

**CHALLENGES FACING
PROBATION OFFICERS WORKING WITH YOUNG
PERSONS IN CONFLICT WITH THE LAW**

BY

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CHALLENGES FACING PROBATION OFFICERS

WORKING WITH YOUNG PERSONS

IN CONFLICT WITH THE LAW

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ABSTRACT

This study aimed at focusing on the challenges facing probation officers working with young persons in conflict with the law, in the Eastern region, which forms part of the Eastern Cape Province. The main purpose of the study was to explore the experiences of probation officers in terms of the legislation that they are using when making decisions pertaining to young persons and the types of programmes that they offer to young persons for diversion and prevention purposes. The researcher also wanted to generate a greater understanding of the resources which probation officers have and need in order to run their programmes successfully to young persons, as well as to explore their feelings about working with young persons.

The researcher did some literature review in relation to this field, where it became evident that probation services in respect of young persons in conflict with the law, is a relatively new field of specialisation in South Africa. This field started around 1995 as a result of the Inter - Ministerial Committee (IMC) on young people at risk, which was set up to respond and manage the crisis of more than one thousand children who were released from prisons and police cells. The IMC then, identified probation officers as leading role players in dealing with young persons in conflict with the law.

An exploratory (non - experimental) design was used to carry out the research. A qualitative research method was also used as it attempts to describe and explain social reality from the points of view of the participants. This is because the researcher was interested to find out the experiences of probation officers in relation to their work with young persons.

A non - probability purposive sample of all (11) probation officers was used. A semi - structured interview schedule with both closed and open - ended questions was used to collect data.

All the information gathered from those personal interviews, was analysed by hand because the researcher wanted to interpret and produce social explanations.

The findings of this small - scale study have revealed that there are a number of challenges facing probation officers. For example presently there is no comprehensive legislation for the management of young persons caught up in the criminal justice system. Instead, limited provisions are spread throughout a number of separate statutes, which make it difficult for probation officers to apply them.

This study has also revealed that there is a shortage of human and material resources, which somehow impact negatively on how probation officers render services to their clientele. All probation officers in this study have positive feelings and attitudes about their work despite the fact that there are some challenges facing them that need to be addressed. Specific recommendations have been made based on the findings of this study, which could contribute to the development of probation services in respect of young persons in conflict with the law.

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CONTENTS

	PAGE
Abstract	(i)
Acknowledgements	(ii)
Contents	(iv)
Glossary	(viii)
Definition of terms	(ix)
List of Tables	(x)
List of Appendices	(xi)
CHAPTER 1: INTRODUCTION TO THE STUDY.	1
1.1. Introduction.	1
1.2. Reasons for the choice of the research topic.	1
1.3. Area of study.	3
1.4. Goals of the study.	3
1.5. Literature review.	4
1.6. Research methodology.	6
1.7. Problems experienced and limitations of the research	8
1.8. Value of the research.	10
1.9. Ethical considerations.	10
1.10. Organisation of the Thesis.	11
1.10.1. Chapter 1: Introduction to the whole study.	11
1.10.2. Chapter 2: Literature review.	11
1.10.3. Chapter 3: Research methodology.	12
1.10.4. Chapter 4: Data analysis and interpretation.	12
1.10.5. Chapter 5: Conclusions and recommendations.	12

CHAPTER 2: LITERATURE REVIEW.	13
2.1. Introduction.	13
2.2. Background information on the development of probation services in SA.	14
2.2.1. Main aim of the probation services.	15
2.2.2. Components of probation services.	15
2.3. Participants in the court hearing process.	16
2.4. Understanding the juvenile justice system.	21
2.5. Relationship between the youth justice system and the welfare system.	22
2.6. The role of the Inter - Ministerial Committee on young people at risk.	23
2.7. The principle of restorative justice.	24
2.8. Legislation that deals with young persons in conflict with the law.	26
2.8.1. Age and criminal capacity.	27
2.8.2. Legal representation.	28
2.8.3. Procedure followed during the arrest of a young person.	30
2.8.4. Referral of a child's criminal case to a Children's court.	32
2.8.5. Sentencing of a young person in conflict with the law.	32
2.8.5.1. Factors which aggravate sentence.	33
2.8.5.2. Factors which mitigate sentence.	34
2.8.5.3. The role of a probation officer's report in sentencing.	36
2.8.5.4. Some general guiding principles on how to write court reports.	38
2.8.5.5. Sentencing options.	39
2.9. Types of programmes available to young persons in conflict with the law.	44
2.9.1. Level 1: Prevention programmes.	45
2.9.2. Level 2: Early intervention.	46
2.9.2.1. Diversion process.	48
2.9.3. Level 3: Statutory processes.	51
2.9.4. Level 4: Continuum of care.	52
2.10. The role of Inter - sectoral approach when dealing with young persons.	52
2.10.1. Pre - sentence evaluation committees.	53
2.10.1.1. Composition of the committee.	53
2.10.1.2. Purpose of the committee.	54

2.10.1.3. Feedback to the committee.	55
2.11.Situational analysis on human resource needs and development.	56
2.12.Conclusion.	58
CHAPTER 3: METHODOLOGY.	60
3.1. Introduction.	60
3.2. Research design.	60
3.3. Research method.	61
3.4. Sampling procedure.	62
3.5. Research tool.	64
3.6. Data analysis.	66
3.7. Limitations of the study.	67
3.8. Conclusion.	69
CHAPTER 4: DATA ANALYSIS AND INTERPRETATION.	70
4.1. Introduction.	70
4.2. Legislation.	71
4.2.1. Acts (Statutes) dealing with young persons in conflict with the law.	71
4.2.2. Factors taken into consideration when deciding which Acts to use.	76
4.2.3. Strengths of the current legislation used by probation officers.	80
4.2.4. Problems experienced with regard to the present legislation.	81
4.2.5. Recommendations regarding youth justice legislation in South Africa.	82
4.3. Programmes offered to young persons.	84
4.3.1. Types of programmes recommended most.	84
4.3.2. Figures of youths reached through programmes.	87
4.3.3. Period that the criminal justice system takes to finalise cases of young persons.	88
4.3.4. Recommendations regarding programmes offered to young persons.	90
4.4. The role of inter - sectoral approach when dealing with young persons.	92
4.4.1. Reasons why inter - sectoral approach is working.	92
4.4.2. Reasons why inter - sectoral approach is not working.	94
4.5. Human resource needs and development.	95

4.5.1. Human resources.	95
4.5.1.1. Number of probation officers per district and their experience.	95
4.5.1.2. Work load.	97
4.5.2. Training.	100
4.6. Probation officers' feelings about working with young persons.	102
4.6.1. Feedback received by probation officers about their work.	104
4.6.2. Specialisation of probation services.	105
4.6.3. Promotion opportunities for probation officers.	106
4.7. Conclusion.	107
CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS.	109
5.1. Introduction.	109
5.2. Conclusions.	109
5.2.1. Section A: Legislation.	110
5.2.2. Section B: Programmes offered to young persons.	112
5.2.3. Section C: Human resource needs and development.	114
5.2.4. Section D: Probation officers' feelings and experiences about working with young persons.	116
5.3. Recommendations.	117
5.3.1. Legislation.	117
5.3.2. Programmes offered to young persons.	117
5.3.3. Training.	118
5.3.4. Resources.	118
5.3.5. Supervision.	119
5.3.6. Future research.	119
5.4. Concluding remarks.	121
BIBLIOGRAPHY	122

GLOSSARY

Beijing Rules.....	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
CRC	United Nations Convention on the Rights of the Child.
FGC... ..	Family Group Conferencing.
IMC	Inter - Ministerial Committee on Young People at Risk.
NGO	Non - governmental organization.
NICRO.....	National Institute for Crime Prevention and Re- Integration of Offenders.
RAR	Reception, Assessment and Referral centre.
SAPS	South African Police Services.
VOM	Victim - Offender Mediation.
YES	Youth Empowerment Scheme programme.
Young persons.....	Young persons in conflict with the law.

- In this study, a **probation officer** will be referred to as **she** whereas a **young person** will be referred to as **he**.

DEFINITION OF TERMS

- **Probation officer.** The term refers to a qualified social worker who is appointed by the Minister of Welfare in terms of the Probation Services Act (Act 116 / 1991) and has statutory authority to give evidence regarding children to a Children's court, Juvenile court or any other court as well as to make recommendations regarding their sentence, treatment programme, to exercise supervision and to draw up measures to prevent crime (New dictionary of social work 1995: 47).
- **Young person in conflict with the law.** In the context of this study, this term refers to any person or child under the age of 18 years who is alleged, charged or has been found to have committed an offence that is punishable by the law. This definition incorporates the definitions found in the Constitution of the Republic of South Africa Act (Act 108 / 1996: sec 28(3)), the Criminal Procedure Act (Act 51 / 1977: sec 50(5)), the Beijing Rules (1986: 4) and the CRC (1989: article 40(1)). Other previous terms that were used are "juvenile", and "young offender".
- **Challenges.** In the context of this research, the term refers to both positive and negative aspects / experiences of probation officers' professional abilities to work (deal) with young persons.
- **Eastern Region.** This term refers to the nine magisterial districts of the Eastern Cape Province namely: Umtata, Engcobo, Mqanduli, Elliotdale, Libode, Ngqeleni, Port St Johns, Qumbu and Tsolo.
- **Accused, offender, criminal.** The terms refer to a person who at the inception of the trial, is accused of having committed a crime (Terblanche 1999: 9). In South Africa, these terms are used interchangeably and so will they be in this study.

LIST OF TABLES

	PAGE
• TABLE 1: Factors taken into consideration when deciding about the case of a young person.	76
• TABLE 2: Programmes offered to young persons in conflict with the law.	84
• TABLE 3: Experience as a probation officer.	96

LIST OF APPENDICES

	PAGE
• APPENDIX A: Interview schedule	126
• APPENDIX B: Application to the Department of Welfare.	136
• APPENDIX C: Approval from the Department of Welfare.	138
• APPENDIX D: Map of the Eastern Cape Province.	139

CHAPTER 1

INTRODUCTION TO THE STUDY

1.1. INTRODUCTION.

The aim of this chapter is to give a general overview of the whole study. The chapter outlines the reasons for the choice of the research topic, area of the study, goals of the study, literature review, research methodology, limitations of the study, value of the research, ethical considerations and organisation of the thesis.

1.2. REASONS FOR THE CHOICE OF THE RESEARCH TOPIC.

The research topic is in the field of legal social work. It aimed to focus on probation officers who work in the formal courts of law when dealing with young persons in conflict with the law.

The problem of young persons in conflict with the law started to be of great concern and interest to the researcher in 1996. At that time, the researcher was personally involved, working with such youths as a probation officer in Mqanduli magisterial district. The monthly statistics of such cases used to increase every month and this was a relatively new

approach to all the major role players involved like probation officers, police officers, magistrates and prosecutors as to how these children were to be handled.

The whole problem started around May 1995 when the then State President, Nelson Mandela signed an order which brought into effect the promulgation of section 29 of the Correctional Services Act (Act 8 / 1959). As a result of this promulgation, more than one thousand children were released from prisons and police cells throughout the country (Skelton 1997: 162; IMC Report In whose best interests 1996(a): 2). The release of these children was a major crisis in South Africa, which the researcher saw it even on national television, because no prior arrangements were made by any department as to where the children were to be placed. Neither their homes nor institutions like places of safety (which are under the department of Welfare) were prepared for their release.

The Inter - Ministerial Committee (IMC) on young people at risk was then set up in June 1995 led by the Ministry of Welfare. The IMC was set up to respond and manage the crisis of the released children, hence it had to design policy guidelines for the transformation of the child and youth care system in South Africa over a limited period of time (IMC Interim policy recommendations 1996(b): 8).

The IMC then, identified probation officers as leading role players in dealing with young persons in conflict with the law. Some of their major functions were to assess all children arrested and awaiting trial within the first 24 - 48 hours, compile pre - sentence reports for the court and also to conduct diversion programmes for these children. The overall purpose for this was to prevent children from getting deeper into the criminal justice system (IMC Interim policy recommendations 1996(b): 8; Skelton 1997: 163).

