MENTORING PROGRAMME AS A DIVERSION INTERVENTION FOR CHILD OFFENDERS: A CASE STUDY OF NATIONAL DEVELOPMENT OUTREACH CENTRE IN THE TSHWANE REGION

by

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DECLARATION

I, …………………………………………………………………………….declare that the study entitled: **Mentoring programme as a diversion intervention for child offenders: A case study of National Youth Development Outreach Centre in the Tshwane Region** submitted for fulfilment of degree of Magister Artium in Criminology at the University of South Africa, is entirely my own and has not been presented for any other degree or to any other institution previously.

I further declare that all sources I have used or quoted have been indicated and acknowledged.

Signature: ………………………….Date………………………….

(M. Zitha)

DEDICATION

"The greatest glory in living lies not in ever falling, but in rising every time we fall" (Rolihlahla Mandela).

I dedicate this dissertation to my husband Vusi Zitha, my adorable children, Vuyo and Mandisa Zitha and my mother, Mmangwashi Mokgethi.

ACKNOWLEDGEMENTS

ABSTRACT

The aim of the study was to investigate the effectiveness of the mentoring diversion programme provided to child offenders referred to the National Youth Development Outreach Centre (NYDO) by the courts.

This research study uses a qualitative research approach. A structured questionnaire was administered to the participants, after the main themes were identified from an analysis of the completed questionnaires. Central themes that emerged related mainly to participants' unique understanding of their deviant behaviour. The themes that emerged during data collection and analysis was the factors that predispose children to deviancy.

The results indicated that the National Youth Development Outreach Centre has developed a mentoring intervention programme that is meeting the needs of these child offenders, by giving them the opportunity to reflect on their deviant behaviour and aims to assist them in changing their behaviour. The researcher noted that children who participated in the study seemed to have developed an insight into their behaviour and have realised the importance of accountability and the willingness to change so much. So, most participants indicated that the mentoring programme should have facilitators in all schools.

In addition, the NYDO has contributed positively in improving the relations of child offenders and their parents/ guardians by empowering the parents or guardians with good parenting skills and providing them with a support system in a form of home visits and aftercare programme.

The study also highlighted numerous research and methodological difficulties inherent in this study. These problems and recommendations for future studies are discussed. The study provides continued support use of the NYDO mentoring diversion programme when dealing with child offenders who have been diverted from the criminal justice system.

KEY TERMS: child diversion; Child Justice Act (75 of 2008); diversion programmes, mentoring programme; youth offenders.

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CHAPTER 1: GENERAL ORIENTATION AND RESEARCH METHODOLOGY

1.1 INTRODUCTION TO THE STUDY

South Africa has seen a rampant increase in child offending over the last few years. According to Rocha-Silva (1998:53), one in three young people commit serious offences such as armed robbery, assault, housebreaking and rape. Most of these children experience multiple levels of adversity, including poverty, dysfunctional families and parental involvement in criminal conduct (Haines & Case, 2005:169). As a consequence thereof, they are exposed to many of the risk factors that could increase their chances of becoming involved in violent criminal acts. Pelser (2008:6) is of the notion that such constant exposure to crime and violence in the key institutions of socialisation has contributed to a significant proportion of SA youth offending population. Research has identified a number of individual, familial, community and social structural factors that place individuals and communities at risk which can at least assist in preventing the risk of future crime (Lab 2004:141).

Various media reports are an evidence of the nature of violent offences committed by the youth and even children as young as 10 years in SA (Harbour, 2010; Pillay & Krishna, 2012; Conway, 2013). Child offending often occurs in traditionally considered safe areas, such as schools and what is more disturbing is that girls are more likely to be victims of sexual assault and rape perpetrated by fellow learners (SA Council of Educators, 2011:7). Collaboration with all relevant stakeholders in assisting children with conduct disorders will bear fruit in the long run (Conwill 2003:239), because the implication of such exposure has negative consequences as these children are more likely to get caught up in the cycle of violence and display of aggression from an early age (Siegel & Welsh, 2009:254). Schools are in fact in a prime position to identify and intervene with children who are showing signs of deviancy (Lab 2004:156).

Burton (2007:102) is of the opinion that youth violence in South Africa is rife because children are growing up in a society where they are exposed to community violence. In addition, association with delinquent peers, access to alcohol and drugs and living in poverty-stricken communities contribute to deviancy. Crime accounts for a major portion of the written and broadcast media. It has become a norm that on a daily basis, there are

media reports on violent crimes committed by the youth; hence it is imperative to have alternative approaches in responding to child and youth offending, such as diversion (Burton, 2007:102). Responses to child and youth offending have moved from punishment and incarceration into rehabilitation through alternative practices such as diversion (Hargovan, 2013:25). Diversion has been viewed as a promising alternative to formal procedures by various stakeholders and has been practised since the 1990s. Yet limited empirical research exists as to what type of diversion intervention work best in the South African context. Diversion is one of the most significant developments in criminal justice practice to emerge over the past two decades (Crawford, 2007:1). The objective of diversion is to develop skills, build and improve relationships.

According to McLaren (2000:70), mentoring as a diversion programme is among the least studied approaches in dealing with child offenders. Which is concerning as some experts argue that diversion plays a core role in preventing and reducing child offending, particularly the recidivism rates (Lab 2012:546). Various reasons affect discrepancies, for example, the lack of consistency in the record keeping by the mentors (Singh & White, 2000:29). Globally there are a few reports on the effectiveness of diversion that are seen as unreliable because of conflicting accounts.

Notwithstanding various challenges, diversion and reintegration services in South Africa are increasingly demonstrating the value of a criminal justice system that embraces the principles of restorative justice. The prevention of child offending is best accomplished through cooperative processes where all stakeholders are involved. In this regard, the offender, victim and the community become significant role-players because these groups do not exist in a vacuum but make up a broader system that legitimises and influence their purpose (Toseland & Rivas, 2009: 12). In support of this argument, Maxwell and Morris (2002:139) observed that indicators for poor restorative outcomes include a lack of parental support and supervision and unhealthy relationship between the child and others.

Intervention programmes aim to correct the criminal or the detrimental behaviour and an early intervention is a critical aspect of child justice system. South Africa is a diverse country that needs to include culturally relevant programmes, which can improve the responsiveness of its youth in remodelling their offending behaviour.

The purpose of this study is to evaluate the impact of a mentoring programme offered to offending children in Eersterus and Mamelodi in the City of Tshwane, South Africa. It has been envisaged that the diversity of this metropolitan area will advance research of the National Youth Development Outreach (NYDO) efficacy on different ethnic groups.

1.2 THE RATIONALE OF THE STUDY

Rationale is statement that entails the significance of a study and how a researcher developed an interest in that particular field (Maree & van der Westhuizen, 2007:28). The aim of this study is to evaluate the effectiveness of a mentoring programme offered to child offenders at the NYDO Centre. Babbie (2010:363) also points out that the aim of evaluation research is to determine the impact of a particular programme aimed at solving a social problem.

Limited studies have been conducted in South Africa with regard to the effectiveness of diversion programmes, that is, whether they are effective and how they impact on the recidivism rate. There are wide-ranging components of diversion programmes. However, there is lack of empirical evidence on the impact of such services on diverted child offenders and recidivism. This might be because these strategies run the risk of focusing only on the crime for which the child offender had been arrested for (Steyn, 2011:151) or perhaps the lack of evidence on specific activities that comprise an intervention that can theorise key processes through which positive impact is through to occur (Siegel & Welsh 2012:8).

The objective of such programmes is to divert young offenders from the criminal justice processes and incarceration in order to protect them from experiencing, inter alia, stigmatisation. In the past, diverting child offenders to the care of their parents and or guardians was probably an effective response. But currently, it is no longer an effective way of dealing with child offenders as this may only exacerbate the deviant behaviour.

There has been a debate among scholars globally on the impact of diversion programmes on child offending and recidivism. Dawes and van der Merwe (2004:31) state that empirical sound studies on the impact of recidivism were lacking and have produced mixed results. There is a need for an evaluation study on child offenders in diversion programmes in order to have a clear picture of 'what works'.

Locally, there is no decisive evidence that exists regarding research conducted on the impact of diversion programmes while research conducted abroad reveals contradicting results (Bezuindenhout & Joubert, 2013: 187). In addition, there are questions regarding whether diversion programmes respond to individual needs and risk assessment and what the perceptions of young offenders are on such programmes. Even though assessments are crucial, they cannot prevent risk (Hope & Sparks 2000:137). The lack of recent research and mixed results on the effectiveness of diversion is partly responsible for the controversy and debate to date. Therefore, it is critical to examine ways in which the effectiveness of these programmes could be enhanced. The future feasibility of programmes is reliant on the findings of evaluation research of such programmes (Presser & Van Voorhis, 2002: 162).

1.3. Aim and objectives of the study

The primary aim of the study is to evaluate the effectiveness of the mentoring diversion programme at the NYDO Centre in the Tshwane Metropolitan area.

At the commencement of the research project, the researcher needs to reflect ahead at the main purpose of his / her research and the issues that need to be addressed and ultimately design the project accordingly (Noak & Wincup, 2004: 122).

The objectives of this study include the following:

- To investigate the extent to which the mentoring programme offered at the NYDO Centre is effective;
- To investigate the extent to which the mentoring programme is designed to address the needs of child offenders;
- To articulate aetiology of offending among children in Eersterus and Mamelodi;
- To examine and identify the factors necessary for a possible best practice approach in curbing recidivism;
- To determine a methodology for assessing the effectiveness of a mentoring diversion programme;
- To conduct a comparative analysis of the child justice act guided by the international instruments;
- To evaluate the role of the mentor at the NYDO; and

- To recommend best practice and approaches of implementing mentoring programme to child offenders.

1.4 RESEARCH APPROACH

A qualitative approach has been employed in this study. This approach is utilised when one needs to understand social life and people's experiences of their lives (Delport & Fouche, 2002:79). The researcher will adopt an unstructured approach, because it allows flexibility in all the research aspects (Kumar, 2005:12). The intent is to gauge the extent to which the intervention programme has effected change in the desired direction (Rossi & Freeman, 1989: 49-50). The researcher adopted an unstructured approach which puts more emphasis on experience and interpretation. Interpretive research is primarily concerned with meaning and it seeks to understand a situation.

The data obtained from the respondents were coded and computerized in order to make sense. Field notes deductions were made during observations or interviews regarding respondents' opinions. The interpretivist research is best suited for this study because it answers the research questions on the effectiveness of the mentoring diversion programme and gives voice to children in conflict with the law.

1.5 TYPE OF RESEARCH

This study can be classified as basic research. Basic research is done to explore certain phenomena, to answer questions or to elaborate on existing theory (Bless & Higson-Smith, 2000:38; Fouche & Delport, 2002: 108). It aims to develop theory to extend the knowledge base. The purpose of the research was mainly exploratory in nature. Exploratory research is aimed at answering the 'what' question (Fouche 2002: 109). In this case, the 'what' question that had been answered pertained to among others, the impact of mentoring diversion programme on recidivism and behaviour change of participants.

1.6 RESEARCH DESIGN AND METHODS

1.6.1 Research design

Research design refers to the researcher's plan for collecting and analysing data. This includes who will collect it, how, from whom, when and where (De Vos, Strydom, Fouche

& Delport, 2011:163). For the purpose of this study, a qualitative research design, which is descriptive, explanatory and evaluative, has been adopted.

The design is appropriate for this study because the goal is to determine the effects of the mentoring intervention on recidivism. It was envisaged that the design will enhance an in-depth understanding of the factors and perceptions that contribute to child offending. According to Patton (2002:225), qualitative design needs to "remain sufficiently open to permit exploration of whatever the phenomenon under study offers for enquiry".

1.6.2 Research population, sample and sampling method

Sampling comprises of elements of the population that are considered for actual inclusion in the study with specific characteristics that represent the population (Descombe, 2010:141). Sarantakos (2000:139) states that the primary aim for sampling is feasibility and representativeness is also an important aspect of sampling (Kerlinger, 1986:110-111). This is particularly important when a researcher wants to generalise from the sample to a larger population (Reid & Smith, 1981:171).

The participants sampled for this study were located at the NYDO Centre. The institution offers diverse diversion programmes to children in conflict with the law, including the mentoring intervention programme. The researcher drew the sample from these young offenders and the study was confined only to the individuals designated to attend the mentoring diversion programme. The population of the study consisted of all the entities that possess a certain trait within set boundaries.

The researcher has adopted a mixture of purposive and random sampling methods. Moreover, the main goal of purposive sampling is to focus on particular characteristics of a population and will enable the researcher to answer research questions (Grinnell & Unrau, 2008: 153, Monette, Sullivan & DeJong, 2005:148) and random sampling technique method affords each member of the population an equal chance of being selected. These sampling methods are relevant for this study because it is a homogeneous study. All participants had the same chance of being included and probability sampling added credibility to the study. In opting for this method, the researcher dealt with participants that are known to one another since they were from the same establishment. According to Silverman (2000:159), volunteer sampling works well when the respondents are known to each other and can encourage one another to become involved in the study. Although the researcher is well aware of the disadvantages

of using this method of sampling, nevertheless, it was also one way of collecting the most comprehensive data. Rubin and Babbie (2001:403) point out that the researcher's overall goal should be to collect the richest possible data.

The aggregate sample frame was made up of as many participants as possible because the researcher conducted an open study and continued until no significant new material was gathered (Marshall, 1996:92). The researcher needs to understand behaviour as the participants understand it, learn about their world, learn their interpretation of self in the interaction and share their definitions (Chenitz & Swanson, 1986:7).

1.6.3 Data collection

This step in the research process commences with a decision as to which data gathering method and techniques will be utilized. There are various data collection techniques, which can be utilised, for instance, open-ended, narrative, checklist, field guides and interviewing (Denzin & Lincoln 2000:674). More specifically, for the purpose of this study, questionnaires, interviews, focus group discussions and observation were used to collect data.

Interviewing is one of the most common methods that can be employed in order to be able to gather information directly from individuals or a group (DePoy & Gilson, 2008:108). Interviewing is described as a conversation with a purpose (Kahn and Cannell, 1957:149). It has long been the most popular method in qualitative study. The interviews were conducted with relevant stakeholders at the NYDO Centre.

The unstructured interviews facilitated probing and follow-up questions where the responses lacked sufficient details, depth or clarity. The interviews were recorded with the consent of the participants in order to make the analysis thereof more thorough.

Furthermore, field notes were employed as they may contain valuable information on the context of the interview that may not be captured on tape (Greeff, 2002: 304; Hagan 2005: 173). During interviewing, the researcher needs to ensure that full and accurate notes are recorded. Babbie (2007:310) suggests that both empirical observations and the researcher's interpretations should be noted. According to Druckman (2005:249), this step of data gathering is taking place while taking notes. Participant observation has already been described as fundamental to all research methods (Denzin & Lincoln, 2000: 673). It is a technique that persuades participants to give additional facts about an issue

under discussion. The main objective is to expand the response to a question and increase the richness of the data being obtained (DeVos et al., 2011:345).

Case studies of young offenders that have gone through the diversion process at the NYDO Centre were also included. Identification of child offenders who went through the system has been processed with the assistance of the NYDO Centre and social workers reports. Such case studies will provide possible answers to whether the programme has any impact on curbing recidivism. Getting participants to tell a story about their life or of a particular experience is a variation of the typical interview based on a set of field questions. This will offer children in conflict with the law freedom over the data generated and will assist the researcher to gain direct sense of their experiences and perceptions with regard to the programme (Bachmann & Schutt, 2011:260).

1.6.4 Data Analysis and Interpretation

The task of interpretation is a continuation of analysis and presents challenges because the usefulness and utility of research findings lie in proper interpretation (Kothari, 2004: 361). After the researcher has collected the data using questionnaires, interviews, focus group discussion, observations, analysis and interpretation followed. Bhandakar, Wilkinson and Laldas (2010:305) emphasize that the entire research process is guided by the concern for analysis and interpretation. This is mainly because the outcomes of the research problem and research questions are exposed during analysis and interpretation. Analysis of data is carried out to obtain answers to the research questions (Rajiv & Marco, 2006: 195).

After the data had been analysed, the process of interpretation follows to draw conclusions useful for findings and recommendations. No other extraneous information was considered for analysis and interpretation other than that collected during the survey. The other information collected during the literature review was subjected to descriptive analysis to form a composite set of findings and recommendations.

The interpretation of data was done in order to draw inferences, identity relationships and make conclusions for presentation in the research report. Care was taken to avoid false or implied generalisation that may be used to develop hypotheses for future research. There will be a comparison of findings from literature review and primary data to find

commonalities in the development of recommendations regarding the effectiveness of the mentoring diversion programme and its impact on reducing recidivism.

The reader should take note of the following concepts used and are defined for purposes of the study:

1.7 DEFINITION OF KEY CONCEPTS

- A **risk factor**: Shader (2004:3) defines risk factors as "those variables or characteristics that, if present for a given individual make it more likely that they will develop a disorder"; these risks are factors associated with child offending. In addition, Andrews and Maree are of view that a 'risk factor" is a characteristic of the individual or circumstances that is associated with a harmful or negative outcome.

- **Child:** according to the South African Constitution of 1996, Section 28(3) as well as the Child Justice Act 75 of 2008, a child is a person younger than 18 years of age. For the purpose of this study, it refers to a person under the age of 18 years of age who has been accused and or convicted of committing a deviant offence.

- **Child offender (operational definition):** this refers to children who have committed crime while under the age of 18 years

- **Child offending:** Acts by children that would be considered a crime if committed by an adult, as well as actions that are illegal only because of the age of the offender (McCord, Widom & Crowel, 2001:23).

- **Child Justice System:** a set of procedures and inter-sectoral services that provide programmes, support and monitoring to children in conflict with the law through various stages of the criminal justice process.

- **Criminal involvement:** refers to the process through which individuals initially choose to become involved in particular forms of deviant behaviour (Cote 2002:291).

- **Diversion:** "An attempt to divert or channel out, youthful offenders from the juvenile justice system" (Bynum & Thompson 1996:430).

- **Delinquency:** Acts by a juvenile that would be considered a crime if committed by an adult, as well as actions that are illegal only because of the age of the offender (McCord, et al. 2001:23).

- **Intervention**: is defined as applied action undertaken by a social worker or other helping agent, usually in concert with a client, affected party or population (Schilling, 1997:174).

- **Programme evaluation**: Patton (2002:10) defines programme evaluation as the systematic gathering of information about the activities, characteristics and effects of programmes to make judgements about future programming.

- **Recidivism:** Re-arrest and conviction of a person previously convicted of a crime, (Zastrow, 2000:29). It is a measurement of the rate at which offenders commit other crimes. It literally means "a falling back" and usually into bad habits, that is the behaviour of a repeat or habitual criminal.

- **Reinforcement:** a key concept in social learning theory, which states that crime, is largely a response to reinforcing stimuli. If individuals are rewarded for committing crimes, they are more likely to commit them again (Beirne & Messerschmidt, 2006:488).

- **Restorative justice:** Wright (1996:7) summarises the meaning of restorative justice as the support and reparation for the victim: the offender should be actively involved and cooperate with rehabilitation process and is guided by the value of healing and rebuilding the community.

- **The organization:** the agency or individual providing services to children at risk or in conflict with the law that receives funding from the Department of Social Development (DSD).

- **Literature review:** summarises much more than just reviewing the literature and it refers to a scrutiny of all relevant sources of information (Mouton, 2001: 87). All the sources of information which were used for preliminary literature review will also be consulted where necessary for more insight. These include books, journals, newspaper articles as well as the internet.

- **Mentoring:** mentoring in this context implies a cross age, dyadic relationship between a trained adult and a deviant child (Davies & Thurston, 2005: 37; Vanderven, 2004:95). A mentor plays a critical role in the programme as he or she has a direct and indirect link in the overall outcome of the programme. An effective mentor can often make a difference between a failed mentoring relationship and a successful one.

- **Youth at risk:** refers to children or youth at risk as those that certain circumstances, behaviour and way of life put them at a higher risk of offending

(Shaw & Tshiwula, 2002: 1)."At risk" describes a state that is not necessarily current, but can be projected in the absence of the necessary interventions.

1.8 FEASIBILITY OF THE STUDY

Limited studies have been conducted in South Africa with regard to the effectiveness of diversion interventions and their impact on the recidivism rate of children who went through the programmes. The researcher has conducted the study at the NYDO Centre at Eersterus and Mamelodi to discover possible variables that may have an impact on the success or failure of the diversion programmes.

1.9 ETHICAL CONSIDERATIONS

Research ethics of science concerns the guidelines pertaining to what is right and wrong while conducting research. The UNISA Policy on Research Ethics (2007) provides guidelines and requirements to be followed by the researcher carrying out research under the authority of the University and the study falls under this scope. The policy covers basic moral and general principles among other issues. Ethical considerations in any research should be of the utmost importance since the manner in which research is conducted and findings are released both have a direct or indirect consequence to people's lives (Mutchnick & Berg, 1996:215). The study was dependent on human participants as sources of data hence the need to ensure that these moral principles were observed in the design of the research.

Patton (2002:407) suggests that before the interview or during the opening of the discussion, the purpose of the research should be clearly explained. In this regard, the researcher explained to all the participants why information is required from them and what the researcher hopes to achieve with it.

For the purpose of this study, the following ethical consideration was taken into account:

- To obtain approval for the research as well as the participants' consent;

- Confidentiality is guaranteed (Ladikos, 2009: 218);

- The researcher will not, under any circumstances change data or observation;

- To debrief participants if necessary since through this process, problems generated by the research can be corrected (Babbie, 2001:475);

- To ensure that the research does not bring any harm to the participants (Babbie, 2007: 27);

- The assessment of all possible risks should be negotiated during the planning phase of the study (Ritchie & Lewis, 2003:70);

- Participation should at all times be voluntary and no one should be forced to participate in a project (Rubin & Babbie 2005); and

- No cheating of colleagues should take place.

The researcher applied the principle of justice and fairness by following proper sampling procedures so as to select the units of analysis objectively without any personal bias or favour. The identity and particulars of the researcher and the supervisor were endorsed on the consent form including contact details. Furthermore, the researcher ensured that she does not impinge on the rights of individuals by observing rights issues in the design and application of data collection instruments. The researcher recognised that it remains her responsibility for the ethical quality and accurate reporting of the study (Babbie, 2001:475).

1.10 LIMITATIONS OF THE STUDY

- This study focused only at the NYDO Centre in the Tshwane Metropolitan area; these might not be a true reflection of other centres providing similar intervention programmes to youth offenders elsewhere.

- The impact of other existing programmes being offered to diversion participants at the NYDO Centre will not be evaluated. The results could be questioned, as there are a number of programmes that could be effective in meeting the risk and needs of diversion participants.

- If a child turned 18 years of age within the period of observation then we wouldn't be in a position to verify if they have reoffended or not. According to the Child Justice Act,

once a child turns 18 years of age he or she is considered an adult and would not be seen or assessed by a probation officer even if they do reoffend.

1.11 CONTENTS OF THE RESEARCH REPORT

The following layout will be followed in this research study in order to achieve the above-mentioned aims.

Chapter 1: provided an introduction and orientation of the phenomenon under investigation. This chapter outlined the main focus of the study and drew out the scope, aims and objectives as well as the rationale for this study. The chapter concluded with an overview of the methodology that will be applied in the study.

Chapter 2: the chapter reflects on an in-depth overview of the historical background of diversion and restorative justice system in South Africa. Theories on the contributory factors towards child offending in a South African context are discussed. Possible shortcomings or findings of other researchers' work were highlighted with regard to whether the mentoring diversion programme is effective or not as well as its impact on curbing recidivism.

Chapter 3: it is important to note that the criminal justice system has been developed with the guidelines of various international and regional policy instruments. These instruments are discussed and a comparative analysis of the child justice system is also reflected. These countries are as follows: Botswana, Canada, Kenya and Netherlands.

Chapter 4: looks at the development of child justice and diversion in South Africa and what diversion entails and the legal provision.

Chapter 5: describes and discussed the research methodology employed in this study. The subjects of this study are discussed in this chapter as well as different methods used to collect and analyse data.

Chapter 6: will cover interpretation according to data source and in relation to the research questions. Data will be categorised and organised into ratings and rankings. Further comparative analysis of data according to categories of respondents and participants observation is covered. A summary and analysis of the responses according to questions for NYDO stakeholders, youth in conflict with the law are provided. Statistical presentation of descriptive and inferential statistics is covered in this chapter. Statistical

comparisons of the responses from the different categories of participants were provided. The findings on each of the research questions will be detailed.

Chapter 7: concludes this study by indicating to NYDO Centre that its diversion mentoring programme is effective in curbing recidivism. The recommendations will take into consideration the outcomes of the research questions and the conclusion will comprise a brief summary of the research project, particularly the design, findings and recommendations. The chapter also explores the limitations of this study and recommendations for future research will also be tabulated.

1.12 CONCLUSION

In this chapter the focus was on introducing the reader to the topic. Various topics were covered which included introduction and background, problem formulation, goals and objectives, research questions, problem statement, goal and objectives, feasibility of the study, ethical aspects, limitations of the study and lastly contents of the research report.

Chapter 2 focuses on the literature overview pertaining to this research topic.

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CHAPTER 2: BACKGROUND OF LITERATURE AND THEORY

2.1 INTRODUCTION

For decades social scientists have attempted to identify and understand the problem of child offending and to determine factors that contribute to the persistence of antisocial behaviour. A better understanding of such factors would allow policymakers and practitioners to develop and implement effective interventions to enhance knowledge based on child offending, particularly in South Africa. The concept of deviance is complex because of its diversity, as norms vary considerably across groups. Every deviant act involves the violation of social rules that regulate the behaviour of child offenders in a social system. This affirms the fact that a comprehensive approach aimed at improving the links between all the significant other in a child's life is important in order to address the problem of child offending. This is of the utmost importance as majority of children in South Africa grow up in a culture of violence and consequently contribute to the weakening of community support systems (Roelofse, 2011:361). Moreover, children who engage in serious delinquent activities are among the most at risk for a lifetime of criminal behaviour. As such, it is important to identify not only the causes of early childhood deviant behaviour, but also effective intervention strategies to interrupt this potentially problematic developmental trail.

Over the last few years, new opportunities have arisen for better coordinated and less punitive responses to young offenders in South Africa. Policy changes, in particular the Child Justice Act 75 of 2008 and a new emphasis on the importance of diversion, provide a clearer focus on the prevention of offending and recidivism across a range of services. Children and youth are recognised as being particularly vulnerable group, both as victims and perpetrators of crime. Diversion is a vital tool in ensuring that children in conflict with the law are protected. However, in the past, there was no legal framework for diversion in South Africa. The purpose of this chapter is to explore ways that various theories contribute to the explanation and prevention of child offending including alternatives to dealing with children in conflict with the law. Firstly, we consider how a few theories of social control can be linked to the idea of alternative criminal justice. In addition, theoretical foundation of diversion and its effectiveness are discussed and the current role of diversion in the child justice system. A brief background and an overview of the

process of how diversion is practiced will be discussed. It also aims to give details on how the Child Justice Act 75 of 2008 is applied.

2.2 THEORIES OF DELINQUENCY AND CRIMINALITY

Since the causes of child offending are numerous and complex, action taken to improve any of the factors contributing to this concern will undoubtedly help in its prevention. Early societies established rules to maintain social order and protect their members (Hess & Drowns, 2004:2). It is important to study child offending from the context in which early research was based. The fact that children and youth have created their own "world" and "culture," we need to acknowledge that culture is learned and does not exist in a vacuum (Mueller 2006:116). Nel (2000:28) argues that although youth culture is not easily well defined and is evolving adults, guardians and policy makers need to understand and learn their culture.

There is a disregard of traditional norms and values by the youth where their own culture assumes a more significant role (France 2008:1). Every theory offers a recommendation for dealing with crime (Brown, Esbensen & Geis, 2001: 238). The fundamental purposes of criminological theories seek to arrive at an explanation that accounts to child offending. It has been argued that childhood deviancy is likely to produce antisocial behaviour in adulthood; hence early interventions hold a theoretical assurance to some degree of deterring crime during later life (Fareta, 1981: 439; Loeber & Stouthamer-Loeber, 1987: 325). Furthermore, child offenders are viewed as the group that is most controllable to interventions due to their age.

It is evident that South Africa experiences serious social problems that create and encourage factors for the involvement of children in offences that display higher levels of aggression and violence (Hunter, 2000: 2). The basis of current sociological and cultural assumptions of child offending can be traced to some of the earlier and subsequent interpretations. A review of fundamental theories for their contribution to the study of child offending will be discussed including theoretical diversion theories and how diversion "works". Despite more than two decades of research on diversionary politics, our knowledge about its effects and best strategies is far from being conclusive.

2.2.1 Biological approach

Biological risk factors are identified in various studies however it has to be noted that it hasn't been given much attention (Lab 2004:167). Biogenic theories represent one of the earliest forms of explaining child offending. Though today these theories are considered invalid as general explanations of crime, they are credited with being influential in bringing scientific perspective to the study of crime. Without biological processes, there would be no action or life (Franken, 1998: 25). The belief that criminality has a biological basis is by no means new. However, environmental conditions are not ignored but viewed as potential triggers of the biological force. Initially, Lombroso developed the belief that all offenders were born criminals and that criminals have numerous physical defects (Williams & McShane, 2010:30). Nonetheless, modern biological theorists do not see child offenders as born criminals, but characterises biological factors as predisposing certain individuals towards misbehaviour (Shoemaker, 2000:41). According to Bartol and Bartol (2011:147), some children purposefully engage in deviancy at a young age and gradually become more aggressive as they grow older.

It is evident that theorists currently adopt a more multifactor approach in their attempt to explain child offending. Some criminological scholars maintain that a focus on biological and psychogenic factors is ill advised with regard to explaining child offending. The approach of individual positivism has experienced few changes in recent times. Shoemaker (2000:41) highlights the following three major approaches:

- This approach suggests that people are exposed to biological and psychological processes that shape their personalities in childhood. There are different influential effects on a child's life when growing up, but social influences encountered in the school or community environment may equally contribute to antisocial behaviour.

- Research on the biological contribution to explaining deviant behaviour by child offending is complex. Control groups are beginning to emerge and definitions of key variables are revised and refined.

- Modern theories are much more interdisciplinary than in the past. Personality factors and environmental conditions are often considered. Some children are exposed from

the onset and are automatically at risk because of socio-economic problems or family dysfunction (Siegel & Senna, 2000:186).

Though studies of child misbehaviour have reported that most deviant behaviour is not premeditated but are mostly influenced by impulsive decision making, but to some degree they do have some control over their acts. Decision making is complex, is seen as a product of various impacts such as biological, psychological and sociological (Hunter & Dantzker, 2002: 137). Children who display behavioural disorders may be suffering from neurological disabilities which may lead to acts of violence. Bartol (1995:124) argues that in most cases these young offenders are emotionally troubled or psychologically maladjusted and in need of conventional psychotherapy. It also needs to acknowledge that genetic factors in humans pay just a vital role in a person's life as environmental factors (Lanier & Henry, 2010:104). Further in some circumstances, children are involved in deviancy because of mental conflicts that are created by inadequate family relationships (Bartollas, 1993:121). As Eysenck cited in Bartol and Bartol (2010:79) argue that, understanding criminal behaviour require a holistic overview of the phenomenon and cannot be understood only in terms of hereditary or environmental influences.

Sheldon argued that the body is really "an objectification, tangible record, of the most long-standing and most deeply established habits that have been laid down during a long succession of generations" (Sheldon, 1949:5). He also believed that there were three distinctive bodily forms that informed us on the particular types that were likely to behave in particular ways. These body types are categorised by the individual's emotional and physical characteristics. According to Sheldon's explanation, delinquent boys are mainly mesomorphs, this fact may be the 'justification' as to why more males than females commit crime. The above arguments support the notion that certain physical traits are essential for certain kinds of crime.

Other biological theories have focused on numerous potential causes of deviant behaviour in young children, such as genetic factors underlying antisocial behaviour.

2.2.1.1 Genetic and hereditary factors comparative to deviancy

Efforts have been made to link genetic traits to criminal behaviour by studying families in which criminal activity was widespread through generations. Hereditary factors play a vital role in determining the individual's personality and character. The family history of criminals have been examined, especially those of twin children. The other argument

behind this research is that if one twin turned to crime, the other one will always do the same. For example, the study of Lange on prisoner twins and those who were not institutionalised found a high degree of displaying the same type of behaviour. It was found that often both twins had engaged in criminal behaviour, but it was pointed out that the effect of environmental influences was ignored (Williams & McShane, 2004:39). In addition, it was found that males who inherited extra Y chromosomes tend to be aggressive and mentally retarded (Hoge, 2001:53). Support of these findings and other biological theories has been quite limited largely because they lack empirical support (Hoge, 2001:54).

However, even if most offenders share some biological traits, this might be the product of some environmental condition such as poor nutrition and not necessarily a genetic factor. It has been found that food intolerance can have a substantial influence on anti-social behaviour (Benton 2007:752). According to Siegel (2004:141), a high intake of artificial colouring in food, milk, sweets, high levels of caffeine and sugar may cause hyperactivity and aggression in children. Kanarek (1994:520) concurs with this view, it was found that sugar intake is the cause of numerous psychological problems, which may include, mood swings, aggression, irritability and violent behaviour.

2.2.1.2 Intelligence and delinquency

Livermore (2001:25) defines intelligence as a mental, incentive and behaviour capability to understand and adjust efficiently to diverse situations and environments. It was revealed that most offenders have a low IQ (Siegel & Welsh, 2009: 102). Most research on the relationship between IQ and misbehaviour focused on adolescent and it appears there are several reasons to explain the apparent causal link between low IQ and deviant behaviour by the youth.

According to Barkan (1997:142), children with low intelligence perform poorly and this in turn leads to lowered attachment to school. Furthermore, low intelligence leads to a lower ability to engage in moral reasoning (Barkan, 2012:151). Siegel (2001:176) supports this notion that children with low IQ perform poorly in school and that school failure and academic incompetence are highly related to child offending and later to adult criminality. However, Walsh and Ellis (2007:170) put an argument on the relationship between intelligence and misbehaviour. They found that the correlation between academic performance and antisocial behaviour is a stronger predictor of deviancy than IQ. It is

very important to remember that the child is a physical organism functioning in a social environment that has different influential factors towards offending. The indigenous nature of early efforts to explain biological and psychogenic factors as explanations of crime helps to explain some of the subsequent resistance to this field of work.

2.2.2 Classical school

Classical theory movement began in the 18th century and it was referred as the 'age of reason' (Schmalleger 2013:13). This movement was advanced in response to the harsh, corrupt and subjective nature of the legal system in the 1700s (Cullen & Agnew 2006:19). Classical theorists assumed that the causes of crime lie in the fact that people are free individuals who reason and act logically (Williams & McShane, 1994: 14). According to this school of thought, people have free will to choose deviant behaviour and that their choices are designed to bring them pleasure and can be controlled by fear of criminal sanctions (Siegel, 2009:92). This explains and identifies motives of action which are of self-interest.

Classical school of thought is of view that punishment could serve as a deterrent only if it is proportional to the crime. Proportionality means (a) that the severity of punishment corresponds with the severity of the harm done; (b) that the type of punishment resembles the crime in order for the community to associate such crime with the punishment (Carrabine, Igansky, Lee, Plummer & South, 2004:33). The classical school replaced the past explanation that crime is an 'unusual' phenomenon. It played an important role in most criminal justice systems including South Africa. Current concepts such as civil rights, process, sentencing and deterrence were supported historically by this school of thought (Williams & McShane 2010:15).

Beccaria formulated three principles of punishment that later became characteristics of the deterrence principle. He is of the opinion that the first two principles are the most important (Barkan, 2012:116). This theory states that whether people engage in crime their actions are perceived as dependent on 'certainty, swiftness and appropriateness' of punishment they face (Cullen et al 2006:21). There is an assumption that punishment meted immediately after the crime has been committed the more just it will be and that "the degree of the punishment, and the consequences of a crime, ought to be so contrived, as to have the greatest possible effect on others, with the least possible pain to the delinquent"(Cullen et al 2006:24).

2.2.3 Neo Classical School

The Neo classicists recalled the "central rational choice actor model notion of free will, but with the modification that certain circumstances may be less conducive to the unfettered exercise of free choice than others"(Burke 2009:32). The Neoclassical theorists can be divided into three groups, namely, utilitarian philosophers, just deserts philosophers and rational choice theorists (Empey, Stafford & Hay 1999:234).

These groups are discussed in detail below.

2.3.1 Utilitarian philosophers

Generally utilitarianism is well-known by fairness or impartiality and historically it is characterised by its normative ethics. The utilitarian theory of punishment seeks to punish offenders with the aim of deterring them from any future misconduct. The utilitarian theory recognises that punishment has consequences for both the offender and society and that it should not be limited.

Utilitarian philosophers consider that legal punishment serves two important purposes, namely:

- It discourages individuals from committing further crimes and
- It safeguards society from criminal acts that threaten social order.

These philosophers maintain that individuals who are most likely to commit crime lack self-control against misconduct and put value n the pleasure brought by the excitement of violation of the law. They further postulate that individuals who are involved in such deviant acts if convinced that their actions may bring severe punishment, only a few will be willing to engage in crime (Siegel, 2001:115).

2.3.2 Just desert philosophers

The concept of just desert seeks to preserve human dignity through punishment and emphasises that a person is a rational being with free will to distinguish between right and wrong. A just desert is a "philosophy of justice that asserts that the punishment should fit the crime and culpability of the offender" (Adler, Mueller & Laufer 1996:246). Since the premise underlying retributive justice is that an individual may only be punished if he or she "deserves" it, punishment is then only justified where an individual is found guilty of an offence (Van der Merwe 1982:264). As result emphasis is put on two basic principles

with regard to sentencing. These principles are that the perpetrator must be punished for a crime and accountability is of paramount in addition punishment must fit the crime (White & Haines, 2001:31). When dealing with child offenders the above principles will also be informed by the Child Justice Act 75 of 2008, which affords children in conflict with the law-specific safeguards. This shows that proportionate sentencing promotes the ideology that sanctions should be directly related to the harm caused (Quirk 2006:955), and children must be afforded with alternatives where possible.

2.3 DEFINITION OF DIVERSION

Diversion is closely linked to the concept of restorative justice which requires a balancing of rights and responsibilities. The introduction of the Child Justice Act made diversion a central feature in the child justice process. According to Kassan (2006:97), diversion involves the referral of cases when an applicable amount of evidence is available to prosecute away from formal criminal court procedures. Diversion is an attempt to channel out child offenders from the child justice system (Bynum & Thompson, 1996:30). Diversion could also be explained as the process that assigns children and youth who are in conflict with the law 'into treatment oriented programmes prior to formal trial and dispose in order to minimize their penetration into the justice system and thereby avoid stigma and labelling'(Siegel & Welsh 2012 :546).

The basis of diversion argument is that courts may unintentionally stigmatize some child offenders for having committed fairly petty acts that might be handled outside the formal system. Diversion "implies more than simply screening out cases for which additional treatment is needed" (Siegel & Welsh 2012: 56). Furthermore, it aims to create a sense of responsibility in child offenders by holding them accountable for their actions and by reinforcing respect for the fundamental rights of all citizens (Badenhorst, 2011:5).

2.4 THE AIMS AND OBJECTIVES OF DIVERSION

The child justice practice in South Africa has experienced many amendments (Bezuindenhout & Little, 2012:369). In the past, different sections of legislation were used to deal with children in conflict with the law, such as the Criminal Procedure Act, the Child Care Act, the Correctional Services Act and the Probation Services Act. Prior to the enactment of the Child Justice Act, the South African law did not specifically cater for diversion interventions. The Child Justice Act aims to replace the fragmented method and

create legislation that offers directives to all stakeholders involved in dealing with children in conflict with the law (Skelton & Tshehla, 2008:1).

The Child Justice Act 75 of 2008 was instituted to address the inhumane treatment of children and youth before 1994. Historically, thousands of children awaited trial in very bad conditions and for lengthy periods of time without parents or guardians knowing their whereabouts (Juvenile Justice for South Africa, 1994:2). The lack of proper child justice legislation resulted in most children being exposed to cruel practices and inhumane treatment (Stout & Wood, 2004:115). For example, activism for child offenders' rights was initiated after the death of 13 year old Neville Snyman who was raped and murdered by his cell mates while awaiting trial in Robertson police cell in October 1992 (Gxubane, 2010: 35). This case had a huge influence in the formation of the National Working Committee on Children in Detention. However, more than two decades after the death of Neville, a 15 year old boy was allegedly been raped while detained at Westville prison and he was put in a cell with hardened criminals. He was awaiting trial for shoplifting. It was reported that the 15 year old had become a "zombie" as he was sold by prison guards to older inmates (Mcetywa 2008: Np). After his plight was reported he was released on warning after he pleaded guilty for theft. This sexual abuse is a serious problem not only for child offenders but equally for adult offenders as this is a contravention of international human rights. This report is validated by Matshaba's (2011:275) findings on the problem of sexual abuse in prisons. He found that rape in correctional centres takes on different forms and that the most brutal one is when the victim is raped by several perpetrators. He further reports that this mostly happens in communal cells, where there is no direct supervision of correctional officials. Moreover, it has been established that gangs play an integral role in perpetuating sexual violence in South African prisons (Mcetywa, 2008: Np). This development of sexual violence in correctional facilities needs to be eradicated and children need to be protected from being exposed to such traumatic events while incarcerated.

 A range of methodologies have been used to curb the problem of child offending, Siegel (2001:310) found that the traits present in persistent offenders could be observed as early as eight years of age. Services to children in conflict with the law have changed over the last 20 years. The reason for prevailing support on diversion is that it can offer significant advantages to the child.

Currently, there are various methods of dealing with children in conflict with the law which includes correctional safety institutions for child offenders where diversion interventions are not suitable as an option. The Child Justice Act 75 of 2008 has strong restorative justice ethos and provides the framework for criminal justice system specifically in handling children in conflict with the law. However, this restorative approach should not be seen as a "soft" approach as it aims to hold children in conflict with the law accountable for their deviant behaviour (Gallinetti, 2009:12).

These interventions have significantly decreased the number of children referred to preliminary inquiries. According to the 2014 Annual Report of the Department of Justice and Constitutional Development on the Implementation of the Child Justice, there has been a decline in the number of preliminary cases from a high of 25 517 in 2013/2014 compared to 21 563 in 2013/2014. The decrease may be linked to a possible increase in the number of children being diverted in terms of Section 41 of Act 75 of 2008. Wood (2003:1) has noted a fairly significant growth in the number of children referred to diversion programmes.

The primary objective of diversion programmes is to redirect children away from formal processing in the child justice system. The practice of diversion developed concurrently with the establishment of separate child justice system. Originally, diversion interventions were based within institutions and designed in such a way that they provided treatment and moral education with the aim of curbing recidivism. It is commonly accepted that treating only family or school risk factors is insufficient approach to the prevention and control of child offending (Zinn, 2011:175). Later there was a move towards community-based interventions in response to the criticism that institutions were stigmatising the youth offenders.

In terms of section 51 of the Act, the objectives of diversion are as follows:

- To deal with a child outside the formal criminal justice system in appropriate cases;
- To meet the particular needs of the individual child;
- To promote the integration of the child into his or her family and community;
- To provide an opportunity to those affected by the harm to express their views on its impact on them;
- To encourage the rendering to the victim of some symbolic benefit or delivery of some object as compensation for the harm caused;

- To promote reconciliation between the child and the person or community affected by the harm caused by the child;
- To prevent stigmatising the child and reduce the potential for recidivism;
- To provide for the special treatment of children in a child justice system developed to break the cycle of crime, which will ensure safer communities and encourage child offenders to become law-abiding and productive adults;
- To prevent child offenders from exposure to the negative effects of the formal criminal justice system by using procedures and services which are more suitable to the needs of children, including the use of diversion and strengthen cooperation within an integrated and holistic approach in the implementation of the Criminal Justice;
- To prevent child offenders from having a criminal record, and promote the dignity and well-being of the child and the development of his or her sense of self-worth and ability to contribute to the society and promote the spirit of Ubuntu in the child justice system by strengthening children's sense of dignity and worth; and
- To protect the interests of victims and the community and supporting reconciliation by means of restorative processes by involving parents, families, victims and the community in the reintegration of children".

Diverting children from the formal justice system contributes to protecting them from abuse and violation of their rights and promotes liability.

2.5 THEORETICAL FOUNDATION OF DIVERSION

According to Rubin and Babbie (2001:44), "theory is a systematic set of interrelated statements intended to explain some aspect of social life or enrich our sense of how people conduct and find meaning in their daily life". Shoemaker (2000:7) emphasises that theory is an attempt to make sense out of observation. It also offers an explanation and understanding of a phenomenon (Winfree & Abadinskry, 2003:8). Criminal, delinquent and violent behaviour in young people results from a complex interaction of risk and protective factors in different environments which influences the way in which children learn behaviours. Complex interaction takes place between the individual, the family, peers and the broader community. A theory offers answers to the question why? they signify a search for the truth.

The development of diversion programmes in the 1960s and 1970s corresponds with the drastic change that occurred in the type of families in which children found themselves.

These weakened informal control systems and expanded social control institutions that could supply services previously provided within the community.

Historically, the unit of responsibility for juvenile justice has not been the individual child but the child in the context of the family group (Staples, 1986:177). Research has shown that poor family affection and structure have a negative effect on the child's behaviour (Contreras, Molina & Del Carmen Cano, 2011:77). The rise of single parent and dual worker households has affected the family bonds (Siegel & Senna, 2000: 8). We know that this is associated with a variety of negative experiences including delinquency and school dropout. The control exercised by the school is another traditional source of social control. Similar to family and community control, discipline in schools has also weakened. In addition, because there was an increased scrutiny over social control, this has led schools to abandon measures such as corporal punishment, suspensions or expulsions without formal proceedings (Lieberman, 1981:128). All of these changes lead to the reduction of informal control over children and their deviant behaviour. According to its original conception, diversion was a "process whereby problems otherwise dealt with in a context of delinquency and official action would be defined and handled by other means" (Lemert, 1981:36). As forms of social control, diversion programmes represent less legality and exclusion than traditional correctional programmes. Experts committed to the ideology and practice of individual treatment designed diversion programmes that provide rehabilitative, treatment and counselling services (Polk 1987:358). Hence, diversion usually involves therapeutic social control over children that families have previously sanctioned.

Positivists have concluded that offending children are driven into crime by something in their physical makeup, by psychological impulses or by the harshness of their social environment. In contrast, the sociological positivism argues that the key causative factors lie in the social context external to the individual.

One of the major developments involves attempts to integrate two or more theories to produce a better explanation for child offending. We need to acknowledge that it is difficult to explain human behaviour from a one-dimensional approach, especially in South Africa where we have diverse cultures and carry the legacy of the culture of violence. For the purpose of this study, the researcher will discuss the social process theories in an attempt to explain child offending.

2.5.1 Social process theory

Social process theories share one basic concept, that is, all people, regardless of their race, class and gender have the potential to become law breakers. The causes of crime are dysfunctional, abnormal emotional adjustment formed during the period of childhood development and early socialisation. As a result of these factors, the individual is, to all intents and purposes, "destined" to become a criminal (Burke, 2005: 89). Social control theories attribute child offending and crime to social variables such as family structure, education and peer pressure. A study by Chaiken (2000:7) found that the lack of adult supervision is probably the cause of violence during the period where children are unsupervised.

Child justice has been influenced by various theories but most prominently by labelling theory and differential association theory. "The rise of juvenile diversion is in large part attributable to the popularity of labelling theory during the 1960s" (Osgood & Weichselbaum 1984:35). Labelling theory continues to be the most influential force for diversion from the justice system. It hypothesizes that the delinquent behaviour and the act of being labelled by authoritative figures will strongly influence juveniles in believing that their deviant behaviour is expected.

On the other hand, differential association theory's basic premise is that through association with deviant groups, individuals are more likely to become deviant themselves.

2.5.2 Differential association theory

The theory's major focus is on the learning mechanism available, which results in various forms of delinquent subcultures. Differential association theory has significantly contributed to the field of criminology and its primary focus is on the development nature of criminality. Differential association is a term that referred to the difference in the strength between the youth's association of delinquent behaviour with rewards and punishments (Davidson, Redner, Amdur & Mitchel, 1990: 13). In addition, it suggests that persons socialised in disorganised neighbourhoods have a likelihood of associating with people who will encourage and approve deviant behaviour (Brown et al., 2001:324).

Fundamentally, this theory holds that behaviour is entirely a product of the individual's social environment. This theory addresses the issue of how people learn deviance.

