

**THE APPLICATION OF THE CHILD CARE ACT IN RESPECT  
OF THE ASSESSMENT AND SENTENCING OF  
JUVENILE OFFENDERS**

**BY**

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## **DECLARATION**

I, the undersigned, hereby declare that the work contained in this thesis is my own original work and that I have not previously in its entirety nor in part submitted it at any University for a degree.



## ABSTRACT

This study is concerned with children and youths in conflict with the law, who are additionally at risk of becoming or being in need of care. The study eventuated from concern for neglected children and youths from poor, disadvantaged and violent communities in the Western Cape Province, who inevitably lapsed into crime.

Child and youth care, including juvenile justice, in South Africa is presently in a process of transformation, managed by the inter-ministerial committee on young people at risk. As an outcome of the transformation of the juvenile justice system, assessment centres were established at juvenile courts. Probation officers were appointed in terms of the Probation Services Act (Act 116 of 1991) to assess arrested children and youths before their first court appearance in view of a suitable awaiting trial placement and possible diversion of the criminal case. The researcher investigated how arrested children and youths, being in need of care, are managed within the criminal justice system.

The research study showed that in spite of the implementation of policies and legislation to protect children and youths from detention in prison, the number of children and youths in prisons awaiting trial have steadily increased. A continuous shortage of vacancies in awaiting trial places of safety exists. It has further been established that professionals such as magistrates, prosecutors and probation officers recognize the needs of arrested children and youths who are additionally at risk of being or becoming in need of care. Factors such as the existing lack of vacancies in awaiting trial places of safety however result in children and youths not being protected in terms of care in all instances. The research study also indicated that arrested children and youths who are current subjects of the Child Care Act (Act 74 of 1983) as amended are often not effectively managed within the criminal justice system. A lack of sufficient knowledge of the said Child Care Act by especially prosecutors appears to be a contributing factor.

A comprehensive criminal justice system for children and youths in South Africa is being envisaged, as contained in the draft Bill (Bill B), which will enable individualized but holistic services in respect of children and youths in conflict with the law. The role and tasks of probation officers carrying out assessments have as such become a key element in the management of arrested children and youths, as contained in the draft Bill (Bill B). Probation officers therefore play a significant role in advising the court regarding the appropriate management of arrested children and youths who are at risk of becoming or being in need of care.



## **OPSOMMING**

Hierdie studie het betrekking op kinders en jeudiges in botsing met die gereg, wat bykomend in gevaar is om sorgbehoewend te raak of sorgbehoewend is. Die studie het voortgevloei uit besorgdheid oor verwaarloosde kinders en jeudiges van arm, agtergeblewe en gewelddadige gemeenskappe in die Wes-Kaap Provinsie, wie noodwendig in misdaad verval het.

Kinder- en jeugsorg, insluitend jeugreg in Suid-Afrika is tans in 'n proses van transformasie, wat deur die inter-ministeriële komitee vir jong persone in gevaar, bestuur word. As 'n uitkoms van die transformasie van die jeugregsisteem, is assesseringsentrums by jeughowe tot stand gebring. Proefbeamptes is in terme van die Wet op Proefdienste (Wet 116 van 1991) aangestel om gearresterde kinders en jeudiges te assesseer voor hulle eerste hofverskyning in die lig van 'n geskikte aanhouding terwyl verhoofafwagting en moontlike afwending van die kriminele saak. Die navorser het ondersoek ingestel na die wyse waarop gearresterde kinders en jeudiges wat sorgbehoewend is, binne die kriminele jeugregstelsel hanteer word.

Die navorsingstudie het getoon dat ten spyte van die implementering van beleid en wetgewing om kinders en jeudiges van aanhouding in gevangenis te beskerm, die hoeveelheid kinders en jeudiges verhoofafwagting in gevangenis voortdurend toegeneem het. 'n Deurlopende tekort aan vakatures in plekke van veiligheid kom voor. Dit is verder vasgestel dat die behoeftes van gearresterde kinders en jeudiges wat bykomend in gevaar is om sorgbehoewend te raak of sorgbehoewend is, deur professionele persone soos landdroste, aanklaers en proefbeamptes erken word. Faktore soos die bestaande tekort aan vakatures in plekke van veiligheid veroorsaak egter dat kinders en jeudiges nie ten alle tye beskerm word nie. Die navorsingstudie het ook aangedui dat gearresterde kinders en jeudiges wat steeds onderhewig is aan die Wet op Kindersorg (Wet 74 van 1983) soos gewysig dikwels nie doeltreffend binne die kriminele jeugregsisteem hanteer word nie. Gebrek aan voldoende kennis van die genoemde Wet op Kindersorg deur veral aanklaers, blyk 'n bydraende faktor te wees.

'n Omvattende kriminele jeugregsisteem vir kinders en jeugdige in Suid-Afrika word beoog, soos vervat in die konsep Wetsontwerp (Wetsontwerp B), wat die geleentheid vir individuele maar holistiese dienste ten opsigte van kinders en jeugdige in botsing met die gereg sal bied. Die rol en take van proefbeamptes wat assesserings uitvoer het as sulks 'n sleutel element geword in die hantering van gearresterde kinders en jeugdige, soos vervat in die konsep Wetsontwerp (Wetsontwerp B). Proefbeamptes speel gevolglik 'n belangwekkende rol ten einde die hof te adviseer oor die gepaste hantering van gearresterde kinders en jeugdige wat in gevaar is om sorgbehoewend te raak of sorgbehoewend is.

THIS STUDY IS DEDICATED TO MY CHILDREN  
MIA AND NANINE GILDENHUYS



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## **CHAPTER 1**

### **INTRODUCTION**

#### **1.1 MOTIVATION FOR THE STUDY**

This study is concerned with juvenile offenders who are additionally at risk of being removed from their homes, or have already been dealt with in terms of the Child Care Act (Act 74 of 1983). Motivation for the study eventuated from concern for neglected youths from poor, disadvantaged and violent communities in the Western Province, who inevitably lapsed into crime. In order to prevent recidivism, optimal management by professionals employed by the courts is required.

The assessment centre at Cape Town juvenile court was established during 1995 as an outcome of the transformation of the juvenile justice system in South Africa. Legislation to prevent the holding of awaiting trial children in police cells and prisons was concurrently amended by the Government of National Unity which came into power in 1994. The Correctional Services Amendment Act, (Act 17 of 1994), to amend Section 29 of the Correctional Services Act was promulgated on 8 May 1995. Probation officers were appointed in terms of the Probation Services Act, (Act 116 of 1991), to assess arrested children regarding suitable awaiting trial placement as well as decision making in respect of diversion of the criminal proceedings.

An inter-ministerial committee on young people at risk was established to manage the process of crisis intervention and transformation of the child and youth care system over a time-limited period. According to the inter-ministerial committee on young people at risk, child and youth care are concerned with those children who are at risk of removal from their homes and those who have already been removed from their homes, to various facilities which offer care and protection, education and treatment or secure accommodation and detention (IMC Draft: Discussion Document 1996:17). This includes both children in need of care and children in conflict with the law.



The researcher has been employed as a probation officer at the Cape Town juvenile court since January 1997. She previously worked in the child care field for a period of six years, which included the position of canalisation officer during 1994 at the Provincial Administration Western Cape (PAWC) Social Services, Cape Town. Duties as canalization officer comprised of canalization of court reports to the commissioner of child welfare as well as an administrative function regarding the extension of Section 16 – orders in terms of the Child Act, (Act 74 of 1983).

During the period the researcher has been assessing juveniles, certain tendencies and related problems have emerged. Approximately 20% of children being assessed at the juvenile court, Cape Town, are street children. Although a large number of these children have already been dealt with in terms of child care legislation, orders are not carried into effect, due to the children's nomadic lifestyle, resulting in ineffective service rendering.

Children and youths committing offences in the magisterial district of Cape Town often originate from poor, disadvantaged and violent communities of the Cape Peninsula, warranting further investigation in terms of the Child Care Act, (Act 74 of 1983). According to Siegel and Senna (1981:248), negative family environments and experiences contribute to delinquent behaviour of children, chiefly because the family is the primary unit in which children learn the values, attitudes and processes that guide their actions throughout their lives. Tshiwula (1995: 52. 19) and Zigler, Kagan and Hall (1996: 312) agree that the family represents the primary agent for the socialization of children. They both support the ecological viewpoint that families form part of a large system of social institutions by which they are influenced.

A further established factor influencing delinquency is poor school performance. Wilson and Herrnstein (1985: 266) state that virtually every inquiry has concluded that children and youths who have difficulty in school, such as low achievement levels and poor behaviour, are much more likely to become delinquents and criminals than other children. Siegel and Senna (1981: 221) confirm that numerous studies have corroborated the fact that delinquents and non-delinquents differ in academic achievement. According to them, researchers indicate that delinquent behaviour is more closely related to a poor school record than to minority or low socio-economic status. Delinquent behaviour is further affected by IQ-ability through its effect on



school performance. Savitz and Johnson (1978: 324) confirm the well-established assertion that delinquents have lower IQ's than non-delinquents. With respect to poor behaviour, it has been concluded that students, who violate school regulations in matters such as smoking, truancy, tardiness, classroom behaviour and respect for authority, are far more inclined to become delinquent than students who follow rules. These factors also reflect on a child or student's inability to fit into an orderly-regulated pattern of life (Siegel and Senna, 1981: 233 & 234). Preventative social work services often fail to address behaviour problems.

The Criminal Procedure Act (Act 51 of 1977), makes provision in terms of Section 71 for a child in custody for any offence to be placed in a place of safety as defined in Section 1 of the Child Act (Act 74 of 1983) pending his further appearance before a court.

A criminal court may in terms of Section 254 of the Criminal Procedure Act (Act 51 of 1977) stop a trial and refer a child under the age of eighteen years, upon any charge, to a children's court regarding an investigation in terms of Section 13, 14 and 15 of the Child Care Act (Act 74 of 1983) if it appears to the court that he is a child as referred to in Section 14 (4) of that Act and it is desirable to deal with him in terms of that Act.

Section 290 (1) (a), (b), (c) and (d) of the Criminal Procedure Act (Act 51 of 1977) provide for sentencing options for a child under the age of eighteen years in terms of placement under the supervision of a probation officer, to be placed in custody of a suitable person or order that he be sent to a reform school as defined in Section 1 of the Child Care Act (Act 74 of 1983).

In practice, however, there are no clear guidelines regarding the application of the Child Care Act (Act 74 of 1983) in respect of the assessment and sentencing of juvenile offenders. In general practice the aforementioned Act is consequently being applied at random by magistrates, prosecutors and probation officers. No consistency for instance appears to exist regarding issues such as:

- the number of cases which can be considered for conversion in respect of a particular youth;
- the seriousness of an offence;



- at which stage of the criminal proceedings conversion should be considered;
- the management of children already dealt with in terms of the Child Care Act;
- which cases should be converted and which withdrawn;
- in which instances the criminal and child care procedures should proceed independently.

As a result of the ineffective and inappropriate application of the Child Care Act (1983) in the assessment and sentencing of juvenile offenders, problems related to delinquency are not adequately addressed in order to prevent recidivism. As in South Africa, the Netherlands and Germany distinguish between the treatment of children involved in crime and those in need of care, with a strong emphasis on education and support for diversion. The critics view are supported that complete exclusion of criminal responsibility, which are practiced in Scotland, is not in accordance with the ideal to grant children more independence and responsibility (De Villiers, 1988: 561, 562). In the USA a more punitive approach is followed, where unmanageable and ungovernable children can as status offenders be taken into police custody, can be given a trial or hearing before a juvenile court judge and be placed in custodial care (Tshiwula, 1995: 17). It appears that both criminal and child care procedures are necessary to deal effectively with youths at risk and should be fully utilized.

## **1.2 THE AIM OF THE RESEARCH STUDY**

The aim of the research study is to present guidelines for the effective application of the Child Care Act (Act 74 of 1983) in respect of the assessment and sentencing of juvenile offenders.

To achieve the aforementioned aim the following objectives are formulated:

- to describe and discuss the context and framework for transformation of the child and youth care system, including the juvenile justice system;
- to present a profile of youths at risk;
- to discuss present and proposed legislation pertaining to the assessment and sentencing of juvenile offenders;
- to describe the assessment process in social work;
- to investigate the application of the Child Care Act (Act 74 of 1983) in the assessment and sentencing of juvenile offenders, and



- to identify relevant social and juridical criteria which can guide the effective application of the Child Care Act (Act 74 of 1983) in respect of juvenile offenders.

### **1.3 DEMARCATION OF FIELD OF RESEARCH**

Demarcation of the field of research is necessary in order to ensure feasibility of the study. The study focuses on children under the age of 18 years entering the juvenile justice system who are additionally at risk of being removed from their homes in terms of the Child Care Act (Act 74 of 1983) or who have already been dealt with in terms of child care legislation. The field of research is therefore demarcated to the child and youth care service field and specifically the juvenile justice service field, which serves as point of departure for the study. In order to make the field of research accessible to the researcher, as well as cost-effective, the field of research is further demarcated in terms of area to magisterial districts in the Cape Peninsula where juvenile courts and assessment centres are in operation. This includes the magisterial districts of Cape Town, Wynberg, Simon's Town, Athlone, Mitchell's Plain, Goodwood, Bellville, Kuils River and Somerset-West. The selected magisterial districts further ensure a representative study.

### **1.4 RESEARCH METHODOLOGY**

The research methodology entailed both a literature and empirical study.

#### **1.4.1 Literature study**

Yegidis and Weinbach (1991: 48) define the purpose of a literature review or study to provide a basis and background for the research study. According to them the literature review or study serves to put the researcher's current efforts into perspective in relation to previous research on the topic and in view of advancing existing knowledge. The literature study undertaken firstly involved obtaining information regarding the context and framework within which the child and youth care services and specifically juvenile justice services are to be rendered. Social work perspectives and theories, policy documents and draft interim policy reports from social services and related fields such as justice and education were studied in this regard. Secondly, a thorough study was made of present and proposed criminal legislation pertaining to juvenile offenders as well as relevant childcare legislation. Social work literature was lastly examined in obtaining information regarding the assessment process in social work.



In accordance with Schutt (1996: 39) the literature study was carried out through a bibliographic computerized search conducted by the J.S. Gericke Library of the University of Stellenbosch. Literature such as policy documents, draft interim policy reports, relevant Acts and statistical reports were obtained from the PAWC Social Services Head Office and Cape Town Service Office, the Department of Education Western Cape and the SAPS Western Cape Youth Desk.

#### **1.4.2 Empirical study**

The research study firstly entails the assessment and sentencing of juvenile offenders. The establishment of assessment centres at juvenile courts are a new development, which forms part of the transformation of the juvenile justice system. The study further involves the application of the Child Care Act (Act 74 of 1983) in respect of the assessment and sentencing of juvenile offenders. This subject of study is relatively new and unstudied. In accordance with Grinnell & Williams (1990: 150) and Rubin & Babbie (1993: 107) an exploratory research study was therefore undertaken.

The population of the research study consisted of three groups of respondents who were in accordance with Yegidis and Weinbach (1991: 145) selected on the grounds of specific characteristics. The first group of respondents consisted of magistrates employed by the Department of Justice at magistrates' courts in the Cape Peninsula, who have experience in juvenile courts. The second group of respondents comprised of senior prosecutors or prosecutors designated to authorize diversions in respect of juvenile offenders, employed by the Department of Justice at magistrates courts in the Cape Peninsula. The third groups of respondents included probation officers or social workers employed by the Provincial Administration Western Cape Social Services, who render day- or after-hour services at assessment centres attached to juvenile courts in the Cape Peninsula. In respect of the first and second groups of respondents the whole population were included in the research study, namely 20 magistrates and 15 prosecutors. In respect of the third group of respondents, it was not necessary to include the whole population. The method of purposive sampling was used to select a representative sample of 30 respondents from a population of 47 respondents (Grinnell & Williams, 1990:126). Probation



officers or social workers with the most experience in carrying out assessments were selected in correspondence with their respective unit managers.

The research study was carried out by means of self-administered questionnaires, according to Rubin and Babbie (1993: 335) one of the main methods of administering survey research. Permission to carry out the survey was obtained from Heads of Office of the magistrates' courts and PAWC Social Service offices included in the survey. The questionnaires were hand delivered to Heads of Office of the relevant magistrates courts and social service offices for distribution to the respondents in question. The self-administered questionnaires were again collected from the Heads of Office concerned, after completion by the respondents. Both quantitative and qualitative data were included in the questionnaires. Tripoli, Trellin & Meyer (1983: 37) state that types of data included in exploratory studies may both be quantitative and qualitative. According to Grinnell Jr. (1988: 185) quantitative data attempt to count and correlate phenomena and qualitative data seek the essential nature or character of phenomena. This study attempted to seek answers in respect of how frequently procedures are carried out, as well as what motivates the use of specific procedures. In this regard, closed and open-ended questions were included in the questionnaire. Open-ended questions were specifically included so that the researcher could form an idea of the range of knowledge and feelings of respondents as proposed by Schutt (1996: 280).

#### **1.4.3 Procedure of data processing**

The research study further included the manual processing of the collected data by the researcher. The corresponding number of responses to closed questions by the three groups of respondents were separately noted. Responses on open-ended questions by the respective groups of respondents were separately listed and categorized. The data were hereafter analyzed and compared in order to obtain the most general opinion or feedback. The findings were also related to existing theory. Tables and figures were used to illustrate the frequency distribution of data and findings. The findings were finally applied to formulate guidelines for practice purposes.

### **1.5 DESIGN OF THE INVESTIGATION**

This research report is divided into six (6) chapters:



- The first chapter provides an outline of the motivation for the study and the methodology of research undertaken.
- Chapter 2 discusses the status and profile of youths at risk in the Western Province. The chapter endeavours to describe the context and framework within which child and youth care services, including juvenile justice services are to be rendered. A profile of youths at risk are presented in view of their management and position in terms of arrest and detention. The position at childcare facilities providing care and protection or care and education within the child and youth care system are examined.
- Chapter 3 includes a discussion of criminal and child care legislation in respect of youths at risk. The chapter attempts to provide the necessary knowledge in order to enable the effective administration and application of criminal and relevant child care legislation in the assessment and sentencing of juvenile offenders.
- In chapter 4 assessment in social work is discussed in view of the purpose of assessment, assessment as stage or process and the skills, knowledge and guidelines necessary to carry out assessments. The use of risk- and needs assessment instruments in juvenile justice and child welfare are further examined.
- The empirical data is presented in chapter 5. The data obtained are introduced, processed, analyzed and compared with existing literature.
- Conclusions and recommendations are dealt with in chapter 6.

## **CHAPTER 2**

### **THE STATUS AND PROFILE OF YOUTHS AT RISK IN THE WESTERN CAPE PROVINCE**

#### **2.1 INTRODUCTION**

The well-being of children depends on the ability of families to function effectively. South African families have, however, been particularly affected by the social, economic and political policies of the past, the inequitable distribution of resources, social changes, migration patterns, the growing subculture of violence and changes in the traditional roles of women and men (White Paper for Social Welfare, 1997: 8). These factors have resulted in large numbers of homeless, abandoned and neglected children no longer being adequately protected by their caregivers and communities. This further caused large numbers of children awaiting trial in prisons, and resulted in a residential child and youth care system inaccessible to the majority of children and youths in the country (IMC Draft: Discussion Document, 1996: 7).

During May 1995, a year after the Government of National Unity came into power, an inter-ministerial committee on young people at risk was established to manage the transformation of the child and youth care system in South Africa. Child and youth care in South Africa are especially concerned with those children who are at risk of removal from their homes and those who have already been removed from their homes, to various facilities which offer care and protection, education and treatment or secure accommodation and detention (IMC Draft: Discussion Document, 1996: 8, 17).

In order for probation officers and social workers involved in child and youth care to assist youths at risk effectively, it is necessary to have an understanding of who these children are, what their environmental circumstances are, as well as the context within which probation and social work services will be rendered. In this chapter the aforementioned issues will be studied and discussed with special reference to the position in the Western Province.

#### **2.2 DESCRIPTION OF YOUTHS AT RISK**



Youths at risk is defined through and embodied in legislation. It includes both children in conflict with the law and those in need of care and protection, and implies statutory processes in terms of the Criminal Procedure Act (Act 51 of 1977), the Probation Services Act (Act 116 of 1991), the Correctional Services Act (Act 8 of 1959) and the Child Care Act (Act 74 of 1983) (IMC Draft: Discussion Document: 21).

In South Africa a child or youth in conflict with the law, either being accused or convicted, who is under the age of 18 years, is referred to as a juvenile offender. Criminal procedure and law of evidence applicable to children becoming involved in crime is in principle the same as those applicable to adult offenders. The following sections of the Criminal Procedure Act (Act 51 of 1977) name children specifically and provide differentiated treatment for children:

- Sections 71 and 72 (1) (b) refer to specific treatment in the presentence phase;
- Sections 73 (3), 74, 153 (3) and (4), 154 (3) and 164 are aimed at the trial phase;
- Sections 286 (2) (a), 290, 291 and 297 refer to the sentence phase;
- Section 254 enables diversion; and
- Section 337 provides for estimation of age (De Villiers, 1998: 531 & 532).

The aforementioned Sections of the Criminal Procedure Act (Act 51 of 1977) recognize the minority status of children, in that an awaiting trial juvenile offender can be detained in a place of safety as defined by the Child Care Act (Act 74 of 1983) or under the supervision of a probation or correctional officer, as a safety measure.

The aforementioned sections of the Criminal Procedure Act (Act 51 of 1977) further provide for the assistance by parents or guardians during the court process. The identity of the juvenile offender is protected by conducting the court proceedings in camera and prohibiting the publications of the accused's identity. A youth is protected from taking the oath if he or she is ignorant and unable to understand the nature of the oath. Specific alternative sentence options exist in respect of juvenile offenders. They can, as in the pre-trial phase, be placed under the supervision of a probation officer and alternatively be referred to a reform school. In view of children in need of care, the criminal proceedings can be stopped and converted to a children's court inquiry.



Legislation regarding the detention of awaiting trial juveniles is included in Section 29 of the Correctional Services Act (Act 8 of 1959) as amended, and specifies conditions of placement in police cells, awaiting trial places of safety and prisons. In view of protecting the rights of a child, a juvenile offender is only to be detained as a measure of last resort and for the shortest period possible. The Correctional Services Act (Act 8 of 1959) as amended, requires that a juvenile offender be brought before a court within 24 hours after arrest. Thereafter a juvenile offender can only be detained in a prison for a period not exceeding 14 days at a time, provided that he or she is charged with a serious offence as stipulated in Schedule 2 of the Act, that no place of safety is available and if it is considered to be in the interest of justice.

In view of establishing a comprehensive criminal justice system for children and youths in South Africa the draft Bill, referred to as Bill B is being proposed by the South African Law Commission. The Bill is contained in the Report on Juvenile Justice. In addition to present legislation it endeavours to encompass children's rights, appropriate and individual treatment of children and youths, as well as accountability. (Juvenile Justice Report, 2000: X, XI). (Legislation in respect of youths at risk will be fully discussed in Chapter III of this study.)

Section 10 – 16 of the Child Care Act (Act 74 of 1983) as amended, provide legislation regarding the protection of children pertaining to maintenance of children detained apart from parents, removal to places of safety, children's court inquiries and investigations, powers of children's courts after inquiry and duration of orders under section 15. Section 14 (4) of the Act determine the criteria indicating a child to be in need of care in that the child:

- “(i) has been abandoned or is without visible means of support;
- (ii) displays behaviour which cannot be controlled by his or her parents or the person in whose custody he or she is;
- (iii) lives in circumstances likely to cause or conduce to his or her seduction, abduction or sexual exploitation;
- (iv) lives in or is exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;
- (v) is in a state of physical or mental neglect;



- (vi) has been physically, emotionally or sexually abused or ill-treated by his or her parents or guardian or the person in whose custody he or she is; or is being maintained in contravention of section 10.”

The aforementioned legislation has to be viewed and applied within the framework of the child and youth care system as identified by the inter-ministerial committee on young people at risk and within the broader South African welfare system. The process of the transformation of the child and youth care system will subsequently be discussed.

## **2.3 PROCESS OF TRANSFORMATION OF CHILD AND YOUTH CARE**

### **2.3.1 Introduction**

An inter-ministerial committee on young people at risk were appointed during 1995, as sanctioned by the South African cabinet. The aim of the committee was to manage the transformation of the child and youth care system. Research and investigation pertaining to residential care facilities, places of safety, schools of industries and reform schools, indicated a need for transformation. General conditions and standards of care in facilities visited fell short of standards set by the United Nations instruments, as well as the South African constitution. Problems identified related to issues such as inequality, lack of respect for privacy and human dignity, breaches in terms of freedom and security, slow integration, lack of developmental programmes and inappropriate placements (IMC: Discussion Document: 1996: 8, 9, 11 & 12).

Child and youth care are consequently concerned with those children who are at risk from removal from their homes and those who have already been removed from their homes to various facilities, offering care and protection, education and treatment, or secure accommodation and detention (IMC: Discussion Document: 1996: 17).

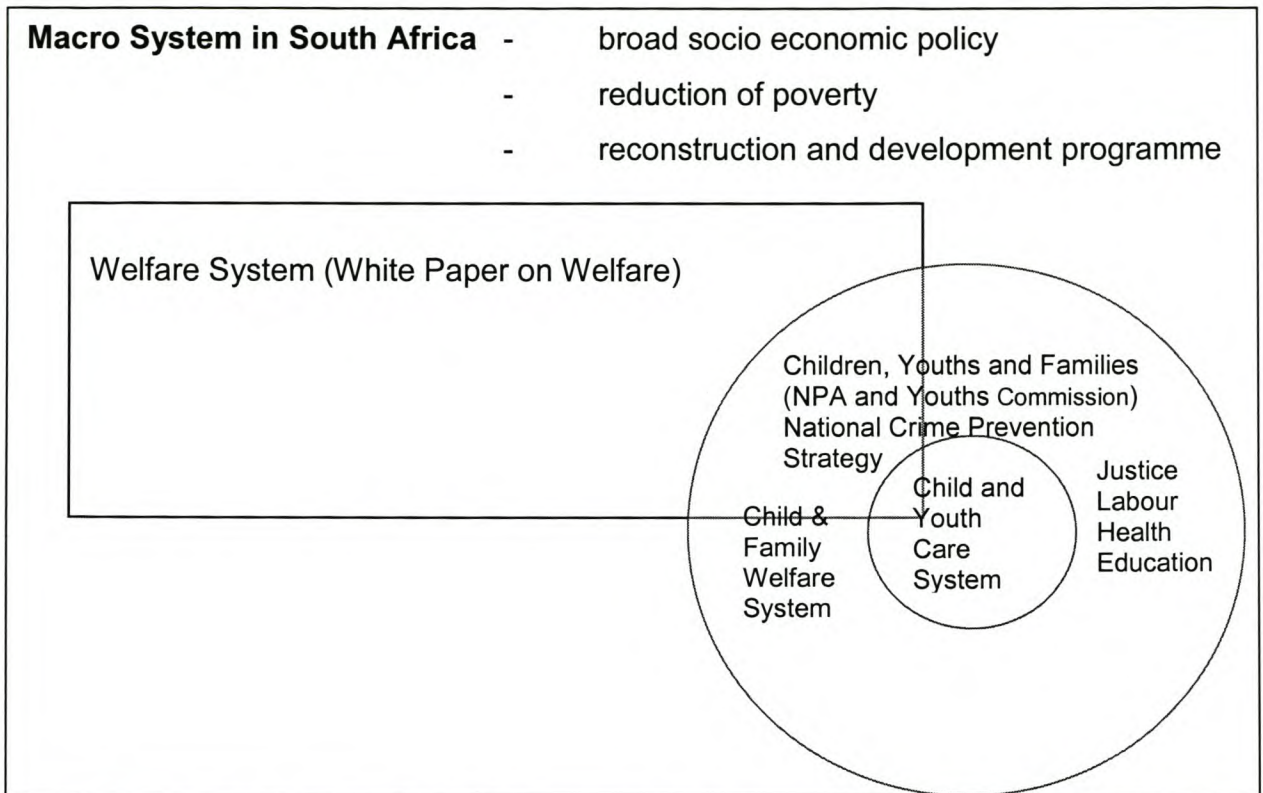
### **2.3.2 Context of the Child and youth care system**

In South Africa the fundamentals for a just society are embodied in the constitution of the Republic of South Africa (1996: 774). The constitution determines equality, human dignity, a right to life and freedom for all people. It prescribes the right of

every child to family or parental care, basic nutrition and shelter, protection from exploitation, not to be detained except as a measure of last resort and the right to legal representation. A child's best interests are to be regarded of paramount importance in every matter concerning the child.

The child and youth care system as identified by the inter-ministerial committee on young people at risk therefore has to operate within the context of the macro systems in South Africa as well as fulfill the goals of the national development social welfare strategy as stipulated in the White Paper for Social Welfare (1997). Macro systems in South Africa relate to broad socio-economic policy, the reduction of poverty, and the Reconstruction and Development Programme (1993). National systems or programmes include programmes which serve children youths and families, such as the National Plan of Action for Children, the Youth Commission, the transformation of the criminal justice system, the National Crime Prevention strategy and the changes taking place in education. (IMC: Discussion Document: 1996: 18). Figure 2.1 demonstrate the context of the child and youth care system as presented by the inter-ministerial committee on young people at risk.





**Figure 2.1** Context of the child and youth care system.

(IMC: Discussion Document : 1996)

Within the abovementioned context the White Paper for Social Welfare (1997: 15) sets the following goals for the national development social welfare strategy:

- “- to facilitate the provision of appropriate developmental social welfare services to all South Africans, especially those living in poverty, those who are vulnerable and those who have special needs;
- to promote and strengthen partnership between government, the community and organizations in civil society and the private sector who are involved with the delivery of social services;
- to promote social development intrasectorally both within the welfare departments and in collaboration with other government departments and non-governmental stakeholders;

- to give effect to those international conventions of the United Nations system which have been ratified by the government and which are pertinent to developmental social welfare;
- to realize the relevant objectives of the constitution of the Republic of South Africa and the reconstruction of development program.”

In accordance with the abovementioned goals, the inter-ministerial committee on young people at risk view the key to transformation of the child and youth care system to move away from a medical model, which focuses on weaknesses, categorizing, labeling, helping and caring, towards a developmental and ecological perspective which focuses on competency building and residential environments which empower children, families and communities (IMC Draft: Discussion Document: 1997: 37).

In order to implement the transformation of the child and youth care system, it is necessary to have an understanding of both the developmental and ecological perspectives. According to Midgley (1995: 25 – 28) social development is the most inclusive of all approaches for promoting social welfare today. He defines social development as:

“a process of planned social change designed to promote the well-being of the population as a whole in conjunction with a dynamic process of economic development”.

Social development is also characterized by an interdisciplinary focus, which draws insights from various social schemes and specifically addresses values, beliefs and ideologies. Gray (1998: 32) agrees that social development incorporates political, economic and cultural changes as part of a deliberate action to transform society. Sewpaul (1997: 4) emphasizes empowerment and a people-centred approach to sustainable development. Midgley (1995: 28) states that although social development is concerned with specific groups who are neglected by economic growth or excluded from development, its concern for the ecological viewpoint focus on human needs or problems brought about by transactions between people and



their environment. It provides the field of social work with a specific aim to influence environments in order to promote growth and development.

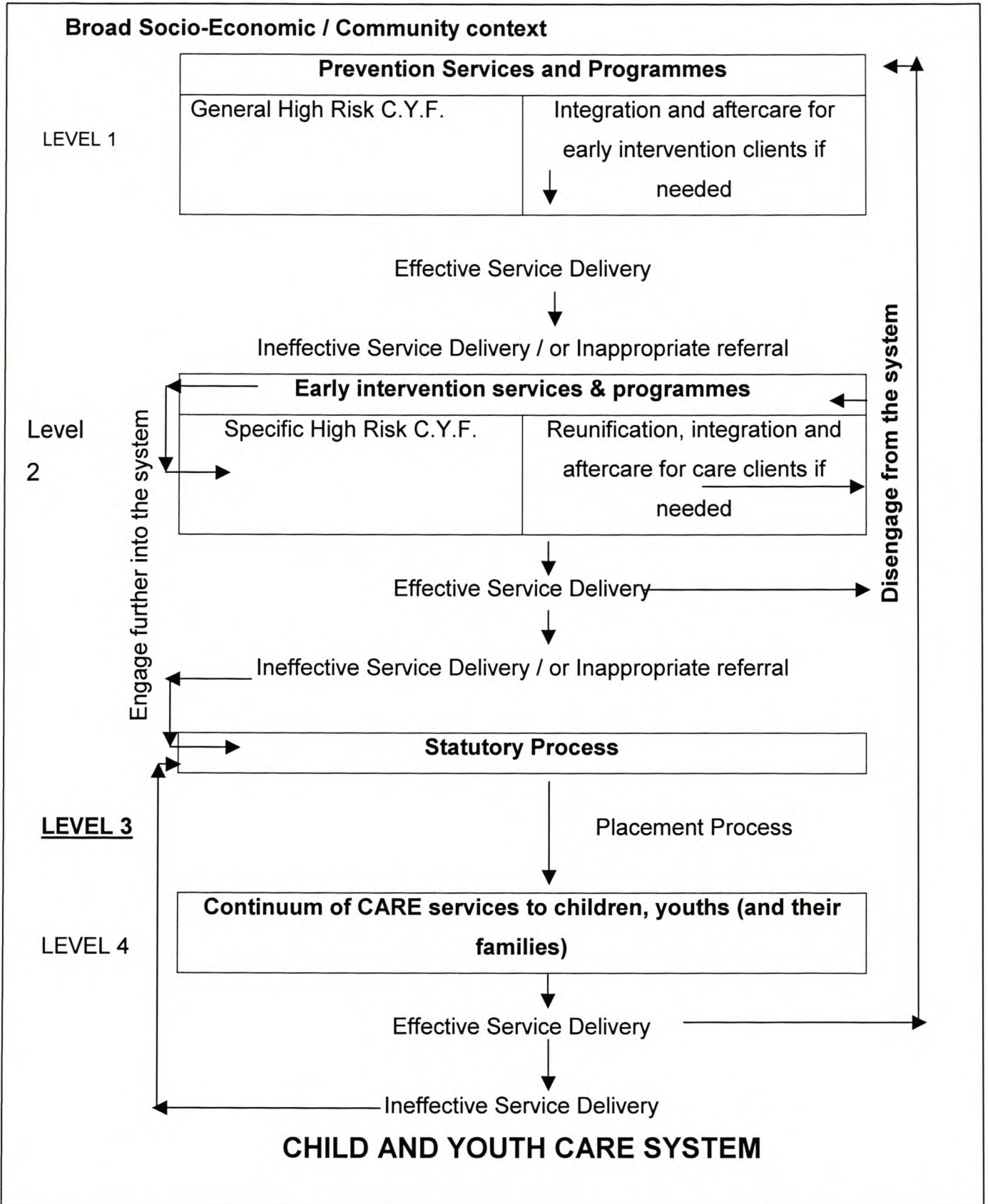
In congruence with the context of the child and youth care system as described, the specific framework for the child and youth care system as proposed by the inter-ministerial committee on young people at risk will be subsequently discussed.