1.3. AREA OF STUDY.

The present study targeted probation officers working with young persons in the Eastern region. This region is one of the five regions forming the Eastern Cape Province namely: Eastern (Umtata as regional office), North Eastern (Kokstad), Northern (Queenstown), Central (East London) and Western (Port Elizabeth). The Eastern region consists of nine magisterial districts, which are: Umtata, Engcobo, Mqanduli, Elliotdale, Qumbu, Tsolo, Libode, Ngqeleni and Port St Johns (see Appendix "D" for the Map of this province).

1.4. GOALS OF THE STUDY.

The main aim of this study was to identify the challenges facing probation officers working with young persons in conflict with the law, with specific focus on the following goals:

- To identify which legislation probation officers use when making decisions or recommendations pertaining to young persons, and how they decide which legislation to use that is factors they take into consideration.
- To explore the types of programmes that probation officers offer to young persons for diversion and prevention purposes.
- To identify the resources that probation officers have and need in order to run these programmes (including human resources).
- To explore the probation officers' feelings and experiences when working with the above mentioned three areas.

1.5. LITERATURE REVIEW.

Probation services in respect of young persons in conflict with the law, is a relatively new field of specialisation in South Africa. It is for that reason that the South African literature reviewed in this study is limited compared to the international literature, which is quite extensive.

One of the main aims of probation services is to promote the social functioning of the offenders, their families and the victims of crime, and to contribute to the prevention of crime (Manual for probation services 1994(1): 1). Probation services cover a wider range of services, which are stipulated in the Probation Services Act (Act 116 / 1991). However, for purposes of this study, the focus is on probation services in relation to young persons in conflict with the law.

Probation work with youth in South Africa is based on the principle of restorative justice and is rooted in the developmental perspective. Restorative justice is a form of criminal justice based on reparation, where reparation in turn, is defined as actions to repair the damage caused by the crime, either materially or symbolically (Haines & Drakeford 1998: 229). This means that the objective of the restorative juvenile justice system is not to affix guilt and to punish, but to help restore a sense of reconciliation by resolving the injury that the offender has caused.

One of the major problems facing probation officers is that in South Africa, there is no comprehensive legislation for the management of young persons caught up in the criminal justice system (Juvenile justice issue paper 1997: 1). Instead, limited provisions are spread throughout a number of separate statutes like Constitution of the Republic of South Africa

Act (Act 108 / 1996), the Child Care Act (Act 74 / 1983 as amended), the Criminal Procedure Act (Act 51 / 1977), the Correctional Services Act (Act 8 / 1959) and the Probation Services Act (Act 116 / 1991).

According to the White paper for Social Welfare (1997: 59), probation officers have the task of screening, selecting and assessing young persons, prepare pre - sentence reports and also undertake supervision of sentenced offenders. That is why the High Courts have firmly established the need for a probation officer's report in order to guide sentencing particularly in more serious offences (Skelton 1997: 173). In cases where the offender is under the age of 18 years of age, the court cannot decide that it is unnecessary to obtain a pre - sentence report (Haines & Drakeford 1998: 124).

The IMC Interim policy recommendations (1996(b): 18) provides an integrated framework for services on the child and youth care system which refers to four levels of intervention. These levels are prevention, early intervention, statutory intervention and continuum of care. Probation officers are therefore expected to offer intervention programmes to young persons, their families and the community in general according to each level.

The situational analysis conducted in 1995 / 96 and the May - June 1996 IMC investigation, revealed that there are approximately eighty full - time probation officers and three hundred social workers who provide part - time probation services in the country (IMC Report In whose best interests 1996(a): 67-68). According to the same report, probation officers both full - time and part - time, have received only minimal training with regard to probation work with young persons.

The responsibility of children in conflict with the law is shared between various departments like Welfare, SAPS, Justice, Correctional Services, Health and Education (Children in

prison in South Africa 1997: 3). Apart from government departments, NGO's like NICRO also play a very important role (Skelton 1997: 171). Given this involvement, the delivery of an effective and integrated service to young persons requires a shared vision and strong inter-sectional collaboration and support amongst all these relevant role players (IMC Interim policy recommendations 1996(b): 66).

1.6. RESEARCH METHODOLOGY.

An exploratory (non- - experimental) research design was used to carry out the study. This design was chosen mainly because the area under study, of probation officers working with young persons is a relatively new field in South Africa and as such has limited literature, hence the idea was mainly to explore. This design is therefore recommended when the researcher wants to build a foundation of general ideas that can be thoroughly explored at a later time (Friedman 1998: 39; Grinnel 1988: 225).

The researcher used a qualitative research method to conduct the study. Qualitative research is based on methods of data generation, analysis and explanation building which are flexible and sensitive to the social context of respondents (Mason 1996: 4). It is grounded on the interpretation of the social world and aims to produce rounded understandings on the basis of rich, contextual and detailed data. This is because this method emphasizes the importance of understanding deeper meaning of particular human experiences (of probation officers in this case) which cannot be easily reduced to numbers (Rubin & Babbie 1997: 26). However, qualitative research does use some form of quantification (as it is the case even with this study), but statistical forms of analysis are not central (Mason 1996:4).

A non- probability sample of all (11) probation officers in the Eastern region was used. This sample was purposely selected because the researcher believed that probation officers possess specialised knowledge and experiences regarding the challenges facing them when dealing with young persons.

Although the sample of this study was small, it is considered as satisfactory in relation to the needs of the researcher, because the information gathered was qualitative in nature. This is supported by Patton (in Marlow 1998: 147) who argues that the validity, meaningfulness and insights generated from qualitative inquiry, have more to do with the information richness of the cases selected and the interviewing or analytical capabilities of the researcher than with the sample size.

The researcher used qualitative interviewing to conduct this study. This is because interviews are one of the most commonly recognised forms of qualitative research method (Mason 1996: 39). A semi - structured interview schedule with closed and open - ended questions, was used as a research tool for gathering data. The researcher used the interview schedule as a guide when interviewing the respondents. By conducting the interviews personally, the researcher wanted to have a higher response rate than she would have had she used mailed questionnaires. This tool also allowed the researcher to probe for further responses and clarity when necessary (Rubin & Babbie 1997: 354-355; 358). The researcher during each interview process took comprehensive field notes.

A pilot study was conducted by the researcher prior to the actual research using the designed semi - structured interview schedule. The pilot study was meant to test the questions so that they can be re - formulated based on the weaknesses identified as result of the pilot (Bless & Higson - Smith 1995: 107).

Data analysis in this study was done by hand. The researcher sorted and summarised the data from its original form of field notes (Blaxter, Hughes & Tight 1996: 182). All respondents' answers, during this process were assigned numbers from 1-11 for differentiation purposes. The data was also put into categories that describe similar ideas, concepts or themes. It was then interpreted to generate more meaning in comparison with literature.

1.7. PROBLEMS EXPERIENCED AND LIMITATIONS OF THE STUDY.

The researcher had initially planned to have a sample of 20 probation officers from the Eastern and Central regions of the Eastern Cape Province. Respondents were successfully interviewed in the Eastern region. The problem arose when the researcher went to the Central region. She was told by the two co-ordinators of probation services that it is only the East London magisterial district which has specializing probation officers. Otherwise in the rest of other districts, cases of young persons are attended to by any social worker present in the office at that particular time. The researcher therefore decided to exclude the Central region because it was not practical to interview all social workers who would still not be in a position to give an accurate and comprehensive picture of how probation services work.

Another problem experienced in the field was that, although the researcher had made telephonic appointments with the respondents prior to the actual visits, on arrival, she could not find some of the respondents. Thus she had to travel again for the second time to their offices.

The researcher is aware of the fact that the sample of this study is small, and is not representative of the whole population of probation officers in South Africa, and therefore it will be difficult to make generalisations. Although this is the case, the information gathered from the respondents is quite valuable and adequate to draw some conclusions.

The exploratory design used in this study may limit the validity of the findings since it cannot provide full answers to the research questions, but gives an insight of what is being researched (Rubin & Babbie 1997: 109). However, the aim of this study was to explore probation officers' experiences regarding their work with young persons and it can be said that at least this has been achieved.

The researcher was once involved in probation work prior to this study, and therefore has her own opinions about it. To avoid being biased, she tried to be cautious and to separate her own opinions from those of the respondents.

Another limitation of this study is that although the researcher had planned to use a tape recorder when conducting the interviews, most respondents refused to be recorded. The researcher then had to respect their views and therefore relied on field notes. Taking field notes, was a time consuming exercise, but there was no other option since the primary goal was to gather information as much as possible.

1.8. VALUE OF THE RESEARCH.

- This study has revealed a number of challenges facing probation officers working with young persons, in terms of legislation, programmes, resources and the general experiences of probation officers in this field.
- Based on the identified challenges facing probation officers, some specific recommendations have been made in Chapter 5, for the department of Welfare to consider in order to improve probation services.
- It is hoped that the findings of this research will give a better understanding of probation services in respect of young persons to the various departments and other organisations involved in the transformation of the youth justice system.
- Social work students and other interested researchers will gain a theoretical knowledge from this study, which could help them to conduct further research on the basis of these findings.

1.9. ETHICAL CONSIDERATIONS.

The researcher asked for voluntary participation from the respondents. She informed them that anonymity and confidentiality of their identities and responses would be maintained. This has indeed been done since they have all been assigned numbers to protect their identities. The researcher also made it clear to respondents that their circumstances of

service rendering, will not be changed by the findings of this research, but that the final document will be made available to them and their employer (department of Welfare). This will be done as soon as the researcher has been awarded the degree in May 2001.

1.10. ORGANISATION OF THE THESIS.

The findings of this research, have been organised and divided into the following chapters to enable the reader to have a better understanding:

110.1. Chapter 1: Introduction to the whole study.

The aim of this chapter is to provide the reader with the general overview of the whole study. The chapter describes the reasons for the choice of the research topic, area of the study, goals of the study, literature review, research methodology, limitations of the study, value of the research and ethical considerations.

1.10.2. Chapter 2: Literature review.

This chapter provides a theoretical background on the development of probation services in respect of young persons. Some of the major topics discussed in this chapter include the following: components of probation services, understanding the juvenile justice system and the relationship between the youth justice system and the welfare system. The role of the IMC on young people at risk and the principle of restorative justice are also discussed. Legislation that deals with young persons, programmes available to young persons, the role

of inter-sectoral approach when working with young persons as well as the situational analysis on human resource needs and development are also discussed.

1.10.3. Chapter 3: Research methodology.

This chapter describes in detail how this research was conducted in terms of research design, research method, sampling procedure, research tool, data analysis and limitations of the study.

1.10.4. Chapter 4: Data analysis and interpretation.

Data analysis and interpretation of the research findings are discussed in detail in chapter 4. This is done in comparison with the literature reviewed in chapter 2. The chapter ends with a conclusion, which is a summary of the major findings.

1.10.5. Chapter 5: Conclusions and recommendations.

This is the last chapter of the thesis, where the researcher makes some conclusions drawn from the findings of this study in terms of legislation, programmes offered to young persons, human resource needs and development as well as the experiences of probation officers about working with young persons. Specific recommendations are also made based on the major challenges identified as facing probation officers. These include training, resources, supervision and areas for further research.

CHAPTER 2

LITERATURE REVIEW

2.1. INTRODUCTION.

The main aim of this study was to explore the challenges facing probation officers working with young persons with special focus on the following areas: legislation, programmes, resources as well as the general feelings and experiences of probation officers when working with young persons. In this chapter therefore, several topics will be discussed which the researcher believes they constitute an important part in the rendering of probation services to young persons and in the process the challenges facing probation officers will unfold.

A brief background on the development of probation services in South Africa is presented. The participants in the court hearing process as well as the relationship between the youth justice system and the welfare system are also discussed. The role of the Inter - Ministerial Committee (IMC) on young people at risk is highlighted because it is the cornerstone which brought about significant changes in the way young persons are dealt with within the criminal justice system. The principle of restorative justice is also discussed since probation work with youth in South Africa, is based on this principle and on the developmental perspective. The discussion on legislation covers the various separate Statutes (Acts) in South Africa dealing with young persons in conflict with the law. Some reference is also made during the

discussion on the International Instruments like the United Nations Convention on the Rights of the Child (CRC) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) because they are binding to South Africa since she is a signatory to these instruments.