Culture conflict is an important subject in the differential association theory (Bezuidenhout, 2011:144). In essence, it seeks to explain factors associated with offending. Behaviour patterns are influenced by values and norms that children and youth learn from significant others. According to Curran and Renzetti (1994:184), Sutherland believed that the major difference between compliance and criminal behaviour is in what is learnt rather than how it is learnt. The learning perspective assumes that law-breaking values, norms and motives are acquired through interaction with others. The task of learning theories is to detail the process through which criminal patterns are learnt (Brown et al., 2001:322). Some children may engage in deviant behaviour because of mental conflicts that originated in disappointing family relationships (Bartollas, 1993:121). However, Tlhoaele (2003:56) emphasises that it is not only parenting styles that are vital in moulding the life of a child, but also the nature of the family structure.

Differential association suggests that persons socialised in disorganised neighbourhoods are likely to have association that will encourage criminal behaviour. In contrast, individuals from socially organised neighbourhoods are more likely to experience non-criminal associations. According to this theory, the environment plays a significant role in determining which norms people choose to violate. Tremblay (2012:16) summarises various research findings pertaining to environmental risk factors that influences antisocial behaviour as follows:

- Developmental trails of disruptive behaviour from early childhood to adulthood are the consequences of genetic and environmental endowment;
- The early environment is created by the parent's own developmental history and has major impact on disruptive behaviour through its impact on gene expression and brain development; and
- As children grow older, peers, have a greater impact on disruptive behaviour.

Many children live in conditions of poverty that undermine the functioning of protective social networks around them. Prevailing attitudes and practices rooted in child rearing further complicate the conditions in which the rehabilitation and reintegration of children take place. South Africa corresponds with those identified elsewhere in the world, but the emphasis differs. Differential association theory' view is that behaviour is entirely a product of the individual's social environment.

FIGURE 1: Ecological Heritage of Differentiation Association

Poverty

Residential Mobility   →   Social   →   Culture   →   Differential

Racial Heterogeneity   Disorganisation   Conflict   Association

favourable to crime
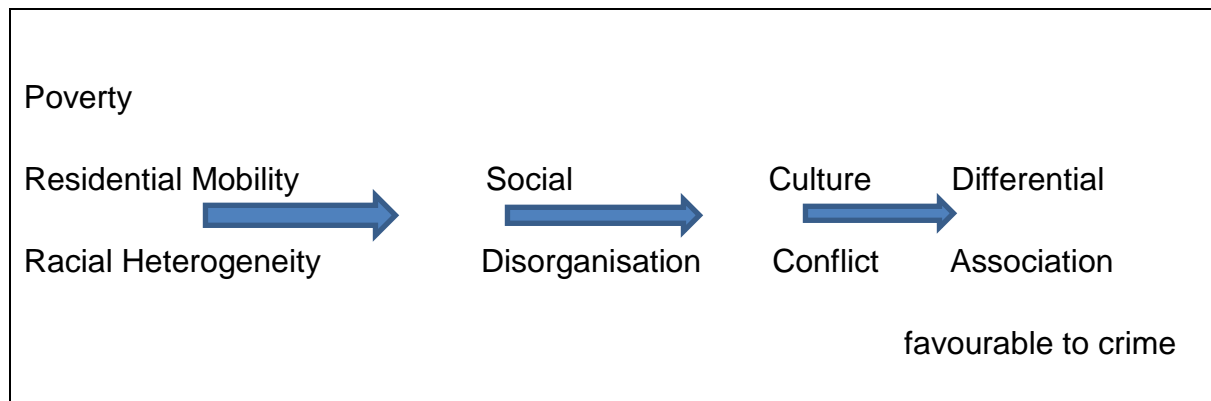
Adopted in Brown (2001:324)

2.6. PRINCIPLES OF DIFFERENTIAL ASSOCIATION

There are nine principles of differential association theory in explaining how deviant behaviour is learnt. These propositions specify "the process by which a particular person comes to engage in criminal behaviour". According to Sutherland's differential theory, the propositions are as follows:

- Criminal behaviour is learned;
- Criminal behaviour is learnt through interaction and being involved with other people through communication;
- The main part of learning criminal behaviour occurs within intimate personal groups;
- When criminal behaviour is learned, it includes

  - techniques on how to commit crime; and
  - the specific direction of motives and drives and attitudes.

- The specific direction of motives and drives is learned from definitions of the legal codes as favourable or unfavourable;
- A person becomes delinquent because of an excess of definitions favourable to violation of law over definitions unfavourable to violation of law;
- Differential association may vary in frequency, duration, priority and intensity;

- The process of learning criminal behaviour by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning; and
- Despite the fact that criminal behaviour is an expression of general needs and values, it is not explained by those general needs and values, since non-criminal behaviour is an expression of the same needs and values (Sutherland & Cressey, 1974:75).

It is evident that each theory of crime is based on certain assumptions that may not be scientifically established. The first principle provides the foundation for differential association. It rules out certain variable as causes of deviant behaviour, such as heredity, human nature and innovation. This is possibly because the involvement of crime is a dynamic social process that changes over a period of time (Hunter & Dantzer, 2002:141). The second and third principles of differential association specify that deviant behaviour is learned primarily in interaction with significant others such as family. The emphasis placed on parental influence in a child's upbringing illustrates widespread validation of these points. As the associations of childhood expand, it is anticipated that conduct initially shaped by parents will be more influenced by peers. According to Siegel and Senna (2000:196), the influence of family is normally replaced by friends and this shift might result in acquiring and developing"bad" values and culture.

In the fourth principle, learning techniques of committing crime are said to be much less important than learning the motives, drives and rationalisation conducive to deviant behaviour. However, learning the motives and drives results in "relatively constant desire or persistent urge to do illegal things (Tittle, Burke & Jackson, 1986:414).

The fifth principle provides the key to differential association because they determine the values or mind set of the individual. As people we have learnt and received definitions favourable to law violation from our parents or from the community around us, which validates the fact that human behaviour is largely the result of how children are socialised (Ellis & Walsh, 2000:321).

The sixth principle specifies that an excess of definitions favourable to violation of law over definitions unfavourable represents "the principle of differential association" (Sutherland & Cressey, 1974:75). It may be interpreted as a ratio, which determines learning of deviant behaviour:

Definitions favourable to violation of law

Definitions unfavourable to violation of law

These definitions are practically unlimited and occur throughout life, with a person becoming delinquent when the ratio exceeds unity. It is unclear whether Sutherland meant to provide a single ratio incorporating all definitions favourable and unfavourable to crime or specific ratios for each type of crime (Tittle et al., 1986:414). However, all associations do not carry the same weight. The theory projects dissimilarity in terms of frequency, duration, priority and intensity. Frequency is particularly referring to how often exposure to definitions occurs and duration refers to the length of each exposure. Intensity reflects the degree of identification with particular association. In other words, the more a child identifies with a particular individual, the more weight will be attributed to the definitions provided by that person. According to Sutherland and Cressey (1974:76), to bring the ratio specified in proposition six and seven, it would be vital to weigh the formula by these factors.

The final two stages of differential association provide further linkage to general learning principles. They both emphasise that deviant behaviour is learned in the same way as other behaviour and that they are products of similar needs and values. Behaviour patterns are influenced by the values and norms that an individual gain from significant others around them (Bezuidenhout, 2011:144). There is "little" doubt that peers are a critical factor in influencing the onset of deviancy.

2.6.1 Social learning approach

Offending by young people is relatively common, especially in a country like South Africa where a culture of violence is a norm due to various factors, such as, lack of adequate skills, resources and support. The task of learning theories is to detail the process through which criminal patterns are cultivated. The values and motives associated with deviant behaviour are learnt through interaction with the significant other. The learning techniques of committing criminal acts includes motives, drives, and attitudes favourable to the commission of crime (Cressy, 1970:39)

Behaviourist theorists maintain that human behaviour is developed through learning experiences. Social learning theory postulates that people learn the techniques and attitudes of crime through the process of socialisation. In addition, theorists who believe that an individual's socialisation determines the likelihood of deviant behaviour consequently adopt the social process approach to human behaviour (Siegel, 2009:202). In essence, a young offender has to learn how to become criminal. Piaget proposed that "learning is a dynamic process comprising successive stages of adaptation to reality during which children construct knowledge by creating and testing their own theories of the world" (Piaget 1968:8). Behaviour is seen as being shaped by life experiences and can be reinforced by rewards or eliminated through punishment (Hunter & Dantzker, 2002:71).

The learning perspective assumes that unlawful values and norms are acquired through interaction with others (Brown, 2001:322). This theory is based on the belief that people learn to become violent because their life experiences have taught them to be aggressive. A subculture of violence exists when, in some situations, a "violent and physically aggressive response is either expected or required" (Wolfgang & Ferracuti, 1967:159). These experiences include observing others acting aggressively, especially through the media (Siegel, 2004:156). In view of the complexity of influences on aggression, theoretical explanations of a link between exposure to media violence and aggression need a multifactorial approach. The generalised aggression model suggests that violent video and computer games heighten the possibility of violent behavioural patterns in the long-term (Kirsh 2003:377. Criminal behaviour is a product of such ideas and beliefs (Vold, Bernard & Snipes, 1998:199). For example, the social learning theory asserts that exposure to media violence reinforces aggressive play. In addition, criminal behaviour is largely determined by an absence of aversive consequences and is also reinforced by observing the behaviour of others (Jones, 2001:413). Later in life, such behaviour patterns persist in social relationships (Siegel, 2004:136). Hunter and Dantzker (2002:72) concur with this notion that deviant behaviour is learnt through behaviour modelling or imitation.

Early socialisation experiences have a lifelong influence and impact on an individual. Delinquency can be prevented if a child's socialisation experiences are positive and supportive (Siegel & Welsh, 2009:136). The focus of young offenders' risk factors will be on the socialisation process into adulthood. It is therefore of importance that the

interactive relationship between "nature and "nurture" should be kept in mind when the individual risk indicators of crime are considered.

In addition, films and television generally depict violence graphically especially, if violence is portrayed as acceptable behaviour. Various studies have also shown the influence and impact of media on reinforcing and promoting aggressive or antisocial behaviour. This situation could be transformed by using the very same media as an educational tool which instils acceptable values and norms (Carli, 2008:10). However, according to Taylor and Nee (1988:396), learning theories have failed to exploit their ability to provide fully situational analyses either of crime or of criminality and on the other hand, rational choice perspective has a number of advantages which psychological action theories lack. In addition, rational choice theory recognises the importance of situational sources of temporary motivation and inducement of behaviour. Despite their differences of focus and purpose, both situational and behavioural analyses assume the need to study the interplay of the personal and situational variables in the individual case. Because of these shared features, either rational choice or behavioural methods of analysis could in principle be employed as action theories to give diversion a more situational outlook and to relate its objectives more closely to those of situational prevention.

Diversion by its very nature should concentrate on the offence and its circumstances including drawing the offender's attention to the situational influences upon his or her behaviour (Tutt, 1984:369) would provide a circumscribed approach to interventions in keeping with the necessarily limited objectives of diversion.

2.6 .2 Labelling as a cause of crime

Labelling theory is 'most usefully conceived as a perspective whose core problems are the nature, emergence, application and consequences of labels' (Plummer 1979:86). A number of theorists believed that labelling the youth as delinquent tends to reinforce their deviant behaviour. They assert that once child offenders are labelled and stigmatised, the individual may be subjected to isolation, segregation and degradation treatment. When dealing with youth offenders, we need to understand the cycle of crime and violence and the contributory factors towards their deviant behaviour. Diversion programmes are intended to preserve decency for identified deviants. Labelling theorists have observed that there are dire consequences in labelling children in conflict with the law. The labelling perspective challenges our view of crime and criminal justice. It highlights social

responses to crime and deviance (Barkan 2012:15). According to the advocates of this perspective, crime is seen as a social process. It involves different perceptions of what constitutes good or bad behaviour. There are two variations of labelling theory:

- The interactionist approach, focuses on self-identification and the thought process of the deviant; and
- The social response approach is mainly focused on how people are perceived by others and how they value their opinions.

This theory holds that behaviour is deviant only when society labels and accepts it as deviant. As such, compliant members of society who understand certain behaviours as deviant and goes as far as labelling such individuals will ultimately define the distinction between deviance and non-deviance. In this perspective, people are perceived as having offended not of the act itself, but because of how people react to the act. This kind of reaction results in the offender withdrawing traditional values, rejecting the institutions that they feel rejected them and seeks deviant peers that will approve such behaviour. These children will normally end up feeling "a total absence of moral sense, disregard for the law and lack of conformity" (Fattah, 1997:236).

It is suggested that labelling perspective has fourfold challenges (Plummer, 1979:88):

- What are the characteristics of labels, their variations and forms?
- What are the sources of labels, both societal and personally?
- How, and under what conditions do labels get applied?
- What are the consequences of labelling?

It has been observed that this perspective's emphasis is on the process of labelling and does not see deviance as a state of being, but as an outcome of social interaction. The attention is immersed on the response to behaviour. Deviant behaviour is viewed as the result of other people's reactions (Bartollas, 2006:170). According to the labelling theory, crime is not caused by inadequate families, poverty, and lack of opportunity or peer group associations. Instead, it is the society's reaction to child offending that creates serious misconduct (Empey et al. 1999:116). White and Haines (2001:84) concur with the statement and they present this process of labelling as follows: "negative labelling, stigmatisation new identity formation in response to negative labelling and commitment to the new identity based on available roles and relationships".

Labelling and reacting to offenders as deviant have serious negative consequences, deepening the behaviour and making the problem worse. It can be seen as a cause of crime because society regards the actions of the offender as deviant and this forces the offender further in the direction of continued crime. However, research suggests that deviance is not essential in any action, but is created when rules and prohibitions are applied to conduct considered to be offensive (Muncie, 2006:229). Barkan (2012:15) states that official labelling encourages the acceptance of deviant lifestyle. Braithwaite (1989:55) warns that 'for all types of crime, shaming runs the risk of counter productivity when it "shadows" into stigmatisation'.

Social groups create deviance by making the rules whose element constitute deviance and by applying these rules to particular people and labelling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by rules and sanctions to an "offender". The deviant is one to whom that label has successfully been applied (Becker, 1963:9). Labelling theory advances the hypothesis that individuals who are labelled as deviant are likely to take on a deviant self-identity and become more or rather less deviant than if they had not been so labelled (Akers, 1994:128). The labelling approach argues that criminological exploration should begin with how people come to be well-defined as deviant and scrutinises the implication that such definition's hold for future deviant behaviour. Regardless of other good qualities, if a person is labelled as deviant, it carries the greater weight in the minds of others. This leads to self-fulfilling prophecy (Reid, 2003:183).

However, psychological maturity of child offenders should also be taken into consideration. According to Barkan (2012:151), adolescents with low intelligence are thought to be less able to appreciate the consequences of their actions and more vulnerable to the influence of deviant peers. There is a universal trend for child offending to peak during adolescence and decline as they reach maturity (Siegel, 2004:67; Conklin, 2004:88).

Research postulates that the more a child displays deviant behaviour and has poor self-esteem, the higher the risk of engaging in deviancy (Bartollas, 1997:71; Siegel & Senna, 2000:8). For instance, a child first needs to believe that he or she has the capability to carry out an aggressive act and have the appreciation of the anticipated consequences of such action (Huffman, Vernoy & Vernoy, 1994:293). Generally speaking, as people we

tend to label ourselves and our significant others without realising the detrimental effect this can have on their lives and our own lives. Once a person has been labelled as deviant, opportunities for conforming behaviour become limited. This further emphasises the fact that labelling is detrimental in the psychological growth of children.

The labelling perspective confirms that deviant behaviour and crime are not a syndrome or a compulsive defect (Siegel, 2004:237). Barkan (2012:15) states that "official labelling leads to the adoption of deviant lifestyle". Deviant groups represent a source of social support in which deviant activities are accepted. Moreover, deviant groups often provide social shelter from those who react negatively toward the deviant status. The labelled person is thus increasingly likely to become involved in social groups that consist of social deviants and unconventional others" (Bernburg, Kroh & Rivera, 2006:68).

Moffit's theory, reminiscent of labelling theory, sensitises us to the fact that majority of child offenders will ultimately discontinue being involved in criminal acts on their own. Studying and understanding how different developmental changes of an individual assists with the identification of a chronological chain of events that highlights how antisocial behaviour is shaped and sustained (Bartol & Bartol, 2008:61). Multiple factors may result in child offending and crime and the importance of each factor may vary according to the developmental stage of each individual person. In most cases as children reach their teen years they start to imitate the antisocial behaviour of those who are already displaying deviancy , which only diminishes the frequency of their offending when they are almost 18 years of age (Siegel 2010:232).

As indicated, child offending and crime is a complex, multidimensional phenomena with multiple causes. Moffit's life course persistent theory emphasises that persistent of child, youth and adult offending display manifestations of biting and hitting from age four and that most of these offenders exhibit neurological problems, including temperaments during their childhood (Bartol & Bartol 2008:61; Siegel 2010:232). These individuals are normally rejected and avoided by their parents and childhood peers. People's understanding of what constitute antisocial behaviour varies. There are various indicators of an early onset of antisocial behaviour and they are associated with mental and interpersonal problem (Bartol & Bartol 2008: 62; Siegel, 2011:232).

There is a need to use an integration of varying theoretical models and variables to try to curb child offending. Arbitrary labelling can affect a child's self-concept and intensify his

or her deviant behaviour. Labelling theory supports the use of diversion, whether involving therapeutic interventions or not; it emphasises the negative consequences of labelling and stigmatising children.

2.7 MINIMUM STANDARDS OF DIVERSION

Decisions about the appropriate diversion option for each case should inform the development of individual diversion plans and ensuring that the minimum standards of diversion are observed.

The Child Justice Act 75 s55 of 2008 stipulates the minimum standards of interventions as follows:

- May not be harmful, exploitative to the child's physical or mental health and should not interfere with the child's education in anyway;
- May not exclude certain children because of their family backgrounds, including financial and where they were residing;
- Must allow the involvement of the child's parents or guardians and exercise an acceptable level of sensitivity when dealing with children in conflict with the law;
- Must impart useful skills, include a restorative element and promote the child's understanding of the impact of the offence in line with one of the aims and objectives of diversion; and
- Must be accessible to the child and structured in a way that is suitable to be used in a variety of circumstances and for a variety of offences and measurable in terms of effectiveness.

2.8 CRITERIA OF DIVERSION PROGRAMME

Child offenders who meet the criteria for diversion are referred to crime prevention and developmental programmes (Sloth-Nielsen & Gallinetti, 2004:32). The purpose of alternative system is to address the root causes of the child's deviant behaviour. Formal diversion programme generally involve some conditions, including an admission of guilt and an agreement to participate within the suitable programme. With the guidance of communities, support from all relevant stakeholders' children in conflict with the law could gain an understanding of the impact of their crimes (Skelton & Frank 2001:1).

The legal consequence of a diversion is that, where it is completed successfully, the child cannot be prosecuted on the same facts (s59 (1) (a) of the Child Justice Act).

The Act stipulates that a child be diverted if they meet any of the following criteria:

- The prosecutor or Director of Public Prosecutions indicates that the child must be diverted in accordance with relevant provisions of the Child Justice Act;
- The child acknowledges responsibility of the offence and has not been unduly influenced to do so; and
- It is stated that a prima facie case exists against the child in question.

It should be noted that when a case is diverted in terms of Section 41, the child and where possible, his or her parents or an appropriate adult or guardian must appear before the magistrate to have the diversion option that has been selected by the prosecutor made an order of the court. In addition, it must be noted that diversion may be considered even in cases where a child offender has a record of previous diversions (Banderhorst, 2012:3). The Child Justice Act 75 of 2008 allows for young offenders who acknowledge to have committed an offence to be diverted where appropriate.

Diversion aims to meet the particular needs of the child and promote their reintegration into the family and the community. In addition, diversion should also give those affected by the crime the opportunity to express their views on its impact on them and promote reconciliation between the child, victim and the community affected by the harm and protect the child from the consequences of the criminal justice (Wood, 2003: 3). It is important to acknowledge that South Africa's diverse social environment is characterised by cultural diversity and meeting individual needs might also pose a few "problems".

2.9 CHARACTERISTICS OF DIVERSION STRATEGIES

Diversion of child offenders from the conventional criminal justice system has been possible through the cooperation of various stakeholders, such as the, prosecution, judiciary, probation officers, police, social workers and nongovernmental organisations (Tladi 2006:31). According to Section 4 of the Child Justice Act 75 of 2008, any person alleged to have committed an offence while under the age of 18 and in exceptional cases between the ages of 18 and 21 should be considered for diversion.

If a child goes through a diversion programme and the court is informed that the child has successfully completed the programme, the charge is withdrawn and prosecution does not take place. As a result, the child cannot be prosecuted on the same facts (s59(1)(a) of the Child Justice Act. However, if the conditions are met, there is no need for punishment. It is important to note that a child may be diverted at any stage of the criminal justice process up until the close of the state's case (ss41, 52 and 67 of the Child Justice Act). This means, a child may be diverted regardless of whether he or she committed a Schedule 1, 2 or 3 offence (ss 52(2) and (3) of the Child Justice Act). Furthermore, a diversion order does not constitute a previous conviction (s59 (1) (b) of the Child Justice Act. However, if a child does not successfully complete the diversion programme, the matter is referred back to court for trial and prosecution to continue (Tladi, 2006:31). In addition

2.10 TYPES OF DIVERSION PROGRAMMES

Child offenders' programmes have become a panacea in an effort to prevent subsequent offending and further penetration into the criminal justice system. The structure of the programmes and their operation vary, but the overall goals are essentially the same, that is, to curb recidivism. However, very little attention has been given to the programmes components and how those programmatic components impact on children in conflict with the law who participate in the diversion programmes.

In South Africa, diversion was established on a fairly informal basis through campaigns and initiatives such as Justice for children: no child should be caged which was initiated by the Community Law Centre, Lawyers, National Institute for Crime Prevention and Reintegration of Offenders (NICRO) and lawyers for Human Rights (IMC, 1996:13-14). Subsequently, in the early 1990s, NICRO established a number of diversion programmes in the Western Cape and Kwazulu-Natal. The first two programmes were Pre-trial Community Service (PTCS) and the Youth Empowerment Scheme (YES). The child justice practice in South Africa has experienced many amendments (Bezuindenhout & Little, 2012:369).

Services to children in conflict with the law have changed over the last 20 years. The introduction of the Child Justice Act 75 of 2008 is the reason for the prevailing support of diversion including significant advantages it offers to children in conflict with the law. The Child Justice Act 75 of 2008 has strong restorative justice ethos and provides the

framework for criminal justice system specifically in handling children in conflict with the law. However, this restorative approach should not be seen as a "soft" approach as it aims to hold children in conflict with the law accountable for their deviant behaviour (Gallinetti, 2009:12).

These interventions have significantly decreased the number of children referred to preliminary inquiries. Growth and positive change has been noted in the number of children referred to diversion programmes since 1996 (Wood, 2003:1). According to the 2014 Annual Report of the Department of Justice and Constitutional Development on the Implementation of the Child Justice, there has been a decline in the number of preliminary cases dealt with, from a high of 25 517 in 2012/2013 compared to 21 563 in 2013/2014. The decrease may be linked to a possible increase in the number of children being diverted in terms of Section 41 of Act 75 of 2008.

Currently, there are various methods of dealing with child offenders. These programmes help young offenders avoid negative effects of formal court arbitration and possibly incarceration. For the purpose of this study, the following programmes will be discussed

2.10.1 LIFE SKILLS TRAINING

Life skills are viewed as formalised teaching that aims to empower child offenders with survival and the intuition skills. Generally, life skills include "the ability to solve problems, to communicate honestly and directly, to gain and maintain social support and control emotions and personal feelings" (Gilchrist, Schinke & Maxwell 1987:73). Its main focus is to equip child offenders with techniques that discourage deviancy and the ability to function efficiently in society (Ebersöhn & Eloff 2003: 40).

In order to bring behavioural change on child offenders, it is imperative to make use of life skills training that are embedded in the social cognitive theory (Bezuidenhout 2013:183). According to the cognitive theory, human behaviour is learned and learning is crucial in learning life skills. Behaviour can be experienced in various contexts (Ebersöhn & Elloff, 2003:41). A comprehensive framework for acquiring life skills involves a "declarative phase" where specifics regarding various skills are provided, including a demonstration on how to perform those skills (Bezuidenhout 2013:184). Child offending must be viewed in the context of the everyday environment as experienced by the child. The experiential world is the result of two developments, namely; the product of a long historical

development and on the other hand they are in the process of developing a personality as part of growing up. Societal changes over the years, particularly in South Africa have resulted in today's children and youth occupying a special position in society with a culture of their own. Therefore, it is important to empower them with skills and knowledge that will assist them in coping with the harsh realities of growing up in a culture of violence. Methods to strengthen learning of life skills includes involvement of peers throughout the process and encouraging them to use those acquired skills in a variety of circumstance and establishing self-monitoring procedures to regulate the use of such skills (Algozzine, 2001: 251).

According to research outcomes that investigated the effects of life skills programmes, it was found that participants were generally happy, they were skilled in decision making and they were more selective when choosing friends (Kok 1994:27 & Muntingh, 2001:35). Structured activities promote group interaction and sharing. Intervention programmes that emphasise programmes that reinforce social skills and occupational skills are vital and have a positive impact in changing the deviant behaviour of child offenders (Bales & Mears 2008:45).

2.10.2 MENTORING

Generally mentoring refers to a mutually valuable relationship which involves a more experienced person assisting a less experienced person. Mentoring is seen as a relationship between a skilled, compassionate adult and an underprivileged or troubled child (Davies & Thurston, 2005:37). Mentoring may be defined as "a protected relationship in which experimentation, exchange and learning can occur and skills, knowledge and insight can be developed" (Mumford 2002:215). Mentoring is a social relationship that "always occurs in a social milieu and among specific people with different individual attributes' (Bearman, Blake-Bear, Hunt & Crosby 2007:376). It is founded on modelling, which believes that children learn behaviour by observing and emulating adults and peers. Thus, skills and cognitive development takes place by following the learned traits and capabilities of modelling and such behaviour is then perceived essential (Karcher, 2005:67). Hence it is imperative to provide child offenders with programmes that attempt to curb recidivism rates.

The Child Justice Act 75 of 2008 provides a guiding framework to guarantee consistency of practice and legal certainty (Gallinetti 2009:43). The understanding of how diversion

works has evolved over the years, however there are basic characteristics that distinguish diversion intervention programmes in S.A. For instance, the below figure attempts to summarise the procedures that enables the management of child offenders in the system. This procedure aims to ensure that an individualised response is used and the laws governing children are observed in each case. Section 54(2) of the act affords that different diversion options may be used in combination with each other. Section 54(3) further provides individualised diversion options for each child referred depending on the initial assessment undertaken (see 4.3.1).

FIGURE 2: Hierarchy of a Mentoring Project in the Community
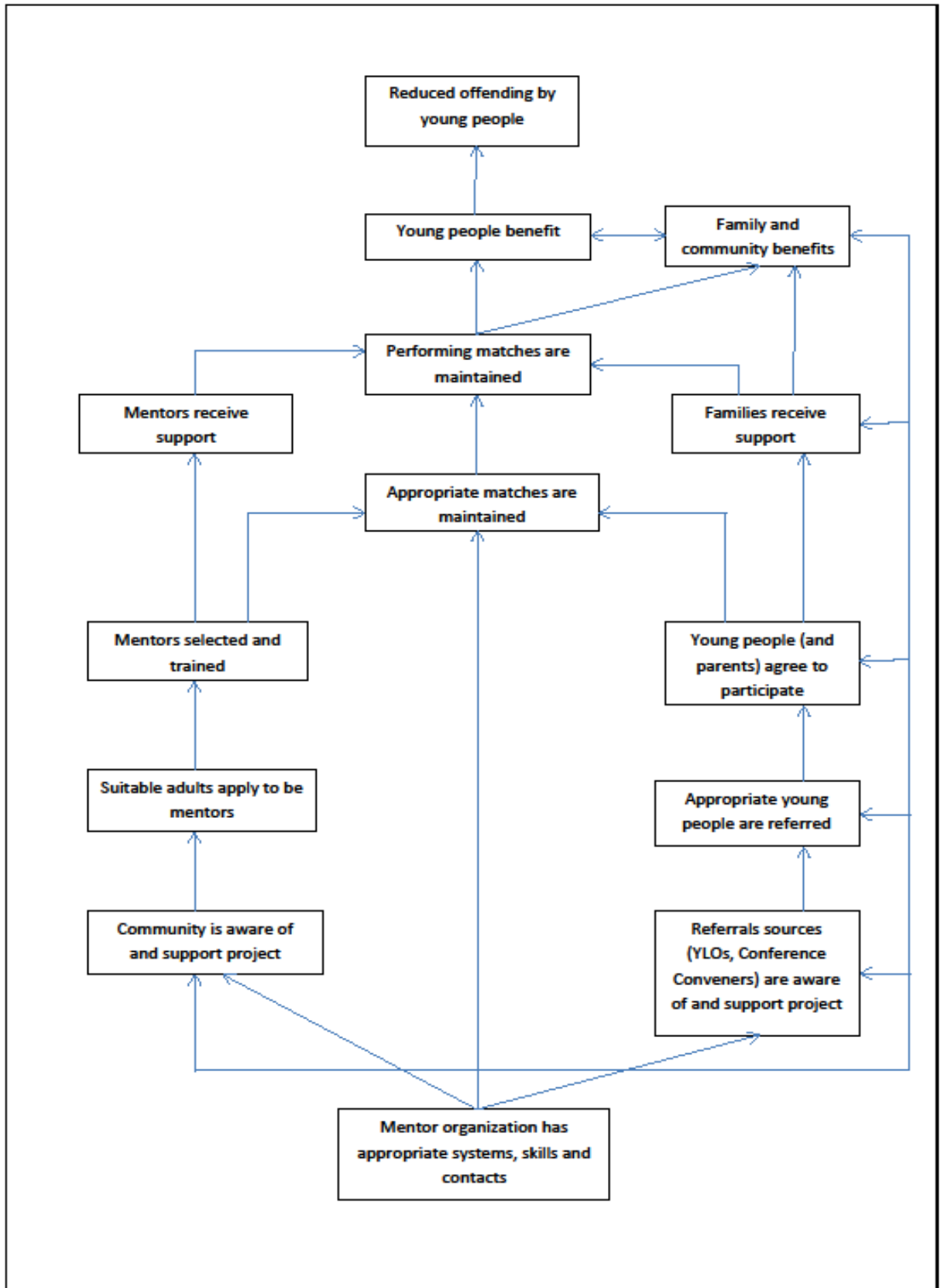
Adopted in Singh & Steyn (2013:5)

Mentoring has been defined by the following four characteristics:

- Interaction between the two individuals over a specified period of time;
- Inequality of knowledge or power between the mentor and mentee;
- Mentee's benefits from the experience (mentor-mentee relationship), such as, knowledge and skills acquired from the mentor and
- The lack of inequality that characterises other assisting relationships that is marked by determined status, such as parent-child relationship (Tolan, Henry, Schoeny, Bais, Lovegrove & Nichols 2013:5).

Mentoring as a diversion programme may be facilitated through three interrelated processes, namely:

- Enhancing child offenders' social relationships and emotional well-being;
- Improving their cognitive identity development through serving as role models; and
- Promoting positive identity development through serving as role models and advocates (Rhodes, 2005: Np).

Mentoring aims to reinforce learning by complementing it with a supportive relationship. For more than a century, efforts to prevent child offending have been guided more by the prevailing theories about the causes of delinquent behaviour than by whether the efforts achieved the desired effects or not. Several stressors have indicated to be contributory to child offending such as, low academic performance, lack of commitment to educational aspirations and school during lower levels of schooling and middle school grades (Herrenkohl, Huang, Kosterman, Hawkins, Catalano & Smith, 2001:223). These stressors include, for example stress within the family which may be worsened by the parents' anti-social tendencies which in turn results in inconsiderate and sometimes violent reactions to those around them, which can lead to children and the youth into thinking that solving their problems through deviant behaviour is acceptable (Howell 1997:163).

As a method of intervention, mentoring has been tailored to serve the needs of child offenders and those experiencing poor educational performance (DuBois & Rhodes, 2006:647).

What does a mentoring diversion programme entail?

Diversion programme can be made according to programme type and referral level. Formal diversion programme generally consist of some conditions, including an

admission of guilt and an agreement to participate in the identified suitable programme. The service provider has the discretion to decide which activities and themes can be included in their programme (NICRO, 2000: 8).

Diversion programmes are known to reduce the workload of the courts and prosecution services. It aids the criminal justice system to deal with backlogs and ensure a more efficient service in general (Schonteich, 2002:8). Furthermore, it reduces the growing number of awaiting-trial offenders and prison overcrowding in general (Davis & Booysen, 2004:24).

Successful completion of the conditions of the formal diversion programme will generally result in the dismissal of charges. Efforts to prevent subsequent reoffending is an important goal of diversion but examining specific programmatic components and how they impact diverted child offenders is crucial.

Positive effects of mentoring are largely thought to be derived from the support and role modelling offered by the mentors. Based on observation the age difference between the mentor and mentee differs between eight and 15 years (Day, 2006:196). However, it must be noted that little attention has been paid to describing how the processes work to curb recidivism.

As an intervention, mentoring assumes the following (Steyn 2005:283-284):

- Significant interaction between mentors and child offenders promotes accountability and encourage positive self-concept,
- Throughout the developmental years, children need supervision and support from responsible and trusted adults;
- Child offenders often grow up without a father figure and or positive role model; and
- The formation of long-term and trusting relationships can benefit child offenders with coping with life's challenges.

Mentoring is understood to encourage the creation of a "meaningful ad supportive relationship" (Dawes & Dawes 2005:5). Campbell (2005:91) concurs with this notion and states that intervention benefits generally materialise over a longer period of time. In general mentoring relationships with child offenders last for a period between six and 12 months (Open Society Foundation, 2002:18). Mentoring programmes should offer conditions favourable for communication and learning in order to instil the envisaged

behavioural changes (Larson, 2006:684). Some mentoring programmes also target family members in addressing dysfunctional relationships and domestic challenges observed to breed antisocial and deviant behaviour. It is imperative to look at the influence of parental involvement in the mentoring. It has been proven that parental influence is crucial, especially on the modelling of the child's principles, attitudes and behaviour (Beam, Chen & Greenberger, 2002:305).

2.10.3 OUTDOOR INTERVENTION

In outdoor diversion, child offenders are exposed to unfamiliar environment to improve their social skills, self-concept and self-control (Siegel & Welsh 2012:602). Furthermore, they postulate that the concept of education and work ethic is emphasised. Such circumstances cause a level of helplessness and discord as they have to function outside their comfort zone (Steyn, 2005:181). A fruitful planned activity in the outdoor diversion is to ensure that child offenders have positive self-concept and behavioural change (Steyn, 2011:75). Outdoor diversion also aims to strengthen the self-image of participants through activities that challenge them at a physical and emotional level. Steyn (2011:83) postulates that outdoor diversion requires three broad phases, namely; preparation, the adventure and follow-up phase. The phases are as follows:

Preparation phase:

During this phase parents and guardians are informed of the purpose, processes and procedures of the intervention, including requesting consent and indemnity for their children's participation (Bezuidenhout 2013:192), which is in line with the ethics. The preparation phase enables participants to familiarise themselves to the process of the intervention and engage with each other. As part of the preparation phase, participants take part in numerous teambuilding activities which involves and encourages working in groups. In this phase, group rules are communicated and participants must commit to the approved rules by signing them (Bezuidenhout 2013:192), which is also a common practice at NYDO

Adventure phase:

Adventure therapy programmes offer life skills and leadership skills through outdoor practical learning (Mbambo 2005:80; Wood 2003:14). Adventure phase can incorporate

various activities with specific goals Moolman (2002:3). The outdoor activities assist to motivate and cover the physical abilities of participants comparable to their emotional capacities (Ryklief, 2002:6). Facilitators must always ensure that the environment which the participants are exposed to is safe and accommodating and that confidentiality is of paramount importance (Bezuidenhout 2013:193). This programme aims to engage child offenders and impart vital skills that will enable them to cope with life's challenges (Mbambo 2005:80; Van Eeden 1997:50).

Follow-up phase:

Although various studies have been conducted, mixed effects characterise the impact of outdoor intervention with children in conflict with the law. Various studies indicated that intervention programmes that were facilitated over a longer period were more effective than shorter ones (Cason & Gillis 1994:46), even though other researchers dispute such claims. Some researchers found that outdoor programmes that included a therapeutic component have proved to be more effective in reducing child offending (Siegel & Welsh 2012:603).

2.10.4 FAMILY GROUP CONFERENCING

In all cultures, historical and modern, the family has been and continues to be the central socializing institution responsible for instilling a set of norms, values, beliefs and ideals in the child. Dynamics within the family can influence whether a child will engage in anti-normative activities. Most researchers agree that "bad" parenting is a compelling cause of delinquent behaviour (Unnever, Cullen & Agnew, 200 6:3). In addition, most child offenders experts agree that the interactions between parents, guardians, siblings and their children provide opportunities for children to acquire deviant behaviour patterns (Siegel & Welsh 2012:278).

Family group conferencing is perceived to be founded and rooted on the ethos and principles of restorative justice (Bezeuidenhout 2013:188). It aims to bring all parties involved, that is the offender, their families, victim and the community together and to also facilitate the reintegration of the offender (Skelton & Tshehla, 2008:10). The family plays an important role for the development of children's personality. It is a place where children develop a large part of their identity and self-concept. Because the family plays such an important role in the personality development of children, negative values are

virtually predictable when less than optimal family conditions prevail. This means that, the younger the delinquent, the more one must seek the causes of his or her criminality within the family.

The relationship between family and child offending has a long history. Since the early 1900s, initially the emphasis was on structural aspects but gradually it became apparent that these characteristics were less important to child offending than functional aspects such as family atmosphere, family relationships and child rearing (Van Voorhis, Cullen, Mathers & Garner, 1988:235). Preventing recidivism is one of the important elements of a family group conference and as such family involvement is central to the process. It is of great concern to the researcher, that when these young offenders are being returned to the same conditions without an effective support system they may reoffend. According to Maxwell and Morris (2001:243), poverty and parental neglect have an effect on recidivism, which validates the fact that a follow-up session with clients is vital. Similarly, Moffitt (1993:681) suggests that parents of children who are difficult to manage often lack the required psychological and physical resources to cope positively with a challenging child.

In light of the assumptions and theories supporting family group conferencing, it is clear that instruments are needed to create significant discourse among parties affected by the offence.

2.10.5 RESTORATIVE JUSTICE PROGRAMME

Restorative justice has evolved as a means of "diverting" repeat offenders from the formal criminal justice system. Restorative justice is seen as a nonpunitive control strategy for child offender's ad attempts to address matters that have the potential to cause conflict between two parties, that is the offender and the victim (Siegel & Welsh 2012: 584). Its primary aims are to attend to the needs of victims, enable offenders to assume responsibility for their actions by involving their families and the wider community in the attempt to prevent recidivism (Marshall, 1998:5).). It often involves a process whereby all parties involved come together as a collective and work towards an amicable solution (Van Ness & Strong 2006:22).

Restorative justice in South Africa is not a new concept (Neser, 2006: 1; Consedine, 1999: 170; Zehr, 2002: 11). Although formal restorative justice programmes were first

introduced in countries such as Australia and New Zealand, its concepts are not new to South Africa. African people practiced restorative principles for centuries in some or other form. It has its origins in African cultures through its doctrines derived from Ubuntu. The concept of Ubuntu represents "ideas about interconnectedness of people to each other, the importance of the family group over the individual and the value of compassion towards all others in the community" (Skelton & Frank, 2001:104). Restorative justice is a theory of justice that focuses on repairing the harm caused by the criminal act to the victim and to the community and puts emphasis that the offender must contribute to the repair of the harm caused by their deviant behaviour (Hess & Drowns 2004: 45). There are seven core principles that characterise restorative justice; they are as follows (Siegel & Welsh 2012:584):

- Misconduct is a violation against social relationships.
- Victims and the community are fundamental to justice processes.
- The main priority of justice processes is to assist victims.
- The other important priority of the justice process is to restore the community
- The offender has a subjective obligation to victims and the community for his violations.
- The restorative justice process assists the offender in understanding and gaining valuable skills.
- Responsibilities are shared among all relevant stakeholders for restorative justice process to succeed.

Participation in restorative justice initiatives is voluntarily for both the offender and the victim. A key objective of restorative justice initiative is to enhance the perceived fairness of the process. The programmes must be based on a framework of sound principles to guide discussions and the decision-making process.

2.11 MONITORING AND EVALUATION OF DIVERSION PROGRAMME

In this country, there are no effective mechanisms in place to monitor the progress of child offenders who have completed the diversion programmes. Certain gaps have been identified in certain areas. For instance, the lack of integrated information management system and the intersectoral statistical reports show variances in numbers of reported cases. The structure of the programmes provided in South Africa and their operation vary, but the overall goals are essentially the same, namely; to address juvenile deviant

behaviour informally in the community in an effort to prevent subsequent behaviour. To achieve child justice, the values, vision, mission and goals of programmes must be consistent. Efforts to prevent recidivism are an important goal of diversion but examining specific programmatic components and how they impact diverted children is crucial. Proponents of diversion intervention programmes argue that such interventions are less stigmatising than formal court involvement and result in reductions in recidivism rates (Beck 2006:1-10). However, opponents of this view argue that diversion programmes extend social control to child offenders who would ordinarily have been released to the community and increase recidivism. Section 52 of the Child Justice Act 75 of 2008 stipulates various criteria's for a child to be considered for diversion.

As already stated diversion programmes differ in their structure and operation; they target specific population and run by various entities. The lack of sufficient recordings of specific mechanisms, implementation procedures, including measurement of targeted processes that will allow comparison on these key features is seen as a major obstacle to progressing knowledge on the effectiveness of diversion (Tolan, et al 2013:34). They further postulated that the absence of information that describes 'the best practices' delays progress in this field. This further highlights the importance of this research and the outcomes of the study will be of assistance in shedding some light on the impact of the mentoring programme provided at the NYDO on recidivism and to investigate whether the programme is "working or not". Though research has not identified any one approach as suitable for all child offenders, there are clear indications that programmes that are now widely termed the 'what works' in principle can reduce recidivism. Generally speaking, the more effective programmes are seen to:

- Target high and medium risk offenders;
- Be well structured;
- Utilise an approach that challenges ways of thinking as well as behaviour;
- Address all the possible factors that have a direct influence to deviancy, including family and environmental factors; and must
- Adhere to agreed objectives and procedures (McNeish, Newman & Roberts, 2002:179).

Although a number of literature reviews compare the effectiveness of diversion programmes the results are unclear and vague, on the other hand it has been found that

some diversion programmes are more effective than "probation and parole or institutional-residential programmes" (Lab & Whitehead, 1988:60). McGuire and Prestley (1995:16) found that 'deterrence based programmes, interventions containing strong punitive elements had significant negative effect on recidivism'. However, these studies neither compare child offending in diversion programmes to those who avoid treatment entirely nor examine the sorts of social characteristics of offenders, their families, peer groups, and treatment agents that might predict the effectiveness of the diversion process. Several social conditions should lead to effective diversion programmes.

According to Andrews, Bonta and Hoge (1990:369), the best programmes involve families, child offenders and peers for the purposes of promoting parental monitoring and positive peer association. He further added that programmes with service providers who are warm and respectful to the clients should be more effective than those with agents who act in a more rigid way. There is a certain degree of consensus amongst scholars that effective programmes have an element of linking treatment and efforts in improving family and community values (Coates, 1981:87).

Research on the effectiveness of new and innovative diversion models is necessary. According to Denscombe (2002:54), "newly published" works need to be considered because new sources are discovered and different things become relevant as the researcher progresses". In South Africa, the modern knowledge of 'what works' relies greatly on programmes delivered and evaluated which inevitably raises issues relating to structural and cultural contexts. In addition, there are a few unreliable versions of success that need to be accurately documented. Recent research on diversion is sparse. The lack of recent research is partly responsible for the controversy and lack of understanding on diversion programmes. The use of a screening tool can assist with easy access to the national database. In addition, progress in preventing recidivism and reducing its associated risks can be measured by repeating the assessment after child offenders have completed the programme.

The review of literature is aimed at contributing towards a clear understanding of the nature and meaning of the problem that has been identified (De Vos et. al 2002:127). According to the researcher, effective programmes for child offenders should focus on addressing the underlying factors behind the deviant behaviour. This may involve concentrating on reducing risk factors, such as peer pressure, alcohol and drug abuse,

dysfunctional families, addressing parental discipline styles and the emphasis of having a positive role model in the young offenders' lives. Such problems if left unaddressed are likely to undermine any long-term benefit.

Measuring the effects of child offending programmes is challenging because the behaviour which the programme is attempting to change is often concealed and the full benefits extend to over long periods of time. In the researchers' view, estimating the effects of interventions to curb recidivism, for instance, can be challenging because it might take years for their effects to become apparent.

Diversion programmes continue to be created and funded without a systematic examination of their outcomes. Furthermore, there is little to no guidance on the acceptable uniformity ways of how to assess programme outcomes. In addition, evidence is lacking on one of the most fundamental and often quoted reasons for diversion, that is, the avoidance of stigma and labelling. In the absence of research on offenders' perceptions, it is impossible to conclude. Most lacking of all is information about the long-term effects of the various measures currently being employed. However, diversion programmes offer opportunities to gather local information relevant to other crime control strategies. Examining outcomes will help shed light on how specific programmes components impact on behaviour as most studies are considered dated by social science standards.

2.12 CONCLUSION

Crime is a subject of inherent interest to many. In any country, coping successfully with child offending is determined largely by the cooperation of all stakeholders, including those involved in child rearing. Understanding child offending cannot be explained in a vacuum. An analysis of the individual factors that could be associated with criminal causation was discussed and it appears that both genetic and environmental factors are important in forming the child's personality. Genetic factors determine the potential and limits of human behaviour. On the other hand, environmental circumstances influence the child's socialisation, development, personality and behaviour within these genetic boundaries. Although adverse circumstances associated with any one of the individual risk factors mentioned could be linked with criminal causation, the probability of child offending increases if various risk factors are present. Violence is rooted in our historical and political past where individuals were taught to use violence to address social

challenges. These cognitions still remain even 21 years post the apartheid era. Children in South Africa are not only exposed to extreme violence but grow up in an environment where violence is normalised. This destructive cycle can only be broken if antisocial internal and external motives are replaced with good morals and values instilled through diversion programmes.

Although the developments aimed at improving the situation of children in conflict with the law were fragmented, they definitely contributed to a more child rights-based approach in the criminal justice system. It also sensitised relevant stakeholders in the criminal justice system to the plight of children in the system and managed to intensify the focus on the growing need for comprehensive child justice system.

These processes produced a Child Justice Act with central features such as how to deal with the youth who come into conflict with the law and diversion. Diversion is conceptualised as an alternative to the confrontational criminal justice system. It focuses on keeping children out of the criminal justice system and uses family and community as resources. However, it must be noted that dealing with child offending is a complex issue. It should strive to understand the interaction and role of different influences on the development process and their relation to criminality. Such understanding will indicate which variables can be manipulated and during which age range to have a maximal effect on the reduction of child offending.

The next chapter discusses the development of international principles and standards on child justice and recognised ideas and concepts that shape the global laws regulating child justice today. In addition, a comparative analysis is discussed.

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CHAPTER 3: THE INTERNATIONAL INSTRUMENTS AND COMPARATIVE ANALYSIS OF CHILD JUSTICE SYSTEM INTERVENTIONS

3.1 INTRODUCTION

Child offending is a complex social problem that significantly impacts all members of society and processes of a social structure. Age is so fundamental to crime rates that the relationship to the offending is usually referred to as "the age of crime" (Reichel, 1994:6). Potential and child offending is caused by a variety of adverse components displayed in a variety of offences. Therefore, child offending must be dealt with in a manner reflecting its complexity. The place of the child offender in a social and historical context has evolved from an initial position that could be described as harsh, to a more open-minded one. There is consensus among scholars on the negative and long term consequences of children's exposure to violence. In order to reverse the situation and reduce their involvement with the criminal justice system, we need to emphasise the importance of interventions.

During the past decades the international community has developed sound regulations to protect the rights of children in conflict with the law. It is increasingly assumed that developments in any single nation state cannot be fully explored without reference and acknowledgment of international and global forces. However, we need to acknowledge the fact that systems differ from state to state in the structure of the diversion programmes, placement to various organisations and the period. Comparative analysis makes it possible to begin to unravel the relative dynamics, contexts and constraints regarding the principle that children and young people should be protected from the full might of the criminal justice system. For centuries, custodial institutions have been criticised as stigmatising and dehumanising. South Africa is no exception. We are equally faced with a challenge of large numbers of children who have committed or are at risk of committing crime.