### **2.3.3 Integrated framework for the Child and youth care system**

#### **2.3.3.1 *Introduction***

The inter-ministerial committee on young people at risk has identified an integrated framework of service rendering for the child and youth care system. The emphasis is on prevention and early intervention and minimizes residential care in its present form. The integrated approach is essentially a continuum of services, implying continuous, perpetual and constantly changing intervention, delivered within the developmental and ecological perspectives and embedded within communities (IMC: Discussion Document: 1996: 18).

The framework, as illustrated in Figure 2.2, refers to four levels of intervention, which are increasingly intrusive and potentially harmful to the development of the young person and / or family. Each level as will be consequently discussed, represents young people who are identified as increasingly at risk. Child and youth care primarily refer to levels three and four of the framework, which are directly concerned with the out-of-home-placements of children and youths. The effective implementation is based on a multi-disciplinary approach on each level and within each component and involve role-players such as justice, welfare, education, correctional services, N.D.C's communities, families and child welfare agencies (IMC: Discussion Document: 1996: 19 & 24).



**Figure 2.2 Framework for services (IMC: Discussion Document : 1996)**



The four levels, namely, prevention services and programmes, early intervention services and programmes; statutory process and the continuum of CARE services to children, youths and their families, as illustrated in Figure 2.2 will be consequently discussed.

### **2.3.2.2      *Level 1: Prevention services and programmes***

The aims of the prevention and early intervention levels are directly in accordance with the ecological perspective to address discrepancies between people's needs and capacities on the one hand and environmental qualities on the other, in order to promote development and growth (Germain and Gitterman, 1980: 28). Level 1, namely prevention services and programmes, strives to ensure that communities, families and groups of children and youths who are broadly identified as being vulnerable to risk factors such as poverty, drugs, violence and unemployment, receive services which strengthen existing capacity and develop new capacities that will provide resilience and increase their ability to benefit from developmental opportunities. The inter-ministerial committee on young people at risk contemplates reprioritization of human and financial resources to appropriately maximize programmes at this level and level 2 which is concerned with early intervention services and programmes. Programmes such as youth development, leadership training, conflict management, day care, school-based developmental programmes and parenting skills training are envisaged (IMC Draft: Discussion Document: 1996: 20).

### **2.3.2.3      *Level 2: Early intervention services and programmes***

Early intervention within this framework is a deliberate intervention in relation to a specific child, youth and family and is based on the fact that there is an identified risk of the child or youth being placed away from home or entering the criminal justice system. Early intervention services aim to divert children, youths and their families from the criminal justice system and / or child and youth care system.

This level of intervention includes the processes of reception, assessment, and referral into programmes such as diversion, family conferencing, intensive family support and capacity building, family grants, home-based development and therapeutic programmes for children and youths, parent skills training, school-based programmes, and youths support and developmental programmes.



Early intervention programmes may also serve as reunification, re-integration and aftercare services for children and youths disengaging with the child and youth care system (IMC Draft: Discussion Document: 1996: 20, 21).

#### **2.3.2.4      *Level 3: Statutory process***

The statutory process specifically focuses on youths at risk, including both children in conflict with the law, and / or children needing care and protection. It implies proceedings under the Criminal Procedure Act (Act 51 of 1977), the Probation Services Act (Act 116 of 1991), the Correctional Services Act (Act 8 of 1959) and the Child Care Act (Act 74 of 1983).

The inter-ministerial committee on young people at risk specifies a child centred approach with meaningful participation by the child or youth, families and communities. The process should ensure the most appropriate placement option for the child or youth in terms of the need for protection and / or containment and for development and / or therapeutic programmes.

The assessment process should be undertaken by a multi-disciplinary team provided at assessment centres, places of safety and residential care facilities. Referral at this level should be based on the principle of using the most empowering and least restrictive option appropriate to the individual child or youths (IMC Draft: Discussion Document: 1996: 21, 22).

#### **2.3.2.5      *Level 4: The continuum of care services to emotionally and / or behaviourally troubled children and youths (and their families)***

The inter-ministerial committee on young people at risk acknowledges that there will always be a need for residential care programmes for a percentage of children. This service should however, be used effectively and carefully. The continuum of care services will in itself be transformed to reflect all levels of intervention. It is therefore required that the transformed residential care service provide a quality service to the surrounding community through a range of programmes such as parent skills training, day care and after school care. These services should in effect minimize the length of placement, the movement of children from one placement to the other, and the potential for institutionalization. Children needing residential care are identified



as those who are orphaned and abandoned and who cannot be absorbed into communities, those who have serious emotional and / or behavioural problems, or are seriously disabled and cannot be best served by their families or in foster care (IMC Draft: Discussion Document: 1996: 22).

The primary responsibility for the care and protection of children, therefore remain with the parent and the community.

#### **2.3.4 The setting of youth justice within the broader framework**

The inter-ministerial committee on young people at risk envisage a youth justice system which moves away from the due process and prosecution-oriented justice model, supplemented by an approach which places importance on alternative programmes for children and youths. These programmes will provide an opportunity to keep young people out of the formal justice system, while at the same time assuring that they are held accountable for their behaviour. The inter-ministerial committee on young people at risk endorse the concepts of restorative justice centring on conflict resolution, the involvement of young people, families and communities, and accountability (IMC Draft: Discussion Document: 1996: 24). According to Zehr (1990: 184, 186 & 188) restorative justice view crime as a violation of people and people's relationships. It requires a process of healing for the victim in order to gain a sense of recovery and a degree of closure. The offender is also given an opportunity to heal by accepting accountability and responsibility. The approach moves away from a retributive and punitive justice system and focuses on addressing the respective needs of the victim and the offender.

The integrated framework of service rendering for the child and youth care system as discussed, equally involves children in conflict with the law. On a prevention level children and youths in conflict with the law are also in need of protection. The early intervention level is considered to be a turning point in order to divert children and youths away from the criminal justice system. A standardized multi-disciplinary assessment procedure of children and youths who come into conflict with the law needs to be developed, to ensure correct referral of children and youths to a diversion programme, to the care and protection system or criminal justice system where appropriate. The aim is that the majority of children and youths committing offences should be kept out of the criminal justice system. Decisions in view of



awaiting trial secure care placements should be decided by a multi-disciplinary team. Lastly, appropriate sentencing of children and youths should emphasise community-based options (IMC Draft: Discussion Document: 1996: 24 & 25).

In view of implementing the framework of services for the child and youth care system, including children in conflict with the law, as examined, the functions of Project Go will hence be discussed.

### **2.3.5 Project Go**

In view of facilitating the transformation of the child and youth care system as illustrated in the interim policy guidelines, the PAWC Social Services has registered Project Go as a pilot project with the national inter-ministerial committee on youths at risk. The core procedure involved reviews for the period 1 January 1998 to 30 November 1998, with the aim to assess and monitor the movement of all children entering the child and youth care system, remaining in the system and moving out of the system. A central strategy was to ensure that all children entering the child and youth care system were appropriately assessed in terms of their respective placements to ensure that they are referred to and / or remain within the least restrictive and most empowering facility and / or programme appropriate to their developmental needs. A moratorium was thus applicable to foster care, children's homes, schools of industries and reform schools for the period 1 January 1998 to 30 November 1998, with regard to children being transferred deeper into the system. This indicates transfer of children from foster care to any form of residential care, from a shelter or children's home to a school of industries or from a school of industries to a reform school.

In view of the transformation of the juvenile justice system Project Go conducted a pilot project at certain assessment centres for the period March 1998 to March 1999. Additional probation officers, administrative personnel as well as family finders were appointed during the specified period in order to advance services in respect of youths in conflict with the law. In addition, social workers and probation officers operating within the child and youth care system, including the juvenile justice system were trained in respect of strength-based assessment in order to assess youths with the focus on their strengths and developmental needs. (PAWC Social Services: Project Go: 1998 1-3).



According to Lupton (1998: 109 & 110), empowerment by definition is seen to involve the acquisition of power on the part of those who are relatively powerless. It may also require individuals striving for greater power and control over their lives, to develop a greater degree of independence and self-reliance. The central strategy of Project Go incorporated both these principles. In view of the implementation of the child and youth care system, the financing policy will be discussed in the next section.

### **2.3.6 Financing policy: developmental social welfare services**

A further official document, which influence the transformation of the child and youth care system, is the financing policy for developmental social welfare services. The financing policy is one of the most important policy instruments for transformation of social welfare services and the financing thereof, as directed by the White Paper and inter-ministerial guidelines for the child and youth care system in South Africa. The phasing in of the policy commenced in April 1999. The aim of the policy is to make welfare funding more efficient, to target beneficiaries and distribute benefits equitably and effectively, and thereby to correct injustices and imbalances brought about by the previous subsidy system (Department of Welfare: Financing Policy: 1999: 4).

#### **2.3.6.1 *Paradigm shifts in social welfare service delivery***

In order to achieve the abovementioned aim the paradigm shift to a developmental approach as illustrated in figure 2.3 should be consciously supported and encouraged through the financing policy and mechanisms. (Department of Welfare: Financing Policy: 1999: 11).

Shift #1	From a pathology and specialization focus	To a development focus and service methodology
Shift #2	From too few resources (human and financial) allocated to and focused on prevention and early intervention strategies	To an emphasis on prevention and early intervention strategies, even when services are located at level 4 of the system
Shift #3	From most services located at level 4, yet poorly resourced and generally ineffective	To least services at this level, but well resourced and highly effective
Shift #4	From fragmented services across specialized areas and various sectors	To integrated services, including special development areas (such as disability, HIV/AIDS, and substance abuse) and across sectors
Shift #5	Dislocation or isolation from social assistance	To linkages and where possible integration with social assistance components (such as combining child support grant with a range of integrated services)
Shift #6	From inequality	To conscious targeting of inequality together with a strong anti-poverty focus throughout all services
Shift #7	From viewing residential care as institutions	To reframing and transforming them into "one-stop" services
Shift #8	From services directed at addressing a particular pathology or problem area	To services addressing the needs of children, youths and families, and/or women and older persons

**Figure 2.3 Paradigm Shifts in Social Welfare Service Delivery (Department of Welfare: Financing Policy: 1999: 11).**

Within a 5 year period, the emphasis will have shifted to most services being rendered at the preventative and early intervention levels and least but effective services at level four, namely the continuum of care and developmental services. An

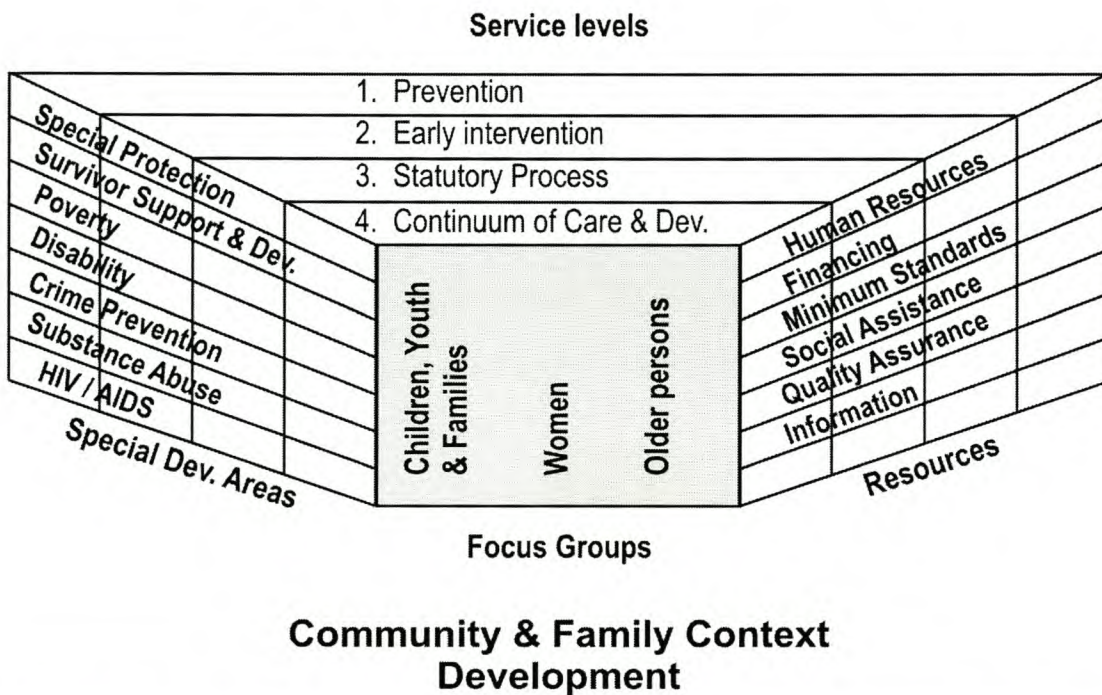


integrating service approach should be applied throughout, targeting inequality and needs of specific focus groups as mentioned in shift 8 of figure 2.3 (Department of Welfare: Financing Policy: 1999: 11-13).

**2.3.6.2 Integration of special developmental areas and re-framing of services**

Figure 2.4 illustrates the policy and delivering framework within which services are to be rendered and financed.

**FRAMEWORK FOR POLICY AND SERVICE DELIVERY**



**Figure 2.4 Framework for Developmental Social Welfare Services (Department of Social Welfare Financing Policy: 1999: 12)**

The framework integrates special development areas such as HIV/AIDS, poverty alleviation, crime prevention, substance abuse, survivor support and development and disability within each level and across the focus groups on children, youths, families, women and older persons. Services should be structured around the focus groups; and could be at one or more of the service levels. Developmental areas should be integrated where they are relevant to service participants. There is a paradigm shift away from special development areas or pathologies to a holistic integrated service delivery (Department of Welfare: Financing Policy: 1999: 14). The



proposed framework will benefit children and youths as they are one of the focus groups around which services will be rendered.

### 2.3.6.3 *The new financing approach: Budgeting*

A new frame of reference for financing services are being implemented which is instrumental to developmental, holistic integrated welfare services. Budgeting for service delivery are output- and outcome-based. The stated purpose and results will enable the analysis and allocation of resources. (Department of Welfare: Financing Policy: 1999: 15). Financing shifts within the new frame of reference are illustrated in figure 2.5

Shift #1	From a narrow focus on quantitative services	To a focus both on qualitative and quantitative services
Shift #2	From per capita financing	To programme financing
Shift #3	From a focus on financing specialist organizations and services	To financing of holistic services with specialist components integrated
Shift #4	From racially-based structures and practices	To supporting those services that promote social integration, diversity and equity
Shift #5	From financing on the basis of historical reasons	To financing on the basis of necessary and effective services
Shift #6	From a skewed allocation of resources	To prioritizing services and ensuring a more balanced resource allocation
Shift #7	From financing organisations and services that disregard indigenous rights and cultural practices	To financing of organizations that respect diversity and indigenous rights and cultures
Shift #8	From financing based on arbitrary criteria such as numbers	To financing based on principles, value-based criteria and on output / outcome orientation
Shift #9	From an individualist bias in financing	To recognition of collective approaches
Shift #10	From financing of fragmented, specialized or isolated services	To financing of "one-stop" integrated services



Shift #11	From social assistance separated from social services	To financing social services which is linked to social assistance
Shift #12	From top-down delivery	To a participatory approach

**Figure 2.5 Financing shifts (Department of Welfare: Financing Policy: 1999: 15 – 19)**

The new framework for financing capacitates and empowers organizations, facilities and communities to delivery people-centred services, which incorporates the principles as included in the White Paper (1997) and the inter-ministerial guidelines for the child and youth care system. It ensures integrated and accountable services as well as equitable distribution of resources, in order to make services available to all South Africans. The focus of service rendering, however, remains with vulnerable groups such as children and youths, women, families and older persons. The transformation of the child and youth care system is therefore considered to be of primary importance. Of equal importance is the transformation of the education system as will be subsequently discussed.

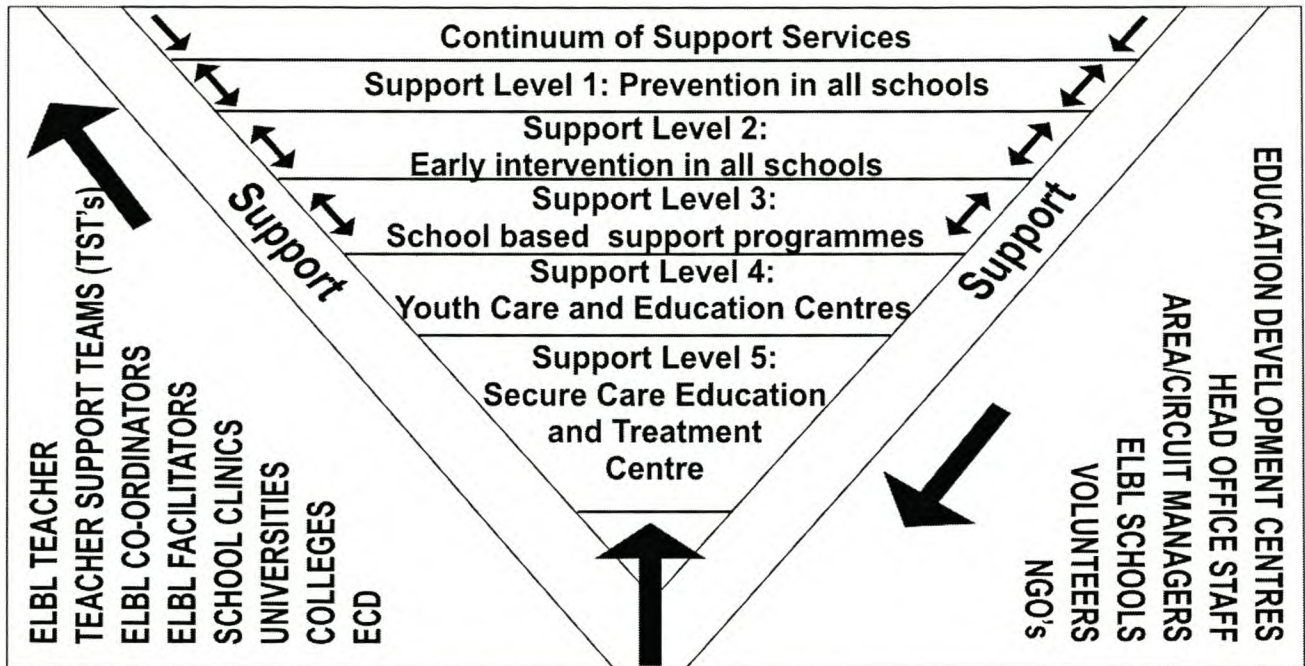
### **2.3.7 Education for learners with special education needs (ELSEN)**

In accordance with the framework for services developed by the inter-ministerial committee on young people at risk for the transformation of the child and youth care system, a new model for education of youths at risk has been developed by the Directorate Special Needs Education of the Department of Education in conjunction with the inter-Ministerial Committee on Young People at Risk (WCED: ELSEN: 1999:9).

Since 1995 the Western Cape Education Department and specifically the Directorate Special Education Needs view learners with behavioural problems and youths at risk as learners with special educational needs. ELSEN are regarded as learners who experience barriers to learning and development and who need support in addition to that usually offered in ordinary class. The new model provides support to learners with special educational needs on various levels, as determined by the intensity of their needs. The model endeavours to steer away from stigmatizing learners and to apply the principle of education in the least restrictive environment as far as it is practically possible (WCED: ELSEN: 1999: 1 & 2).



The new model for education of youths at risk is illustrated in figure 2.6. The model exist of four levels of support, as being discussed as follows: (WCED: ELSEN: 1999: 9)



**Figure 2.6** WCED Youths at Risk Model. (WCED: ELSEN: 1999: 9)

#### 2.4.7.1 *Support Level One: In the mainstream class*

The first level is aimed at prevention by providing learners the opportunity to develop the necessary life skills such as social skills, conflict management skills and problem solving skills. This will also include programmes for parents on how to deal effectively with the education of their children. In addition the Western Cape Education Department intends to train every teacher in preventing the development of behaviour problems, to identify behavioural problems at an early stage and to deal with these as soon as they are identified. Teachers will be supported by a learner support teacher and a support team which could consist of the principal, subject advisors, senior staff, school clinics, EISEN schools, volunteers and local specialists in relevant fields such as medicine, psychology, therapeutic services and social welfare services (WCED: ELSEN: 1999: 5,6 & 10).



### **2.3.7.2 Support Level Two: Periodic withdrawal from the mainstream class**

On the second level the learning support teachers can withdraw learners with behavioural problems from mainstream classes individually or in groups and assist them where necessary. After being assisted for a period, the ELSEN should return to the mainstream classroom. These teachers will be specifically trained for this new function by psychologists and will be supported by youths care centres and non-governmental organizations. (WCED: ELSEN: 1999:10).

### **2.3.7.3 Support Level Three: Youth Care Centres**

The Western Cape Education Department intends to replace its current schools at places of safety, schools of industries and reform schools, with community based youths care centres. Should the support be available at levels one and two not meet the needs of the learners in question, these centres, in conjunction with schools and school clinics, will be used to help learners that are at risk (WCED: ELSEN: 1999: 10).

### **2.3.7.4 Support Level Four: Secure Youth Care Centre**

The Western Cape Education Department intends to establish a secure youth care centre for those learners with serious behavioural problems who cannot progress sufficiently in any of the former options (WCED: ELSEN: 1999:11).

In line with the transformation of the child and youth care system the new education model for youths at risk focuses on prevention and early intervention, within an integrated community based framework of services. The effective implementation of this model will to a large extent depend on the availability of resources.

Transformation of the child and youth care system involves the way in which the earlier discussed legislation regarding youths at risk are being administered by the juvenile and children's courts, as well as the various facilities and institutions that provide care, education and detention. A profile of youths at risk in the Western Cape will be subsequently illustrated in terms of existing structures, institutions and facilities.

## 2.4 PROFILE OF YOUTHS AT RISK IN THE WESTERN PROVINCE

This section attempts to provide a profile of youths at risk in the Western Province. It will firstly focus on children and youths in conflict with the law in view of their management and position in terms of arrest, assessment and detention. Secondly the position at facilities providing care and protection, or care and education, within the child and youth care system, such as children's homes, schools of industries and reform schools will be discussed.

### 2.4.1 Arrest and assessment of youths

According to statistics obtained from the SAPD Western Province, child and youth desk, 10 808 children and youths were arrested in the various magisterial districts of the Western Province for eight of the twelve months between June 1998 and May 1999, indicating 16 212 arrests for the full period. A distribution of arrests of children and youths in the 42 magisterial districts in the Western Province is illustrated in Table 2.1 for the period June to August 1998.

**Table 2.1: Distribution of arrests of children and youths in the magisterial districts in the Western Province (SADP Western Cape Province Child and Youth Desk)**

Magisterial District	June 98	July 98	Aug 98	Magisterial District	June 98	July 98	Aug 98
Cape Town	281	191	243	Caledon	17	12	13
Wynberg	149	121	223	Bredasdorp	6	5	8
Simon's Town	22	29	29	Hermanus	11	8	17
Mitchell's Plain	102	109	152	Worcester	21	34	49



<b>Magisterial District</b>	<b>June 98</b>	<b>July 98</b>	<b>Aug 98</b>	<b>Magisterial District</b>	<b>June 98</b>	<b>July 98</b>	<b>Aug 98</b>
Goodwood	104	154	145	Ceres	21	15	25
Bellville	140	124	135	Touws River	0	0	3
Kuils River	83	107	124	Lainsburg	4	0	0
Strand	13	10	19	Robertson	0	3	3
Somerset West	11	20	29	Montagu	1	2	2
Stellenbosch	42	35	20	Bonnievale	0	2	0
Paarl	80	70	65	Swellendam	0	10	5
Wellington	18	10	17	Ladismith	12	0	5
Atlantis	21	26	26	Calitzdorp	1	2	1
Malmesbury	11	16	11	Oudtshoorn	57	59	31
Moorreesburg	2	3	24	Beaufort West	12	11	15
Piketberg	2	5	3	Murrayburg	0	11	1
Vredenburg	17	9	29	George	14	20	27
Vredendal / Lutzville	6	10	31	Pletenberg Bay	4	5	18
Vanrhynsdorp	6	7	6	Knysna	19	9	4
Clanwilliam	1	3	2	Mossel Bay	10	10	17
Grabouw	6	7	21	Riversdal	4	2	11
<b>Sub-Total</b>	<b>1117</b>	<b>1066</b>	<b>1355</b>	<b>Total</b>	<b>1331</b>	<b>1148</b>	<b>1585</b>

Arrests for the period June – August 1998.

Table 2.1 demonstrates that approximately 66% of arrests in the Western Cape Province occur in six of the magisterial districts of the Cape Peninsula, namely Cape Town, Wynberg, Mitchell's Plain, Goodwood, Bellville and Kuils River.

In accordance with legislation pertaining to the detention of arrested children and youths, as discussed in paragraph 1.1 of this study, assessment centres have by the year 2001 been established at 17 magistrates courts in the Western Province, being



served by 120 probation officers or social workers. This is according to information obtained by PAWC Social Services Head Office at the beginning of March 2001. Arrested children and youths are being assessed before their first court appearance in view of a recommendation to the court regarding their release, a suitable awaiting trial placement and possible diversion of the criminal proceedings. A day assessment as well as after-hour assessment service are being rendered to enable the speediest release or suitable placement of an arrested youth. In this regard family finders have been employed in view of tracing the parents and guardians of arrested children and youths, in order to assist their children at court. According to information obtained from PAWC Social Services Head Office at the beginning of March 2001, approximately 780 assessments per month were being carried out at the 17 assessment centres in the Western Cape Province, an estimated 9 360 per year. As mentioned an estimated number of 16 212 children and youths were arrested in the Western Province for the period June 1998 to May 1999. In view of the information available it appears that by March 2001, in the region of 40% of arrested children and youths were not being assessed after arrest. A considerable number of children and youths in conflict with the law were therefore not adequately protected in view of a suitable awaiting trial placement or diversion from the criminal justice system.

#### **2.4.2 Detention of youths awaiting trial in prison**

Although arrested children and youths are being assessed before their first court appearance, the detention of youths awaiting trial in prison can in view of certain serious offences not be avoided in all instances. Awaiting trial youths can only be detained in prison in terms of section 29 of the Correctional Services Act (Act 8 of 1959), as amended from the age of 14 years and if they have committed an offence as stipulated in Schedule 2 of the Act, provided no place of safety is available. Schedule 2 includes offences such as murder, rape, armed robbery, serious assault, sexual assault, kidnapping and dealing in drugs. According to statistics from the SAPD Western Cape Province youth desk, only 4.5% of youths arrested in Cape Town policing area are for Schedule 2 offences.

In spite of the above legislation to limit the detention of youths in prison, the number of youths being detained in the 14 prisons the Western Cape have steadily increased. Statistics obtained from the SAPD Western Cape Province youths desk,



as illustrated in Table 2.2 show that the number of youths awaiting trial in prison have tripled since 1997.

**Table 2.2: Number of youths awaiting trial in prisons in the Western Cape Province on a specific day**

Specific Day	Pollsmoor	Other Prisons	Total
31/03/97	171	71	242
31/03/98	174	89	263
31/30/99	331	70	401
31/03/2000	495	151	646

The limited availability of places of safety are only one of the factors, which contribute to the increase of the detention of awaiting trial youths in prison. Information from the SAPD Western Cape youth desk confirms that an overloaded justice system are unable to finalise cases within an acceptable time limit. At the Cape Town juvenile court, the number of cases on the court role for the day have increased from 18 in January 1992 to 37 in January 1999. During April 1999 only 15.7% of cases in relation to the 172 new cases, were finalized. This causes long periods of detention, in some instances periods of two years, resulting in the accumulation of youths in detention.

The Horizon Secure Care facility originally planned to accommodate 60 awaiting trial boys, is in operation since June 2000. In order to relieve the situation of the accumulation of youths in detention in prison the facility was compelled to admit 160 awaiting trial boys. In view of the 646 awaiting trial youths detained in prisons in the Western Cape at the end of March 2000, the additional 160 awaiting trial places of safety does not provide a solution to the continuous detention of awaiting trial youths in prison.

### **2.4.3 Detention of youths awaiting trial in places of safety**

Youths awaiting trial are being assessed before their first court appearance in view of suitable placement where applicable. Detention in a place of safety is recommended in view of their need for protection as well as to ensure court attendance. Section 29



(1) of the Child Care Act (Act 74 of 1983) provides for the establishment and maintenance of places of safety for the reception and detention of children under the Child Care Act (Act 74 of 1983) as well as children awaiting trial or sentence. According to information obtained from the PAWC Social Services Head Office there are presently five places of safety for awaiting trial children and youths in the Western Province, providing detention for 442 youths, as illustrated in Table 2.3. The Horizon Secure Care facility, in operation since June 2000, is operating as a place of safety in view of the increase in numbers to 160 awaiting trial boys.

**TABLE 2.3: Capacities of youths awaiting trial places of safety in the Western Cape Province**

<b>Horizon</b>	<b>Bonnytown</b>	<b>Lindelani</b>	<b>Huis Vredelus</b>	<b>Outentiekwa</b>
160 boys 14 – 17 years	160 boys 15 – 17 years	70 boys Under 15 years	12 girls Under 18 years	40 boys Under 18 years

A continuous shortage of places of safety for the detention of awaiting trial children and youths exist. Information obtained from the PAWC Social Services Head Office, Cape Town, confirms that the turnover of children and youths at places of safety are not adequate to supply in the demand for admissions. For the period July to December 1999, the average number of youths discharged from Bonnytown were 24.1%, from Outentiekwa 31.25% and from Lindelani 34.5%. In addition, a large number of the population at places of safety are unmoving. As estimated at the end of January 2000, 39% of the population at Bonnytown were unmoving for the period of 15 months and 55% of the population at Outentiekwa were unmoving for 11 months. One of the main factors precipitating the lack of movement of children and youths in places of safety is the slow court process, in view of criminal cases not being finalized, as were discussed in section 2.4.2. Social work and educational services, as well as recreational activities are available at all five places of safety in order to address the social, emotional and educational needs of the children and youths in detention. As awaiting trial places of safety have little control over the movement of children and youths in their care, planned individual services in respect of children and youths are not always feasible. Multi-disciplinary strength based assessments, instituted by Project Go, are being implemented, but are not in all



instances fully utilized. The assessment sessions involve probation officers, external social workers, parents or guardians and the youths concerned in the decision making process, while focusing on the strengths and developmental needs of the children and youths. Full utilization of places of safety is necessary in order to provide adequate protection in respect of arrested children and youths, and in view of ensuring court attendance, contribute to a speedy court process.

#### **2.4.4 Schools of industries and reform schools**

Schools of industries and reform schools are facilities within the child and youth care system which provide care education and training in respect of youths at risk. Both schools of industries and reform schools fall under the control of the Department of Education. Referral to a school of industries is determined by the children's court and in the case of a reform school, by the criminal court.

In section (1) (xxxiv) of the Child Care Act (Act 74 of 1983) as amended, "school of industries" means a school maintained for the reception, care, education and training of children sent or transferred thereto under the Child Care Act (Act 74 of 1983). In section (1) (xxxii) of the said Act, "reform school" means a school maintained for the reception, care and training of children sent thereto in terms of the Criminal Procedure Act (Act 51 of 1977). In terms of the Child Care Amendment Act (Act 13 of 1999), the power of the Minister was revoked in order to transfer certain pupils or children to a reform school. A pupil or child can therefore no longer be transferred from a school of industries to a reform school in terms of section 34 of the Child Care Act (Act 74 of 1983), as amended.

During 1996 there were nine schools of industries and six reform school situated in the Western Cape Province under the control of the Department of Education and Culture, respectively providing placement for 1872 and 1138 youths (IMC Draft: Discussion document: 1996: 11 & 13).

According to information obtained from the Western Cape Education Department, the number of children and youths in schools of industries and reform schools have been markedly reduced, in view of transformation of education services. During the year 2000, eight schools of industries were in operation with a collective population of 316



children by April 2000 and four reform schools with a collective population of 198 children and youths, also by April 2000.

The status quo in respect of children and youths being referred to schools of industries and reform schools are being maintained until the new model for education of youths at risk can be implemented (refer to paragraph 2.3.4 of this chapter). Concern exists for the number of children and youths who have been released from schools for whom no alternative services are yet in place.

#### **2.4.5 Children in residential care**

Children's homes are facilities within the child and youth care system, which provide protection and care to children and youths in needs of care. In section (1) (vii) of the Child Care Act (Act 74 of 1983), as amended, "children's home" means any residence or home maintained for the reception, protection, care and upbringing or more than six children apart from their parents, but does not include and school or industries of reform school. According to information obtained from the PAWC Social Services Head Office, Cape Town, during April 2000 there are forty institutions registered as children's homes in the Western Province, providing care for 2 470 neglected and abandoned children. The information guide and regulations on the practical application of the Child Care Act (Act 74 of 1983) as amended, stipulates that children's homes are not obliged to receive children, but have an obligation to maintain and care for them once admitted. A transformed residential care service has been recommended by the inter-ministerial committee on young people at risk, as discussed in paragraph 2.3.2.5 of this chapter. In accordance herewith children's homes should provide a quality service to the community through a range of programmes such as parenting skill training, day care and after school care. The intention is to minimize the length of placement as well as the potential for institutionalization (IMC Draft: Discussion Document: 1996: 22). The emphasis is therefore on developmental, integrated and accountable service rendering. In view of capacity, children's homes have not been affected in relation to the drastic diminishing of the capacities of schools of industries and reform schools.

## **2.5 SUMMARY**

It is accepted that the well-being of children depends on the ability of families to function effectively. South African families have however disintegrated due to factors



such as poverty, a subculture of violence and the political policies of the past. The child and youth care system are presently being transformed in order to improve services in respect of youths at risk.

In terms of children and youths in conflict with the law, in the region of 16 000 children and youths are being arrested in the Western Province in a year.

Although assessment centres have been established to enable the speediest release of arrested children and youths more than a third of arrested children and youths are still not being assessed before their first court appearance. The detention of youths are steadily increasing in spite of legislation to limit detention of youths in prison. Services rendered by Project Go in order to facilitate the transformation of the child and youth care system had virtually no long-term effect, especially in relation to youths in conflict with the law. The number of children and youths in schools of industries and reform schools have been markedly reduced, although an alternative model is not yet in operation. It is evident that legislation and policies implemented to transform the child and youth care system, have been ineffective to protect children and youths in conflict with the law. In respect of the 2 470 children in children's homes, it however appears that services are to a large part being rendered in accordance with new policies and legislation.

## **CHAPTER 3**

### **CRIMINAL AND CHILD CARE LEGISLATION IN RESPECT OF YOUTHS AT RISK**

#### **3.1 INTRODUCTION**

Assessment and sentencing forms part of the criminal process in respect of youths in conflict with the law, also referred to as juvenile offenders. As discussed in Chapter I and II of this study, social workers appointed as probation officers in terms of the Probation Services Act (Act 116 of 1991) play a key role in these processes. This study is especially concerned with youths at risk which include youths in conflict with the law, who are additionally at risk of being removed from their homes or have already been dealt with in terms of the Child Care Act (Act 74 of 1983) as amended. Sufficient knowledge and effective administration of the law is necessary in order to protect youths at risk within the legal system. In this chapter the existing and proposed legislation regarding the arrest, assessment, detention and criminal procedure applicable to youths at risk will therefore be discussed, as well as the relevant child care legislation.