The procedure that is followed before and during the sentencing of a young person as well as factors that are considered when a pre - sentence report is compiled are discussed. This is where the role of a probation officer's report is emphasized together with sentencing options. There is also a discussion on the types of programmes that are available to young persons in conflict with the law, which are offered by probation officers at the different levels of intervention.

The chapter also covers the issue of human resource needs and development around probation work as well as the importance of inter - sectional / multi - disciplinary approach when dealing with young persons in conflict with the law.

2.2. BACKGROUND INFORMATION ON THE DEVELOPMENT OF PROBATION SERVICES IN SOUTH AFRICA.

The establishment of a comprehensive probation service in South Africa started around 1979. At that time, the Cabinet approved that probation services should form a differentiated service. Then in 1986, the first Probation Services Act (House of Assembly) Act 98 / 1986 was produced in parliament. This Act made provision for the rendering of probation services to Whites only (Manual for probation services 1994 (1): 3).

As a result of inadequate legislation relating to probation services for all the population groups, the then Minister of Justice established a working group in 1990 to investigate probation as a sentencing option for all population groups. The working group found and recommended that community - based sentences, probation and correctional services should increasingly be implemented in South Africa and that new legislation was to be formulated to regulate such services. In response to that, the Probation Services Act (Act 116 / 1991) was passed and it replaced the Probation Services Act (House of Assembly) (Act 98 / 1986). The Correctional Services and Supervision Matters Amendment Act (Act 122 / 1991) was also passed and it amended certain sections of the Criminal Procedure Act (Act 51 / 1977) and the Prisons Act of 1959.

2.2.1. MAIN AIM OF THE PROBATION SERVICES.

One of the main aims of the probation services is to promote the social functioning of the offenders, their families and the victims of crime and to contribute to the prevention of crime (Manual for probation services 1994 (1): 1).

2.2.2. COMPONENTS OF PROBATION SERVICES.

Probation services cover a wider range of services which include the following in terms of the Probation Services Act (Act 116 / 1991: sec 3):

(a) Services to the courts which are provided by probation officers and these form the most important component of all probation services.

- (b) Programmes which focus on the prevention of crime in general.
- (c) The performance of community services by offenders.
- (d) Information to and the treatment of offenders.
- (e) The care, treatment and or compensation of victims of crime when applicable.
- (f) The observation, treatment and supervision of persons who have been released from a prison or a reform school and who are probationers or who have been legally placed in the custody of any person.
- (g) The rendering of assistance to the families of persons detained in a prison or reform school.

For the purposes of this study, the focus will be on probation services in respect of young persons in conflict with the law.

2.3. PARTICIPANTS IN THE COURT HEARING PROCESS.

There are several important participants in any court hearing process. These include the magistrate, prosecutor, attorney, social worker or probation officer and the witnesses. Some of these people do not participate in every hearing, however, it is important to understand the role of each in the hearing process.

2.3.1. The magistrate.

The magistrate presides over the hearing, he applies the law to the facts presented by the parties and he decides the facts. In all of these three functions the magistrate applies the law. This means that in the course of presiding over a trial, he may have to determine whether certain evidence is admissible or whether a line of questioning is proper under the

law (Saltzman & Proch 1990: 36). In applying the law to the facts, he may have to determine what law to apply and whether a particular legal standard should apply to the facts. This means that the magistrate is the primary legal decision - maker in a hearing process.

2.3.2. The parties.

All petitioners (applicants / plaintiffs) and respondents (defendants) are referred to as parties during the hearing process. All parties to a case must be served with all the important papers and be notified of all important motions and hearings. They also have a right to be heard at any hearings (Saltzman & Proch 1990: 37).

2.3.3. The attorney.

Any party who wishes to be represented by an attorney during the hearing process is free to hire one. However, some parties do not wish to have attorneys because they choose to represent themselves. Sometimes they wish to have attorneys but cannot afford to hire one. The Constitution of the Republic of South Africa Act (Act 108 / 1996: sec 35(3)(g) specifically grants an accused person a right to have a legal practitioner assigned to him by the state and at state expense if substantial injustice would otherwise result, and to be informed of this right but this will be discussed later in detail under legal representation of young persons in conflict with the law.

2.3.4. The witnesses.

Witnesses are called to present evidence to the magistrate in a particular case. They do this under oath and under penalty for lying under oath. Witnesses typically present information about what they have seen, heard and done through oral testimony. Social workers or probation officers also fall under this category although they are called expert witnesses because they may also present their opinions when making an evaluation, but a detailed discussion of their role will follow.

According to Saltzman & Proch (1990: 39) all witnesses, whether expert or not must be found competent to testify. This means that the magistrate must determine among other things, that the witnesses understand the obligation to tell the truth and either have personal knowledge of the facts about which they are going to testify or are qualified by virtue of training or experience to give an opinion on a particular case beyond the knowledge of an ordinary person in the case of expert witnesses.

2.3.5. The social worker (probation officer).

Social workers or probation officers play many roles in court apart from being expert witnesses. Sometimes she appears in court as a **respondent** during the hearing process. This occurs when the probation officer's performance is called into question, for example in cases of violation of client's civil rights, for malpractice or to release records (Saltzman & Proch 1990: 47).

Probation officers occasionally act as **judges**. For example in some jurisdictions as mentioned by Saltzman & Proch (1990: 47) court hearings involving juveniles may be presided over by non lawyer judges who may be probation officers. Sometimes they work

directly for judges assisting them in imposing criminal sentences, however this is not the case in South Africa and this is one of the challenges facing probation officers.

In some cases, the court may appoint a probation officer as a **guardian ad litem**. A guardian ad litem acts to protect a party in a given case who is assumed to be unable to protect himself usually because of age. Thus a probation officer would be appointed to represent children who are subjects of the juvenile court proceedings. Unlike an attorney, a guardian ad litem present to the court what she thinks is best for the party and not what the party wants to be presented.

Sometimes a probation officer acts as an **advisor** and as an **advocate**. This happens when a client has both the legal and social problems that may have brought him to the probation officer. Sometimes the legal problem is independent like having committed an offence of assault, at other times the legal problem might be inter - twined with the social problem like in the case where the child has stolen some food because he has been neglected by parents and lives in poverty. However, whatever the source of the problem, a probation officer is usually in a position to recognize that the problem is legal, even if the client does not recognize it as such. She may then advise the client to obtain legal services and help him to do so.

The probation officer may act as an **interpreter** when working with children because it is a known fact that legal proceedings are complicated, confusing and frightening to many people especially children. She is therefore in a position to explain the proceedings, what is likely to occur, what the possible outcomes are and what alternatives might exist. This does not mean that probation officers should act as attorneys, but it is proper for them to provide information in terms understood by the client without trying to advise the client to pursue a certain course of action. Saltzman & Proch (1990: 49) suggest that a probation officer can

perform the role of an interpreter not only to the client but also to the client's friends and family members. Friends and family members may be in a position to help the client, but they are often overlooked in the legal process. Probation officers often know who the significant others are and can provide them with information on behalf of the client as long as they are mindful of the client's right to confidentiality.

One of the roles of the probation officer is that of being a **counsellor**. Saltzman & Proch (1990: 49) mention that what happens after the hearing is over is that the judge (magistrate) calls the next case and all other role players return to their offices. Then the offender is left alone to live with the outcome of the case. Because probation officers are social workers, and as such are trained in counselling, it is therefore important for a probation officer to continue having contact with the client so as to help him accept the outcome of the case and comply with any orders imposed by the court.

Counselling helps an offender to deal with feelings of guilt, anger, etc. Sometimes the court imposes orders, which may require substantial changes in the young person's life, and because of age he may not fully understand the order or the duty to comply. Thus a probation officer's role is to help the client by explaining and clarifying the conditions and implications of the imposed sentence both to the offender and his family and to explore possible options to move on with life.

2.4. UNDERSTANDING THE JUVENILE JUSTICE SYSTEM.

The term **juvenile justice system**, refers to the laws, professional practices and institutions created to respond to children and young people who are suspected, or found guilty of

committing a criminal offence (Pitts 1990: 39). From this definition, it becomes clear that the juvenile justice system is characterized by inter-dependence, which means that power is dispersed throughout the whole system rather than being concentrated in one place. In other words, each actor within the system needs others in varying degrees, and power is bestowed upon them all. In the South African context for example, the court needs the police, probation officer, correctional services, NGK's and other role players in order to deal effectively with children caught up in the criminal justice system.

The juvenile justice system can be a site of conflict, consensus or negotiation and what it becomes is determined by the ways in which the various role players within it choose to use their power. Pitts (1990: 52) further states that the juvenile justice system is a mechanism composed of a multiplicity of agents and agencies which strive to prevent, compensate, educate, divert, deter, frighten and punish children and young people in an attempt to stop them from offending or re-offending.

Most young people enter the juvenile justice system when they are caught up by the police. At the police station, the investigating officer decides whether the young person's case should be prosecuted in court or whether it can be dealt with within the police whereby a young person may be formally cautioned. The extent to which cautioning is used to divert young persons out of the criminal justice system tends to be determined by the degree of inter-agency consultation which takes place at the point of arrest (Pitts 1990: 40). If the young person is not diverted, then his case is referred to the juvenile court for trial and sentencing if found guilty.

2.5. RELATIONSHIP BETWEEN THE YOUTH JUSTICE SYSTEM AND THE WELFARE SYSTEM.

Social work with young people caught up in the criminal justice system is a demanding and wearing occupation in which persistence, resilience and optimism remain core characteristics for any worker determined to remain useful to those for whom a service is being provided (Haines & Drakeford 1998: 145). There is little doubt that for some less resilient and less committed probation officers, the legitimised concentration upon 'offending behaviour' provides a convenient escape route from some of the fatigue of dealing with young people in the complexities of their lives.

Haines & Drakeford (1998: 148) propose that the following principles need to be re - modeled to youth justice social work:

- A resource strategy, which recognises the beneficial impact that changes in the welfare system, can bring about in the lives of multiple young individuals.
- A sensitivity to the particular importance of timing both the welfare and justice systems ' intervention when working with young people in conflict with the law.
- An emphasis upon the importance of bringing about attitude change towards young people as a technique in systems management.
- A greater prioritizing of inter - agency work that is genuinely co - operative and where values are shared, and being prepared to be assertive when these are not.

There is an obligation upon all workers who have daily contact with young people caught up in the justice system to maintain an up - to- date and accurate understanding of the ways in which some systems can help some young people. Within the youth justice system, the strength of team working is one of its substantial assets.

2.6. THE ROLE OF THE INTER - MINISTERIAL COMMITTEE (IMC) ON YOUNG PEOPLE AT RISK.

At present in South Africa, probation services are rendered by social workers who are referred to as probation officers. They are mainly employed by the Department of Welfare, although in some areas like East London, the National Institute for Crime Prevention and Re - Integration of Offenders (NICRO) is also involved. For purposes of this research, the focus is on probation officers employed by the Department of Welfare in the Eastern region of the Eastern Cape Province.

Probation services in respect of young persons in conflict with the law is a relatively new field of specialization in South Africa. It came as a result of the IMC on young people at risk, which was set up in June 1995 led by the Minister of Welfare. The IMC was set up to respond and manage the crisis of more than one thousand children who were released from prison and police cells throughout the country as a result of the promulgation of section 29 of the Correctional Services Act (Act 8 / 1959) (IMC Report In whose best interests 1996 (a): 2).

The release of these children was a major crisis in South Africa because no prior arrangements were made by any department as to where the children were to be placed. Neither their homes nor institutions like places of safety were prepared for their release. Thus, the IMC had to design policy guidelines for the transformation of the child and youth care system in South Africa over a limited period of time (IMC Interim policy recommendations 1996 (b): 8).

The IMC then, identified probation officers as leading role players in dealing with young persons in conflict with the law, in terms of assessment, referral, preparing pre - sentence reports for the court and in conducting programmes for these children. The overall purpose for this being to prevent children from getting deeper into the criminal justice system. Thus, Schroeder (1995: 114; 115) states that this involvement is viewed as an effort to divert children from the possible abuses of the criminal justice system and also because offences committed by children are not considered as crimes although they would be if they were committed by adults.