The focus of this chapter is on the treatment of child offenders once they have come into contact with the criminal justice system. It is useful to begin, though, with an overview of various philosophic positions regarding the treatment of child offenders. Few child justice systems follow an explicit philosophy of juvenile intervention and most systems are so complex that they cannot be characterised in simplistic terms.

However, recognition that there are alternative assumptions and beliefs about child offending can help us understand some of the dynamics of these judicial systems and the public debates revolving around them. The historical development of the study of the child offender in its entirety should be viewed as a process of discovery. It should be borne in mind that child offending has always existed but was dealt with on an informal basis and until fairly recently it was a legal matter. Although it may seem intuitively obvious to many people that child offenders should generally be treated differently for their criminal acts, unfortunately this is not the case. As a result, there are legislations and procedures that provide the necessary guidelines on how to deal with offending children.

The chapter also presents the key international rules and guidelines that provide the framework for the proper administration of child justice and the mechanisms for enforcing them. It also looks at the wide gap that exists in many countries between this framework and the actual situation on the ground, particularly in the African continent. A brief discussion on the child justice systems of the selected countries will also be discussed.

3.2 A BRIEF OVERVIEW OF THE CHILD JUSTICE SYSTEM

From early on customs and laws were authorised for compliance and punishment was necessary for the benefit of the country. In traditional societies common custom and practice were the equivalents of the law (Siegel, 2004:27). Every society has declared certain modes of behaviour to be unacceptable or criminal in nature (Martin, 2005:61). The historical foundation movements promoting the concept of child justice addressed very basic problems of young people, such as child offending and idleness. These problems unfortunately still persist. However, they now manifest in quite different forms than in the past, because they are present in conjunction with new challenges unique to child offenders in the modern era. Many children who enter the child justice system have special needs and that necessitate professional intervention.

Once children are in conflict with the law, they are significantly more vulnerable to violence at virtually every stage of the justice system process. The new child legislation's emphasis is on the rights of the child having contributed to the need for change in the intervention system to children who offend. The child justice system applies different standards and procedures to those who are processed through the system.

Siegel and Welsh (2011:292) are of the opinion that the components of the adult and juvenile criminal processes are similar. Most nations have developed their own cultural standards for rearing children and have distinct methods for addressing the problem of child offending. However, child justice is a global issue, which led governments, political leaders, non-governmental organisations (NGOs) to develop an internationalised concept of child justice. This global context was useful for experts to share their experiences and findings, but it also illustrated a disturbing fact in that child offending was rife.

Even though the significant others play an important role in confronting child offending, in the end it is the legislation and judicial personnel who play the major role in ensuring and monitoring that such policies affecting child offenders are adhered to. Their actions are governed to some extent by existing laws and procedures and by whatever legal philosophy they might embrace. In accordance to Section 28 of the Constitution of the Republic of South Africa, it covers diverse issues including the rights of children in conflict with the law. Child offenders must be guaranteed at all stages of basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges and the right to appeal to a higher authority (Article 4 of the United Nations Convention on the Rights of the Child).

Different existing international standards which make reference to alternative to deprivation of liberty are presented below.

3.3 THE RIGHTS OF THE CHILD IN CONFLICT WITH THE LAW: INTERNATIONAL TREATIES, CONVENTION AND PROTOCOLS

The United Nations Convention on the Rights of the Child (UNCRC) is an international instrument that realised the plight of children and was established in order to protect the rights of all children globally. It has to be noted that all governments must comply with the Convention's requirements and processes safeguarding the interest of child offenders because they are binding (Badenhorst 2003:12). It further provides all other relevant international frameworks dealing with child offenders (Gallinetti 2009:9). In view of the above statements it is imperative that all minimum rules and standards relating to issues dealing with child offenders must at all time be observed. One needs to also recognise that the United Nations Standard Minimum rules on the Administration of Juvenile Justice (Beijing rules) are very important, including the Convention on the Rights of the Child (CRC), which is mandatory on all states. Articles 37 and 40 of the CRC are of particular

importance for children in conflict with the law. Article 37 contains guarantees for children deprived of their liberty and article 40 contains specific provisions concerning child justice. The most specific article in relation to alternatives to deprivation of liberty is article 40. The article lifts several possible alternative measures and emphasizes that a variety of dispositions shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and offence. The Beijing Rules were the first protocols passed in the United Nations to develop international standards for child justice and the treatment of young offenders.

Most of the development of child justice in South Africa is based on the United Nations Convention on the Rights of the Child. South Africa has learnt from the experiences and processes of countries like Canada, New Zealand and Scotland, and has also looked at indigenous customs and "legal" practices of African people. The South African child justice legislation is embedded in the international instruments, specifically the United Nations Convention on the rights of the child, the African Charter on the Rights and Welfare of the Child and the Constitution of the Republic of South Africa. It was established in 1989 in order to protect the rights of all children despite of their race, culture or creed.

The global context of child justice requires an appreciation for the great diversity of traditions, laws and cultures that characterise how societies deal with their children. Children at risk are common to all countries because they are all faced with similar issues of abuse, divorce, domestic violence and other situations which put them at risk. It is helpful to understand the fundamental context for the factors associated with the treatment of child offenders in other cultures. Because of the link between child offending and numerous other social problems, any measure that succeeds in reducing crime will have great benefits.

Within the African culture and value system, the Children's Charter provides for the responsibilities of children to their parents, communities and to society as a whole relative to their age and ability (Article 31 African Children's Charter). In Africa, United Nations Charter on the Rights of the Child is not the sole framework in the quest for expanded boundaries of children's rights. It is supplemented by the African Charter on the Rights and Welfare of the Child. How the rights of a child are determined differs from country to country, depending on governments and the extent to which they adhere to the ideals of

democracy. Some countries have responded to child offending by changing their child justice systems to be compatible with the United Nations Charter on the Rights of the Child and other related instruments.

Dissatisfaction with the criminal justice system led to a number of modifications in laws and processes dealing with child offenders (Van Ness & Strong, 2006:39). There are a number of guiding principles that ought to be applied to the system of child justice. This includes:

- Children at risk must be identified and provided with the relevant services in order to correct the deviant behaviour;
- Children who have offended must be subject to measures directed at preventing recidivism; and
- Children who have offended must be educated on the importance of adhering to community values and be assisted with the reintegration (Joyce, 2006:419).

According to Smith (2010:288), all child justice systems in developed countries are required to fulfil two potentially competing objectives. Firstly, these child justice systems have been designed to assist child offenders to develop skills that will enable them to change their deviant behaviour and overcome their challenges, that is, to provide a turning point in their lives and secondly, to deliver firm, prompt and appropriate response to child offending.

In principle, criminal justice can control crime in three ways, namely; "by taking offenders out of circulation through incapacitation; by demonstrating to the law-abiding majority that offenders are punished and by changing the behaviour of those offenders who are caught" (Smith, 2010:7). There are numerous factors that need to be taken into account before diverting a child, such as, the nature of the offence, number of previous offences, and having considered all circumstances diversion might be the only crucial response in changing the deviant behaviour of such a child. The child justice system use early interventions to target those at risk of offending behaviour. The purpose of child offending interventions programme is to engage and teach child offenders to develop skills that will enable them to make positive lifestyle choices.

Children in conflict with the law are now legally entitled to special consideration and countries around the world are obliged to ensure that all children thrive and reach their

full potential despite their deviant behaviour. Countries have a legal obligation to create and invest in justice system that improves the lives of children and give them hope and a brighter future. The Convention on the Rights of the Child and other legal instruments call for specialised child-sensitive justice system that places the respect for the dignity and best interest of the child at the centre of policy and legislation.

3.3.1 UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The United Nations Convention on the Rights of the Child is an international instrument that was established in 1989. Its aim was to globally protect the rights of all children because they realised the plight of child offenders all over the world. It also provides, together with other related international instruments, the international framework within which children in conflict with the law should be managed (Gallinetti, 2009:9). State parties to the Convention are obliged to ensure that their policies are developed in a manner that puts the best interest of the child as paramount (United Nations Children's Fund (UNICEF)(a)). Most of the development of juvenile justice in South Africa is based on the United Nations Convention on the Rights of Child.

3.3.2 THE CONVENTION ON THE RIGHTS OF THE CHILD

Article 40 of the Convention specifically deals with the guiding procedures of the child justice. However, the United Nations Convention on the Rights of the Child consists of 54 rules. For the purpose of this study, focus will only be on those rules which have relevance to child offenders. Article 1 of the Convention defines a child as a "person below the age of 18 years, unless the laws of that particular country set the legal age for adulthood at an age that is younger than 18". In addition, Article 3 regulates that the best interest of the child must be of main concern in making decisions that may affect them. In support of Article 3, Article 4 stipulates that all governments have the obligation to take all existing procedures into consideration and ensure that their rights are protected and respected. Governments are obliged to ensure that the standards set by the Convention are met. Hence it is vital to always remember and put into practice Article 16 as it states that children have the right to privacy. Furthermore, this Article further highlights the importance of protecting their privacy to ensure that they are not labelled nor stigmatised in any way. Article 19 determines that children have the rights to be protected from being psychologically, physically or emotionally abused in anyway. Child offenders should not be treated with brutality.

For children who are detained, Article 37 states that they must not be treated harshly and this Article resonates the notion of Article 17, that during the trial and also if found guilty of infringing, rehabilitation and re-integration should be encouraged.

3.3.3 THE BEIJING RULES ON THE RIGHTS OF THE CHILD (Standard Minimum Rules for the Administration of Juvenile Justice, 1985)

The Beijing Rules list standards for the administration of child justice in a comprehensive manner. These rules were adopted by the United Nations in 1985. They detail development of a separate and specialised child minimum standard for responding to child offending. Part II of the Rules deals with investigation and prosecution. It details the process from the time of the offender's initial contact with the justice system, contact with the police, giving consideration to dealing with child offenders without resorting to formal trial, the need for specialised training of the police and the treatment of children who are in detention pending trial.

However, the Beijing Rules are not legally binding, but many of the principles have been incorporated into the Convention on the Rights of the Child, thus making it legally binding. These rules are divided into six parts, namely: fundamental principles; investigation and prosecution; adjudication and disposition; non-institutional treatment; institutional treatment and research, planning, policy formulation and evaluation. Article 18 of the Beijing Rules sets out desirable disposition measures on how to treat children in conflict with the law, including all relevant treatment. Article 19 of the Beijing Rules provides that imprisonment of child offenders shall be the last resort and for minimum period. In addition, Article 28 provides that where a child must be institutionalised, the objective is to provide care, protection, education, medical and assistance in order to ensure that such a child is equipped to be reintegrated into society. In order to provide effective implementation of disposition orders, Article 23 of the Beijing Rules also requires that appropriate provision be made for the implementation of orders of competent child court.

These principles aim to uphold the welfare of the child and minimise intervention by the child justice system.

The following rules address the fundamental principles:

- The fair and humane treatment of child offenders;

- Conducting proceedings that allows a child's full participation and safeguarding their fundamental rights;

- The application of the principle of proportionality to the offender and the offence;

- The application of community programmes for diversion from court procedures;

- Detention as a measure of last resort and for the shortest possible time;

- Incarceration should only apply when dealing with serious offences;

- The elimination of corporal and capital punishment;

- Continuous and training that focuses mainly on stakeholders working with children;

- The application of alternatives where possible; and

- The provision of educational and other social re-integrative services for those children who are institutionalised.

The Beijing Rules are said to be articulated in a way that is applicable to different legal systems.

3.3.4 THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

There are distinct similarities between the African Charter on the Rights and Welfare of the Child in terms of its interpretations and the United Nations Convention on the Rights of the child in terms of their interpretation and understanding of the child justice system.

However, it must be noted that the United Nations Convention on the Rights of the Child has a more modified practice which is in contrast to the African Charter on the Rights and Welfare of the Child because it mainly follows a collective approach that combines accountability with rights (Badenhorst, 2003:17).

3.3.5 THE SOUTH AFRICAN CONSTITUTION AND CHILDREN

The Constitution, which is the supreme law in South Africa, came into operation in 1996. The injustices of the past are well known and documented and the primary objective of the adoption of the new Constitution was to establish a society that is based on fundamental human rights and equality, including the rights of children. The absence of proper child justice legislation led to inhumane treatment of child offenders by both authorities and child justice organisations (Stout & Wood, 2004:115). Before the adoption of the new Constitution, children's rights were not recognised, especially those in conflict with the law. The development of child justice in South Africa is based on the United

Nations' Charter on the Rights of the Child, on the African Charter on the Rights and Welfare of the Child, and on the Constitution of the Republic of South Africa. South Africa's child justice legislation is embedded in the international instruments that can be used to give insight into the best practice of dealing with child offenders.

Currently, the Constitution advocates for the protection and respect of children's rights. Section 35 of the Constitution is of relevance to the child justice because it deals with the rights of children who have been detained. However, Section 28(I)(g) is equally important because as it sets out specific and clear principles on how to deal with children in conflict with the law (Gallinetti, 2009:10). In response, the Constitution specifically make mention of children and guarantees them special protection and rights. We will then explore the different sections in the Constitution that safeguards their rights. The following sections are important guidelines on how children should be treated, namely; a child in conflict with the law has the right to be kept in conditions that takes a child's age into consideration and while in detention, she/ he should be kept separately from adult offenders ; authorities must be mindful of gender when placing child offenders and be protected from any form of abuse; their social and moral development should be protected at all times and lastly, they must not be subjected to practices that could place their wellbeing in danger. In addition, incarceration should be the last resort (Section 28 of the Constitution). However, if there are no alternatives in the situation, it should be for the shortest period.

According to Alleman and Gido (1998:22), criminality is seen as a consequence of social and personal conditioning. Over years there has been a call to pay attention preventing of risks and problems in the psychosocial development of our children, growing attention has been paid to factors which can enhance development. The bottom line is that the goal and objective of changing deviant behaviour of child offenders is to try to ensure that they do not reoffend. When dealing with child offenders we must always bear in mind that the child's best interests are of paramount importance (Section 28(2) of the South African Constitution of 1996). Early identification and treatment of children at risk is probably one of the most effective means of ensuring the long-term protection of society. Moreover, there is a growing evidence that by the age of six or younger children who require intervention can be identified by experienced professionals (Bala & Mahoney, 1994:45).

This framework broadly identifies the following systems as representing international child justice processes and taking consideration multicultural and traditional societies. A brief summary of the different approaches on the issues of child justice system, diversion and the practical interpretation thereof in Canada, Netherlands, Botswana and Kenya will also be provided.

3.4 A COMPARATIVE INQUIRY OF CHILD JUSTICE SYSTEM APPROACH: CANADA, NETHERLANDS, BOTSWANA AND KENYA

During the past decade, the international community has developed sound standards to protect the rights of child offenders. Legislation tends to maintain a separation between systems dealing with the protection, care, welfare and responses to child offenders. As discussed in section 3.4.2, the Convention on the Rights of the Child and other legal instruments call for a specialised child justice system that places the respect for the dignity and best interest of the child at the centre of legislation and policy practice.

However, it has generally been advocated that the procedure and conduct of our child justice system fall short of the minimum standards provided by the international children's rights instruments. It would appear that the courts have not succeeded in promoting the dignity of child offenders, their proper growth and development and their reintegration into society, as is required by the international instruments. There are a number of specific concerns which have been noted by academics and activists in the field. They relate procedural problems such as lack of legal presentation of children in criminal courts, long delays in the finalisation of trials involving child offenders and problems with the separation of child and adult offenders. However, we need to bear in mind that there has never been a universally accepted philosophy on how to best conceptualize child justice. In the next section, the child justice systems of selected countries will be discussed in detail. These countries are Canada, Netherlands, Botswana and Kenya.

3.4.1 THE CHILD JUSTICE PROCESS IN CANADA

Canadian child offending crime rates stabilised and began to drop in the 1990s and it was further reported that the media would always use any opportunity to portray child offending as dangerous and their offending as getting out of hand (Muncie & Goldson, 2006:20). Evidence and arguments are convincing in supporting the view that there has been a real and substantial increase in child offending (Corrado & Markwart, 1994:354).

However, Corrado and Markwart (1994:355) point out that 'while we believe the evidence that these increase may be real, the incidence remains relatively low'. Tanner (1996:1) notes that 'no other social group receives as much negative attention as children; they are viewed variously as troubling and troubled, a constant source of fear and worry'.

Diminished responsibility due to immaturity and special efforts designed to give child offenders room to reform in the course of their developmental stages will assist in curbing deviant behaviour amongst our children. Compared to adults, children are more impulsive and susceptible to the influence of others and these may be influenced by lack of judgment and life experience (Steinberg & Schwartz, 2000:26). These changes must be put in perspective and recognise that individuals and communities form their own opinions of child offending and are affected in ways that are not readily apparent. For this reason, it is helpful to form a preliminary context for understanding how the criminal justice system deals with child offending.

In Canada, child offenders are generally treated less harshly than adult offenders (Zimring & Fagan 2000:277), the preferable approach of treating child offenders under the age of 12 is for provinces to form regimes that focus on their safety and wellbeing and offer long-term intervention where applicable. Emphasis is put on the acceptable responses when dealing with child offenders, incarceration should be the last resort, and should not be placed with adult offenders (Bala & Mahoney, 1994:256) and it has been proven that contact with any justice system is in practice is likely to have a negative impact on children (Muncie 2005:39).

Legal protection for children can be performed as fundamental rights and freedoms of children as well as a variety of interests related to child welfare (Section 3 of YCJA). So the legal protection for children includes a very broad scope. This scope includes among others, the protection of the child's rights, and freedom, including the legal protection of all interest relating to their welfare. In 2001, the Canadian House of Commons passed Bill C-7, the Youth Criminal Justice Act (YJCA). The new law replaced the Young Offenders Act (YOA) and came into force as of April in 2003. The YJCA sets out a new legislative framework for Canada's child justice system. Most importantly, the YCJA signifies a vital element of the Youth Justice Renewal Initiative which further ensures that consistency with national and international human rights (Muncie 2005:39).

The 2001 Bill (i.e., Bill C-7) has a number of important focuses, such as prevention and to causes of crime by encouraging and supporting the community's efforts to reduce crime; meaningful consequences that hold child offenders accountable; rehabilitation and reintegration back into their community and flexibility for the provinces, that is, to choose options in some areas that best meet their needs (Canada's Youth Criminal Justice Act, 2001:2). The Act and Section 10(a) of the Charter of Rights and Freedoms provide that all children alleged of committing an offence must be informed about their rights by the attending officer before they are arrested. It also includes the use of alternative measures.

Obviously most of us would seek a justice system that is founded on core principles of restoration and reintegration if it were our own children who were in trouble. This, of course, is the key issue. Only if we could recognise the reality that all children need support and guidance, the search for an ideal child justice should be our only moral choice (Krisberg, 2005:196). Howell's (2003:309) rationale is that the criminal justice system does not have the capacity to protect child offenders and their incarceration is not effective in deterring future crime. If one regards the developments in the disposals that are applicable to child offenders, there has been a clear expansion of the available means of support services. However, these are often linked to educational measures or merely function to confirm values and norms of a particular society by means of a warning.

Universally, it is proclaimed that incarceration of child offenders should be the last resort. Conversely, in practice the level of last resort varies according to countries and their legislation. The only development that appears to be common across the countries is the application of elements of restorative justice policies when dealing with child offenders. There is a clear tendency in child justice policy in recent decades to strengthen the justice model by establishing or extending procedural safeguards, also to what may be regarded as welfare measures. This tendency includes a stricter emphasis on the principle of proportionality. This implies that proportionate sentencing requires that sanctions should relate to the harmfulness of the conduct (Quirk, 2006:955).

3.4.2 The role of the Child Justice System in Canada

Historically, prior to the modern era, children's court judges were entrusted with significant discretion and court proceedings were informal (Martin, 2005:356). It was

believed that informality, coupled with strict discipline was the best way to rehabilitate child offenders. However, this philosophy was shortened in 1982 with the introduction of the Young Offenders Act, and Canada now practices official formality, with strict rules and procedures that are similar to the adult criminal court which is governed by Section 61 of the Act. The Act reflects a child justice consensus that sanctions movement toward a criminal justice model (Mcguire, 1997:185). In addition, it is stated that child offenders accused of committing serious offences can be sent before the adult criminal court and they "loose" their right to be "protected" as their identity can be made public(Bala 1997:213). However this process can be deemed unconstitutional and in violation of the Canadian Charter of Rights (Sections 110(b), 75(3) of the Act).

When children are arrested on suspicion of committing a crime, they are informed of their rights, which also include the right to confer with one's parents. When the child offender chooses to cooperate with authorities, the police must record their waiver of rights in writing and then proceed with questioning. In some Canadian provinces, statements cannot be taken by the police unless approved by the Crown Counsel (Martin 2005:354). Nevertheless, child offenders may receive long sentences for serious crimes.

3.4.3 Alternative sanctions to deprivation of liberty offered in Canada

Alternative measures programmes provide child offenders with several benefits including the opportunity of avoiding the consequences of having a criminal record. The Youth Criminal Justice Act 2003 is the law that governs Canada's child justice system. It also makes provision for extrajudicial sanctions programmes that allow child offenders to be diverted from the court process. The YCJA puts additional emphasis on the use of diversion programmes by stating that they are "presumed to be adequate to hold a young person accountable for his or her behaviour" (S4 (c) (d), YCJA). The YCJA covers the prosecution of children who are between the ages of 12 and 17 years. It mainly focuses on reintegration of the child offender back into the community; to give fair sentences consistent with the needs of children in consideration of their age and maturity; respect is upheld and to enforce the law to strengthen the link between the behaviour and its consequences safeguarding their rights. If the young offender completes the requirements of the programme, then all charges are dismissed.

3.4.4 DIVERSION PROGRAMME FOR CHILDREN IN CONFLICT WITH THE LAW IN CANADA

The purpose of the application of diversion programmes is to eliminate the negative effects, such as those arising from the application of formal and administrative procedures in the conventional criminal justice system. In many cases, the form of alternative policy is considered as the most appropriate measures and will provide optimal results. In Canada like other countries, diversion is an alternative measure to the formal court process which is available to child offenders. The police officers have the choice of either charging them or diverting them away from the justice system. Diversion can take two forms, namely; police discretion or alternative measures (Kowalski, 1999:2). Section 4 of the Young Offenders Act laid out various legal safeguards for the young person and indicates that alternative measures have to be appropriate.

Snyder and Sickmund (1995:21-28) report on extensive statistical analysis on juvenile offenders and victims. They found that "by year 2010 the number of juvenile arrests for violent offences such as murder will be on the increase by 150%" if both population growth and arrest rates continue to increase, and currently, many countries can attest to these findings. Furthermore, Hogeveen (2005:74) has taken this analysis forward by arguing that "construction of a conventional dangerous and punishable young offender was clearly evident in Canada throughout the late 1990s as politicians and the public debated solutions to the problem of child offending". However, according to Paternoster (1989:37), "severity of punishment had virtually no effect on the decision to offend or to quit offending". It is traditionally argued from the perspective of individual deterrence that the more severe the processing of child offenders, the less likely it is that such child will be involved in deviant behaviour. On the other hand, the opposing perspective, that is the labelling theory, suggests that the effect of criminal justice processing, particularly on children, is that their self-concept changes to be consistent with the label which in this case is the "child offender"(White & Haines, 2001:84).

A basic distinction among diversion programmes can be made according to programme type and referral level. Most diversion programmes follow a risk/ need / responsivity (RNR) approach, which involves screening for the child offenders' level of risk or needs and assigning them to appropriate intervention programmes (Andrews, Bonta & Hoge, 1990: 19).

Globally, research into the effects of interventions aimed at enhancing the positive development of children is increasing gradually. A variety of approaches have been used to address the problem of child offending. The following discussion is a brief summary of two community-based programmes and models for prevention and diversion of children at risk for child justice involvement (Community-based Diversion Programme Models for Youth at Risk for Justice System Involvement 2014:4-6). Diversion programmes offered are as follows:

3.4.4.1 Ottawa Community Youth Diversion Programme

This programme is intended for children who are between the ages of 12 and 17 and are eligible for Extrajudicial Measures (EJM) and Extrajudicial Sanctions (EJS) according to the YCJA (2003). It is a comprehensive community-based programme that encourages greater accountability and address criminogenic needs. This aspect is very important as it will shed light on the influences of the peer group and increasing lawlessness during the teens (Sykes & Cullen, 1992:114). In Canada, child offenders are normally referred by police as a pre-charge extrajudicial measure. This programme also includes screening and assessment to reduce recidivism and provides an on-going support and conflict mediation and resources for affected families. The programme features an intake assessment protocol to ensure that the level and intensity of intervention is tied to risk, need and responsiveness. Programme elements are designed to ensure that the interventions focus on improving and rehabilitating the root causes of the offending behaviour.

3.4.4.2 Justice Sector and Community Services

This is a pre-charge diversion programme. Ottawa Community Youth Diversion Programme (OCYDP) seeks to improve the manner in which the community deals with child offenders. This programme was developed to meet the mandate of the YCJA that children between the ages of 12 and 17 years be diverted from the formal criminal justice system whenever possible and appropriate. Caseworkers forward all referrals from the police officers or Crown Attorney's trained in the screening tool. At the OCYDP, an individualised risk/needs assessment is completed with each participant using standardised assessment tools (Boys & Girls Club of Ottawa 2015: Np). Based on the outcome of the assessment, a case management plan is then implemented outlining the

goals that the participant is expected to complete. Goals are intended to hold child offenders accountable for their actions.

A recent evaluation report on the OCYDP found that the programme was generally successful in reducing recidivism. On the contrary, a related analysis showed that children on probation were almost twice as likely as diverted children to be re-convicted each month. This evidence is consistent with a recent meta-analysis by the same researchers. In addition, it was found that child offenders who did not complete the OCYDP had significantly higher reconviction rates than those who fully or partially completed the programme and those in the probation group (Wilson & Hoge, 2013: 313). The only effects on recidivism that were found were in programmes that included a strong rehabilitative component in the daily schedule of activities (three or more hours) and in programmes that provided intensive supervision to participants after release. Additional benefits of the programme were that this programme was cost effective and more efficient in addressing matters affecting child offenders and most importantly to protect child offenders from being labelled and stigmatised. On the contrary programmes designed only to provide physical training, hard labour and military discipline did not reduce recidivism and may have a negative effect (McKenzie 1994:17). Successful completion of the OCYDP results in no further action being taken.

3.5 THE CHILD JUSTICE PROCESS IN THE NETHERLANDS

This Act also replaces parts of other laws that regulate matters that deal with the care of mentally disabled children and youth. Most sections of this Youth Act came into effect in 2015 (Bosscher, 2014:3). The Youth Act came into operation on a day as appointed by order or orders. In the Netherlands the term 'youth' applies to children and young people up to 25 years of age (Hilverdink, 2013:1).

From the late 1980s, decentralisation of the care for youth from the central government to the local and provincial administrative level was already taking place. This decentralisation was envisioned to facilitate and find solutions to local issues, needs and demands. A distinction was made between general and preventive youth policy, such as education, leisure time and health care (Netherlands Institute 2010:5).

The development of child offending in the Netherlands is fairly well documented. Even though Netherlands has been seen as progressive, it is reported that it is currently

undergoing major changes because of various problems. The current youth care system faces problems such as the lack of transparency because of many different services, statutory bases and sector organisations (Bosscher, 2014:4).; hence, the review of certain aspects of the law that regulate matters that deal with children and youth.

3.5.1 THE ROLE OF THE CHILD JUSTICE SYSTEM IN THE NETHERLANDS

In the Netherlands there is no encompassing law for issues on children and young people yet. However, two laws are very important. The Youth Care Act (2005) is the legal framework of youth care services for children and youth at risk and their families and it aims to strengthen the position of all parties involved(Bosscher 2014:1). The system that the Netherlands is encouraging is a significant one, as Tlhoaele (2003:56) cautions that it is not only the parenting styles or skills that are important but also the nature of the family structure.

With enactment of the Youth Act in 2015, the accountability for all forms of youth care was decentralised from state level to municipal level (Dutch Report on NGO Coalition for Children's Rights, 2014:26). The new Youth Act provides for the placement of child offenders in youth care institution without prior judicial review (Article 6.1.4 Youth Act). An important condition to achieve goals for the transition and transformation is that minors and their parents are actively involved in designing the system, policy and the implementation thereof. Traditionally, a child's family acts as its primary agent of socialisation but, as children mature and become integrated into society, their peers exert a significant influence over their thoughts and actions (Burton, 2007:108). Moreover, the poorer a child's interaction with family members is, the higher the risk of engaging in antisocial behaviour (Bartollas 1997:71; Siegel & Senna, 2000:8).

The Youth Act further stipulates that children, youths and parents should be able to influence the quality of the care provided to them. This is an important goal with the United Nations Charter on the Rights of Children in mind (Dutch Report on NGO Coalition for Children's Rights 2014:28). According to this law, children that received an admission to care from Youth Care Agency have the right to claim such services (Bosscher, 2014:3). The objective of the juvenile justice system is to reduce the offending behaviour and aims to prevent the recurrence. There is no one risk factor that leads to deviant behaviour; it is usually an accumulation of causes. The starting point is the need of a system that provides an effective and early intervention. A significant decrease in child

offending has been evident in the Netherlands. As a result, the number of court cases involving children has significantly diminished. In the Netherlands, an educational and corrective approach is preferred when dealing with child and youth offending. Juvenile criminal law can also be applied to 16 and 17 year old year olds if the court decides that this is appropriate for the particular offender or if there were special circumstances relating to the crime, especially in serious matters such as murder. By the same rationale, 16-17 year olds may be subjected to adult law (The Netherland Youth Institute, 2007:16). In addition, young people that have committed a crime and have been sentenced are placed by a judge in a juvenile justice institution.

Most websites of relevant organisations for children and youth in conflict with the law in the Netherlands contain little or no information in any other language than Dutch.

3.5.1.1 ALTERNATIVE SANCTION TO DEPRIVATION OF LIBERTY OFFERED IN THE NETHERLANDS

It is estimated that 35,000 minors are interrogated by the police annually. Furthermore, it is reported that approximately 7,000 of them are taken into police custody, most of whom are held overnight or for longer periods (4th Report on the UN CRC of the Dutch NGO Coalition for Children's Rights 2014:63). By law (Article 15 of the Judicial Youth Detention Centres Framework Act (Beginselenwet Justitiële Jeugdinrichtingen, Stb.2000, 481), children above the age of 12 , may be held in police cells for a maximum of nine days or 16 days and 15 hours. While these children are in custody, specific criteria concerning the criteria of their incarceration are normally not reported. It is noted that at this stage the interest of the investigation outweighs the interest of the child. The Netherlands is thus in breach of the principle of "last resort". In addition, it has been revealed that 74% of all child offenders are in pre-trial detention, kept in police cells that are often cold, unclean and not child-friendly (4th Report on the UN CRC of the Dutch NGO Coalition for Children's Rights 2014:63).

The confusion or rather lack of appropriate knowledge with regard to matters pertaining to children in conflict with the law may somewhat be due to the fact that restorative justice and mediation have a weak base in Dutch Juvenile Criminal Law.

Awareness on alternatives to incarceration available to child offenders has proven to be mostly problematic as most police officers and public prosecutors are not specialised and lack sufficient knowledge in dealing with child and youth offenders; for instance, the lack

of knowledge on available programmes and how to apply the rules and principles in place when dealing with such children is a reflection of the seriousness of the matter (4th Report on the UN CRC of the Dutch NGO Coalition for Children's Rights, 2014:65). In the Netherlands, alternatives to incarceration are not all nationally available and therefore are not being fully exploited. Currently, there a few programmes in place for child offenders in the Netherlands. However, for the purpose of this study we will only discuss the HALT and Behavioural measure (Gedragsbeïnvloeddende maatregel) programme.

3.5.1.2 HALT (A body organising out-of-court settlements offered by the Public Prosecution Service to juvenile offenders involving community service or educational tasks)

This programme deals with first time offenders who are willing to acknowledge and confess to their deviant act and police officers can also divert them. Offences that can be diverted are vandalism, truancy, shoplifting or the use of illegal fireworks. Halt confronts child offenders with their behaviour and ensure that they face their consequences by apologising or paying compensation. In addition, they are given specific teaching assignments. Confession is very important and parents must be actively involved in the whole process. One major advantage for children sent to HALT is that unlike most alternatives, the intervention is not registered in the national judicial documentation and has no negative consequences to the future of the child in question (Berger & Brummelman, 2013:9).

3.5.1.3 Behavioural measurement

This measurement aims at closing the gap between a conditional youth detention or pij-measure (a measure for treatment in a youth custodial institution) and deprivation of liberty. The "behavioural measure" was introduced in February 2008. The goal is to change the deviant behaviour of a child offender and aims to reintegrate them well into society. In addition, it aims to curb the development of criminal career, to strengthen protective factors and to instil positive values and norms. The measures consist of several interventions and are aimed at repeat offenders and serious offenders. The programme can be facilitated at various places, including outside an institution, at home, with the family or at another specified place. The programme can last from six months up to a year. However, it can be extended but only once (Berger & Brummelman, 2013:11).

3.6 CHILD JUSTICE PROCESS IN BOTSWANA

Botswana's 1981 Children's Act preceded the United Nations Convention on the Rights of the Child and many of the international juvenile legal instruments such as the Riyadh Guidelines, Beijing Rules and Tokyo Rules(Macharia-Mokobi 2013:11). But it was still a progressive piece of legislation that sought to protect the right of children. Its limitations were judged against international norms and their standards. The Children's Act of 1981 did not make provision for legal representation for juvenile offenders in court nor did it provide for appeal of the decision of the magistrate.

In recent years we have seen many countries have separate legislation governing judicial procedures for children in conflict with the law. The Parliament of Botswana passed the Children's Act in April 2009. The Act defines a child as 'any person below the age of 18 years', which is in line with the United Nations Charter on the Rights of Children (Article 1). The main objective for the introduction of child justice emanated from concerns that children were increasingly getting involved in deviant acts at an early age and courts were ill equipped in dealing with such cases because there were few alternatives to incarceration. Recognising that children are mostly likely to experience violation while in police custody, it was very important for Botswana to have the Children's Act in order to protect their rights. However, Siegel and Welsh (2011:292) are of the opinion that the components of the adult and juvenile criminal processes are similar While Botswana has made significant progress in meeting the requirements of the Convention on the Rights of the Child, the major milestone was the passing of the Children's Act 2009. Prior to the implementation of the Children's Act 2009, sentencing options for child offenders were inadequate (Macharia-Mokobi, 2013:14).

In Botswana, children in conflict with the law are tried and sentenced for their offences. These children are liable to certain consequences for criminal conduct. Section 85(a)-(e) of the Children's Act 2009 provides various approaches on how to deal with child offenders, including, the admission to school industries, community service, corporal punishment and incarceration (Macharia-Mokobi, 2013:10). In addition, the Act confers jurisdiction over all matters concerning child offenders to the Children's Court. The Children's Court has the power to hear and determine cases against children aged between 14 and 18 years old. Notably, the researcher observed that nothing is mentioned of children below the age of 14. According to Otlhogile (1985:396), the Botswana

Government created a legacy of child offending by offering free education only to primary school learners which created masses of school dropouts, who channelled their energies into crime and other deviant behaviour.

3.6.1 The role of child justice in Botswana

This Act together with Penal Code and the Criminal Procedure and Evidence Act are the main statues regulating child justice in Botswana. The Children's Act 08 of 2009 makes adequate provision for the observation of basic procedural legal safeguards for treatment of alleged child offenders contained in both the Constitution and other legislation. Nevertheless, according to Section 13(1) of the Children's Act 08 of 2009, the age of criminal responsibility is eight years. Section 13(2) of the Penal Code provides that children between the ages of eight and 14 may be held liable for their deviant behaviour if it is proved by the court of law that such child could differentiate between right or wrong during the commission of the criminal act. This provision is endorsed in Section 82(1) of the Children's Act (Macharia-Mokobi, 2013:16). The Children's Act seeks to make provision for the custody and care of children, for the appointment of commissioners of child welfare, for the establishment of juvenile courts and certain institutions for the reception of children and other matters concerned therewith. Part VI of the Act provides for the establishment of juvenile courts, the appointment of their officers and procedures and rules for dealing with children in conflict with the law. Part VI is dedicated to the establishment of institutions which receive children including juvenile offenders.

In Botswana, procedural safeguards include among others, the right to be tried separately from adult offenders, the right to the presence of a guardian or parent; the right to the intervention of a social worker or probation officer, the right to privacy and to humane treatment.

3.6.2 ALTERNATIVES MEASURES PROVIDED IN BOTSWANA TO CHILDREN IN CONFLICT WITH THE LAW

Children and young people often face multiple risk factors and it may be insufficient to address just one of these with the hope of preventing child offending. The targeting of risk factors in multiple domains is especially important. The criminal justice system has a responsibility to address the crimes committed by such children.

Diversion allows for matters involving children to handle outside the normal court or trial process. The absence of diversion programmes means children who have committed crime even for petty offences such as theft would be subjected to the court process and this will affect the child psychologically in the long run. Section 85(a) of the Children's Act 2009 provides that the Children's Court may sentence a child offender to probation, for a period of six months to three years (Macharia-Mokobi, 2013:17-19). The court is to inform the child offender in a language that they can understand. Snyman (2002:161) points out that the ability to distinguish between right and wrong forms part of a person's reasoning or intellect. Nevertheless, it is stated that the probation order works as a good behaviour pledge for child offenders. Botswana is yet to provide such services as a sentencing option in accordance to section 185(a). Section 85(b) of the Children's Act 2009 stipulates that child offenders may be sent to a school of industries for a period not exceeding three years or until the age of 21. Botswana has one school of industries, Ikago, and can only cater for hundred children at a time. The mandate of the school is to cater for child offenders from the age of eight to 18 years. Moreover, community service sentencing option is not available because structures and regulations for its implementation have not been created. Child offenders can be "sentenced" to corporal punishment. Section 7(2) of the Constitution upholds and preserves the use of corporal punishment.

3.6.3 DIVERSION INTERVENTION IN BOTSWANA

According to Steyn (2010:165), diversion holds various benefits for child offenders, their families as well as the justice system. Badenhorst (2011:5) concurs with this notion that diversion focuses on keeping children out of the Criminal Justice System and uses families and communities as resources. The child offender can escape the stigmatisation and negative labelling from involvement in the Criminal Justice System.

According to the Tabengwa (2007:86), a review found that there was no focus on child's rights, goals and human rights principles in Botswana's legal system , including customary law. This was because the customary law encouraged corporal punishment while the Education Act regulated the practice in schools. Skelton and Tshehla (2008:31) argue that the use of corporal punishment as a sentence should be totally abolished.

The review proposed the setting of a target date for the identification of traditional practices and customary law that were respectively compatible or incompatible with child

rights principles and goals. It is further reported that due to lack of suitable facilities, most child offenders may end up being in the same facilities as adults offenders. This is a gross violation of children's rights as it opens the possibility of detention and other inappropriate violations against such child. This is mainly because of the absence of procedural guidelines. The international norms and standards discourage pre-trial detention of children. However, this is still a practice in Botswana. All efforts to harmonise the domestic law with international standards have been focused on changing the written law (Tabengwa, 2007:87).

In Botswana, the main diversionary measure provided for under the Children's Act is by referring a child offender from the juvenile court to the children's court (S14 of the Act). Botswana has recognised and acknowledged the fact that lack of interventions for children in conflict with the law is a serious legislative omission that needs to be addressed.

Diversion programmes can offer significant advantages to the child offender. Dispositions provided under the Act are limited and serious consideration should be taken so as to include, community service orders, treatment and counselling. The researcher at the time of the writing of this chapter could not find a single diversion programme offered to child offenders. One cannot put enough emphasis on the importance of preventing recidivism among child offenders and promote rehabilitation, positive change and empathy building (Cilliers & Smith, 2007:86). According to Webster-Stratton and Taylor (2001:178), child offenders' skills training programmes are designed to 'directly teach children social skills, effective problem-solving, anger management and emotion language'. Botswana should recognise the different benefits that come with interventions that strive to provide child offenders with opportunities that protect them from being "branded" as criminals. For Botswana to enjoy the full benefits of the United Nations Convention on the Rights of Children and the Beijing Rules, they need to reconsider how they are dealing with issues concerning children in conflict with the law.

3.7 THE CHILD JUSTICE PROCESS IN KENYA

Kenyan domestic law recognises the vulnerability and special needs of children. The endorsement of a new Kenyan Constitution in 2010 represented a vast shift in the state's obligations towards offenders. Kenya's Constitution introduced a progressive Bill of Rights (Chapter 4) which is guided by international human rights standards. Since Kenya

follows the dualist system, it domesticated the United Nations Convention on the Rights of Children through the Children's Act in 2010. Article 53 of Kenya's 2010 Constitution reflects the most important principle found in the United Nations Convention on the Rights of Children pertaining to child justice. The Act is the most comprehensive law on juvenile justice in Kenya since it delivered for the rights of children and Kenya's Constitution puts an emphasis that a child's best interest as of paramount importance (Article 53 (2) of Kenya's Constitution, 2010). Previously, the system took community interest over individual interest and offences were mainly resolved by elders in the community (Kariuki 2010:32). The Bill of Rights provides for various rights, including specific provisions on the rights of children. It further places the state in a position to observe, respect, promote and fulfil the rights and freedoms in the Bill of Rights and to enact and implement legislation to fulfil its international obligations in respect of human rights and freedoms (Article 121 Constitution of Kenya). The Children's Act was intended to complement the previous laws that provided for children.

Before the 2010 Constitution, the children's rights guaranteed under the Children's Act were unclear. Kenya differed from the best practices in child justice system with regards to the minimum age of criminal responsibility and they could be delegalized through a simple majority vote in parliament. The provisions of the Constitution now entrench the Bill of Rights providing for a two-thirds majority vote in both sets of parliament in addition to a majority vote in a public referendum before any amendments could be endorsed (Odongo, 2012:4). Therefore, the inclusion of children's rights in the Constitution ensures that children's rights are safeguarded.

It must be recognised that even though Kenya's Child Justice Bill of Rights is still on the on the initial stages, the Bill has encompassed all the necessary tools and clear guidelines in matters dealing with child offenders in line with the United Nations Convention on the Rights of Children. The Children's Act outlines ways of dealing with children in conflict with the law. A notable change on the new Act is the age of criminal capacity. According to Section 6 of the new Child Justice Bill (Amendment Bill) 2014, a child who commits an offence under the age of eight lacks criminal responsibility and cannot be prosecuted. However, before the new Bill was passed, children as young as eight could stand trial. Currently, the child justice system is guided by one of the most important principle of the Child Act; the principle of the 'best interests of the child'.

Addressing the needs of children in conflict with the law is challenging. However, with clear guidelines based on the core principles it becomes the compass of the Act.

When the Children's Act 2001 of Kenya introduced a new legal framework for dealing with children and their rights, including children in conflict with the law, the Act did not include diversion. It only provided a range of options by ways which the court may deal with criminal proceedings, particularly in relation to alternative sentences. However, it cannot be emphasised enough as numerous studies have established that any form of deprivation of liberty will have a negative impact on the development of the child. It is important to reduce children's vulnerability and enhance the impact of social protection programmes on the realisation of other rights, through integrated and child sensitive social protection system.

3.7.1 THE ROLE OF THE CHILD JUSTICE SYSTEM IN KENYA

The enactment of the Children's Act in 2001 was a significant development in the implementation of international child rights norms in Kenya. Certainly, the Act stands out as the first to domesticate Kenya's legal obligations under any human rights treaty. According to Part VII, Section 44(a) of Kenya's Child Justice System, one of the main purposes of diversion is to encourage a child to be accountable for the harm caused and to prevent stigmatisation and adverse consequences flowing from being subjected to the criminal justice system (section 44(g) and is to prevent the child from having a criminal record (section 44(h).

3.7.2 DIVERSION PROGRAMME FOR CHILDREN IN CONFLICT WITH THE LAW IN KENYA

In Kenya, diversion can be used as an alternative to keeping child offenders from the process of a court trial under the formal criminal justice system. For participation in any diversion programme, it is imperative that the child admits commissions of the criminal act. Decision concluded following diversion must conform to international and human rights standards. Setting up a diversion programme is important in order to identify a suitable location where diversion can practically take place such as district level.

Section 48(1) specifies the different diversionary options diversion is set out in various levels. They are as follows:

- a compulsory school attendance order, that is, an order that requiring a child to attend school every day for a specified period of time and must be monitored;

- a family time order, this order requires a child to abide by an agreement made between the child and his or her family to comply with certain standards of behaviour;

- a positive peer association order, this order requires a child to associate with persons who can contribute to the child's positive behaviour;

- a reporting order, an order requiring a child to report to a specified person at the specified period which is specified in such an order so as to enable the process to be monitored; and

- a supervision and guidance order, an order placing a child under the supervision and guidance of a mentor or peer in order to monitor and guide the child's behaviour.

In addition to the diversion options set out in Section 48, the inquiry magistrate may after consultation with the persons present at the preliminary inquiry develop an individual division option which meets the purposes of the standards applicable to diversion set out in Sections 46 and 47. Section 41 stipulates that if a child fails to comply with any order to diversion, the inquiry magistrate may upon being notified of such failure in the prescribed manner issue a warrant for the arrest of the child or a written notice to the child to appear before the magistrate.

These provisions significantly advance Kenya's compliance with its obligations under United Nations Convention on the Rights of Children and the African Children's Charter. Though it has been reported that diversion in Kenya has reduced the number of children held either in remand homes, rehabilitation centres or borstal institutes, the researcher was unable to corroborate what has been reported with regard to these diversionary interventions as there was no readily information on such programmes and how they were run as well as their effectiveness in curbing recidivism.

3.8 CONCLUSION

The search for an understanding of the phenomenon of child offending is motivated by natural curiosity. Thagard (2002:236) is of view that curiosity plays an important role in the search of scientific ideas. This search is also motivated though, by recognition that our prevention and treatment efforts will be successful to the extent that they are based on accurate knowledge of the conditions contributing to deviant behaviour. This general

focus on child offending is undoubtedly one factor accounting for our intense concern with the phenomenon.

In our discussion, we could easily trace the similarities among both the developed and developing nations. However, the underlying principle of separating child offenders and adult proceedings and standards were commonly applied. Criminal justice system processes and institutions are created to deal with such matters that threaten the violation of children's rights. Crime and delinquency are becoming so much a part of life that they almost seem normal in modern society. Norms and justice are relative to social systems. Although most norms are informal and independent of legal status, they constitute the framework of society and its major fabric of social control. It cannot be morally and socially acceptable that we have within our society children as young as seven years being involved in crime. We cannot emphasise enough the importance of investing in appropriate support and care of families in order to reduce the need for custodial placements.

The plight of children in conflict with the law is particularly a major issue confronting the world community. Diversion programmes have been identified as appropriate mechanism to divert children away from the criminal justice system and to provide them with corrective and educational opportunities. Conventional practice has long associated early preventive measures with positive delinquency reduction results. It is well recognised globally that long-term measures implemented to prevent crime is an essential and effective method in crime reduction. In particular, the Ryadh Guidelines are concerned with the prevention of child offending. These guidelines focus on early prevention as well as preventive interventions paying specific attention to child offenders. Interventions are key strategies in addressing the issue of child offending.

In some societies, child offenders are defined as criminals and are punished accordingly, while other cultures are very focused on rehabilitating and redeeming child offenders. In the latter cultures, child offenders receive enhanced treatment to give them every opportunity to reintegrate into civil society. Globally, no one can be sure how many young people have been incarcerated, nor is it an easy matter to determine how many child offenders have been rehabilitated informally outside of official justice institutions. It is worrisome that the available figures in all these countries do not show a comprehensive overview of the number of children in custodial placement, nor a differentiation in terms of

those placed in institutions and those placed in foster care. A comprehensible system is required in order for all stakeholders involved to be able to monitor and evaluate intervention programmes which will in turn encourage an improved service. For instance, in Botswana where culturally traditional justice is acceptable, records of such cases are scarce. In general it is clear that not enough progress has been made toward the elimination of child offending and violence against children in conflict with the law.

Measuring the outcomes of diversion programmes prove to be difficult in all the nations discussed. Perhaps, the most significant point to raise in any review of interventions is the critical importance of good quality evaluation designs for testing programme effectiveness. An intervention may in principle appear to address a broad range of risk factors associated with development of offending behaviour. Unless there is clear evidence demonstrating their effectiveness in a form of scientifically robust research, we cannot be certain that they do in fact work. There is lack of reliable data on child offenders, especially in Africa. There are no statistics that validates the effectiveness of different systems. South Africa is no different. It will be useful to have a longitudinal study in comparing various programmes offered in order to inform the policy makers, stakeholders involved on the most effective programme and that will in turn assist in improving other programmes and curb recidivism of child offenders. Having reviewed the literature on the Child Legislation, Diversion and Criminal Justice System from various countries, the next chapter discusses the South African perspective on dealing with child offenders, including the Child Justice Act 75 of 2008, diversion and the impact of diversion in the South African context.