#### **3.2 EXISTING AND PROPOSED LEGISLATION IN RESPECT OF YOUTHS AT RISK**

Juvenile offenders in South Africa are in principle managed within the broad adult criminal justice system (De Villiers, 1988: 531, Howres, 1992: 109). Certain sections in the Criminal Procedure Act (Act no 51 of 1977) as amended, section 29 of the Correctional Services Act (Act 8 of 1959) as amended and the Probation Services Act (Act no 116 of 1991) prescribe the management of juvenile offenders within the criminal justice system. Although the aforementioned Acts provide a certain degree of protection to juvenile offenders, a comprehensive holistic criminal justice system for children in South Africa has not been attained (Ladikos, 1997: 45).

On 16 June 1995 South Africa ratified the United National Convention on the rights of the child. This convention includes a broad range of children's rights and provides a comprehensive framework within which the issue of juvenile or child justice must be understood. By ratifying the Convention, South Africa is required in terms of Article



40 (3) thereof to establish laws, procedures, authorities and institutions specifically applicable to children or youths in conflict with the law (Cassim, 1998: 333). As a result hereof the South African Law Commission was requested to undertake an investigation into juvenile justice, in order to make recommendations to the Minister of Justice for the reform of this specific area of the law. A final proposed draft Bill, referred to as Bill B, as contained in the Report of Juvenile Justice, embodies the recommendations of the South African Law Commission for the reform of the law relating to children or youths accused of crimes in South Africa (Report: Juvenile Justice, 2000: X, 1).

Youths at risk refer to those juvenile offenders who are additionally at risk of being on becoming in need of care. The Child Care Act (Act 74 of 1983) as amended, provides legislation in respect of children in need of care in order to protect those children whose parents are unable or unwilling to care for or provide in their children's needs (Van Niekerk 1998: 16). The emphasis in the amended Act is no longer on the parent being unable or unfit to take care of a child, but on the child being in need of care. In view of the aim to protect the rights of children entrenched in the Constitution and provided for the international instruments, the proposed draft Bill (Bill B) among others, outline the duties and powers of probation officers. Clauses 45 (7), 46 (1) and 47 of the proposed draft Bill (Bill B) specifically describe the powers and duties of probation officers pertaining to the referral of matters to the children's court (Report: Juvenile Justice, 2000: 215, 250, 21 & 253). This will enable more effective application of the Child Care Act in respect of juvenile offenders.

### **3.3 AGE AND CRIMINAL CAPACITY**

Estimation of age is one of the purposes of assessment of an arrested child or youth by a probation officer. Age is a deciding factor in the determination of the criminal capacity of a child or youth, as well as in determining his or her status in terms of childhood or adulthood.

Criminal as well as child care legislation recognize a child to be a person under the age of 18 years. The Child Care Act (Act 74 of 1983) as amended, provides protection in terms of care to all children under the age of 18 years. Section 10 of the said Act provides additional protection to children under the age of seven years if maintained away from their parents and are born out of wedlock or awaiting adoption.



Consent of the Commissioner of Child Welfare is needed to maintain these children away from their parents for a period longer than 14 days by all persons, other than the managers of maternity homes, a place of safety or children's home.

The rights of children are also protected in terms of the Convention on the Rights of a Child, which place a duty on state parties to establish a minimum age below which children shall be presumed not to have the capacity to infringe penal law (SA Law Commission: Issue Paper 9, 1997:10). According to Balgopal (1997: 3) most countries in South Asia, including Bangladesh, India and Pakistan, have seven years as the age of criminal liability with a rebuttable presumption of incapacity till the age of 12 years. The age of criminality in developing countries in other parts of the world, especially in South America however vary considerably, ranging from 14 to 16 and even 18 years.

In accordance with common law the minimum age of prosecution in South Africa is seven years. A child under the age of seven years is in terms of criminal and common law irrebuttably presumed to be *doli incapax* and therefore not capable of crime. A child between the ages of seven and 14 years are only partly protected from prosecution. Children above seven years of age but under 14 years of age are rebuttably presumed to be *doli incapax*. They can therefore not be prosecuted unless the state proves that the child in question can distinguish between right and wrong and knew what he did was seriously wrong. Once a child attains the age of 14 years, he is fully criminally liable and is dealt with according to normal criminal procedure (Cross, Jones and Carol 1988: 143), (Olmesdahl and Steytler 1983: 236 and 246), (SA Law Commission: Issue Paper 9: 1997: 8 & 9). The rebuttable presumption of incapacity that applies to children between the ages of seven and 14 years, however, does not seem to protect children from prosecution and conviction. According to a study conducted by Hutchinson at the Durban and Umlazi Magistrate's courts during 1980, the court records of the 106 cases against juveniles studied, did not reflect whether the state actually rebutted the presumption. He could therefore not conclusively determine how the court approached the question of criminal liability (Olmesdahl and Steytler, 1983: 246).

In clause 6 of the proposed draft Bill (Bill B) the common law with regard to children below the age of 14 years is repealed. The minimum age of criminal capacity is



raised from seven to 10 years, with a rebuttable presumption of criminal capacity between the ages of 10 years, but below 14 years. A child who has reached the age of 10 years, but is not yet 14 years of age, may only be prosecuted if it was proved beyond a reasonable doubt that the child did have the capacity to differentiate between right and wrong and act accordingly. In addition the Director of Public prosecutions has to issue a certificate confirming an intention to proceed with the prosecution of such a child. The intention is to encourage the diversion of the majority of cases in this age group, while still preserving the discretion with regard to the prosecution of such children. In view of age determination, the draft Bill (Bill B) proposes in clauses 7, 8 and 9 that age assessments by probation officers, magistrates presiding at preliminary inquiries and district surgeons be performed before children are arrested or charged. The aim is to ensure appropriate treatment of children within the legal system from the initial contact with the law (Report: Juvenile, 2000: XI, XII, 223 – 226).

### **3.4 ARREST AND DETENTION**

Probation officers are required to assess children and youths after arrest, before their first court appearance. In this section the aim and conditions of arrest and detention in terms of criminal and child care legislation will be discussed. Reference will be made to the responsibilities of the probation officer concerning children and youths involved in these processes.

#### **3.4.1 The aim and conditions of arrest**

According to Hiemstra (1987: 79 & 80) the purpose of arrest is to bring an accused before a court to answer to a charge. Chapter 5 of the Criminal Procedure Act (Act 51 of 1977) describes the manner and conditions of arrest. Subsections 50(4) and (5) specifically refer to the management of children under 18 years. It is firstly required that the parent or guardian of a person under 18 years, if reachable, be informed of the young person's arrest without undue delay by the investigating officer concerned. Thereafter the probation officer or if not available, the correctional officer in whose area of jurisdiction the arrest has taken place, has to be informed of the arrest of the young person.

In view of the proposed legislation pertaining to children and youths in conflict with the law, the draft Bill (Bill B) in clause II determines the purpose of arrest to bring a



child before a preliminary inquiry by a magistrate. The Bill further protects children and youths by providing alternatives to arrest such as requesting a child or youth to accompany the police official to attend a preliminary inquiry or by issuing a written notice to the child or youth and if available the parents or family to appear at a preliminary inquiry at a specified time and place. In clause 14 of the draft Bill (Bill B) it is further specified that when a police official has arrested a child or youth, he or she must notify a probation officer in whose area of jurisdiction the child was arrested within 24 hours of such an arrest. The police official is further required to take the child or youth to a probation officer as soon as possible, but not later than 48 hours after arrest. (Report: Juvenile Justice, 2000: XI, XVI, 228, 229, 231).

In terms of the Child Care Act (Act 74 of 1983) as amended, only pupils or children who have absconded from institutions, place of safety or custody of any person in which there were placed in terms of this Act or the Criminal Procedure Act (Act 51 of 1977) or have failed to return to the institutions, places of safety after cancellation or expiration of leave of absence, may be apprehended without a warrant by a policeman, social worker or authorized person. The pupils or children concerned may be kept in a place of safety until they are brought before a commissioner of child welfare, in the district they were apprehended. A young person sentenced in terms of the Criminal Procedure Act (Act 51 of 1977) to a reform school can therefore appear before a Commissioner of Child Welfare for the purpose of an absconder's inquiry.

### **3.4.2 Detention of child or youth**

A further purpose of assessment of a child or youth by a probation officer after arrest, before their first court appearance, is to make a recommendation regarding the release or suitable placement of a child or youth. This recommendation is guided by legislation as will accordingly be discussed.

Section 71 of the Criminal Procedure Act (Act 51 of 1977) specifically applies to the release of children and youths in custody. It makes provision for the release on bail, release in the custody of a probation or correctional officer or detention in a amended, instead of a prison (Sloth-Nielsen 1996: 63, 64). Section 72(1)(b) of the Criminal Procedure Act deals with the release on warning of a juvenile accused. In



this instance the responsibility for his presence in court is placed on the person in whose custody he is (Hiemstra 1987: 160, 161).

Conditions of detention of unconvicted children and youths under the age of 18 years are contained in Section 29 of the Correctional Services Act (Act 8 of 1959) as amended. The aforementioned Act specifies that if a child or youth in custody cannot be released in terms of Section 71 or 72 (1)(b) of the Criminal Procedure Act (Act 51 of 1977) as discussed, he or she may be detained in a police cell for a maximum of 24 hours after arrest, before he or she is brought to a court. A further condition is that detention must be necessary and in the interest of justice.

In terms of certain serious offences and under certain conditions as specified in Section 29 of the Correctional Services Act (Act 8 of 1959) as amended youths from the age of 14 to 17 years, may be detained in prison after his or her first court appearance. Firstly, there should be reason to believe that the detention of the young person is in the interests of justice, no secure place of safety within a reasonable distance to the court is available and the young person is being charged with an offence specified in Schedule 2 of the Correctional Services Act or any other offence in circumstances of such serious nature as to warrant such detention. Schedule 2 offences refer to the following:

- “- murder
- rape
- robbery where wielding of a firearm or any dangerous weapon or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved.
- Assault with intent to commit grievous bodily harm or when a dangerous wound is inflicted
- Assault of a sexual nature
- Kidnapping
- Any offence under any law relating to the illicit conveyance or supply of dependence producing drugs



- Any conspiracy, incitement or attempt to commit any offence referred to this schedule."

The Correctional Services Act (Act 8 of 1959) as amended consequently allows for magisterial discretion when determining detention of unconvinced youths (Sloth-Nielsen, 1996: 67). The aforementioned Act further stipulates that an unconvinced youth who has been detained in prison after his or her first court appearance, has to appear in court every 14 days in order to reconsider the order. The emphasis is on obtaining a place of safety placement as defined in the Child Care Act (Act 74 of 1983) as amended for the youths concerned. Although detained as an offender, the youth is protected in terms of care by the said Child Care Act.

The conditions for detention of youths 14 to 17 years of age as contained in clause 36 (4) of the draft Bill (Bill B) is in principle the same as the conditions specified in the Correctional Services Act (Act no 8 of 1959) as amended. Certain conditions have however been changed or added in view of the best interest of children and considering the best interest of justice. It is additionally specified that if evidence presented in court indicate a substantial risk that a youth will cause harm to other youths in a place of safety or secure care facility, he or she may be detained in prison. The 14 days extension to reconsider the order relating to detention of youths in prison is changed to 30 days. In respect of youths in places of safety and secure care facilities a 60 days extension is granted. The purpose of the extension is also for the court to ensure that the child or youth is properly treated. Schedule 3 in the draft Bill (Bill B) includes offences in terms of which a youth may be detained in prison. Two types of offences have been added in view of the offences specified in Schedule 2 of the Correctional Services Act (Act 8 of 1959) as amended. Schedule 3 firstly includes any offence related to the dealing, smuggling and possession of ammunition, firearms, explosives or armament. The schedule secondly incorporates any offence related to exchange control, corruption, extortion, fraud, forgery, uttery or theft. The draft Bill (Bill B) emphasizes that the detention of unconvicted children and youths should only occur as a measure of last resort, and the least restrictive form of detention appropriate to the child or youths and his or her circumstances must be selected (Report: Juvenile Justice, 2000: XIC, 244, 245 & 312).



### 3.5 REFERRAL AND ASSESSMENT

Referral and assessment involve the role, duties and powers of probation officers regarding arrested and awaiting trial children and youths. Probation officers are social workers appointed in terms of Section 2 of the Probation Services Act (Act no 116 of 1991). A probation officer appointed under the Children's Act (Act no 33 of 1960) shall also be considered to have been appointed as a probation officer under the Probation Services Act. The duties of probation officers in the aforementioned Probation Services Act mainly refer to advising the court on treatment options of an accused, reporting to the court regarding the progress and supervision of an accused placed under probation and implementing crime prevention programmes.

Since 1995 probation officers have been appointed in terms of the Probation Services Act (Act 116 of 1991) to assess arrested and awaiting trial children and youths in view of release or suitable placement and in respect of diversion of the criminal proceedings. Transformation of the juvenile justice system in South Africa and amendment of legislation prohibiting the holding of awaiting trial children and youths in police cells or prisons necessitated extension of duties of probation officers.

The extended role, duties and powers of probation officers regarding children and youths accused of having committed a crime are described in the proposed draft Bill (Bill B) (Report: Juvenile Justice, 2000: XVI, XVII, 246 – 253). The draft Bill (Bill B) in clause 39 specifies that an assessment of every child or youth must be undertaken or authorized by a probation officer. It is proposed by the South African Law Commission in the Report on Juvenile Justice (2000: 13 & 77) that the assessment of each individual child should become a key determinant in how the matter should proceed. The South African Law Commission describes assessment as:

"A process of evaluation of a child, the child's development and competencies, and the child's home and family circumstances. With regard to a child accused of having committed a crime, an assessment would include an understanding of the circumstances surrounding the offence, its impact on the victim and the child's intention to acknowledge responsibility for the offence."



The purposes of assessment as set out in clause 38 of the draft Bill (Bill B) are to:

- “- estimate the probable age of the child if uncertain;
- establish the prospects for diversion of the case;
- formulate recommendations regarding the release of the child or youth or suitable placement; and
- in the case of children below the age of 10 years, establish what measures if any, need to be taken.”

The draft Bill (Bill B) further stipulates that the assessment must be attended by the child, his or her parent or an appropriate adult. If all reasonable efforts to locate a parent or an appropriate adult fail, the assessment can be concluded in the absence of that person or persons. The assessment must take place as soon as possible and prior to the preliminary inquiry, which means within 48 hours after arrest. Powers and duties of probation officers have been extended as described in clause 44 of the draft Bill (Bill B), in that a probation officer may issue a requisition notice requiring the arresting officer or any other Police Officer to perform the following duties namely:

- to bring a child from police custody for assessment;
- to obtain documentation regarding proof of the age of a young person;
- to notify a parent or appropriate adult to appear at an assessment; and
- to secure transport to ensure attendance of a child or parent at an assessment (Report: Juvenile Justice, 2000: XVI, 249).

After completion of the assessment the probation officer must in accordance with clause 45 (7) of the draft Bill (Bill B) complete an assessment report containing recommendations as to:

- “- the prospects of diversion;
- the possible release of the child into the care of a parent or an appropriate adult;
- the placement, where applicable of a child in a particular place of safety, secure care facility or prison; or



- the transfer of the matter to a children's court inquiry; stating reasons for such a recommendation".

As determined in clause 45 (8) of the draft Bill (Bill B), the probation officer has to submit the assessment report without delay to the prosecutor to decide whether or not to withdraw the charges pending against the child or youth or to open a preliminary inquiry (Report: Juvenile Justice, 2000: 251).

The draft Bill (Bill B) also endeavours to protect children below the age of criminal capacity, namely below ten years, in view of addressing behavioural problems, links with organized crime and exploitation by others. The draft Bill (Bill B) provides that children of this age group, who are alleged to have committed offences, may even so be brought to assessment by a probation officer. The powers of such assessments are set out in clause 46 of the draft Bill (Bill B). After assessment of a child younger than 10 years of age the probation officer may:

- “- refer the matter to the children's court;
- refer the child or the family for counseling or therapy;
- arrange for the provision of support services to the child or family;
- arrange a family conference to come up with a written plan to assist the child and prevent him or her from getting into trouble again;
- decide to take no action".

(Report: Juvenile Justice, 2000: XVI, XVII, 251, 252).

Assessments by probation officers at children and youths accused of having committed a crime, play a key role in view of the outcome of the criminal justice process. The emphasis is on preventing children or youths from entering deeper into the criminal justice system (Juvenile Justice Report, 2000: 77).

### **3.6 DIVERSION**

Diversion is an important option available to prevent children or youths from entering deeper into the criminal justice system. A main purpose of assessment by probation officers of children or youths after arrest, before their first court appearance is to determine whether diversion should be recommended. Although the concept of



diversion has been practiced by prosecutors and juvenile courts, it has not been included in legislation. The authority to divert a matter lies with state prosecution. In terms of Section 6 of the Criminal Procedure Act (Act 51 of 1977), the director of public prosecutions or any person conducting a prosecution at the instance of the state has the power to withdraw a charge before an accused pleads to a charge, in which case the accused shall not be entitled to a verdict of an acquittal in respect of that charge. The accused can therefore be charged again at a later stage. In respect of an accused who has pleaded but not convicted the director of public prosecution has the power to stop prosecution in which case the court trying the accused shall acquit the accused in respect of that charge.

The concept and administration of diversion is now included in legislation as contained in the draft Bill (Bill B) (Report: Juvenile Justice, 2000: XVII – XIV, 253 – 261). Diversion implies the redirecting of an arrested child or youth away from the criminal justice system. The draft Bill (Bill B) describes the purposes of assessment in clause 48, which include concepts such as:

- encouraging the child to be accountable for the harm caused by him or her;
- providing an opportunity for victims to express their views, encouraging restitution, and promoting reconciliation;
- reintegrating the child into his or her family and community, preventing stigmatization and preventing the child from acquiring a criminal record”.

(Report: Juvenile Justice, 2000: XVII).

The draft Bill (Bill B) in clause 49 further specifies that any diversion option, which are to be used, must comply with minimum standards aimed at ensuring that children are not exploited or hurt, and that the options are proportionate to the harm caused and to the circumstances of the child. The most important aim is however that diversion options should be positive in their outcomes, by helping children to understand the impact of their behaviour on others and to heal relationships (Report: Juvenile Justice, 2000: XVII, 253 & 254). These principles contained in legislation are according to Chadbourne (1998: 33) supported by the youths perspective on juvenile justice.

In accordance with the essence of diversion a child or youth can only be considered for diversion in certain circumstances included in clause 51 of the draft Bill (Bill B).



Such a child or youth should acknowledge responsibility for the alleged offence, consents to diversion and sufficient evidence for the matter to proceed in court should be present, without risking the procedural rights of the child concerned. Diversion programmes as described in clauses 52, 53 and 54 of the draft Bill (Bill B) include among others positive peer association, placement under supervision for a specific period, compulsory schooling or attendance of a centre in view of vocational training for a limited period, community service and dispute resolution restorative programmes such as victim-offender mediation and family group conferences (Report: Juvenile Justice, 2000: 255 – 258).

In accordance with clause 55 of the draft Bill (Bill B) the probation officer must submit the assessment report containing recommendations regarding the diversion of a child or youth to the prosecutor of the district court having jurisdiction. Upon consideration of the recommendations, the prosecutor may exercise his or her power to withdraw the charges or alternatively must arrange for the opening of a preliminary inquiry to consider diversion (Report: Juvenile Justice, 2000: XIX, 261). In terms of present legislation charges are withdrawn in view of successful of diversion options or programmes.

### **3.7 PRELIMINARY INQUIRY**

The South African Law Commission in the Report on Juvenile Justice (2000: 13 & 14) proposes an important new procedure called the preliminary inquiry. The aims of the preliminary inquiry are to make sure that the case of each child or youth is carefully considered and to give each child or youths the maximum opportunity to be diverted out of the criminal justice system. In addition the preliminary inquiry aims to provide better protection to those children or youths proceeding to trial from the risk of pre-trial detention.

Clause 56 of the draft Bill (Bill B) includes the objectives and manner of conduct of the preliminary inquiry. As proposed in the draft Bill (Bill B) the preliminary inquiry is presided over by a magistrate referred to as the inquiry magistrate, appointed by the chief magistrate of the magisterial district concerned. The inquiry is an informal procedure and may be held at any place. The inquiry may not be held in a court, unless no other suitable place is available. The preliminary inquiry must take place



within 48 hours after arrest. The objectives of the preliminary inquiry among others are to:

- “- ascertain whether an assessment of the child has been affected by a probation officer, and, if not, whether compelling reasons exist for dispensing with such assessment;
- establish whether a child can be diverted, and if so, to which diversion option;
- provide the prosecutor with an opportunity to assess whether there are sufficient ground for the case to proceed to trial;
- determine the release or placement of a child.”

(Report: Juvenile Justice, 2000: XIV, 262 & 263).

Probation officers play an important role as the preliminary inquiry. Probation officers are in terms of clause 57 (1) of the draft Bill (Bill B) required to attend the preliminary inquiry. It is further in terms of clause 59 (2) of the draft Bill (Bill B) required that the probation officer or prosecutor, at the start of the preliminary inquiry, have to ensure that the inquiry magistrate is in possession of the assessment report, as well as an age assessment form, in view of a child or youth whose age is in dispute. Clause 60 (3) of the draft Bill (Bill B) determines that an inquiry magistrate may order a child or youth to be assessed if this has not already occurred, or make a decision to dispense with assessment, if it would be in the best interest of the child or youth. (Report: Juvenile Justice, 2000: XIV, XX, 263 – 265).

Clause 66 of the draft Bill (Bill B) provides that any person may request the inquiry magistrate to remand the inquiry for the purpose of a further detailed assessment of a child or youth by a probation officer. If the inquiry magistrate is satisfied that there are exceptional circumstances warranting a further assessment of the child or youth, he may remand the preliminary inquiry for a period of 14 days to enable a detailed assessment to be conducted. Circumstances under which the preliminary inquiry may be remanded relate to:

- “- the possibility that the child may be a danger to others or to self;
- the fact that the child has a history of repeatedly committing offences or abscondment;
- the social welfare history of the child;
- the possible admission of the child to a sexual offender’s programme, substance abuse programme or other intensive treatment programme;



- the possibility that the child may be the victim of sexual or other abuse.”  
(Report: Juvenile Justice, 2000: 269).

At the finalisation of the preliminary inquiry the inquiry magistrate may make an order that the matter can be diverted, where the prosecutor has indicated that diversion can be considered. Where the inquiry magistrate has reason to believe that the magistrate has reason to believe that the child is in need of care, he may order that the preliminary inquiry be closed and the matter be transferred to the children’s court. Where the prosecutor decides to proceed with the prosecution of the child or youth, the matter may be set down for plea and trial in a court. The prosecutor must inform the inquiry magistrate of the place and time where the child or youth is to appear for plea and trial. (Report: Juvenile Justice, 2000: XXI, 266 & 267).

It is clear that the probation officer’s assessment of a child or youth is a determining factor in the outcome of the preliminary inquiry in respect of the child or youth.

### **3.8 JUVENILE COURT AND CRIMINAL PROCEEDINGS**

Although the aim is to divert children or youths as far as possible away from the criminal justice system, it is a fact that certain matters regarding children or youths will proceed to court for plea and trial. Probation officers delivering services at assessment centres attached to juvenile courts are not as such involved in the criminal proceedings. In view of their role in the assessment process it is however necessary for them to have knowledge of legislation specifically related to the assistance and protection of children or youths at criminal proceedings. It is the task of probation officers carrying out assessments to advise children or youths regarding the protection of their rights and parents or guardians regarding their responsibilities towards their children during the trial phase. Present and proposed legislation pertaining to the status of juvenile courts in South Africa, as well as pertaining to the protection and assistance to children or youths during the criminal proceedings will subsequently be discussed.

#### **3.8.1 Juvenile courts**

There are as yet no differentiated or separate criminal courts for juveniles in South Africa. Provision has however been made for administrative juvenile courts, that is courts set aside within the adult system to deal with cases of juveniles under the age



of 18 years. (Carriers 1997: 2; De Villiers 1988: 541; Olmesdahl and Steytler 1983: 236 and Pinnsolle et al 1994:4) The administrative juvenile courts function at district level as determined in accordance with the Magistrate's court Act (Act no 32 of 1944). As in the case of an adult accused, an accused child or youth can be tried in a district court, Regional Court of High Court, depending on the jurisdiction of the court in view of the offences it can adjudicate and in view of its sentencing powers. A criminal court at district level and thus a juvenile court, has jurisdiction to adjudicate in respect of all offences except treason, murder and rape and in the case of a Regional Court, all offences except treason. In view sentencing a district court may impose sentences of imprisonment not exceeding three years and the Regional Court sentences of imprisonment not exceeding 15 years. The Director of Public Prosecutions or a designated prosecutor makes the decision to refer the matter to the Regional Court before plea and trial (Magistrate's Court Act (Act no 32 of 1944). The High Court has jurisdiction to adjudicate any offence and has unlimited sentencing powers (Edwards 1992: 47).

The child justice court as proposed in clause 71 of the draft Bill (Bill B) will function at district level. The jurisdiction of the magistrate's court in view of the offences it can adjudicate and its sentencing powers applies to the child justice court. The child justice court in which a child or youth must appear is also determined in accordance with section 90 of the Magistrate's Court Act (Act no 32 of 1944). Although cases involving accused children or youths may be heard in a Regional Court of High Court, clause 71 92) of the draft Bill (Bill B) determines that preference must always be given to the referral of cases to the child justice court. The draft Bill (Bill B) further endeavours to create a form of differentiated court to deal specifically with children or youths, in accordance with international instruments. The draft Bill (Bill B) provides that the chief magistrate must designate a child justice court in his or her magisterial district and that such a court must be staffed by specifically selected and trained personnel. The draft Bill (Bill B) further provides that the courtroom, where achievable, should be located and designed in a way which is favourable to the dignity of children and youths, the informality of the proceedings and the participation of all persons involved. (Report: Juvenile Justice, 2000: XXII, 130, 273 and 274).

In order to further differentiate child justice services, the South African Law Commission has included legislation in clause 72 of the proposed draft Bill (Bill B) to



enable the establishment of One-Stop Child Justice Centres by the Minister of Justice and Constitutional Development and other relevant Ministers. Centralised services at a One-Stop Child Justice Centre will include police, probation officers, a child justice court and temporary facilities to accommodate children or youths pending a preliminary inquiry. The Minister of Justice and Constitutional Development is given the power to determine boundaries of magistrate's courts in relation to One-Stop Youths Justice Centres. (Report: Juvenile Justice, 2000: XXII, 138, 274 & 275).

In view of the proposed legislation the status of juvenile courts remain unchanged. The draft Bill (Bill B) however provides for a form of differentiated court in view of a changed structure pertaining to the atmosphere of child justice courts, court procedure and the personnel serving the child justice court. It is necessary for probation officers delivering services at assessment centres attached to juvenile courts, to have knowledge of the aforementioned legislation in order to function effectively as part of the juvenile or child justice system.

### **3.8.2 Criminal proceedings**

With reference to paragraph 3.8 of this study legislation providing differentiated treatment to accused children or youths during the trial phase will subsequently be discussed. De Villiers (1998: 531 and 532) confirms that children or youths are in principle subject to the same criminal procedure and law of evidence as adults. Only five sections of the Criminal Procedure Act (Act no 51 of 1977) provide differentiated treatment for children or youths under 18 years during the trial phase.

Section 73 (3) of the Criminal Procedure Act (Act no 51 of 1977) entitles an accused under the age of 18 years to be assisted by a parent or guardian. Hiemstra (1987: 171) emphasizes that the parent or guardian can advise the accused but cannot make decisions on his or her behalf especially with the decisions to testify or not. Assistance can also be provided by another person such as a teacher if the court approves.

Section 74 of the aforementioned act further requires that a parent or guardian of a child or young person under the age of 18 years be warned or notified to attend the criminal proceedings, if known to be in the magisterial district in question. Failure to



attend or remain in attendance of the criminal proceedings if warned or notified as such, is considered an offence and is punishable. Written exemption from attending the criminal proceedings can be obtained from the magistrate concerned.

Section 153 (4) of the Criminal Procedure Act (Act 51 of 1977) determines that if an accused at criminal proceedings before any court is under the age of 18 years, no person other than the accused, his legal representative and parent or guardian or a person in loco parentis, shall be present at such proceedings, unless such person's presence is necessary in connection with such proceedings or is authorized by the court.

The identity of a young person under the age of 18 years is protected at criminal proceedings in terms of Section 154 (3) of the Criminal Procedure Act (Act 51 of 1977). No information may be published which reveals or may reveal the identity of the young person. The presiding judge or judicial officer may, however, authorize the publication of such information which is in his opinion just and equitable and in the interest of the particular person.

Section 164(1) of the Criminal Procedure Act (Act 51 of 1977) provides that any person who, from ignorance arising from youth is found not to understand the nature or meaning of the oath or the affirmation, may be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation. In such instance the youth shall be cautioned to speak the truth. In terms of the aforementioned sections of the Criminal Procedure Act (Act 51 of 1977), protection is provided in view of the assistance and presence of parents or guardians at criminal proceedings and in view of the protection of the identity of the child or youth.

Protection to a child or youth as contained in the Criminal Procedure Act (Act 51 of 1977) is also included in the draft Bill (Bill B) . Clause 76(1) of the draft Bill (Bill B) provides that a child or youth must be assisted by a parent or an appropriate adult at criminal proceedings. Clause 83 of the draft Bill (Bill B) protects the child or youth in terms of confidentiality in that the criminal proceedings where a child or youth is present should be held in camera. The publication of a child or youth's identity is further prohibited. Any information pertaining to a child or youth governed by the draft Bill (Bill B) can only be divulged or made public under specific circumstances



and if it is in the interest of the child or youth concerned or children or youths in general. A child's rights are also protected in view of the provision in clause 81(1) of the draft Bill (Bill B) in that a court must conclude all trials of accused children or youths as speedily as possible. Clause 78 of the draft Bill (Bill B) provides protection in view of a child or youth's dignity, determining that no child or youth may be subjected to wearing leg irons when appearing at court. Conditions are also provided as set out in clause 78 to protect the safety of children being transported to court. (Report: Juvenile Justice, 2000: XXII – XXIV, 277 – 280). As discussed in paragraph 3.8 of this study probation officers carrying out assessments needs to have knowledge of the aforementioned legislation in order to advise children regarding their rights during the trial phase. It is important for probation officers to advice or inform parents or guardians regarding their responsibilities towards their children, in order to aid children in view of their right to assistance during the trial phase.

The draft Bill (Bill B) furthermore provides the maximum opportunity for children or youths to be diverted away from the criminal justice system as supported by Sloth-Nielsen, 1997: 107). Clause 82 of the draft Bill (Bill B) determines that if it comes to the attention of the court, before the end of the state's case, that a child or youth acknowledges or intends to acknowledge responsibility for the offence, that court may divert the matter with consent of the prosecutor. The court may refer the child or youth to any diversion option and may postpone the matter to enable the child or youth to comply with the diversion conditions. Upon receipt of a report from a probation officer confirming that the child or youth has successfully completed the diversion, the court must acquit such a child or youth. If a child or youth fails to comply with the diversion conditions, the prosecutor may follow the necessary procedures in order to continue with the trial. (Report: Juvenile Justice, 2000: XXIV, 281 & 282).

### **3.9 CONVERSION OF TRIAL INTO A CHILDREN'S COURT INQUIRY**

One of the most important provisions included in the Criminal Procedure Act (Act 51 of 1977) to protect children or youths in need of care, is the conversion of a trial into a children's court inquiry. In this section the criminal legislation and related child care legislation pertaining to the procedure of conversion of a trial into a children's court inquiry will be discussed, with reference to the role of probation officers and social



workers. As this study also deals with children or youths who are current subjects of the Child Care Act (Act 74 of 1983) as amended child care legislation in this regard will also be included.

### **3.9.1 Referral to children's court**

Kadushin (1980: 157) corroborates that the state is ultimately a parent to all children. In view of a natural parent neglecting, abusing or exploiting a child, the state has the legal right and responsibility to intervene to protect him.

Children or youths appearing before the juvenile court are protected in terms of Section 254 of the Criminal Procedure Act (Act 51 of 1977). Section 254(1) stipulates that:

“ if it appears to the court at the trial upon any charge of the accused under the age of 18 years, that he is a child as referred to in section 14(4) of the Child Care Act (Act 74 of 1983) as amended, and that it is desirable to deal with him in terms of section 13, 14 and 15 of that Act, it may stop the trial and order that the accused be brought before a children's court mentioned in section 5 of that Act, and that he be dealt with under the said sections 13, 14 and 15. If an order under subsection (1) is made after conviction the verdict shall be of no force in relation to the person of whom the order is made and shall be deemed not to have been delivered.” McLaghlan (1984: 26) expresses the opinion that this procedure should protect all children who are neglected, abandoned and in emotional or financial need. In practice a probation officer's report in the form of a pre-trial or pre-sentence report is required, as well as the consent of the senior or designated prosecution before the court will proceed with the conversion of a trial into a children's court inquiry.

The draft Bill (Bill B) in clause 70(2) requires that referral of a matter to the children's court must be considered by a probation officer at assessment, an inquiry magistrate at a preliminary inquiry and a court if it becomes evident that:

- if a child has on more than one occasion been assessed in regard to minor offences to meet his or her basic needs for food or warmth;
- if the child is a current subject of the children's court;
- is abusing dependence-producing substances;



- does not live at home or in appropriate substitute care and is alleged to have committed a minor offence with the purpose to meet his or her basic needs for food or warmth;
- or is a child as described in section 14 of the Child Care Act (Act 74 of 1983) as amended”.

(Report: Juvenile Justice, 2000: 272).

According to the stipulations of the Criminal Procedure Act (Act 51 of 1977) all children before a criminal court, who appear to be in need of care in terms of section 14(4) of the Child Care Act (Act 74 of 1983) as amended, should be considered for referral to a children’s court. This includes all types of offences as well as all the grounds indicating a child to be in need of care. As conversion however indicates action in terms of section 13, 14 and 15 of the Child Care Act, that is opening and holding of an inquiry and making of a finding and order, it does not make provision for children who are current subjects of the Child Care Act. This also indicates that children are not necessarily protected from involvement in crime by the Child Care Act (Act 74 of 1983) as amended.

### **3.9.2 Children’s courts and procedures**

According to Van Niekerk (1998: 16) children’s courts ensures an extensive network to ensure the protection of children in need of care. Probation officers and social workers form part of this network in view of their function and powers in terms of the Child Care Act (Act 74 of 1983) as amended in order to protect children in need of care.

Section 5 of the Child Care Act (Act 74 of 1983) as amended determines that every magistrate’s court is a children’s court for the area of jurisdiction. Section 6 of the said Act appoints every magistrate or assistant magistrate as a commissioner or assistant commissioner of child welfare. A commissioner or assistant commissioner of child welfare presides over a children’s court in terms of section 7 of the Act to execute jurisdiction and powers as granted to the court in terms of the said Act or any other law. Section 7 also provides for the appointment by the Minister or a commissioner of a officer of the public service as a children’s court assistant. Regulation 2 under the Child Care Act (Act 74 of 1983) as amended, specifies the main function of a social worker appointed as a children’s court assistant to canalize



all social workers reports intended in terms of Section 14(2) of the Child Care Act. In terms of Section 8 of the Act a children's court sits in a room other than a normal court and is held in camera. Publishing of any formation related to the proceedings is prohibited, unless authorized by the Minister or commissioner concerned and being considered as just, equitable and in the best interest of a person.