2.7. THE PRINCIPLE OF RESTORATIVE JUSTICE.

Probation work with youth in South Africa is based on the principle of 'restorative justice' and is rooted in the developmental perspective. Haines & Drakeford (1998: 229) define restorative justice as a form of criminal justice based on reparation, where reparation in turn is defined as actions to repair the damage caused by the crime, either materially or symbolically. These actions are performed by the offender in the form of payment or service to the victim or to the community, but it can include the offender's co - operation in training, counselling or therapy.

The above definition concurs with the understanding of the IMC that a restorative justice perspective means that the objective of the juvenile justice system is not to affix guilt and to punish, but to help restore a sense of reconciliation by resolving the injury that the offender has caused to the victim (IMC Report on pilot projects 1998: 38). Probation work with youth is said to be taking up to 80 % of the work load of probation officers because it aims at preventing and minimising crime as well as focusing on the growth and development of

young persons in conflict with the law, their families and their victims (IMC Interim policy recommendations 1996 (b): 74).

When using the restorative justice approach, young offenders are held responsible for restoring the harm they have caused to the victim because it encourages the re - integration of the young person back into society, drawing community based and indigenous models of dispute resolution (Juvenile justice issue paper 1997: 6).

Although we all know that crime is a very serious thing, and being a victim of crime can be very distressing, victims generally get a pretty raw deal from the old way of administering criminal justice system (Haines & Drakeford 1998: 231). That is why the State's role in restorative justice is mainly to represent the victim and the community's interest by ensuring that the offence is appropriately resolved.

According to the proponents of the restorative juvenile justice approach, the offender should only be imprisoned if there is absolutely no other option that is, as a last resort. This process creates opportunities for and encourage genuine repentance on the part of the offender, and forgiveness on the part of the victim, within the context that things should be made right (IMC Report on pilot projects 1998: 38).

However, an offender - oriented restorative justice is also recommended because of the following reasons as suggested by Haines & Drakeford (1998: 234):

- It recognizes the needs of the offender and sets about tackling these needs.
- It recognizes the responsibility of others to the offender and tackles others in the delivery of their responsibilities like schooling, houses, benefits etc.
- It promotes positive behaviour in youth through setting good examples.
- It supports the offender and their family or community.

Because of reasons like these, it is said that across Europe, there is a growing interest in restorative juvenile justice system.

2.8. LEGISLATION THAT DEALS WITH YOUNG PERSONS IN CONFLICT WITH THE LAW.

At present in South Africa, there is no comprehensive legislation for the management of young persons caught up in the criminal justice system (Juvenile justice issue paper 1997: 1). Instead, limited provisions are spread throughout a number of separate statutes like the Constitution of the Republic of South Africa Act (Act 108 / 1996), the Child Care Act (Act 74 / 1983 as amended), the Criminal Procedure Act (Act 51 / 1977), the Probation Services Act (Act 116 / 1991) and the Correctional Services Act (Act 8 / 1959). Following is a discussion of issues covered in certain sections of the different statutes with regard to children.

2.8.1. AGE AND CRIMINAL CAPACITY.

Historically in South Africa, children and young persons charged with crimes have been managed in much the same way as adult offenders. For example in the late 1980's and early 1990's, it was common for children to be arrested and detained in prisons for long periods of time whilst awaiting trial (Skelton 1997: 161).

The Constitution of the Republic of South Africa Act (Act 108 / 1996: sec 28(3); 28(1)(g) defines a child as a person under the age of 18 years and that the child has a right not to be

detained except as a measure of last resort and that he may be detained only for the shortest appropriate period of time. Similarly to this section, the Child Care Act (Act 74 / 1983: sec 28) states that no child shall be detained in a police cell or be locked up without a commissioner for a period of one month. However, the question that one may ask here is why should children who have not yet been found guilty be allowed to languish in police or prison cells because according to the Report of the International seminar on children in trouble with the law (1993: 19) an accused is deemed innocent until proven guilty and the state must prove its case beyond reasonable doubt.

According to the law in South Africa, a child who has not yet turned seven years old is said to lack criminal capacity and therefore cannot be held criminally responsible for any act. On the other hand, a child between 7 and 14 years of age is presumed to lack criminal capacity but this presumption can be rebutted (contradicted) by evidence if the state can prove that the child is able to distinguish between right and wrong and that he knew about the wrongfulness of the offending behaviour at the time of commission of the offence (Skelton 1998:146; Juvenile justice issue paper 1997: 9).

In South Africa, children between 14 and 17 years do have criminal capacity whereas in Spain for example the age of full criminal capacity is 16 years (Guasch 1995: 501). However, although the question of age is so important when dealing with children, a serious problem that faces probation officers and the police when a young person comes into conflict with the law, is the difficulty in determining the exact age of a child. This is because many children do not have documentary proof of birth dates. The Criminal Procedure Act (Act 51 / 1977: sec 337; Bosman - Swanepoel & Wessels 1995: 83) state that whenever during criminal proceedings, the age of any person is a relevant fact of which there is no or insufficient evidence available, the judicial officer (magistrate) may estimate the person's age by looking at his appearance, and the age so estimated be deemed to be the true age of that

person. The court may also refer the child or young person to a district surgeon for examination to assess his age.

On this aspect of age and criminal responsibility Haines & Drakeford (1998: 234) propose an approach to youth justice which is rooted in a recognition of youthfulness of the young person in trouble with the law, and which argues for a response to juvenile crime based upon the particular developmental needs and status of such an individual. They argue that such an approach sets youth crime in relation to other social events, processes and structures. Thus, addressing youth crime is a shared responsibility in which adult obligations are accepted and acted upon by those with the power to do so.

2.8.2. LEGAL REPRESENTATION.

The Constitution of the Republic of South Africa Act (Act 108 / 1996: sec 35(2)(c); 35(3)(g) clearly states that every child who is arrested, detained and accused has a right to have a legal practitioner assigned to him by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly. This is in line with the principle of putting the ' best interests of the child ' first as mentioned by the CRC (in Initial country report - South Africa to the UNCRC 1997: 35). This is one of the challenges facing probation officers to ensure that young persons are legally represented in court, as any child needs to be protected from the strange environment, fear and lack of understanding of the criminal justice system.

Legal representation of children in court is very important so as to ensure that children are treated fairly and that their rights are duly protected. For example, the Correctional Services Amendment Act / 1996 amended section 29 of the Correctional Services Act (Act

8 / 1959) in such a way that the court is required to give every young person detained an opportunity to obtain legal representation as soon as possible after arrest. This can be done by either allowing the child to hire an attorney in private practice or advising the child to get the services offered by the Legal Aid Board. However, in reality, very few children actually enjoy this right as Skelton (1997: 172) states that in over 80 % cases of accused children under the age of 18 years they appear before courts un- represented. This is contrary to what Skelton (1997: 168; 171) strongly suggests that the court should call for the child to be legally represented in all cases especially where the matter is to be finalised in the absence of a parent or guardian and that the magistrate has a duty to explain the importance of this right to every child who appears before court. The CRC (in Basic human rights instruments 1995: 150) also states that every child deprived of his liberty should have the right to prompt access to legal and other appropriate assistance.

2.8.3. PROCEDURE FOLLOWED DURING THE ARREST OF A YOUNG PERSON.

The amended section 29 of the Correctional Services Act (Act 8 / 1959) in 1994, brought about some challenges to probation officers in terms of how children in conflict with the law should be treated. For instance, the amendment no longer allowed children who are under 14 years to be held in prison or police cells for more than 24 hours when arrested. In the case of children who are 14 years or older but under 18 years, they also as a general rule, should not be held in police or prison cells for longer than 24 hours when arrested. However, detention of these children (i.e. 14 - 18) could only be extended to 48 hours if the

child has been charged for a more serious offence. These serious offences include murder, rape, robbery, assault resulting in serious body injury etc (Skelton 1998: 147). Probation officers therefore, have a duty to ensure that section 29 is implemented accordingly.

One of the basic aims of the 1994 amendment of section 29 was that arrested children should, where possible, be released to go home to their parents or guardians to await their trials. If however, this is not possible, arrested children should be placed in a place of safety to await trial. This was an attempt by the South African government to be in line with the CRC (in Basic human rights instruments 1995: 153) which South Africa finally ratified in June 1995. This convention binds all States, which are signatories to establish laws and procedures specifically applicable to children in conflict with the law and that they should recognize the rights of every child arrested and treat such child with respect and dignity.

However, one of the identified weaknesses of the amended law was that no inter - sectoral planning was done and the Provincial Departments of Welfare which run the places of safety were not involved so that they could be prepared for the change. When the then State President, Nelson Mandela signed an order which brought the amended section 29 into operation throughout the country in May 1995, South Africa experienced great pressure and crisis as more than one thousand children were released from prisons and police cells and had no where to be placed. A number of problems persisted throughout the country as a result of different interpretations on the promulgation of section 29. Thus the government had to enact a new legislation to amend the section 29 again of the Correctional Services Act (Act 8 / 1959) which was made in 1996 (Skelton 1998: 148).

The 1996 amendment changes the situation of children who are 14 years and older in that these children can now be held in prison for more than 24 or 48 hours in the awaiting trial stage. The basis for the holding of a 14 - 18 year old child for longer than 24 or 48 hours is

that it should only happen when the child is charged with a serious offence and if the magistrate believes that the young person's detention is necessary for the administration of justice and the safety of the community, and that there is no secure place of safety within a reasonable distance from the court (Skelton 1997: 163). It is also important to note that the same legislation provides that children who are detained for longer periods must be brought before court every 14 days for the decision to be re-considered and that cases involving children in custody must be given the highest priority. This is similar to the Beijing Rules (1986: 11) which emphasize that each young offender case should be handled expeditiously without any delay.

2.8.4. REFERRAL OF A CHILD'S CRIMINAL CASE TO CHILDREN'S COURT.

Skelton (1998: 153) states that a prosecutor can withdraw charges against an accused child and recommend that the case be referred to a Children's court. A prosecutor usually consults with a probation officer who is employed in terms of the Probation Services Act (Act 116 / 1991: sec 2) who has to assess whether the case should be transferred to a Children's Court Inquiry or not. The Criminal Procedure Act (Act 51 / 1977: sec 254) also provides that during the trial of any person under the age of 18 years, if it appears to the magistrate that the child may be in need of care in terms of the Child Care Act (Act 74 / 1983: sec 14(4)), then the magistrate can order that the criminal case be referred to a children's court for inquiry.

When referring a child's case to the children's court, the magistrate may act on his own observation or in response to observations raised by any other person such as a prosecutor, a lawyer or probation officer. Even if the child has been convicted before the court decides

to stop the proceedings, the court may still refer the case to the children's court and the earlier verdict of finding the child guilty falls away and the child will not have a criminal record (Skelton 1998: 153).

2.8.5. SENTENCING OF A YOUNG PERSON IN CONFLICT WITH THE LAW.

Sentencing can be defined as the order of the court, which finalises the criminal case against the offender (Terblanche 1999: 5). This definition means that sentencing describes the action by an official criminal court of imposing a sentence on a convicted offender.

2.8.5.1. FACTORS WHICH AGGRAVATE SENTENCE.

Terblanche (1999: 211) argues that many factors, which are present before, during and after the commission of a crime, may potentially influence the kind of sentence to be imposed on a convicted person. In other words, such factors may influence the extent to which the offender is to be blamed for his crime, and how much he therefore deserves to be punished.

Factors which aggravate sentence, can be divided into those which relate to the **crime**, the **offender**, or the **interests of society** as stated by Terblanche (1999: 213 - 214).

Factors relating to **crime** include the following:

- **Seriousness of crime**. In crimes of violence, major factors which may aggravate the sentence, include the degree and the extent of violence used to hurt the victim. The nature of any weapon used, the brutality and cruelty of the attack, the nature and

character of the victim, including whether the victim was unarmed or helpless, all contribute to aggravate sentence.