Chapter four will focus on child justice in South Africa. This involves critical assessment and exploration of the relevant provisions of the Children's Act and the extent to which they are sensitive and responsive to the needs and well-being of the child offender.

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CHAPTER 4: THE HISTORICAL CONTEXT OF CURRENT SOUTH AFRICAN CHILD JUSTICE SYSTEM POLICIES, PRACTICES AND THE ALTERNATE RESPONSES OFFERED

4.1 INTRODUCTION

There is no question that child offending is a major concern in all societies because children are an integral part of human survival and sustainability of a nation. It should already be fairly clear that to a large extent, complaints about antisocial behaviour often involve children. While deviance has always been a fact of life, societal intervention and participation in the handling of child offenders has gained most of its momentum in the last few decades. Unfortunately, many of these children face multiple disadvantages with complex needs and facing barriers to rehabilitation, education, training and employment (Krisberg, 2005:73). According to research, children who were involved in deviancy at the age of 13 and 14 years had the strongest likelihood of becoming adult criminals (Tracy & Kempf-Leornard, 1996:138). Nevertheless, as Loeber and Farrington note (1998:28-29), it is "never too early and it is never too late" to intervene with serious, violent and chronic child offenders". Research indicates that chronic offenders normally display a number of personal, social and developmental shortfalls (Siegel & Welsh 2012:66). When looking for the best way to respond to child offending or when trying to reduce the level of child offending in a community, it is important to be informed about the problem. Solutions created to deal with one form of a problem may be inappropriate in dealing with other problems.

Child offenders need to be protected from the negative impacts of the progress of rapid development and the globalisation in the field of information and communication technology, including changes in lifestyle that brought fundamental changes in their value system. A key objective of the South African Child Justice Act 75 of 2008 is to protect the rights of children by using restorative justice values, the involvement of parents and the community in interventions to ensure adequate integration of a child and cooperation between various stakeholders' who are involved in the child justice system. Section 28(2) requires that the best interest must always be taken in consideration when dealing with child offenders. The Act recognises the need for practical crime prevention by highlighting on the importance of rehabilitation and reintegration of child offenders in order to reduce the possibilities of reoffending (Rooth, 1995:1).

Punishment is "as old as society itself and it has always been perceived to control and change deviant behaviour" (Regoli & Hewitt, 1997:91). A central criticism of the 'dispersal of discipline' argument has been the fact that supposed 'alternatives' to incarceration or to punishment, have seldom functioned as alternatives but instead become additional forms of discipline and control, applied to a larger population and working to filter people into a wider social control system rather than divert them from it" (Squires & Stephen, 2005:87). In an effort to develop a more holistic approach to prevent child offending, the Child Justice Act stipulates that incarceration of children should be the last resort and should involve more community groups and organisations. Despite this, it has been reported that more than one million children worldwide are living in detention as a result of being in conflict with the law without access to a fair and appropriate judicial process or legal presentation (O'Donnel, 2004:9). If this is true, it is clear that the standards set by the Convention are constantly dishonoured (Musiani, 2006:38).

However, South Africa is painting a positive and different picture to what has been stated. According to the Department of Correctional Services 2015 Report, the number of children awaiting trial in the country's detention facilities indicated that there was a significant decrease by 74%. In the 2013/2014 financial year report, 129 awaiting-trial children were held in the country's remand detention facilities, down from 497 in 2009/2010. The number of sentenced children also declined by 62% from 538 to 204 between 2009/2010 and 2014/2015 financial years. It was further reported that the reduction of the incarceration of children was a product of close collaboration between various stakeholders including the Department of Justice and Constitutional Development.

According to this report, the Department of Correctional Services refers awaiting trial children to courts for consideration after every 14 days of detention in order to facilitate the conclusion of their cases in line with the Child Justice Act. The Department of Correctional Services further reported that child offenders are treated as a special category and as one of the vulnerable sectors among the country's 159 563 offenders. They are said to be accommodated separately from adult offenders and receive special attention in respect of rehabilitation programmes and particularly, education. This is line with the purpose of rehabilitation and intervention programme which stipulates that the programme must be comprehensive, holistic and should be designed to reduce all the negative consequences of deviant behaviour on attachment to family and commitment to

school (Thornberry, Lizotte, Krohn, Farnworth & Jang, 1991:32). The need for not only a separate consistent child justice system, but also for a coordinate effort to address restrictions in the system, was reinforced by South Africa's endorsement of the United Nations' Convention on the Rights of the Child (Potgieter, 2007:1). The Convention as underlined in Chapter 3 dealt with a broad range of children's rights and provides a comprehensive framework within which the issue of child justice must be understood.

This chapter looks at the development of the South African child justice legislation and the legal provisions of it. The focus is on children who come into contact with the police and justice system because of their deviant behaviour. Firstly, a discussion will be on the legislative framework for various processes and procedures for the establishment of criminal capacity of children who commit crime. In addition, it presents a comprehensive review of the literature concerned with the efficacy of mentoring intervention programme in the South African context. An overview is provided of three selected NGO's and their interventions in dealing with child offending.

4.2 A BRIEF HISTORICAL DEVELOPMENT OF THE CHILD LEGISLATION IN

SOUTH AFRICA

In the past there was no separate criminal justice system for child offenders (Gxubane, 2010: 35; Brink 2010:29).Consequently, activists for children's rights were motivated to modify interventions that were used to deal with child offending to the ones based on restorative justice philosophy. This process culminated in the founding of the Child Justice Act 75 of 2008. The main aim was to establish a separate criminal justice for children in conflict with the law against the background of the Constitution and South Africa's international obligations.

Children's rights are indisputably interdependent and involve a wide-ranging support. Having regard to the South African Constitution as well as a variety of international instruments, every legislative approach was aimed at promoting their well-being and to deal with each child in an individualised way. This affirms that the child justice needs a separate technique which its foundation is based on a rehabilitative model (Zaal & Skelton, 1998:548). Through the adoption of the international instruments as well as our constitutional principles, it is clear that children's rights are regarded as very important by the South African government. However, prior to the adoption of the Child Justice Act, an

integrated and coordinated way to deal with children was still lacking. Children charged with crimes continued to appear in the adult criminal courts (Skelton, 2011:417).

The Act incorporates the rights of children to be protected and treated in an age-appropriate way together with due process rights (Dynamics of Youth Justice & the Convention on the Rights of the Child in South Africa, 2008:2). It focuses on the rights of children, but also on a child's accountability by attempting to instil respect for the fundamental freedoms of others. We need to bear in mind that when a child commits crime, it does not necessarily mean that they will continue with the deviant behaviour until adulthood. Newburn (2002:540) states that self-reported studies recommend that deviant behaviour in the adolescent years is fairly common and if treated addressed early, the child can develop into a law-abiding and productive member of society. However, we must realise that the involvement in deviant behaviour is a dynamic social process that changes over time (Hunter & Dantkzer, 2002:141). If the child is "incorrectly" treated by the authorities, such experience might have long lasting negative impact. "Evidence" on how child offenders are dealt with by our child justice system is challenging and difficult, including obtaining reliable statistics from the Department of Justice, Correctional Services and Inter-Sectoral Committee. In addition, it is also difficult to estimate levels of child offending in large part because one is rather dependent on official crime statistics.

4.3 SCOPE AND APPLICATION OF THE CHILD JUSTICE ACT 75 OF 2008

The Child Justice Act 75 of 2008 provides measures to protect the constitutional rights of children who come in conflict with the law. The significance of the Act is not only on the establishment of a separate child justice system, but also on the provision of mechanisms on dealing with child offenders in a way that will reduce recidivism. One of the most important matters covered by the Act is the establishment of criminal capacity of children.

Generally speaking, the issue of determining criminal capacity is a global problem. South Africa is no different and has unique characteristics that might make it to be more difficult to determine the age of a child and their criminal capacity. One of the most important changes that the Act brought about was the increase in the age of criminal responsibility. Before the Act was promulgated, the age of criminal capacity was seven years, but the Act has changed this age to 10 years. It was then recommended that South Africa review their age of criminal capacity (Sewpaul 2000:1). This was as a result of the United Nations, stating that the minimum age of 10 years is still comparatively low and

suggested that it was important for South Africa to consider raising the age of criminal capacity (Badenhorst, 2006:71).

It is imperative to establish the criminal capacity of children before they can be prosecuted. The Act distinguishes child offenders according to different categories, that is, those who lack and have criminal capacity. It is vital to know at what age a child can be held liable for a crime and ensure that corrective measures are applied in such cases.

4.3.1 VITAL EVALUATIONS PRIOR TO THE ESTABLISHMENT OF CRIMINAL

CAPACITY

Crofts (2002:63) suggest that the best approach to determine a child's criminal capacity is to understand the child's background and establish their level of understanding. There are wide disparities in the minimum age of criminal capacity for child offenders in different countries. However, the concept of criminal capacity is not entirely straightforward. In terms of the South African law, before a child can be prosecuted, the state must prove beyond reasonable doubt that the child had criminal capacity. This means that the state must prove that the child knows the difference between right and wrong and that the child has the capacity to behave in accordance with this insight (Burchell & Milton, 2006:1). It is important to understand the child (Müller 2001:9).

The court has to order an evaluation of the child by a suitable qualified person. These assessments are very important because today children commit crime at a younger age and child offenders are common (Cohen 2002:74).This evaluation includes the psychological development, cognitive development, emotional development and language development of the child.

4.3.2 PSYCHOLOGICAL DEVELOPMENT

Badenhorst (2006:90), asserts that assessing the psychological development of children refers to the capability of children to control their behaviour in accordance with their insights. In addition it relates to repelling "impulses or desires" to act different to their insights. The ability of a person to distinguish between right and wrong is part of the person's mental functions, which are in turn linked to the person's ability to reason (Snyman, 2002: 161).

4.3.3 COGNITIVE DEVELOPMENT

According to the founder of cognitive theory, Jean Piaget children are born with basic mental structure (McLeod 2009:1). According to Papalia, Olds and Feldman (20006:7) the process of development starts as early as at conception. The main goal of this theory is to clarify the processes by which infant and then the child matures into an individual who can logically reason (McLeod 2009:1). According this theory people's reasoning develop in an orderly manner, commencing at birth and continuing until the age of 12 years and older (Siegel 2001:168). Cognitive development refers to the process by which a child understands his or her surroundings which are influenced by their life experiences and age plays a significant role (Pillay 2009:20). Banderhorst (2006:80) proposes that there are numerous significant aspects of the stages of cognitive development from the age of seven upwards. According to this view, during the age of seven and 11 years, it's a turning point in the child's cognitive development. This means a child is able to think independently. When they enter the concrete operational stage, they are able to construct a better understanding of rules and laws, but they do not yet understand them completely. The concrete operational phase is followed by the formal operations phase when the child is between 11 years and older.

Cognitive structures reach their highest level of development and children become capable of applying logical reasoning to all classes of problems. However, the above time spans are the norm. The ability of children to recall events and experience in their lives is influenced by anxiety, stress, the presence of a supportive person and trauma. Cauffman and Steinberg (2000:743) adapt the term maturity of judgment to describe the interface of cognitive, social and emotional influences on the how children function and make decisions. It has also been established that the memory of children in relation to 'peripheral events becomes more incomplete over time compared to that of adults'. Most children are incapable of abstract reasoning prior to adolescence stage Moffatt (2002: 51). However, Kostelnik, Soderman and Whiren (1999:18) are of the opinion that age is not and absolute measure of a child's competences though it does create reasonable expectation of what might be achievable for children to do.

4.3.4 SOCIAL DEVELOPMENT

During this phase peers play a very significant influence in the child offenders' behaviour but the immediate family stays being their point of reference. Gestwicki (1999:10)

explains that children's development is best understood within the context of the family, then that of the community. Family is influential to how a child develops including attachment bonds to the significant other (Ramasar 1996:143). Parental socialisation has a lifelong influence on a child and could play an important role in the causation or prevention of deviant behaviour. Between the ages of three to 12 years, children have a desire to satisfy others (Badenhorst, 2006:96). Furthermore, he contends that children who show signs of criminal behaviour at an early age are the same children who will most likely become persistent offenders. This simply means, "Offending is conveniently individuated and is not a matter for social justice or social inclusion" (Brown 2005:101).

4.3.5 LANGUAGE DEVELOPMENT

Language capacity plays a vital role in the intellectual development of children (Du Preez, Naudè & Pretorius 200:26). Even though the law does not necessarily state this, Badenhorst (2006:160) highlights the importance of considering language development when assessing criminal capacity of a child. He further suggests that development should be associated to the language the child is exposed to, especially at home. Certain matters have a certain degree of influence in the language development of a child, such as exposure to traumatic events (Müller 2001:9). Berk (2003:5) is of the opinion that as children grow all these different domains of development is interrelated and the one domain has an influence on the other. When all of the above factors have been dealt with, then criminal capacity can be established.

4.4 PROCEDURES AND DIRECTIVES ON HOW TO ASSESS CRIMINAL CAPACITY

Generally speaking, the issue of the minimum age at which a child should be held criminally liable for his actions is a global problem. Countries differ remarkably on how to deal with this challenge. It has been argued that the new minimum age of criminal capacity will not bring any change as the children under the age of 10 were hardly ever charged (Snyman, 2011:185). The South African requirements for criminal liability on which age has a particular effect are unlawfulness, criminal capacity and fault. Criminal law defines certain forms of human conduct as criminal. Sloth-Nielsen (2000:393) emphasises that criminal capacity should be distinguished from criminal responsibility subject on whether all features of legality are present. If criminal capacity has been fully established and that such a person can appreciate their unlawful act, it is then that the

law can take its course (Burchell & Milton, 2006:1). It must be first be established if perpetrators' have both the criminal capacity and mental ability to understand the unlawfulness of their conduct and to act (Snyman, 2011:165). The younger the child, the more challenging it is to disprove the presumption of incapacity and vice versa (Snyman, 2011:186).

As the child justice system evolved as a separate category, it was then developed with a sense that children were a responsibility that required protection and guidance. Moreover, "children are creatures with potential for good and evil, discipline being required to ensure that the former predominates over the latter" (Newburn, 2013:749). Until a decade ago, academics, politicians and the media paid little attention to children under the age of 12 engaging in criminal activities. Since then, however, policymakers and researchers have paid greater attention to this phenomenon.

4.4.1 Children under the age of 10 years

Section 9 of the Act gives the guidelines on how to deal with children under the age of 10 years who are suspected of having committed an offence. The Act further states that a such child cannot be arrested and the police official dealing with such a case must hand over the child to his or her parents or any other appropriate adult or a guardian and if no such person is available, or if it is not in the child's best interest to hand the child to such person, the child will be handed over to a suitable child and youth care centre. In most cases, a situation where a child is handed over to child and youth care centres is often applicable to street children. Although children below the age of 10 may not be arrested or prosecuted, section 7(1) of the Act recognises that they are at risk and that some action should be taken. The Act further stipulates that it is mandatory that a probation officer be notified to conduct an assessment. Once such a child is assessed, the probation officer may refer them to the children's court. Services that would be provided at children's court would be to provide them with either therapy or counselling; a programme designed to suit their needs taking their age into cognisance or schedule a meeting with their parents or guardian in order to develop an appropriate written plan of action.

This additional information is obtained to assist the probation officer to understand the circumstances surrounding the allegations against the child. The probation officer will then be in a position to formulate a written plan on how to deal with the specific child

(Section 9(3)(a); Section 9(4)(a) and (b) of the Act). It is important for the probation officer to make known of the plan of action concerning the child. This must be done in a way that is prescribed by the Act, and the plan of action must include the following: the objectives that should be achieved for the child and also the period in which it should be achieved; details regarding the services and assistance that will be provided to the child; the persons or organisations that will provide the relevant services and assistance; and the responsibilities of the child and the parent, or the appropriate adult or guardian.

4.4.2 Children between the ages of 10 and 14 years

According to the Act, it is presumed that a child between the ages of 10 and 14 lacks criminal capacity. However, this opinion is rebuttable and it diminishes when such a child approaches the age of 14 (s 7(2) of the Child Justice Act. in such cases, the state is tasked with proving beyond reasonable doubt that such child had criminal capacity (s 11(1) of the Child Justice Act). In addition, if it is found that such a child lacks criminal capacity and it is in their best interest, they should be dealt with in the same manner as they were below the age of 10 (s 11(5) of the Child Justice Act). Section 11(1) of the Act stipulates that the state must prove beyond reasonable doubt that a child who is 10 years or older but under the age of 14 could differentiate between what is right or wrong at the time of committing the crime. The following are key factors that need to be considered when deciding on a child's ability and understanding of their misbehaviour, that is, the child's cognitive ability , their background, educational level, maturity and age (Section 10 (1) of the Act). In cases where a child is not found to have criminal capacity, they have to be dealt with in the same manner as if they were below the age of 10 (s 1(5) of the Child Justice Act). Should the prosecutor be of the opinion that the child is likely to be proved to have criminal capacity, then one of the two possible options can be followed; to either divert the matter (if it is a schedule 1 offence) or refer the matter to a preliminary inquiry.

4.4.3 Children who are 14 years and older

According to the law children who are 14 years of age and older are alleged to have criminal capacity (s 7 (3) of the Child Justice Act). However, one of the main aims of the Child Justice Act is to prevent children from being exposed to the adverse effects of the formal criminal justice system (s 2(c) of the Act). The application of the Act is in recognition that some children commit crime as a result of lack of self-control, because the component of choice includes assessing the rewards and risks attached to

committing a crime (Conklin, 2004:228). Deviant behaviour and violent behaviour in young people originate from a complex interaction of risk and protective factors in different environments which influence the way in which children learn behaviours. Section 35(a) of the Act stipulates that the purpose of an assessment of a child is to establish whether a child may be in need of care and protection so that such recommendations can be included in the assessment report and such information will assist the probation officer on the necessary steps to be taken is such cases.

4.5 THE TYPES OF TRANSGRESSIONS THE CHILD JUSTICE ACT ADDRESSES

The Act applies to all criminal offences and transgressions and is divided into three schedules depending on the seriousness of the crime. Schedule 1 contains the least serious offences and Schedule 3 the most serious offences. The concept of diversion is based on the theory that treating certain children through the child justice system may have a negative impact on their welfare. In terms of section 52(2) of the Act, a prosecutor can divert a Schedule 1 or 2 offences after consultation with all relevant stakeholders in the matter.

The Child Justice Act categorises three schedules of offences for which a child in conflict with the law may be diverted (Gallinetti 2009:66-67), they are as follows:

4.5.1 Schedule 1 offences

These offences include the following:

- Theft or possession of stolen property amounting to R2500;
- Extortion, fraud, forgery or vandalism of property amounting to R1500;
- Illicit possession of drugs amounting to R500;
- Common assault, perjury, contempt of court, blasphemy, compounding, crimen injuria, defamation, trespassing and public indecency; and
- Engaging the sexual services of children under the age of 18 or older, bestiality and any other statutory offence where the maximum penalty determined by the statute is incarceration for a period no longer than three months or a fine of three months.

4.5.2 Schedule 2 offences

These include the following:

- Theft or possession of stolen property to the amount of R2500;

- Extortion, fraud or forgery where the amount exceeds R1500;

- Robbery , any other offence with aggravating circumstances;

- Malicious damage to property where the amount involved exceeds R1500;

- Illicit possessions of drugs with a value between R500 and R5000;

- Assault with the infliction of grievous bodily harm, public violence, culpable homicide or arson;

- Housebreaking with intent to commit an offence;

- The administering of poisonous or harmful substance;

- Crimen expositionis infantis;

- Abduction, sexual assault, compelled sexual assault or compelled self-sexual assault where grievous bodily harm has not been inflicted. Incest,   to persons who are mentally disabled, or using persons who are mentally disabled or violating acts with a dead person; and

- Exposure or display of private organs , anus or female breasts to any person and defeating or obstructing the ends of justice, any offence referred to in the Intimidation Act, offences reflect to criminal gang activities, and any other contravention of the Animals Protection Act. Section 52(5) states that if a decision to divert has been taken in terms of section 52(2) or (3) then an order of diversion may be taken.

4.5.3 Schedule 3 offences

These include the following:

- Rape or compelled rape, sexual assault, compelled sexual assault or compelled self-sexual assault involving grievous bodily harm;

- Exposure or display of child pornography or pornography to children, if that exposure or display is intended to facilitate the sexual exploitation or sexual grooming of a child or the use of a child for purposes of child pornography or in order to benefit in any manner from child pornography;

- Sexual exploitation, sexual grooming and using children for child pornography or benefiting from it;

- Sexual exploitation, grooming, exposure or display of pornography to persons who are mentally disabled, or using persons who are mentally disabled or using persons who are mentally disabled for pornographic purposes;

- Compelling or causing children to witness sexual offences, sexual acts or self-masturbation;
- Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding five years or a fine for that period;
- Robbery where there are aggravating circumstances or which involve the taking of a motor vehicle; and
- Trafficking or involvement in trafficking of persons for sexual purposes and any offence referred to in the Drugs and Drug Trafficking Act or illicit possession of drugs where the value exceeds R5000.

According the Criminal Justice Act, once a diversion order has been complied with, the probation officer must inform the court and the case will be withdrawn or charges dropped. Hence it is important for mentors to submit reports regularly that inform the probation officers on the emotional well-being of their mentees and any other matter that they deem important with regard to the child's development. In a case where a child failed to meet the terms, then the court can proceed with prosecuting the criminal case or it can decide on a more strict diversion option (Criminal Justice Act, Section 58).

4.6 REFERRAL OF CHILD OFFENDERS FROM THE CRIMINAL JUSTICE SYSTEM

Section 52(1) of the Act, affords child offenders to be considered for diversion either at the preliminary inquiry or at trial before the child justice court. In terms of section 50 of the Criminal Procedure Act 77 and section 43 of the Child Justice Act, a child's appearance at a preliminary inquiry is regarded as his or her first appearance before a lower court. Should a child appear to be in need of care and protection, such child can be referred to the Children's Court (section 50 of the Child Justice Act). In addition, Section 53 of the Child Justice Act 75 of 2008 stipulates various orders and options for diversion. They are as follows:

- A supervision and guidance order : places a child under the supervision and guidance of a mentor or peer mentor;
- A family time order : a child is required to spend the indicated period with their family;
- A peer association order : a child is required to socialise with peers who can have a positive effect in their behaviour;

- A compulsory school attendance order: a child is required to attend school on a regular basis and must be monitored;
- A reporting order: a child is required abide by the order at all times and report their movements to a specified person and
- A good behaviour order: an order with set standard rules that a child agrees to and must fully comply with.

The annual reports on the Implementation of the Child Justice Act have not consistently reported on the number of children referred to the children's court as matters. In the first and second annual report, the Department of Justice and Constitutional Development reported that 3 856 children were referred to a children's court at the preliminary inquiry phase of the child justice process (Department of Justice and Constitutional Development, 2013:35).

In addition to what was reported by the Department of Justice and Constitutional Development, the fourth annual report (2013/2014) mentions the number of child offenders referred to a children's court at a preliminary inquiry including 2011 to 2014. The pie chart below indicates the number of child offenders referred to Children's Court at Preliminary Inquiry and it also shows a decrease of referrals over a three year period. (Department of Justice and Constitutional Development 2014 Annual Report).

CHART 1: Number of child offenders referred to children's court at preliminary inquiry

Number of child offenders referred to Children's Court at Preliminary Inquiry

- 3,169
- 4,511
- 3,856

Legend:
- ■ 2011/ 2012
- ■ 2012/2013
- ■ 2013/2014
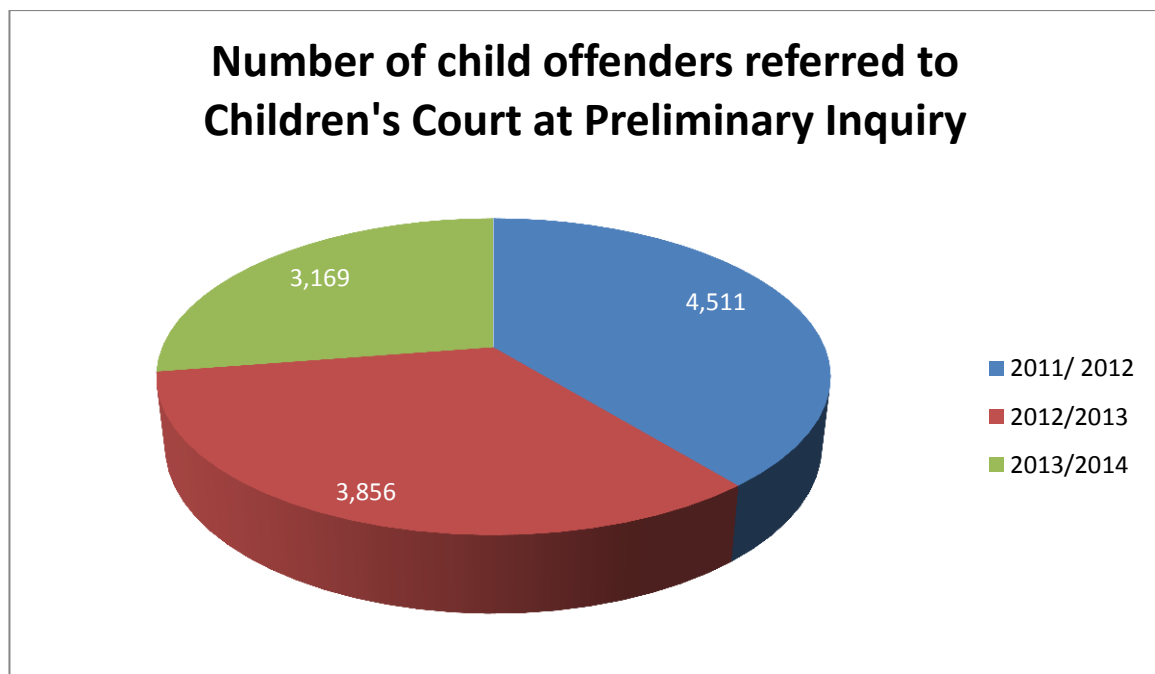
This decrease may be linked to a possible increase in the number of children being diverted in terms of section 41 of the Act (before the preliminary inquiry for Schedule 1 offences). In total 11 536 child offenders were referred to Children's Court at Preliminary Inquiry. The diversion options are set to out into two levels. Level one applies to the offences referred to in Schedule 1 of the Criminal Justice Act, while Level two includes all other offences indicated in Schedule 2 and 3.

Level one diversion options include the following (Criminal Justice Act section 53(3)):

- An oral or written apology;
- Formal caution, with or without conditions;
- Returning or restoring a specified object to the victim;
- Referral to counselling or therapy;
- Community service;
- Symbolic restitution;
- Payment of compensation; and
- Provision of service or benefit by the child to a victim which has been deemed appropriate by law.

Level 1 option applies to Schedule 1 offences, which generally are minor offences. In cases where a child is under the age of 14 an order may not exceed 12 months and for those who are 14 years of age or older an order must not exceed 24 months. In certain circumstances an order exceeding the above mentioned periods may be given, in which case the reasons for exceeding the time period must be stated and entered on the case record (Criminal Justice Act Section 53(5)). Level two diversion options apply to Schedule 2 and Schedule 3 offences. In terms of Level two, children under the age of 14, the order may not exceed 24 months and children older than 14, the order may not exceed a period of 48 months. A child can also be placed under the supervision of a probation officer where conditions and restrictions are stipulated and must be adhered to (Criminal Justice Act, Section 53(4)).

4.7 PROCEDURES OF SECURING A CHILD'S ATTENDANCE AT A PRELIMINARY INQUIRY

Section 43(3)(b)(i) states that a preliminary inquiry must be held within 48 hours of a child's arrest. Emphasis is placed on the likelihood of effectively rehabilitating and

reintegrating child offenders back in society. Once the inquiry magistrate has considered all relevant information, an order may be made (Gallinetti, 2009:41).

If there is sufficient suspicion that a child was involved in misconduct, there are three ways that can be followed to secure their presence at the preliminary inquiry:

- A written notice applies to children who have committed a Schedule 1 offence. In terms of section 18 (1) of the Child Justice Act, such notice should be handed to the child in the presence of either the parents or guardian and must specify the time and place of the preliminary inquiry. The police official should then notify the probation officer concerned within 24 hours, that a written notice has been served on a particular child (s 18 (4) (b) of the Child Justice Act).

- Summonses can be issued to secure the attendance of a child regardless of what schedule offence is alleged to have been committed. In addition, section 19 of the Act stipulates that summons are also used to inform a child of their charge and when they are expected to appear in court for the preliminary inquiry(Gallineti 2009:23)

- A police official may arrest a child. However, it is vital to note that a child may not be arrested for an offence referred to in Schedule 1 unless convincing explanations exist justifying this (Gallineti 2009:24). The police official must to notify the parents or guardian of such intention to arrest a child offender and if for some reason is not possible, the police official must submit a written report to the enquiry magistrates clarifying why he or she was unable to follow procedure (ss 17(1) (c).The police official must notify the probation officer concerned within 24 hours of arrest (s 20(4) of the Child Justice Act).

4.7.1 Pre-trial detention

The Child Justice Act is totally not in support of the detention of child offenders. However, if detention is to be used, then the Act differentiates between the release and pre-trial detention of a child offender. Detention and release should be made before the first appearance at the preliminary inquiry. In addition, a police official must where appropriate release a child on a written notice into the care of a parent or guardian in respect of an offence referred to in Schedule 1 (s 21 (2) (a) of the Criminal Justice Act). In a case where a police official for some reason does not release a child a written report must be

submitted to the inquiry magistrate citing their reasons for such decision (s 22 (2) of the Child Justice Act).

In cases where the police official is unable to release a child, a prosecutor is then authorised to discharge such child on bail. The prosecutor is allowed to do so in relation to both Schedule 1 and Schedule 2 offences (s 21 (2) (b) of the Child Justice Act). However, if a child is not released before his or her first appearance, a police official must where appropriate, consider the placement of a child in a suitable child care centre (s 26 (2) (a) of the Child Justice Act). Incarceration and release of a child should be after the first appearance at the preliminary inquiry and at any subsequent appearance in court. In addition, a child may be released at a preliminary inquiry or any other subsequent appear in one of the following ways:

- Section 21(3) (a) of the Child Justice Act stipulates that a child in conflict with the law may be released in respect of any offence, into the care of a parent or guardian;
- Section 21(3) (c) of the Child Justice Act states that a child may be released in respect of a Schedule 1 or Schedule 2 offence; and this section further stipulates that child may also be released on bail.

4.7.2 Pre-trial assessment

According to the Child Justice Act 75 of 2008 (s 34 of the CJA), it is enforced for all children who are suspected to have committed an offence, including those under the age of 10 years, to be assessed by a probation officer before they appear before a preliminary inquiry. Hoge (2009:55) points out the importance of the use of appropriate assessment instruments. The purpose of the assessment report in terms of section 35 of the Child Justice Act, among others, is to establish the following:

- Estimate the age of a child if it is uncertain;
- Investigate whether the child is in need of care and protection;
- Formulate recommendations regarding the release or detention and placement of the child;
- Gather information relating to any previous convictions or diversion or pending charges in respect of the child; and

- Express observations on whether expert evidence is necessary in relation to the criminal capacity of a child 10 years or older but under the age of 14 years and establish whether such a child is "fit" candidate for diversion.

Once such assessment has been compiled, the probation officer will then provide a written report with recommendations to the court, which may include any of the following recommendations:

- That the child should be placed in a child and youth care centre or juvenile prison;
- To consider referring the child offender to the children's court for care and protection; and
- To consider referring the child for diversion and consider logistics such as the location thereof.

In cases where a more detailed assessment is needed, for example where there is a probability that such child might be a danger to himself or others, where the child is referred to a sexual offender's programme or where it has been established that a child has a history of committing offences or absconding (Gallinetti 2009:36). It must always be taken into consideration before making any decision that involves a child that the Child Justice Act of South Africa advocates for children in conflict with the law to be diverted from a punitive to a rehabilitative and restorative justice system and for them to be successfully and safely reintegrated into their communities.

4.8 RISK FACTORS ASSOCIATED WITH CHILD OFFENDING

Explanations of child offending and criminal behaviour, whether biological, psychological or sociological in nature, provide some insight into the reasons for deviance. The diversity in perspectives, however, illustrates the lack of understanding that still exists. Indeed, the search for a single theory that explains all, or almost all deviance appears to be an effort in futility. The interest in understanding protective and risk factors has led researchers and various stakeholders into designing and implementing intervention programmes that will eliminate the contributory variables that lead to deviancy. The reasonable consideration is to view deviance as multifaceted. The explanation, therefore must consider a wide range of variables, influences and treatments.

The risk principle states that treatment will more likely be effective when treatment services are matched with the risk level of the offender (Petersilia, 1998: 199). Some

child development advocates urge a shift from risk and protection–focused child offending prevention to an emphasis on only the protection side of the equation. The development of effective interventions to address social problems such as child offending depends mostly on a sound understanding of the nature of the problem. In addition, understanding the child's family background and the type of environment in which they grew up are equally important in order to deal with the root causes of deviant behaviour amongst children (Siegel, 2012:336).

According to Mintz (2004:382), since we cannot isolate children from all negative influences, it is critical that we prepare them to deal responsibly with the pressures and choice they face. This task requires knowledge, not sheltering, in a risk-filled world. The risk factors elsewhere are the same with South African ones. The only most effective way of ensuring our children are well equipped with dealing with the influences of contemporary culture is to familiarise ourselves with the possible risk factors that are linked with child offending. However, these factors from different variables do not function independently but affect one another. No single risk factor can predict with certainty which child will have deviant behaviour tendencies or will display aggressive acts. The emphasis also differs.

The following are examples of risk factors associated with child offending.

FIGURE 3: Adolescent Problem Behaviours

	Adolescent Problem Behaviours				
	Substance Abuse	Delinquency	Teenage Pregnancy	School Dropout	Violence
Availability of drugs	X				
Availability of firearms		X			X
Community laws and norms favourable toward drug use, firearms and crime	X	X			X
Media portrayals of violence					X
Transitions and mobility	X	X		X	
Low neighbourhood attachment and community organisation	X	X			X
Extreme economic deprivation	X	X	X	X	X
Family history of the problem behaviour	X	X	X	X	
Family management problems	X	X	X	X	X
Family conflict	X	X	X	X	X
Favourable parental attitudes and involvement in the problem behaviour	X	X			X
Early and persistent antisocial behaviour	X	X	X	X	X
Academic failure beginning in elementary school	X	X	X	X	X
Lack of commitment to school	X	X	X	X	
Rebelliousness	X	X	X	X	
Friends who engage in the problem behaviour	X	X	X	X	X
Favourable attitudes towards the problem behaviour	X	X	X	X	
Early initiation of the problem behaviour	X	X	X	X	X
Constitutional factors	X	X			X

Adopted from Bartollas (2000: 357)

Unfortunately, the idea of risk reduction is sometimes misinterpreted as something negative, as though it involves blaming the child offenders for their risk factors. Children do not choose the families and the environment in which they are born, the schools they attend, or many of the individual problems they develop. However, they do choose their peer associations and make choices that lead to certain individual problems such as drug and alcohol use. Therefore, communities must reduce the causal risk factors to achieve

significant reductions in child offending. Currently, there seems to be two competing doctrines in the treatment of child offenders. On the one hand, the past decade has seen the development and implementation of a wide array of treatment programmes. Often these programmes have come about with little assessment of the community's or offender's needs. But, it is not always easy in finding balance between punitive measures, preventative and diversionary approaches. Mentoring of child offenders is expected to function as a primary prevention or early intervention strategy to avoid participants from the criminal justice system. If we wish to reduce crime, we must change society, not the individual (Walsh & Ellis, 2007:80). It is important that the community has the means to control crime itself because social organisation is maintained when a group is committed to certain social rules. However, if the commitment diminishes, then social control will then decline (Barlow, 1996:446). Can this be achieved in the South African context?

4.9 THE CRIMINAL JUSTICE PATH OF A DIVERTED CHILD OFFENDER

The Child Justice Act 75 of 2008 provides mechanisms to deal with child offenders in a way that will minimise the chances of reoffending. Section 4 of the Criminal Justice Act stipulates that any person alleged to have committed an offence while under the age of 18 should be considered for diversion. The Criminal Justice Act recognises that people between the ages of 18 and 21 years may also benefit from certain procedures laid down in the Act.

Diversion practices vary in terms of the contact point at which the child is diverted and the type of services provided. In order to provide some clarity, Section 52 of the Act prescribes that it applies to the following categories of children; children who acknowledges responsibility for the offence; a prima facie case exists against the child; the child has not been unduly influenced to acknowledge responsibility; the child, parents or guardians' of such child consents to diversion and the prosecutor or Director of Public Prosecutions indicates that the child may be diverted in accordance with relevant provisions of the Child Justice Act.

The balanced approach is one of the approaches in child justice system which supports the notion that the victim and community must be considered when dealing with child offenders. In an effort to restore, this philosophy necessitates the system to provide balanced consideration to the needs all parties involved, firstly there must be a level of

accountability on the part of the offender and on the other hand the communities safety must be considered (Kurlychek, Torbet & Bozynski, 1999:3). Furthermore, Section 51 of the Child Justice Act stipulates that the victim has a say in the content of the diversion option and conditions relating to compensation or rendering of a specific benefit or service. It is thought that restitution and community service sends out a message that the offender is held accountable for their deviant behaviour. Formal diversion programme generally involve some conditions, including an admission of guilt and an agreement to participate in programming if available within the programme and if deemed suitable. Therefore, the balanced approach is actually a combination of traditional rehabilitation, restorative justice and classical criminology (Whitehead & Lab, 2006:300). Legislative provisions do specify what is possible in the way of intervention through NGOs. Social authorities have the power to decide how to deal with such a child as they have a wide range of options at their disposal. The choice of which in principle depends on the needs of the child rather than on the seriousness of the offence, which is not in itself a critical factor (Kyvsgaard, 2004:366). When dealing with child offenders through diversion we need to bear in mind that diversion is entrenched in the ethos of the restorative justice system. 'Diversion is the vehicle for restorative justice principles to find expression. Whether focused on counselling, mentoring, life skills or community service, all these programmes promote responsibility and accountability towards the harm caused by child offenders" (Mbambo 2005:88).

Below is the diagram illustrating the path of a diverted child through the South African Criminal Justice System.

FIGURE 4: Different stages of diversion
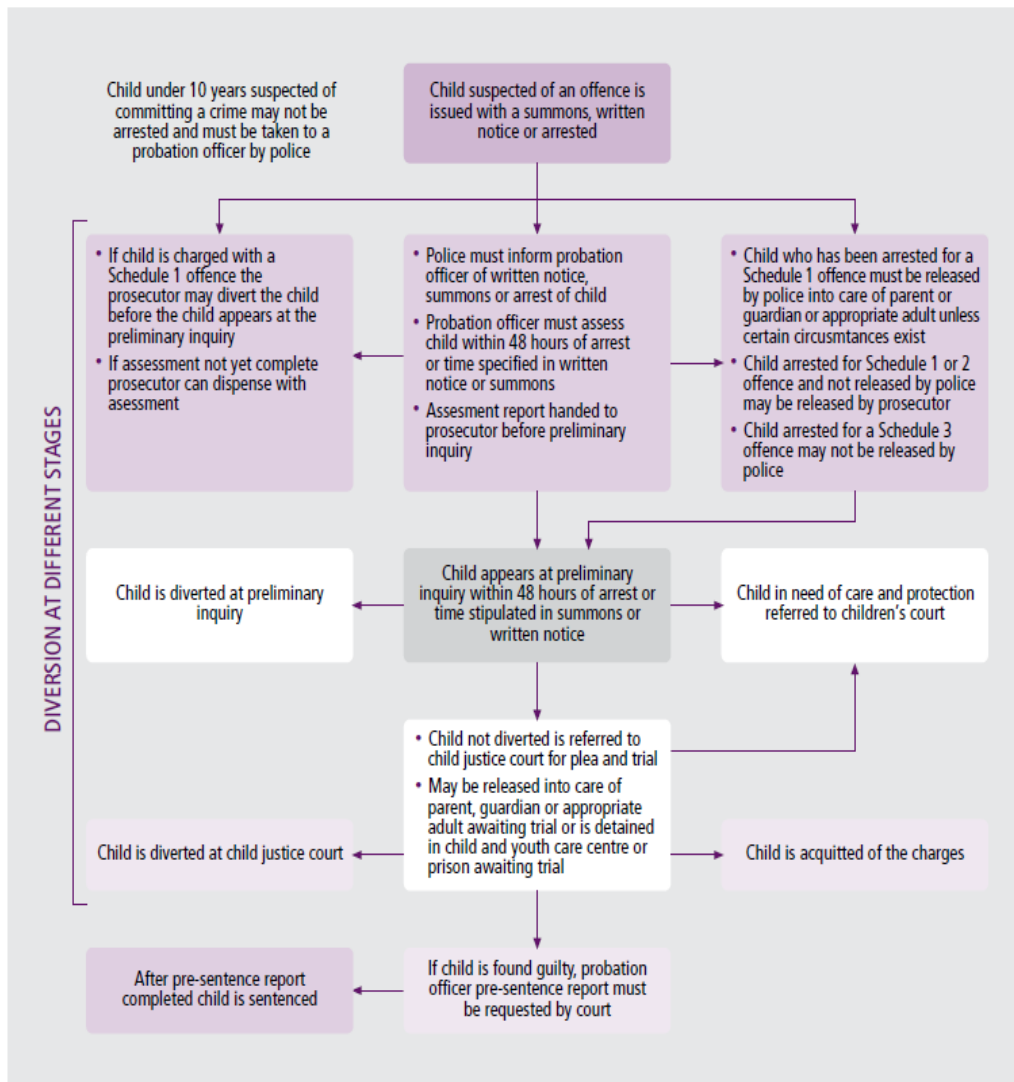
Adopted from Gallinnetti (2009: 65)

As stated a child can be diverted either before the preliminary inquiry or at the preliminary inquiry. Extensive legislative and policy reform in South Africa has seen restorative justice taking many forms, such as, restorative justice programmes, diversion programmes, crime prevention, victim empowerment programmes and community safety partnerships (Hargovan, 2011:78). In South Africa, because norms vary considerably across groups, it contributes to the complexity of dealing and finding solutions that are "acceptable" across

the board. However, standardised programmes are in place to correct or prevent further involvement with the criminal justice system. The basic theory that guides diversion programmes is that the child offender will at some point commit some type of deviant behaviour or otherwise lack judgment. As such, it is not fair to prematurely label child offenders as deviant and subject them to punishment and embarrassment (Taylor, Fritsch & Caeti, 2007:157).

The goal of treatment for first time offenders is to prevent recidivism by addressing a variety of risk and triggering factors. Children rarely choose where they reside; rather, they are dependent upon their parents or guardians in regard to particular environment in which they reside. The surroundings may be more or less safe, inhibited by drug dealers, school gangs, bullying and lacking in supportive and nurturing social institutions. Fortunately, programmes are emerging in most communities to counter such problems. In South Africa, a wide variety of programmes are offered. Alternative programmes may prove to be less stigmatising and more effective than correctional facilities. Child offenders are viewed as the group most amenable to interventions due to their age. Hence, a focus on alternative interventions with troubled children provides the promise of addressing a major social issue. When South Africa opened their doors to the child justice courts over a few years ago, the idea was that children in conflict with the law should be treated with special care and protection.

Diversion programmes take many forms and can be either general in the sense that most offenders can be eligible or specific, meaning that only certain types of offenders are diverted to them. However, serious or violent child offenders are not eligible for diversion, even to general programmes (Taylor, Fritsch & Caeti, 2007:157). Many experts are now advocating a more holistic approach to delinquency prevention that involves more than just treating child offenders themselves. Thus rather than concentrating on institutional behaviour, reintegration aims at developing skills and attitude that will assist the offender to cope in any challenging situation (Rogers & Mays, 1987:393). Lindon (2006:10) defines holistic or whole child approach by "stressing the importance of thinking about the behaving towards children as entire individuals, that all their skills are important and support their whole development".

Understanding how various researchers have organised child offending programmes in undertaking their literature reviews is important to an appreciation of the many potential

applications of promising and effective programmes. Perhaps, the most difficult problem of all is determining the programme's effectiveness. This means, even when the programme is doing some good, it is difficult to demonstrate this.

4.10 GENERAL OUTLINE OF A MENTORING INTERVENTION PROGRAMME

South Africa has seen a growth in the number, range and strength of diversion programmes for child offenders. Despite this development, very few studies have been conducted to evaluate the effectiveness of these interventions. As an intervention, mentoring is seen as vital in assisting with the curbing of recidivism. Justification for mentoring is based on social learning and modelling theories that view behaviour as the continuous reciprocity of cognitive, behavioural and environmental influences (Tinsley, 1996:75). Mentoring programmes acknowledge the inadequate personal relationships and damaging environments that often characterise the background of at-risk children. Although the significance of mentoring for child offenders is generally recognised, its positive effects also extend to the family and broader community (Open Society Foundation, 2002:17). Mentoring programmes show a specific understanding of the risk factors related to the absence of pro-social role models during the formative years of children. Generally it involves a "non-parental adult" who play an important role in modelling a child's behaviour (Peterson 69:2012).

The thrust of intervention programmes is to offer child offenders with the necessary skills for recognising potential situations which may lead to reoffending. Mentoring programmes combine many of the progressive aspects of averting child offending and have been a crucial outlet for volunteers who wish to assist (Taylor et.al, 2007:161). These programmes provide child offenders with positive role models and peers that offer them with positive interactions. Mentoring generally takes place at regular, scheduled intervals over a specific period of time (Karcher, 2005:65). The service provider has the discretion to decide which activities and themes can be included in their programme (NICRO, 2000:8).

Community-based programmes have a significant positive impact on children's lives (Bartollas, 2003:473). In addition, they are sustained by the community because these programmes are considered to be humane, economical and effective in rehabilitating child offenders (Bezuidenhout & Joubert, 2003:193). Intimately connected with many of

the solutions embraced over the years has been the notion that "the community is an integral component to a final solution of the crime problem" (Petersilia, 1998:3).

Mbambo (2002:7) notes that the use of mentoring in the criminal justice system is fairly new and that effort should be made to endorse reliability. This calls for proper evaluation based on clear indicators related to children at risk. The planning and implementation of mentoring programmes present, among others, the following challenges:

- Effective monitoring of the mentorship relationship;
- Ensuring applicable strategies for the termination of mentoring relationships ;
- Gaining the support and understanding of communities ;
- Setting the limitations of the mentoring relationship regarding the level and nature of its involvement in the child's family and school environments;
- Determining possible benefits for child offenders from mentoring; and
- Ensuring that child offenders understand and are committed in the process (Crowley & McIntyre 1999:9; Open Society Foundation 2002:4-19).

In South Africa, structured mentoring as an intervention was available just over a decade ago (Open Society Foundation, 2002:1). The mid 1990s saw the formalisation of the country's first mentoring programme when Inanda residents expressed the need to have older children mentoring and guiding children involved in gangs (Farren, 2002:32). There are various services available to child offenders which are provided by various institutions with the aim to reintegrate child offenders with their communities, families and peers in order to curb recidivism and build healthy relationships. The NYDO institution followed suit. In the context of diversion, mentoring programmes set out to "facilitate responsible and effective behaviour to prevent recidivism; increase self-awareness and self-value through meaningful interaction; foster stable ad on-going friendships between adults and at-risk children; assist and equip child offenders with coping mechanisms in dealing with life challenges; and enable them to explore constructive social and recreational opportunities" (Crowley & McIntyre 1999:7). In addition the goal of a mentoring programme is to provide child offenders with positive adult contact and aims to reduce risk factors(Peterson 2012:69).

Following arrest, the child offenders are often diverted to an agency providing a service intended to prevent deviancy. However, for these young offenders to be accepted into the

diversion intervention programme they need to adhere to the principles of restorative justice system, that is, they must acknowledge that they have committed the particular crime so that they can be accountable for their deviant behaviour. The diversion intervention programme provides a second chance for a young offender not to have a criminal record. Mentoring involves a cross-age and dynamic relationship between a trained and experienced facilitator with a child offender (Vanderven, 2004:95) in addition it takes place at regular predetermined period (Karcher, 2005: 65). Mentoring has been embraced as a panacea in dealing with child offending.