### **3.9.3 Intervention in terms of the Child care act**

Kadushin (1980: 313) views substitute care as a drastic change necessary when the child's home presents deficiencies so serious, that it cannot provide the child with minimally adequate social, emotional and physical care. He advocates that every effort should be made to keep the home intact for the child and to keep the child in the home. This view is endorsed by the Department of Welfare in their information guide on the practical implications of the Child Care Act (Act 74 of 1983) as amended and Regulations (1998: 1). In view of the powers of competence of the children's court Van den Heever (1995: 39) endorses that recommendations by social workers to the children's court should be made with great caution and on certain grounds, as the children's court has far-reaching powers to its disposal in view of restricting parental powers.

#### **3.9.3.1 *Removal of a child to a place of safety***

Initial intervention to secure the safety and welfare of children is included in Sections 11(1) and (2) and section 12(1) of the Child Care Act (Act 74 of 1983) as amended. Sections 11(1) and (2) of the Act provide for the removal of a child to a place of safety. Firstly a court can make an order to remove a child to a place of safety if it becomes apparent during the proceedings that a child is in need of care or that it is in the welfare and safety of that child to be taken to a place of safety. Secondly, a commissioner of child welfare on information on oath given by any person to the same effect, can issue a warrant authorizing a policeman or social worker or any other person to search for a child and take him to a place of safety to be kept there until he can be brought before a court. Section 12(1) gives authorization to any policeman, social worker or officer to remove a child to a place of safety without a warrant if there is reason to believe that the child is a child as referred to in section 14(4) and if the delay in obtaining the warrant will be detrimental to the welfare and safety of the child. Especially in terms of section 12(1) extensive powers are given to



social workers and police officers to intervene in the respect of the safety and welfare of children.

### **3.9.3.2 *Bringing children before a children's court and holding of an inquiry***

Children removed in terms of section 11(1) or (2) or 12(1) are brought before the children's court of the district in which they reside or happen to be in terms of section 13(1) of the Child Care Act (Act 74 of 1983). In terms of section 13(2) any child who according to a children's court assistant has no parent or guardian or is a child as described in section 14(4) can be brought before the children's court of the district in which the child resides. The children's court hold an inquiry in terms of section 13(3) in order to determine whether the child is in need of care as described in section 14(4). In view of a report furnished by a social worker in terms of section 14(2) the court at the inquiry shall make a finding in terms of section 14(4) in light of the child being abandoned or has no visible means of support, lives in circumstances that could seriously harm the physical, mental and social well-being of the child, has been physically, emotionally or sexually abused or is uncontrollable.

### **3.9.3.3 *Powers of children's court after an inquiry***

After the making of a finding in terms of section 14(4) of the Child Care Act (Act 74 of 1983) the court makes an order in terms of section 15(1). The report of the social worker in terms of section 14(2) includes a recommendation in terms of section 15(1). The child can firstly be returned to the custody of his parent or guardian in whose custody he was before being removed, with conditions and requirements as determined by the court. Secondly, an order in terms of a foster placement can be made. Thirdly, a child can be referred to a children's home as designated by the Director-General and fourthly be referred to a school of industries as designated by the Director-General. An order by the children's court under this section may be made in respect of any person who was under the age of 18 years at the commencement of the inquiry, although that person has attained the age of 18 years before the date of the order.



If a child or youths appears before a juvenile court after being dealt with in terms of the aforementioned sections of the Child Care Act (Act 74 of 1983) as amended, conversion of the criminal proceedings to a children's court inquiry is no longer possible.

#### **3.9.3.4      *Current subject of the Child Care Act***

It is the task of the probation officer carrying out assessments, to establish the status of children or youths in terms of the Child Care Act (Act 74 of 1983) as amended, appearing at a juvenile court. The probation officer should further investigate whether the current order of the children's court is still in the best interest of the child or youth and inform or advise the court accordingly. Section 16 of the Child Care Act (Act 74 of 1983) as amended, determines that orders in terms of section 15 will lapse after a period of two years. Orders can be extended by the Minister for a further period, not extending the end of the year, in which that pupil attains the age of 21 years. Whilst subject to an order in terms of sections 15 or 16, certain interventions can be carried out. Section 34 provides for the transfer of a child or pupil from an institution to which he was sent or the custody he was placed in to any other institution or custody, excluding transfer to a reformatory. Transfer from a reformatory to another institution is, however, possible. Leave of absence from foster care or an institution, can be granted for a limited period in terms of section 35. Section 36(1) provides for the temporary removal of a child or pupil for the purpose of observation, examination and treatment. In terms of section 36(2) the commissioner of child welfare can order the immediate removal of a foster child or pupil in an institution to a place of safety if desirable. In terms of both section 36(1) and (2) the Minister makes an order within 6 months for the child to either return to the custody or institution he was removed from or deal with the child or pupil in terms of section 34 or 37. The Minister may discharge a foster child or pupil if desirable and in the interest of the child or pupil from the effect of any order made under section 15 or the Criminal Procedure Act (Act 51 of 1977). If a foster child or pupil who has absconded from custody or an institution or has failed to return after leave of absence under the Child Care Act or Criminal Procedure Act, he or she may be brought before a commissioner of child welfare. The child or pupil can be ordered to return to the custody or institution he absconded from or be removed to a place of safety, pending further investigation and action in terms of section 34 or 37.



Probation officers should have knowledge of the aforementioned legislation in order to advise the court appropriately in view of protecting the best interest of the accused child or youth who are also current subjects of the Child Care Act (Act 74 of 1983). Children or youths who for instance have been sentenced to a reformatory, are subject to the Child Care Act for the duration of the sentence and can be dealt with in terms of the aforementioned sections of the Child Care Act. Children can be detained awaiting trial in institutions where they were referred to in terms of the Child Care Act. Where applicable, criminal proceedings could be diverted in view of interventions in terms of the Child Care Act such as section 34 transfers, for instance where a child or youth is transferred from a children's home to a school of industries, if in the best interest of the child or youth.

### **3.10 Sentence of convicted children or youths**

The primary task of probation officers during the sentencing phase is the compiling and presenting of pre-sentence reports (Lennox 1999: 21). Although subjected to the same criminal procedure and principles of punishment as convicted adults, ample sentence options are available for convicted children and youths, which probation officers can utilize creatively in making recommendations to the court regarding the sentence of convicted children and youths (Lennox 1999: 21, Wessels 1994: 17; Juvenile Justice Report 2000: 151). The purpose of sentencing and the various sentence options applicable to convicted children and youths as contained in the Criminal Procedure Act (Act 51 of 1977) and the proposed draft Bill (Bill B) will be subsequently discussed. Reference where relevant will be made to the task of the probation officer during the sentence phase.

#### **3.10.1 Purpose of sentencing**

According to Hiemstra (1987: 584 and 585) a person is punishable if he or she is culpable and acted unlawfully with a guilty inclination. In general, punishment of convicted persons should be measured in terms of justness and effectiveness. The accepted aims of punishment of convicted persons are deterrence, prevention, reform and retribution. Of the four aims, deterrence is viewed as the prevailing and universally acknowledged aim of punishment in order to prevent recidivism. Winter (1997: 8 and 9) distinguished between the purpose at sentencing and the purpose for sentencing. The purpose at sentencing, for instance, might be to incapacitate and deter, but the purpose of the sentence might be to provide drug treatment and reunite



the offender with his or her family. In the sentencing of convicted children or youths the purpose for sentencing should be emphasized. Carriero (1997: 18 and 28) argues that a child or youth's responsibility for criminal behaviour must be measured differently than that of an adult, because the aim of punishment is to correct children's conduct. Pinnock, Skelton and Shapiro (1994: 4 and 5) propose that the court in sentencing children or youth be guided by principles such as proportionality, accountability, an attempt to restore the harmony between the child or youth and society, family preservation and appropriate time frames. Chadbourne's voices of the youth project advocates individualized sentencing options, encompassing the rehabilitation or restoration of both the offender and the communities harmed. (1998: 32 and 34). Although deterrence remains a factor in sentencing, the focus in the sentencing of convicted children or youths are to correct behaviour and to reintegrate the child or youth into the family and society. The purpose of sentencing convicted children or youths as set out in the draft Bill (Bill B) are therefore to:

- “- encourage the child or youth to be accountable for the harm caused by him or her;
- promote an individualized response which is appropriate to the child or youth's circumstances and proportionate to the circumstances surrounding the harm caused;
- promote the integration of the child or youth into the family and community;
- ensure that any necessary supervision, guidance, treatment or services which forms part of the sentence can assist the child or youth in the process of integration.”

(Juvenile Justice Report 2000: XXV, 284 and 285).

The aforementioned draft legislation as such serves to protect the interests of children and youths in terms of sentencing.

### **3.10.2 Sentencing options in respect of convicted children or youths**

As mentioned, the Criminal Procedure Act (Act 51 of 1977) provides appropriate sentence options in respect of convicted children and youths. These sentence options provides for the correction of behaviour instead of punishment, as well as community-based sentence options. As will be discussed hereafter. Reference will also be made to the proposed legislation as contained in the draft Bill (Bill B) relating to the sentencing of convicted children and youths.



### **3.10.2.1      *Alternations to punishment***

Section 290 of the Criminal Procedure Act (Act 51 of 1977) provides alternatives to punishment directed at the correction of a child or youth's behaviour under the age of 18 years. These entail the placement under the supervision of a probation officer or correctional officer, placement in the custody of any suitable person or referral to a reform school. The above alternatives are also applicable to persons of 18 years who have not reached the age of 21 years. A child or youth may be kept in a place of safety until the order can be put into effect. An order in terms of section 290 will lapse after a period of two years, or a shorter period as determined by the court when making the order. In practice a pre-sentence report by a probation officer is required for sentence purposes in terms of section 290. As McLaghlan (1998: 428) confirms, children and youths's welfare are benefited in view of the above sentence options.

As set out in clause 90 of the draft Bill (Bill B), sentencing involving a residential element are only warranted in the case of a serious offence, if a crime impacted severely on the victim, protection of the community is needed and where a child or youth failed to respond to non-residential alternatives. A pre-sentence report by a probation officer is compulsory in all matters with a residential requirement. A sentence to a residential facility may be imposed for a period not less than six months and not exceeding two years. An exception is however provided in that the draft Bill (Bill B) proposes a longer sentence in respect of children or youths under 14 years, who would otherwise have been sent to prison. (Report: Juvenile Justice, 2000: XXV – XXVII, 284, 287 and 288).

The draft Bill (Bill B) in clause 87 provides a range of sentencing options which do not involve a residential requirement and which allow the child or youth to remain in the community. The range of sentencing options include some of the orders which may be used as diversion orders, such as an oral apology, and placement under a good behaviour order, a family time order, compulsory school attendance or positive peer pressure. Other options include placement under supervision and guidance, specialized interventions such as counseling or therapy, attendance at a centre for a vocational or educational purpose and community service. Clause 88 of the draft Bill (Bill B) provides restorative justice sentence options such as referral of a matter to a family group conference or victim offender mediation, which also allow the child or



youth to remain in the community (Juvenile Justice Report 2000: XXVI, 257, 285 & 286). In accordance with the purpose of sentencing these options provide the opportunity for the correction of the child or youth's behaviour, as well as promoting the integration of the child or youth into the family and community. It is the task of the probation officer advising the court regarding sentence, to use the aforementioned sentence options creatively in the best interest of the child or youth concerned.

### **3.10.2.2 *Suspended or postponed sentences***

Suspended or postponed sentences are community-based sentence options with the aim to keep convicted persons out of prison (Howes 1992: 29). Suspended or postponed sentences may be imposed on convicted adults or children. Section 297 of the Criminal Procedure Act (Act 51 of 1977) provides for the conditional or unconditional postponement or suspension of sentence and caution or reprimand in respect of all offences except those where a minimum sentence are prescribed. The court may postpone or suspend sentence for a period not exceeding five years and release the person concerned. Conditions of release may include one or more of the following:

- compensation;
- rendering of some specific benefit to the person aggrieved in view of compensation for damage or loss;
- performance of unpaid services for the benefit of the community under supervision and control of an organisation;
- submission to correctional supervision;
- submission to instruction or treatment;
- submission to the supervision or control of a probation officer;
- compulsory attendance or residence at a specified centre for a specified purpose; and
- good conduct."

The person or child may be ordered to appear before the court at the expiration of the relevant period. If unconditionally release, a person or child may be ordered to appear before the court if called upon before the expiration of the relevant period. The researcher agrees with Howes (1992: 31, 32, 34 and 35) that postponed sentences are especially appropriate for children and youths but that effective



supervision and feedback are vital. It is also necessary to ensure that children and youths understand the sentence. Winter (1997: 5) stresses the importance of the appropriate authorities to have the power to require convicted persons or children to comply with certain conditions and to perform certain activities. She is of the opinion that in order to safeguard respect for human rights and human dignity, standards should be set for imposition and implementation of conditions.

The draft Bill (Bill B) stipulates that sentences in respect of children and youths may not be postponed or suspended for a period exceeding three years. Conditions of sentence correspond in nature with prescribe sanctions for sentence and include conditions concerning restitution, restorative resolution process, counseling and guidance and school attendance. The proposed conditions and time-limit are focused on the needs of convicted children and youths (Juvenile Justice Report 2000: 289, 290).

### **3.10.2.3      *Correctional Supervision***

Correctional supervision is a further community-based sentence option in order to keep convicted adults and children out of prison. A sentence of correctional supervision may be imposed in terms of Section 276A of the Criminal Procedure Act (Act 51 of 1977). A correctional supervision sentence in terms of section 176(1)(h) requires a report by probation officer and the duration thereof may not exceed three years. In terms of Section 276(1)(i) correctional supervision may only be imposed if the court is of the opinion that the offence justifies imprisonment for a period not exceeding five years. The draft Bill (Bill B) in clause 89 is in accordance with correctional supervision in terms of section 276(1)(h) with an age limit of 14 years. It is also proposed that a sentence in terms of Section 276(1)(h) be postponed or suspended, with or without conditions. Correctional supervision is generally viewed as a harsh and restrictive punishment for children and youths and is seldom imposed. (Juvenile Justice Report 2000: XXVI, 287).

### **3.10.2.4      *Imprisonment***

Imprisonment is a sentence option aimed at punishment and containment, which may be imposed on convicted adults and children. Winter (1997: 4) maintains that imprisonment still remains the cornerstone of the present penal systems in spite of efforts to decrease its use. Although a prison sentence definitely incapacitate it does



not deter effectively. A child or youth under the age of 18 years cannot be declared a habitual criminal in terms of section 286 of the Criminal Procedure Act (Act 51 of 1977). The duration of imprisonment of a convicted child or youths under the age of 18 years is however not specified in the Criminal Procedure Act. The draft Bill (Bill B) in clause 92 defines that children or youths younger than 14 years at the time of commission of the offence, cannot be sentenced to imprisonment. Authority is also given to the Commissioner of Correctional Services to place a child or youths under 18 years under correctional supervision in terms of section 276(1)(i) of the Criminal Procedure Act (Act 51 of 1977). A sentence of imprisonment is warranted if substantial reasons exist in view of conviction of a serious and violent crime or if the child or youth has previously failed to respond to alternative sentences, including residential sentences other than imprisonment. Clause 95 of the draft Bill (Bill B) further defines that no sentence of life imprisonment may be imposed on a child or youth who at the time of the offence was under the age of 18 years. Although imprisonment is seen as the cornerstone of penal systems, imprisonment in respect of children and youths are imposed with caution. A pre-sentence report by a probation officer is compulsory for sentence purposes.

### **3.11 LEGAL REPRESENTATION**

In view of assisting children or youths in protecting their best interests during criminal or child care proceedings probation officers should be informed regarding the right of children and youths to legal representation. According to Hiemstra (1987: 164) the right to legal representation is a fundamental right in Roman-Dutch, English and South African law. Section 73 of the Criminal Procedure Act (Act 51 of 1977) grants the right to legal representation to any person including children or youths, from the moment of arrest. The draft Bill (Bill B) defines certain requirements regarding the legal representation of children and youths. These concern principles protecting the rights of the child or youth, the procedure regarding the appointment of a legal representative, restriction on the right of the child or youth to waive legal representation and the accreditation of legal representatives by the Legal Aid Board. As set out in clause 99(2) of the draft Bill (Bill B) a probation officer or prosecutor to whom a child or youth communicates the request for legal representation, must inform the Legal Aid Board officer as soon as possible to appoint a legal representative to represent the child or youth (Juvenile Justice Report 2000: 291 – 295).



The right to legal representation for children appearing in child care proceedings are included in section 8A of the Child Care Act (Act 74 of 1983) as amended. A child who is capable to understand, has to be informed by a children's court of his or her legal right to legal representation at the commencement of any proceedings or at any stage of the proceedings. The court can either approve that a parent appoint a legal practitioner for his or her child or may order that legal representation be provided for the child at expense of the state, if considered to be in the best interest of the child. Procedure regarding application to the Legal Aid Bond is stipulated in section 8A. Regulation 4A under the Child Care Act (Act 74 of 1983) as amended, specifies conditions under which legal representation will be granted at the expense of the state. In view of a children's rights approach Zaal (1997: 343) is of the opinion that where a child is in disagreement with anyone else involved in child care proceedings or any other party has a legal representative, legal representation should be made mandatory. It is nevertheless imperative that children or youths understand and exercise their right to legal representation in order to ensure their protection within the legal system.

### **3.12 SUMMARY**

In this chapter, present and proposed legislation regarding the detention and criminal procedure related to children and youths under the age of 18 years have been discussed. Although there is no differentiated legal system for children and youths in South Africa as yet, specific sections in the Criminal Procedure Act (Act 51 of 1977) protect the right and needs of children and youths in conflict with the law. Several sections enable intervention in terms of the Child Care Act (Act 74 of 1983) as amended, in order to specifically protect the welfare of children. The Correctional Services Act (Act 8 of 1959) as amended, provide conditions in order to protect children and youths in detention. Proposed legislation in order to establish a comprehensive criminal justice system for children and youths in South Africa is included in the draft Bill (Bill B). The Act aims to protect the rights of children and youths ensuring individual treatment and accountability from the commencement of contact with the law. Duties and powers of police officers, probation officers, prosecutors and magistrates are specified. Probation officers are enabled to render a specialized but holistic service to children and youths in conflict with the law, and to ensure the welfare of the children and youths concerned.



## **CHAPTER 4**

### **ASSESSMENT IN SOCIAL WORK**

#### **4.1 INTRODUCTION**

Assessment of children and youths in conflict with the law forms the basis of this study. The framework and legislation within which child and youth care services are to be rendered and assessments carried out have been explored in the previous two chapters. Assessments of children and youths in conflict with the law are being carried out by social workers appointed as probation officers in terms of the Probation Services Act (Act 116 of 1991). In order to enable probation officers or social workers to effectively carry out assessments a thorough knowledge of assessment in social work is required. In this chapter assessment in social work will be defined and discussed in view of the purpose of assessment, assessment as stage or process, the skills, knowledge and guidelines required to carry out assessments, as well as risk- and needs assessment as related to youths at risk, including children and youths in conflict with the law.

#### **4.2 DEFINING AND CONCEPTUALISING ASSESSMENT IN SOCIAL WORK**

Fouché and Delport (1997: 44) are of the opinion that assessment forms an integral part of any helping relationship. They maintain that the understanding gained through assessment provides both the helper and client system with a clear indication as to which course to take. According to them no professional intervention is possible without a thorough prior assessment. Assessment in social work will forthwith be defined in terms of the purpose of assessment and conceptualized in view of assessment as stage, process and product.

Assessment in social work is defined by Sheafor, Horesji and Horesji (2000: 301) as: "The thinking process by which a person reasons from information gathered to arrive at tentative conclusions. During assessment the available information is organized and studied to make sense of the client's situation and lay a foundation for a plan of action. When the assessment is complete, the social worker should be able to describe the problem or situation accurately and identify what needs to be changed



to improve the client's situation." Wakefield (1996: 14) views assessment to a large extent as a matter of defining a client's problem.

Compton and Galaway (1994: 370, 371) view the purpose of assessment to reach an understanding of the problem, client and situation so that a plan can be constructed to solve or alleviate the problem. The express purpose of the assessment is not the understanding of the client, but to contribute understanding necessary for appropriate planning. According to them assessment involves an active thinking and testing process on the part of the worker and the client that results in the integration of understanding and knowledge in such a way that the problem becomes comprehensible and appears manageable enough to be converted into client actions and professional services. According to Milner and O'Byrne (1998: 36) the acid test of the assessment is satisfaction with subsequent decisions and action on the part of the service providers. Assessment therefore entails an accurate understanding of a client's situation by the social worker and client concerned in order to enable appropriate planning and action to solve or alleviate the client's problem.

According to Rauch (1993: 14,15) assessment can be conceptualized as stage, process and product. As a stage of treatment, assessment follows definition and precedes intervention planning. As process, practitioners or social workers engage in assessment from the time of initial contact with potential clients to the final contact, which may be minutes, days, weeks, months or even years later. Assessment is also moment to moment in that the practitioner or social worker continually decides what information does and does not merit further exploration. As product it is presented as a written document entered into the client's record. Formats vary from setting to setting, but they usually include definition of the problem, analysis of the factors supporting the problem situation, identification of goals and objectives and statement of the planned strategies for achieving goals and objectives.

O'Neil McMahon (1996: 35, 154, 155) views assessment as a specific stage during the problem solving process. According to her the problem solving process consists of progressive stages that lead to goal accomplishment. She divides the assessment stage into three components namely:

- an assessment statement;
- problem prioritization, and



- the contracted plan.

Assessment of the nature of the problem is conceived within the context of persons – in – environment and generalist social work practice. According to Krogsrud Miley, O’Meila and Du Bois (1995: 10) generalist social work considers the interplay of personal and collective issues and works with a variety of human systems such as societies, communities, neighbourhoods, complex organizations, formal groups, informal groups, families and individuals, to create changes which maximize social functioning. In order to explain assessment as a specific stage of the problem-solving process, the three components of the assessment stage as viewed by O’Neil McMahon (1996) will be discussed briefly.

#### **4.2.1 Assessment statement**

According to O’Neil McMahon (1996:155) an assessment statement needs to be made for each problem identified. The emphasis in view of the assessment statement is on the appraisal of the problem, depending on three variables of the problem, person and environment. The change potential of each of these variables needs to be assessed. Firstly the social worker and the client or system of contact needs to consider the nature of the problem. Secondly the strengths and the weaknesses of the person or the persons having the problem need to be assessed. The third area to be considered involves the environment in which the problem is located, in view of resources available, existing restraining forces in the environment and knowledge of the expected outcome with optimum use of available resources. O’Neil McMahon (1996: 156 & 157) further specifies that an assessment statement should also include a judgment about the seriousness or urgency of the problem with supportive data. Immediate attention has to be given to life-endearing situations.

#### **4.2.2 Problem prioritisation**

After assessing all three dimensions of a problem the social worker will be able to arrive at a comprehensive and accurate prognosis that can be used for problem prioritization. The social worker will usually select the problem with the highest change potential for beginning intervention. For some problems the persons may have high motivation and capabilities, but the environment may provide little opportunity to actualize the persons potential. If a person has little motivation or if there are no available support groups or resources in the environment, the prognosis for change in the specific area is low. In selecting the problem with the highest



change potential for beginning intervention the social worker should be aware of the fact that there are problems of greater severity in need of ongoing attention. Because of the serious nature of these problems, the social worker continues to direct efforts toward overcoming them, while at the same time working on those problems or needs for which progress may be expected (O'Neil McMahon, 1996: 158, 160).

#### **4.2.3 The contracted plan**

After a problem has been selected for action, the social worker and the client or system of contact begin to plan what needs to be done, by whom and when. In view of the identified problems and corresponding goals, the social worker and client conceptualize and verbalize specific goals that need to be performed in order to accomplish the goals. As a result of dialogue between the social worker and client or system of contact, tasks are placed in sequence. The discussion about each task also extends to a consideration of possible consequences that may result in its performance. Dates are also identified when each task is expected to be carried out. The projection of dates for task execution serves as a guide for general planning and review. The contracted plan needs to be continuously updated and reviewed (O'Neil McMahon 1996: 160, 161 & 163).

As described by O'Neil McMahon (1996) assessment can be conceptualized as a stage in the problem-solving process, while involving a continuous thinking process in order to enable appropriate planning and action.

### **4.3 A FOUNDATION AND GUIDELINES IN ASSESSMENT**

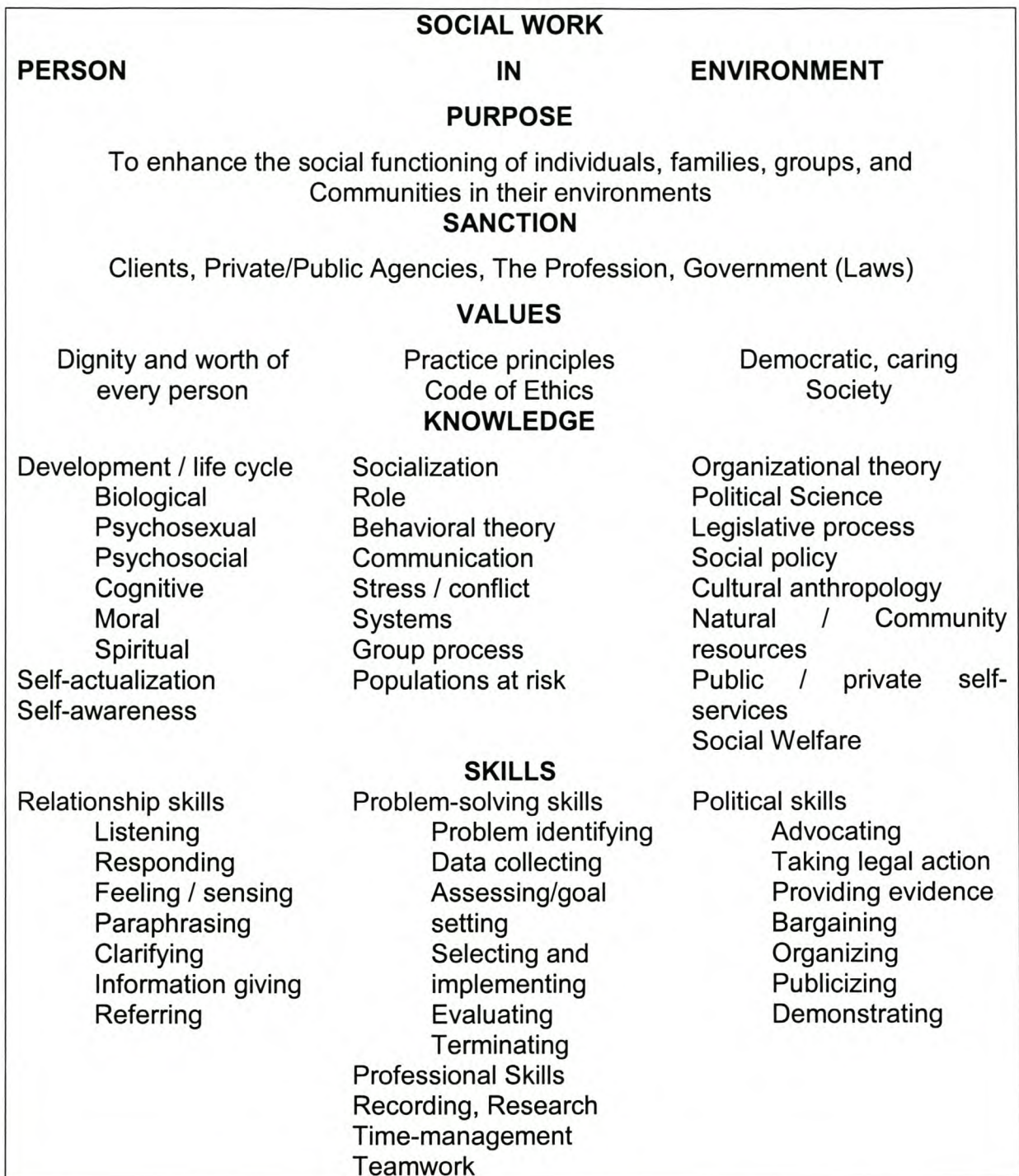
Milner and O'Byrne (1998: 56) maintain that social workers need a selection of practice principles and values, coupled with a range of theoretical models and methods, as a foundation from which they can respond creatively to the infinite range of situations they will meet. This will enable them to be thinking, reflecting and responsible professionals. As a basis for social work assessment, guidelines in assessment will be discussed with reference to a holistic foundation in social work, the ecosystem's assessment framework, diversity sensitivity in assessment and assessing client strengths.



### **4.3.1 A holistic foundation in assessment**

A holistic foundation in assessment as proposed by O'Neil McMahon (1996: 173) forms the basis from which all assessments in social work should be carried out. This holistic conceptualization of the foundation for social work practice is illustrated in figure 4.1.





**FIGURE 4.1** A holistic conceptualization of the Foundation for social work practice (O'Neil McMahon, 1996: 16)

The skills and approach a social worker uses in assessment should according to O'Neil McMahon (1996:173) firstly reflect the foundation value of belief in the dignity of every person. A client or system further needs to have an individualized



assessment, as no two people or systems are alike. Each client has a unique combination of problems, needs, resources and circumstances. A further essential factor according to O'Neil McMahon (1996) is client self-determination. Problem resolution will be unsuccessful without the agreement and support of the client system. She states that although it is easy to wish that a system or client have greater strengths or motivation, the social worker must convey an attitude of acceptance toward the client system as it is. Garvin and Seabury (1977:183) emphasise that the social worker should during assessment, encourage, include and value the client's participation in exploring his or her problems and life situation.

Apart from foundation values and principles, O'Neil McMahon (1996: 173) states that the social worker in addition uses knowledge and skills from the holistic foundation for social work practice when carrying out assessments. When writing a statement of cause for a problem, a social worker for instance may be using such theories as ecology, role or socialization to explain how a client system has been influenced by others. Knowledge of cultures, policies and formal and informal resources are used in developing priorities for planning and intervention. The social worker further utilizes various theories to understand persons, problems and environments and their interactions, as an appraisal of their change potential is being made.

The foundation skills that are used during assessment would according to O'Neil McMahon (1996: 173) include goal setting, planning, contracting and recording. As the social worker involves the client system in contracting, some degree of clarifying, bargaining and confronting may be needed. The supportive skills of listening, guiding and feeling and sensing are prevalent throughout the assessment process. With individualization of each problem – environment triplex during assessment, the social worker applies foundation skills and theories as regarded appropriate to the situation. This holistic foundation for assessment in social work ultimately needs to incorporate the sanction given by clients, social work agencies, the social work profession and Government, including laws.

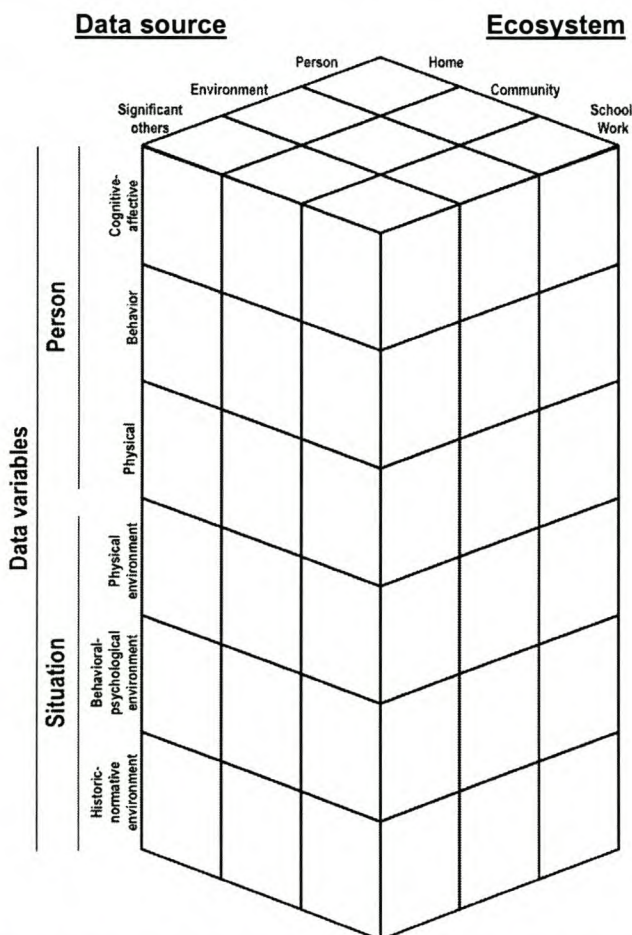
#### **4.3.2 Ecosystems assessment framework**

The ecological systems theory is according to Compton & Galaway (1994: 118) used as a base for social work practice as it offers a conceptual framework of the person and situation as an interrelated whole. According to O'Neil McMahon (1996: 17) the



ecological systems theory helps to clarify and to reinforce the perspective of person in environment for social workers. She recognizes that it is at the boundary where person and environment meet that most stress or problems occur. Krogsrud, Miley O'Melia and Du Bois (1995: 260) affirm that social workers use theoretical frameworks to explore and describe the context of client's situations in comprehensive and theoretically sound ways. The ecosystems assessment framework as a further basis from which social work assessments can be carried out will be forthwith discussed.

According to Meanes and Lane in Rauch (1993: 7,8) the ecosystems assessment framework as illustrated in figure 4.2 represent the major dimensions of a complete ecosystems assessment.



**FIGURE 4.2 Ecosystems Assessment Framework (Meanes and Lane in Rauch, 1993: 9)**

As explained by Meanes and Lane in Rauch (1993: 7,8) and illustrated in figure 4.2 the three dimensions of assessment include critical data variables, significant



ecosystems and relevant data sources. By breaking the three-dimensional block into its component cells, one can begin to identify the assessment components represented by each cell. A component is a data point that represents a combination of the specific focuses of each of the major assessment dimensions. Figure 4.2 represents an ideal framework for assessment. Meanes and Lane (1993) point out that in practice it may however be impossible to address every component. Practice constraints such as agency policy, case load and client or family resistance may inhibit completion of a comprehensive assessment. According to them the implementation of this framework results in specific principles of practice, which will subsequently be explained.

1. A comprehensive ecosystem firstly requires that data be collected about multiple ecosystems, such as school, home and community. Information relating to expectations of school personnel, adequacy of home resources for education and educational opportunities in the community could for example be obtained.
2. Assessment should further include data from all three data sources, namely person, significant others and direct observation of the client in the environment. Data are for instance obtained during an interview by a child reporting sadness due to separation of parents (person); by the parent reporting the child's resistance at home on a behaviour-rating scale (significant other) and by the social worker observing parent-child interaction in multiple-environments (environment).
3. When doing an assessment data should be collected on all of the critical data variables that describe the person, including cognitive and affective characteristics, behaviour and physical attributes, as well as the situation including data regarding the physical environment, psychosocial-behavioural environment and the historic normative environment. An example is used to illustrate this principle. A child's intellectual functioning on standardized tests for instance suggests above-normal capacity (cognitive affective), the teacher reports inattentiveness and sleeping in the classroom (behaviour), even though the child's physician does not include medical problems (physical). Observation reveals a too warm classroom (physical environment) in which students are not reinforced for constructive contributions (psychosocial-



behavioral environment) and social interaction has traditionally been low (historic normative environment).