- **Planning.** The fact that the offence was committed not on the spur of the moment, but only after careful planning, is well recognized as an aggravating factor. This is because planned criminality is morally more reprehensible than acting impulsively and without planning. The same consideration applies to a crime which is committed over a considerable length of time, since this would invariably require planning.

Factors relating to the **offender** include the following:

- **Previous convictions.** The court takes into account any previous convictions of accused when imposing sentence. Previous convictions impact on the character of the accused to be bad and less open to rehabilitation, especially since the offender was not deterred by the experience of the previous sentence or sentences.
- **Motive.** A morally unacceptable motive may aggravate the sentence. An example is where the crime is motivated by greed e.g. for monetary reward.
- **Lack of remorse.** Lack of remorse has often been mentioned as an aggravating factor where the accused does not show any feelings of regret or pity towards the victim, instead he is rude or hostile.

Factors relating to **society** include the following:

- **Disadvantaging children.** The defenselessness of the victim of a crime is also an aggravating factor. This is particularly true in the case of children because they are vulnerable to abuse and need to be protected by organs of civil society like the courts.
- **Prevalence of crime.** The prevalence of a particular kind of crime like house-breaking and theft may lead to an increased severity in sentences.

2.8.5.2. FACTORS WHICH MITIGATE SENTENCE.

Among the challenges facing probation officers, is the fact that there are some factors which they have to consider when dealing with young persons such as those which could mitigate the sentence.

Factors, which mitigate sentence, can be divided into those relating to the **crime** and those relating to the **offender** as mentioned by Terblanche (1999: 220 - 228).

Factors relating to **crime** include the following:

- **Dolus eventualis.** The fact that the crime was committed not with direct intent, but with dolus eventualis (provocation / self-defense) can in appropriate circumstances be mitigating because it reduces the moral blameworthiness of the offender.
- **Trapping.** This can be a mitigating factor if the offence was only committed as a result of inducement by a trap.

Factors relating to the **offender** include the following:

- **First offender.** Being a first offender is a mitigating factor as far as sentencing is concerned. The subsequent principle is that a first offender should not be imprisoned if this can be prevented. However, this does not mean that imprisonment may not be imposed on a first offender.

- **Youth.** It is a true fact that the age of an offender is almost invariably a mitigating factor. In general, a court will not punish an immature young person with the same measure as an adult. This is because the interests of society cannot be served by overlooking the interests of a young offender.
- **Bad health, various mental and emotional factors.** Ill - health should be considered together with other relevant factors in determining whether imprisonment is called for if it cannot be decisive by itself. A variety of factors may affect the offender's emotions and mental health to such an extent that it may lead to diminished criminal responsibility in the offender. Whether such diminished responsibility is based on mental illness, provocation, jealousy or severe emotional stress does not matter. When the court finds that any such factor has substantially reduced the offender's power of restraint and self - control, such factor will be highly relevant to the question of sentence.
- **Sub - normal intelligence.** It has been decided by the courts that sub - normal intelligence can reduce the blameworthiness of the offender if there is proof to that effect.
- **Positive motive and euthanasia.** Some positive motive with the commission of a crime may be a mitigating factor. For example mercy killings are regarded as highly mitigating. Generally speaking, as Terblanche (1999: 228) puts it, such killings are performed by people who are not considered criminal in the normal sense of the word, but often in circumstances where the deceased is a family member who is suffering. The offender in this case would be invariably under emotional strain and is a first offender.
- **Remorse and a plea of guilty.** It is considered a mitigating factor if the offender is remorseful about the committed crime. Some of the important actions of showing remorse include a plea of guilty, assisting the police in solving the crime and offering to pay compensation to the victim.

- **Schooling.** If a young person is attending school, this is also considered as a mitigating factor.

2.8.5.3. THE ROLE OF A PROBATION OFFICER'S REPORT IN SENTENCING.

According to the White paper for Social Welfare (1997: 59), probation officers have the task of screening, selecting and assessing young persons awaiting trial. They are also required to prepare and present pre - sentence reports and undertake supervision of sentenced offenders. The High Courts have firmly established the need for a probation officer's report in order to guide sentencing particularly in more serious offences (Skelton 1997: 173). In cases where the offender is under 18 years of age, the court cannot decide that it is unnecessary to obtain a pre-sentence report (Haines & Drakeford 1998: 124).

Probation officers receive requests for pre - sentence reports from the court mainly because magistrates have to know the social circumstances or personal difficulties of a young person before imposing a sentence. Pitts (1990: 71) argues that magistrates expect probation officers on the basis of their knowledge of the social sciences and social work methods, to give 'value - free' expert opinions and recommendations about the impact of any sentence the court may wish to impose.

The probation officer's report should be based on a thorough assessment of all the important issues around the young person's life. The assessment should be around personality, character, family circumstances, childhood development, maturity of the child, as well as the social environment of the young offender so as to establish the extent to which he was

responsible for his actions (Pitts 1990: 72). A pre - sentence report needs to draw on a series of sources of evidence including parents or guardians as well as the young person himself.

Haines & Drakeford (1998: 126) propose that guidelines must also be in place for report writers (i.e. probation officers) as well as adequate supervision from their supervisors so as to assist in preparation of good professional reports. For example they suggest that the pre - sentence report should include the following:

- The 'offence analysis' section, which ought to provide a broad understanding of what has taken place within the context of that particular young person's life.
- There should be a systematic analysis, which links the behavior with which the court must deal with and the experiences and dealings with others, which have shaped the young person's actions.
- Provide positive as well as critical comments about the young person. For example the Probation Inspectorate (1993) reported that in a sample of 574 pre - sentence reports, 42 % of those reports failed to say anything positive about the young person on whom the report was being written or to identify a single redeeming feature (Haines & Drakeford 1998: 126).
- Supervisors should ensure that pre - sentence reports are free from discrimination in terms of gender, race, class, disability, or sexual orientation.

When magistrates ask the Department of Welfare to supply them with full reports, the role of probation officers then differs from that of other professionals like psychologists and teachers who supply information to the court in that probation officers are not simply expert witnesses, but they are also sentencing advisers to the bench (court) as well (Pitts 1990: 76).

2.8.5.4. SOME GENERAL GUIDING PRINCIPLES ON HOW TO WRITE COURT REPORTS.

Saltzman & Proch (1990: 55) discuss some of the challenges facing probation officers. They argue that, no matter what type of report a social worker / probation officer is writing for the court, the **style** of writing should be the same. This means that the report should be factual, objective, specific, to the point and without jargon. For example, statements such as ‘they appear to have a close relationship’ ‘the house was filthy’ say little that is useful to anyone. It is important therefore that any report that one writes clearly distinguishes between what the probation officer knows from her first hand observation and what she has learned from other sources.

When a probation officer obtains information from other sources, her report should, to the extent possible given the law and professional ethics concerning confidentiality, fully identify sources. When writing reports where the content is determined or suggested by law, it is important to clearly include the specified content. If for example the practice or requirement in a given court is to use a certain form, one should use the form because it is necessary to provide information in the format that those who will use it expect to see.

A probation officer should carefully proofread any report that she writes for the court. A report with misspelled words, typographical errors, poor punctuation and grammar and excessive erasures not only detracts from readability, but also gives the impression that the writer is careless at best and not intelligent at worst (Saltzman & Proch 1990: 55). Thus a poor report can mask good information and detract from a report's credibility and persuasiveness.

Skelton (1998:156) proposes that the pre - sentence report should also recommend appropriate sentencing options, which should be creative alternatives, which are in proportion to the offence. Following is a discussion of the various sentencing options.

2.8.5.5. SENTENCING OPTIONS.

There are a number of possible sentences, which are available and suitable for children convicted of offences in South African courts. The Criminal Procedure Act (Act 51 / 1977) provides for a range of sentencing options of which a probation officer is expected to know. However, according to Skelton (1997: 173) alternative sentencing is not well developed in South Africa and probation officers should therefore come up with creative options which are proportionate to the offence.

- **CAUTION AND DISCHARGE WITH REPRIMAND - Section 297(1)(c).**

This sentence option means that the magistrate warns the child about his unacceptable behaviour and the consequences of getting into trouble should he break the law again. This is viewed as a suitable option for less serious offences committed and for first offenders. Terblanche (1999: 48) states that this is the lightest sentence which a court can impose, and it may be imposed for any crime, except one for which a minimum sentence is prescribed.

- **POSTPONEMENT OF PASSING OF SENTENCE - Section 297 (1)(a).**

This is a sentence option which is commonly used by magistrates when dealing with children in conflict with the law. The postponement of passing of a sentence may be conditional or unconditional. In the case of unconditional postponement, the court does not pass any sentence, but warns that the young offender may have to appear again before court within the period of postponement if called upon to do so. With conditional postponement, the court may set one or more conditions as set out in the Act. These possible conditions are compensation to the victim, performance of some community service without remuneration where the child is 15 years or older (to be discussed in detail under correctional supervision), submission to instruction or treatment, and good conduct. These options are very flexible and allow for creative sentencing.

- **SUSPENDED PRISON SENTENCE - Section 297 (1)(b).**

This sentence option can be linked to conditions such as those listed above under the postponement of passing of sentence. It is a suitable option for more serious offences but where the court is of the opinion that the young person does not pose a serious risk to the community.

- **PLACEMENT UNDER THE SUPERVISION OF A PROBATION OFFICER - Section 290 (1).**

A young person can also be placed under the supervision of a probation officer, correctional official or any other suitable person designated by the court. This means that the probation

officer is expected to maintain regular contact with the young person, advise and assist him through specific individual, group or community programmes. This is one of the useful options which allows for community involvement as well.

- **CORRECTIONAL SUPERVISION - Section 276 (A).**

Correctional supervision is a form of appreciable punishment, which does not remove the offender from the community where he lives (Terblanche 1999: 327). In other words, it is a community - based punishment which requires direct and free service to the community. A young offender can also be sentenced to undergo correctional supervision if a report by a probation officer has recommended it. Although it is not designed particularly for young persons, it is an effective method for avoiding imprisonment if there are no other options available (Skelton 1997: 175).

Statutory provision in the Correctional Services Act (Act 8 / 1959: sec 84(1)) is the most important provision as far as the content of correctional supervision is concerned and it is presented as follows:

Correctional supervision as a sentence option includes a wide range of measures which include monitoring, community service, house arrest, placement in employment, payment of compensation to the victim and rehabilitation or placement to other programmes as may be determined by the court.

The following are examples of the advantages of **correctional supervision**:

- It can be a sentence with a high punitive value.
- It has a substantial potential to promote the rehabilitation of the offender.
- The offender is not imprisoned and therefore not exposed to hardened criminals.

- He does not suffer isolation and stigma attached to imprisonment.
- He continues to live with his family, which can provide support to him, and society does not lose his skills.
- Correctional supervision costs much less than imprisonment, for example in the 1997 / 98 financial year, the budgeted cost per probationer was R13.07 as against R 71.87 per prisoner (Terblanche 1999: 333).

The Criminal Procedure Act (Act 51 / 1977: sec 276 (1)(h)) provides for imposition of correctional supervision as one of the sentencing options. It is therefore important for the content of the probation officer's report to make a clear and specific recommendation. For instance in the case of *S v Omar* (in Terblanche 1999: 341), the court found that the report has to set out the officer's reasons for considering the offender to be a suitable candidate for correctional supervision (or not) and for proposing a programme for the offender that is suggesting the conditions of the sentence. The report should explain why the offender would be advantaged by the sentence, how his family will be accepted by the community and the victims and what facilities are available.

- **COMMUNITY SERVICE AS AN OPTION UNDER CORRECTIONAL SUPERVISION.**

One of the most effective 'gateway ' interventions when working with young offenders is creative community service or what is increasingly labeled as restorative community service (Bazemore & Terry 1997: 696 - 697). Community service is typically ordered as a sanction most commonly for young offenders in the juvenile justice system. Involving youths in community projects also adds value to the offender and the community, thus paving the offender's way for enhanced re - integration into the community. In community projects,

youths work together with adults and are involved in planning and decision - making and thus find role models. For example in the case of *S v Williams & others* (in Juvenile justice issue paper 1997: 52), the Constitutional court described correctional supervision (community service) as a "milestone in the process of humanising the criminal justice system".