In most countries, including South Africa, diversion programmes are primarily based on restorative justice principles. Child offenders are encouraged to take responsibility for their deviant behaviour. Mentoring is utilised as an approach that will assist to reduce or prevent recidivism. It is generally preferred that the age difference between the mentor and participant may vary between eight and 15 years (Day, 2006:196). In addition, the supportive nature of these relationships plays an instrumental role in encouraging child offenders to 'grow out' of their deviant behaviour (Nolen-Hoeksema, 2001:453).

The utilisation of alternative ways of addressing the deviant behaviour of children contributes to a more effective reintegration as well as avoiding the effects of incarceration that contribute in many cases to increased recidivism and heightened anti-social attitudes. Children in conflict with the law are being protected from being psychologically and emotionally damaged by the court proceedings and this has been entrenched in Section 53 (1) (f) of South Africa's Child Justice Act 75 of 2008, which supports the use of mentoring as an intervention strategy.

This part of the study contextualises mentoring programmes services provided by selected South African NGOs. These service providers are Usiko, Khulisa, and NYDO.

4.11 MENTORING PROGRAMME AT USIKO

Usiko is an NGO based in the Western Cape Province and has been providing diversion services to children in conflict with the law since 2005. This initiative was born out of concern from community members that most children were becoming increasingly vulnerable to, violence, substance abuse and other negative social behaviour including dropping out of school (Rousseau, Kruger & Van Oosterhout, 2011:8). Usiko targeted child offenders from various neighbouring surroundings as well as those referred by the

court system. It is further reported that the programme is therapeutic in nature and child offenders are taught life skills through group sessions. These child offenders are afforded an opportunity to rebuild their lives in a safe environment.

Programmes offered at Usiko are viewed as "multi-modal" which includes exposure to the wilderness, life-skills, family counselling, mentoring and vocational skills (Rousseau, Kruger & Van Oosterhout, 2011:7). The primary aim of Usiko is to assist child offenders and those at risk to break out of the cycle of deviancy. A mentoring programme has also been established where community members volunteer and are trained to mentor child offenders. Direct Involvement of the community plays a vital role in curbing and reducing child offending.

Their diversion programme is facilitated as a method of both reducing recidivism and increasing positive life outcomes such as advocating for education and employment. Literature indicates that mentoring interventions impact positively on many crucial areas of a young person in trouble. For structured mentoring to succeed, the prospect of compatibility between the mentor and the child plays an important role (Darling, Bogat, Cavell, Murphy, & Sanchez, 2006:765). Fundamental variables that need to be considered during the matching process include demographic characteristics, intervention needs, interest and personality (DuBois, Neville, Parra & Puch-Lilly, 2002:29). Usiko's mentoring programme has been recently enhanced through psycho-social training courses (Rousseau, Kruger & Van Oosterhout, 2011:8).

It has been reported that most of the Usiko programmes combine self-exploration, life skills development with exposure to wilderness and nature as part of a growth and therapeutic process. Further at Usiko it was established that positive relationship with child offenders who participated in their programme reduced recidivism significantly, that is, mentors who promote values of acceptance, equality, integrity, empathy and social justice help to change a child to have a different outlook to life and their past (Rousseau et al., 2011:8). Even though it has been stated by various researchers that Usiko is playing a vital role in decreasing recidivism, there is no scientific research that can confirm the claims. It is considered that mentoring relationships have various benefits; including promoting mental health, building resilience and instilling good values (Zimmerman, Bingenheimer & Notaro, 2002 :223). No information was available on the time frame that Usiko is providing the mentoring intervention. However, it is generally

accepted that mentoring relationships should last between six and 12 months (Open Society Foundation, 2002:18).

4.12 THE OUTLINE OF KHULISA MENTORING PROGRAMME

Khulisa is an accredited service provider for diversion programmes throughout South Africa, working in partnership with the Department of Social Development. It aims to bring a positive change in the community by designing specific and suitable interventions that include internationally acclaimed best practice programmes by engaging all relevant stakeholders, which encourages meaningful relationships. The researcher interviewed the social worker, Ms Edgar Mnisi of Khulisa in Hammanskraal, who is responsible in providing mentoring programme at the institution to child offenders. All their programmes are designed to follow the approach of restorative justice. Khulisa in Hammanskraal has been operating since 2009 and child offenders that attend their programmes are normally referred by the magistrate court, the surrounding schools and a few self-referrals. However, Ms Mnisi has noted that during 2014 and 2015 period, referrals decreased, which might be due to the lack of information on the procedure of diversion of child offenders.

Their mentoring programme entails the following programmes; positively cool programme, facing your shadow, silence the violence programme and adult diversion programme.

4.12.1 POSITIVELY COOL PROGRAMME

Children who are referred for this programme are normally between the ages of 13 and 18 years. The researcher was informed that common crimes committed by child offenders in the area include assault, theft, shoplifting and assault with grievous bodily harm. It was further reported that there was a high percentage girls committing aggressive crimes, especially when under the influence of alcohol, whereas boys were commonly referred for "rape". Generally speaking, females commit much less crime and delinquency than males for nearly every category of crime. Violence and delinquency are traditionally defined in male terms and are seen mainly as the domain of male adolescents and young men. The gender gap in offending is larger for more serious and violent offences and narrower for minor behaviours. These are among the most robust and consistent findings in criminology. Feminist criminology challenges the overall

masculinist nature of criminology by pointing to the repeated omission of the misrepresentation of women in criminological theory. As Cain (1990:2) explains, "women and girls exist as other: that is to say, they exist only in their difference from the male, the normal". Researchers have long used self-report surveys to attempt to gain information about the extent of their offending. Typically, the surveys reveal that female child offending is more common than arrest statistics suggest between male and female child offenders. They also revealed that males commonly known to be involved in most serious types of offences (Chesney-Lind & Shelden, 2014:19). By looking carefully at the lives and listening to the voices of these young girls, we can begin to understand how families in these communities cope with economic marginality and the double standards practiced when raising a girl child.

In cases where "rape" was suspected, the child offender was referred to the facing your shadow programme. The positively cool programme is provided to child offenders for at least eight weeks and this programme is a life skill programme, where respect, responsibility and accountability are reinforced. An attempt is also made in restoring relations between the child offender, victim and the community. Chid offenders that displayed the tendencies of aggression were offered the Silence the Violence Programme.

4.12.2 SILENCE THE VIOLENCE PROGRAMME

This programme is mostly designed for children who struggle to manage their anger. It runs for a period of 16 weeks. What the social worker has observed is that most of child offenders who battled with anger management issues were mostly from single parent household. It is very difficult to predict violence and aggression and no single factor can be highlighted as the most important contributing factor to aggression (Bezuidenhout, 2011:188). Siegel and Welsh (2009:254) maintain that children growing up in an environment characterised by conflict often exhibit aggressive deviant behaviour, having learnt from an early age that being aggressive have positive rewards.

However, in this case, children who were referred to this programme have a common factor, that is, they are all from single parent households. Single-parent households have become far more commonplace from which child offenders come. Research has shown that a black child from a single-parent home is more than twice likely to engage in criminal activities than a black child from a two-parent family (Barr, 1992:6). One of the

contributory factors might be because children from single-parent families are forced to take up certain responsibilities which in turn might enhance their desire for independence and freedom from parental supervision (Siegel & Senna, 1991:243). The ideal family situation which might be more conducive for proper psychosocial functioning of children is to have strong relations with both biological parents despite their marital status.

4.12.3 FACING YOUR SHADOW PROGRAMME

This programme is therapeutic or educational in nature. Most of the child offenders that attend this programme have either been accused of "rape" or for alcohol abuse. What was interesting was that the researcher found out that children who were using drugs in this area were non-existent or at least they have never dealt with a case of drug abuse since its inception. What was alarming for the researcher was that with cases where they were referred as rape, they were actually not 'fitting" to be labelled as rape. For instance, one of the rape cases they dealt with involved two 13 year olds. However, one of the assigned probation officers working on the case during the assessment established that these teenagers decided to watch a pornography movie, which led them to have consented sexual relations. In this case, both teenagers were provided with counselling and after the completion of the programme the charges were dropped.

Campbell (2005:18) maintains that an understanding of the pre-teen sex offender can have a significant contribution to eradicating the deviant cycle as most child offenders at this age are more accessible and responsive to intervention. Delport and Vermeulen (2004:46) support this notion and are of view that sexual misbehaviour is a multidimensional phenomenon that needs a comprehensive treatment approaches involving all relevant stakeholders.

In addition, Khulisa in Hammankraal liaises with SANCA with regard to child offenders who abuse alcohol. They only deal with the emotional and psychological well-being of the child offender and SANCA is expected to deal with assisting them with their alcohol abuse problem. The social worker informed the researcher that they have a very successful rate on reducing the rate of alcohol abuse rate among the child offenders referred at their institution. However, she also mentioned that children who attended this programme through self-referrals did not complete the course. They simply dropped out and they assume that it is because of lack of commitment and that they are not bound by a court order to complete the programme. This programme runs for a period of 16 weeks.

4.12.4 ADULT DIVERSION PROGRAMME

This programme is offered to child offenders who are mostly 17 and above, not excluding younger ones depending on the circumstance of the case. It is more intense and deals with the risk and needs of the offender. Offenders are referred by the social workers and most of them are teenage mothers. This programme runs for 10 weeks. It provides the client with parenting and life skills. According to Ms Mnisi, most of these young mothers because of financial and emotional burdens of raising a child, they end up committing crimes such as, shoplifting and theft for survival. In addition, they abuse alcohol as a 'remedy' of dealing with their loss of achieving their goals and the reality of having to grow up quickly and raise a child. The alcohol abuse is used as a coping mechanism and unfortunately, it has negative consequences on the upbringing of a child. The adult diversion programme does not deal with serious offences such as murder.

4.12.5 AFTERCARE PROGRAMME

Khulisa in Hammanskraal provides after care programme to all child offenders who have undergone their mentoring programme. The social worker enquires about the child's progress three months post the completion of the mentoring programme. For most of us, the family is our initial learning environment and it is where we learn about relationships and ways of relating. Consequently, family members usually possess valuable information about the child's development and strategies they have developed for coping with their day-to-day life. This programme ensures that parents or guardians understand the holistic extent of behavioural improvement if any is noticed. Secondly, they are provided with a dialogue workshop towards the end of the completion of the mentoring programme. The aim is to empower parents with good parenting skills, knowledge and awareness on the signs of deviant behaviour and the correct method of dealing with such a child. There are direct benefits for parents or guardians in being involved in therapeutic work. It offers support at a time when families often feel most isolated. It helps them understand their children and their deviant behaviour and provide opportunities for relationships to be repaired.

The social worker reported that they have mostly encountered good result during their aftercare programme, parents or guardians informed them that the programme has "saved" their children's lives and future, but she also recalled one case that they dealt with in 2012, where the parents informed them that their children's behaviour worsened

after they completed their programme. These children were initially diverted for rape and sodomy when they were both 11 years of age, but only started attending the programme when they were 13 and 15 respectively. The social worker reported that according to their records on these cases, both child offenders were not taking the court order seriously as they often violated it and they were then put under house arrest. However, their lack of commitment and lack of empathy resulted in both of them being imprisoned for 10 months at a juvenile prison. Both parents of the child offenders were happy with the outcomes of their sons' cases as they realised that the law had to be a bit "harsher" in order for them to internalise the seriousness of their crimes and to learn to take responsibility. Unravelling and understanding the stories of children who demonstrate good outcomes in the face of adversity can provide real life examples of resilience in action and can inspire practitioners to find resilience-enhancing ways of helping other children on similar developmental journeys.

While sexually aggressive behaviour is experienced by both those who commit it and those who encounter it as confusing and disturbing, during recent years there has been considerable progress in coming to understand the extent of such abusive behaviour, those more at risk of perpetrating it, the dynamics which lead to the behaviour and enable its progression and ways of responding effectively. Certainly, the 'dual status' of children who have sexually abused, especially those over the age of criminal responsibility, who are usually in need of care and control, appears to have present dilemmas for those formulating policy and other responses, resulting in on-going contradictions and tension that organisations and agencies have had to manage since the new Child Justice Act.

Evaluation of their mentoring programme is only done internally. However, there was no evidence provided. The extent to which they are effective in terms of preventing child offending from becoming tomorrow's serious offenders is not known. Referrals to curb recidivism imposed in response to child offending at this NGO have not yet been evaluated. This situation constitutes an important reason for the lack of knowledge concerning the performance, effectiveness and outcomes of preventive and remedial programmes for serious and violent child offenders. These shortcomings undermine the validity of research outcomes. Methodological failings at this NGO include the absence of control groups and small numbers of participants in the programmes. Relatively little is known about police contacts with children below the age of twelve. The researcher has

reason to believe that such shortcomings also affect outcome studies of the mentoring programme.

4.13 A COMPREHENSIVE BACKGROUND OF THE NATIONAL YOUTH DEVELOPMENT OUTREACH INSTITUTION (NYDO)

NYDO offers various programmes to children in conflict with the law around Cullinan, Bronkhorstspruit Eersterus and Mamelodi, within the Tshwane Metropolitan area. The NYDO offers a joint adolescent development and youth mentorship intervention for children who have committed offences. This organisation accepts referrals from the neighbouring Magistrate Courts. Child offenders are assessed and matched with a mentor under the supervision of a social worker. Programmes offered are run for a period of 12 weeks or more depending on the progress of the child in conflict with the law. The mentor provides aftercare support and mentoring after the child has completed the programme. It also facilitates Family Group Conferences as part of the mentoring diversion option. It aims to address causes of crime and instil a sense of self-control.

The mentoring intervention programme delivered at the NYDO involves a compassionate and caring relationship between the child offender, his or her peer from the same backgrounds and geographical circumstances. The positive effects of mentoring are generally thought to be derived from the support and role modelling these relationships offer. Mentoring assumes that affirmative attributes shaped by facilitated relationships can be generalised to other 'proximal bonds and life experiences' (Dallos & Comley-Ross, 2007:381). Participants have an opportunity of learning from the mistakes of others (Bandura, 1986:271) and participation is voluntary, it also focuses and addresses difficulties that children and young people might be battling with. By targeting young people already within the criminal justice system, the programme plays a role of a crime prevention initiative. The researcher only concentrated on programmes offered at Eesterus and Mamelodi region.

NYDO offers various programmes to children in conflict with the law. The types of crimes that are commonly committed by child offenders referred at NYDO are among others, assault with intent to inflict grievous bodily harm, common assault, driving under the influence of alcohol or drugs, burglary at residential premises carjacking, illegal possession of firearm, theft and shoplifting. During the 2014 financial year, the NYDO managed to reach 3 228 child offenders in different schools in the Mamelodi and

Eesterus Metropolitan area through their Outreach or Prevention Programme. A similar session was facilitated for adults on crime prevention and through this initiative, 254 adults were reached. The programme is facilitated in a way that encourages participation in the form of debates.

The primary motivation behind these programmes is the belief that formally processing children in conflict with the law through the juvenile justice system does not always serve the best interest of the child or community.

Current programmes offered to child offenders are as follows:

4.13.1. Adolescent Development Programme (ADP):

This programme is a 12 week non-residential programme that aims to enhance the self-esteem and personal development of participating young people. The target group of this programme is child offenders who are 18 and below. In exceptional cases, young people above 18 not older than 21 years are also admitted to the programme.

4.13.2 Holiday Programme

Holiday programmes are conducted in all of the NYDO branches during the school holidays. The NYDO decided that in order to share resources and to maximize effectiveness of the school holiday programmes, they collaborated with other organisations in the community. These programmes are open to the community. Some of the activities that were conducted during these programme include, career guidance workshop, the amazing race, field trips (such as educational movies, which covered themes about substance abuse and gangsterism), and cultural / indigenous games, among others.

4.13.3 Peer / Youth Mentoring Programme

This is a 12 week programme that makes use of peers, older youth and adults from the community who have undergone training to act as mentors. That is, children in conflict with the law are assigned a trained mentor who serves as a role model (Bandura, 1999:25). In addition, the mentor provides aftercare support and monitoring after the child has completed the programme. Goals and objectives are normally structured around the anticipated developmental outcomes and at the same time ensure that a child remains interested in the programme (DuBois et al. (2002:54). The NYDO defines a mentor as "a

loving brother or sister striving for what is best for the younger brother or sister. He or she looks for ways to assist them from childhood into adulthood, by making his or her personal strength, resources and networks of friendships and contacts available in order for the child to reach his or her full potential".

Mentoring has proved to have a positive effect in the life of the child offenders if both the mentor and the child participating in the programme make commitment and effort in developing the relationship. As part of the mentoring diversion option programme, family group conferencing is also included with the view of improving the relationship between the child offender and that of their parents by offering parental support and skills workshops. According to Liese (2002:24), a positive relationship with an adult, either within or outside the immediate family is often a major contributory factor in preventing the possibility of deviancy. Successful mentoring depends on significant time commitment (Mbambo, 2002:7). Within the mentoring programme, the following programmes are also offered:

4.13.3.1 Family Group Conferencing (FGC):

Family group conferencing aims to bring the offender, their families, victim and the community together including the facilitation of reintegration. Parents are viewed as the most important adults in the lives of children since they significantly impact on the beliefs, attitudes and behaviours of their children (Beam, Chen & Greenberger, 2002:305). According to Maxwell and Morris (2001:243), poverty and parental neglect affect recidivism, which validates the fact that a follow up session with clients is vital. This component provides an opportunity to sensitise child offenders to their environment and community. According to the NYDO 2013/ 2014 Annual Report, Family Group Conferencing Programme has various intensified services which include:

4.13.3.2 Intensive Family Support

A total of 208 sessions were conducted with the families of children in conflict with the law. These sessions included 125 home visits, 33 family meetings and 50 progress assessments.

4.13.3.3 Family fun day

The Family Group Conferencing also focuses on building relationships between young people and their caregivers in a non-threatening environment. The programme consists of various fun activities that are aimed to positively influence the relationships within the family.

4.13.3.4 Parental guidance workshop

The idea of this interactive workshop is to create a platform for parents to discuss their challenges and receive expert advice from various stakeholders dealing with children in conflict with the law.

After the completion of the diversion programmes, the NYDO social workers compile a report to the court that referred the young offender. If the young offender has complied with all the terms and conditions of being referred to a diversion programme, then the court registers all the facts surrounding the case and the case is closed. Eventually, the young offender is no longer required to attend the programme.

While the concept of diversion has merit, it has also raised an academic debate, as to whether, it has accomplished what it was intended to do. We have seen the progress that South African Child Justice System has had with regard to issues pertaining to children in conflict with the law. The burning question is: Are these interventions, especially mentoring diversion, effective? It is of great concern to the researcher that when these young offenders are being returned to the same conditions without an effective support system, they may reoffend.

4.14 MEASURING THE EFFECTIVENESS OF THE MENTORING PROGRAMME

The researcher investigated the impact of mentoring programme offered to children in conflict with the law between the ages of 12 and 18 years, who were diverted and referred to the NYDO.

This is a course for concern for the researcher as the programmes offered and regulated by the Department of Social Development run under a period of six months. In particular, the NYDO offers their intervention programme for 12 weeks, which is less than the norm. The researcher is also concerned that most service providers in South Africa have no mechanism of tracing back their clients after they have completed the attendance of such interventions. This proves the significance of this research because according to the

researcher, it is imperative that there are tools in place for young offenders who went through diversion programmes to continue to be assessed in order to advance research by being able to move beyond the question of whether diversion programmes are successful or not in reducing recidivism.

Measuring the effects of youth offending programmes is challenging because the behaviour which the programme is attempting to change is often covert and the full benefits extend to over long periods of time. In the researcher's view, estimating the effects of interventions to curb recidivism can be challenging because it might take years for their effects to become apparent. The NYDO provides aftercare facilities for children who are in conflict with the law who have undergone the various intervention programmes. This aftercare programme is facilitated by various methods. For instance, during the 2013/2014 financial year, 73 telephone calls follow up sessions were conducted, 46 home visits/family meetings and nine individual sessions. This programme was particularly important because the stakeholders at the NYDO found that most parents were struggling to control their children's deviant behaviour. It was further found that the issues that these children were battling with were on a wider scale. Mostly, these issues were from the negative impact of the community, such as, increasing levels of substance abuse, school drop-out, lack of positive role models, high unemployment and the absence of fathers in most families, among others. Thus, the youth lack the motivation and self-belief that they need to overcome these challenges and therefore are at high risk.

 An international research has shown that exposure to violence and crime at a young age within the home, school and community environments increases likelihood of engaging in antisocial or criminal behaviour at a later stage in life (Steyn, 2010:6). Dealing with these wider community issues requires that various stakeholders as well as the community to unite and work together to deal with these challenges.

In this country, there are no effective mechanisms in place to monitor the progress of child offenders who have completed the diversion programmes. However, It has been proven that when mentoring is long-term and on a regular and predetermined period of time, it is more effective (Karcher, 2005:65).

The structure of the programmes provided in South Africa and their operation varies, but the overall goals are essentially the same. This includes addressing juvenile deviant

behaviour informally in the community in an effort to prevent subsequent behaviour. According to the researcher's view, effective service delivery can only take place once the cultural background of individuals is understood, respected and integrated into treatment objectives. Limited studies have been conducted in South Africa with regard to the effectiveness of diversion programmes, that is, whether they work or not and how they impact on recidivism rate.

The prospective benefits of restorative justice and diversion programmes remain to be fully realised globally. Since there has been little evaluative research on programmes like this, this study sought to establish the extent to which the programme is effective in meeting participants' needs and curbing recidivism. The researcher will embark on the qualitative premise.

4.15 CONCLUSION

Child offending is a significant problem that impacts negatively on all communities. The rates and types of child offending vary across communities and across subgroups. These disparities can be attributed to different exposure to risk and protective factors. Child offending is not a result of one factor; so, there is not one definitive way to prevent it from occurring. Binder, Geis and Bruce (2001:69-70) agree that the precise meaning of "cause" remains complicated. A growing body of research indicates that child offending is influenced by the interplay of multiple individual, relationship, community and societal risk and protective factors that affect children over the course of their development from early childhood through young adulthood. Building a protective environment for children is crucial in the support to promoting policies that encourage the use of alternatives to incarceration.

A proper approach to child justice also requires that efforts be made to prevent children from coming into conflict with the law in the first place. It is not surprising that children living in communities typified by extreme poverty, high rates of crime and violence, high drug availability and high population turnover are more likely to offend. Some researchers argue that improving conditions and services in high risk communities is the best way to combat child offending. The African Charter speaks to the specific problems confronting African children.

The purpose of diversion programmes is to divert children away from formal participation in the child justice system. Stakeholder attitudes regarding "treatment vs. punishment" are critical. The goals and purpose of a diversion programme must be understood by all stakeholders to ensure the success and sustainability of a programme. Although many such community-focused interventions have been attempted, little is known about their long-term impact because the appropriate research designs are so difficult to implement. The lack of more community-based approaches on the proven and promising lists may be due more to the difficulties of evaluating them rather than their underlying effectiveness.

Diversion initiatives need to encompass adequate monitoring and evaluation systems so as to track the progress of individual participants and determine the quality of the services provided. Very few diversion initiatives have detailed systems in place to keep track of and analyse the participants' background profiles. It appears that such profiling could be aligned to risk factors that participants present. However, it is commendable that some initiatives rely on a broad source of monitoring informants to gauge the outcomes of its interventions. In general, initiatives follow conventional post-intervention evaluation by participants, and this information informs the programme's activities. Part of the difficulty in evaluating the success of these programmes lies in the diverse nature of the programmes as well as the varying communities they are intended to serve. Questions can be raised regarding the quality of some of these evaluations, as majority of offenders referred for interventions have difficulty in reading and writing and the programmes were developed in the English language.

Effective response to child offending must recognise the contribution that mentoring as an intervention strategy can make in a child's life. The South African child justice system recognises that young children are in the process of maturation and that offending does not confirm them as "bad" people. If diverted away from the criminal justice system the majority will "age out" of offending and live law-aiding lives. If labelled as "criminals" and incarcerated, there are likely to be negative influences moulding the young person's character. Mentoring relationships are particularly valuable when implemented with older children that have participated in a diversion programme. They will be able to relate on the same level and at the same time. The child offender will be learning valuable lessons from the experiences of the "mentor". In addressing problem behaviour, mentoring with troubled child offenders could extend to other activities that include assistance with scholastic tasks (Dallos & Comley-Ross, 2007:370).

To reiterate, while the concept of diversion has merit, it has also raised academic debate, as to whether, it has accomplished what it was intended to do. Limited studies have been conducted in South Africa with regard to the effectiveness of diversion programmes and how they impact on recidivism rate. It is not always easy in finding balance between punitive measures, preventative and diversionary approaches. Mentoring of young offenders is expected to function as a primary prevention or early intervention strategy to prevent participants from entering the criminal justice system. However, can this be achieved?

Outcome evaluations are rare and seldom properly conducted. Standardisation of reoffending measures is an indispensable requirement. Furthermore, the nature, content and method of interventions should be extensively described and the fidelity of implementation should be monitored and secured. In this respect, there is certainly a need for sound process and implementation evaluations. Through description of intervention, programmes also clarify how interventions are dictated by theoretical considerations. This is important, since well-conceived and elaborated theories can considerably increase the effectiveness and efficacy of interventions. For the same reason, assessments of risk and promotive actors to which child offenders and their families are exposed and known to influence children's development of serious psychosocial problems reappear in the near future. Prevention strategies that address these risk and promotive factors associated with recidivism are a worthwhile and cost-effective investment for society.

The above chapter has described how the South African Justice System applies the Child Justice Act when dealing with child offenders, including, approaches, strategies and structures of the reviewed organisations and their diversion services. The following chapter discusses the methodology of our research.

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CHAPTER 5: METHODOLOGY, PROCEDURES AND TECHNIQUES

5.1 INTRODUCTION

Having reviewed the literature on labelling theory and diversion, diversion programmes, in this chapter the researcher outlines the methodology of the study detailing the procedures and techniques of research, data collection and analysis that were followed. Bailey (1994:34) proposes that a researcher's methodology determines factors that formulate hypotheses, the level of evidence that is crucial in determining whether or not such hypotheses are suitable or not. This study adopted the qualitative paradigm as a research tool. Qualitative research is a common term that characterises the way a researcher gathers, organises and interprets information that has been attained from individuals (Litchtman, 2010:5).

5.2 METHODOLOGICAL APPROACH

The qualitative research paradigm was adopted because it elicits participants' interpretations of meaning, experience or perceptions. This method enables the researcher to understand the experiences of children in conflict with the law who have undergone the mentoring intervention programme at NYDO Institution. The qualitative design was considered most applicable for the study because it could give a clear understanding of the participants' views and perceptions in their own words (Leedy & Ormrod 2005:94). The objective is to answer questions about the 'what, how or why'. This study seeks to understand a given research problem from the perspectives of children in conflict with the law. This type of method is more effective in obtaining culturally specific information about the values, opinions, behaviour and social context of particular population. According to Crofts (2002:60), the social environment of the child is of great importance as the child may not regard certain forms of deviant behaviour to be unacceptable if they are a part of his or her life.

Qualitative methods were opted for, with the aim of describing and understanding the impact of the mentoring programme on recidivism. The research method is a strategy of enquiry which moves from the underlying hypothesis to research design and data collection. The researcher needs to understand deviant behaviour of child offenders as the participants understand it, learn about their world and their interpretation of self in the interaction and share their definitions (Chenitz & Swanson, 1986:7).

Mouton (1988:6) states that 'symbolic interactionism operates on the basis that people use symbols reflexivity in order to interpret reality'. Hence, to comprehend participants' accounts, it is imperative to understand that they are social creatures whose experiences, meanings and behaviours only make sense when viewed within their broader interpersonal and social setting. Qualitative research entails that "generic research approach in social research according to which the research takes as its departure point is the insider perspective on social action" (Babbie & Mouton, 2001:270).

5.2.1 CHARACTERISTICS OF QUALITATIVE RESEARCH

Qualitative research is a form of inquiry in which researchers make an analysis of what they understand, hear or see. Kumar (2005:12) views characteristics of the qualitative approach as follows:

- The qualitative approach is classified as unstructured ,as it allows flexibility in all the aspects of the research process;
- The unstructured approach is more appropriate to explore the nature of a problem, issue or phenomenon ; and
- A study is qualitative if the purpose of the study is primarily to describe a situation, phenomenon or problem.

Employing this method for this particular study will assist the researcher in identifying factors that might be of influence to child offending such as social norms, socio-economic status, gender roles and ethnicity, whose role in research may not be readily apparent. This means that qualitative research studies things in their natural settings, attempting to make sense of, or interpret the phenomena in terms of the meanings people bring to them (Denzin & Lincoln, 2005:3). Qualitative research strives to explore the inner experiences of participants in order to determine how meanings are formed during interaction between people. In addition, it is an important part of evaluative efforts because "they tell the programmes story by capturing and communicating the participant's stories" (Patton, 2002:10). Hence, the qualitative approach is classified as unstructured because it allows flexibility in all aspects of the research process (Kumar 2005:12). Tewksbury (2009:38) concurs that the benefit of a qualitative method is that it provides a more in-depth understanding of crime, offenders and the criminal justice system than would have been possible if only quantitative research was used.

There are various scientific methods that a researcher can use to conduct a qualitative study. According to Neuman (2003:10), the scientific method refers to all the ideas, rules, techniques and approaches that the scientific community practices. The researcher chose this method because it strives to explore the inner experiences of participants in order to determine how meanings are formed during interaction between people as well as through environmental and cultural influences. In other words, it embraces the notion that reality is subjective as people intimately connect objects with their perception of them (Creswell, 1998:53). "There is no separate or objective reality of people; there is only what they know their experiences is and mean" (Kivel & Kleiber, 2000:219).

5.3 AIM AND OBJECTIVES OF THE STUDY

The goal of the study is to evaluate the effectiveness of the mentoring diversion programme at the NYDO centre in the Tshwane Metropolitan area. The objectives of this study include the following:

- To investigate the extent to which the mentoring programme offered at the NYDO Centre is effective;
- To investigate the extent to which the mentoring programme is designed to address the needs of child offenders;
- To articulate aetiology of offending among children in Eersterus and Mamelodi;
- To examine and identify the factors necessary for a possible best practice approach in curbing recidivism;
- To determine a methodology for assessing the effectiveness of a mentoring diversion programme;
- To conduct a comparative analysis of the child justice act guided by the international instruments;
- To evaluate the role of the mentor at the NYDO; and
- To recommend best practice and approaches of implementing mentoring programme to child offenders.

Therefore, the research questions will provide the basis for formulating questions to be used in data gathering through observation, probing and interviews.

The next point of discussion is the research paradigm.

5.4 RESEARCH PARADIGM

The word "paradigm" refers to a fixed set of assumptions about the way a study should be conducted (Thomas, 2009:73). The qualitative paradigm stems from an anti-positivistic interpretative approach, is idiographic and holistic in nature and aims to understand social life and meaning that people attach to everyday life (McRoy in De Vos, 2011:65).The important point is that all scientific research is conducted within a specific paradigm. A paradigm is a model or framework for observation or understanding, it shapes how people see and understand their life-world (Babbie, 2007:32).

The qualitative research paradigm refers to research that elicits participant accounts of meaning, experience or perceptions. It also produces descriptive data in the participants' own written or vocal words (De Vos, 2011:65). Paradigms share ideas predominant in a specific research community and further it outlines the way a researcher thinks about a research project (Thomas, 2009:72).

According to Mouton and Marais (1990:150), the supporting theory of paradigms has had a major impact on the philosophy and methodology of the social sciences. Phenomenologists focus on describing common experiences by participants as a phenomenon (Creswell, 2007:57), which in our study, is to investigate the extent to which the mentoring diversion programme is achieving what is intended to do for child offenders, that is, changing their deviant behaviour and reinforcing acceptable morals and values.

5.5 RESEARCH DESIGN

This research uses a qualitative research design as a basis for collection and analysis of data. Creswell (1998:2) defines design in the qualitative context as "the entire process of research from conceptualizing a problem, to writing the narrative". Outlining the research design is very important so as to enable other interested researchers to replicate the study (Bailey, 1987:12). The researcher adopted the qualitative questionnaire she developed to collect the primary data for the study. Bogdan and Biklen (2007:55) are of view that all researchers bring their own specific backgrounds to a study. A qualitative study is characteristically inductive and shaped by the researcher's collection and analysis of the data. The researcher follows a specific approach to data collection and analysis; that is, basic research. Basic research is conducted solely for the purpose of

gathering information and building on existing knowledge. It is viewed as the purest form of research and is used to enrich the knowledge base in a specific discipline (Bachman & Schutt, 2011:373). The analysis of this research data is centred on the content analysis method, which involves summarizing and classifying data within a thematic framework.

5.6 SUBJECT OF THE STUDY

As specified, this dissertation is an evaluative study and seeks to explore the impact of the mentoring diversion programme offered at the NYDO institution on the behaviour of child offenders. That is, the main aim is explore the extent to which the mentoring diversion programme is effective in achieving its goals or outcomes. One of the most critical issues facing diversion interventions is the effectiveness issue: Do the interventions have any impact on the criminal behaviour of their charges? Based on the stated problem of the study, the unit of analysis may be described as child offenders who were under the age of 18 years at the time of their referral. The participants in this study consisted of thirteen (13) child offenders who had been referred to a Mentoring Diversion Programme at NYDO by various stakeholders, including the schools, parents or children's courts. Most importantly, the intent in qualitative research is not to generalise the findings, but rather to clarify a phenomenon (Creswell, 2007:126).

Participants who took part in this research were on the basis of their availability during the period which data was collected and also their willingness to participate in the study. Since the programme is offered for 12 weeks before new participants are admitted, the sample consisted of participants who are already in the programme. The researcher visited the programme venue and also attended the programmes before beginning with the study and informed the participants of the intended research. In addition, researcher has briefed all concerned parties of the area of research, including the content of the questionnaire and the whole process. It is important to gain permission and ensure that all relevant people involved understand what the project seeks to accomplish (Van der Burgh, 1988:67). Permission to participate, including the use of audio recording, was requested from the NYDO stakeholders, parents or guardians as participants are minors. It is also clear that "supportive programmes that invest in at-risk children and in at-risk families work to reduce crime" (Cullen, Wright & Chamlin, 1999:198). In this way, the researcher is able to develop an understanding of the participants and their environment as research perspectives will evolve in an effort to give solutions to the unanswered

theoretical questions interrelated to the representation of the "other" (Schwandt, 2007:213). Litchtman (2010:5) suggests that this often involves in-depth interviews in the participants' natural environment and social settings. The purpose of this research is to understand the phenomena from the participants' perspective.

The primary means of accessing and subsequently understanding phenomenon is through description of it, in the persons' own words" thus, lived experiences" (Jasper 1994 :310). Participant observation has already been described as being central to all research methods (Denzin & Lincoln, 2000:673).

5.7 SAMPLING METHOD

The concept behind sampling theory is that a few observations can give an idea of what can be projected in the entire population of the intended study (Royse, 2004:189-190). In the research context, the population refers to the collection of individuals. For the purpose of this study, the population refers to child offenders. According to Creswell (2007:125), purposeful sampling is synonymous with qualitative research because the researcher is able to select participants and research sites that are related to the phenomenon and research problem being studied. Sarantakos (2000:139) states that the main reason for sampling is feasibility.

This research employed purposeful sampling. With purposive sampling, the researcher decides who or what represents the phenomenon that is being studied in order to explore the research problem. Batchman and Schutt (2011:129) suggest the following three guidelines for selecting participants when using purposive sampling, the participants should be:

- Knowledgeable about the phenomenon being studied.
- Willingness to participate in the study.
- Representative of the range of points of view.

In terms of the size of the sample, it is suggested that the researcher continues to select participants until they have achieved completeness and saturation. Research will be completed when the data the researcher has collected indicates an overall sense of the meaning of the phenomenon studied, that is, until it reaches saturation. Saturation would be achieved when little new information is collected from any new participants (Bachman & Schutt, 2011:131).

In most qualitative studies, the researcher will make use of more than one level of sampling, because data will be collected from documents, interviews and observation. In terms of the size of a sample in qualitative research, sample size tends to be smaller because emphasis is on the quality rather than the quantity of data. However, the general guideline in qualitative research is not only to study few participants but is to also collect extensive, in-depth details about each participant. The researcher drew the sample from child offenders designated to attend the mentoring diversion programme. As mentioned earlier, the intent is not to generalise the findings but rather to clarify a phenomenon (Creswell, 2007:126).

5.8 DATA COLLECTION

There are many alternative methods of data collection in qualitative research. Diversion of child offenders is multifaceted and it can be researched from different angles. However, the present study is centred on exploring the effectiveness and impact of a mentoring programme provided at NYDO. The procedures for conducting phenomenological research when collecting data involves identifying a phenomenon of study, including collecting data from several participants from their own experiences (Creswell, 2007:58-60). The researcher collected data from child offenders who have undertaken the programme including interviewing programme facilitators, parents or guardians and social workers. Qualitative interviews are in-depth conversations between a researcher and participants for the purpose of collecting information in research. The researcher has followed unstructured interviews in order to discover the respondent's perception on the programme. With qualitative observation, the researcher uses several strategies and some degree of participation in a group's activities in order to study or observe the group. It is a process that enables researchers to learn about the interaction, behaviour and perceptions of the participants in their natural environment by observing and participating in their group activities.

Observation consists of listening to the participants and looking carefully. This procedure allows the researcher to play the role of data collector and that data interpreter (Neuman, 2000:361). This enables the researcher to develop a holistic understanding of the phenomena they study. When we are watching people with the purpose of gaining knowledge of certain details of their behaviour, we are involved in observation. Secondary documents can also act as empirical data in a qualitative study. These

documents contain information that is important in describing the current situation in a community. They include, newspaper articles, documents, which might include transcriptions of interviews, participant observation field notes and documented statistics. In order to convey their observations to other scientists, participant observers should also record their data (Corbetta, 2003:249).

The intent of qualitative research is not to generalise information but rather to clarify a phenomenon (Creswell, 2007:126). Case study designs are used when attention is focused on the in-depth examination of one or a few cases (Maxfield & Babbie, 2009:133). The flexible nature of case study designs allows for primary data (interviews) and secondary data (document) to be intertwined in order to provide a broad picture of diversion strategies and their theoretical assumption. Creswell (2007:117) describes data collection in qualitative research as a consistent circle of activities which establishes a process of engaging in activities that includes but goes beyond the collection of data.

5.9 DATA ANALYSIS METHOD

The purpose of data analysis is to illustrate the characteristics of the group responses including describing the differences between two or more groups (Sharma, 1983:245).

The data analysis process of this research study can be explained as follows, the research process had been started with the collection of data by means of the said unstructured interviews, observation and field notes. Then the interviews were conducted in the home language of the subjects, which will include Afrikaans, Sepedi and isiZulu. The data that were gathered were translated into English and finally, the translated interviews were written down verbatim.

This step involves converting the qualitative data from the questionnaires to numerical forms and codes. The reading and coding of the captured data happened simultaneously. The themes were organised into a logical order so that a clear understanding of the phenomenon can be created. In qualitative research, coding refers to the process whereby ideas and concepts are generalised from raw data. The coding process requires the researcher to identify key concepts and categories found in the data. A coding framework which is the system used to classify the concepts, their definitions and criteria for recognition is developed over time during coding and analysis of the data. Through this process of coding and represented reviewing of codes, the link between various

codes becomes evident, thus enabling the researcher to come to an understanding of the data. Data analysis is not a once-off process and the key of analysis is coding (Babbie, 2010:418).

In most research, after editing and coding, the data is then subjected to various forms of statistical analysis (Sharma, Prasad & Satyanaryana 1983:241). Statistical analysis involves the calculation of statistical distributions, construction of diagrams and simple calculations such as averages, distribution, percentages, correlation and so forth. The deeper meaning of the stories were assessed during this process to ensure that the findings could be integrated into existing scientific knowledge regarding child offending as obtained during the literature review of the same topic. After the analyses of data, the next step in the research process is to draw conclusions about the hypothesis based on the evidence that has been collected.

5.10 FEASIBILITY OF STUDY

The feasibility of the study is a very important aspect of the research as it contributes to the planning of the research project regarding the logistics concerned, such as transport and time factors since all stakeholders involved need to be present at each interview. The researcher interviewed all subjects at the NYDO premises at Eersterus and Mamelodi, where it was decided that it was a safe and familiar environment for the subjects.

5.11 THE PILOT STUDY

This phase of the process should be performed in exactly the same manner as in any research procedure. A pilot study was undertaken with two child offenders who were attending the mentoring programme at the NYDO institution. The information gathered is vital because the emphasis in interviewing is placed on collecting detailed in-depth information (Strydom & Delport, 2011:391). This process is equally important as the researcher should study the selected database to ascertain whether it is correct and where voids in the data occur (Jones, 1985:115). Therefore, the pilot study was conducted in order to identify any problems that might arise during the field work phase (Strydom & Delport, 2011:395). The researcher also realised that there were a few limitations as the study is mainly on minors. As a result, it was not easy to obtain parental consents as individual house visits had to be conducted. It was costly (travel expenses) and time consuming. However, parents were willing to participate and give their children

permission as they had a better understanding of the purpose of the study. The researcher's exploration of the participants train of thoughts necessitate that ethical issues are adhered as they are of the utmost importance considering the nature of the study.

5.12 ETHICAL CONSIDERATIONS

When human behaviour is researched, ethical issues are always involved. The credibility of the researcher is linked to how he or she deals with these issues. Any type of social research always intrudes into the lives of the respondents. When they are asked to complete a questionnaire or to participate in interviews, it signifies an activity the respondents did not request. From whatever angle one looks at it, research always disturbs the regular activities of the respondent (Babbie, 2001:470). Therefore, social scientists agree that an ethical requirement for responsible social research is the voluntary participation of the respondents. Whether or not the respondents volunteered or not, they should never be harmed in any way by social research. In our case, we are dealing with children. It means that no information should be released that could embarrass them or harm them in anyway (Babbie, 2001:471). In addition, Dane (1990:44) claims that an ethical obligation rests with the researcher to protect subjects against any form of physical discomfort that may arise from the researchers' project.

The researcher must ensure that anonymity and confidentiality are upheld at all times. To secure anonymity and confidentiality, the researcher must remove all identifying information from the questionnaires the moment they are no longer required. The same technique should be followed once all follow-up interviews have been conducted with respondents, to remove the participants' details (Babbie, 2001:474).

The researcher ensured that during the conducting of the interviews, letters of informed consent that indicate permission granted for the research to be conducted, were explained to each respondent to ensure that appropriate research ethics are adhered to. Informed consent becomes a necessary condition rather than a luxury or an impediment (Hakim, 2000:143). Loewenberg and Dolgoff (1988:66) explicitly state the necessity of informed consent even if the subjects do not listen to the researcher's explanation or are not really interested in knowing. Regarding the publication of results, the NYDO management will have opportunity to scrutinise the articles for agreement before they are submitted for publication and they will be acknowledged for their contribution.

In addition, the researcher must also ensure that she does not influence the respondents in any way and must remain truthful in her findings. Commonly, social science grows through honesty and openness. Loewenberg and Dolgof (1988:70) describe the deception of subjects as "deliberately misrepresenting facts in order to make another person believe what is not true, violating the respect to which every person is entitled". Neuman (2000:229) states that deception occurs when the researcher intentionally misleads subjects by way of written or verbal instructions, the actions of other people or certain aspects of the setting. This deception includes also that of colleagues'. According to Bachman and Schutt (2011:59), the researcher's concern with validity requires that the researcher should be willing to be open and honest in disclosing the methods used and in presenting the findings. When researchers do not cheat their colleagues, they may save them from making the same mistakes (Babbie, 2001:475-476).

5.13 CONCLUSION

The purpose of this chapter was to outline the research methodology applied in this study, including the explanation of the research method used as the basis of this dissertation. These include the research paradigm; subject of study; sampling method; data-collection method; data-analysis method; feasibility of study and ethical considerations.

Chapter 6 contains the analysed empirical field work, an exploration of child offending and the impact of the mentoring intervention on recidivism, as well as a representation of the narratives of respondents. The narratives provided by the participants are given in their analysed and interpreted form.

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CHAPTER 6: RESEARCH ANALYSIS AND INTERPRETATION OF RESULTS

6.1 INTRODUCTION

Communities and policy makers are becoming increasingly familiar with diversion. However, the interest is turning to its effectiveness. As with most social interventions the future viability of diversion is largely dependent on the findings of evaluation research. As a result, few comprehensive evaluations of diversion mentoring intervention have been conducted to date. The purpose of this research study was to determine the effectiveness of the mentoring diversion programme at NYDO and to investigate how the children viewed the programme in the Tshwane Region. We know very little about the effects of mentoring interventions and what they do to achieve these effects in the South African context.

In this chapter, the presentation, analysis and integration of the qualitative data (semi-structured individual interviews and focus group interviews as described in paragraph 1.10.4) are presented and discussed. This is done by means of emergent themes and subcategories to categorise patterns or trends that can be identified or isolated in order to indicate the realisation of the goal and objectives of this study as mentioned in paragraph 1.4. Initially, and to realise these goals, nine semi-structured individual and focus group interviews were conducted with different stakeholders directly involved with the family and children's services. In-depth discussions were held with an independent qualitative researcher, to substantiate on the emergent themes and subcategories, with the aim of triangulation of the data analysis. In order to promote the trustworthiness of the study, the research methodology, as discussed in paragraph 1.10 of Chapter 1 was implemented and adhered to in the gathering and analysis of the data. The demographic particulars of the research participants are presented in Annexure B. During the process of data collection (i.e. the semi-structured individual and focus group interviews) the objectives and resultant questions reflected in Annexure A were used as a guideline to structure the discussion. From the participants' answers to the aforementioned questions, the resultant processes of data analysis by the researcher and independent coder and the consequent consensus discussion, the following main themes reflected in Annexure C emerged. In this table, an exposition is provided of the themes and sub-themes. The results of the individual interviews and focus group interviews follow. The following section presents the results and analysis.

6.1.1 SECTION A: PARTICIPANTS' DEMOGRAPHIC INFORMATION

Various biographical particulars concerning the participants were obtained from the survey in order to place answers to other questions that follow in perspective. This means that the results that emerged from the empirical study conducted with the aid of sections A, B and C should not be viewed separately from the biographical details.

6.1.2 Distribution of the sample according to gender

The below findings are consistent with the general observation and research based on the differences in crime and gender. In this study, 76.9% of the participants are males compared to 23.1 % of female participants.

Frequency table 1: Distribution of the sample according to gender

<table>
<tr><td colspan="5" align="center">Gender</td></tr>
<tr><td>Valid</td><td>Frequency</td><td>Percent</td><td>Valid Percent</td><td>Cumulative Percent</td></tr>
<tr><td>Male</td><td>10</td><td>76.9</td><td>76.9</td><td>76.9</td></tr>
<tr><td>Female</td><td>3</td><td>23.1</td><td>23.1</td><td>100.0</td></tr>
<tr><td>Total</td><td>13</td><td>100.0</td><td>100.0</td><td></td></tr>
</table>

Worldwide crime information sources reveal that males are significantly more likely than females to be involved in deviant behaviour. Although gender differences in crime rates vary from one society to another, it is seen as a primary factor differentiating offenders from law-abiding citizens (Conklin, 2004: 82; Siegel, 2004:68).
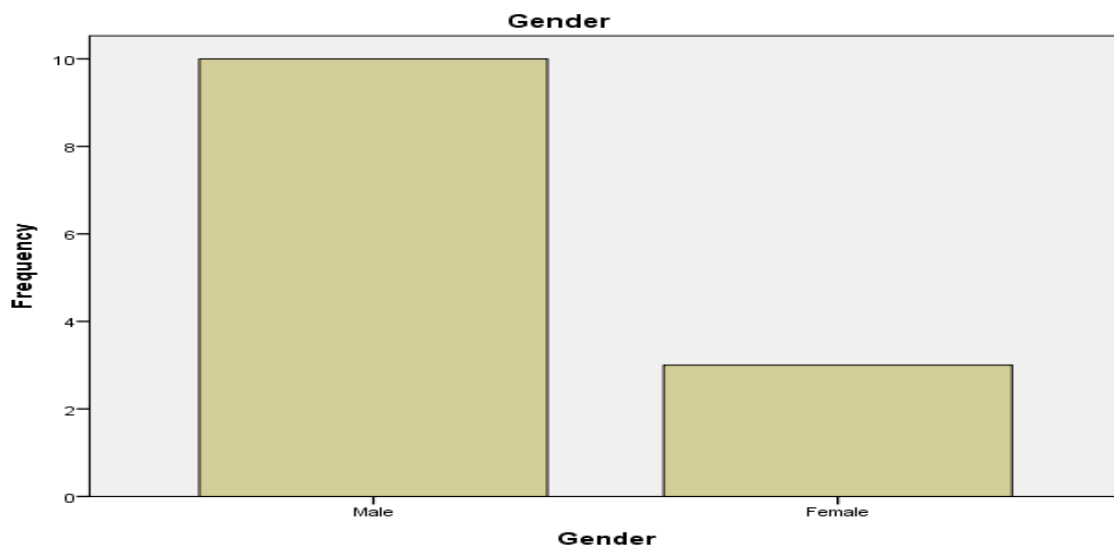
Official statistics of arrests, victimisation data and self-reported studies corroborate the above findings. It further confirms that female child offenders are involved in less frequent misbehaviour than male offenders (Newburn, 2002:547; Siegel, 2012:53).