4. A comprehensive assessment should more over include as many components as is possible, including data about as many of the critical variables and systems as are possible and relevant. Each variable and system is one piece of a total picture. Meanes and Lane in Rauch (1993: 8-12) point out that social workers cannot achieve a clear picture of the clients' situation if assessment data about each component are not complete. In order to understand the inability of a child to make friends in his or her classroom, the social worker would therefore assess the child's social skills across settings, obtaining information about the child's social functioning from a number of significant other, assess specific environments in which the child functions, and draw upon objective techniques such as sociometric ratings from peers and family members. The outcome of the process is a comprehensive picture of the child-situation.
5. All the assessment data must further be integrated into a comprehensive picture of the client's situation. An ecosystems assessment should thus assist the social worker to identify dysfunctional aspects of the person's interaction with his or her environment. The source of difficulty may be located within the person, the environment or both.
6. The ecosystems assessment must lastly be linked to an eclectic repertoire of intervention strategies, including interventions that are both person-and-environment-changing. A social worker may for instance teach a juvenile delinquent specific social skills that facilitate adjustment in society, while simultaneously working with the family, school and community agencies to develop a natural support network for the youths (Meanes and Lane in Rauch, 1993: 8-12).

Meanes and Lane (1993: 12) view these principles provided by the ecosystems framework as sound for conducting assessment. They suggest that social workers should identify, develop and refine the range of assessment methodologies that can be utilized to collect data for each of the components as outlined in figure 4.5. It is clear from the discussion that the ecosystems assessment framework provides a complete and thorough assessment of a person in his or her environment as an



interrelated whole. The ecosystems assessment framework also requires that resources in the environment be utilized in intervention.

### **4.3.3 Diversity sensitivity in assessment**

Social workers are specifically concerned with persons in their environment. As confirmed by O'Neil McMahon (1996: 47) clients of social workers are frequently identified as members of populations-at-risk. According to her, populations distinguished by age, gender, sexual preference, religion, ethnicity, or developmental delay or disability are at risk of experiencing discrimination, economic deprivation, oppression or abuse. The White Paper for Social Welfare 91997: 16) recognizes these at risk-populations or groups and determines that social welfare services and programmes will promote non-discrimination, tolerance, mutual respect, diversity and the inclusion of all groups in society.

In carrying out assessments social workers need to be sensitive to and acknowledge diversity. Milner and O'Byrne (1996: 60, 62 & 77) maintain that because oppression, inequality and powerlessness account for considerable pressure, distress and stress of many service users, social workers have to take note of the barometer of oppression before searching for valid accounts of people's lives and difficulties. According to them social workers should at all times listen to the stories of people who are oppressed and who are different. Social workers should further retain awareness of the power of differences, share similarities and differences and negotiate in order to learn about service user's perceptions, experiences and resulting psychological consequences. This includes learned helplessness, referring to the internalized feelings of alienation and worthlessness of the marginalized.

Milner and O'Byrne (1998: 77) and O'Neil McMahon (1996: 47) acknowledge the need for social workers to demonstrate respect for human life. According to O'Neil McMahon (1996) respect for human life is demonstrated through informed acceptance of human diversity and a resulting application in service rendering to diverse individuals and populations. As interventions are for example contracted the social worker should strive to promote empowerment by strongly encouraging and supporting minority members to speak and act for themselves, to meet immediate needs as well as to bring about societal change. Planning and selection of tasks on a contract should further reflect a sensitivity to cultural values and beliefs.



Institutional care for an elderly person or a foster care placement for a child may for example be inappropriate for certain cultures. Hines, Garcia-Preto, McGoldrick, Almeida and Weltman in Rauch (1997: 372) confirm the difference in the way different cultures define responsibilities and obligations according to gender roles, in view of motherhood and fatherhood and treatment of children. Thus in writing assessments, prioritizing problems and contracting with different clients or systems, social workers should use their knowledge of and sensitivity to diversity, value systems, age and stages, endowment and personality, class and geographic location.

Placing the above variables within a person-in-environment framework, as outlined in figure 4.3, using a holistic perspective, the social worker will be able to identify the unique combination of factors that constitute the identity of the system receiving service. The whole person is not understood without also considering his or her functioning in his or her environment (O'Neil McMahon: 1996: 75, 76).

<b>Person</b>	<b>In</b>	<b>Environment</b>
Gender	Culture	Class
Age / Developmental ability	Value System	Geographic location
Endowment / health / Personality	Sexual orientation	Institution / services
	Population-at-risk	

**Figure 4.3 Human Diversity (O'Neil McMahon, 1996: 75)**

Diversity sensitivity in assessment therefore forms an integral part of the foundation value of social work, believing in the dignity of every person.

#### **4.3.4 Identifying client strengths**

In moving away from the medical model to a developmental approach as recommended by the inter-ministerial-committee on young people at risk, social workers carrying out assessments should place emphasis on identifying client strengths. Sheafor, Horesji and Horesji (2000: 304, 323) confirm that social workers need to give particular attention to assessing client strengths. They maintain that



including an analysis of client strengths, build hopefulness and possibilities for dealing with a problem. To be successful an intervention must therefore be built on and around client strengths. Smith and Stern (1977: 406) concede that to work effectively with families, social workers must believe in their inherent capabilities and search for and support family strengths.

Bazimore and Terry (1997: 690, 691, 693 & 695) present arguments for a competency development model for delinquent youths, which endorses the abovementioned principles. A competency development model according to them places a strategic emphasis on identifying and building on a person's individual strengths, including those of his or her family, community and work group. They argue that the likelihood of success will be increased by assuming a capacity in offenders for positive, productive, rational action rather than assuming that all offenders are disturbed and incompetent. The focus is on enhancing these capacities, as well as locating additional supports in neighborhood organizations, local businesses, civic groups, families and extended families. The competency development strategy finally assumes that individuals learn primarily by doing. Capacities are therefore enhanced by immediately involving offenders where possible in some productive activity. Active participation and involvement of offenders is as such encouraged, involving them in activities such as drug education, recreational aides, peer counselling and community projects and programmes. A competency developmental model therefore improves offenders' integration into their communities.

Sheafor, Horesji and Horesji (2000: 325, 326) offer the following guidelines, as drawn from suggestions made by Cowgen (1994), which should assist a social worker to maintain a focus on strengths, when carrying out assessments:

- Believe the client, unless proven otherwise. Assume that all people are capable of making positive changes and to cope with challenges of life and in their interaction with others;
- Display an interest in strengths. Listen for and make the client aware of his or her competence, skill, resourcefulness and motivation to improve his or her situation;
- Assume that the client is an "expert" on his or her behaviour, life and situation and knows best what will and what will not work in the change process. Give primary attention to the client's own perceptions and understanding of his or her situation.



- In correspondence with the aforementioned guideline, view the assessment and the service planning processes as joint client-worker activity. Both the client and professional share responsibility for determining what concern or issue needs to be addressed and how this can be done.
- Assess, but do not diagnose. Diagnostic labeling should be avoided as it draws attention away from client strengths and places the focus on pathology and deflects.
- Avoid discussions of blame and what the client or others should or should not have done previously. Focus on what can be done now.
- Assume that within the client's family, social network, and community there is an "oasis" of potential resources, both formal and informal that can be incorporated in the helping process.
- Formulate an intervention plan that is specific and individualized to the client and his or her situation, in view of every client's and family's uniqueness.

In order to effect change and assist clients to improve their situations, it is necessary to utilize the strength of clients and their families, as well as the potential resources in the communities.

#### **4.4 RISK ASSESSMENT**

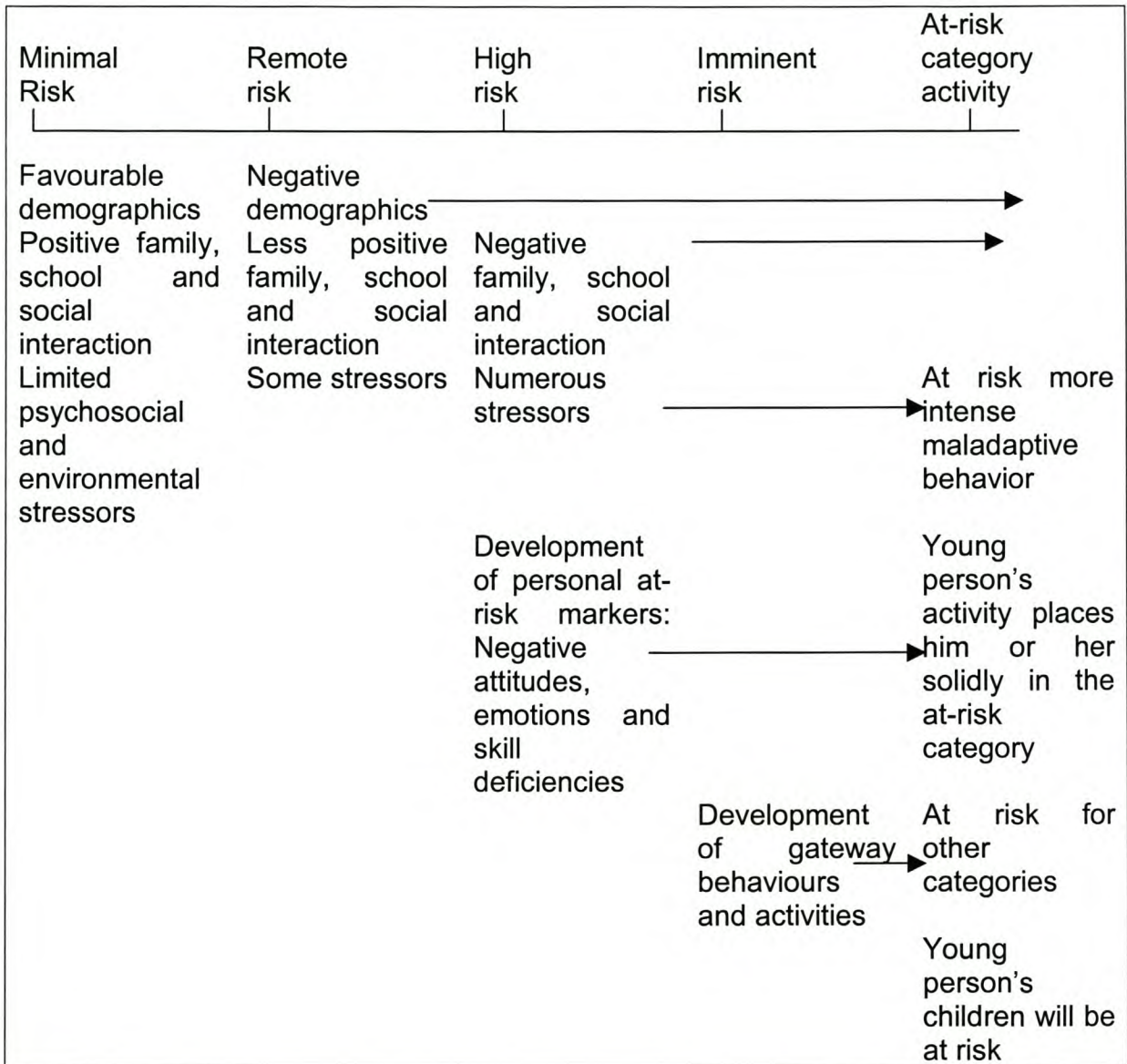
This study, as previously discussed, is concerned with youths at risk, being children or youths in conflict with the law, who are additionally at risk of becoming or being in need of care. Social workers and probation officers therefore need to be able to assess whether children or youths are at risk and to what extent in terms of their involvement in crime or care. In this section the term at-risk and risk assessment in juvenile justice and child welfare will be discussed.

##### **4.4.1 Defining the term at-risk in terms of problem behaviour and delinquency**

McWhitaker, McWhitaker, McWhitaker and McWhitaker (1998: 7) use the term "at risk" to imply a set of presumed cause-and-effect dynamics that place a child or adolescent in danger of future negative events. A specific behaviour, attitude, or deficiency for instance, provides an initial marker of later problem behaviour. Conduct disorders, aggression and low achievement in elementary school according to McWhitaker et al. become markers that predict later delinquent and anti-social behaviour in adolescents. "At-risk" therefore designates a situation that is not



necessarily current, but can be anticipated in the absence of intervention. At-riskness must therefore as such be viewed not as a unitary diagnostic category, but as a series of steps along a continuum. Figure 4.4 illustrates the at-risk continuum as presented by McWhitaker et al. (1998: 8).



**Figure 4.4 At-risk continuum (McWhitaker et al., 1998:8)**

The steps of risk along the continuum, distinguish between minimal, remote; high and imminent risk, as well as at-risk category activity, being briefly discussed. Minimal risk for future trouble according to McWhitaker et al, (1998: 7) indicates young people whose families are of high socio-economic status, who are subjected to few psychosocial stressors, attend good schools and have loving, caring relationships with their families and friends. Some element of risk always exists as young people



in all circumstances must cope with death, divorce, incapacity or bankruptcy in their families.

- Remote risk implies a point on the continuum at which risk, though still remote, seems increasingly possible. This point is reached when demographic, family, school and social markers of future problems appear. Demographic characteristics of low socio-economic status, membership in a minority ethnic group, negative family, school and social interactions and increased psychological stressors, such as divorce or loss of family income, indicate markers of future problems (McWhitaker et al. 1998: 7).
- High-risk characteristics which may according to McWhitaker et al. (1998: 8) move a young person toward at-riskness include dysfunctional families, poor school, negative social interactions and numerous psychological stressors. The final push is however supplied by the person's own negative attitudes, emotions and behaviours, such as depression, anxiety, aggression, hopelessness as well as deficits in coping skills and coping behaviours.
- Imminent risk implies individual high-risk characteristics which often find expression in gateway behaviours. A child's aggression toward other children and adults for example, is a gateway to juvenile delinquency. McWhitaker et al. (1998: 8) maintain that although each gate is not certain or predictable, evidence linking gateway behaviours with more serious activities is so strong that behaviours must be recognized as placing young people at imminent risk.
- At-risk category activity, the final step in the continuum is reached when the young person participates in those activities that define the at-risk categories. McWhitaker et al. (1998: 9, 18) argue that activity in an at-risk category can escalate. The young person who abuses drugs can become a drug addict or the delinquent can go on to commit violent crimes. In addition, young persons or individuals who participate in one category activity continue to be at risk for the other categories. The at-risk continuum allows social workers and other professionals to identify young persons at all levels of risk and provide opportunities for early intervention.

Literature endorses the concept that personal, family and environmental stressors are predictors of future problem behaviour. Williams, Ayens, Abbott, Hawkins and Catalane (1999: 253) found that low academic and social skills are significant predictors across race for delinquent behaviour and for substance using behaviour,



low academic and social skills and peer and sibling influence are significant predictors. Mash & Bowen (1999: 173) argue that from a social learning perspective, adolescents are more likely to engage in problem behaviours when neighborhood adults model and benefit from criminal activities. Wilson & Howell (1995: 39) specify five categories of causes and correlated factors of juvenile delinquency, being documented over the past 50 years namely:

- “(a) individual characteristics, such as alienation, rebelliousness and lack of bonding to society;
- (b) family influences, such as parental conflict, child abuse and a family history of problem behaviour (substance abuse, criminality, teen pregnancy and school dropouts).
- (c) school experiences, such as early academic failure and lack of commitment to school;
- (d) peer group influences, such as friends who engage in problem behaviour (minor criminality, gangs and violence); and
- (e) neighborhood and community factors, such as economic deprivation, high rates of substance abuse and crime, and low neighbourhood attachment”.

The aforementioned causes may according to Wilson and Howell (1995) be viewed as risk factors for delinquency.

According to Wilson & Howell (1995: 39) protective factors must be introduced to counter these causes and risk factors. They maintain that research indicates that protective factors fall into three basic categories, namely:

- “(a) individual characteristics, such as a resilient temperament and a positive social orientation;
- (b) bonding with prosocial family members, teachers and friends; and
- (c) healthy beliefs and clear standards for behaviour.”

Protective factors may especially be enhanced in view of increasing bonding and setting clear standards of behaviour (Wilson and Howell, 1995).

As a protective factor Miller & MacIntosh (1999: 16) have established that a positive racial identity can for instance protect African American adolescents against adversity and allow them to maintain competence and perform well in school. In view



of prevention and early intervention Pollard, Hawkins & Arthur (1999: 56) found that simply focusing on strengthening assets or protective factors, without attending to risk exposure is incomplete as a strategy for prevalence of problem behaviour. The term “at risk” therefore implies a dynamic set of risk factors or stressors which could cause future problem behaviour. Children and youths as a result needs to be protected in view of recognizing risk factors from an early age and by including reduction of exposure to risk factors in intervention.

#### **4.4.2 Risk-assessment in juvenile justice**

Wiebush, Baird, Krisberg & Orek (1995: 171, 172) state that there appears to be an emerging consensus that a comprehensive continuum of intervention and sanction is required to prevent youths involvement in the juvenile justice system. They propose that intervention and sanction should vary from community based prevention efforts and early intervention, to escalating sanctions for repeat, serious and violent offenders, as well as secure care facilities for chronic offenders and comprehensive aftercare services. This is in principle consistent with the framework for juvenile justice as proposed by the inter-ministerial committee on young people at risk, as discussed in chapter II of this study. According to Wiebush et al. (1995: 172) the successful implementation of such a continuum relates directly to issues of assessment and classification. They conclude that any system based on graduated, differential interventions must include the following:

- Clearly specified selection criteria for various programmes and levels of intervention;
- Adequate methods of assessing the degree to which individual youths meet those criteria, and
- A selection process that ensures youths targeted for intervention at each level of the system are those who are in fact served at that level of the system.

Wiebush et al. (1995: 173) stress the importance of juvenile justice having the capacity to directly link the nature of the intervention with the offender’s need for control, supervision and services. They broadly define risk assessment and classification in juvenile justice as:

“the process of estimating the individual’s likelihood of continued involvement in delinquent behaviour and making decisions about the most appropriate type of intervention, given the identified level of risk”. Classification decisions based on risk



assessment are made at all levels of the system. Risk assessment in juvenile justice is accordingly viewed as a continuous process, incorporating all levels of the system namely arrest, detention, assessment, diversion, prosecution and sentence.

#### **4.4.2.1 Formal assessment and classification systems**

According to Wiebush et al. (1995: 174) there are two primary reasons underlying the use of formal assessment and classification systems, namely:

- “to promote greater validity, structure and consistency to the assessment and decision making processes; and
- to more efficiently allocate limited system resources by targeting the most intensive or intrusive interventions on the most serious violent and chronic offenders.”

Wiebush et al. (1995:181) and Hoghughi (1980: 25) state that in order for types of assessments or assessments instruments used in classification systems to be successful, certain criteria or principles must apply. Duckitt & Du Toit (1986: 13) affirm that the crucial importance of criteria such as consistency, fairness, intelligibility and validity for effective and accepted classification, directed the search toward more objective classification systems. They view the three criteria of completeness, clear operational definitions and reliability as minimum starting points for classification and necessary for a good classification system. Hoghughi (1980:26) and Duckitt & Du Toit however consider validity as the most important single determinant of a classification system’s effectiveness. In it’s essence the issue of validity can be reduced to the degree to which the implicit or explicit predictions made by the classification system are accurate, enabling more efficient and cost effective deployment of resources. The use of objective assessment instruments and classification systems are therefore necessary to ensure appropriate and accurate assessments and decisions, resulting in optimal use of resources.

#### **4.4.2.2 Types of assessment instruments**

Wiebush et al. (1995: 177) present three types of assessment instruments frequently used to assess and classify juvenile offenders, relating to risk assessment and detention and placement decisions, which will be forthwith discussed.



#### **4.4.2.2.1 Risk assessment instruments**

Risk assessment instruments refer to those instruments which estimate the likelihood that an identified juvenile offender will subsequently commit another offence within a specified follow-up period of for example 18 – 24 months. It is based on the statistical relationship between youth characteristics and recidivism. These instruments are primarily used to determine the level of supervision for probationers and paroles, although they have also been integrated into classification systems used for sentencing and placement decisions (Wiebush et al. 1995: 177 & Duckitt & Du Toit 1986: 13,14). An actuarial approach to risk assessment is used, wherein historical data on offender characteristics and outcomes are analyzed to determine that set of characteristics most closely correlated with negative outcomes. Once those factors have been identified, all newly referred offenders are assessed to determine the extent to which their characteristics are similar to those who have had low, medium or high failure rates in the past. According to Wiebush et al. (1995: 177) well designed instruments are typically able to identify a group of high-risk offenders whose probability of recidivating is four or five times greater than the identified low-risk offenders. In order to develop well-designed actuarial prediction instruments, Duckitt & Du Toit (1986: 15) maintain that good quality longitudinal data is required. The use of actuarial risk assessment instruments therefore can markedly improve decision making regarding recidivism and appropriate supervision services. An example of a risk assessment instrument is illustrated in figure 4.5.



<b>Select the <i>highest</i> point total applicable for category</b>		
1. Age at First Adjudication		_____
0 = 16 or older		
3 = 14 or 15		
5 = 13 or younger		
2. Prior Criminal Behaviour		_____
0 = No prior arrests		
2 = Prior arrest record, no formal sanctions		
3 = Prior delinquency petitions sustained; no offences classified as assaultive		
3. Institutional Commitments or Placements of 30 Days or More		_____
0 = None		
2 = One		
4 = Two or more		
4. Drug/Chemical Use		_____
0 = No known use or no interference with functioning		
2 = Some disruption of functioning		
5 = Chronic abuse or dependency		
5. Alcohol Abuse		_____
0 = No known use or no interference with functioning		
1 = Occasional abuse, some disruption of functioning		
3 = Chronic abuse, serious disruption of functioning		
6. Parental Control		_____
0 = Generally effective		
2 = Inconsistent and/or ineffective		
4 = Little or none		
7. School Disciplinary Problems		_____
0 = Attending, graduated, GED equivalence		
1 = Problems handled at school level		
3 = Severe truancy or behavioral problems		
5 = Not attending / expelled		
8. Peer Relationships		_____
0 = Good support and influence		
2 = Negative influence, companions involved in delinquent behaviour		
4 = Gang member		

**Figure 4.5 Juvenile Probation and Aftercare Assessment of Risk.**  
(Wiebush et al. 1995: 175)

Risk instruments may specifically be useful in South Africa in view of guiding decisions regarding supervision and long term residential placements for sentence purposes.



#### **4.4.2.2 Placement or custody assessment instruments**

The second type of assessment tool that is according to Wiebush et al. (1995: 179) widely used is the placement assessment or custody assessment tools. Although they frequently include some predictive items, they are generally driven by policy considerations rather than research results. Generally the developmental process involves a cross section of juvenile justice decision makers, such as prosecutors, judges, correctional officers and administrators. They determine which item will be included in the scale and how they will be weighted, how the seriousness of the offence will be ranked, and what types of placements will be associated with various assessment scores.

Wiebush et al. (1995: 179, 180) state that in differentiation to risk assessment instruments, detention-screening focus on the juvenile's short-term threat to public safety, and whether he or she is likely to abscond prior to an adjudicatory or court hearing. Tools for detention screening include the measure of current and prior offence severity, the frequency and recency of past offences and stability measures such as a history of escapes or runaways.

Custody assessments used within correctional facilities on the other hand are primarily concerned with a juvenile's risk to himself or others while in the institution. In this situation risk is defined and measured as the potential for disruptive behaviour generally, as well as specific behaviour such as assault on staff or peers, escape or suicide. The outcome of the assessment will guide placement in view of a maximum, moderate or minimum-security environment. (Wiebush et al. 1995: 180). Figure 4.6 illustrate the Colorado Security Placement Instrument.



1.	Severity of Current Offence		_____
	Murder, rape, kidnap, escape	10	
	Other violent	5	
	All other	0	
2.	Severity of Prior Adjudication		_____
	Violent offence	5	
	Property offence	3	
	Other / none	0	
3.	Number of Prior Adjudications		_____
	Two or more	5	
	Less than 2	0	
	<b>TOTAL ITEMS 1-3</b>		_____
Total Items 1-3. If score is 10 or higher, score as <i>secure placement</i> . If less than 10, score remaining stability items			
4.	Age at First Referral		_____
	12 – 13 years of age	2	
	14+	0	
5.	History of Mental Health Outpatient Care		_____
	Yes	1	
	No	0	
6.	Youths Lived Alone or With Friends of Current Adjudication		_____
	Yes	1	
	No	0	
7.	Prior Out-of-Home Placements		_____
	Yes	1	
	No	0	
	<b>TOTAL ITEMS 1-7</b>		_____
Apply score to the following placement scale:			
10+ Consider for Secure			
5 – 9 Short Term Placement			
0 – 4 Immediate Community Placement			

**Figure 4.6 Colorado Security Placement Instrument. (Wiebush et al. 1995: 180)**

The aforementioned placement instrument predominantly measure the threat an accused child or youth may pose to the community. Placement of custody assessment instruments such as the Colorado Security Placement Instrument, may in particular be utilized in South Africa in view of detention decisions.

Duckitt & Du Toit (1986: 15) view the consensus model as totally objective, thus enabling entirely consistent and fair decisions. They however argue that the basis for decisions is essentially as subjective as traditional classification approaches. Due to the lack of empirically validated criteria, they do not consider consensus models to



necessarily be predictors of risk. According to Wiebush et al. (1995: 179) placement and custody assessment instruments are not primarily concerned with the risk of an offender committing another offence, but with placement decisions and custody needs of incarcerated youths. Consensus models in this regard offer equitable and consistent decisions enabling appropriate placement for offenders.

#### **4.4.2.3 Needs assessment instruments**

The third basic type of assessment instrument used in juvenile justice is referred to as needs assessment. It is frequently completed along with the risk or placement / custody scales in order to systematically identify critical offender problems. Where risk and or custody assessment drive decisions regarding level of supervision or type of placement, needs assessment determines the specific programme interventions to be delivered within the designated custody or supervision level (Wiebush et al. 1995: 181).

As needs assessment instruments are selected to describe a juvenile's functioning rather than predict outcomes, they are not developed through research. Needs assessment tools are mostly developed by agencies using a consensus approach to identify and prioritize the service issues most frequently encountered in the client population. According to Wiebush et al. (1995: 181) needs assessment tools in all sites tend to incorporate similar sets of factors. All eight instruments they examined, included items related to substance abuse, family functioning or relationships, emotional stability, school attendance and behaviour and peer relationships. Measures of health or hygiene, intellectual ability or achievement and learning disabilities are also included in the vast majority of instruments. Wiebush et al. (1995: 181) maintain that regardless of the number or nature of the items included, it is critical that each item be clearly defined, in view of attaining consistency in the assessment process. Figure 4.7 illustrates the needs assessment instrument used by the Lucas County Juvenile Court.



1. Family Relationships 0 = Stable/supportive 3 = Some disorganization / stress 6 = Major disorganization / stress	[ ]	7. Emotional stability 0 = No problem 1 = Some problem, occasional interference 2 = Major problem, serious interference	[ ]
2. Parental Problems (Check all that apply / Add points) 1 = Inadequate discipline -- 1 = Emotional instability -- 1 = Criminality -- 1 = Substance abuse -- 1 = Physical/sexual abuse -- 1 = Family violence -- 1 = Marital discord --	[ ]	8. Peer Relationships 0 = Good support/influence 1 = Associations with occasional negative results 2=Associations primarily negative	[ ]
3. Support System 0 = Youths has support system or none needed 1 = No family / external support	[ ]	9. Health 0 = No problem 1 = Some health problems 2 = Major handicap/illness	[ ]
4. School Attendance 0 = No problem 1 = Some truancy 2 = Major truancy	[ ]	10. Sexual Adjustment (Check all that apply and enter highest) 0 = No problem 1 = Prostitution 1 = Sex offence 1 = Sexual identity / awareness problems 3 = Pregnant / has child 4 = Aggressive/ assaultive sex offence	[ ]
5. School Behaviour 0 = No problem 1 = Some problem 2 = Major problem	[ ]		
6. Substance abuse 0 = No use 1 = Experimenter 3 = Former abuse / in recovery 4 = Occasional use 8 = Abuse	[ ]	11. Structured Activities 0 = Involvement 1 = No involvement	[ ]
		TOTAL SCORE	[ ]

**Figure 4.7 Lucas County Juvenile Court Needs Assessment (Wiebush et al. 1995: 182)**

The Lucas County Juvenile Court Needs Assessment instrument reflects that scores differ in terms of specific variables. According to Wiebush et al. (1995: 181) higher scores are allocated to those variables perceived by staff to be of importance in assessing the needs of a specific offender population. The Lucas County Juvenile Court Needs Assessment instrument emphasizes variables related to family



relationships, substance abuse and sexual adjustment. The identified needs of a specific offender population should be addressed in terms of appropriate intervention programmes.

The three assessment instruments discussed provide differentiated assessments of juvenile offenders in terms of risk assessment related to recidivism, appropriate placement or custody decisions and needs assessment to determine specific treatment programmes. The three instruments can be used interdependently to promote valid, consistent and appropriate management of juvenile offenders within the juvenile justice system.

#### **4.4.3 Risk assessment in Child welfare**

As has been discussed, this study is concerned with children or youths in conflict with the law, who are additionally at risk of becoming or being in need of care. Assessment of children or youths in conflict with the law therefore also involves risk assessment in terms of care. Wiebush et al. (1995: 186) endorse the need for more consistent and accurate identification of those children who are most likely to suffer from maltreatment. They argue that in view of the well-established empirical link between maltreatment and subsequent delinquency, child welfare interventions can serve two reciprocal roles, namely child protection and delinquency prevention. In this section risk assessment in child welfare will therefore be briefly examined.

According to De Panfilis and Scannapieco (1994: 229) child protection services are concerned with the following difficult decisions namely to assess the safety of children who are at risk of maltreatment; to decide what types and levels of services may be immediately needed to keep children safe and to determine under what conditions children must be placed in out-of-home care for their protection. Baird, Wagner, Healy & Johnson (1999: 724) maintain that social workers in child protection must base their decisions on the best interest of the child, a determination that is largely dependent on the worker's estimation of the risk of future harm. Conclusion regarding risk in a particular case may vary widely, resulting in mistakes that can have enormous consequences, ranging from unnecessary expenditures to emotional upheaval and trauma to serious injury to and even death of a child. They view the primary issue facing child protection as decision-making. They further argue that



until valid, reliable decision support systems are fully utilized, debates over which programmes and strategies work are fruitless.

Wiebush et al. (1995: 186) are of the opinion that recent research has provided child welfare with the risk information necessary to make fully informed decisions regarding case-opening and level of service - determination. In view of risk assessment the empirical approach to risk assessment in contrast to a consensus – based approach are according to Wiebush et al. endorsed by the federal government agency for child welfare. Baird et al. (1999: 727) affirm that evidence presently available from actuarial studies of child abuse and neglect endorse the conclusion that actuarial risk assessments derived from simple, empirically validated instruments can sufficiently estimate the risk of future maltreatment and therefore may considerably improve the clinical risk assessment performed by an individual case worker. Accurate decision making in child welfare is as a result attainable, thereby protecting the best interest of the children concerned. The use of specific risk assessment and needs assessment instruments in child welfare will be subsequently discussed.

#### **4.4.3.1      *The child research centre risk assessment model***

Research-based risk tools as developed by the children's research centre are forthwith discussed as presented by Wiebush et al. (1995: 187). These risk tools were developed for child welfare agencies in Alaska, Michigan, Oklahoma, Rhode Island and Wisconsin. Each instrument is designed to identify the relative degree of risk for continued abuse or neglect among families that already had a substantial abuse or neglect referral. The risk level is used to set a level of service for opened cases, and is in some states also used as a criteria in case-opening decisions. All the instruments were based on the analysis of the relationship between family characteristics and case outcomes using large samples (e.g. 1 000 to 2 000 families) of previously substantiated cases. Negative outcomes were defined as a subsequent referral or substantiation for abuse or neglect within 18 – 24 months of the original referral.

Results in the Rhode Island, Alaska and Oklahoma jurisdictions were discussed. It was clear from results that the instruments in the respective jurisdictions are able to identify dramatic differences in the risk potential of the client population. In Rhode



Island for example almost two-thirds of the identified high-risk clients had subsequent incidents, whereas only about one in twenty (6%) of the identified low-risk cases had subsequent incidents (Wiebush et al. (1995: 1 87). The Rhode Island risk tool is illustrated in figure 4.8.

Case Name		Unit		Date			
SCR #	CYCIS #	Staff Person					
NEGLECT			Score	ABUSE		Score	
N1	Did the current investigation indicate neglect? a. No ..... b. Yes .....	0 +1	--	A1	Did the current investigation indicate abuse? a. No ..... b. Yes .....	0 +1	--
N2	Was the type of neglect indicated at this investigation inadequate food, clothing, medical care or failure to thrive (CANTS allegations 43, 45, 46, 48)? a. No ..... b. Yes .....	0 +1	--	A2	How many early warning were received for this household <u>prior</u> to the current incident? a. None ..... b. One ..... c. Two or more .....	-1 0 +1	--
N3	How many early warning were received for this household <u>prior</u> to this incident? a. None ..... b. One ..... c. Two or more .....	0 +1 +2	--	A3	How many <u>unfounded</u> investigations of this household were conducted <u>prior</u> to the current incident? a. None ..... b. One ..... c. Two or more .....	0 +1 +3	--
N4	How many <u>unfounded</u> investigations of this household were conducted <u>prior</u> to the current incident? a. None ..... b. One ..... c. Two or more .....	0 +1 +2	--	A4	Has any <u>prior</u> investigation of this household indicated sexual abuse? a. No ..... b. Yes, prior sexual abuse ....	0 +2	--
N5	Was neglect or sexual abuse indicated at any <u>prior</u> investigation of this household? (Check & add for score) a. ---- Neglect ..... b. ---- Sexual abuse ..... c. ---- None of the above .....	+1 +2 0	--	A5	How many children were indicated for abuse or neglect in this incident? a. One child ..... b. Two children ..... c. Three or more children .....	0 +1 +2	--
Case Name		Unit		Date			
SCR #	CYCIS #	Staff Person					
NEGLECT			Score	ABUSE		Score	
N6	How many children were indicated for abuse or neglect in this incident? a. One or two children .....	0		A6	Age of the <u>youngest</u> child indicated for abuse or neglect in this incident? a. Age 16 or older .....	-2	



	b. Three or more children .....	+1	--		b. Age 15 or younger .....	0	--
N7	Age of the <u>oldest</u> child indicated for abuse or neglect in this incident? a. Age 11 or older .....	-1		A7	Age of the primary adult caretaker? a. 36 years or older .....	-1	
	b. 6-10 years old .....	0			b. Age 35 or younger .....	0	--
	c. Less than 6 years old .....	+2	--				
N8	Was the primary adult caretaker a perpetrator in this incident? a. No .....	0		A8	Is there evidence that either caretaker has an alcohol or drug problem? a. No .....	0	
	b. Yes .....	+1	--		b. Yes .....	+1	--
N9	Does this appear to be a stable family? a. No .....	0		A9	Does the family appear to receive little or no external support from family, friends or community resources? a. Some support .....	0	
	b. Yes .....	-1	--		b. Little or no support .....	+1	--
N 10	Does any child in this family have a CYCIS contact record or a CYCIS service history? a. None .....	0		A 10	Does this appear to be a stable family? a. No .....	0	
	b. Yes, CYCIS contact .....	+1			b. Yes .....	-1	--
	c. Yes, CYCIS service history ..	+2	--				
<b>TOTAL NEGLECT SCORE</b>			--	A 11	Does any child in the family have a CYCIS contact record or CYCIS service history? a. No .....	-1	
<b>INITIAL ABUSE / NEGLECT CLASSIFICATION</b>			--		b. Yes, CYCIS contact .....	0	
					c. Yes, CYCIS service history ..	+1	--
Assign the family's A/N classification on the higher or the abuse or neglect scores, using the following chart:				<b>TOTAL ABUSE SCORE</b>			
<u>A/N Classification</u> <u>Neglect Score</u> <u>Abuse Score</u>							
-- Low                      -- -3 to 1                      -- -6 to -3							
-- Medium                      -- 2 to 4                      -- -2 to 0							
-- High                      -- 5 to 7                      -- 1 to 3							
-- Intense                      -- 8 to 16                      -- 4 to 14							

**Figure 4.8 Rhode Island DCYF Initial Family Assessment of Abuse / Neglect**  
(Wiebush et al. (1995: 186))

In the Rhode Island risk tool a low score in terms of negative outcomes in relation to family characteristics indicate a low level of risk, while very high scores indicate an intense level of risk. A direct relation between negative outcomes and levels of risk are therefore indicated.