- **IMPRISONMENT - Section 276 (1).**

Imprisonment is a custodial sentence whereby an offender is sent to prison or jail for a specified period and it means that he is removed from the community. In terms of the Constitution of the Republic of South Africa Act (Act 108 / 1996: sec 28(1)(g), imprisonment should be used only as a measure of last resort, where all other possible sentence options have been explored and found not to be suitable. Unfortunately, the South African courts tend to impose imprisonment more often to young persons in conflict with the law, a practice which serves only to brutalise young persons who do not pose serious threat to society (Skelton 1997: 175).

Imprisonment offers neither rehabilitation nor training as Pitts (1990: 126) asserts that evidence of the appalling reconviction rates, assaults upon young persons by inmates and violations of their human rights, shows that "if there ever was a time when custodial confinement could be justified in terms of the best interests of the young offender, those days are over". The central irony of imprisonment is that it brings together large numbers of people who have nothing in common but crime and offers them almost limitless time and opportunity in which to discuss, boast about and fantasize about crime. Thus their experience of imprisonment may serve to recast the identity of a young person into that of a prisoner. For example according to the First supplementary report of South Africa to the CRC (1999: 29), about 398 children awaiting trial in prison, 62 % of them were charged with petty crimes and they were found to be sharing over - crowded cells with rapists and

murderers. This situation is contrary to the South African Constitution, which creates an enabling child protection environment.

2.9. TYPES OF PROGRAMMES AVAILABLE TO YOUNG PERSONS IN CONFLICT WITH THE LAW.

Among the challenges facing probation officers is for them to conduct certain programmes to young persons at the different levels of their intervention. The IMC Interim policy recommendations (1996 (b): 18) provides an integrated framework for services on the child and youth care system which refers to four levels of intervention. The framework emphasizes level one (prevention) and level two (early intervention) as of the highest priority whenever a young person and his family can be effectively served through these levels. Intervention at level three (statutory) and level four (continuum of care) should only be considered if, on the basis of an effective assessment this is judged to be the most appropriate service to the young person and his family.

2.9.1. LEVEL 1: PREVENTION PROGRAMMES.

According to the White paper for Social Welfare (1997: 59), probation officers are also required to render integrated developmental programmes on crime prevention and restorative justice for young persons in conflict with the law, that will address the social and economic factors which contribute to crime. However, the same policy states that in reality, very few of these tasks are being carried out because probation officers are

overloaded and understaffed and most of them are still doing other social work duties. With reference to an international perspective on this issue, Schmalleger (1995: 427) argues that the President's Commission on Law Enforcement and the Administration of Justice recommended that probation caseloads should average around 35 clients per officer, however, caseloads of 250 clients are very common.

Programmes offered by probation officers at the prevention level target young people, their families and communities to prevent re - occurrence of problems or re - commitment of offences, which may lead to placement of young persons away from home. These programmes include parenting skills and child development programmes in communities (IMC Interim policy recommendations 1996 (b): 26). The Financing policy for Developmental Social Welfare Services (1999: 12) also emphasizes a paradigm shift from the old models of intervention like institutionalisation towards more prevention programmes.

The White paper for Social Welfare (1997: 60) also provides that crime prevention programmes target groups identified as vulnerable to factors associated with the causes of offences committed by children. Advocacy of a youth justice system, which takes a comprehensive approach and includes provision for tertiary prevention is another recommended strategy.

2.9.2. LEVEL 2: EARLY INTERVENTION.

Early intervention in respect of young persons in conflict with the law provides an opportunity for a probation officer to determine whether or not the case should be dealt with outside the criminal justice system.

Probation officers are essential and play a major role during the process of reception, assessment and referral of the arrested young person. Thus, according to the IMC Interim policy recommendations (1996 (b): 38) they should be based at the court or at the Reception, Assessment and Referral centre (RAR).

The reception, assessment and referral processes are defined as follows in the IMC Interim policy recommendations (1996 (b): 37).

- **Reception** is a process during which the young person is received after arrest preferably at a " child friendly " venue and is attended to by a probation officer.
- **Assessment** is a diagnostic process undertaken by a probation officer whereby he or she takes into account the psycho - social and developmental concerns regarding the arrested young person in order to determine the appropriate course of action.
- **Referral refers** to a process of decision making by a probation officer as to what should happen to the young person's case like withdrawal of charges, formal caution or to which programme the child should be placed like diversion (which will be discussed later in detail).

An example of an RAR is based in the Durban magistrate's court and is referred to as an early intervention project. It is aimed at diverting as many children as possible out of the criminal justice system. According to the IMC Report on the pilot projects (1998: 18 - 22), research conducted on that project (Durban RAR) showed that about 400 children who were assessed at the centre were referred to diversion programmes. A total of 1254 children who were seen had a parent, guardian or significant other available with them at the first interview. Another group of 1080 children was placed with parents, family members or friends on warning.

The research results also indicate that the Durban project has successfully tested a new way of working with children within the criminal justice system, as a result children were treated as individuals and not merely as offenders. Those children were able to move more quickly out of the system and were provided with support. However, the same research findings indicate that procedures in the juvenile courts still remain formal. They are neither child-centred nor child friendly and they also lack an inter-sectoral approach. Neither the child, parent nor the probation officer is free to address the court unless specifically requested to do so.

2.9.2.1. DIVERSION PROCESS.

During the early intervention process, diversion of young offender cases is very important. Diversion is defined as the "channeling of prima facie cases away from the criminal justice system" (IMC Interim policy recommendations 1996 (b): 39). Diversion programmes are central to the proposed youth justice system in South Africa. This is because they provide young persons with an opportunity to be responsible and accountable for their actions, to repair the damage done to victims where appropriate and to help young persons to become contributing members of society.

Theoretically, diverted youth escape the stigmatisation of official court handling and the criminogenic effects of associations with other juvenile offenders (Ezell 1992: 50). That is why the IMC Interim policy recommendations (1996 (b): 91) recommends that an urgent and increased financial resources should be allocated to reception, assessment and referral processes, diversion programmes, family preservation and re - unification programmes.

In Britain for example, diversion came to be widely accepted in the early 1990's as a hugely successful and beneficial way of dealing with the mass of young people who become peripherally involved in crime (Haines & Drakeford 1998: 105). They also assert that diversion is based on the notion that:

- Crime is an ordinary and normal part of growing up for children, which for most young people goes unnoticed and it readily extinguishes itself as individuals mature.
- Greater involvement with the criminal justice system acts to delay and disrupt such maturation, thus increasing rather than lowering the risk of further offending.

When a diversion programme has been recommended by a probation officer, the public prosecutor does not take a plea of guilty in the case, instead, the case is postponed until the diversion programme has been completed and then criminal charges are withdrawn.

This allows the young person not to have a criminal record at an early age because he has committed a minor offence. Thus, the CRC (in Basic human rights instruments 1995: 153) which is binding to South Africa recommends pre - trial diversion as a better way to deal with children outside court whenever possible, provided that human rights and legal safeguards are fully respected.

Diversion is also addressed in the Beijing Rules (1986: 7) which state that the police, prosecutor or other agencies dealing with juvenile cases shall be empowered to dispose of such cases at their discretion, without recourse to formal hearings and that any diversion involving referral to appropriate community or other services, shall require the consent of the juvenile, his parents or guardian, provided that such decision shall be subject to review by a competent authority upon application.

The following types of diversion programmes are examples of programmes that are being used in South Africa:

- Youth Empowerment Scheme (YES) which is a six - session life skills programme.
- Pre - trial community service.
- The Journey or Experiential Learning.
- Victim - offender mediation and
- Family group conferencing (Skelton 1998: 154).

Research findings from the Stepping Stones One Stop youth justice centre in Port Elizabeth showed that the following cases that were registered at the criminal court between 15 August 1997 and 31 August 1997, were diverted in the following manner:

- 8 cases were referred to diversion programmes.
- 32 cases were converted to children's court inquiries.
- 20 cases were withdrawn and
- 7 cases were referred to pre - trial community service orders. (IMC Report on the pilot projects 1998: 60).

In a study conducted by Baldry (1998: 741), she concluded that probation officers tended to implement Victim - offender mediation only for minor (petty) offences.

Ezell (1992: 55) proposes that researchers also need to improve the descriptions and measurements of the diversion interventions so that these programmes can be replicated when they are found to be effective within certain youths. Questions such as the following need to be addressed when such research is conducted.

- Who works with the diverted youth.
- What are their credentials e.g. BA (Social Work) and what type of training did they undergo, its intensity and duration.
- What is the content of the intervention programme, what theory or rationale guides it and what are the short and long - range goals of the intervention.

It is important that researchers should also pay attention to the agency context where the diversion programme is offered. For example, is it a public (like Department of Welfare) or private non- - profit organization like NICRO. What are the caseloads of the diversion staff and how are they supervised and supported, is there an automated client information system etc. Not only will this information aid in the replication of successful diversion programmes, but it will also provide information to diversion programme managers so that they can set priorities more effectively, supervise staff, and acquire and allocate resources appropriately.

Although the South African statutes currently do not provide for diversionary options in order to operate in accordance with the CRC, South Africa should legislate the option of diversion and the state should ensure that there are sufficient and appropriate diversion programmes in place (Skelton 1997: 171).

2.9.3. LEVEL 3: STATUTORY PROCESSES.

Statutory intervention happens when the probation officer and the multi - disciplinary team that was involved at assessment and referral stages decide that the case of a young person is not suitable for out of court diversion. For example, if the young person has committed a serious offence like murder, the case is referred to the public prosecutor for consideration.

During the statutory level, probation officers have the task to screen, select, and assess young persons awaiting trial. They also have to prepare pre - sentence reports, present them to court and undertake supervision of sentenced offenders. It is necessary for the probation officer at this level to make a clear recommendation in her report having explored all the other relevant sentence options that were discussed earlier on in this chapter under legislation.

Community involvement is also an important component at this stage because many programmes that are explored are community - based (IMC Interim policy recommendations 1996 (b): 53).

2.9.4. LEVEL 4: CONTINUUM OF CARE.

The IMC Interim policy recommendations (1996 (b): 60) states that young persons in conflict with the law, wherever possible should be kept in their families and in the communities, but at the same time the safety of the community should also be considered. This refers to both those youths awaiting trial and those at the sentencing stage.

If, according to the probation officer, magistrate and prosecutor, it appears that the young person cannot be diverted or cannot await trial at home because he is a threat to either himself and to society, then the young person can be placed in a secure care facility. Secure care facilities should provide differentiated programmes according to ages and the degree of danger, which the young person may pose to peers, staff and society in general. Regardless of the length of stay or reason for admission, each young person should have a developmentally appropriate plan and programme of care and the young person should participate in the development and review of his plan (IMC Interim policy recommendations 1996 (b): 60).

2.10. THE ROLE OF INTER - SECTORAL APPROACH WHEN DEALING WITH YOUNG PERSONS.

A situational analysis (Children in prison in South Africa 1997: 3) revealed that the responsibility of children in conflict with the law is shared between the Departments of Welfare, South African Police Services (SAPS), Justice, Correctional Services, Health and Education. Given this involvement, of many different departments, one may say that co-ordination of services is complex. In order to deliver an effective, integrated service to children in conflict with the law and their families at any level of intervention, there must be a shared vision and strong inter - sectoral collaboration and support amongst all these relevant departments (IMC Interim policy recommendations 1996(b): 66) and this is one of the challenges facing probation officers.

Apart from government departments mentioned above, NGO's like NICRO also play a very important role in terms of rendering services to young persons in conflict with the law. For example, NICRO has developed and runs quite a number of diversion programmes like YES for this group of young people (Skelton 1997: 170 - 171).

2.10.1. PRE - SENTENCE EVALUATION COMMITTEES.

One of the major roles of the multi - disciplinary team is to form pre - sentence evaluation committees. A pre - sentence evaluation committee should be established in terms of the Probation Services Act (Act 116 / 1991: sec 5) and it is the task of the probation officer to ensure that it is existing.