6.1.3 Distribution of the sample according to age

At the time of the interviews, 38.5% were between the ages of 15 and 16 years while 61.5% were between 17 and 18 years of age. According to these findings, child offenders showed an early onset at around the age of 15 with a peak at around the age of 17. If we consider that the 15-18 year age groups are at risk of committing deviant acts, it is clear that a large proportion of South Africa's population fall within this 'high risk' cohort.

Frequency table 2: Distribution of the sample according to age

Age

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	15-16	5	38.5	38.5	38.5
	17-18	8	61.5	61.5	100.0
	Total	13	100.0	100.0	
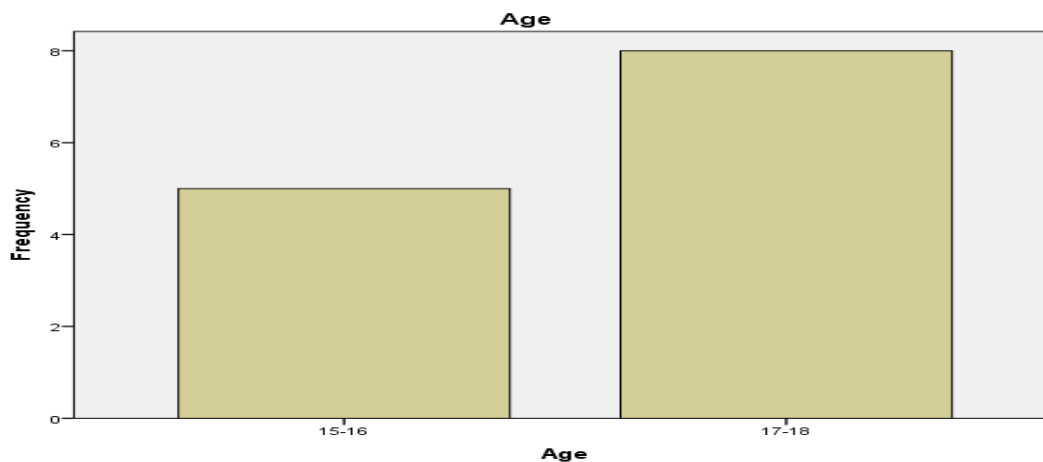
Age is inversely related to deviance. There is a universal tendency for criminal involvement to peak during teenage years and scale down afterwards. This means that child offenders have the highest crime rate, but as they mature their offending rate declines (Siegel, Welsh & Senna, 2003:43).

6.1.4 Distribution of the sample according to ethnic group

Frequency table 3: Distribution of sample according to ethnic group

Ethnic group

Valid	Frequency	Percent	Valid Percent	Cumulative Percent
Black	5	38.5	38.5	38.5
Coloured	8	61.5	61.5	100.0
Total	13	100.0	100.0	

It is a known fact that the incidence of crime varies among the different ethnic groups. Variations in crime rates between different racial and ethnic groups reflect social, cultural and economic differences among groups (Conklin, 2004:91). The majority of participants in this study were Coloured at 61.5% and 38.5%were black.
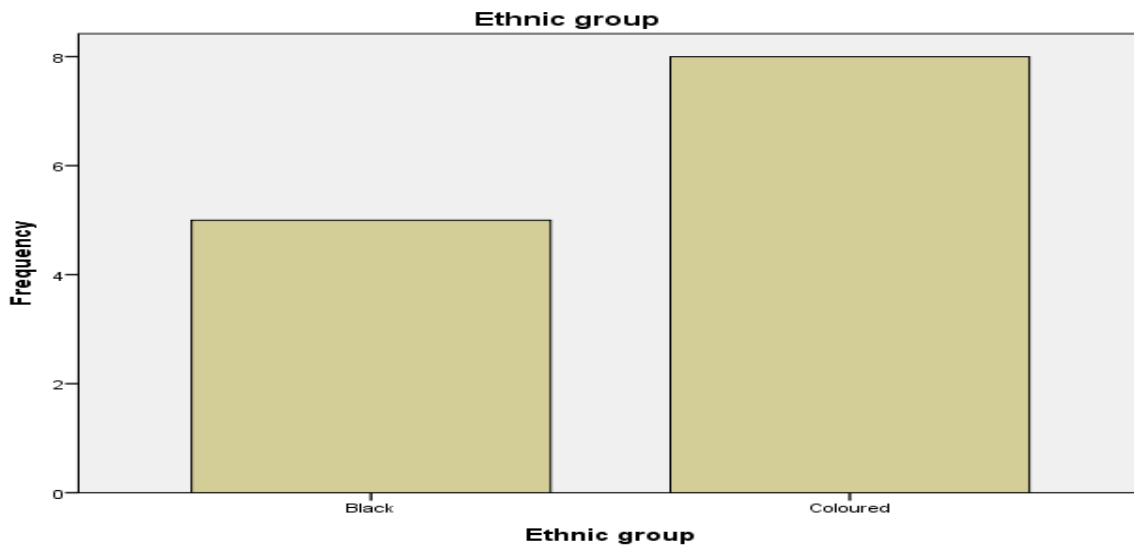
Research has tried to find explanation for the considerable difference in the incidence of crime among the different ethnic groups. Factors offered in explanation are differences in social position, effects of discrimination and the decline of certain suburbs which indirectly encourages a subculture of violence and lawlessness (Sykes & Cullen, 1992:109).

6.1.5 Distribution of the sample according to educational level

Frequency table 4: Distribution of sample according to educational level

Education level

Valid	Frequency	Percent	Valid Percent	Cumulative Percent
Grade 8	4	30.8	30.8	30.8
Grade 9	2	15.4	15.4	46.2
Grade 10	3	23.1	23.1	69.2
Grade 11	3	23.1	23.1	92.3
Grade 12	1	7.7	7.7	100.0
Total	13	100.0	100.0	
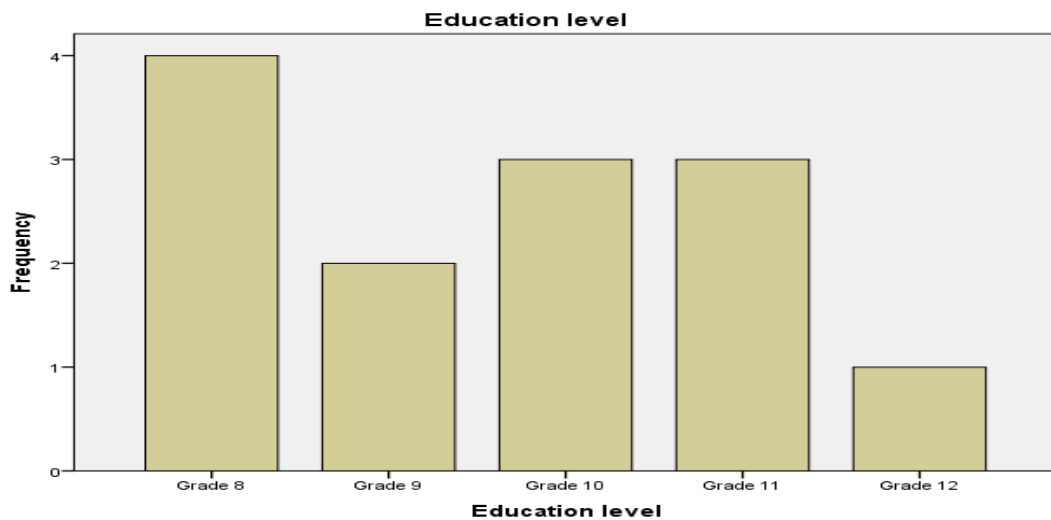
All participants have at least received a secondary education. The highest educational level was Grade 12 and the lowest was Grade 8 at the time of commission of the offence. Six of the participants were no longer attending school at the time of the interviews and none of them completed Grade 12. Of the six participants, two were diagnosed with learning disorder. One of them is 15 years old and expelled because of misconduct while in Grade 8 while the other one was in Grade 9. Two participants dropped out in Grade 10 and one in Grade 11 and one in Grade 12. Dropping out of schools reduces the chances of children acquiring the necessary social skills. Low levels of literacy, poor social skills

and the failure to find work can often result in further negative peer association (Andersson & Stavrou, 2001: 40).

6.1.6 Distribution of the sample according to home language

Frequency table 5: Distribution of the sample according to home language

Home language

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Afrikaans	7	53.8	53.8	53.8
	English	1	7.7	7.7	61.5
	Sesotho	2	15.4	15.4	76.9
	Setswana	1	7.7	7.7	84.6
	Sepedi	1	7.7	7.7	92.3
	isiXhosa	1	7.7	7.7	100.0
	Total	13	100.0	100.0	

South Africa is seen as a rainbow nation because it is identified by its recognition of 12 official languages. About 53.8% of the participants used Afrikaans as their home language, while 15.4% use Sesotho and English, Setswana, Sepedi and isiXhosa stand at 7.7%. The predominance of Afrikaans speakers is because the research was conducted in a predominantly Afrikaans speaking community. All participants were South African citizens.
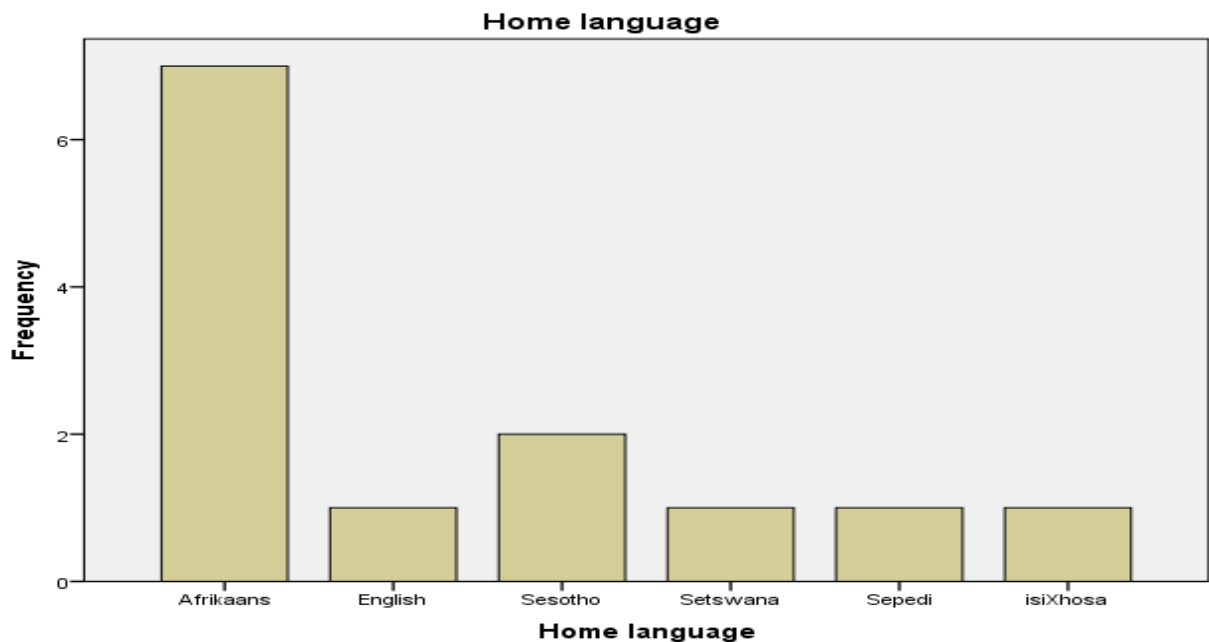
6.1.7   Distribution of the sample according to family background

Family is seen as the first socialisation agent for all children. The main task of the family is to care, protect and socialise the child (Toseland & Rivas, 2009:3; Zastrow, 2009:244). With regard to family structure and composition, most studies and debates take place on the influence of broken homes on child offending. According to findings of this research, 46.2% of child offenders were raised in a complete family (nuclear family), 38.5% in extended families while 15.4% were from single parent families.

Frequency table 6: Distribution of the sample according to family background

Family description

Valid	Frequency	Percent	Valid Percent	Cumulative Percent
Single parent family	2	15.4	15.4	15.4
Extended family	5	38.5	38.5	53.8
Complete family	6	46.2	46.2	100.0
Total	13	100.0	100.0	
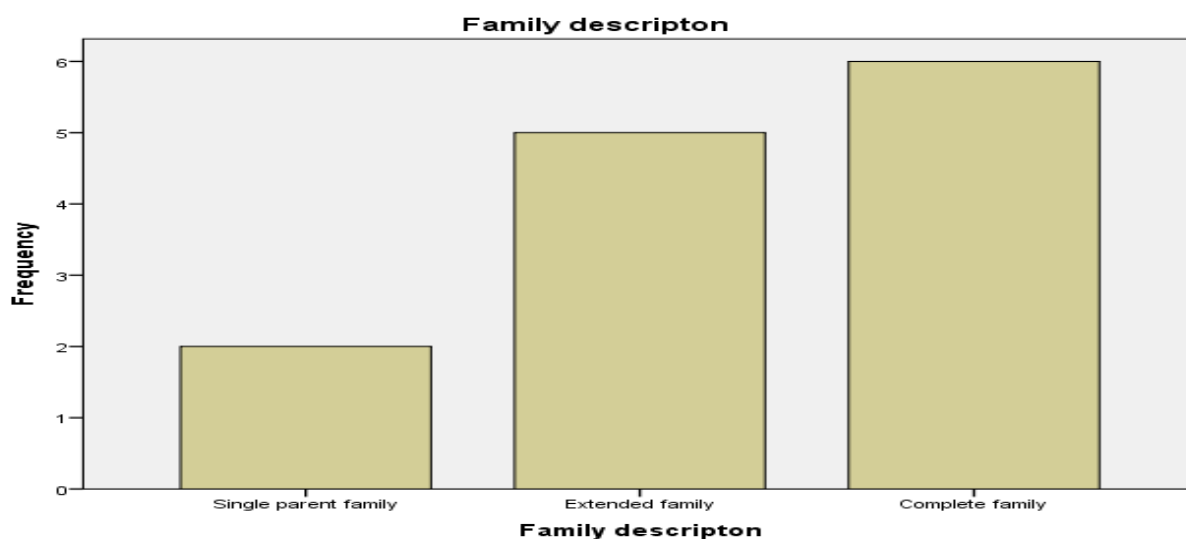
These findings put emphasis on the fact that family structure and composition cannot be directly linked to criminal causation but rather as a predisposing factor that could be associated with child offending. In addition, these findings are supported by research conducted by Bartol and Bartol (2005:57), which revealed that a stable, secure and

supportive family system is important in preventing child offending. Furthermore, there has been some evidence that the structure of the family and interaction with the child is an important factor that can minimise the risk of engaging in deviancy (Bartollas, 1997: 71). The researcher found an interesting element in the study, 85% of the participants were middle children, which is in support with the notion that middle children are more likely to exhibit deviant behaviour (Siegel & Senna, 2000:284).

6.2 SECTION B: PARTICIPANTS' INTERACTION WITH THE CRIMINAL OR CHILD JUSTICE SYSTEM

Do you have previous criminal offences?

Frequency table 7: Background of previous offences

Previous criminal offences

Valid	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	6	46.2	46.2	46.2
No	7	53.8	53.8	100.0
Total				
	13	100.0	100.0	

When asked about their previous criminal offences, the researcher observed that majority of the participants felt uncomfortable answering this question truthfully. However, when they were rest assured that their responses would not have any negative effect on their current cases, they felt relieved and responded. All the participants revealed that they were never arrested before even though they were involved in deviant behaviour. In addition, 46.2% revealed that they have been in possession of illegal drugs and involved in common assault. In contrast, 53.8% reported that they were never involved in any of the illegal acts.

Previous criminal offences
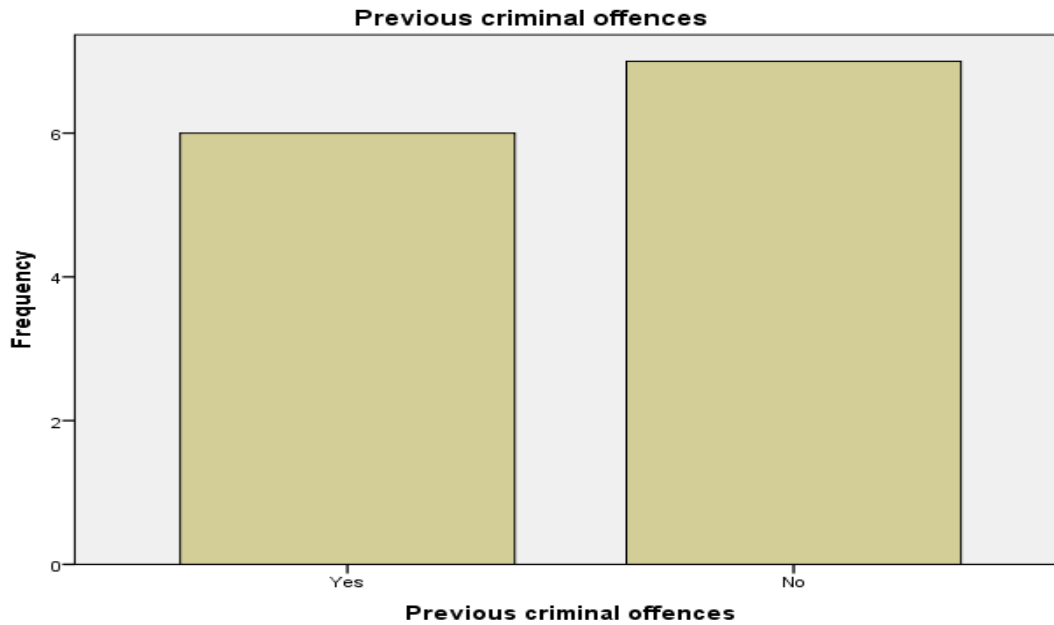
The revelation of this question in particular demonstrates that the onset of deviancy with regard to this study started at an earlier age than 15 as it was assumed.

Have you been questioned or arrested by the police before the age of 12?

All 13 participants revealed that they were not deviant before the age of 12 years. The researcher established that they started being involved in deviancy at the onset of adolescent stage.

If you saw someone committing a crime, will you report that to the police?

Frequency table 8: Someone committing crime

Someone committing crime

Valid		Frequency	Percent	Valid Percent	Cumulative Percent
	Yes	9	69.2	69.2	69.2
	No	4	30.8	30.8	100.0
	Total	13	100.0	100.0	

About 30.8 % of the participants reported that they will just turn a blind eye and mind their own business, while 69.2% said they would report them. Of the 69.2 % participants, 54% alleged that if they were asked the same question before being referred to NYDO they

would have said no. They added that it is because they have been taught to differentiate between right and wrong. In addition, 15% of the participants said if it was a friend they would advise them otherwise and added that if it was a stranger then they will report them. These responses demonstrate that the skills and attributes acquired at NYDO enhance the quality of life of the participants and reduce the risks of being involved in deviant behaviour (Chance, 2003:235).
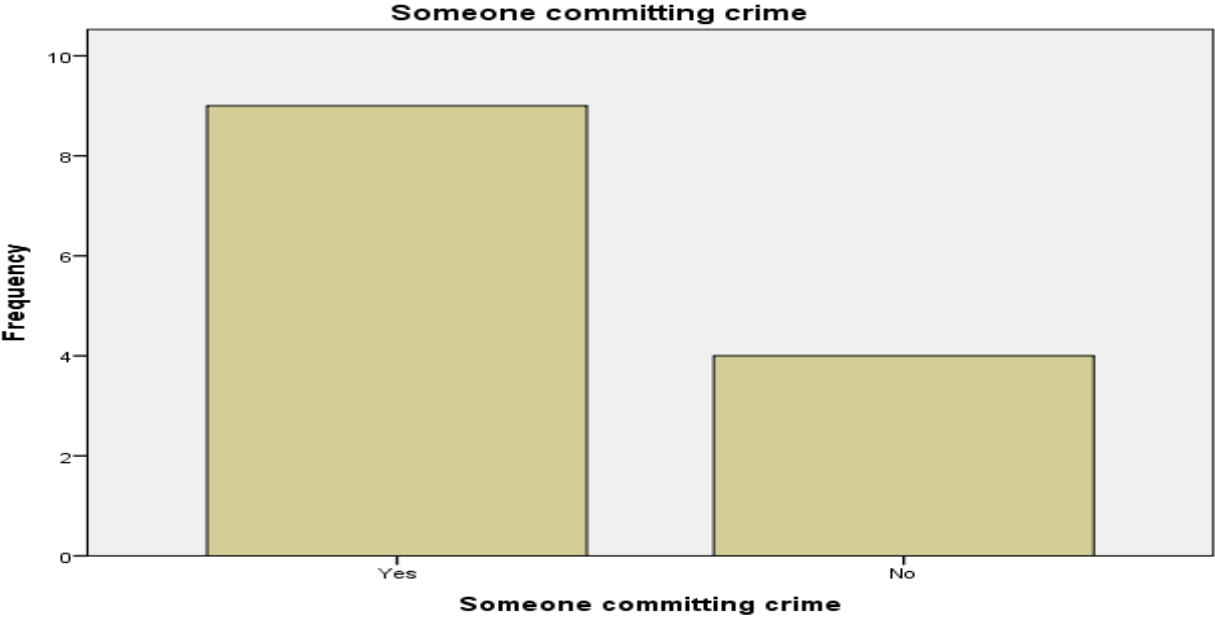
Have you ever done something that your parents, teachers and / or friends have warned you about?

Frequency table 9: Something you have been warned about

Something you have been warned about

Valid	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	12	92.3	92.3	92.3
No	1	7.7	7.7	100.0
Total				
	13	100.0	100.0	

In addition, 92.3% of the participants reported that they have been involved in deviant acts despite their parents or guardians and teachers warning them against. The researcher probed them to explain why they still continued and not taking heed of their significant other advice. Only 7.7% alleged that he listened. Of the 12 participants that

responded affirmatively to the question, nine revealed that they listened more to their friends because they understood them and they always have their "back". Although most children tend to retain the fundamental values of their parents, they put more value to what their peers are doing in order to be accepted. Young people in general are more vulnerable to peer pressure (Kassin, 1995:319). Several studies have found a consistent relationship between involvement with deviant peer groups and deviant behaviour.

Something you have been warned about

Peers exert a significant influence over their thoughts and actions (Burton, 2007: 108). The influence of peers and their acceptance of deviant behaviour are significant and this relationship is magnified when the youth have little "interaction with their parents".

Frequency table 10: Distribution of the sample according to crime committed

Crimes committed

Valid	Frequency	Percent	Valid Percent	Cumulative Percent
Assault with intent to inflict grievous bodily harm	1	7.7	7.7	7.7
Common assault	1	7.7	7.7	15.4
Illegal possession of drugs	5	38.5	38.5	53.8
Shoplifting	2	15.4	15.4	69.2
Theft	4	30.8	30.8	100.0
Total	13	100.0	100.0	

According to these findings, 38.5% of child offenders were found in possession of illegal drugs, 30.8% were arrested for theft, 15.4% for shoplifting, while 7.7% were arrested both assault with intent to inflict grievous bodily harm and common assault. These findings on the possession of illegal drugs are in line with daily media reports on the concern regarding the level of drug abuse in schools and among young children in general. With reference to an article by Thompson (2013:Np) on the overview of the drug abuse in South Africa, she found that substance abuse rate in South Africa among teenagers is spiralling out of control and that most children start experimenting with drugs at the age of 12. Furthermore, it was reported that about 2 to 9% of these teenagers were abusing Cannabis. The abuse of Nyaope in most parts of the country was also on a rise, which is a mixture of marijuana.

Substance abuse is a complex problem that develops in response to multiple influences. These spheres of influence, or 'domains of activity', may include the individual, family, peers, school, community and society or the environment. Characteristics and conditions that exist within each sphere of activity function as either risk factors or protective factors. These factors help either to propel individuals towards substance abuse or to safeguard them from it. The more a child's peer group is involved in deviancy such as truancy and drug abuse, the higher the risk of the child engaging in deviancy (Bartollas, 1997:71; Siegel & Senna, 2000:8).

Of the 30.8% arrested for theft, they all cited that they were influenced by their peers except one female participant who disclosed that she acted on her own. What was interesting about these findings was that the only perpetrator of assault with intent to inflict grievous bodily harm was a 16 year old female, which confirms that more research needs to be conducted on female offenders, as aggression is found to be an important predictor of possible continued problematic behaviour and deviancy (Brown, Esbensen & Geis, 2001:432).

Have you been placed under the supervision of a probation officer before?

Frequency table 11: Prior placement under supervision of a probation officer

Supervision of probation officer

Valid	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	8	61.5	61.5	61.5
No	5	38.5	38.5	100.0
Total	13	100.0	100.0	

When asked to describe their experiences with the probation officer, 61.5% of participants reported that it was positive. However, 50% of the participants were confused by the term probation officer. But after the researcher has explained the role of the probation officer, they reported that that they all assessed by the social worker. They reported that the social worker needed to understand their family background, school level and their neighbourhood. In addition, they discussed the details of their offences. According to Section 4 of the Act, every child who is alleged to have committed an offence must be assessed by a probation officer before the preliminary inquiry takes place and / or before being diverted. They further reported that the social worker explained the seriousness of their offences and its consequences thereof; this process is in accordance with Section 10 of the Criminal Justice Act. They further reported that their parents/ guardians were called in and the procedure was explained to them, including

what diversion meant and that their cases were postponed pending attendance of a diversion programme at NYDO. Only the prosecutor can dispense with the assessment if it is in the best interest of the child (Galinetti, 2009:45).

6.3   SECTION C: PARTICIPANTS' PERCEPTIONS ON BEING REFERRED TO A MENTORING PROGRAMME

By who were you referred to NYDO?

Frequency table 12: The reason for attending mentoring programme

The reason for attending mentoring programme

Valid	Frequency	Percent	Valid Percent	Cumulative Percent
Referred by the court	10	76.9	76.9	76.9
Referred by the social worker	2	15.4	15.4	92.3
Referred by the parents/guardian	1	7.7	7.7	100.0
Total	13	100.0	100.0	

About 76.9% of the participants were referred by the court, 15.4% by the social worker and 7.7% by either their parents or guardians. The researcher has discussed the criteria used for considering a child offender for diversion in Chapter 2 of the study. When asked about their first experience with being diverted to a mentoring programme, 62% of the participants reported that they were positive but anxious because they did not know what to expect. While 31% of the participants said that all that they wanted was to get over and done with the process, however they felt differently now that they fully understand what diversion entails. In addition, 7.7% of the participants said they did not know what to think; he was just numb.

The reason for attending mentoring programme
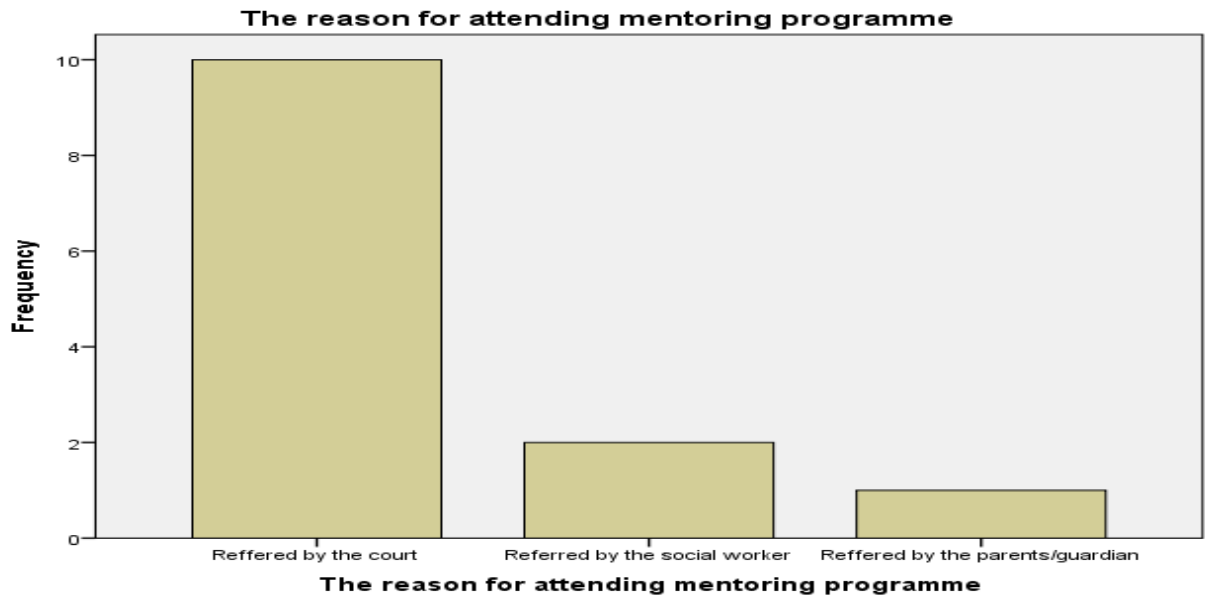
What is the intention for you to attend mentoring programme?

Frequency table 13: The intention for attending mentoring programme

The intention for attending mentoring programme

Valid	Frequency	Percent	Valid Percent	Cumulative Percent
To avoid criminal record	3	23.1	23.1	23.1
To take responsibility of my action	3	23.1	23.1	46.2
To learn from my mistakes	3	23.1	23.1	69.2
To learn how to stop the life of crime	1	7.7	7.7	76.9
To make my parents/guardian happy	3	23.1	23.1	100.0
Total	13	100.0	100.0	

The intention to attend mentoring programme
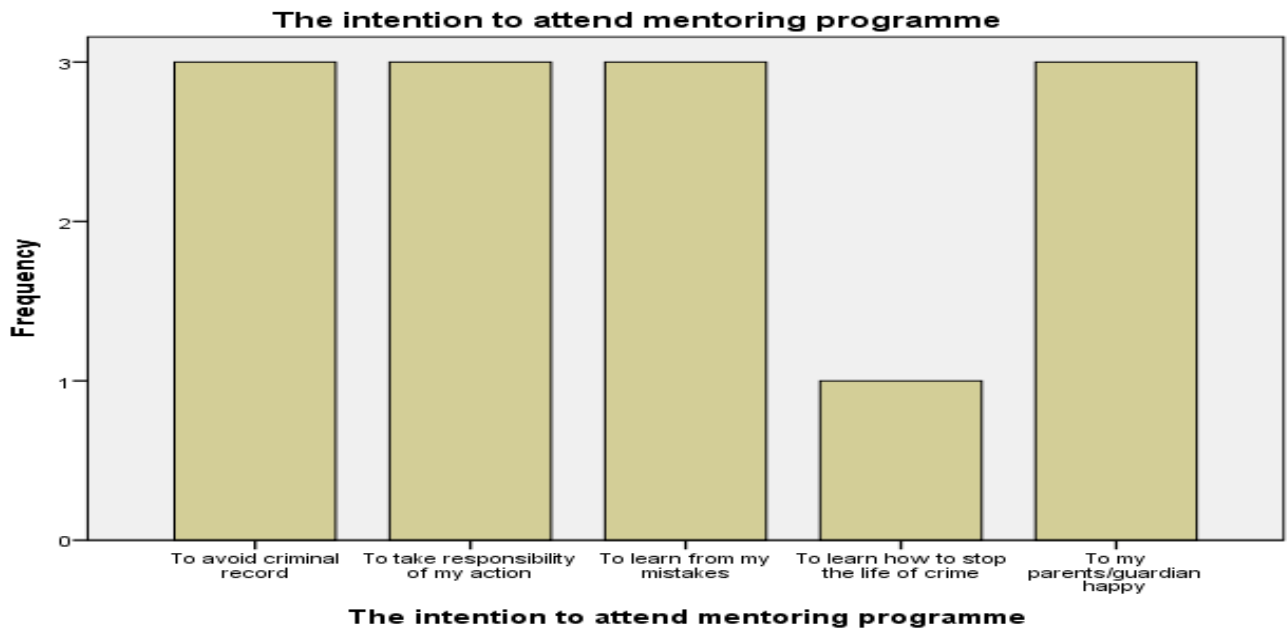
When a child is involved in deviant acts, it is not always in his or her best interest to be subjected to the harsh realities of being arrested. But it is important to establish whether such child understands and appreciated the consequences of his or her actions. Section 52 of the Criminal Justice Act sets out the criteria for a child to be diverted and one of them is to investigate whether such child acknowledges responsibility and consents to diversion. When the participants were asked about their reason for attending the programme, they provided various reasons. About 23.1% indicated that they agreed to attend the mentoring programme because they wanted to avoid having criminal record. A further 23.1% reported that they wanted take responsibility for their actions and another 23.1% reported that they needed to learn from their mistakes. However, 7.7% reported that the aim is to please his parents and an additional 7.7% indicated that it was for the purposes of learning how to stop the life of crime.

6.4 SECTION D: ASSESSMENT OF THE IMPACT OF THE PROGRAMME

According to Creswell (2013:180), data analysis in qualitative research comprises the preparation and organising of the data for analysis, then reducing the data into themes through a coding process and summarising the codes and lastly presenting the data in either tables, figures or as a discussion. Unlike in the previous theme, where the researcher used chats and frequency tables to present findings and results, the following themes will be presented in the form of narratives and discussions.

Do your parent(s) / guardian support you with regard to diversion programme?

When asked about this question, the 13 participants responded as follows:

Participant A responded by saying "They do support me and they tell me to come to NYDO". The researcher probed the participant to ascertain who "they" referred to and the participant said he meant his parents".

Participant B: "My parents and siblings are very supportive; they encourage me to attend and they are always reminding me not to forget about my sessions."

Participant C: "My family is encouraging to attend because my failure will result in me getting more trouble"

Participant D: "My mother supports me a lot, but she's the only one, ja because she's my only parent"

Participant E: "My parents support me wholeheartedly and they ensure that I have money for taxi fare"

Participant F: "My uncles and aunties don't ask me what we do at NYDO, they just say did you go to NYDO, we don't want trouble."

Participant G: "My parent and guardian support me with most things that I have done, when probed, he then said, they understand that I was provoked but they want me to learn not to get into fights."

Participant H: "My mother supports me and my sisters are always reminding me to come to NYDO."

Participant I: "My mother is very supportive and wants to make sure I come to NYDO, she likes saying, X did you go to NYDO"

Participant J: "They want to know all the time what I'm doing at NYDO and they also phone the facilitators to check if I came"

Participant K: "My parents support me very much, they want to see me happy and being a good child."

Participant L: Responded by just saying yes, then the researcher probed, then Participant L just stared at the researcher with lack of interest

Participant M: "My mother is the one who is more interested and fully supporting me, my father avoids the topic"

According to the above responses, all the participants have a support system. About 31% reported that they were supported by their mothers only despite being from nuclear families, which raises a concern on the role of fathers in the family. Similarly, 31% revealed that they received support from both parents, while 15% were supported by their siblings and guardians and 8% abstained from responding to the question. So, the researcher did not probe to avoid causing any distress for the participant, but informed one of the facilitators' to address the matter. Participant M indicated that her father was not interested in the "topic" and a probe by the researcher revealed that her father told her mother that he was deeply hurt and did not know how to deal with the matter as she was his only daughter. One interesting element raised by the participants was the support by siblings. Various research studies suggest that for an intervention programme to be effective, there are various stakeholders that need to support the child, such as the community, parents and government entities (see Section 2.11.2). Bobbit and Nelson (2004:1) contend that family involvement as part of intervention programme may lead to a more successful transition.

CHART 2: Support system by the significant other
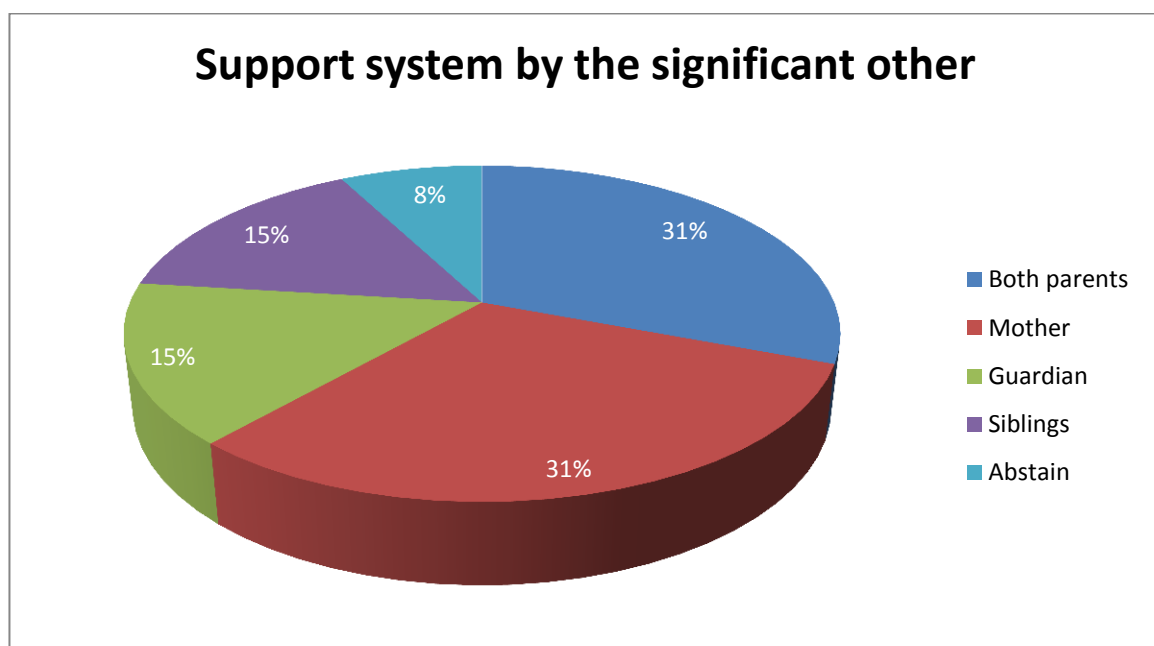
Siegel and Senna (2000:278) identified parental neglect and insensitivity towards a child's emotional needs as a criminal risk factor. Conklin (2001:230) points out that it is

not always critical that the parents should be physically present to supervise their children's behaviour, but rather psychologically present. Crowley and McIntyre (1999:2) point out that a successful mentoring is linked to a presence of a "meaningful father figure" or role model. Section 2.6, 2.11.2 and 2.11.4 have shown the importance and the role that a family plays in instilling good and acceptable values and norms within a community.

Is the orientation on the programme clear?

Participant A: "Yes, I then began to understand what NYDO was all about because when the probation officer told me about it, I thought I'm really in trouble."

Participant B: "Yes, they encourage me to attend and they always reminded me not to forget about the sessions."

Participant C: "Very clear, I'm enjoying it and I was happy with how they explained to me."

Participant D: "Yes, but I was still confused and embarrassed."

Participant E: "Yes, they explained to me why I was at NYDO and I was referred to the programme."

Participant F: "They did but I was thinking of what my friends will say."

Participant G: "No, I'm still going to my programme to make sure that it is clear."

Participant H: "Yes, they did explain to us how the programme goes."

Participant I: "I'm by NYDO because the court sends me there to finish my programme and as I can see NYDO is helping me."

Participant J: "Yes, I understand why I'm send to NYDO and that the case is going on but if I attend I will be fine."

Participant K: "Yes, even though at first I was confused cause I didn't know what to expect and why vele?"

Participant L: "Yes they did and I was with my mother."

Participant M: "I was scared, but I understand why the court wants me to attend the programme because when I get here they explain everything."

Participants were in agreement that the social worker and mentors at NYDO thoroughly explained of the advantages and disadvantages of the court order. Furthermore, they said that the rules and protocol of NYDO as an organisation is also stated. This includes the house rules that guides late coming and abstaining from sessions. Records are kept by signing attendance registry and participants are advised that should they not be able to attend a session, they should notify one of the mentors or social workers so that it is recorded and alternative arrangements be made and their programme duration/ schedules be adjusted in order to ensure that missed sessions are facilitated. The participants also revealed that their schedule includes the time and days of the week for attending sessions. The parent(s) / guardians are also provided with the same schedule so that they can monitor and encourage attendance. Parents and guardians are informed in advance of the home visits. They are also provided with the mobile numbers of mentors and social workers so that there is an open communication relationship.

How did you feel about the mentoring programme when it was first introduced to you?

Respondents' views were as follows:

Participant A: "I was angry at myself, big sigh! I thought it was going to be boring."

Participant B: "I was not happy, but had to accept."

Participant C: "I thought I was not going to enjoy it or they will label me or to make me feel guilty."

Participant D: "I felt it's a waste of time."

Participant E: "I was not excited at all but after attending the orientation session I was looking forward to it."

Participant F:"unhappy but had to accept."

Participant G: I was happy about is because I didn't want to go to prison."

Participant H: I felt happy because NYDO is not far from home and it also takes me away from bad friend."

Participant I: I was feeling happy because NYDO is thee to help you."

Participant J: "I felt embarrassed because I thought people will judge me"

Participant K: "I was bored at first and angry and I felt it was not necessary."

Participant L: Eish! "I don't want to answer this one."

Participant M: I was not happy; I thought everyone will know about it and people at NYDO will judge me; but I'm happy they understand me."

This question had the most mixed emotions responses, which is fairly understandable. Of the 13 participants, only participant G and H said they were happy about being diverted. They both stated some of the main objectives of diversion, namely; to protect child offenders from the harsh realities of the criminal justice system, avoid incarceration and to ensure that child offenders are not stigmatized. However, 11 participants shared different emotions where some felt angry, embarrassed, guilty, bored, and unhappy and also had different assumptions such as, they thought it will be a waste of time; they will be judged, and labelled.

Do you feel the programme holds participants responsible for their action?

They all said they have learnt how to take responsibility and gave the following responses:

Participant A: "Yes, avoid criminal acts", when probed he said: "It helps you understand that what you have done is not acceptable and that you must learn from your mistakes and others. I now fully understand how my actions affected so many people, especially my mom."

Participant B: "Eish! I have learnt a lot from the programme like taking responsibility"

Participant C: "Most things taught in the programme have made me aware to take responsibility for my actions and not blame others because I'm responsible for me."

Participant D: "Ja, I have learnt a lot, even to be responsible for my own action."

Participant E: "They teach us to be responsible and differentiate between right and wrong."

Participant F: "NYDO teaches us to accept that we have done something wrong and learn to make good choices."

Participant G: "I'm learning how to avoid bad friends and situations and I know that what I have done is not okay."

Participant H: "NYDO have helped me to realise that what I have done was wrong."

Participant I: I've always denied that the cops caught me with dagga, eish! And it was mine, I have to accept so that I can get help and maybe change."

Participant J: "I have learnt to make positive decisions; the facilitators' are always emphasising the importance of choices."

Participant K: "I don't feel that I was responsible, he provoked me, it's not fair", Ai! maybe later I will see things differently."

Participant L: "Ja, they teach us all the time, so ja, will see."

Participant M: "I have learnt a lot about choices and myself; I'm happy."

One of the criteria for diversion according to Section 52 of the Criminal Justice Act is for the child offenders to acknowledge responsibility for their deviant behaviour. About 92% of participants have responded with some sense of understanding what responsibility meant and how the programme has assisted them to get to a stage where they appreciate the wrongfulness of their acts. The researcher had a feeling from observation, that is, body language of Participant L that he was still in "denial" that he has done something wrong and seemed uninterested responding to the question, more like irritated. In contrast, Participant I was brave enough to admit that he has been having difficulty admitting that the dagga found in his possession was his and even disclosed that his denial will not help him in the long run as it will make it difficult for the mentors to assist him with his problem. His change of heart demonstrated a degree of reflective and self-consciousness (Bandura, 2001:10).

About what level or frequency of contact do your mentors and other participants have with each other?

CHART 3: Frequency of contact with mentors

Frequency of contact with mentors

- 15% — Attend once a week (red)
- 85% — Attend two or more times a week (blue)

Legend:
- Attend two or more times a week
- Attend once a week
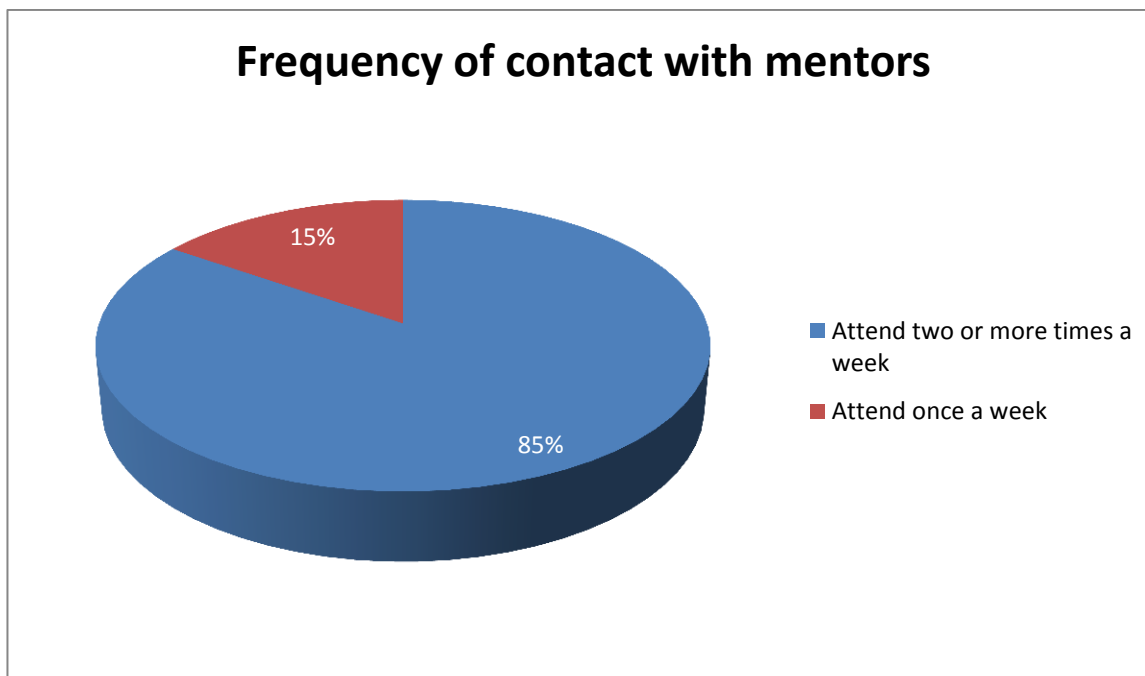
Participants A, B, C, D, E, F, H, I, J, L and M attend: two or more times a week for three months.

Participants G and K attends: once a week for three months.

At the time of the research all participants have been attending the mentoring intervention programme for just over two months. This excludes the home visits that programme facilitators and social workers offer to all participants. However, as mentioned there is a general notion that mentoring relationships should at least last for a minimum of six to 12 months (see section 2.10.2). NYDO facilitates mentoring programmes and home visits for three months. The question and debate around the number of sessions that could be agreed to be sufficient is still a burning issue. As mentioned earlier the programme should be at least six months (see Section 3.7.1.3 and Section 4.11). What the researcher deduced from this study is that NYDO is flexible and deals with each case on its merit, as it has been revealed by one participant that he has been with NYDO for 10 or 11 months. From these findings, one can assume that what is important is to deal with the needs and risks of individuals, including the content of the programme than the number of sessions.

Have you been tempted to participate in any deviant behaviour while attending the sessions?

About 100 % of our sample responded by saying no to the above question. This means that they have never participated in any deviancy. The researcher interviewed their

parent(s) and guardians in order to corroborate this fact. This finding was supported by the parent(s) / guardians. Six parents indicated that they observed a difference in their children's behaviour since attending the programme at NYDO. They added that they have observed that they no longer have too many friends and coming home at night. However, they pointed out that they still display the "normal teenage behaviour", like not doing house chores. The other five parents indicated that their children are now willing to change, but because they have dropped out of school they are troubled by the fact that they are home most of the time and unsupervised. Their concern is that they might relapse into the life of crime as they have nothing to keep them busy like school.

How has NYDO provided you with skills to protect yourself from being involved in deviant behaviour?