The researcher therefore supports Baird et al. (1999: 724) in that valid, reliable decision support systems such as the discussed research-based risk instruments should be fully utilized in child protection decision making processes. Lyons, Doueck & Wodarski (1996: 153) further stress the importance that assessment of risk assessment models in child protection services should include examination of case worker decision making processes and the extent to which a given assessment model is congruent with those processes.

#### **4.4.3.2 *Child welfare needs assessment***

According to Hoghughi (1980: 164) it is generally accepted in Western society that most children's problems emanate from difficult home circumstances. He states that research findings show that practically every aspect of children's problems is to varying degrees associated with difficulties within the family unit. Needs assessment instruments have been developed for child welfare systems to serve as complements to the risk tools (Wiebush et al. (1995: 187, 190). The needs assessments are used to identify critical problems in the family. They provide a concise but thorough evaluation of client circumstances that provides a foundation for service planning and delivery. In some states they are also used in conjunction with risk results to set the level of service to be provided to the family. The needs assessment tools have been developed using a staff consensus-building model, including 10 – 15 identified items believed to be the most common and important issues requiring intervention. Child welfare instruments focus almost exclusively on the caretaker and family as a whole, rather than a specific child. Problems within the family unit are therefore targeted in respect of service delivery. Needs assessment tools therefore serve as a bases or guideline for service delivery. Figure 4.9 illustrates a typical child welfare needs assessment scale.



1.	Emotional Stability	a.	Appropriate responses .....	0	
		b.	Both parents or single parent, some problems .....	3	
		c.	Chronic depression, severely low esteem, emotional problems .....	5	--
2.	Parenting Skills	a.	Appropriate skills .....	0	
		b.	Improvement needed .....	3	
		c.	Destructive / abusive parenting ..	5	--
3.	Substance Abuse	a.	No evidence of problem .....	0	
		b.	One caretaker with some substance problem .....	2	
		c.	One caretaker with serious problem or both caretakers with some substance problem	3	
		d.	Problems resulting in chronic dysfunction .....	5	--
4.	Domestic relations	a.	Supportive relationship / single caretaker .....	0	
		b.	Marital discord, lack of co- operation .....	2	
		c.	Serious marital discord / domestic violence .....	4	--
5.	Social support system	a.	Adequate support system .....	0	
		b.	Limited support system .....	2	
		c.	No support or destructive relationships .....	4	--
6.	Interpersonal skills	a.	Appropriate skills .....	0	
		b.	Limited or ineffective skills .....	2	
		c.	Hostile / destructive .....	4	--



7.	Literacy	a.	Adequate literacy skills .....	0	
		b.	Marginally literate .....	2	
		c.	Illiterate .....	3	--
8.	Intellectual capacity	a.	Average or above functional intelligence .....	0	
		b.	Some impairment, difficulty in decision making skills .....	2	
		c.	Severe limitation .....	3	--
9.	Employment	a.	Employment or no need .....	0	
		b.	Unemployed but looking .....	1	
		c.	Unemployed, not interested .....	2	--
10	Physical health issues	a.	No problem .....	0	
		b.	Health problem or handicap that affects family .....	1	
		c.	Serious health problems or handicap that affects ability to provide for or protect child .....	2	--
11	Resource availability / management	a.	Sufficient income to meet needs .	0	
		b.	Income mismanagement .....	2	
		c.	Financial crisis .....	3	--
12	Housing	a.	Adequate housing .....	0	
		b.	Some housing problems, but correctable	1	
		c.	No housing, eviction notice .....	2	--
13	Child characteristics	a.	No evidence of problem .....	0	
		b.	One or both caretakers have abused children sexually	5	--
14	Child characteristics	a.	Age appropriate, no problems ....	0	
		b.	Minor physical, emotional, intelligence problems .....	1	
		c.	Significant problems that put strain on family .....	2	
		d.	Severe problems resulting in dysfunction .....	3	--

**Figure 4.9 Child Welfare Family Assessment of Needs. (Wiebush et al. (1995: 191)**



Scores contained in the Child Welfare Family Assessment of Needs tool predominantly relate to the levels of functioning, stability and skills of the child's caregivers. The child's characteristics are further valued in relation to the effect it has on the functioning of the family, and not in view of the needs of the specific child as stated, the focus is on intervention with the family as a whole.

#### **4.5 SUMMARY**

Assessment in social work forms an integral part in determining the problem and more importantly lay the foundation for planning and action. As social work is specifically involved with the person-in-environment, the assessment process was examined within this framework. Although the holistic foundation in social work provides the necessary knowledge, value and skills base for carrying out assessments, a need for valid and reliable support systems or assessment tools has been established. This is to ensure reliable outcomes and appropriate service rendering, especially in view of establishing risk. The empirical approach is mainly used in designing assessment tools where outcome is applicable. Custody decisions which is mainly policy driven, are determined by consensus of a cross section of juvenile justice decision makers. In the case of needs assessments a consensus approach is also preferred, using the expertise of social workers at a specific agency. These tools should be used conjointly in view of enabling accurate assessments and decision making, in order to ensure that the best interest of a child or youth is served, within both the juvenile justice and child welfare systems.



## **CHAPTER 5**

### **THE APPLICATION OF THE CHILD CARE ACT IN THE ASSESSMENT AND SENTENCING OF JUVENILE OFFENDERS**

#### **5.1 INTRODUCTION**

Norman Tutt (1982: 7) makes the following statement:

“No criminal justice system is a pure example of the juvenile or welfare models, inevitably the legal system emerges as a compromise which attempts to be fair and differentiate for individual circumstances.”

This study aims to investigate and explain the application of the Child Care Act (Act 74 of 1983) in the assessment and sentencing of juvenile offenders. The three previous chapters entailed the literature study. Aspects examined were the status and profile of youth at risk (being juvenile offenders additionally at risk of becoming or being in need of care) in the Western Cape Province, criminal and relevant child care legislation pertaining to juvenile offenders and the assessment process in social work. With the literature study as a basis the empirical study was undertaken.

The empirical study was carried out by means of self-administered questionnaires. In accordance with Schutt (1996: 265) the compilation of the questionnaire was guided by the overall purpose of this study being the formulation of guidelines for the effective application of the Child Care Act (Act 74 of 1983) in the assessment and sentencing of juvenile offenders. The questionnaire contains 11 questions divided into five sections. Closed and open-ended questions were formulated with the aim to gather data regarding the manner in which juvenile offenders additionally being at risk of becoming or being in need of care are being managed by magistrates prosecutors and probation officers or social workers within the juvenile justice system. The five sections included in the questionnaire respectively refer to the management of juvenile offenders in terms of the transformation of the juvenile justice system, detention, diversion of criminal cases, conversion of criminal proceedings and sentencing. Prosecutors and probation officers or social workers were required to complete all five sections contained in the questionnaire.



Magistrates were required to complete four of the sections excluding the section regarding diversion of criminal cases, as they are not involved in this process.

The composition of the study population and the results of the research study will be forthwith discussed.

## **5.2 Composition of target group**

This study is concerned with the administration and application of criminal and relevant child care legislation in respect of juvenile offenders. The population of the research study consisted of three groups of respondents, respectively responsible for administering legislation in respect of juvenile offenders, namely magistrates, prosecutors and probation officers or social workers. The three groups of respondents were selected in view of the demarcation of this study in terms of the field and area of research and on the grounds of specific characteristics (refer to paragraphs 1.3 and 1.4.2 of this study). The research study was therefore carried out at magistrates courts in the Cape Peninsula where juvenile courts and assessment centers are in operation. The first group of respondents consisted of magistrates employed by the Department of Justice at magistrates courts in the Cape Peninsula, who have experience in juvenile courts. The second group of respondents comprised of senior prosecutors or prosecutors designated to authorize diversions in respect of juvenile offenders, employed by die Department of Justice at magistrates courts in the Cape Peninsula. The third group of respondents included probation officers or social workers employed by the Provincial Administration Western Cape Social Services, who render day- or after-hour services at assessment centers attached to juvenile courts in the Cape Peninsula. In respect of the first and second groups of respondents the whole population was included in the research study, namely 20 magistrates and 15 prosecutors. In respect of the third group of respondents it was not necessary to include the whole population. The method of purposive sampling was used to select a representative sample of 30 respondents from a population of 47 respondents. Probation officers or social workers with the most experience in carrying out assessments were selected in correspondence with their respective unit managers.



social workers questionnaires were distributed by Heads of Office of PAWC Social Service offices, where the probation officers or social workers are employed. A total of 46 (70.7%) of the 65 questionnaires distributed were returned. Of the first group of respondents namely magistrates, 15 out of 20 (75%) magistrates responded. The best response rate was obtained from the second group of respondents, namely prosecutors with a response rate of 13 out of 15 (86.6%) prosecutors. The third group of respondents namely probation officers or social workers completed the least questionnaires, that is 18 out of 30 (60%) probation officers. A specifically weak response rate was obtained from probation officers or social workers rendering services at the Bellville & Goodwood magistrates courts, namely a response rate of 30%. The composition of the study group and number of responses are illustrated in table 5.1 As indicated by brackets a number of probation officers or social workers respectively delivery services at both Wynberg and Simon's Town magistrates courts, Goodwood and Bellville magistrates courts and at Kuils River and Somerset-West courts.

**Table 5.1 Composition of study population and number of responses**

Magistrates Courts	Study Population			Number of Respondents		
	Magistrates	Prosecutors	Probation officers / Social workers	Magistrates	Prosecutors	Probation officers / Social workers
Cape Town	4	3	3	3	2	2
Athlone	1	1	2	1	1	1
Wynberg	3	3	3, * 1	2	2	3
Simon's Town	1	2	* 1	1	1	0
Mitchell's Plain	2	2	5	1	2	3
Goodwood	3	1	* 10	1	1	* 3
Bellville	1	1	* 10	1	1	* 3



Kuils River	4	1	2, *3	4	1	2, *3
Somerset West	1	2	1, *3	1	2	1, *3
<b>TOTAL</b>	<b>20</b>	<b>15</b>	<b>30</b>	<b>15</b>	<b>13</b>	<b>18</b>

\* Respondents deliver services at both magistrates courts as indicated by the bracket.

### 5.3 Transformation of the juvenile justice system

This study was carried out within the context of the transformation of the juvenile justice system. A main outcome of the transformation of the juvenile justice system is the establishment of assessment centres at juvenile courts. A further important aspect underlying the transformation of the juvenile justice system is the ratification of the United Nations Convention of the Rights of the Child. The utilization and application of these two aspects within the juvenile justice system served as the point of departure for the research study.

#### 5.3.1 Utilization of assessment centres

As ascertained in the literature study, assessment centres at juvenile courts have been established as an outcome of the transformation of the juvenile justice system. It is further proposed by the South African Law Commission in the Report on Juvenile Justice (2000: 13 & 17) that the assessment of each child or youth should become a key determinant in how the matter should proceed. The researcher therefore sought to establish to what extent the services of probation officers or social workers are utilized at assessment centres in terms of day- and after-hour services and in view of the percentage of arrested children or youths being assessed before their first court appearance. Table 5.2 gives an indication of the utilization of assessment services at juvenile courts in the Cape Peninsula.



**Table 5.2 Utilization of assessment services at juvenile courts in the Cape Peninsula**

\* Respondents deliver services at both magistrates courts as indicated by the bracket.

Magistrates Courts	Number of respondents	Day Assessments				After-hour assessments					Percentage children assessed				
		Yes	No	Full Time	On rotation	Ad hoc	Yes	No	On rotation	Ad hoc	30%	50%	70%	90%	100 %
Cape Town	7	7		6		1	7		6	1				1	6
Athlone	3	3		2	1		2		2			1			2
Wynberg	7	7		7			7		7					5	2
Simon's Town	2	2		1	1		2		2	2				2	
Mitchell's Plain	6	5	1		5		6		4	1	1		1	4	
Goodwood	2, *3	2, *3		2, *3			2, *3		2, *2			*1		2, *2	
Bellville	2, *3	2, *3		1, *3	1		2, *3		1, *2	1		*1		1, *2	1
Kuils River	7, *3	6, *1		1	3, *1	2	6, *3		4, *3				1	4, *1	2, *1
Somerset West	4, *3	4, *3		1	1, *1	2	4, *3		4, *3					3, *1	*1



### **5.3.1.1 Day- and after hour assessment services**

As indicated in table 5.2, day- and after-hour assessment services are in operation at all assessment centres in the Cape Peninsula, notwithstanding one respondent from Mitchell's Plain court who indicated that day assessment services are not being rendered. Table 5.2 shows that the type of day-assessment services however differs, being rendered full-time, or on a rotation or ad hoc basis at the respective courts. As signified by the five remaining respondents, day assessment services at Mitchell's Plain court are being rendered on a rotation basis. A response rate of between 66.7% – 100% points to full-time day assessment services being rendered at Cape Town, Athlone, Wynberg and Goodwood courts. Uncertainty appears to exist amongst respondents from the Simon's Town, Kuils River and Somerset-West courts in view of the type of day-assessment service being rendered. Of the two respondents from Simon's Town court, one respondent indicated that full-time day assessment services are being rendered and the other respondent pointed to day assessment services being rendered on a rotation basis. In respect of Kuils River and Somerset-West courts, responses varied in terms of day assessment services being rendered full-time, on rotation and on an ad hoc basis. In respect of after-hour assessment services a response rate of 80 - 100% points to services being rendered on a rotation basis at all the courts in the Cape Peninsula. Although it can be concluded that assessment services are in place at all the assessment centres concerned in accordance with the transformation of the juvenile justice system, a number of respondents are still unacquainted with the type of services being rendered, especially day assessment services.

### **5.3.1.2 Percentage children assessed**

In view of the percentage of arrested children and youths being assessed before their first court appearance, 39 (84.78%) respondents revealed that 90% – 100% of arrested children and youths are being assessed at the respective juvenile courts included in the study. From Mitchell's Plain court two respondents respectively showed that, only 30% and 70% of children and youths are being assessed. At each of Athlone, Goodwood and Bellville courts one respondent indicated that merely 50% of children and youths are being assessed. At Kuils River court one respondent indicated that at most 70% of children and youths are being assessed before their



first court appearance. It can therefore be assumed that at five of the nine juvenile courts there is some perception that assessment services are not adequately utilized. According to responses as illustrated in table 5.2 it appears that assessment services are most adequately utilized at Cape Town juvenile court in terms of availability of assessment services and the number of arrested children or youths being assessed.

### **5.3.2 Ratification of the united nations convention on the rights of the child**

A further aspect underlying the transformation of the juvenile justice system is the ratification of the United Nations Convention on the Rights of the Child, requiring that children or youths in conflict with the law should be treated in accordance with certain principles included in article 40(1) thereof. (Report: Juvenile Justice, 2000: 1). It was accordingly enquired whether the rights of children and youths appearing in juvenile courts are being protected in terms of the particular principles which relate to:

- The child's sense of dignity;
- Age appropriate treatment;
- Respect for human rights; and
- Integration of the child or youth into the family or community

Forty one (91.3%) respondents (N = 46) specified that the principles related to age appropriate treatment and integration of the child or youth into the family or community are being applied in juvenile courts. The principles related to the child's sense of dignity and respect for human rights appears to be applied to a lesser extent with a response rate of 37 (80.4%). This may signify that children and youths appearing in juvenile courts are foremost protected in terms of their circumstances and thereafter in terms of their sense of dignity and respect for human rights.

### **5.4 Decisions regarding detention**

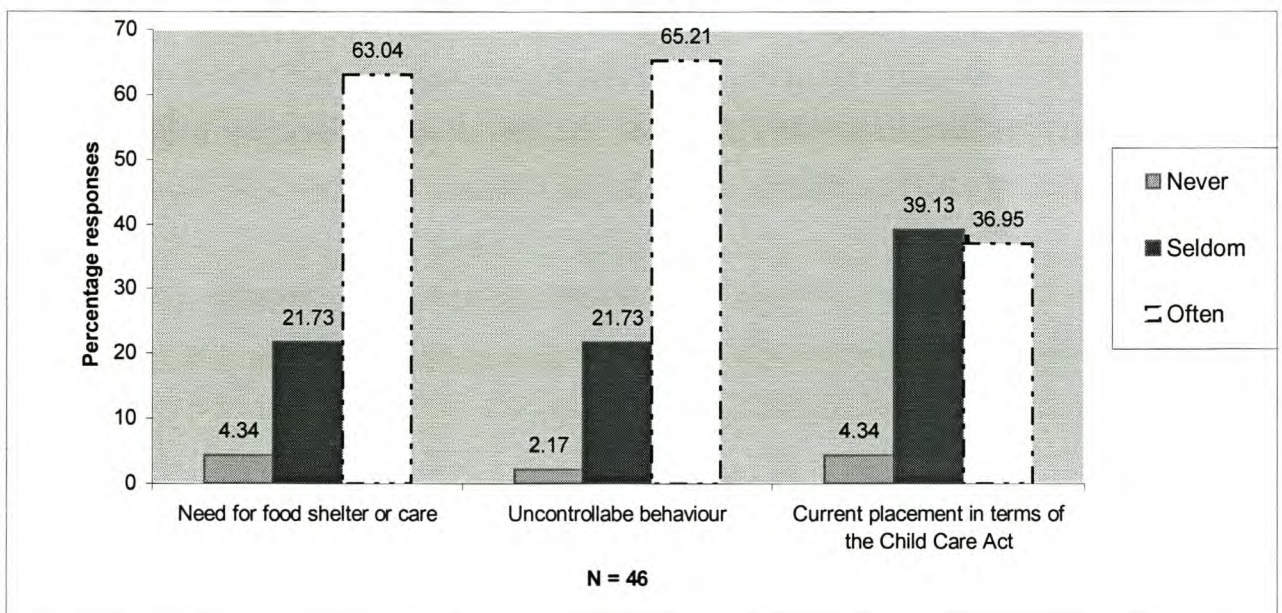
One of the main purposes of the assessment process is to decide whether an arrested child or youth should be detained, and if so to arrange the most suitable placement. Some children and youths are additionally at risk of becoming or being in need of care, indicating further protection in terms of care. Section 71 of the Criminal Procedure Act (Act 51 of 1977) makes provision for the detention of arrested children and youths in a place of safety as defined in section 1 of the Child Care Act (Act 74 of 1983) as amended. In this section the researcher endeavoured to establish to



what extent children and youths in conflict with the law are protected in view of their status in terms of the Child Care Act (Act 74 of 1983) as amended regarding decisions related to detention. Further aspects related to detention which the researcher enquired into is the extent to which children’s homes, schools of industries and reform schools are utilized in terms of detention, which juridical and social factors guide decisions regarding detention and how decisions are being made in view of specific detention options.

### 5.4.1 Release on warning and status of arrested child or youth in terms of the Child Care Act

Section 72(1)(b) of the Criminal Procedure Act (Act 51 of 1977) allows for the release on warning of an accused under the age of 18 years in the care of the person in whose custody he or she is. In view of arrested children and youths being released on warning on a criminal charge, the researcher explored to what extent their status in terms of the Child Care Act (Act 74 of 1983) as amended are being considered regarding their need for food, shelter or care, uncontrollable behaviour and their current placement in terms of the Child Care Act (Act 74 of 1983) as amended. The results of the research are illustrated in figure 5.1



**Figure 5.1 Release on warning: status in terms of the Child Care Act**



#### **5.4.1.1      *The need for food, shelter or care and uncontrollable behaviour***

The result of the research study shows that according to the majority of respondents children's status in terms of the Child Care Act (Act 74 of 1983) as amended are often being considered in terms of their need for food, shelter or care and in terms of uncontrollable behaviour when released on a criminal charge as indicated by 29 (63.04%) and 30 (65.21%) respondents respectively. Ten (21.73%) respondents indicated that children's status in terms of the Child Care Act is seldom considered when being released on a criminal charge in terms of the abovementioned aspects. A minority of the respondents namely two (4.34%) in view of a child's need for food, shelter or care and one (2.17%) in terms of uncontrollable behaviour stated that these factors are never being considered regarding the release of arrested children or youths.

Respondents motivations to answers brought different perspectives to the fore. Five (10.58%) respondents, one respondent from group I (magistrates), three respondents from group II (prosecutors) and one respondent from group III (probation officers) pointed out that it is part of the decision-making process to consider a child's or youth's circumstances. The three respondents from group II (prosecutors) further stated that this function is carried out by probation officers. The respondent from group III (probation officers) mentioned that the absence of parents or guardians at an assessment interview impaires the decision-making process. A further 17 (36.98%) respondents recognised the prevalence of problems associated with arrested children and youths, such as poor and disadvantaged circumstances, unemployment, illiteracy, single parenthood as well as uncontrollable behaviour by the arrested children and youths. According to one respondent from group III (probation officers) problem behaviour often exists prior to a child or youth being arrested. This is in accordance with Klein, Forehand, Armistead and Long (1997: 61, 73) who emphasize the impact of the family on delinquency. Smith and Stern (1997: 387 – 392) confirm that clear links have been established between specific parenting practices and delinquency. They also emphasize factors such as disadvantaged neighborhoods, economic hardship, stress and depression and social isolation which disrupt effective parenting.



Six (13.04%) respondents, four respondents from group I (magistrates) and two respondents from group II (prosecutors) indicated that children or youths in need of food, shelter or care will be detained in view of providing them with the necessary care. In respect of arrested children and youths presenting with uncontrollable behaviour, detention would be considered with a view to protect the community, and is according to five respondents from group III (probation workers) more likely to occur. One respondent from group I (magistrates) mentioned that information regarding a child or youth's problem behaviour is often only placed on record by a parent or guardian when a child or youth fails to return to court. Problems related to a lack of places of safety as discussed in paragraph 2.4.3 of this study are raised by three (6.52%) respondents, two respondents from group I (magistrates) and one respondent from group II (prosecutors). The respondents from group I (magistrates) stated that a lack of places of safety leads to arrested children and youths being released into impoverished circumstances. The respondent from group II (prosecutors) indicated that although problems related to a need for food, shelter or care and uncontrollable behaviour often exist, there is no alternative but to release them. It can therefore be concluded that although the majority of respondents consider and recognize arrested children and youths circumstances in terms of being in need or care or being uncontrollable, children or youths are at times being released due to lack of co-operation by parents or guardians and a lack of resources.

#### **5.4.1.2 *Current placement in terms of the Child Care Act***

Current placement in terms of the Child Care Act (Act 74 of 1983) as amended refers to those children and youths who have already been dealt with in terms of Sections 13, 14 & 15 of the Child Care Act and whose orders in terms of the said Act are still valid. Figure 5.1 shows a virtually even distribution of responses indicating that the status of children and youths in terms of the Child Care Act (Act 74 of 1983) as amended are often (36.95%) or seldom (39.13%) being considered in view of them being released on warning on a criminal charge. Two (4.34%) respondents indicated that the current status of children and youths in terms of the Child Care Act is never considered in view of decisions regarding their release on a criminal charge. Nine (19.56%) respondents did not answer the question. Of the remaining 37 (80.43%) respondents who did respond, six respondents from group II (prosecutors) did not motivate their answers and four respondents from group I (magistrates) and three



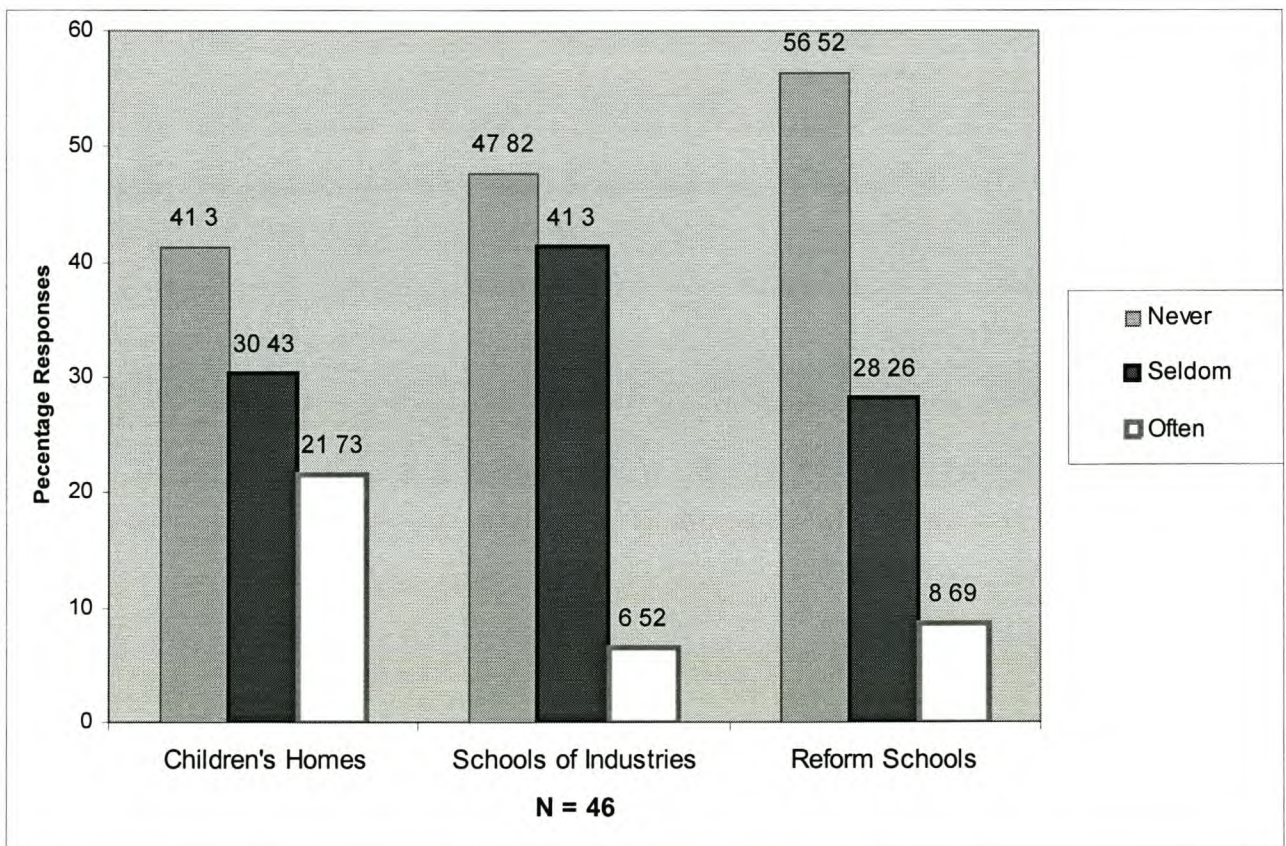
respondents from group III (probation officers) provided inappropriate motivations. A further 26 (34.78%) respondents, three respondents from group I (magistrates), three respondents from group II (probation officers) referred to the opening of a children's court inquiry in their motivations and not to current placements in terms of the Child Care Act (Act 74 of 1983). A limited number of respondents from each group provided relevant motivations for their answers. Respondent 29 of group III (probation officers) indicated that although arrested children and youths are often current subjects of the Child Care Act (Act 74 of 1983) as amended, this information is seldom revealed during assessment. Respondent 43 of group III (probation officers) mentioned that the resources for the follow-up of information is not available after-hours and can therefore only be determined during the day-time assessment. Respondent five from group I (magistrates) and respondent 26 from group II (prosecutors) indicated that children and youths who are currently in places of safety in terms of the Child Care Act (Act 74 of 1983) as amended are usually detained and not released on a criminal charge. According to respondent three of group I (magistrates) arrested children and youths are often detained at their current placements in terms of the said Child Care Act (1983) on criminal charges and not released, although these placements often fail to protect the children and youths concerned. Factors pertaining to the inadequate feedback of respondents, lack of information at assessment and perceived failure of child care facilities to protect children and youths, indicate that the current placement of a child or youth in terms of the Child Care Act (Act 74 of 1983) as amended are generally seldom considered in respect of arrested children and youths being released on warning on a criminal charge.

#### **5.4.2 Utilization of children's homes, schools of industries and reform schools as places of safety for detention purposes**

As confirmed in paragraphs 2.4.2 and 2.4.3 of this study youth prisons are overcrowded and places of safety are often due to lack of vacancies unable to assist with the detention of waiting trial children and youths. Section 71 of the Criminal Procedure Act (Act 51 of 1977) provides for the placement of awaiting trial children and youths in places of safety in terms of Section 1 of the Child Care Act (Act 74 of 1983) as amended. With reference to paragraphs 2.4.4 and 2.4.5 of this study children's homes, schools of industries and reform schools are facilities within the



child and youth care system which respectively provide protection and care and education and training in respect of children and youths and may accept arrested children and youths who have already been referred to their care for detention purposes. The researcher therefore aimed to establish whether the aforementioned facilities are being utilized as places of safety for detention purposes and if so, to what extent. The outcome of the research is illustrated in figure 5.2.



**Figure 5.2 Utilization of children's homes, schools of industries and reform schools as places of safety for detention purposes.**

The outcome of the research study shows that children's homes and mainly schools of industries and reform schools are never or seldom used as places of safety for detention purposes, as being discussed as follows in terms of each placement option.



#### **5.4.2.1 Children's homes**

Ten (21.73%) respondents indicated that children's homes are often used as places of safety for detention purposes. This is probably relevant to the view point of respondent 21 of group II (prosecutors) that the main purpose is to treat accused children and youths differently from adults and to try to keep them out of prison as far as possible. Four other respondents from group II (prosecutors) support this view point. The approach is endorsed by the inter-ministerial committee on youth at risk in that children and youths should be placed in the most empowering and least restrictive placement option (IMC Draft: Discussion Documents: 1996: 22). The main reason why children's homes are seldom (30.43%) or never (41.30%) used as a detention option is according to four respondents from group I (magistrates) and seven respondents from group III (Probation officers) the refusal of children's homes to accept awaiting trial children due to problem behaviour and a possible negative influence. A further three respondents from group III (probation officers) expressed the opinion that children's homes are not suitable placement options for awaiting trial children. The information guide and regulations on the practical application of the Child Care Act (Act 74 of 1983) as amended stipulates that children's homes are not obliged to receive children, but have an obligation to maintain and care for them once admitted. A further motivation given that children's homes are seldom or never used for detention purposes is that only children who are current subjects of the Child Care Act (Act 74 of 1983) can be considered for this option. It therefore appears that children's homes refuse placement for detention purposes to children who have already been placed in their care. It can therefore be assumed that once children or youths have become involved in crime they are often not considered suitable for re-acceptance in a children's home. One respondent from group I (magistrates) nevertheless referred to the need for alternative placement options as awaiting trial places of safety are often full.

#### **5.4.2.2 Schools of Industries**

According to the research results only 3 (6.52%) respondents indicated that schools of industry are often used for detention purposes. Respondent 21 from group II (prosecutors) once again mentioned that arrested children and youths should be treated differently to adult offenders and as far as possible be kept out of prison. The majority of respondents namely 19 (41.30%) and 21 (47.82%) respectively revealed



that schools of industries are seldom or never used for detention purposes. As reviewed in paragraph 2.4.4 of this study, two respondents from group I (magistrates) and one respondent from group II (prosecutors) endorsed that only a few facilities are available. Respondent one from group I (magistrates) supported by respondent 23 of group II (prosecutors) expressed the opinion that schools of industries are not secure, resulting in abscondings and are therefore not considered to be a reliable form of detention. The draft Bill (Bill B) however emphasizes that the detention of unconvicted children and youths should only occur as a measure of last resort and that the least restrictive form of detention appropriate to the child or youth and his or her circumstances must be selected. Twelve respondents, two from group I (magistrates), one respondent from group II (prosecutors) and nine respondents from group III (probation officers) further endorsed the provision that this form of detention can only be used if an order of the children's court is in place. As in the case of children's homes eight respondents, namely five respondents from group I (magistrates) and three respondents from group III (probation officers) pointed out that schools of industries refuse to or are reluctant to accept arrested children or youths. This may imply that a child or youth's placement in terms of the Child Care Act (Act 74 of 1983) has broken down or is no longer in his or best interest. The reason for schools of industries' reluctance to accept children or youths awaiting trial was however not mentioned by respondents.

#### **5.4.2.3 Reform Schools**

Although reform schools provide the most secure form of detention of child care facilities, 26 respondents (56.52%) specified that reform schools are never utilized for detention purposes. Thirteen (28.26%) respondents indicated that reform schools are seldom used and 4 (8.69%) respondents that they are often used for detention purposes. Respondent 2 from group I (magistrates) and nine respondents from group III (probation officers) pointed out that children and youths in reform schools have already been sentenced in terms of Section 290 (i)(d) of the Criminal Procedure Act (Act 51 of 1977) on a criminal charge and according to respondent 35 of group III (probation officers) often on a serious charge. When these children or youths are therefore arrested on a criminal charge they are repeat offenders in need of detention. Reform schools as such address the need for detention and education as discussed in paragraph 2.4.4 of this study. Regarding detention of children or youths



awaiting trial in reform schools it appears that their need for education in relation to their need for detention are not taken into account. As in the case of schools of industry six respondents, three from group I (magistrates), one respondent from group II (prosecutors) and two respondents from group III (probation officers) point to fact that only limited facilities are available.

#### 5.4.3 Relevance of specific juridical and social factors guiding detention

Wiebush, Baied, Krisberg and Onek (1995: 190) view the key concerns of detention decisions as whether a child or youth represents an immediate threat to the community and whether the child or youth is likely to abscond to avoid court proceedings. According to them risk screening for detention by courts are mainly based on statutory requirements and the identification of criteria that are believed to reflect public safety and youth stability issues. As discussed in paragraph 3.4.2 of this study statutory requirements regarding the detention of unconvicted children and youths are contained in Section 29 of the Correctional Service Act (Act 8 of 1959) as amended. The researcher aimed to explore the relevance of specific juridical and social factors used in detention decisions by juvenile courts. The research results illustrated in table 5.3 reflect the aforesaid discussion.