2.10.1.1. COMPOSITION OF THE COMMITTEE.

The committee should consist of the following components:

- **Appointed members.** The authorised probation officer should appoint three to five members on such conditions and for such period as she may deem fit. Various disciplines should be represented on the committee and members may be recruited from fields like law (e.g. magistrate or prosecutor), medicine, psychology, psychiatry, education, criminology, social work etc. These persons may, for example, be representatives of the Departments of Welfare, Justice, SAPS, Correctional Services, Health, a local university, and private welfare organizations (Manual for probation services (1994 (1): 44).
- **Co - opted members.** The committee may allow any person who has knowledge or insight that is considered necessary for the performance of the advisory function, to attend a meeting or part of a meeting in order to convey such knowledge or insight to the committee.
- **Departmental staff.** An officer in the service of the Department is appointed in terms of the Probation Services Act (Act 116 / 1991: sec 6 (1)(c)) to perform the administrative duties of the committee. This person is known as the secretary. However, in view of the principle of confidentiality that applies to social workers, the secretary should be a social worker (Manual for probation services 1994 (1): 45). The probation officer dealing with a specific young offender is simply part of the committee when her client is being discussed. It is not always necessary or possible for a client to be present during meetings of the committee, however, sometimes he may be called in for questioning by the committee.

2.10.1.2. PURPOSE OF THE COMMITTEE.

The purpose of the pre - sentence evaluation committee is to undertake a comprehensive multi - disciplinary evaluation of the young person awaiting trial or sentencing. The aim of such an evaluation is to form an objective overall picture of the young person, to advise the probation officer on a recommendation to the court and to assist the court in the assessment of a sentence.

The pre - sentence evaluation committee also helps to promote the following:

- The provision of an effective probation service.
- The individualisation of punishment.
- Inter - sectoral collaboration.
- The treatment of victims and probationers.
- The involvement of the community in probation services.

2.10.1.3. FEEDBACK TO THE COMMITTEE.

It is important that the probation officer should provide the committee with feedback on the acceptance of its advice by the court. Feedback enables the committee to evaluate its services.

The probation officer and the correctional official should work together especially if correctional supervision is considered as a sentence option. The court has a discretion to refer the young person to either of the two officers for assessment, treatment and supervision (Manual for probation services 1994 (1): 21).

2.11. SITUATIONAL ANALYSIS ON HUMAN RESOURCE NEEDS AND DEVELOPMENT AROUND PROBATION WORK.

The situational analysis conducted in 1995 / 96 and the May - June 1996 IMC investigation on places of safety, schools of industry and reform schools, revealed that there are approximately eighty full - time probation officers and three hundred social workers who provide part - time probation services (IMC Report In whose best interests 1996 (a): 67 - 68).

Most probation officers both full - time and part – time have received only minimal training with regard to probation work. About 90 % of all probation officers who deal with young

persons have received no training in early intervention strategies or working with youth in trouble with the law (IMC Report In whose best interests 1996 (a): 68).

The IMC Interim policy recommendations (1996 (b): 69) and the Beijing Rules (1986:12) provide that all personnel involved in the child and youth care system, should have access to appropriate and effective formal training, in - service training, refresher courses and developmental supervision in order to maintain the necessary professional competence when dealing with young offender cases.

Some international countries like New South Wales, Australia, Canada, Israel, Japan England and Spain do provide training for probation officers and as such initial training for newly recruited probation officers is compulsory. For example in Australia, initial training takes 3 months and then there is additional training on specific skills. In Canada, a two-week training is compulsory and then a wide variety of additional training is also offered. In Japan, probation officers receive in - service training every year in specific professional skills, there are also 3 annual courses that are conducted by the Research and Training Institute. Of those three courses, one course takes 35 days, another takes 20 days and the third one takes 15 days (Hamai & Ville' 1995: 143; 149). In Spain, professionals working in the juvenile justice system (including probation officers) are subjected to a process of continuous training where they are obliged to attend annual 40 - hour courses (Guasch 1995: 509).

However, in Italy, research findings by Baldry (1998: 738) revealed that social workers working as probation officers, stated that they lacked specific skills and training for conducting programmes like victim - offender mediation and that they had to decide without any guidelines to follow how to conduct mediation.

The improvement of educational qualifications, working conditions and infra - structure for probation officers is also emphasized by the IMC. This is because the resources are lacking or minimal in South Africa, whereas the lives of thirty thousand young people a year in the criminal justice system particularly depend on a vastly improved ethical service delivery with respect to probation officers. Thus, a developmental approach should also be applied within the human resource policy and practice.

The IMC Interim policy recommendations (1996 (b): 80; 91 - 92) further recommends that a minimum of three hundred additional probation posts are required throughout the country, and that funding in the child and youth care system requires re - prioritisation in order to bring about transformation. It also recognises that at present, funding of the child and youth care system is unequally distributed with regard to provinces.

If the above mentioned imbalances can be addressed, then there will be sufficient personnel who will be committed to and model a developmental approach. Such personnel will also give a high priority to continuous formal and informal professional self-development. Hence Guasch (1995: 510) emphasizes that the degree of quality of content of probation services can be achieved with three basic ingredients namely: resources (human, technical, material and services), training and research.

The Financing policy for developmental social welfare services (1999: 23) also states that the government is committed to finance both government and NGO activities that are aimed at providing integrated services to children, youth and families. Such funding includes transport, personnel staff development and equipment costs.

Schmallegger (1995: 427) mentions that another difficulty facing probation officers around human resources and development is that there is lack of opportunity for career mobility in

this field. For instance probation officers are generally assigned to small agencies serving certain geographical areas with one or two lead officers, and unless retirement or death claims the supervisors, there is little chance for other officers to advance.

2.12. CONCLUSION.

Probation work with young persons in conflict with the law, provides opportunities for the re - integration of young persons into the community through the use of various resources available in the community, as well as in the Departments like Welfare as it is based on restorative justice and on a developmental perspective. It is a youth justice system that strives to treat young people in trouble with the law as children first and offenders second, and thus placing the best interests of such children at the centre of practice approaches (Haines & Drakeford 1998: 211).

However, probation work with young persons is not without critics. Some people are complain saying that children in conflict with the law are let loose and the State seems to be protecting offenders and promoting their rights more than victims of crime. Although there are such views, Schmallegger (1995: 433) argues that probation work with youth is a powerful restorative and rehabilitative tool, which allows children to repay the damage they have caused to the victims and the community because it provides for an opportunity to utilize the resources of the community in a more focussed effort.

The role of the probation officer in terms of assessment, referral, pre - sentence investigations and reports as well as the rendering of programmes at prevention, early

intervention, statutory and post statutory levels to young persons in conflict with the law, is central to the new youth justice system in South Africa that is yet to be legislated.

It is apparent that the challenges facing probation officers working with young persons, are quite enormous given the roles and duties that they are expected to perform as highlighted in this chapter.

CHAPTER 3

METHODOLOGY

3.1. INTRODUCTION.

In order to explore the challenges facing probation officers working with young persons, the researcher needed a coherent methodology. In this chapter, the researcher will therefore discuss the methodology that she used to conduct the actual research. The following topics will be discussed in relation to this particular study: research design, research method, sampling procedure, research tool, method of data analysis and the limitations of the study.

3.2. RESEARCH DESIGN.

The researcher used an exploratory (non- - experimental) design to carry out the research. This design was chosen mainly because the area under study of probation officers working with young persons in conflict with the law in South Africa, is relatively new and as such has limited literature, hence the idea was mainly to explore. An exploratory research design is

recommended when the researcher wants to build a foundation of general ideas that can be thoroughly explored at a later time (Friedman 1998: 39; Grinnel 1988: 225).

The exploratory design was considered to be more suitable for this study when compared to the explanatory design which requires the formulation of an hypothesis and also aims at providing explanations of events in order to identify causes (Marlow 1998: 33). In exploratory research, there are no hypotheses to test, but only the broadest research questions to examine especially in situations where the researcher wants to examine a new interest, or when the subject under study is relatively new, like in this particular study (Yegidis & Weinbach 1991: 76; Babbie 1998: 90). That is why this particular design was chosen for this study because the researcher was not interested in identifying causes, but rather interested to get a better understanding of challenges facing probation officers working with young persons in conflict with the law.

3.3. RESEARCH METHOD.

The researcher used a qualitative research method in this study. Some of the distinct characteristics of qualitative research are the following:

- It is grounded on the interpretation of the social world.
- It is flexible and sensitive to the social context in which data is produced, unlike the quantitative method where subjects are removed from real life.
- It aims to produce rounded understandings on the basis of rich contextual and detailed data.
- It does use some form of quantification, but statistical forms of data analysis are not seen as central (Mason 1996: 4).

One of the reasons why qualitative research method was chosen is because it helps to explore the individuals' perceptions, attitudes, beliefs, views and feelings about things or events (Hakim 1997: 26).

The qualitative research method was viewed by the researcher as the most appropriate method for this study because it emphasizes the importance of understanding the deeper meanings of particular human experiences (of probation officers in this case) and is also intended to generate theoretically richer observations that cannot be easily reduced to numbers (Rubin & Babbie 1997: 26). Thus, a quantitative research method would not be appropriate in this particular study since it emphasizes the production of precise and measurable quantity of statistical findings.

3.4. SAMPLING PROCEDURE.

The researcher used a non-probability purposive sample of 11 probation officers in the Eastern Region, which forms part of the Eastern Cape Province. Initially the researcher had planned to use a sample of 20 probation officers both in the Eastern and Central Regions of the Eastern Cape Province, but due to problems encountered in the field this could not happen. Those problems are discussed under the limitations of the study on page 67.

The sample of probation officers was selected on the basis of the researcher's knowledge of the population, its elements and the nature of the research aims (Babbie 1998: 195).

The non - probability purposive sampling method was used in this study because of the advantage that it requires the researcher to identify a specific group of people (probation officers in this case) who can provide information about a given problem (Yegidis &

Weinbach 1991: 155). Thus probation officers were purposely selected because the researcher believed that they possess specialized knowledge and experiences regarding challenges facing them as professionals in the field of probation services, when dealing with young persons in conflict with the law.

The researcher was aware of the other type of sampling method known as probability sampling, which is usually used when every element in the population has a known chance of being selected (Marlow 1998: 136). However, in this particular study it was not considered as appropriate because the researcher had a small sample of probation officers since this was a small-scale study. Given emphasis on the detail and depth of information gathered when the researcher was interviewing probation officers, Hakim (1997: 27; 28) argues that qualitative studies normally involve small numbers of respondents because they involve pre - liminary exploratory work. Thus, the detailed data obtained from the respondents in this study, could be regarded as sufficient for the results to be taken as true, correct, complete and believable reports, even though the sample was small and therefore cannot be taken as representative of the general population (Judd, Smith & Kidder 1991: 136).

The sample of 11 probation officers in this study is considered as satisfactory in relation to the needs of the researcher because the information gathered was quite tangible and meaningful. This is supported by Patton (in Marlow 1998: 147) who argues that the validity, meaningfulness and insights generated from qualitative inquiry have more to do with the information richness of the cases selected and the observational / interviewing or analytical capabilities of the researcher than with the sample size.

3.5. RESEARCH TOOL.

The researcher used qualitative interviewing to conduct this study. According to Mason (1996: 38-39) 'qualitative interviewing' refers to in-depth semi-structured form of interviewing, whereby the majority of questions are open-ended. In this study, a semi-structured interview schedule with both closed and open-ended questions was used as a research tool for gathering data. This means that the researcher carried along the interview schedule and used it as a guide whenever she interviewed each and every probation officer who formed part of the sample (total of 11 respondents).

The following are some of the distinct advantages of conducting the interviews personally, which the researcher viewed as relevant to this particular study:

- The interview schedule guided the interviewer so as to ensure that she covered all the questions that she planned to ask and remained focussed on the pre - determined topics, while at the same time remaining conversational and free to probe into the un-anticipated responses.
- Interviewing as a data gathering method, created a natural and spontaneous situation for interviewees to present information to the researcher. This is because it is easier and more natural for most people to respond to questions orally than in writing, in a casual, relaxed and familiar setting. This really led to more spontaneous answers by respondents. The researcher also found the setting advantageous because probation officers were interviewed in their offices, which was a familiar environment to them.
- One of the advantages of conducting the interviews personally is that they are characterized by a high response rate than mailed questionnaires (which have a low response rate). This is because with personal interviews, the researcher is there to see that each question is answered fully. Thus, in this study, the researcher achieved a 100

% response rate from probation officers because she conducted the interviews personally.