Participant A: "They tell us, do what is right so that I can get where I want it life."

Participant B: "I have learnt self-control and the ability to differentiate between right and wrong and to be able to say no to crime without feeling that my friends will think I'm stupid."

Participant C: "They showed me the way that violence and crime are not always the answer to your problems or solving anything."

Participant D: "In many ways, I have changed and I know that crime is wrong."

Participant E: "They have empowered me with skills to control my anger."

Participant F: "I have learnt how to stay out of danger."

Participant G: "NYDO is encouraging me to do good and show people that I can do good things."

Participant H: "They have taught me to say no to wrong things and I still have a case and don't want to go to jail."

Participant I: "NYDO is good to me and other children like me; I will not disappoint them by fighting or using drugs."

Participant J: "I have learnt to act without thinking of the consequences and not to forget that every action or decision has consequences."

Participant K: "I have learnt that I must concentrate on my school work and be home more than in the streets where we do wrong things."

Participant L: "I know that I must not have too many bad friends, but they always have my back, so ja will see how it goes."

Participant M: "I'm learning so much from everyone and also by sharing with other children. I realise that I'm not alone and I can change and have good friends. I'm avoiding doing things that cause me to do crime now."

Raundrup and Langelid (2004: 9) state that education and training needs may be formal in nature to a great extent but a major need for informal skills identified, for example, life skills. That is the ability to function in a team, in society and in the family. Learning should be epitomised by the developing the ability to solve problems and to learn new things.

Do you feel comfortable sharing your experiences in a group?

Participant A: "I don't mind because some of them are my friends; so, it makes it easy for me to share and the facilitators tell us that we must not tell what other children are sharing in the sessions."

Participant B: "Not really, if sharing positive things I have no problem, but about my experiences not sure."

Participant C: "Yes, I enjoy it causes others can learn from my experiences."

Participant D: "I feel comfortable because they have taught us to learn to be open about our problems so that someone can help us."

Participant E: "Not really, because others will judge me and I feel ashamed."

Participant F: "I don't mind because we all there to get help so that we don't go to jail."

Participant G: "Yes I do feel comfortable when I share my experiences in a group. I did it to be a better person in life."

Participant H: "I prefer one on one with the mentor because I'm too shy to share my experiences in a group because they will look at you in a wrong way."

Participant I: "No, because all the children at NYDO know me by now, but if we had to share at the beginning of the sessions I would not have felt comfortable."

Participant J: "Yes, I don't have any problems sharing with other participants."

Participant K: "I feel embarrassed because I don't feel comfortable around some children."

Participant L: Generally, I don't like talking; so, these talking and sharing thing is not my thing."

Participant M: I don't mind sharing because they give us tasks and scenarios to use with what we have learnt in the programme; so, you know people don't see things the same mos, so I learn from others and I enjoy it."

Group-based activities provide a prospect of learning about multiculturalism and develop life skills such as communication, conflict management and team work (Wood, 2003:14). This is the case at NYDO as they provide the programme to children who are from the Coloured and Black communities. Interactive learning promotes self-awareness and increased self-esteem, which allows child offenders to learn how to take ownership with their lives (Mbambo, 2005:80; Van Eeden, 1997:50).

Is the diversion programme helping you to achieve your potential?

Participant A: "Yes, they give me the basics so that I can make myself better and it is fun."

Participant B: '' It really does; it helps me to be focused so that I can achieve my goals and they have given me a second chance because I don't have to go to jail. I can now plan for my future because I'm more positive."

Participant C: "The tasks and assignments given help me to realise that I should solve my problems without using violence. I have experienced positive things from attending the programme it helped me to improve as a person."

Participant D: "NYDO has helped me a lot, now I know what I want in life, I asked them not to leave when my case was dismissed, so I have been attending for about 10 or 11 months."

Participant E: "Yes, I'm now able to focus on my school work and not worry about my case. They have taught me to manage my anger so that I don't offend again".

Participant F: "They have encouraged me to keep on with hard work and I'm always motivated after attending sessions."

Participant G: "Yes, the diversion programme is helping me achieve more potential and I do my best and always attend the programme."

Participant H: "The programme is taking me away from bad friends. I'm now able to participate in sport such as soccer. The school has suspended me and after I have attended the programme I feel ready to go back because I was always fighting at school."

Participant I: "Diversion programme is helping you to finish your school and become something in life and I also enjoy activities that we do, like playing soccer and baking kookies."

Participant J: "I have realised that if I continue living the way I was; I won't be able to become a lawyer; so, I have to change. NYDO has helped me a lot and it has given me a second chance in life".

Participant K: "It has helped me manage my anger and to have good dreams about my future. I'm now concentrating on my school work and have reduced the number of friends I used to have".

Participant L: "Yes, you learn a lot from your mentor and you share a lot of things."

Participant M: "I no longer about going to prison, I'm concentrating on changing and to make my parents proud. I have learnt a lot and my mentors are understanding."

From the above responses, it shows that besides the child justice procedure by which child offenders are processed, they are still being held accountable for their deviancy through positive peer influence as it is illustrated at NYDO. Wilson, Gallagher and MacKenzi (2000:355) point out those child offenders who participate in programming reoffend at lower rates than those who do not go through the programme and are employable at a higher rate than those who do not go through the programme. From this findings and other literature, most child offenders lack decent education and social skills.

Therefore, programmes such as this will not only improve the livelihood of child offenders but will considerably decrease the rates of recidivism (Bales & Mears, 2008:45).

Do the programme activities address the factors directly associated with offending?

Participant A: "Yes, I was able to talk about my life and things that hurt me in life."

Participant B: "They help us to deal with our problems and you are able to share your deep seated problems and you feel relieved by sharing."

Participant C: "Our tasks and activities attend to my problems, my personal issues and the reason I'm here. I have learnt to get out of trouble, be safe and I can advise others who are doing the same mistakes."

Participant D: "Our programme and activities teach all of us about crime, violence and consequences and our parents are involved."

Participant E: "NYDO has provided me with guidance and I can now be trusted as I follow the programme."

Participant F: "Yes, but is not nice talking about your crime in front of the social worker and facilitators, but they are helping us."

Participant G: "It does and my parents are happy that I have changed even the teachers can see change."

Participant H: "They have taught me how my actions affect other people. It has helped me a lot and my relationship with my parents has improved and I try to listen to my parents but sometimes they make me angry."

Participant I: "They do, all activities teach us good things and is the things that we struggle with; so, no more crime because I also go to SANCA."

Participant J: "Yes, they want to know why you did the crime, about your family, school and everything and they encourage us to open up so that they can help us."

Participant K: "Yes and no because sometimes I feel like I'm not telling them everything; so, they can't really help me. The researcher then probed the participant who explained

that there are a lot of things that happened when growing up and he doesn't want to talk about them but they still hurt him."

Participant L: "Yes, because they ask you about your case, what happened and everything, then when you attend the programme they talk and teach you about all bad decisions and they also talk to my family and come home to check if everything is okay."

Participant M: "Yes, because the social workers, facilitators and our parents have a meeting where they tell them everything about us and they also ask us what happened and everything."

Child offending is complex and it is difficult to single out one risk factor and or explanation. It is imperative to acknowledge the role developmental stages and the systems within the social context play in influencing the programme outcomes. NYDO assists participants with substance abuse by liaising with SANCA and ensuring that they are offered the best possible care. Measuring the effects of an intervention programme is a challenge because the deviant behaviour that the programme attempts to change is often concealed and benefits are generally observed over a long period of time. With view of the responses, there is likelihood that the intervention programme has positive outcomes. NYDO has proved to be in consistency with standard 77 of the Programme Outcomes of the Department of Social Development, which states that diversion strategy and activities should aim to address factors directly associated with child offending, which can have a positive effect in reducing recidivism. In addition, they have demonstrated that they use a multi-disciplinary approach that involves drawing on the skills of people from different disciplines or sectors.

Do you think aftercare programme is necessary?

Twelve (12) of the participants said they thought it was necessary to be provided with aftercare programmes. Some of their reasons were as follows:

- "I will hate it if I were to disappoint them and my parents."
- "Yes because I'll see them again and just talk."
- "They will be able to help us if you see we have problems."
- "It will make me do good and when they come they will hear good things about me."
- "I guess is good for us for them to check us."

- "I will not hang around with my bad friends so that I don't go back and show them."

Only one participant said he did not know about the aftercare programme and did not understand its purpose. The researcher learnt that he is one of the child offenders with a learning disorder.

CHART 4: Number of aftercare sessions

Number of aftercare sessions

- 7.7 % — I don't know
- 54% — Once a week
- 7.7% — Twice a week
- 34% — Every three weeks
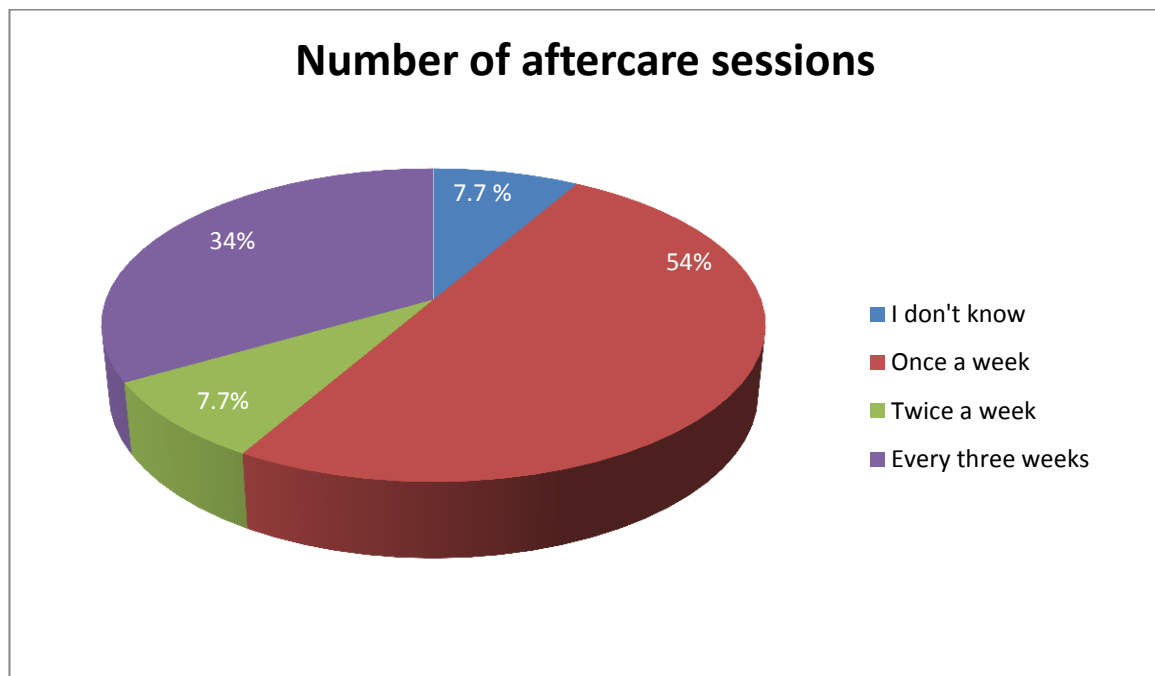
Twelve (12) of the participants confirmed that NYDO provides aftercare programme to child offenders who have successfully completed their programme, meaning after their cases have been dismissed by the Child Justice Court. One participant said he was not sure if they were providing such services. All child offenders and their parents are given the aftercare programme schedules. The aftercare programme at NYDO takes place for three months. The researcher then probed the participants on the period of aftercare programme and all 12 participants said it is for three months and the mentors continue to communicate with their parent(s)/ or guardians. About 50% of the participants revealed that they will be seeing their mentors once a week, 34% every three weeks and one participant twice a week. While NYDO and other organisations provide aftercare programmes, evidence is lacking about the effectiveness of restorative and diversion procedures with child offenders.

Would you recommend the programme to your friends if they were in the same position?

All 13 participants said they would recommend the programme to their friend. They said it was really beneficial and they made new relations. The findings validates their response as 69% the participants said they wish NYDO could avail their services at school as they feel they would not be in their position if they had attended their programmes. When the researcher probed them as to why they felt the programme should be facilitated at schools, they indicated that most learners display aggressive mannerism. They added that if everyone at school is empowered on how to react in different situations and taught how to make good choices, it will decrease the number of violent incidences in schools. They emphasised that it could reduce the number of violent incidences as they alleged that in lawlessness prevails in most schools in their area. Primary deterrence is proactive and relates to the phases that are taken to prevent child offending before it occurs. Workshops on the awareness of substance abuse, the use of violence, sexual abuse in schools and lawlessness should be tackled at a primary prevention strategy. Adequate social support systems often instil a sense of belonging and purpose. Liese (2002:16) is of the view that a likely effective approach is one that offer programmes aimed at reinforcing and internalising positive individual traits such as discipline and life skills.

Generally, would you describe the programme as successful or unsuccessful?

The participants were asked an open-ended question regarding their opinion on whether they view this programme as successful or unsuccessful. Because not all participants clearly understood the question, the researcher explained what it actually intended to discover.

Participant A: "Yes, successful because I learn something every day."

Participant B: "It is very helpful because I will not go to jail. I have learnt a lot and I'm now more positive about life."

Participant C: "It is successful because we learn every day and keeps us away from the streets and crime."

Participant D: "Successful because you get to a point where you can see change in your lifestyle."

Participant E: "I think it is successful because my case will be dismissed as long as I participate in the activities of the programme and listen to my parents. I also learn how to change and be a better person and ja, also not to go to jail."

Participant F: "It is successful because we learn how to stay out of trouble and also manage anger and not get into fights like before."

Participant G: "It has help me improve myself and learn good things."

Participant H: "Very successful because I can see that my behaviour is changing and I'm no longer as aggressive."

Participant I: "Successful because the programmes keep you out of trouble."

Participant J: "I'm happy that I will not go to jail because of the programme and NYDO. I have learnt not to have bad friends and make good choices."

Participant K: "I have learnt so much and happy that because of NYDO I will not go to jail, and because I have heard a lot of stories about jail."

Participant L: "Successful, it is a good place to learn more about life and the dangers of life."

Participant M: I like my mentors; they have really helped me see things differently. I want to do good and be proud of myself and not end up in jail."

Participants measured the success of the programme based on different factors. In summary, of the 13 participants, six of them expressed their "fear" of incarceration was the most significant reason for fulfilling the diversion conditions (Muntingh, 2001:49). Feedback on the programme content was very positive, especially in the participants acknowledging and recognising positive behavioural change. Overall responses confirm the impact it has on them, particularly in changing their deviant behaviour, mind-set and responsible decision making (Muntingh, 2001:49). This finding highlights the importance of not measuring the success of a programme based only on recidivism but behaviour change. The individual's thinking and acknowledging the wrongfulness of the act should be an important factor in curbing recidivism. There should be numerous ways that can be utilised in measuring and interpreting recidivism. Africanised knowledge base about the effects and processes of interventions are solely in need of development.

How do you think this programme can be improved?

All 13 participants pointed out their overall happiness with the mentoring programme.

Participant D: said NYDO must "teach us to do stuff with our hands e.g. woodwork or welding". A staggering 69% suggested that the programme should be offered in schools so that they do not find themselves in the same position with them and they are also not send back in the same environment that encouraged or promoted deviancy. Participant B, C, E, F, G, H, I, J and M were in agreement and in summary reported that facilitation of the programme in schools "would help many school children if the programme could be provided at schools before they are involved in crime and other violent things". While Participant L responded by saying "each child be assigned his or her own mentor" and Participant A and K, responded by saying "Nothing to be improved".

Early intervention does not only provide the opportunity to prevent a life of continued crime, but also lessens the negative effects of incarceration and formal legal proceedings (Holman & Ziedenberg, 2006:2).

CHART 5: Perception regarding the programme
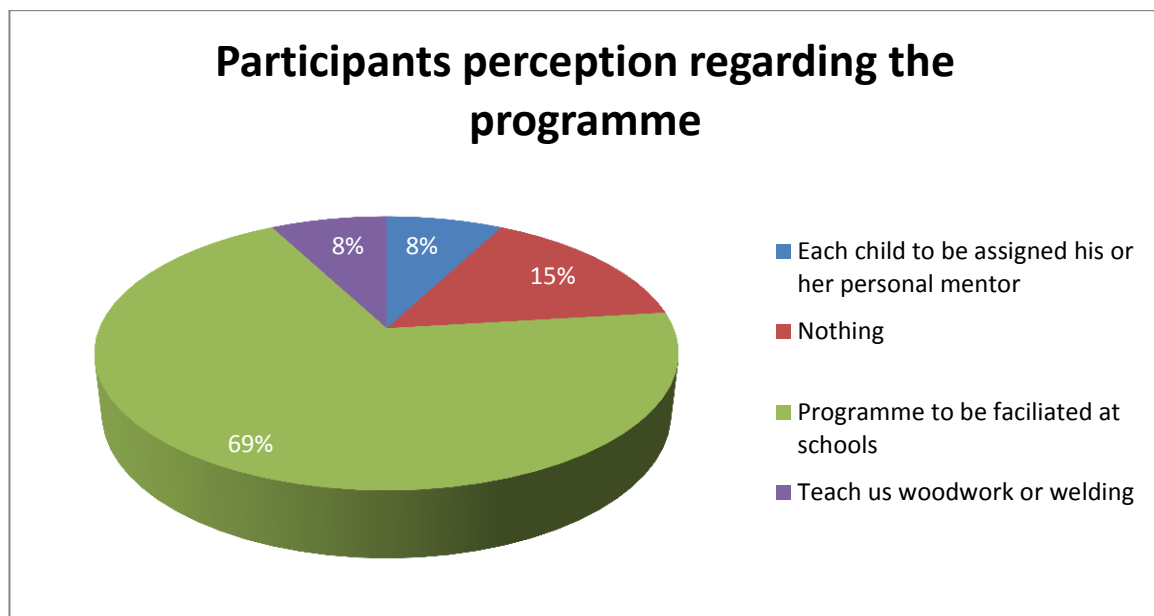
It has been revealed that accurate and detailed statistics on children in conflict with the law are essential for the effective application and administration of the Act (Badenhorst, 2011:30). Findings from various sections of this study have shown that lack of statistics on child offenders is not only a South Africa problem but also our neighbouring countries.

In addition, research on the views of the child offenders with regard to these programmes is also lacking. It is important to consider their "voices" in order to at least establish and improve these programmes.

Is there anything else you would like to add about your experiences in the programme?

Participant A: "I'm enjoying the friendship from other children, going out to camp is exciting and I also like my mentors they have helped me a lot."

Participant B: "I no longer have issues about the programme, I'm actually enjoying it."

Participant C: "My mentors have taught me to accept my mistakes and not shift the blame."

Participant D: "That I have changed my way of thinking and behaviour towards other people."

Participant E: "I'm happy that when I complete my programme I will have good friends and I will not go to jail."

Participant F: "I was really unhappy that I was told to come and attend a programme at NYDO, but now I can see why they send me here, they really help us."

Participant G: "Everything is okay and I know that I will be okay."

Participant H: "I'm generally happy with the programme, especially when we do interesting activities."

Participant I: "Yes, the programme taught me lots of stuff like how to manage anger when you are angry at someone."

Participant J: "I'm just happy with the programme; it helps us not to do crime."

Participant K: "It's okay it help a lot of people."

Participant L: "I'm learning every day and how to change."

Participant M: "I wish the programme was there when I started not to listen and do things with my friends."

All participants expressed that they were generally happy with the programme. In addition, the researcher found that the participants were appreciative of the imparted skills. The researcher observed through body language, jokes and sense of belonging the participants displayed that they were indeed benefiting from the programme. The expression of emotions varied across individuals, social and cultural subgroups, for example, the type of offence committed, gender and the level of education and the period of programme attendance. However, measures that examine satisfaction with regard to certain programme types have not been conducted as well as programmes which work best for specific profiles of child offenders (Steyn, 2010:5).

6.5 SECTION E: THE ROLE OF THE MENTOR

One of the aims of this research is to explore the experiences of child offenders who successfully completed the mentoring programme as their diversion.

Do the mentors clearly state the programme objectives?

All 13 participants indicated that they were informed about the objectives, aims and consequences of failure to adhere to the court order. Careful planning and engaging with participants play a vital role in ensuring an effective group work (Strydom & Strydom, 2010:136). Since diversion has certain legal implications, all relevant stakeholders must be informed about the process and its implications. From the above responses, it is clear that NYDO complied, which is in line with one of the criteria's of diversion (see section 2.8). In addition, they have adhered to the minimum standards, particularly with Standard 76 of the Programme Outcomes developed by the Department of Social Development. This standard states that programme objectives and outcomes must be clearly expressed. The Minimum Programme Outcomes Standards place emphasis on properly designed programmes in which "the objectives, activities and targeted behaviour changes are clearly defined" (Dawes & van der Merwe, 2004:5).

Does the manner in which the programme is facilitated encourage active participation?

Participant A: "I have learnt about me and crime and how to change."

Participant B: "I feel free here and other children are also nice."

Participant C: "It does because we learn while playing and share ideas."

Participant D: "Yes active participation is encouraged and you are free."

Participant E: "Because we have all done something wrong with the police, I enjoy tasks and participating because we are all the same."

Participant F: "Yes because they do it with you, you don't feel out."

Participant G: "Yes the way in which the programme is delivered encourages active participation."

Participant H: "I'm shy, but I enjoy participating, it's fun nyana."

Participant I: "I enjoy the once where we have to see ourselves in the future, so much fun."

Participant J: "Yes, I learn a lot through the different activities and tasks."

Participant K: "Yes, they explain the reason for the task and they make sure we all participate and we learn so much."

Participant L: "Yes, because of the way the mentors talk and treat me I feel welcomed; they don't judge."

Participant M: "It's fun, sho! Sometimes it's so nice."

About 31% of the participants revealed that they enjoyed participating in the programme as it was informative. While 23% felt that the mentors made the activities fun, 23% of the participants said the programme was facilitated in such a way it was inclusive and Participant H commented that he was shy but enjoyed participating and 23% revealed that the mentors and participants were non-judgemental.

CHART 6: Measuring participation satisfaction

Measuring participation satisfation
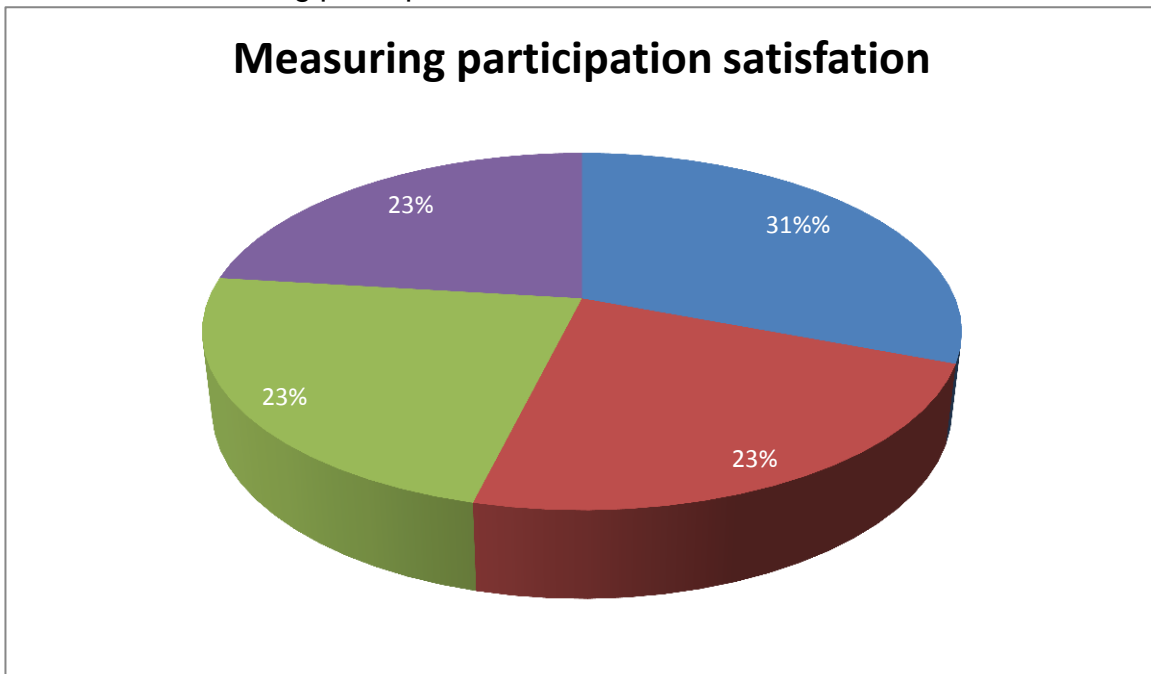
These findings attest to the notion that the relationship that mentors form with participants is important and encourages positive outcomes. Mentoring relationships are said to be flexible yet tailored to the specific intervention needs of the child (Gray & Seddon, 2005:70; Karcher, 2005:66). Creating environments that encourage inclusion and relationship building is important to the participants. The extent to which the facilitator values their inputs reassures them that their efforts are respected and appreciated. The mentor is able to come to their level and put themselves in their shoes and be able to advice without labelling or shaming them. Examining the impact of relationships, the role of the facilitator should receive special attention. It is imperative to have forums that mentors could share their experiences and good practices in working with child offenders (DuBois & Neville, 1997:233; Vanderven, 2004:97).

What is needed is acknowledgment of the problem and background ought to determine the applicable approach for understanding 'what works'. This will assist in finding rich knowledge and improve our knowledge base on what works and with which profile of child offender. According to Laycock (2002:234) "'the golden standard' should not be any particular methodology but a process of informed decision making through which appropriate methodology is chosen".

How does the mentor handle those who show lack of interest in participating?

The mentor is the key agent of the behavioural change of participants. Moreover, the success of the programme depends on the ability of the mentor in encouraging learning through asking considered questions that are aimed at bringing about change and a willing child who will absorb the skills. Mentoring is a skill that cannot be developed overnight and takes a certain level of maturity and understanding of the importance of changing the deviancy.

The researcher found that participation was spontaneous and participants are generally willing to participate. However, there have been one or two incidents where some participants would be passive and not engage. It was reported by the participants that the mentor would give them a task or activity and have a one-on-one with those showing lack of interest in a particular session. Because there are house rules which are formulated by the group, then the participant will have to be meted out with "punishment" by the group, which the researcher has observed. For boys, it could be exercise push-ups and for girls running around the room 10 times with one leg. They normally enjoy this exercise, which is also educational, that is, they learn about respecting and adhering to the rules and taking responsibility. In cases where the mentor would find out that the reason was legitimate, no "punishment" was meted out and participants are told that the child in question has valid reason and they should understand.

Do you feel free to communicate with your mentors?

All 13 participants revealed that it was particularly hard and challenging in the beginning to communicate with the mentors and fellow participants. They revealed that they were mostly preoccupied by anxiety and preconceived ideas of the programme. About 70% of them revealed that they started relaxing after the third session when orientation was facilitated and started to see that the atmosphere was relaxed and seeing familiar faces also put them at ease. Conversely, 30% said when they started to form some sort of relationship with other participants, then the walls that they build started to crumble and they then allowed themselves to "just be". Sociocultural perceptions and how people in general communicate, show respect and understanding can have a significant impact on group processes and the outcomes if misunderstood (Branken 1997: 42; Strydom & Strydom, 2010:127).

How would you describe your relationship with your mentor?

Participants revealed that they were pleased with relationship with their mentors. What was interesting was their revelation on gender preferences. The male participants revealed that they felt more comfortable with female mentors and vice versa. However, they pointed out that it was also depended on the tasks and activities of the day as they would sometimes prefer their own genders. The researcher observed that mentors also played the role of the "significant other." If a participant needed to bond more with either his or her mother then the role of gender comes to play. This observation does not necessarily mean the designed programmes should be gender-based. It only highlights the importance of understanding and appreciating the experience and insights off participants based on gender. However, the researcher is not certain if gender plays any significant role in mentoring relationship as this aspect has limited research locally.

What kind of activities do your mentors and other participants do together?

All participants said they have learnt more from the life skills, parental and anger management sessions, baking, especially the family day. They all expressed their keenness on outdoor activities, such as team building, cricket, football, art, and paintball, minute to win it games, camping and hiking. An outdoor activity creates an atmosphere that encourages learning in a fun and not so restrictive environment. A set up like this allows social workers and programme facilitators an opportunity to "know" child offenders better and observe and assess their level of social skills which encourages team work, following rules and instructions in order to fulfil certain tasks. Larson (2006: 684) is of the view that regardless of the nature of activities, they must offer conditions for communication, motivation, learning and asset building.

The researcher has attended sessions for over a year where mentors were facilitating sessions and observed that participants were empowered with different beneficial skills and the emphasis of the activities or tasks are on instilling good morals and values including a sense of responsibility. These tasks and activities are aimed at encouraging the participants to reflect on their experiences, to explore and apply knowledge gained. Participants are encouraged to engage each other in a secure and loving environment. Most importantly, they are encouraged to think as truthfully as possible.

What brings the mentor/ mentee relationship to an end?

The participants also pointed out that knowing that their relationship with the programme facilitators and social workers does not automatically come to end because their cases have been dropped gives them hope. They stated that they are encouraged to stay in programme as long as they want or until such a time they feel they can stand on their own. They also added that they think having the aftercare programme is a good idea as they know that NYDO will be keeping taps on them and they would not want to disappoint them. Continued support and supervision of relationship are essential (Thompson & Kelly-Vance, 2001:238). Some studies showed that extended treatment is more effective and beneficial in a long run than shorter ones (see section 2.10.3).

How do you feel about the termination of the relationship?

The finding produced mixed emotions, with 31% expressed their happiness and that it would mean their cases are dropped, 15% said it really did not matter because they knew it would come to an end while 54% expressed their sadness and gratitude to all stakeholders involved in their rehabilitation.

Participants were probed to elaborate on their responses and 46% reported that they were scared to be on their own with no support and constant reassurance from their mentors. Conversely, 54% stated that they felt confident moving on without the support system. They added that they can still engage them even after their cases were withdrawn. Themes were drafted to be administered to a sample of participants. The researcher thought because the centre does not have many participants referred at NYDO, this method will encourage the participants to influence each other in participating in the diversion programme. Data results were analysed by the researcher and an independent coder. The researcher interpreted the analysed data and the findings will be discussed in the next section.

One of the aims of the study is to examine the necessary factors for a best possible practice approach and the researcher found that such effects are brought about by numerous variables. For the purpose of this study, the following variables were identified to have possible key elements that could be perceived to influence the desired change in the participants' behaviour and lives. These include:

- Improved interpersonal relationships through learned communication skills;

- Strengthened relationships between the parents/ guardians and the child offenders;
- Instilling good morals, values and norms;
- An increased self-awareness and self-love;
- Instilling a sense of accountability and reduced shift of blame;
- Programme which is appropriate in facilitating change in the attitude and behaviour of participants;
- Strengthened skills for self-control;
- Produce programmes that have both the elements of learning and play; and
- Stakeholders that are willing to liaise with other experts in different fields in the quest of achieving the programme outcomes.

In addition, a programme aimed at emphasising the importance of education, setting of goals and shifting the mind-set. Mentors need to come up with innovative methods which are enjoyable and aimed at treating developmental characteristics that are problematic (DuBois, Neville, Parra & Puch-Lilly, 2002:54).

Instrumental risk factors

The researcher will discuss some of the perceived risk factors linked to child offending in this study. A risk factor is a variable that predicts probability of offending (Walsh, 2012:150). Risk factors have been broadly defined as " characteristics, variables or hazards that if present for a given individual, make it more likely that this individual rather than someone selected from the general population will develop a disorder" (Mrazek & Haggery, 1994:127).

Contributory factors towards child offending are complex. To have a clear understanding of this phenomenon, we need to firstly look at the fraught history of this country that rooted the culture of violence among different communities. These include a norm of displaying violence and lawlessness by individuals, gangs and syndicates that highlight the lack or rather the absence of an effective criminal justice system. Children who are exposed to multiple risk factors have substantially greater likelihood of future offending.

Behaviourists argue that individuals learn by observing the behaviour of others and the reaction to such behaviour and if it is 'approved' or rewarded by positive consequences. It reinforces the particular behaviour and such behaviour will be sustained (see Chapter 2).

For the purpose of this study, the following risk factors were found to be predominantly contributory toward child offending in the areas mentioned. The impact of risk factors may vary with the developmental stage of the individual. Risk factors can be regarded as circumstances that might increase the likelihood of child developing deviant behaviour. Although researchers use risk factors to detect the likelihood of later offending, many children with multiple risk factors never commit delinquent or violent acts.

A risk factor may increase the probability of offending, but does not make offending a certainty. The researcher will discuss the risk factors that emerged from this study. These risk factors are notably common in both races that contributed in the study.

FIGURE 5: Instrumental risk factors in Eesterus / Mamelodi area

Area	Early onset (ages 13-14)	Late onset (14-17)	Protective factors
Individual	Dishonesty Aggression Antisocial behaviour Low IQ Playing truancy Lack of self-control Easy access of drugs	Aggression Physical violence Low IQ Substance abuse Lack of self-respect Anti-social behaviour	Positive role models Perceived sanctions for deviant behaviour Support system Community policing forums
Peer pressure	Antisocial peers Weak social ties Normality of deviant behaviour by peers	Antisocial, deviant peers Weak social ties Friends with school dropouts The criminal subculture	Friends who engage in conventional peers Friends with children who are academically inclined

Family	Poor parent child relationship	Poor parent child relationship	Biological parents involvement in their children's life on a daily basis
	Inconsistent parental discipline	Inconsistent parental discipline	Parental monitoring
	Separation from biological parents	Incomplete family	Warm, supportive and loving relationships with biological parents
	Incomplete family	Low socioeconomic status	
	Low socioeconomic status	Poor parental supervision	Constant Parental encouragement
	Lack of consistent discipline by guardians because of age	Lack of consistent discipline by guardians because of age	Having a curfew
	Poor communication skills	Poor communication skills	
	Parent / child communication breakdown	Having a curfew	
School	Poor attitude	Poor attitude	
	Lack of interest in school work	Lack of interest in school work	Friends who are of school going age
	Poor performance	Poor performance	Friends who see education as a tool out of poverty
	Lack of respect of educators and other learners	Dropping out of school	
	Disrespecting school rules	Lack of respect of educators and other learners	
	Class disruption	Disrespecting school	

		rules Being confrontational with educators Class disruption	
Community	Disorganised neighbourhoods Crime and drug infested community Community that encourage deviant behaviour Lack of recreational facilities	Disorganised neighbourhoods Crime and drug infested community Community that reinforces deviant behaviour Community that have negative role models	Community crime forums Parenting skills workshops Child Justice Act Awareness and NGO's dealing with children in conflict with the law Effective community policing

6.6 THE EFFECTIVENESS OF A MENTORING PROGRAMME AT THE NYDO

According to the risk factors emanating from this study, the researcher found that a few variables had a direct link with child offending. However, what stood out for the researcher was the environment that these child offenders were reared. Existing research points to a powerful connection between residing in an adverse environment and participating in criminal acts. Sociological theories of deviance hypothesize that "disorganised neighbourhoods have weak social control networks, that weak social control resulting from isolation among residents and high residential turnover allow criminal activity to go unmonitored". Farrington (2000:5) notes that "only in the 1990s had the longitudinal researchers begin to pay sufficient attention to neighbourhood and community factors, and there is still a great need for them to investigate immediate

situational influences on offending". Although researchers debate the interaction between environmental and personal factors, most agree that "living in a neighbourhood where there are high levels of poverty and crime, children reared in such circumstances are more likely to be negatively influenced. Unfortunately, the majority of South African children continue to live in disorganised communities where informal settlements are the order of the day. Some of the elements of a disorganised society are children not attending school. This has been proven by 46% of the participants who have dropped out of school as well as gangs forming as an alternative social structure to the family and a general collapse of control. South Africa's history of apartheid and conflict has contributed significantly to the forming of these disorganised communities. A neighbourhood that is characterised by poverty and unemployment is more likely to produce a child who is a high risk of engaging in misbehaviour.

The role and impact of mentoring programme as an intervention to child offending has been discussed in length in Chapter 2 of this study. The researcher has already pointed out on the lack of empirical evidence on the effectiveness of the programme. Participants were asked about their views regarding the programme, how they felt about their mentors and whether the programme addressed their problems and if there is any particular area that they would suggest that it should be changed in order to address their needs. All 13 participants felt that the programme addressed their problems. The risk factor paradigm is a promising approach to understanding the problem of child offending. A diversity of methodologies has been used to address the problem of child offending, including mentoring as an intervention.

Dawes and van der Merwe (2004:5) state that the purpose of the programme outcomes standards are to ensure that diversion programmes comply with standards that focus on programme design, delivery and monitoring and most importantly, on protecting the rights of the programme participants. However, for the programme to be more effective, it has to address the deep seated risk factors that child offenders are faced with and address the problem of disorganised communities and the decay of values and norms in communities, which can only be attained with governmental infrastructures and the active participation of all relevant stakeholders. One of the main objectives of the study was to investigate the effectiveness of the mentoring programme at NYDO. Based on the findings of this study, it can be deduced that it has achieved one of its programme

outcomes, that is, to curb recidivism and change the behaviour and mind-set of child offenders in the Eesterus and Mamelodi Metropolitan areas.

6.7 CONCLUSION

This chapter looked at presenting data collected from child offenders who were referred to the NYDO. All the participants attended the mentoring intervention programme sessions successfully. Mentoring programme at the NYDO was explored and key themes were identified and categorised. Graphs, tables and pie charts and narratives were used to depict some of the responses. Findings emanating from these results will be discussed in the next chapter as well as conclusions and recommendations.

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CHAPTER 7: FINDINGS, RECOMMENDATIONS AND CONCLUSION

7.1 INTRODUCTION

The study began by articulating the problem and also providing tentative answers by means of a proposal and this was discussed in Chapter 1. From Chapter 2 to Chapter 4 an attempt was made to present arguments about what is already known about the problem through a process of consulting global literature on the Child Justice System which is embodied from the principles contained in the Child Justice Act 75 of 2008, the Convention on the Rights of the Child and other legal instruments specialised and sensitive to the needs safeguarding and protecting the rights of child offenders. Chapter 5 provided methodology that was followed in the designing and collection of data and its analysis was presented and discussed in Chapter 6.

This chapter concludes this study and summarises the key recommendations for the NYDO on their mentoring programme. The value of any scientific study should be reflected in the conclusions and research problems on which this study was based. Therefore, the aim of this chapter is to draw the study to its end by presenting research conclusions derived from both the literature review and the empirical research findings, by suggesting further research avenues and providing a summary. This study was encouraged by the limited evidence globally and more so in South Africa on the effectiveness of mentoring programme and its impact on recidivism. Haines and Drakeford (1998:200) pointed out that there is a need for more exploration as to the type of approach which works best and also to establish as to under what conditions and types of settings. A primary goal of intervention research is to develop mediations that are effective in a variety of real-life contexts, with those who actually experience the problem. Hudson (1995:3) argues that in contrast to the view of 'effectiveness' that focuses entirely on mechanisms that only measure the extent to which programme causes change in the desired direction, a second and entirely different view of 'effectiveness' is one that focuses exclusively on outcomes. He further argues that the "simple notion that effectiveness is defined in terms of change is radical, slightly reasonable and difficult to grasp". All this revolves around the main guiding research question for this study. Rossi and Freeman (1989: 49-50) states that an impact assessment gauges the extent to which a programme causes change in the desired direction.

7.2 RESEARCH FINDINGS AND CONCLUSIONS ABOUT EACH OBJECTIVE

The purpose of this section is to discuss the findings that were revealed during literature review and empirical analysis process so that their true meaning can be brought to the surface. That is, what has been revealed or discovered by the investigation? According to Rich (2011:3), numerous things have transformed with regard to how researchers view and understand child offenders.

7.2.1 RESEARCH OBJECTIVE ONE: TO INVESTIGATE WHETHER THE MENTORING PROGRAMME OFFERED AT THE NATIONAL YOUTH DEVELOPMENT OUTREACH CENTRE IS EFFECTIVE

From the onset it should be pointed out that any review of literature has limitations. The researcher has explored as many publications as possible on the subject. The literature served a number of purposes. For instance, it provided the researcher with a broader perspective and understanding on child offending. However, the researcher found that there was conflicting empirical evidence on effectiveness of diversion programme. Studies on the effectiveness of diversion and the notion that it is seen as the panacea to child offending have increased over the years. This is demonstrated by the fact that to date, lack of local research on the effectiveness of diversion and its impact on recidivism still exists. In addition, very few if any are based on the empirical research into examining the perception of child offenders regarding mentoring programme as an intervention.

Literature review served as a second purpose. This study is a practical contribution to issues of dealing with child offenders and exploring the best practices in a South African context. Moreover, the focus was on the issue of what works and under which circumstances needs to be addressed for the advancement of this field. In attempting to understand and explore the main question of this study, the researcher developed an understanding of the concept "effective" when referring to diversion intervention and further address the different criteria that one can utilise to answer those questions, such as whether the programme has a wider positive impact on the participants' lives by addressing the causes of deviant behaviour and instilling knowledge and skills that could assist them to protect themselves from potential damaging situations. This analysis was achieved by investigating the perception of child offenders with regard to the mentoring programme provided by the NYDO.

The researcher found that 69% of the participants were generally happy with the programme

so much so that they suggested that it should be delivered in schools. In addition, 46% pointed out that they saw diversion as giving them a second chance including being able to avoid being convicted. The researcher also found that aftercare programme played an equally important role in recidivism as participants pointed positive aspect regarding the provision of the programme (See section 6.4.14). The NYDO provides an aftercare programme, six months after the child offender has been out of their care. Cupido, Kritzinger and Van Aswegen (2005: 260) identified the need for some form of follow-up interaction as a means to offer further support and assistance where necessary. In accordance with the findings of this research, the mentoring programme provided at NYDO is effective. It has to be noted that in South Africa, methodologically sound studies on the recidivism rate after the conclusion of a programme or process are lacking. In addition participants have expressed views that an atmosphere of respect and mutual trust exist at NYDO.

Participants further reported that they were treated with dignity, that is, they were never judged nor labelled. In addition, the majority of participants reported that they learned that each action has consequences and they were grateful that they were not going to be sent to jail. This could mean that the stakeholders of NYDO encourage mutual understanding and respect while achieving their programme outcome. There were different concerns though, despite the fact that the programme seemed to mould their behaviour. There were other variables have already been mentioned. The participants further expressed their desire that the programme should be made available in schools so as to prevent offending and equip all children with acceptable conduct. According to theory, it is vital to tackle school risk factors which evidently put learners at a higher risk of developing deviant behaviour or be directly / or indirectly affected. It is suggested that all schools despite showing any elements of being dysfunctional should offer subjects which promotes anger management, values against violence, antisocial and aggressive behaviour (Zins, Elias & Greenberg, 2003:57).

The researcher also found that the functionality of the family plays a significant role in moulding a child's behaviour. Parents are the most important socialisation agents. Therefore, it can be deduced that primary prevention remains the primary responsibility of parents (Maree, 2008:62). According to the study findings, 80% reported that they felt their parents don't understand them and do not agree with their methods of discipline. The researcher also found that children brought up by guardians while their parents were still alive and not taking responsibility had devastating emotional impact. This caused feelings of abandonment and rejection. Open rejection and hostility can directly affect the child and ultimately produce

misbehaviour (Trojanowicz, Morash, & Schram 2001: 144). This finding further highlights the direct link of offending and weak bonds. Roelofse (2011:361) states that parent training should be aimed at educating parents on the demands and responsibilities associated with raising children.

The mentoring programme targets family members in addressing dysfunctional relationships and domestic challenges perceived to generate antisocial criminal behaviour (Belshaw, 2007:5). The NYDO facilitates workshops on parenting skills and also have a family day event that encourages and promotes functional relations. The effects were already showing as participants revealed that their relationships with their significant others show some positive changes. For example, they mentioned that they have observed the communication skills have improved, they can now express themselves without fear of being reprimanded and they also listen with understanding and exhibit a level of respect when communicating with adults. According to Bartol and Bartol (2005:246), demeaning comments results in anger and resentment.

One other variable that influences involvement in deviancy is dropping out of school or having acquired a low level of education, which limits their opportunities for a better future, thus maintaining the cycle of poverty and economic disadvantage. It also explains the high percentage of youth unemployment in South Africa.

This finding is an indication that the NYDO has achieved its mission, that is, to improve interaction while promoting bonding within the family context, reinforce positive behaviour and to nurture children. However, we need to acknowledge that we cannot only rely on organisation providing secondary prevention measure but we need to emphasise the important role that the family and the environment play in contributing on the onset of offending and on the long run success of an intervention programme. The focus of treatment is to change behaviour and maintaining the links with the child's family and broader social structure.

7.2.2 RESEARCH OBJECTIVE TWO: TO INVESTIGATE WHETHER THE MENTORING PROGRAMME IS DESIGNED TO ADDRESS THE NEEDS OF CHILD OFFENDERS

The basis of the chapter lies with investigating the extent to which the mentoring programme addresses the needs of child offenders. The rationale behind identifying these aspects was to explore the views of the child offenders in order to establish this phenomenon.

Throughout the history of child justice, criminologists and other experts involved in the field of child justice and deviancy have sought to explain why certain individuals are more prone to acting or making choices that may lead to deviancy. The number of theories for deviant behaviour has grown and progressed considerably over the years. However, most of these theories are based on Eurocentric solutions and this calls for a need for theories and solutions designed for an African child. Theories that are embedded in tackling and addressing the root cause of the culture of violence in some communities while respecting their plight and culture are needed.

The types of factors that have been used to explain child offending take a wide variety of forms. A number of writers identify the source of deviance in "interrupted" developmental patterns during childhood, whereas some are based on the emphasis of socialisation and the influence of the environment. Binder, Geis and Bruce (2001:69-70) agree that the precise meaning of "aetiology" remains complex. The basic hypothesis behind these descriptions is that all individuals develop through a number of stages. Each stage provides an integral part of the total knowledge and understanding that a person needs to function in a society (see section 2.6).

The researcher found distinct similarities with risk and needs factors found in this study and what has been explored. The risk factors that were found in this study were both static and dynamic risk factors. Static factors are those factors that do not change and are seen as more reliable indicators of future risk, such as age and health record (Andrews, Bonta & Hoge, 1990:50), whereas dynamic risk factors refer to factors that are directly associated with antisocial behaviour and this factors include employment status and income. Assessing 'risk' is very important and will assist the policy makers and all stakeholders involved on how to assist child offenders. Risk assessment has been defined as 'the process of estimating and evaluating risk, understood as the possibility of beneficial and harmful outcomes and the likelihood of their occurrence in a stated timescale' (Titterton 2005:83).

At the NYDO, the social workers and mentors establish the background of each child through consultation with the parent(s) and or guardians and where necessary they also consult with the educators so as to fully understand the dynamics in which the participants are struggling. In so doing, they will have a holistic picture of the problem at hand and try to resolve deep seated issues first, by establishing a relationship that will be conducive for the child offenders to feel free to open up and tell their story.

The focus is on discovering the meaning participants give to events, that is, the mentoring programme (Schutt 2004:278). At NYDO the social workers assess the risk of children referred to them in order to obtain a more comprehensive and deeper picture on the experience of participants'. We need to bear in mind that assessing the 'risk' is crucial in that it masks the social and problems facing offenders (Horsefield 2003: 376). When asked about who referred them to the NYDO, 76.9% reported that they were referred by the court, 15.4% referred by the social worker and one participant reported that he / or she was referred by parent(s) / or guardian. When asked about their reasons for attending the programme, the participants expressed different emotions. Three motives specified rated the same at 23.1%, which were, to take responsibility, to learn from my mistakes and to avoid criminal record, while only one participant indicated that he participated in the programme was to learn how to stop the life of crime. They further reported that expressed that when referred for diversion they were confused and did not know what diversion entailed or its content. In addition, they were under the impression that they were going to be judged and shamed.

It is very important to bear in mind that child offending is complex and multifaceted. Dealing with only the deviant behaviour of children will not necessarily have an effective impact in the long run. However, investigating the root cause of deviancy and identifying key variables that lead to child offending is quite important. Instrumental risk factors to offending among children in the Eesterus and Mamelodi area have been outlined in Chapter 6 (see section 6.5.8). According to the findings of this study, family plays a crucial role in desisting deviant behaviour. Parents who invest their time on their children are better off in the long run compared to those who are always busy or happy when the child is "out of their way". Good communication skills and consistent parenting styles, showing emotions and interest in a child's life is key to rearing well balanced children. The secondary objective is to minimise the influence by peers and the environment through monitoring and providing recreational facilities that will not draw a child into the streets.