**Table 5.3 Relevance of juridical and social factors guiding detention decisions**

JURIDICAL FACTORS	Not relevant		Some relevance		Major relevance	
	f	%	f	%	f	%
Severity of present offence	1	2.17	18	39.13	27	58.69
Severity of past offence	4	8.69	22	47.82	20	43.47
Number of past offences	3	6.52	14	30.43	29	63.04
Frequency of past offences	2	4.34	15	32.60	29	63.04
Absconding from previous awaiting trial detentions	0	0	11	23.91	35	76.08
Child / youth pose threat to other children / youths in detention	3	6.52	22	47.82	21	45.65



SOCIAL FACTORS	Not relevant		Some relevance		Major relevance	
	f	%	f	%	f	%
Age of child or youth	0	0	14	30.43	33	71.73
Stability of family circumstances	0	0	22	47.82	24	52.17
Child / youth living on street, with friends at time of offence	1	2.17	18	39.13	27	58.69
Poor school attendance	13	28.26	27	58.69	6	13.04
Drug or alcohol abuse by child or youth	2	4.34	31	67.39	13	28.26
Child or youth is a current subject of children's court	1	2.17	25	54.34	18	39.13

**N = 46**

#### **5.4.3.1 Juridical Factors**

The risk of absconding was rated as the most relevant of the juridical factors in view of detention decisions by 35 (76.08%) respondents. The second issue of major relevance was related to the short terms risk to the community namely the number and frequency of previous offences, with a response rate of 29 (63.04%). The severity of the offence was considered as a further factor of major relevance by 27 (58.69%) respondents. In view of factors concerning the severity of the past offence and the threat a child or youth may pose to other children or youths in detention, responses were more or less evenly balanced in terms of major and some relevance.

#### **5.4.3.2 Social Factors**

The age of the child or youth concerned were recognized by the respondents as the most relevant social factor guiding detention decisions with a response rate of 33 (71.73%). The two factors related to stability issues were of subsequent major importance. Twenty four (52.17%) respondents viewed the stability of home circumstances of major importance and 27 (58.69%) respondents regarded the fact



that a child or youth did not live at home at the time of the offence of major relevance. Drug and alcohol abuse were considered to be of some relevance by 31 (67.39%) respondents, therefore also a notable factor in decisions regarding detention. Poor school attendance was viewed as less relevant. It further appears that if it is known that a child or youth is a current subject of the children's court, this factor will be considered in view of detention decisions by the majority of respondents.

#### **5.4.4. Decision making in terms of the most suitable placement**

In accordance with the integrated framework for the child and youth care system as discussed in paragraph 2.3.3 of this study, a suitable awaiting trial placement for an arrested child or youth concerns his or her need for protection and / or containment and for development and / or therapeutic programmes, as well as the best interests of the child and family (IMC Draft: Discussion Document 1996: 21). Having explored the relevant criteria guiding detention decisions the researcher sought to enquire how decisions are being made in view of the most suitable placement in an awaiting trial place of safety, a child care facility or prison. The outcome of the research is being discussed as follows.

##### **5.4.4.1 *Awaiting trial places of safety***

The availability of an awaiting trial place of safety was raised by three (6.52%) respondents as a deciding factor in terms of a placement decision. In accordance with the child or youth's need for development respondent 4 of group I (magistrates) mentioned that placement in an awaiting trial place of safety is being considered in view of the programmes being offered there. Respondent 8 of group I (magistrates) viewed the interests of the child or youth as a dominant factor in placement decisions. The majority of respondents (N = 46), namely 27 (58.69%) however maintained that placement in an awaiting place of safety is being determined by the child or youth's circumstances, in view of the child or youth having no parent to take care of him or her, the home circumstances being unstable and / or the inability of a parent or guardian to control the child or youth concerned. The seriousness of the offence was raised as a further important factor. Four (8.69%) respondents pointed out that an awaiting trial place of safety will be considered as a first option for detention purposes in view of serious offences. Fifteen (32.6%) respondents stated that in view of very serious or violent offences such as rape or murder detention in a



prison will be considered. Placement decisions in an awaiting trial place of safety therefore concern both the child or youth's need for protection and containment. The child or youth's need for development was only recognized by one respondent.

#### **5.4.4.2 Child care facility**

In view of a placement in a child care facility the child or youth's need for protection appears to be paramount. In accordance with paragraph 5.4.2 of this study eleven (23.91%) respondents pointed out that this placement option is being considered for detention purposes when a child or youth has already been dealt with in terms of the Child Care Act (Act 74 of 1983) as amended and is a current subject of the said Act. Fifteen (32.31%) respondents referred to the need for a child or youth being placed in a child care facility in view of poor home circumstances or being in need of care, but did not indicate that only children or youths already placed in a child care facility in terms of the Child Care Act (Act 74 of 1983) as amended may be accepted for detention purposes. The two other major factors mentioned by respondents which guide detention decisions in view of placement in a child care facility are the age of the child or youth concerned and the type of offence committed. Nine (19.56%) respondents indicated that younger children, namely children under the age of 13 years are being considered for placement in a child care facility and 13 (28.25%) respondents mentioned that this placement option is appropriate in the case of petty or less serious offences. The child or youth's need for development and / or education were not mentioned by respondents.

#### **5.4.4.3 Prisons**

In view of awaiting trial placements in prison respondents eleven and eight of group I (magistrates) expressed opposite view points. Respondent eleven view the seriousness of the offence as a determining factor, also taking into account the criminal disposition of the child or youth or whether the child or youth leads an adult lifestyle. Respondent eight stated that:

"The court shall not punish a child of tender age as a criminal and stamp him as such throughout his life." The respondent maintained that the child or youth should be uplifted and educated to understand the difference between right and wrong, as the child or youth must in the end be returned to society. The outcome of the research indicates that the emphasis in view of awaiting trial placements in prison, is on the



need for containment. Twenty seven (58.69%) respondents stated that a child or youth will normally be detained in prison in the case of serious offences such as murder, rape and hijacking. Eleven (23.91%) respondents further indicated that awaiting trial placements in prison will be considered in respect of children or youths who are repeat or habitual offenders and have a history of abscondings. In compliance with Section 29 of the Correctional Services Act (Act 8 of 1959) as amended, ten (21.73%) respondents conveyed that the unavailability of places of safety is a factor in the detention of awaiting trial children and youths in prison. Three (6.52%) respondents referred to the requirement that evidence should be led under oath as to the reasons why a child or youth should be detained in prison. The stipulation in the said Act that only children or youths 14 years and older may be detained awaiting trial in prison, was recognized by five (10.86%) respondents. In accordance with the policy recommendations of the inter-ministerial committee on young people at risk (IMC Draft: Discussion Document, 1996: 24) who supports a corporatist youth justice model which blends aspects of the welfare and justice models, six (13.04%) respondents confirmed that the circumstances of the child or youth are also taken into account regarding decisions to detain children or youths in prison. The child or youth's need for development and / or education are not mentioned by respondents and appears to be of minor importance in awaiting trial detention in prison.

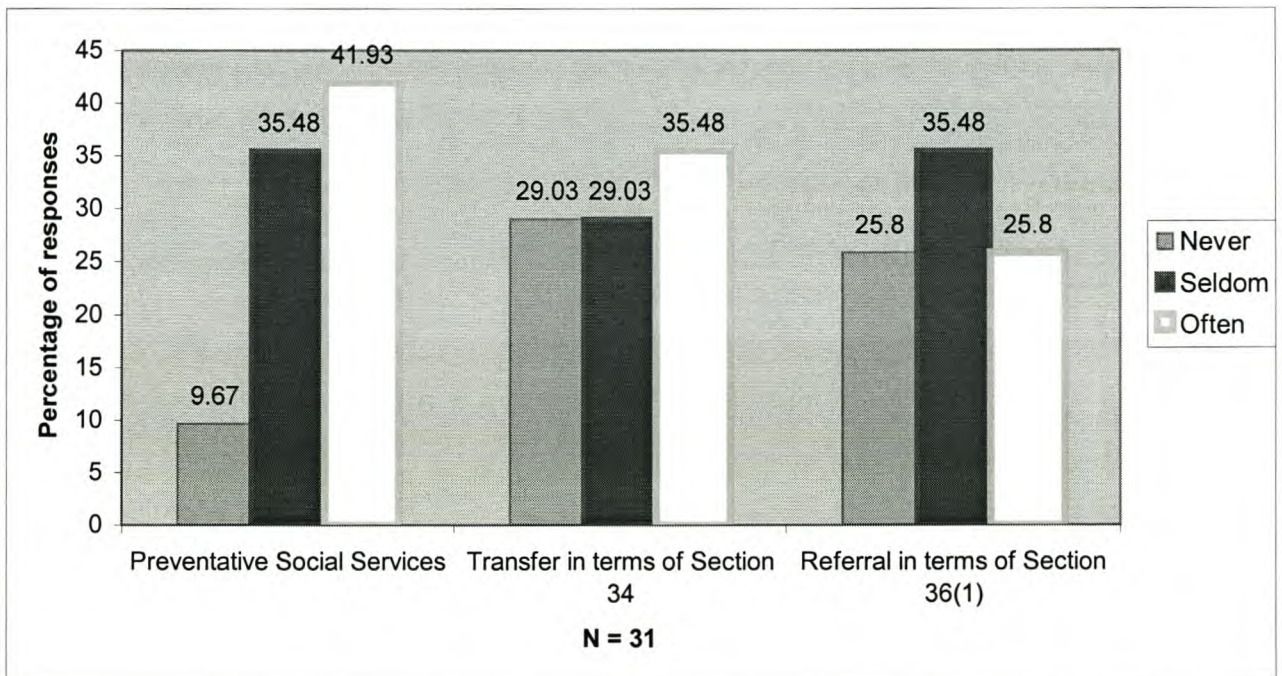
## **5.5 DIVERSION OF CRIMINAL CASES**

Levine, Musheno and Palumbo (1986: 584) maintain that the theory underlying diversion is that if certain people such as young, non violent first offenders are removed from the system before they are given a record, they will not become stigmatized, and may further be prevented from becoming more involved in crime. In line herewith one of the purposes of assessment is that the probation officer should make a recommendation in view of diverting criminal cases in respect of children and youths away from the criminal justice system. In this section the researcher firstly explored how certain accused children and youths who are additionally at risk of becoming or being in need of care, can be protected in terms of the diversion option. Secondly, the researcher investigated which factors are considered in decisions regarding diversion.



### 5.5.1 Utilization of Child care options for diversion purposes

As discussed in paragraph 3.9 of this study not all children or youths in conflict with the law who are additionally at risk of becoming or being in need of care, are protected by the conversion option. Children and youths in need of preventative social welfare services and children and youths who are current subjects of the Child Care Act (Act 74 of 1983) as amended are not protected by the conversion option. The researcher therefore sought to establish if, and to what extent the following child care options, namely preventative social welfare services, transfer in terms of Section 34 of the Child Car Act (Act 74 of 1983) as amended and referral for treatment in terms of section 36(1) of the said Act are being used for diversion purposes. The result of the research is illustrated in figure 5.3.



**Figure 5.3 Child care options utilized as diversion options**

#### 5.5.1.1 Preventative social services

In view of utilization of preventative social services as a diversion option, four respondents (12.9%) did not respond to the question and seven (22.58%) respondents did not motivate their answers. In the light of the 27 (87.09%) responses obtained, three (9.67%) respondents indicated that preventative social services are never utilized as a diversion option, 11 (35.48%) respondents pointed



out that preventative social services are seldom used, and 13 (41.93%) respondents stated that preventative social services are often used as a diversion option. With the processing of the motivations it however emerged that only three (9.67%) respondents, namely one respondent from group II (prosecutors) and two respondents from group III (probation officers) indicated that criminal cases are occasionally withdrawn in view of social welfare services being rendered. One (3.22%) respondent from group III (probation officers) maintained that social welfare do not have appropriate programmes for diversion purposes and another respondent from group III (probation officers) indicated that he or she was not aware that welfare could intervene as a diversion option. Nine (29.05%) respondents pointed out that diversion programmes provided by the NICRO organisation are utilized on a preventative level. In clause 48 of the draft Bill (Bill B) it is stipulated that the purpose of diversion is among others to meet the particular needs of the child or youth and to promote the reintegration of the child or youth into the family or community. The draft Bill (Bill B) does however not specifically provide for preventative social welfare services as a diversion option, and instead recommends conversion of a criminal matter to a children's court inquiry and therefore statutory intervention (Report: Juvenile Justice Report 2000: 253, 256 – 258, 272). Van Niekerk (1998: 31) on the contrary confirms that child protection services include preventative and statutory intervention.

#### **5.5.1.2      *Transfer in terms of Section 34 of the Child Care Act***

Section 34 of the Child Care Act (Act 74 of 1983) as amended allows for the administrative transfer of a child or youth from his or her current placement to a more suitable placement, as discussed in paragraph 3.9.3.4 of this study. In view of using the aforementioned procedure as a diversion option, the responses were more or less equally distributed. Nine (29.03%) respondents respectively indicated that the aforementioned procedure in terms of Section 34 is never or seldom used as a diversion, while 11 (35.48%) respondents signified that this option is often used as a diversion option.

Of the aforementioned respondents, 10 (32.25%) respondents did not motivate their answers. Respondent 36 of group III (probation officers), supported by six other respondents from group III and one respondent from group II (prosecutors), pointed



out that the procedure in terms of section 34 is often used in respect of a child or youth who is a current subject of the Child Care Act (Act 74 of 1983) as amended, especially if the initial placement does not meet the needs of the child or youth concerned. Four (12.9%) respondents, three respondents from group II (prosecutors) and one respondent from group III (probation officers), indicated that the procedure in terms of section 34 as a diversion option is seldom indicated and only if it is initiated by the institution or probation officer concerned. The procedure is however in place to be utilized. In view of the procedure in terms of section 34 never being used, three (9.67%) respondents from group III (probation officers) were of the opinion that assessment involves short-term procedures and that the procedure in terms of section 34 is managed by field social workers rendering ongoing services. It therefore indicates that ongoing social welfare services by probation officers or social workers are not always utilized as part of the assessment process. As in the case of preventative social welfare services, transfer in terms of section 34 as a diversion option is not directly stipulated in the draft Bill (Bill B) (Report: Juvenile Justice, 2000: 256 – 258). As discussed in paragraph 3.91 of this study children or youths in conflict with the law, who are current subjects of the Child Care Act (Act 74 of 1983) as amended are not protected in view of the conversion option.

### **5.5.1.3 Referral for treatment in terms of Section 36(1) of the Child Care Act**

Section 36(1) of the Child Care Act (Act 74 of 1983) as amended provides for a child or youth to be removed from foster care or a child care institution for the purpose of treatment. Clause 52 of the draft Bill (Bill B) makes provision for a child or youth to be referred for counselling or therapeutic intervention as a diversion option. (Report: Juvenile Justice, 2000: 256 – 258). The researcher inquired whether the aforementioned procedure in terms of section 36(1) are utilized for diversion purposes in view of children or youths currently placed in child care institutions. Motivations of respondents showed that the referral of a child or youth for treatment of a drug problem, is predominantly viewed as a diversion option only. Merely one (3.22%) respondent of group II (prosecutors) mentioned that the procedure in terms of section 36(1) is available as a diversion option, although it is rarely used. The responses received were therefore interpreted in view of the aforementioned conclusion. Eight (25.8%) respondents respectively indicated that children or youths



are never or often referred for treatment for a drug problem as a diversion option, and 10 (32.25%) respondents pointed out that the treatment option for drug problems are seldom utilized as a diversion option. Three (9.67%) respondents from group III (probation officers) motivated that referral for treatment involves long term intervention and is not utilized at the assessment level. Two (6.45%) respondents from group II (prosecutors) mentioned that prosecutors do not deal with this procedure. A further four (12.9%) respondents, namely three respondents from group III (probation officers) and one respondent from group II (prosecutors) stated that in view of limited referrals and inappropriate treatment options, children and youths are seldom referred for treatment for drug problems as a diversion option. Only four (12.9%) respondents, three respondents from group III (probation officers) and one respondent from group II (prosecutors) motivated that children or youths who commit crime are often in need of treatment and therefore referred for treatment as a diversion option. It can therefore be concluded that the procedure in terms of Section 36(1) of the Child Care Act (Act 74 of 1983) is not utilized as a treatment option for diversion purposes. It appears that even as a diversion option the treatment option is not fully utilized at the assessment level.

### **5.5.2 Factors considered to be conditions for diversion of criminal cases**

As discussed in paragraph 3.6 of this study, the authority to divert a criminal case lies with state prosecution. Although the concept of diversion has been practiced by prosecutors for a period of time, the concept and administration of diversion is for the first time included in legislation as contained in the draft Bill (Bill B). The purposes of diversion as described in clause 48 of the draft Bill (Bill B) are among others to encourage the child or youth to be accountable for the harm caused, to meet the particular needs of the child or youth and to prevent the child or youth from having a criminal record. Diversion may further only occur under certain circumstances as stipulated in clause 51 of the said draft Bill, namely that the child or youth acknowledges responsibility for the alleged offence, that there is sufficient evidence to prosecute, and that such child or youth and his or her parent or appropriate adult, if such person is available, consent to the diversion and the diversion option (Report: Juvenile Justice, 2000: 253, 255). In accordance herewith the researcher sought to establish which of the following factors are considered to be conditions for diversion, namely:



- establishment of criminal capacity;
- acknowledgement of responsibility for the offence;
- no criminal record;
- seriousness of the current offence;
- motivation of the child or youth to co-operate with the treatment or placement option; and
- appropriateness of the diversion option in relation to the seriousness of the offence.

The findings of the research are illustrated in table 5.4. Only respondents from group II (prosecutors) and group III (probation officers) were required to complete questions related to diversion, namely 31 respondents. Refer to paragraph 5.1 of this study.

**Table 5.4 Factors considered to be conditions for diversion of criminal cases**

Factors	Yes		No	
	f	%	f	%
Establishment of criminal capacity	27	87.09	2	6.45
Acknowledgement of responsibility of the offence	29	93.54	1	3.22
No criminal record	28	90.32	2	6.45
Seriousness of current offence	28	90.32	2	6.45
Motivation of child/youth to co-operate with diversion option	28	90.32	1	3.22
Appropriateness of diversion option in relation to seriousness of offence	25	80.64	4	12.9

**N = 31**

### 5.5.2.1 *Establishment of criminal capacity*

As illustrated in table 5.4 the respondents predominantly confirmed that all six aforementioned factors are to be considered in decisions regarding the diversion of criminal cases. In view of establishment of criminal capacity 27 (87/09%) respondents confirmed that this factor should be considered in decisions regarding the diversion of criminal cases. In accordance with the minimum standards for diversion as set out in clause 49(4) of the draft Bill (Bill B), nine (29.03%) respondents, namely four respondents from group II (prosecutors) and five



respondents from group III (probation officers) pointed out that the child or youth must have the necessary capacity, be it age or mental capacity to understand court proceedings and to appreciate the wrongfulness of his or her actions, to be suitable for diversion. One of the purposes of diversion as contained in clause 48 of the draft Bill (Bill B) is to avoid stigmatization of the child or youth (Report: Juvenile Justice, 2000: 253). In agreement herewith two (6.45%) respondents from group II (prosecutors) confirmed that if a child or youth has an established criminal capacity, her or she would not be considered suitable for diversion. In order for diversion to take place the child or youth therefore needs to have the criminal capacity to understand criminal proceedings.

#### **5.5.2.2 Acknowledgement of responsibility for the offence**

The acknowledgement of responsibility for the offence is according to 29 (93.54%) respondents a condition for diversion. Respondent 17 of group III (prosecutors) maintains that the accused child or youth must not only acknowledge the offence, but should also reconcile him- or herself to the outcome thereof. A further seven (22.58%) respondents, namely two respondents from group II (prosecutors) and five respondents from group III (probation officers) viewed remorse as an important element of acknowledgement of responsibility for the offence. This is in compliance with the purposes and conditions of diversion as set out in the draft Bill (Bill B) (Report: Juvenile Justice, 2000: 253, 255).

#### **5.5.2.3 No criminal record**

As discussed in paragraph 3.6 of this study diversion implies the redirecting of an accused child or youth away from the criminal justice system in order to prevent a criminal record. Twenty-eight (90.32%) respondents confirmed that no criminal record is a condition for diversion. Respondent 17 of group II (prosecutors) stated that diversion is a remorse based principle and that prosecutors therefore adhere as strictly as possible to the condition that the accused child or youth is a first offender. Respondent 31 of group III (probation officers) mentioned that through diversion a child or youth is given a chance, which should be used as a learning experience. Thirteen (41.93%) respondents, namely five respondents from group II (prosecutors) and eight respondents from group III (probation officers) concurred that accused children or youths are only given a second chance in exceptional circumstances. In



accordance with clause 48 of the draft Bill (Bill B) the majority of respondents therefore view diversion as an option for first offenders to prevent stigmatization by involvement in the criminal justice system (Report: Juvenile Justice, 2000: 253).

#### **5.5.2.4      *Seriousness of current offence***

The South African Law Commission decided that the inclusion or exclusion of certain more serious cases from consideration of diversion, should be left to the discretion of those making diversion decisions (Report: Juvenile Justice, 2000: 97). Twenty eight (90.32%) respondents confirmed that the seriousness of the offence is a factor when considering diversion. Four (12.9%) respondents from group II (prosecutors) indicated that the seriousness of the offence in itself could preclude diversion, as in the case of murder, rape or armed robbery. A further seven (22.58%) respondents, namely two respondents from group II (prosecutors) and five respondents from group III (probation officers) stated that serious cases are not normally diverted. According to respondent 31 of group III (probation officers) the seriousness of the offence is a factor, as children or youths should be made aware of their actions, and that diversion options may not address the seriousness of the offence. Two (6.45%) respondents of group III (probation officers) moreover indicated that although the seriousness of the offence is a factor when considering diversion, it is not absolute and that in a particular set of circumstances even an offence of murder can be considered for diversion. Two (6.45%) respondents from group III (probation officers) lastly mentioned that only petty offences such as theft or possession of dagga are considered for diversion. As maintained by Levine, Musheno and Palumbo (1986: 585) diversion is a discretionary process and as such could violate the principle of equal treatment.

#### **5.5.2.5      *Motivation of child or youth to co-operate with diversion option***

Clause 51 of the draft Bill (Bill B) specifies that diversion should only be considered if among others, the child or youth and his or her parents or an appropriate adult consent to the diversion and the diversion option (Report: Juvenile Justice, 2000: 255). In accordance herewith 28 (90.32%) respondents regard the motivation of the child or youth to co-operate with the diversion option as a condition for diversion. Twenty respondents, namely seven respondents from group II (prosecutors) and 10 respondents from group III (probation officers) pointed out that the chosen diversion



option will be of little benefit if the child or youth is not willing to co-operate. Respondent 35 of group III (probation officers) stressed the importance of parental support in this regard. Two (6.45%) respondents from group III (probation officers) pointed out that the particular diversion option is always explained to the child or youth, before he or she signs the expected declaration. Rossouw (1999: 74) confirms that in practice the child or youth and his or her parents sign a declaration that they are prepared to participate in a specific programme.

#### **5.5.2.6 *Appropriateness of diversion option in relation to the offence***

Twenty five (80.64%) respondents viewed the appropriateness of the diversion option in relation to the seriousness of the offence, as a factor or condition, when considering diversion. Five (16.12%) respondents, namely two respondents from group II (prosecutors) and three respondents from group III (probation officers) expressed the opinion that the diversion option should fit the offence committed. In accordance with the purposes of diversion as stipulated in clause 48 of the draft Bill (Bill B), respondent 17 of group II (prosecutors) maintained that the aim of diversion is for the child or youth to feel that he or she compensates the community for the harm done. The correct or appropriate diversion option is therefore important, but not considered to be an overriding factor. In correspondence with the purposes of diversion as stated in the draft Bill (Bill B), respondent 31 of group III (probation officers) specified that the background and special needs of a child or youth should be taken into account in view of the appropriateness of a specific diversion option. Three (9.67%) respondents from group III (probation officers) maintained that the availability of resources also have an impact when deciding on an appropriate diversion option. In light of the limited diversion options currently available, respondent 44 of group III (probation officers) welcomed the extended range of diversion options included in the draft Bill (Bill B) (Report: Juvenile Justice, 2000: 253, 256 – 258).

## **5.6 CONVERSION OF CRIMINAL PROCEEDINGS TO CHILDREN'S COURT INQUIRY**

As discussed in paragraph 3.9 of this study, one of the most important provisions included in Section 254 of the Criminal Procedure Act (Act 51 of 1977) to protect children and youths in need of care, is the conversion of a trial into a children's court



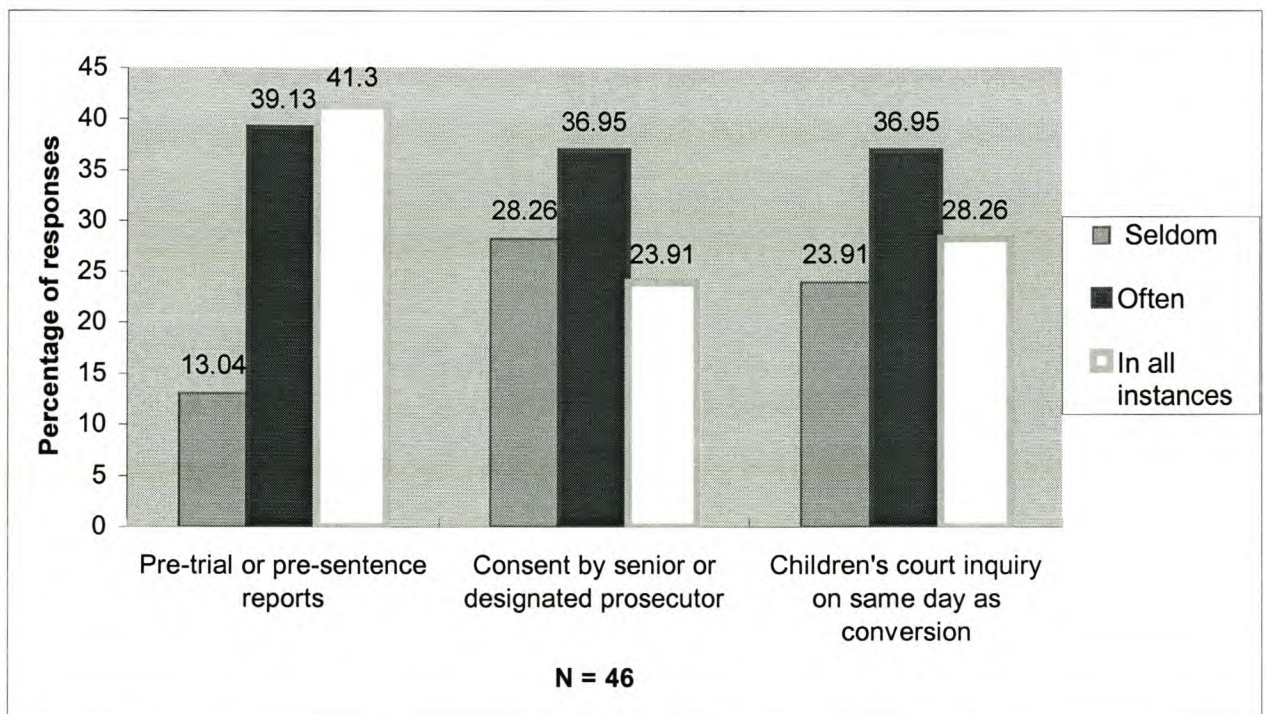
inquiry. In this section the researcher firstly explored whether uniform procedures are followed by the courts when carrying out diversions. Secondly the researcher investigated how decisions regarding conversions are being made by the courts.

### 5.6.1 Conversion procedures

When a trial in respect of an accused child or youth is converted to a children's court inquiry, certain procedures are in place to assist the court and to ensure that court processes are followed through. The researcher enquired to what extent the following procedures are followed by courts when carrying out conversions:

- request for a pre-trial or pre-sentence report by a probation officer;
- consent of a senior or designated prosecutor; and
- opening or finalization of the children's court inquiry on the same day as the conversions.

The result of the research is illustrated in figure 5.4



**Figure 5.4 Procedures followed when carrying out conversions**



### **5.6.1.1 Request for a pre-trial or pre-sentence report**

The result of the research shows that there is a distinct variation in respect of the extent to which the aforementioned procedures are followed by courts, when carrying out conversions. In view of the request for a pre-trial or pre-sentence report by a probation officer, 19 (41.3%) respondents indicated that a probation officer's report is required in all instances when conversion of the criminal proceedings to a children's court inquiry is being considered. Eighteen (39.13%) respondents pointed out that a probation officer's report is often required for the purpose of conversion and 6 (13.04%) respondents maintained that a probation officer's report is seldom required for conversion purposes. For the purpose of a children's court inquiry in terms of section 13(3) of the Child Care Act (Act 74 of 1983) as amended, a social work report in terms of section 14(2) of the said Act is in practice always required by the commissioner of child welfare.

### **5.6.1.2 Consent of senior or designated prosecutor**

Section 254 of the Criminal Procedure Act (Act 51 of 1977) determines that a court may stop a trial and order that an accused child or youth be brought before a children's court and be dealt with in terms of sections 13, 14 and 15 of the Child Care Act (Act 74 of 1983) as amended. As stipulated in Section 6 of the Criminal Procedure Act (Act 51 of 1977) the power to withdraw a charge or to stop prosecution lies with state prosecution. The researcher therefore enquired to what extent the consent of a senior or designated prosecutor is required by the court, when carrying out conversions of criminal proceedings to children's court inquiries. Eleven (23.91%) respondents indicated that the consent of state prosecution is required in all instances concerning conversion. Seventeen (36.95%) respondents pointed out that the consent of a senior or designated prosecutor is often obtained for the purpose of conversion and 13 (28.26%) respondents maintained that the consent of state prosecution is seldom obtained in view of decisions regarding conversions. Although the majority of respondents indicated that the consent of a designated or senior prosecutor is often or always obtained by the court when carrying out conversions, it does not appear to be a requirement by the court in conversion procedures.



### **5.6.1.3 Children's court inquiry on the same day as conversion**

As mentioned in paragraph 3.9.1 of this study, the trial in respect of an accused child or youth is stopped when the court converts criminal proceedings to a children's court inquiry. In order to ensure that the child or youth do appear before the children's court, the researcher enquired to what extent the courts require that the opening or finalization of a children's court inquiry be carried out on the same day as the conversion of the criminal proceedings. Thirteen (28.26%) respondents indicated that the children's court inquiry is in all instances held on the same day as the conversion of the criminal proceedings. Seventeen (36.95%) respondents maintained that the children's court inquiry is often carried out on the same day as the conversion of the criminal proceedings and 11 (23.91%) respondents pointed out that the child or youth is seldom brought before the children's court on the same day as the conversion of the criminal proceedings. The responses obtained showed that children's court inquiries are often not held on the same day as the conversions in the criminal court, which could result in children's court inquiries in terms of the Child Care Act (Act 74 of 1983) as amended, not being carried out as required.

### **5.6.2 Aspects considered in decisions regarding conversion of criminal proceedings**

Section 254 of the Criminal Procedure Act (Act 51 of 1977) stipulates that a criminal case may be converted in respect of any offence and be dealt with in terms of sections 13, 14 and 15 of the Child Care Act (Act 74 of 1983) as amended; that is the opening and holding of an inquiry and the making of a finding and an order. The researcher sought to establish how decisions regarding conversion is being made, considering the best interest of the child or youth concerned while serving the interest of justice. Respondents were requested to motivate their decisions regarding conversion in view of the following aspects:

- age and criminal capacity of a child or youth;
- seriousness of the current offence;
- the number of cases which could be considered for conversion in respect of a particular child or youth;
- at which stage of the trial a case is considered for conversion; and



- in which instances should criminal cases and children's court inquiries proceed separately.

The outcome of the research in terms of the aforementioned aspects is subsequently being discussed.

#### **5.6.2.1 Age and criminal capacity**

As discussed in paragraph 3.3 of this study, age is a deciding factor in the determination of the criminal capacity of a child or youth. In accordance with common law the minimum age of prosecution in South Africa is seven years. Children above seven years of age but under 14 years of age are rebuttably presumed to be *doli incapax*. They can therefore not be prosecuted unless the state proves that the child in question can distinguish between right and wrong and knew what he did was seriously wrong. Once the child or youth attains the age of 14 years he or she is fully criminally liable (De Villiers, 1988: 405, 435). The researcher enquired to what extent the age and criminal capacity of a child or youth is considered in decisions regarding conversion. Thirty three (71.73%) of the 46 respondents answered the question. Eighteen (39.13%) respondents, five respondents from group I (magistrates), four respondents from group II (prosecutors) and nine respondents from group III (probation officers) agreed that the criminal cases of children 13 years and younger will benefit most from conversion due to their limited criminal capacity. According to respondent 1 of group I (magistrates) a lenient sentence do not benefit the child or community. Conversion however addresses the interests of the child or youth and improves the overall consideration or purpose to prevent recurrence. Three (6.52%) respondents, one respondent from group II (prosecutors) and two respondents from group III (probation officers) mentioned that apart from the age and criminal capacity of the child or youth, his or her circumstances will also be considered in decisions regarding conversion. Six (13.04%) respondents, three respondents from group I (magistrates), two respondents from group II (prosecutors) and one respondent from group III (probation officers) stated that the courts largely depend on the recommendation of the probation officer as presented in pre-trial or pre-sentence reports. It can therefore be concluded that the age and criminal capacity of a child or youth is considered to be a factor in decisions regarding conversion of criminal proceedings.



Especially in view of children within the age group of limited criminal capacity, the interest of the child is the predominant consideration. The role of the probation officer in conversion decisions is also emphasized.

#### **5.6.2.2      *Seriousness of the current offence***

Section 254 of the Criminal Procedure Act (Act 51 of 1977) stipulates that any charge can be considered for conversion if it appears to the court that the child before the court is a child in need of care as described in section 14 (4) of the Child Care Act (Act 74 of 1983) as amended. The researcher enquired whether the seriousness of the offence is however a factor in conversion decisions. Thirteen (28.26%) respondents did not respond to the question. Eighteen (39.13%) respondents, namely nine respondents from group I (magistrates), four respondents from group II (prosecutors) and five respondents from group III (probation officers) indicated that the seriousness of the offence is a deciding factor in decisions regarding conversion, although age is still a consideration in view of young children. Five (10.85%) respondents specifically stated that the interests of the community will be considered in view of very serious offences, such as murder, rape or armed robbery. Nine (19.56%) respondents, namely one respondent from group I (magistrates), two respondents from group II (prosecutors) and six respondents from group III (probation officers) view the reasons or motivation for the offence including the circumstances of the child or youth as predominant factors in decisions regarding conversion of criminal proceedings to children's court inquiries. Although it is possible to convert any charge to a children's court inquiry it appears that very serious charges are not normally converted. The seriousness of the offence is however not viewed as the predominant factor in all circumstances, especially in view of young children.

#### **5.6.2.3      *Number of cases which could be considered for conversion***

As stated in clause 70 (3) of the draft Bill (Bill B) the best interest of the child and the interests of justice should be considered in view of decisions regarding conversion (Report: Juvenile Justice, 2000: 272). The researcher therefore enquired whether the number of cases against a specific accused is a factor in decisions regarding conversion of criminal cases to children's court inquiries. Fourteen (30.43%) respondents did not answer the question. Twelve (26.08%) respondents namely four



respondents from group I (magistrates), two respondents from group II (prosecutors) and six respondents from group III (probation officers) maintained that if the circumstances warrant conversion the number of cases are irrelevant. Respondent three from group I (magistrates) pointed out that the number of cases may specifically indicate a cry for help. According to four respondents from group III (probation officers) the emphasis is on finding a solution in the best interest of the child or youth concerned. Ten (21.73%) respondents, four respondents respectively from group II (prosecutors) and group III (probation officers) stated that although the circumstances of a child or youth is an important factor, only a limited number of cases will be converted in respect of a specific child or youth. The interest of justice is in this instance considered. Respondent 29 of group III (probation officers) further pointed out that if a child or youth has already been subjected to the child care system, a further admission to a child care institution should be carefully considered. Four (8.69%) respondents pointed out that the aspect related to the number of cases which could be considered for conversion is unknown or not specified. In clause 70 (2) of the draft Bill (Bill B) the emphasis is on conversion of criminal cases committed to meet a child or youth's basic need for food, shelter or warmth (Report: Juvenile Justice, 2000: 272).

#### **5.6.2.4 Stage of the trial at which a criminal case is considered for conversion**

Section 254 of the Criminal Procedure Act (Act 51 of 1977) stipulates that conversion of criminal proceedings to a children's court inquiry is considered at a trial. The draft Bill (Bill B) in clause 70 (2) specifies that referral of a criminal matter to a children's court must be considered by a probation officer during assessment, by an inquiry magistrate during a preliminary inquiry or a court during proceedings. The researcher investigated at what stage of the trial conversion is being considered in practice. Nine (19.56%) respondents, namely eight respondents from group I (magistrates) and one respondent from group II (prosecutors) pointed out that conversion may occur at any stage of the trial. Three (6.52%) respondents from group I (magistrates) stated that conversion however usually occurs after the receipt of a probation officer's report. One (2.17%) respondent from group 1 (magistrates) further stated that if conversion occurs before plea it is less traumatic for the child or youth concerned. According to 7 (15.21%) respondents from group III (probation



officers) conversion usually occurs when recommended by a probation officer in a pre-trial or pre-sentence report. A further five (10.86%) respondents, namely four respondents from group II (prosecutors) and one respondent from group III (probation officers) indicated that conversion is decided at the assessment stage, if it is evident that the child is in need of care. Seven (15.21%) respondents, namely one respondent from group I (magistrates) and respondent from group II (prosecutors) and five respondents from group III (probation officers) stated that conversion usually occurs after conviction, before sentence with receipt of a probation officer's report. The responses obtained indicate that conversion of criminal proceedings to a children's court inquiry is in practice decided at all stages of a trial. The role of the probation officer in decisions regarding conversions are emphasized by the majority of the respondents.

#### **5.6.2.5 *Instances in which criminal cases and children's court inquiries proceed separately***

Section 254 of the Criminal Procedure Act (Act 51 of 1977) determines that the court may convert criminal proceedings to a children's court inquiry if it is desirable to deal with the child or youth in terms of section 13, 14 and 15 of the Child Care Act (Act 74 of 1983) as amended. Clause 70 (3) of the draft Bill (Bill B) indicates that conversion involves the interests of the child or youth and the interests of justice. The researcher therefore enquired in which instances criminal cases and children's court inquiries could proceed separately. Seventeen (36.95%) respondents did not answer the question. A further five (10.86%) respondents, namely two respondents from group I (magistrates), one respondent from group II (prosecutors) and two respondents from group III (probation officers) indicated that it is difficult to determine or that they are unsure in which circumstances criminal cases and children's court inquiries could proceed separately. Five (10.86%) respondents, one respondent respectively from group I (magistrates) and group II (prosecutors) and three respondents from group III (probation officers) maintained that the trial is normally stopped and converted to a children's court inquiry. Ten (21.73%) respondents stated that the criminal and child care proceedings could continue separately. Five respondents, namely two respondents from group I (magistrates), one respondent from group II (prosecutors) and two respondents from group III (probation officers) stated that criminal cases and children's court inquiries could proceed separately in



view of serious or violent offences if the state refuses to stop a trial or if the court is not prepared to stop a trial. The same number of respondents from each group indicated that criminal and child care proceedings could continue separately in view of repeat offenders who also appear to be in need of care. In view of the above response it appears that a major degree of uncertainty exist amongst respondents regarding criminal cases and children's court inquiries proceedings separately. Decisions therefore appear to either predominantly involve the interests of the child or the interests of justice.

## **5.7 SENTENCING OF CONVICTED CHILDREN OR YOUTHS**

The primary task of probation officers during the sentencing phase is the compiling and presenting of pre-sentence reports (Lennox 1999: 21). Apart from conversion of criminal proceedings to children's court inquiries, certain sentence options provided in the Criminal Procedure Act (Act 51 of 1977) may be applied to protect children or youths in need of care in terms of sentencing. These sentence options as discussed in paragraph 3.10.1 of this study, may comprise of referral to a reform school in terms of section 290 (d) and suspended and postponed sentences including certain conditions, in terms of section 297 of the aforementioned Act. The researcher therefore investigated to what extent the following procedures and options are applied in view of protecting children or youths in need of care in terms of sentencing:

- pre-sentence reports by probation officers where referral of a child or youth to a reform school or residential facility is being considered;
- conversion of criminal proceedings to children's court inquiries after conviction;
- referral to a reform school; and
- suspended or postponed sentences including the condition of compulsory attendance or residence at a specified centre for a specified purpose, such as a child care facility.

The result of the research is illustrated in table 5.5



**Table 5.5 Procedures and options applied in terms of sentencing**

Procedures and Options	Never		Seldom		Seldom	
	f	%	f	%	f	%
Pre-sentence reports by probation officers for referral of a child or youth to a reform school or other residential facility	0	0	8	17.39	33	71.73
Conversion of criminal proceedings to children's court inquiries	3	6.52	13	28.26	24	52.17
Referral to a reform school	0	0	19	41.30	22	47.82
Suspended or postponed sentences including the condition of attendance or residence at a specified centre	1	2.17	12	26.28	28	60.86

**N = 46**

### **5.7.1 Pre-sentence reports by a probation officer for referral of a child or youth to a reform school or other residential facility**

Clause 85 (2) of the draft Bill (Bill B) stipulates that no court sentencing a child or youth in terms of the said Act may impose a sentence with a residential requirement, unless a pre-sentence report by a probation officer has been placed before the court (Report: Juvenile Justice, 2000:272). The researcher sought to establish to what extent the aforementioned requirement is carried out by courts. Table 5.5 indicates that according to 33 (71.73%) respondents a pre-sentence report by a probation officer is often required when referral of a child or youth to a residential facility is being considered for sentence purposes. Eight (17.39%) respondents showed that a pre-sentence report by a probation officer is seldom required for sentence purposes



in view of residential placements. Fifteen (32.60%) respondents who answered the question did not motivate their answers. In congruence with clause 85 of the draft Bill (Bill B) respondent 5 of group I (magistrates) indicated that in terms of several reported cases the court is not allowed to refer a child or youth to a reform school without obtaining a probation officer's report. This viewpoint is supported by a further 9 (19.56%) respondents, namely four respondents from group I (magistrates), two respondents from group II (prosecutors) and three respondents from group III (probation officers). Respondent 5 of group I (magistrates) maintained that a report by a probation officer is required by the court in view of the thorough investigation into the background of a child or youth, upon which sound arguments for referral is based. A further 5 respondents, namely one respondent from group I (magistrates), two respondents respectively from group II (prosecutors) and group III (probation officers) confirmed the importance of placing the personal circumstances of a convicted child or youth before the court in view of appropriate sentencing. Six (13.04%) respondents from group III (probation officers) indicated the reasons for a residential placement, but did not refer to the requirement of a report by a probation officer by the court in view of residential placements for sentence purposes. Although the aforementioned requirement is not always considered, the responses obtained however indicate the importance of obtaining a probation officer's report for sentence purposes where referral to a residential facility is considered, in order to ensure appropriate placement and sentencing.

### **5.7.2 Conversion of criminal proceedings into a children's court inquiry after conviction**

As discussed in paragraph 3.9.1 of this study, section 254 (2) of the Criminal Procedure Act (Act 51 of 1977) stipulates that if the conversion order in view of a children's court inquiry is made after conviction, the verdict shall be of no force in respect of the person of whom the order is made, and shall be deemed not to have been delivered. In view of the aforementioned legislation the researcher sought to establish to what extent a conversion order is made after conviction in order to refer the child or youth to the children's court. As indicated in table 5.5, 24 (52.17%) respondents maintained that conversion of criminal proceedings to children's court inquiries in terms of the Child Care Act (Act 74 of 1983) as amended often occurs after conviction. Thirteen (28.26%) respondents indicated that a conversion order is



seldom made after conviction and three (6.52%) respondents reported that a conversion order is never made after conviction. Respondent 5 of group I (magistrates) pointed out that if it is clear that the child or youth is a candidate for a school of industries rather than a reform school, the conversion will take place after conviction. Fourteen (30.43%) respondents, namely three respondents from group I (magistrates), five respondents from group II (prosecutors) and six respondents from group III (probation officers) maintained that when the circumstances of the child obviously indicate the need for intervention in terms of the Child Care Act (Act 74 of 1983) as amended, conversion of criminal proceedings after conviction will be considered. Five (10.56%) respondents, namely two respondents from group I (magistrates), one respondent from group II (prosecutors) and two respondents from group III (probation officers) were of the opinion that conversion will especially be considered after conviction in view of younger children. Eighteen (39.13%) respondents did not motivate their answers. The aforementioned responses therefore indicate that children and youth's best interests in view of their need for care, when apparent, are being considered in the sentencing phase.

### **5.7.3 Referral to a reform school**

With reference to paragraph 3.10.2 of this study, section 290 (1)(d) of the Criminal Procedure Act (Act 51 of 1977) stipulates that a convicted child or youth may be referred to a reform school as a sentence option. This sentence option provides for the correction of behaviour instead of punishment. The researcher enquired to what extent the referral of a child or youth to a reform school is utilized by courts as a sentence option. Responses as illustrated in table 5.5 point out that 22 (47.82%) respondents are of the opinion that referral of a child or youth to a reform school is often utilized and 19 (41.30%) respondents indicated that it is seldom utilized as a sentence option. The majority of respondents indicated that referral of a child or youth to a reform school is considered a harsh sentence, although it is intended to correct behaviour. Eight (17.39%) respondents, namely five respondents from group I (magistrates), one respondent from group II (prosecutors) and two respondents from group III (probation officers) stated that referral to a reform school is considered in view of serious offences or in respect of repeat offenders. Seven (15.12%) maintained that referral of a child or youth to a reform school is a harsh sentence and used as a last resort to correct behaviour in order to keep the child or youth out of



prison. A further ten (21.73%) respondents, namely three respondents from group II (prosecutors) and seven respondents from group III (probation officers) agreed that the reason for referral of a child or youth to a reform school is to correct behaviour. In view of the aforementioned responses children or youths involved in serious offences or who are repeat offenders are referred to reform schools as a sentence option with the aim to correct behaviour.

#### **5.7.4 Suspended or postponed sentences including the condition of compulsory attendance at a specified centre**

According to Howes (1992: 29) suspended or postponed sentences are community based sentence options with the aim to keep convicted persons out of prison. As discussed in paragraph 3.10.2.2 of this study, section 297 of the Criminal Procedure Act (Act 51 of 1977) provides for the conditional or unconditional postponement or suspension of sentence. Conditions of release may include that compulsory attendance or residence at a specified centre, such as a child care facility. The researcher sought to establish to what extent the aforementioned sentence option is applied in view of children or youths in need of care. According to responses as illustrated in table 5.5, 28 (60.85%) respondents indicated that suspended or postponed sentence options are seldom applied and only one (2.17%) respondent maintained that suspended or postponed sentence options are never applied regarding the sentencing of convicted children and youths.

The motivations of respondents confirmed that although suspended and postponed sentences are often applied in respect of convicted children and youths, the condition of compulsory attendance at a specified centre such as a child care facility is seldom utilized. Sixteen (34.78%) respondents, namely seven respondents from group I (magistrates), four respondents from group II (prosecutors) and five respondents from group III (probation officers) motivated that suspended or postponed sentences are usually applied in respect of convicted children and youths, especially in view of first or second offenders involved in less serious offences. Respondent 16 from group II (prosecutors), supported by two respondents from group III (probation officers) stressed the preventative and rehabilitative value of suspended and postponed sentence options. Only three (6.52%) respondents from group III (probation officers) indicated that the condition of compulsory attendance at a



specified centre such as a child care facility is often applied in respect of children and youths who have already been placed at reform schools or other child care facilities. Sixteen (34.78%) respondents did not motivate their answers. It can therefore be concluded that suspended or postponed sentence options with the condition of compulsory attendance at a specified centre such as a child care facility may be applied in respect of children and youths who are current subjects of the Child Care Act (Act 74 of 1983) as amended.

## **5.8 SUMMARY**

The research findings discussed in this chapter indicate that the needs of arrested children and youths who are additionally at risk of becoming or being in need of care are recognized by professionals delivering services at assessment centres and juvenile courts, especially in view of decisions regarding detention and conversion of criminal proceedings to children's court inquiries. Lack of vacancies in awaiting trial places of safety however give rise to children and youths in need of care to be released on criminal charges, when they should be protected in terms of care. Arrested children and youths who are current subjects of the Child Care Act (Act 74 of 1983) as amended are however often not protected in terms of care during the criminal process. Contributing factors among others relate to the lack of information at assessment, inadequate knowledge of the professionals concerned of child care legislation and the administration thereof and the reported reluctance of child care facilities to re-admit children and youths who become involved in criminal offences. The role of the probation officer carrying out assessments is viewed as a key element in the management of arrested children and youths by the criminal justice system.



## **CHAPTER 6**

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **6.1 INTRODUCTION**

This study was undertaken in order to contribute to the improvement of the management of children and youths in conflict with the law who are additionally at risk of becoming or being in need of care by professionals delivering services at assessment centres and juvenile courts. In this regard the researcher endeavoured to present guidelines for the effective application of the Child Care Act (Act 74 of 1983) as amended in respect of the assessment and sentencing of children and youths in conflict with the law. This aim was supported by a thorough literature study in which the first four objectives of the study were achieved. The fifth and sixth objectives were achieved in the empirical study (Refer to paragraph 1.2 of this study). In this chapter the conclusions drawn from the literature and empirical study and the recommendations arising from the conclusions will be presented.

#### **6.2 CONCLUSIONS**

Conclusions drawn from the findings of this study are as follows:

- The child and youth care system, including the juvenile justice system, in South Africa are presently in the process of transformation. Child and youth care in South Africa are as such especially concerned with those children and youths who form the basis of this study, including children and youths in conflict with the law and children and youths at risk of becoming in need of care. The transformation of services is therefore focused on the needs of these children and youths, referred to as youths at risk.
- In view of the transformation of the child and youth care system, as identified by the inter-ministerial committee on young people at risk, services in respect of children and youths in conflict with the law should focus on competency building and empowerment, as children and youths are not believed to have benefited



from the previous medical model where the focus was on labeling and categorizing.

- In view of the literature study it emerged that policies and legislation thus far implemented to protect children and youths from detention in prison have failed to do so, as the detention of children and youths in prison showed a steady increase.
- The literature and empirical study identified a continuous shortage of vacancies at awaiting trial places of safety. A contributing factor appears to be overloaded court rolls which result in the turnover at awaiting trial places of safety being inadequate to supply in the demand for admissions. This results in detention decisions which do not serve the interests of children and youths in conflict with the law.
- A comprehensive criminal justice system for children and youths in South Africa is being envisaged as contained in the draft Bill (Bill B), which will enable individualized but holistic services in respect of children and youths in conflict with the law.
- A key outcome of the transformation of the juvenile justice system was the establishment of assessment centres at juvenile courts in the Western Cape Province. The role of probation officers carrying out assessments at the various assessment centres has become a key determinant in the management of arrested children and youths in view of detention decisions and how the criminal matter should proceed. As day assessment services at all the assessment centres have not as yet been fully utilized, a certain number of arrested children and youths are still not being assessed before their first court appearance in view of a suitable awaiting trial placement or possible diversion of the criminal proceedings.
- In view of the assessment process in social work the literature study indicated a need for valid and reliable support systems or assessment tools in order to ensure reliable outcomes in assessment and appropriate service delivery.



Appropriate utilization of resources, such as places of safety, can only occur if probation officers carry out assessments accurately.

- The empirical study confirmed that the needs of arrested children and youths, who are additionally at risk of being in need of care, are recognized by professionals such as magistrates, prosecutors and probation officers during the criminal process. Factors such as the lack of co-operation by parents and lack of vacancies at places of safety however result in children and youths not being protected in terms of care in all instances.
- Children and youths who are current subjects of the Child Care Act (Act 74 of 1983) as amended are according to the findings of the empirical study not adequately protected during the criminal process, mainly in view of the detention and diversion processes. Contributing factors refer to a lack of information at assessment in order to determine the status of children in terms of the Child Care Act (Act 74 of 1983) as amended and the lack of knowledge of professionals; especially prosecutors about child care legislation and the administration thereof. The services of social workers rendering family re-unification services in respect of current subjects of the Child Care Act are not adequately utilized during the assessment process, especially in view of detention and diversion or pre-trial decisions.
- The empirical study showed that child care facilities such as children's homes, schools of industries and reform schools are seldom utilized for detention purposes in respect of arrested children and youths who are current subjects of the Child Care Act (Act 74 of 1983). An important contributing factor raised by respondents were the reluctance of facilities to re-accept arrested children and youths who may have a negative influence on other children in the institution or may present with problem behaviour. Children and youths needs in terms of care and education appear not to be fully considered. Although reform schools are the most secure child care facility and admit children and youths involved in serious crimes, it is the facility least utilized for detention purposes.



- The literature and empirical study showed that decisions regarding awaiting trial detention are guided by factors related to short term risk, such as the risk of absconding, severity of present offence and the number and frequency of previous offences. The most relevant social factors being considered are the age of the child or youth concerned and the stability of the home circumstances. Decisions regarding awaiting trial detention therefore involve the interests of justice and the interests of children and youths.
  
- In view of the empirical study decisions regarding a specific detention placement are guided by the child or youth's need for containment and / or protection. In respect of younger children and petty offences the child or youth's need for protection is the predominant factor and would indicate a placement in a child care facility or place of safety. The need for containment is viewed as paramount in respect of very serious and violent offences and could result in awaiting trial detention in prison. The need for development or education is not mentioned by respondents in view of detention decisions.
  
- The empirical study showed that diversion of criminal proceedings are being carried out by prosecutors in accordance with the draft Bill (Bill B). The discretionary approach used in diversion decisions however leads to unequal treatment of children and youths especially in view of criteria related to the seriousness of the offence. In view of appropriate diversion options, the draft Bill (Bill B) includes a wide range of diversion options which provide an optimal opportunity for children and youths to be diverted away from the criminal justice system.
  
- According to the empirical study procedures applied by courts in view of conversion of criminal proceedings to children's court inquiries are not uniform. Procedures include the request of a probation officer's report and consent of a senior or designated prosecutor. It has also been established that it is mostly not required by courts that the children's court inquiry be held on the same day as the conversion of the criminal proceedings. This could result in children's court inquiries not being carried out as required.



- As indicated in the empirical study, the role of the probation officer in guiding the court concerning decisions regarding the conversion of criminal proceedings to children's court inquiries is stressed by all the respondents. It was further established that the child or youth's need for care and protection is an overriding factor in decisions regarding conversion and not the number of offences committed. A major uncertainty was recognized amongst respondents regarding the instances in which criminal proceedings and children's court inquiries should proceed separately.
  
- In order to enable appropriate sentencing respondents stressed the importance of obtaining a probation officer's report when referral of a child or youth to a residential facility is being considered. The empirical study further indicated that children and youths' best interests in view of their need for care, where apparent, are being considered in the sentencing phase, in view of conversion of the criminal proceedings to a children's court inquiry.
  
- The empirical study showed that suspended and postponed sentence options including the compulsory attendance at a specified centre such as a child care facility is very seldom utilized. This sentence option could however be utilized in view of children or youths who are current subjects of the Child Care Act (Act 74 of 1983) as amended to endorse their current placements and as such protect them in terms of care.

### **6.3 RECOMMENDATIONS**

The following recommendations are made based on the conclusions:

#### **Probation officers**

- That this study will be utilized as a practice guideline by probation officers or social workers who carry out assessments at assessment centres in respect of arrested children and youths.



- That probation officers and social workers will render assessment services in accordance with the framework for the child and youth care services as proposed by the inter-ministerial committee on young people at risk.
- That probation officers and social workers will take responsibility to obtain knowledge of the relevant criminal and child care legislation in order to be able to apply legislation appropriately and creatively in the assessment of arrested children and youths.
- That probation officers and social workers will utilize the services of social workers who render preventative social work services and family re-unification services during the assessment process.
- That probation officers and social workers will seek to improve co-operation with children's homes and schools of industries in view of awaiting trial detention placements of children and youths who are current subjects of the Child Care Act (Act 74 of 1983) as amended. In this regard greater emphasis should also be placed on awaiting trial detention of children and youths in reform schools where applicable.

### **Magistrates and Prosecutors**

- That magistrates and prosecutors will fully utilize probation officers and social workers carrying out assessments to advise the court on the management of arrested children and youths in need of care in view of criminal processes related to detention, diversion of criminal cases and conversion of criminal proceedings.
- That magistrates and prosecutors will take responsibility to obtain knowledge regarding the relevant child care legislation and the administration thereof in order to ensure the appropriate management of arrested children and youths in need of care during the criminal process.



- That magistrates and prosecutors will utilize reform schools to a greater extent for the purpose of awaiting trial detention in view of arrested children and youths who are current pupils at a reform school.

### **Provincial Administration Social Services**

- That the Provincial Administration Social Services will take responsibility to provide adequate day assessment services at all assessment centres.
- That the Provincial Administration Social Services will take responsibility to provide training to probation officers and social workers in view of the future implementation of the proposed juvenile justice legislation as contained in the draft Bill (Bill B).
- That the Provincial Administration Social Services will facilitate the development of diversion programmes as indicated in accordance with the proposed draft Bill (Bill B).
- That the Provincial Administration Social Services will facilitate and participate in the development of standardized multi-disciplinary assessment procedures to be utilized by probation officers carrying out assessments.
- That the Provincial Administration Social Services will facilitate the development of a data base regarding children and youths within the child and youth care system, including the juvenile justice system for utilization at assessment centres.

### **Department of Justice**

- That the Department of Justice will take responsibility to provide training to magistrates and prosecutors involved in juvenile justice in view of the future implementation of the proposed legislation as contained in the draft Bill (Bill B).



- That the Department of Justice will participate in the development of standardized multi-disciplinary assessment procedures relating to awaiting trial detention placements.
- That the Department of Justice will take responsibility to address problems related to overloaded court roles.

### **Future research**

- That future research be carried out regarding:
  - the role of the probation officer in view of the application of the Child Care Act (Act 74 of 1983) in the assessment and sentencing of juvenile offenders;
  - the implementation of the conversion procedure in terms of section 254 of the Criminal procedure Act (Act 51 of 1977), and
  - the management of arrested children and youths who are current subjects of the Child Care Act (Act 74 of 1983) as amended during the criminal process.



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## **APPENDIXES**

- **LETTER TO THE HEAD OF OFFICE: MAGISTRATES COURT ..... A**
  - **LETTER TO THE HEAD OF OFFICE: PAWC SOCIAL SERVICES ..... B**
  - **QUESTIONNAIRE - PURPOSE OF THE STUDY: TO FORMULATE ..... C**
- GUIDELINES REGARDING THE APPLICATION OF THE CHILD  
CARE ACT IN THE ASSESSMENT AND SENTENCING OF  
JUVENILE OFFENDERS**





UNIVERSITEIT VAN STELLENBOSCH  
UNIVERSITY OF STELLENBOSCH

**THE HEAD OF OFFICE  
MAGISTRATES COURT**

**FOR ATTENTION:**

**QUESTIONNAIRE REGARDING THE APPLICATION OF THE CHILD CARE ACT  
IN THE ASSESSMENT AND SENTENCING OF JUVENILE OFFENDERS**

I am presently registered for the Masters degree in Social Work at the University of Stellenbosch. A part of the study requires that a research project will be undertaken. The purpose of the study is to explain and investigate the application of the Child Care Act in the assessment and sentencing of juvenile offenders, and to identify social and juridical criteria which can guide the effective and appropriate application of the Child Care Act in respect of juvenile offenders.

The target group of this study consists of:

- Magistrates with experience in the juvenile court,
- Senior prosecutors or prosecutors designated to authorize diversions in respect of juvenile offenders,
- Probation officers or social workers delivering day or after-hour services at assessment centres, situated at magistrate's courts in the Cape Peninsula.

The gathering of information from the different disciplines regarding the manner in which children or youth in conflict with the law, who are additionally at risk of becoming or being in need of care, are managed in terms of detention, diversion and conversion of criminal cases and sentencing, will enable the formulation of guidelines for the effective application of the Child Care Act, in the assessment and sentencing of juvenile offenders.

The success and outcome of this research project is to a great extent dependent on your participation and you are sincerely requested to please assist me, with the completion of the questionnaires. If you have any problems in this regard, please feel free to contact me at telephone number 946-3633 (h).



Thanking you in anticipation for your kind co-operation. It is the belief that this study will contribute to improving the management of children and youths in conflict with the law in terms of prevention and care.

**MARIANNE GELDENHUYS**

**PROF SULINA GREEN  
SUPERVISOR**





UNIVERSITEIT VAN STELLENBOSCH  
UNIVERSITY OF STELLENBOSCH

**THE HEAD OF OFFICE  
PAWC SOCIAL SERVICES**

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**MARIANNE GELDENHUYS**

**PROF SULINA GREEN  
SUPERVISOR**



**UNIVERSITY OF STELLENBOSCH  
DEPARTMENT OF SOCIAL WORK**

**QUESTIONNAIRE**

**PURPOSE OF THE STUDY: TO FORMULATE GUIDELINES REGARDING THE APPLICATION OF THE CHILD CARE ACT IN THE ASSESSMENT AND SENTENCING OF JUVENILE OFFENDERS**

**INSTRUCTIONS**

The questionnaire is to be completed by:

- (i) Magistrates with experience in the Juvenile Court;
- (ii) Senior prosecutors or prosecutors designated to authorize diversions in respect of juvenile offenders;
- (iii) probation officers or social workers delivering day or after-hour services at assessment centres attached to juvenile courts.

The questionnaire consists of five sections to be completed as follows:

- (i) Sections A,B, D and E by Magistrates;
- (ii) All five sections by senior or designated prosecutors
- (iii) All five sections by probation officers or social workers

Please indicate your response with a X in the block provided. As indicated, mark the most appropriate answer on each question. Please give your opinion where required.



**IDENTIFICATION****IDENTIFICATION OF RESPONDENTS**

Are you a magistrate?

Are you a prosecutor?

Are you a probation officer or social worker?


**GEOGRAPHICAL AREA**

In which magistrate's district(s) are you situated:

Cape Town	
Wynberg	
Athlone	
Mitchell's Plain	
Goodwood	
Bellville	
Kuils River	
Simon's Town	
Somerset West	



**SECTION A: TRANSFORMATION OF THE JUVENILE JUSTICE SYSTEM**

1. Assessment centres at juvenile courts have been established as an outcome of the transformation of the juvenile justice system. The assessment of arrested children and youths play a key role in the outcome of decisions regarding the detention, diversion and conversion of cases and sentencing of children and youths. To what extent are the services of the probation officers and social workers utilized at the assessment center in terms of the following aspects?

(i) Day assessment service

Yes  No

If yes, indicate availability of the assessment service being:

Full-time  On rotation  Ad hoc

(ii) After-hour assessment service

Yes  No

If yes, indicate availability of the assessment service being:

On rotation  Ad hoc

(iii) Please indicate the percentage of arrested children and youth being assessed before their first court appearance

30%  50%  70%  90%  100%

2. South Africa ratified the United Nations Convention on the Rights of the Child. Please indicate whether the rights of children and youths appearing in the juvenile court are being protected in terms of the following aspects:

- (i) Child's sense of dignity
- (ii) Age appropriate treatment



(iii) Respect for human rights

(iv) Integration of child or youth into the family or community

### **SECTION B; DECISIONS REGARDING DETENTION**

3. One of the main purposes of the assessment process is to decide whether an arrested child or youth should be detained and if so, to arrange the most suitable placement. Some children or youths are additionally at risk of becoming or being in need of care, indicating further protection in terms of care. In view of arrested children or youths being released on warning on a criminal charge, to what extent are their status in terms of the Child Care Act considered in terms of the following aspects?

(i) Need for food, shelter or care

Never

Seldom

Often

Please motivate your answer:

---

(ii) Uncontrollable behaviour

Never

Seldom

Often

Please motivate your answer:

---

(iii) Current placement in terms of the Child Care Act

Never

Seldom

Often

Please motivate your answer:

---



4. Youth prisons are overcrowded and places of safety are often, due to lack of vacancies, unable to assist with the detention of awaiting trial children or youths. Section 71 of the Criminal Procedure Act provides for the placement of awaiting trial children and youths in places of safety in terms of Section 1 of the Child Care Act. To what extent are children's homes, schools utilized as places of safety for detention purposes?

(i) Children's homes

Never

Seldom

Often

Please motivate your answer:

---

---

(ii) Schools of industries

Never

Seldom

Often

Please motivate your answer:

---

---

(iii) Reform Schools

Never

Seldom

Often

Please motivate your answer:

---

---

5. Which of the following factors are being considered in decisions regarding the detention of awaiting trial children or youths. Please rate factors in terms of relevance.



**(a) Juridical Factors:**

(i) Severity of present offences

Not  
relevantSome  
relevance

Major relevance

(ii) Severity of past offences

Not  
relevantSome  
relevance

Major relevance

(iii) Number of past offences

Not  
relevantSome  
relevance

Major relevance

(iv) Frequency of past offences

Not  
relevantSome  
relevance

Major relevance

(v) Absconding from previous awaiting trial detentions

Not  
relevantSome  
relevance

Major relevance

(vi) Child or youth pose a threat to other children or youths in detention

Not  
relevantSome  
relevance

Major relevance

**(b) Social Factors:**

(vii) Age of child or youth

Not  
relevantSome  
relevance

Major relevance

(viii) Stability of family circumstances

Not  
relevantSome  
relevance

Major relevance



(ix) Child or youth living on the street or with friends at time of the offence

Not relevant	<input type="checkbox"/>	Some relevance	<input type="checkbox"/>	Major relevance	<input type="checkbox"/>
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(x) Post school attendance

Not relevant	<input type="checkbox"/>	Some relevance	<input type="checkbox"/>	Major relevance	<input type="checkbox"/>
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(xi) Drug or alcohol abuse by child or youth

Not relevant	<input type="checkbox"/>	Some relevance	<input type="checkbox"/>	Major relevance	<input type="checkbox"/>
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(xii) Child or youth is a current subject of the Child Care Act

Not relevant	<input type="checkbox"/>	Some relevance	<input type="checkbox"/>	Major relevance	<input type="checkbox"/>
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6. How are placement or detention decided in view of a decision regarding placement in an awaiting trial place of safety, a child care facility or prison. Please motivate your answer by providing deciding factors in terms of each placement option

(i) Awaiting trial place of safety:  
 \_\_\_\_\_  
 \_\_\_\_\_

(ii) Child care facility:  
 \_\_\_\_\_  
 \_\_\_\_\_

(iii) Prison:  
 \_\_\_\_\_  
 \_\_\_\_\_



**SECTION C: DIVERSION OF CRIMINAL CASES**

7. Another main purpose of the assessment process is to make a recommendation in view of diverting criminal cases in respect of children or youths away from the criminal justice system. Not all children or youths in conflict with the law who are additionally at risk of becoming or being in need of care are protected by the conversion option. Has any of the following child care options been considered for diversion purposes?

(i) Preventative social welfare services by a welfare organisation

Never  Seldom  Often

Please motivate your answer:

---



---

(ii) Transfer in terms of Section 34 of the Child Care Act from the current placement to a more suitable placement

Never  Seldom  Often

Please motivate your answer:

---



---

(iii) Referral of a child or youth currently in a child care facility for treatment in terms of Section 36(1) of the Child Care Act, for instance treatment for drug abuse

Never  Seldom  Often

Please motivate your answer:

---



---

8. Which of the following factors are considered to be conditions for diversion of a criminal case?

(i) Establishment of criminal capacity

Yes  No

Please motivate your answer:

---



---



(ii) Acknowledgement of responsibility for the offence

Yes

No

Please motivate your answer:

---

---

(iii) No criminal record

Yes

No

Please motivate your answer:

---

---

(iv) Seriousness of the current offence

Yes

No

Please motivate your answer:

---

---

(v) Motivation of the child or youth to co-operate with the treatment or placement option

Yes

No

Please motivate your answer:

---

---

(vi) Appropriateness of the diversion option in relation to the seriousness of the offence

Yes

No

Please motivate your answer:

---

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**SECTION D: CONVERSION OF CRIMINAL PROCEEDINGS**  
**TO CHILDREN'S COURT INQUIRY**

9. One of the important provisions included in the Criminal Procedure Act to protect children or youths in need of care is the conversion of a trial into a children's court inquiry in terms of Section 254 of the said Act. To what extent are the following procedures followed when carrying out a conversion?

(i) Request for a pre-trial or pre-sentence report by a probation officer

Seldom  Often  In all instances

(ii) Consent of a senior or designated prosecutor

Seldom  Often  In all instances

(iii) Opening or finalisation of the children's court inquiry to be carried out on the same day as the conversion

Seldom  Often  In all instances

10. The Criminal Procedure Act provides that a case may be converted in respect of any offence and be dealt with in terms of Sections 13, 14 and 15 of the Child Care Act, that is the opening and holding of an inquiry and the making of a finding and an order. Considering the best interests of the child or youth, while serving the interests of justice, please motivate how decisions regarding conversion is being made in view of the following aspects.

(i) Age and criminal capacity of a child or youth

\_\_\_\_\_

\_\_\_\_\_

(ii) Seriousness of the current offence

\_\_\_\_\_

\_\_\_\_\_



(iii) The number of cases which could be considered for conversion in respect of a particular child or youth \_\_\_\_\_

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(iv) At which stage of the trial a case is considered for conversion \_\_\_\_\_

(v) In which instances should criminal cases and children's court inquiries proceed separately \_\_\_\_\_

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### **SECTION E: SENTENCING OF CONVICTED CHILDREN OR YOUTHS**

11. Probation officers are involved in the sentencing phase in view of compiling and presenting pre-sentence reports. Apart from conversion, certain sentence options provided in the Criminal Procedure Act may be applied to protect children or youths in need of care in terms of sentencing. Please indicate and motivate to what extent the following procedures and options are applied in view of protecting children or youths in need of care in terms of sentencing.

(i) Pre-sentence reports by probation officers where referral of a child or a youth to a reform school or residential facility is being considered

Never  Seldom  Often

Please motivate your answer: \_\_\_\_\_

---

(ii) Conversion of criminal proceeding into a children's court inquiry

Never  Seldom  Often

Please motivate your answer: \_\_\_\_\_

---



(iii) Referral to a reform school

Never

Seldom

Often

Please motivate your answer:

---

---

(iv) Suspended or postponed sentences including the condition of compulsory attendance or residence at a specified center for a specified purpose, such as a child care facility

Never

Seldom

Often

Please motivate your answer:

---

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***Thank you for your co-operation***