At the NYDO, the needs of children are addressed by firstly understanding each child's life challenges, family background and influences around the child. Schoeman (1988:21) points out that 'the individual that reaches self-actualisation is a person who is content with an understanding of self and is in harmony with his or her environment. Planned tasks and activities address such needs. Mentoring intervention assists child offenders to achieve their full talents, capacities and potentials (Mittelman, 1991:151). Child offenders are also made to feel safe and their views are respected, which is vital in assisting them to be confident and

possess high self-esteem. In addition, they are assisted to rediscover themselves and have shown improved relations with their significant others. It is assumed that if a programme is addressing the needs of child offenders, it should be able to instil the necessary social skills. In addition, it should be able to improve their livelihood and attempt to reduce recidivism, then it could be taken that their needs are met.

Considering all the arguments discussed regarding the contributory factors and variables influencing deviance, expecting that interventions will be the panacea of child offending in addressing all their needs is a far-fetched philosophy. We need to bear in mind that if children grow up on a diet of violence, the results are likely to be a deviant child (The Youth Court of New Zealand 2006: Np). Nevertheless, it has been established through attendance and observation of numerous sessions at the NYDO to conclude that the programme provided is directly linked with the programme outcome that address the needs of child offenders. It has been emphasise that child offenders who participate in programmes reoffend at a lower rate than those who did not partake in intervention programmes.

7.2.3 RESEARCH OBJECTIVE THREE: TO ARTICULATE AETIOLOGY OF OFFENDING AMONG CHILDREN IN EESTERUS AND MAMELODI

The researcher has outlined instrumental risk factors linked to child offending among children residing in Eesterus and Mamelodi in Chapter 6 (see section 6.6). The following are the emerging risk factors in the mentioned areas:

Individual risk factors

The socially constructed nature of childhood needs to be widely recognised in order to fully understand the views and needs of children (Jenks, 2005:134). This has resulted in a society that is entirely undemocratic for children and young people particularly those from disadvantaged backgrounds (Giroux, 2009:187).

When individual risk factors are explored it is necessary to have an in-depth understanding of one's genetic makeup first (see section 2.3.1.1 and 2.3.1.2). The researcher found that participants were displaying variables that were generally characterised with deviancy. These risk factors were aggression, antisocial behaviour, playing truancy, lack of self-control, usage of drugs and low IQ. With regard to the low IQ, it was a small marginal of participants where the researcher established that they demonstrated poor verbal abilities. Generally, deviancy is associated with antisocial behaviour. In relation to intelligence as a risk indicator for criminal

behaviour, studies have indicated that a large proportion of offenders' IQ's are at the low end of intelligence scale (Siegel & Welsh, 2009:102). Aversion for school appears to be common among child offenders than among non-delinquents, probably as a result of poor scholastic achievement, frustration and emotional problems.

Peer pressure

It has been found that the typical peer processes that induce and prompt offending among non-chronic offenders are not aetiological risks for chronic offenders; instead having deviant peers is a consequence of this coercive process (McGloin & Stickle, 2011:421). About 30.8% of participants cited that they were influenced by their peers. This shows that it is important to explore the direct link between both peer influence and group offending. In addition, it was found that 46.2% of participants have committed shoplifting and theft. They all reported that their parent(s) and or guardians could not afford to meet their 'wants' of which some of their friends had.

It was also found that most children have low parental supervision and this was because parents and or guardians were working outside the home and were using public transport which made commuting a challenge and contributed to them arriving home late and tired. Supervision of school work and bonding with their children was made difficult by the situation in which they found themselves. Unfortunately, this challenge transcends other areas of their lives.

Family influences

Family is the most influential system in a child life. A family which is characterised by poor parenting skills, discord, poor parental supervision, parental conflict and parental aggression including harsh discipline aggravates the problem of the reinforcement of aggression and violence in the home. Poor communication and problems within the family are considered important catalysts in the behavioural problems of children (Farley, Smith & Boyle, 2003:80). The view that many factors are operative is becoming more and more prevalent in research and theory today. This finding illustrated the importance of parent child relationship as it is one vital indicator on the probability of a child being deviant. It was established that the participants were from disorganised families, those from nuclear families, and those with both parents not equally involved in their lives. They all indicated poor relationships with the significant other and that discipline meted out was inconsistent.

Of all the 13 children, they all stated that they had difficulty in communicating with their parents or guardians. Most theories dealing with child offending rarely rely on the parent-child relationship as it mostly concentrates on the type of family unit from which a deviant child comes. However, this study found that family relationships and parenting skills are directly or indirectly related to deviant behaviour (Bartollas, 2003:222). Contrary to what research has found, four children were from complete families, one living in an extended family and one from a single family household. It was also found that the method of parental control was important in rearing the child.

School performance

As with other categories of child offenders, the participants interviewed showed a low level of school performance and verbal articulation including learning disorders (Booyens, Beukman & Bezuindenhout, 2008: 32). According to some researchers, there is a direct link between IQ and child offending based on the fact that children with a lower IQ and delinquency based on the fact that children with a lower IQ are unable to manipulate abstract concepts (Siegel & Welsh, 2009:103). In addition, research has indicated that children who do not perform well at school or do not see the need of schooling are more likely to be involved in child offending. According to Bartollas (2003:263), most learners who violate school rules by example, smoking in school premises, classroom demeanour, lack of respect for their educators and fellow learners are more likely to be involved in deviant activities than those who conform to such rules. Therefore, since it has been emphasises by various researchers that behaviour is learned, educators are now more equipped with skills in dealing with such children (Cooper, Smith & Upton 1994:37). In addition, the educational model suggests that disruptive behaviour is the result of maladjustment in children and when the root cause of such instability has been identified they must be referred to relevant services (Jones 2003:147).

On the other hand, school environment can actually be conducive to the development of deviant behaviour (Trojanowicz & Monash, 2001 :176), which corroborates various recent publication by South African Newspapers and the media on the high rising levels of violence and crime in our schools. "The environment and climate necessary for effective teaching and learning is increasingly undermined by a culture of school-based violence and this has become a national concern" (Human Rights Commission 2006:1).

The researchers' observation during data collection was that some schools were situated in environments characterised by squatter camps, social deterioration and unemployment and

poverty. A climate of lawlessness and violence prevails in some of our schools where substance abuse and physical assaults are the order of the day. Violent acts perpetrated by learners in schools have a negative impact and compromise the safety of both the teachers and learners. According to Burton (2008:9), primary and secondary learners revealed that it is easy to get weapons such as knives and guns at schools. When learners are expelled or suspended from school, they are released into the community without any supervision as most parents work outside the home. This in turn, worsens the situation as these children are without structured activities and care and are now free to be involved in deviant behaviour.

According to the researcher's view, rather than allowing such children to be expelled the Department of Education with the Department of Social Development and NGO's can find ways of offering them with alternatives activities that will keep them out of the street. This can be in the form of employing educators who have specialised training in dealing with such children to teach them at "special schools", like those previously known as "stout schools". In some cases parents become aware that their child has dropped out of school after the fact and they did not support such irresponsible decision. Dropping out of school means that the child in question cannot make full contribution to the community, which is an enormous loss to the community. Dropping out of school from sheer reluctance to go to school any longer is also a form of uncontrollability and deviance. In such a situation, parental supervision and discipline probably leave much to be desired. According to the findings of this research, six children who were all under the age of 18 years dropped out of school. Of those who dropped out of school five were Coloured children and one Black. The highest attempted standard was Grade 11 and the lowest was Grade 8.

Community

To study a child's behaviour influences, we need to look not only at the child but to also consider their immediate environment, including their interaction with the larger environment as well (Paquette & Ryan 2001:1). At the earliest commencement of this study, the researcher familiarised herself with the community in both Eesterus and Mamelodi and observed that most parts of both communities were disorganised and that unemployment was rife. Children from these communities are exposed to violence and lawlessness on a daily basis. Some of the participants are residing in informal settlements where infrastructure is non-existent. Weakened social control makes it easier to commit crime (Glanz, 1996:6). They grow up in abject poverty and with no hope of a bright future, where survival of the fittest is the order of

the day. They are forced to grow up way too quickly without the tools of assuming such responsibilities.

7.2.4 RESEARCH OBJECTIVE FOUR : TO EXAMINE AND IDENTIFY THE FACTORS NECESSARY FOR A BEST POSSIBLE PRACTICE IN EESTERUS AND MAMELODI

Themes were drafted to be administered to a sample of participants. The researcher thought because the centre does not have many participants referred to the NYDO, this method will encourage the participants to influence each other in participating. Data results were analysed by the researcher and an independent coder. The researcher interpreted the analysed data and the findings will be discussed in the next section.

One of the aims of the study is to examine the necessary factors for a best possible practice approach. The researcher found that such effects are brought about by numerous variables. For the purpose of this study, the following variables were identified to have possible key elements that could be perceived to influence the desired change in the participants' behaviour and lives. These include the following:

- Improved interpersonal relationships through learned communication skills;

- Strengthened relationships between the parents/ guardians and the child offenders;
- Instilling good morals, values and norms;
- An increased self-awareness and self-love;
- Instilling a sense of accountability and reduced shift of blame;
- Programme which is appropriate in facilitating change in the attitude and behaviour of participants;
- Strengthened skills for self-control;
- Produce programmes that have both the elements of learning and play; and
- Stakeholders that are willing to liaise with other experts in different fields in the quest of achieving the programme outcomes.

In addition, a programme aimed at emphasising the importance of education, setting of goals and shifting the mind-set. 'Best practices' are viewed as programmes that are theoretically and empirically proven to produce the expected outcome of a programme and where there are established relationship between the mentor and mentees (Miller 2002:3). Mentors need to come up with innovative methods which are enjoyable and aimed at treating developmental features that are problematic (DuBois, Neville, Parra & Puch-Lilly, 2002:54).

Little empirical research has been conducted in South Africa evaluating the effects of mentoring programmes in different institutions. Therefore, research investigating the extent to which these programmes are beneficial for the child offenders and if so, under what conditions are positive effects more likely to occur. The most extensive study of what constitute best practice in child mentoring was conducted by DuBois, Holloway, Valentine and Cooper (2000: 187) where a meta-analysis of evaluations of 55 mentoring programmes from 1970-1988 has been conducted. They examined a theory based and empirically based indices of best practice that were associated with increased impact. They found that mentoring of child offenders was to an extent effective. Perhaps researchers should start shifting the paradigm and investigate best practices from an angle of "what does not work as opposed to what works". The researcher found the following methods as best practice possible that works at the NYDO:

- Monitoring of programme implementation;
- Supervision and constant guidance by social workers;
- Training workshops offered to mentors;
- Screening and assessments of child offenders at referral stage;
- Programme orientation for both the child offender, parent(s) and or guardian(s);
- Structured activities for mentors and child offenders;
- Taking the needs of individual child into consideration;
- Involvement of parent(s) and or guardians in the diversion processes;
- Keeping attendance records of child offenders;
- Consistency with home visits;
- Ending of the mentoring relationship is handled carefully taking into account the children's vulnerability afterwards; and
- Internal monitoring mechanism that use the national benchmark to improve the quality of operations and the outcomes.

In this study, it was found that matching did not have any impact in the programme outcome. Sipe (1996:11) concurs with these findings and suggests that matching is the "least critical element" of best practice in mentoring programme. The researcher also found that matching by gender does not correlate strongly with the programme outcomes. However, it was found that ethnic group played a critical element in the programme outcome. The usage of different home languages might pose as a barrier in terms of communication and expressing oneself.

Above all, the findings of this study highlight the importance of the relationship closeness within the mentor/mentee relationship in the context of diversion intervention. Such healthy relationship enriches the programme outcome.

7.2.5 RESEARCH OBJECTIVE FIVE: TO DETERMINE A METHODOLOGY FOR ASSESSING THE EFFECTIVENESS OF A MENTORING PROGRAMME

The aim of this objective is to assess if the NYDO's mentoring programme is in compliance with the developed Minimum Outcome Standards and to explore what the results imply for the stakeholders. The question remains whether diversion is effective in curbing recidivism in the long run. The findings in Chapter 6 have brought positive feedback from the participants and parents or guardians. As discussed in various section of the study, the standards and accreditation policy were developed to guarantee best practices for diversion and programmes provided nationwide. It is expected that they should deliver the expected results, that is, to curb recidivism, change the deviant behaviour and reinforce good morals and values, encourage and rehabilitate. Nonetheless, to expect miracles from these programmes is also unreasonable and unrealistic because there are multiple factors that contribute to child offending. To expect that a programme can tackle all the issues that child offenders have in a short space of time is shifting the blame to programme providers should any of the children reoffend. Based on the above argument, more research needs to be conducted on this issue. Applied research aims to contribute practical issues of problem-solving, decision-making, policy analysis and community development in order to assist decision-makers in drawing suppositions about the problems with which they are grappling (Terre Blanche, Durrheim & Painter 2006:45). A local research based on the evaluation on the effectiveness of a diversion revealed some traits similar to findings in this study. The research profile of participants was as follows: Males aged 15-17 years, first time offenders and charged with property crimes. These offenders were found to be residing with their parents and were still attending school (Muntingh, 2001:48). The compliance rate for all programmes was found to be above 80%. In comparison with the findings of this research, 85% of the participants are males while 15% are females. In addition, 46.2% of child offenders were raised in a complete family, 38.5% in extended families while 15.4% were from single parent families (see section 6.1.7). In terms of educational level they were in high school. However, 46% had already dropped out of school and the youngest being 15 years of age. Of the 13 participants 38, 5% were charged for possession of illegal drugs. The similarities between both findings are the age of arrest. Both findings further show the importance and need for current research on programmes that are

effective.

FIGURE 6: NYDO: Mentoring Programme Methodology

Programme methodology	Number of sessions attended
Group session	13
Individual & group work	15
Holiday programme	4 days a week (depending on the duration of school holidays)+- 12 weeks
Individual session	12 (4 times in a month)
Life skills	10
Aftercare Programme	3 (3 times for three months, excluding phone calls)
Overall total number of the session attended : +- 65 sessions	

(Source: NYDO)

The methodology of NYDO programme is linked to the aim and content of the programme outcome. Life skills such as positive expression of feelings, anger management, communication skills, decision making and team work are vital in modifying deviant behaviour (Wood, 2003:14). The aim is to empower child offenders by ensuring that they are able to take control of their own lives (Mbambo, 2005:80; Van Eden, 1997:50). Minimum standards place emphasis on ensuring properly designed programmes which objectives, activities and targeted behaviour changes are clearly defined (Dawes & van der Merwe, 2004:5). According to the findings, the participants stated that probation officers explained the main objectives of being diverted and that also during the orientation all the processes, procedures and objectives and intention of diversion were thoroughly explained.

The NYDO has holiday programmes which are fun and outdoor-oriented. Their holiday programme includes, camping, hiking, soccer and other sports activities. Interactive learning

promotes self-awareness, self-sufficiency and increased self-esteem. The programmes aim to engage child offenders in problem solving activities either through an adventure-based experiential outdoor intervention model or vocational skills. Schmalleger (1996:119) is of the opinion that no particular rehabilitation programme can be professed to have reduced recidivism. This view is debatable and can only be proved to be a fact by means of current empirical evidence. The need to understand the participants' perception and view regarding the programme is crucial in assessing whether the international instrument governing the child justice system and the South African Child Justice Act have been observed and adhered to.

According to Liese (2002:16), an effective and practical strategy for preventing child offending would be to offer programmes aimed at reinforcing and internalising positive individual traits such as discipline, respect, accountability as well as providing life skills. Primarily, programmes must mobilize or at least be congruent with efforts of families, peer groups and communities. Research has shown that a programme that offers a feasible alternative to the retributive approach by avoiding the negative impact of incarceration and labelling has proved to be also a more cost-effective option (Holman & Ziedenberg, 2006:2) (see section 2.6.5). Although formal evaluations have not been implemented, mentoring programme at NYDO appears to be making a difference in the lives of many young people

7.2.6 RESEARCH OBJECTIVE SIX: TO CONDUCT A COMPARATIVE ANALYSIS OF THE IMPLEMENTATION OF THE CHILD JUSTICE ACT GUIDED BY THE INTERNATIONAL INSTRUMENTS

Child offending is a global problem. Recognising the prevalence of this problem, the United Nations decided to address the issue by bringing forth a Convention that targeted children's rights. The United Nations Convention on the Rights of Children is one of the main international instruments which aim at protecting the rights of children. An overview of the Child Justice Act system was outlined in Chapter 3 of the study and different existing international standards which are relevant to the treatment of child offenders were also discussed. Because the United Nations Convention on the Rights of Children is internationally binding, the researcher aimed to establish and compare practices in countries such as Botswana, Kenya, Canada and Netherlands. All these countries are channelled by the same Convention and a set of guiding principles which frame the paradigm in which processes and procedures are to be applied.

The aim of this objective was to examine if these countries were in compliance and to

establish the best practices. In general, the researcher found that Africa in was still lacking behind, particularly Botswana. In Botswana, the Children's Court has the power to hear and determine cases against child offenders who are between the age of 14 and 18 years. However, there is no mention of children below the age of 14 years. What is also interesting is that the researcher could only identify one school of industries which only catered for hundred child offenders at a time. Nevertheless, it is reported that it caters for children who are between the ages of eight and 18 years. In addition, the researcher found that there is no diversionary option for community service and corporal punishment is still practiced. Botswana has recognised and acknowledged the fact that lack of interventions for child offenders is a serious legislative oversight that needs to be addressed.

On the other hand, Kenya has progressed and has passed a new Bill governing children's rights. It has amended the age of criminal capacity which now states that children under the age of eight lacked criminal capacity and has included diversion measures. However, the researcher could not corroborate the report as there was no information on the type of diversion programmes they provided. With regard to the age of criminal capacity, Kenya has proved to be the leading African country between Botswana and South Africa. The researcher also struggled to ascertain child offending statistics. These further shows that African counties need to unite and find solutions of child offending and share responsive measures to this endemic.

The researcher also looked at international practices. Firstly, with Canada was found that their youth justice system was depended on the province / territory of where the child offender is residing and their Act also covers the prosecution of children who are between the ages of 12 and 17 years. The Act's focus is mainly on reintegrating the child offender back into the community. Their diversion methodology follows a risk/need/ responsivity approach (RNR) and is based on needs and risks basis. The interesting part of their Act was that the police officers have the discretion to either divert or charge the child offender. This procedure is totally different from all the countries already mentioned in the text. It was reported that evaluation on the effectiveness of their diversion programmes were successful in reducing recidivism, but statistics were not readily obtainable.

In the Netherlands with the new law adopted in 2014, the term 'youth' applies to young people up to 25 years of age. It has been established that because the preceding youth care system was faced with many challenges, including lack of transparency which was influenced by

having several different services and organisations. The new Youth Act has decentralised all forms of youth care from state level to municipal level. The Act applies to children aged between 12 and 17 years of age. This Act also acknowledges the child offender and parent(s) / guardians opinions on the quality and care provided to them. The Act further provides for prosecution of children who are between 16 and 17 years of age who have been involved in serious matters such as murder, which means they could be subjected to adult law. Children as young as nine and 12 years of age are held in custody.

The other pitfall is that alternatives to incarceration are not nationally available and they only have two programmes for the purposes of diversion. Against this background, Netherlands needs to review their policies when it comes to the guidelines and principles governing the treatment of child offenders as they are violating and contravening the United Nations Convention for the Rights of Children's rules, principles and guidelines. Another matter that needs attention is the universal practice regarding the "acceptable" duration of programmes. We acknowledge that the exclusion of other countries and their practices may have resulted to failure to recognise other 'proven methods' in dealing with child offenders. The researcher observed that in all the four nations examined, there was no mention on the role of after care programmes and its objective. This could be the result of using different methodologies in the study which indirectly influences the results What is needed is a comprehensive report that includes information regarding different settings, how these intervention programmes are implemented and any other factor(s) that might influence the results. This simply means process evaluation is equally important as outcome evaluation (Lab 2004:15).

The researcher believes that this review makes a ground breaking contribution to the field. The study challenges African researchers and policymakers to stringently assess the strength of the available evidence so as to chart clear direction for future research. In addition, the study shares ideas that could enhance the knowledge base which could ultimately result in Africanised diversion programmes entrenched in the Ubuntu principle. It is very encouraging that South Africa is continuing the trend in African countries that are looking to reform their child justice laws.

7.2.7 RESEARCH OBJECTIVE SEVEN : TO EVALUATE THE ROLE OF THE MENTOR AT THE NYDO

A mentor is a driving force behind the goal and objective of a programme outcome. Mentors are seen to provide child offenders with "personal connectedness, supervision and guidance,

skill training, career or cultural enrichment opportunities" (Peterson 2012:69). Standard 08 of the Minimum Standards of Programme Outcome stipulates that programmes should be stimulating and interesting. The researcher had an opportunity to attend sessions where mentors were facilitating the programme and found that NYDO was in compliance with the standard. Moreover, the researcher observed that their presentation method was not only focused on theory or teaching based but were focused on the active participation of participants. They used different methods like activities with an element of play or by giving them scenarios or tasks that were relevant to their deviant behaviour. According to the findings, the NYDO complied with standard 09 and 10. The findings of the study revealed that participants were given an opportunity of laying house rules and agreed on the consequences of failure to comply. In this way, participants felt that they were part of decision making and understood that they must abide by the agreed rules and failure to adhere resulted in consequences. This process was done in an interesting manner and each child had the voice in drafting the "programme constitution".

The mentors play a vital role as criminal justice agents by ensuring that they have an attendance register, which is important in monitoring compliance on the part of child offenders. This includes their ability to assess if a child is eligible to be exempted from having a criminal record. The NYDO mentors are not only concentrating on the child offender, but family members are also roped in and they are assisted with different needs, such as providing food parcels to families in need. At the completion of the programme and having complied with all the diversion terms, the mentor and the social worker prepare a report that will be furnished at the courts. Participants reported that being accompanied to court by their mentors have a calming effect on them. Because participants are informed from the beginning that the mentor / mentee relationship will come to conclusion when they have complied with the diversion order, it has no negative impact. Some participants reported that the fact that they offer aftercare programme puts them at ease, especially those that feel they are still vulnerable. In addition, participants revealed that to an extent aftercare programmes have a preventative measure. The researcher probed participants and they revealed that they would not want to disappoint their mentors by returning to a life of crime.

A mentor plays an important role as they are the main support system of children referred for a mentoring programme by ensuring that they gain much needed life skills (Potts, 2005:4). Findings of this study highlight the importance of the relationship that a mentor creates with child offenders. The quality of the relationship has a potential of affecting the programme

outcomes significantly. The researcher found that mentors at the NYDO focus on the basic developmental needs of child offenders with the aim of ensuring that they mature responsibly and are skilled to be able to avoid negative behavioural influences and become more resilient in the face of inevitable setbacks.

Child offenders are exposed to different recreational and cultural activities in order to improve their social skills by teaching acceptable values and morals. It has been revealed that learning occurs through four modes of experiential learning, namely; concrete experience abilities, reflective observation abilities, abstract conceptualisation abilities and active experimental abilities (Kolb, 1984:30). Group activities and individual tasks provide child offenders with opportunities to reflect on their learning experiences because experiential learning is a process of relearning (Kolb, 1984:31). The tasks and activities given to participants are arranged in such a way that specific learning outcomes are achieved. Behavioural theorists argue that deviant behaviour is controlled by its consequences. In directly dealing with deviant behaviour, behavioural rehabilitation attempts to change a person's long-established patterns of response to self and others (Reid, 2006:105). From what has been explained, the researcher defines an effective programme as a programme that is able to link treatment with intensive efforts to strengthen family and community ties. Research on a clear method of measuring perceptions is necessary so that all stakeholders involved are using the same instruments and therefore such findings will be valid.

Mentors at the NYDO facilitate parental skills sessions and home visits to ensure that parents afford their children all the necessary support needed to assist the mentors with changing the deviant behaviour by encouraging an environment that is conducive to attain one of their programmes' outcomes. Many studies have emphasised the need and importance of a family in the upbringing of a child. For instance, Arthur (2006:8) points out that parents who have performed their parental duties unsatisfactorily contribute to child offending.

It is also important to understand the personal background of individuals in order to explain deviant behaviour. With this background in mind, mentors are able to assist those from abject poverty circumstances. They provide participants with food parcels when possible.

Mentors at the NYDO also offer aftercare programme which runs for a period of three months. However, in special cases they accommodate child offenders and their families for a longer period up until such time they are satisfied and confident that such a child has rehabilitated. According to Smith (2010:4), the duration of diversion programme can range from 20 to 300

hours depending on the behavioural outcomes to be achieved. Based on the findings in Chapter 6, the researcher argues that time frame is not a deciding factor in the success of a programme but rather the quality of the programme and character of the mentors.

Participants have pointed out that their fears when diverted were to be labelled and judged by their mentors. It has been proven that stereotyping and labelling of child offenders by the community has a negative impact on the child offenders. Hence, mentors at the NYDO are skilled and trained in order to be able to exercise a certain level of respect and sensitivity when dealing with children. Findings of this study also shed some light on the debate on whether mentoring as an intervention is effective in changing deviant behaviour and curbing recidivism. This study emphasises the multifaceted and ever expanding effects that mentoring can have on child offenders. The results of the study revealed a high level of programme outcomes minimum standards compliance.

7.2.8 RESEARCH OBJECTIVE EIGHT: TO MAKE RECOMMENDATIONS BASED ON THE FINDINGS, WITH REGARD TO BETTER APPROACHES OF IMPLEMENTING MENTORING PROGRAMME TO CHILD OFFENDERS

In response to the findings, the researcher makes the following recommendations to the NYDO:

- High risk child offenders should not be placed in the same programme as low risk offenders;
- The NYDO should structure a specific programme for each individual child to meet their risks and needs;
- Children who display psychological or mental tendencies that are not 'normal' should be referred for observation; and
- The NYDO should be in partnership with schools around their area and advocate on behalf of the child offenders to find ways to integrate them back into the school system. This process will serve as a primary prevention strategy.

7.3 RESEARCH CONCLUSIONS

Findings from the study acknowledge the value of the Child Justice Act 75 of 2008, but at the same time operational challenges National Youth Development Outreach service providers identified. From the evidence of this study, it is possible to reach conclusions. These

challenges and implications relate to the following areas that emerged during the evaluation of the findings of the study:

- Mentoring intervention is considered to be an effective programme in assessing child offender's deviant behaviour;

- Mentoring programmes that target the significant other in addressing dysfunctional relationship and domestic challenges have a higher chance of succeeding;

- Programmes with treatment agents who relate to clients in interpersonally warm, flexible and enthusiastic. It was found that during the research process that it was particularly successful to child offenders who were willing to take the opportunity offered as their participation resulted in them not receiving a criminal record and consequently not being labelled as criminals;

- Programmes focussing on rites of passage should be developed for children who are twelve years of age onwards for the purposes of guiding them into adulthood;

- Good companions have a positive socializing influence but bad companions can play a socially deviant role;

- Inadequate leisure facilities at home or in the neighbourhood can send child offenders onto the streets;

- Regular drug testing should be done at schools to detect any substance abuse and to address the problem at an early age. The abuse of substance blunts moral sense and cause further deviancy;

- An analysis of child offending according to race reveals that Coloureds have the greatest proportionate share in crime. However, it could be explained by the demographics of the NYDO;

- The share of girls in deviancy is minimal in comparison with that of boys, though criminality among girls is probably higher than statistics indicate. It could be assumed that the difference between the genders have a significant influence on behaviour;

- The effect of neglect even in its early stages should not be underestimated. The earlier the signs of neglect can be discerned in the child, the easier to deal with developmental problems. However, it needs to be noted that neglect does not cause deviant behaviour but it may result in an attitude to life that predisposes the child to deviant behaviour;

- Poor attendance at school can be related to poor academic achievement. To sum up, contributory factors and causes relating to this study are as follows: little interest in school work; failures at school and lack of interest from parents in child's school work;

- Bad companions, idleness and participation in unhealthy leisure activities;

- Encourage an atmosphere that is conducive for rearing a child is imperative in reducing chances of deviancy;

- Empowering child offenders in their family and community environments might be one effective way of controlling deviant behaviour that is labelled as delinquent;

- It is imperative to provide child offenders and their significant other with manuals that explain the objectives and aims of diversion in their home languages;

- Consideration should be taken into account when dealing with participants who are introverts and gradually introduce them to focus groups;

- Instrumental risk factors emanating from this study have been identified (see section 6.5.8); and

- The availability of evaluations of programmes in various NGOs in South Africa and beyond the borders is imperative in enhancing the quality of programmes.

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

7.4 RECOMMENDATIONS

The value of any research project is contained in the recommendations or proposals that are advocated by the researcher. Those recommendations must be packaged in such a way that they show the new information enhance value to the advancement of knowledge and is in line with what was discussed in Chapter 1. Recommendations to the Department of Social Development and Programme developers:

- Programme developers should not only consult international literature, but also must consider our own findings in order to be better informed in dealing with our unique challenges when dealing with child offending;

- It is recommended that the Department of Social Development should look into providing psychological services to child offenders that have been identified as in need of such services in order to inform and advise the social workers and programme facilitators on how best to deal with each case;

- Recommend that the school should also be involved in the quest of rehabilitating the child and work hand in hand with the NGOs For instance, the researcher found that there were two children who were diagnosed with learning disorder and they can inform the programme providers on how to handle children with special needs;

- Home visits should be carried out with all child offenders in the programme; and
- There is a need for concerted efforts to train all stakeholders involved in the administration of the Child Justice System.

7.5 LIMITATIONS TO THE STUDY

The following indicate limitations of this study, especially during the data gathering stage:

- This study involved one service provider, which is the National Youth Development Outreach Centre in the Tshwane Metropolitan area which delivers a mentoring programme to children in conflict with the law who were referred by the courts. This means that the findings of the study are contextualised to children who have offended in this area only, namely; Eesterus and Mamelodi only. In addition, not all programmes were evaluated, which in the researcher's opinion is an essential element in understanding what is effective or not in the attempt of altering deviant behaviour;
- This study was unable to examine the needs of child offenders from a broader psychological and mental health approach. This remains a gap in the possible range of activities and interventions to facilitate child offending. The various language competencies, age and educational levels presented a major challenge;
- A small sample of participants was used based on the number of referrals the organisation had at the time of data collection;
- Limited local evidence on the impact of a mentoring programme;
- It was a mission to have consent forms signed by parent(s) / guardians as most of them didn't honour appointments; and
- The organisation postponing the time period agreed on collecting data.

7.6 SUGGESTIONS FOR FURTHER RESEARCH

Various avenues for future research exist and these are referred below. It is recommended that further research on the following themes be conducted:

- The life experiences of children in conflict with the law;
- The impact of learning disability on deviant behaviour;
- Techniques or assessment tools be established for assisting educators with the prediction of deviant behaviour in schools;

- On how to maximise relationship of a mentor and child offender; and
- The mass media's influence, effect and probable relationship with the behaviour and misconduct of children.

In addition, it is recommended that

- Continued awareness about the Child Justice Act 75 of 2008 should be encouraged, particularly in schools and communities. This will in turn strengthen the effective implementation of the Act, including informing communities on the complex problems faced by many children so that a certain level of understanding of the phenomenon is achieved (Golson & Muncie, 2006: 211).

7.7 CONCLUSION

The objective of this final chapter was to provide a summary of the research questions that have guided this study. Answers to these questions were provided with varying degrees of success. Many new research questions in the field of child justice and diversion will arise that will serve to initiate further research studies in future.

Investigating the effects on offenders is extremely difficult. Not only are the characteristics of the offenders and consequently of the possible effects very diverse, but it is also difficult to determine in measurable variables the aims of the intervention. Prevention of recidivism seems the easiest measure, but a reliable confirmation is very difficult and is often not sufficient to register the side effects. The study was embedded in the labelling theory, which emphasises the importance of not labelling or stigmatising child offenders and affording them a second chance in life. The said programme is successful as a diversion option for those participants who attended and fully participated in it.

In conclusion, the NYDO has achieved their goals which include, reaching out to young offenders, empowering child offenders with life skills, improving the relationships of child offenders with their parents / guardians, empowering parent with parenting skills and above all, giving the child offenders second chances in life. However, we must acknowledge the fact that the new legislation governing child offenders will not be effective if various predisposing risks are not dealt with accordingly including the influence that disorganised neighbourhoods and families have on the antisocial behaviour of children. In addition, the role of aftercare must not be underrated. After care services are vital mechanisms of monitoring progress as well as identifying other predisposing factors with which the child might be battling.

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30 November 2013

TO WHOM IT MAY CONCERN

Dear Sir/Madam

RESEARCH PROJECT: MENTORING PROGRAMME AS A DIVERSION INTERVENTION FOR CHILD OFFENDERS: A CASE STUDY OF NATIONAL DEVELOPMENT OUTREACH CENTRE IN THE TSHWANE REGION

Mrs Moitsadi Zitha is a registered student for a Master's degree (MA) at the University of South Africa in the Department of Criminology and Security Science. The title of the research project is" mentoring programme as a diversion intervention for child offenders: A case study of National Development Outreach Centre in the Tshwane Region.

Very little empirical evidence exists as to what type of interventions work in the South African context and which programmes work best for particular profiles of young offenders. Restorative justice and diversion have been practiced for two decades in this country, little local work exists regarding its theoretical groundwork, such as, whether it meets individual needs (clients and victims) and no research has been conducted to

explore the potential of particular strategies to effectively meet the objectives of diversion and restorative justice.

For the purpose of this study data will be gathered by the following methods:

- Observation.

- Interviewing.

The purpose of research study includes the following:

- Improvement of existing theory.

- Determine the reasons for offending.

- To identify whether offender and case-specific indicators intercede with the diversion program and affect recidivism.

- To explore what has been reported on the problems hampering the effectiveness of programmes offered, which includes the dire shortage of victim support centres, shelters and special courts with trained personnel and appropriate facilities (Kruger:2004).

- To investigate whether the programmes are designed and implemented in such a way that they address the needs and capacities of the individual children in the group, as well as the group as a whole, to explore whether factors such as, age of the child offender, gender, educational background, and language, risk and needs factors. etc, are considered.

Ethical Considerations that need to be considered are as follows:

The research community has long recognized the importance of respecting the right of research participants. The researcher will ensure that she adheres to the following ethical considerations:

- Protect the well-being of participants and maintain the integrity of the NYDO organization.

- The research will be based on anonymity of participants and confidentiality will be maintained.

- Obtaining informed consent from participants and explaining to them about their right to choose not to participate at any given time.

Benefits to the NYDO:

- Improvement of existing theory

- The researcher is willing to undergo any training related towards the rehabilitation of the NYDO clients

- Researcher is willing to assist with criminogenic risk / needs assessment of young offenders (profiling)

- Any other communicated need that the organization will like the researcher to participate in or assist with.

- The researcher has a driver's license, should a need arise where she has to assist the mentors / clients in anyway, she will avail herself.

The researcher's supervisor (Dr. T. D Matshaba) will ensure that the researcher adheres to the ethics or any other agreement should permission be granted.

Research information plays a very important role for decisions affecting our criminal justice system. Your allowing your clients who are involved in the mentoring programme to participate in this study will add immense value to the above research project. Thus, I will highly appreciate if you could grant me permission in the collection of data in order to be able to complete my Master's studies. The researcher is also willing to contribute in any way that the organization will see fit with regard to assisting with the rehabilitation of the young offenders.

Your cooperation would be much appreciated.

Should you wish to verify anything you can contact Ms Zitha's research supervisor, **Dr. T. D Matshaba** (School of Criminal Justice: Department of Correctional Management) email address: Dmatshab@unisa.ac.za.

Mrs Zitha's contact details are as follows: e-mail: zitham@unisa.ac.za.

Thank you
Yours sincerely

Moitsadi Zitha

ANNEXURE B: ETHICAL CLEARANCE

Dear Ms M Zitha
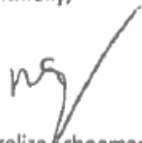
ETHICAL CLEARANCE APPLICATION: SUPPORT INTERVENTIONS FOR YOUTH OFFENDERS AT THE NATIONAL YOUTH DEVELOPMENT OUTREACH CENTRE IN THE TSHWANE REGION

Thank you for the application for research ethics clearance by the College of Law Research Ethics Review Committee for the above mentioned research project. The ethical clearance application for the above mentioned research project has been approved.

The proposed research may now commence with the proviso that:

1) *The researcher/s will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics, which can be found at the following website: http://www.unisa.ac.za/cmsys/staff/contents/departments/res_policies/docs/Policy_Research%20Ethics_rev%20app%20Council_22.06.2012.pdf*

2) *Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study, as well as changes in the methodology, should be communicated in writing to the Chair of the College of Law's Research Ethics Review Committee. An amended application could be requested if there are substantial changes from the existing proposal, especially if those changes affect any of the study-related risks for the research participants.*

3) *The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study.*

Yours Faithfully,

Prof Marelize Schoeman
Chairperson Research Ethics Review Committee
College of Law

Prof S Songca
Executive Dean
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Open Rubric

Open Rubric

ANNEXURE C: CONSENT FORM

Researcher: Mrs M Zitha

Title of study: Mentoring programme as a diversion intervention for child offenders: A case study of the National Youth Development Outreach Centre in the Tshwane Region.

Purpose of study:

The aim of the study is to evaluate the effectiveness of the diversion programme and its impact on recidivism on those offenders diverted from criminal justice system. Evaluation research tracks the efficiency of social programmes in terms of human and social development. In South Africa, diversion has been practiced for over two decades but, to date there are insufficient studies examining its effectiveness. Despite numerous investigations, mixed results characterize the impact of mentoring intervention with children in conflict with the law. Research endeavors should not only determine whether mentoring programme works, but should investigate under which circumstances' and for which profile of child offender the strategy works best. In addition, to investigate the perception of participants regarding the mentoring programme.

Procedures:

The researcher will be conducting unstructured interviews and field notes. Before the interview or during the opening of the discussion the purpose of the research will be communicated to participants, and what is hoped to be achieved with the information. The interviews will be recorded with the consent of the participants and, parents / guardians. The interviews will not be restricted to a time frame; but the researcher will be considerate not to overwhelm the participants.

Risks and discomfort:

The researcher will take necessary precautions including ensuring that social workers or programme facilitators at the National Youth Development Outreach will debrief participants in case of need. The respondent will be given an opportunity to voice their discomfort during the interviews. However, efforts to minimise such will be made.

Benefits:

Crime does not only affect the victim, but also the family and the community. The role and involvement of parents / guardians in particular could have a profound effect on the

children's lives. This questionnaire hopes to paint a picture of the challenges that young people face and can lead to self-reflection, programme design and policy making. It is an opportunity to ensure that the participants' voices are heard and to bring certain opinions and social needs to the attention of stakeholders responsible for policy making.

Respondent's rights:

Participation in the study is voluntary and participants have the right to withdraw from participating in the study. All information will be treated with confidentiality and anonymity is assured. The intention of this research is not to involve other people in observation. Data will be stored in a safe place. The researcher and her study supervisor are the only individuals who will have access to raw data from interviews and field notes, thus ensuring complete confidentiality.

Right of access to researcher:

Participants', parents / guardians should feel free to contact the researcher in connection with the study.

Researchers contact details are as follows:

Office Number: 012 433 9487

Mobile Number: 074 5899 794

Email address: zitham@unisa.ac.za

Please note that all the information collected will be **ANONYMOUS** and kept completely **CONFIDENTIAL**.

CONSENT FORM

Agreement

I ……………………………………………… (Name of parent(s) / guardian)

And …………………………………………… (Name of young person) hereby consent to:

- Responding to questionnaires or to an interview being conducted between Moitsadi Zitha, who is a Master of Criminology student at the University of South Africa, and the afore mentioned people (young person and parent / guardian)

- We understand that the interview involves asking the participants about particular details of current and past criminal behaviour.

- We understand that all information provided will remain confidential between the researcher and the participants and that privacy of participants will be protected by not disclosing their names.

- We understand that participation in the study is voluntary and participants will not receive any compensation for taking part in this study. The objectives of the study have been clearly explained to us.

We also understand that:

- we are free to end our involvement or cancel our consent to participate in the research at any time should we wish to;
- Information rendered up to the point of our termination of participation can, however, still be used by the researcher;
- Anonymity is guaranteed by the researcher and data will under no circumstances be reported in such a way as to reveal the participants identity.
- No reimbursement will be made by the researcher for information rendered or for any participation in this project; and
- By signing this agreement, we undertake to give honest answers to reasonable questions and not to mislead the researcher.

We acknowledge that the researcher:

- Discussed the aims and objectives of this research project:
- Informed us about the contents of this agreement; and
- Explained the implications of signing the agreement.

-

In co-signing this agreement, the researcher undertakes to:

- Maintain confidentiality, anonymity and privacy regarding the identity of the subject and information rendered by myself, the respondent.

I (the researcher)…………………………………………………. certify that I explained the contents of the above.

Date: …………………………...

Signature of parent / guardian: ……………………………Date………………...

Signature of young person: ……………………………...Date……………..

Signature of researcher: ….. ……………………………..Date……………..

THANK YOU FOR ALLOWING YOUR CHILD TO PARTICIPATE IN THIS STUDY!

ANNEXURE D: STRUCTURED INTERVIEW SCHEDULE

QUESTIONNAIRE SURVEY

RESEARCH PROJECT:

> *Instructions:*
> *Please use an ink pen for your responses. You do not need to identify yourself and, similarly, the researcher will uphold anonymity in that there will be no possibility of any respondent being identified or linked in any way in the research findings in the final research report. Please answer all of the following questions as honestly as possible. Where required please indicate your answer with a cross (X) in the appropriate box or write a response in the space provided.*

SECTION A

PARTICIPANTS DEMOGRAPHIC INFORMATION

1.   Gender

Male	
Female	

2.   Age

13-14	14-15	15-16	17+

3.   Ethnic group

Black	White	Coloured	Indian	Other

4.   Educational level in Grade

Grade 6	
Grade 7	
Grade 8	
Grade 9	
Grade 10	
Grade 11	
Grade 12	

5.   Home language

Afrikaans	

English	
Sesotho	
Setswana	
Sepedi	
SiSwati	
Tshivhenda	
Xitsonga	
isiNdebele	
isiXhosa	
isiZulu	

6.   Family type description

Incomplete family	Single parent family	Extended family	Complete family

7.   Place of resident

With own parents	With relative	On the street	Other (please specify)

8.   Offences committed

Assault with intent to inflict bodily harm	
Common assault	
Illegal possession of drugs	
Theft	
Shoplifting	
Burglary at residential premises	
Illegal possession of firearm and ammunition	
Driving under the influence of alcohol	
Other (please specify)	

SECTION B

INTERACTION WITH THE CRIMINAL OR CHILD JUSTICE SYSTEM

1.   Do you have previous criminal offences?

Yes	No

If yes, please indicate the type of crime:………………………………………………………..

2.   Have you questioned by the police or arrested before the age of 12

Yes	No

3.   If you saw someone committing a crime, such as stealing a cell phone from another person, will you report it to the police?

Yes	No

If yes, explain:…………………………………………………………………………………

4.   Have you ever done something that your parents, teachers or friends have warned you against, but you still did?

Yes	No

If yes, explain: ………………………………………………………………………………….

5.   Have you been placed under the supervision of a probation officer before?

Yes	No

If yes, elaborate: ………………………………………………………………………………...

SECTION C

PARTICIPANTS PERCEPTION ON BEING REFERRRED TO MENTORING AS DIVERSION INTERVENTION PROGRAMME

1.   By who were you referred to NYDO?

Referred by the court	
Referred by the police	
Referred by the social worker	
Referred by the teachers	
Referred by my parents/guardian	

2.   The intention for you to attend mentoring programme is (choose one option from below statements).

To avoid criminal record	
To take the responsibility of my own action	
To empower myself	
To learn from my mistakes	
To learn how to stop the life of crime	
To learn how to stop substance abuse	

To make my parents/guardian happy	

SECTION D

ASSESSMENT OF THE IMPACT OF THE PROGRAMME

1. Do your parent(s) / guardian support you in attending the diversion programme?
   _____
   _____
   _____
   _____

2. Is the orientation on the programme clear?
   _____
   _____
   _____
   _____

3. How did you feel about the mentoring programme when it was first introduced to you?
   _____
   _____
   _____
   _____

4. Do you feel the programme holds participants responsible for their actions?
   _____
   _____
   _____
   _____

5. About what level or frequency of contact do your mentors and other participants usually have with each other?

Two or more times a week	
Once a week	
Two or three times a month	
Less than once a month	

6. Have you been tempted to participate in any deviant behaviour while attending the sessions? If yes, how did you handle the situation?

_____
_____
_____
_____

7. How has NYDO provided you with skills to protect yourself?

_____
_____
_____
_____

8. Do you feel comfortable to share your experiences in a group?

_____
_____
_____
_____

9. How do you describe the atmosphere amongst the NYDO participants?

_____
_____
_____
_____

10. Is the diversion programme helping you to achieve your potential? Explain

_____
_____
_____
_____

11. How long have you attended the programme?

_____
_____
_____
_____
_____
_____

12. What do you feel have been the main strength or achievements of the programme to date?

_____
_____
_____
_____

13. What do you feel have been the main weakness or limitations of the programme to date?

_____
_____

_____
_____

14. Do you think the aftercare programme is necessary?
_____
_____
_____
_____

15. Do you think that the overall mentoring programme is an effective approach for
dealing with various issues that participants are faced with?
_____
_____
_____
_____

16. What benefits do you think there are in participating in the mentoring programme?
_____
_____
_____
_____

17. Do the programme activities address the factors directly associated with
offending?
_____
_____
_____
_____

18. Generally, would you describe the programme as successful or unsuccessful
explain why?
_____
_____
_____
_____

19. How do you think this programme can be improved?
_____
_____
_____
_____

20. Is there anything else you would like to add about your experience in the
programme?
_____
_____
_____
_____

THE ROLE OF THE MENTOR

21. Do the mentors clearly state the programme objectives?

_____
_____
_____
_____

22. Does the manner I which the programme is facilitated encourage active participation?

_____
_____
_____
_____

23. How does the mentor handle those who show lack of interest in participating?

_____
_____
_____
_____

24. Do you feel free to communicate with your mentor?

_____
_____
_____
_____

25. How would you describe your relationship with your mentors?

_____
_____
_____
_____

26. What kind of activities do your mentors and other participants do together?

_____
_____
_____
_____

27. What brings the mentor/ mentee relationship to an end?

_____
_____
_____
_____

28. Would you recommend the programme to your friends if they were in the same position?

_____
_____
_____
_____

29. How many sessions do you have to attend?

_____
_____
_____
_____

30. What kind of activities do your mentors and other participants do together?

_____
_____
_____
_____

31. What brings the mentor/ mentee relationship to an end?

_____
_____
_____
_____

32. How do you feel about the termination of the relationship?

_____
_____
_____
_____

THANK YOU FOR YOUR PARTICIPATION!

ANNEXURE E: LIST OF ABBREVIATIONS

ACRWC - African Charter on the Rights and Welfare of the Child

Beijin Rules – United Nations Standard Minimum rules on the Administration Juvenile Justice

CJA – Child Justice Act

CRC – Convention on the Rights of the Child

EJM – Extrajudicial Measures

EJS – Extrajudicial Sanctions

HALT – A body organising out-of-court settlements offered by the Public Prosecution Service to juvenile offenders involving community service or educational tasks

IQ – Intelligence quotient

LD – Learning disorder

NGO – Nongovernmental Organization

NICRO – National Institute for Crime Prevention and Reintegration of Offenders

NJCA – Youth Criminal Justice Act

YOA – Youth Offender Act

NYDO – National Youth Development Outreach Centre

OCYDP – Ottawa community youth diversion programme

OPF – Open Society Foundation

PTCS- Pre-trial Community Service

RNR – Risk/ need / responsivity

SANCA- South African National Council on Alcoholism

UNCRC – United Nations Convention on the Rights of the Child

YES – Youth Empowerment Scheme

EDITING AND PROOFREADING CERTIFICATE

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24 June 2016

TO WHOM IT MAY CONCERN

This letter serves to confirm that I have edited and proofread Mrs. M. Zitha's dissertation entitled: **"MENTORING PROGRAMME AS A DIVERSION INTERVENTION FOR CHILD OFFENDERS: A CASE STUDY OF NATIONAL DEVELOPMENT OUTREACH CENTRE IN THE TSHWANE REGION."**

I found the work easy and enjoyable to read. Much of my editing basically dealt with obstructionist technical aspects of language which could have otherwise compromised smooth reading as well as the sense of the information being conveyed. I hope that the work will be found to be of an acceptable standard. I am a member of Professional Editors Group and also a Language Editor at Bureau of Market Research at the University of South Africa.

Hereunder are my particulars:

Jack Chokwe (Mr)

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Professional
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Guild