- Semi - structured interviews offer a versatile way of collecting data and permit for more flexibility. In this study for example, the researcher was able to use probes and to explore specific questions with a view to clear up vague responses like " I cannot think of any ".
- Personal interviews also allow the researcher to observe non- verbal responses of interviewees, which can also supply significant data. For example, the tone of the respondent's voice, an interruption of eye contact, an unexplained smile or frown, can all lead the interviewer to probe for explanations. Thus, the researcher in this study was very observant of all these non- - verbal behaviours and tried to respond to some of them appropriately as they occurred.
- When conducting the interviews personally, the interviewer can observe and to some extent, control when, where and how the interview should be conducted (Gochros 1981: 255; Rubin & Babbie 1997: 390; Huysamen 1994: 145). In this study for example, the researcher conducted the interviews in the offices of probation officers, she is the one who determined the suitable dates and times of cause in consultation with the respondents.

Although the researcher had initially planned to tape record all the interviews so as to transcribe them at a later stage, this could not happen (to be discussed later in this chapter under limitations of the study). The researcher then relied on taking field notes during each interview process.

The researcher conducted a pilot study prior to the actual research. The pilot study was conducted using the designed semi - structured interview schedule. The aim of the pilot study was to test the questions and help the researcher in the formulation of accurate and

precise questions (Bless & Higson - Smith 1995: 107) based on the weaknesses identified in the results of the study.

The researcher did the pilot by interviewing two probation officers. The results of the pilot study revealed that both respondents generally showed an understanding of the questions and responded in a satisfactory manner according to the researcher. However, the researcher had to change the terminology in two questions where the respondents appeared to have a mis-understanding of the questions. In about three other questions, the researcher had to rephrase and reshuffle them for better clarity and sequence. One could say that the pilot study was indeed helpful as the respondents who participated in the actual research answered the corrected questions accordingly.

It is necessary however, to mention that there are problems and limitations in any research tool like the interview (Gochros 1981: 257; 259). For example in this study, the researcher was aware of the possibility of her own bias, which could influence the respondents. However she tried to overcome this by being cautious not to be biased nor influence the respondents when asking questions.

3.6. DATA ANALYSIS.

The analysis of data in this particular study has been done by hand. During this process, the researcher did sorting, reduced or summarized the data from its original form of field notes (Blaxter, Hughes & Tight 1996: 182). She assigned all the respondents numbers from 1 - 11 depending on whether one was the 1st, 2nd 3rd etc to be interviewed. This has been

done so as to be able to differentiate between the responses and to protect the identities of the respondents.

The researcher then put into categories all material from all interview schedules that describe similar ideas, concepts or themes. She also compared material within categories to look for variations. Thus, Babbie (1998: 297) argues that when analysing data, the researcher looks for similarities and dissimilarities. In other words this means that the researcher tried to look for patterns of interaction that are generally common among the respondents, what experiences do they share in their field of work as probation officers and what the deviations are from the general norms of behaviour in this group of people.

The data analysis stage has been found to be both exciting and difficult at times. This confirms what is stated in literature that data analysis can be exciting when the researcher discovers themes and concepts that are embedded throughout the interview responses. It also becomes difficult to analyse qualitative data which is huge (Rubin & Rubin 1995: 226; Marlow 1998: 210). However, the researcher managed to analyse the whole data successfully and came up with interpretations on each theme identified based on the research results so as to generate more meaning in comparison with literature.

3.7. LIMITATIONS OF THE STUDY.

The researcher is aware of the fact that the sample of this study was small and not representative of the whole population of probation officers in South Africa, and therefore it will be difficult to make generalisations. However, although this is the case, the information gathered from the respondents is quite valuable and adequate to draw some conclusions

about probation services in respect of young persons in conflict with the law in the Eastern region of the Eastern Cape Province.

The exploratory design used in this research may limit the validity of the findings since it cannot provide conclusive answers to research questions, but gives insight of what is being researched (Rubin & Babbie 1997: 109). However, the aim of this study was to explore probation officers' experiences regarding their probation work with young persons in conflict with the law, and this was achieved.

The researcher was personally involved in probation work with young persons prior to this study and has her own opinions regarding probation services. To overcome this, she tried to be cautious of her own opinions and separated them from those of the respondents so as to avoid being biased.

In her proposal, the researcher had planned to interview all (20) probation officers both in the Eastern and Central Regions of the Eastern Cape Province. However, only probation officers (total 11) in the Eastern region were interviewed. The problem that was experienced in the Central region was that probation services are offered by any social worker in the office without any specialization as it is the case in the Eastern region. There is only one district in that region where there are two specializing probation officers working with young persons in conflict with the law.

Another limitation of this study is that although the researcher had planned to use a tape recorder when conducting the interviews, only one respondent agreed to be recorded (respondent no 1). All the other respondents refused stating that they will not feel comfortable and be free to express their ideas. The researcher then had to rely on taking comprehensive field notes because she had to respect the views of the respondents. Taking

field notes was a very time consuming exercise as the researcher tried to capture everything that the respondents said. However, all the respondents were patient and they cooperated although the researcher felt uncomfortable about the long pauses in between whilst she was writing.

Another problem experienced in the field was that, although the researcher had made telephonic appointments with probation officers prior to the actual visits, on arrival she could not get some of the probation officers (no 10 and 11), as a result she had to travel again to their offices.

3.8. CONCLUSION.

The exploratory research design used in this study really helped the researcher to explore the challenges facing probation officers working with young persons in conflict with the law as she was not interested in identifying causes, but rather to get a better understanding of their experiences.

The researcher used a purposive non- probability sample of 11 probation officers who possess a specialized knowledge in this field. Semi - structured interview schedule with both closed and open - ended questions was used as a tool for gathering information.

Analysis of data was done by hand. The limitations of the study include the small sample size which makes it difficult to make generalizations, the inability to use a tape recorder and rely on field notes as well as the fact that the researcher was once involved in probation services with young persons which could lead to bias or influence the responses.

CHAPTER 4

DATA ANALYSIS AND INTERPRETATION

4.1. INTRODUCTION.

The purpose of this study was to explore the challenges facing probation officers working with young persons in conflict with the law in terms of legislation, programmes, resources as well as their general feelings and experiences in the field of probation work with young persons.

The data was gathered through personal interviews using an interview schedule. This is because interviews are one of the most commonly recognised forms of qualitative research method. A total number of eleven probation officers were interviewed in all (9) magisterial districts of the Eastern Region which forms part of the Eastern Cape Province.

In this chapter, the researcher will present the results of the research interviews conducted and also give an interpretation of the results in comparison with literature reviewed. Qualitative data analysis has been used in this study because probation officers' knowledge, understandings, interpretations and experiences of working with young persons, are meaningful properties of social reality which the research questions were designed to explore. The researcher put into categories the data from all interviews that describe similar ideas, concepts or themes. She also compared the data within categories to look for variations.

Respondents have been assigned numbers from 1 - 11 depending on whether the respondent was the 1st, 2nd, 3rd up to 11, to be interviewed by the researcher. This has been done to protect their identities. Below are the findings of this study and the discussion of those findings.

4.2. LEGISLATION.

4.2.1. ACTS (STATUTES) DEALING WITH YOUNG PERSONS IN CONFLICT WITH THE LAW.

All probation officers interviewed mentioned the Criminal Procedure Act (Act 51/1977) as one of the Statutes that deals with young persons in conflict with the law. All respondents mentioned that this is one of the Acts they use mostly especially when making recommendations to the court as to what should happen to the young person's case who has been charged with a criminal offence.

The following Acts were also mentioned and are being used by most respondents: For example 9 respondents stated that they also use the Child Care Act (Act 74 / 1983 as amended). Seven respondents mentioned the Probation Services Act (Act 116 / 1991). Five respondents mentioned the Correctional Services Act (Act 8 / 1959). The difference was with respondent no 7 who mentioned that he also makes use of the Constitution of the Republic of South Africa Act (Act 108 / 1996). Respondent no 2 was also the only one who stated that he also makes use of the International instruments like the CRC (1989).

Although this was a small scale study, the results on the different Acts used by probation officers confirm what is stated in the Juvenile justice issue paper (1997: 1) that at present in South Africa, there is no comprehensive legislation for the management of young persons caught up in the criminal justice system. Instead, limited provisions are spread throughout a number of separate statutes like the ones mentioned by respondents. This is one of the major challenges facing probation officers which they also identified because it becomes difficult for them to make appropriate recommendations when they write pre - sentence reports because they have to read all these different Acts which they find it difficult to master.

It appears that all respondents make use of the Criminal Procedure Act (Act 51 / 1977). This could be attributed to the fact that this Act provides a range of sentencing options which probation officers may choose from when making recommendations to the court as to what should happen to the case of a young person. Another reason why this Act is used by all probation officers is because magistrates (who are presiding officers) also use it as a guide whenever they pass a sentence in a criminal court. Thus Pitts (1990: 71) argues that magistrates expect probation officers, on the basis of their knowledge of the social sciences and social work methods, to give 'value free' expert opinions and recommendations about the impact of any sentence option the court may wish to impose.

The Child Care Act (Act 74 / 1983 as amended) also appears to be used most by probation officers (9 respondents). This may be due to the fact that they are social workers and this Act is the most relevant piece of legislation to their profession whenever they deal with children statutorily who are in need of care. Sometimes young persons in conflict with the law are found to be " in need of care " in terms of the Child Care Act (Act 74 / 1983: sec 14 (4). Then the Criminal Procedure Act (Act 51 / 1977: sec 254) allows for a conversion of the case from a criminal hearing to a Children's court inquiry.

A child benefits when his case is referred to the Children's court because he will not have a criminal record, and even if he was already convicted (found guilty), the earlier verdict of the criminal court falls away (Skelton 1998: 153).

Seven respondents mentioned that they also make use of the Probation Services Act (Act 116 / 199). This may be due to the fact that probation officers are appointed in terms of this Act and their operation in terms of screening, assessment, investigation of home circumstances and compilation of pre - sentence reports as well as intervention programmes are guided by the same Act. Although the researcher expected all respondents to mention this Act, the fact that some of them did not mention it could be linked to two things: (a) That may be they forgot to mention it because they use so many Acts or (b) Because it is not very relevant / applicable to them as only three respondents stated that they use this Act mostly.

Five respondents mentioned that they also use the Correctional Services Act (Act 8 / 1959). This is because of the amendment of section 29 of this Act in 1994 and in 1996 which brought about significant changes in the way children in conflict with the law are dealt with, and it placed a huge responsibility of such children to the Department of Welfare. For example, the Act provides that children as a general rule, should not be held in police or prison cells for longer than 24 hours or 48 hours whilst awaiting trial. Only children who are between 14 - 18 years could be held for longer than 48 hours. This may happen if they are charged for serious offences like murder and if the magistrate believes that the young person's detention is necessary and there is no place of safety available (Skelton 1997: 163). This means that probation officers have to assess children immediately when they are arrested and ensure that they are kept out of prisons and police cells.

It is interesting to note that only one respondent mentioned that he also makes use of the Constitution of the Republic of South Africa Act (Act 108 / 1996). The Constitution is regarded as the supreme law of any country which sets forth the fundamental principles, procedures and basic human rights (Saltzman & Proch 1990: 7). From the researcher's view, this raises a concern as to whether other probation officers interviewed do apply the rules to ensure that children's rights are not violated but protected as mentioned in the Constitution of the Republic of South Africa Act (Act 108 / 1996: sec 28(1) (g).

It is also worth noting that respondent no 2 is already making use of the proposed Child Justice Bill when making recommendations to the court, about what should happen to a young person in conflict with the law. According to her, the Bill "is more comprehensive and applicable to most cases". This is viewed as another challenge facing probation officers as it shows that there is some lack of uniformity and proper guidelines in terms of which Acts to use. Sentencing is a very crucial stage in a court of law as it decides about the life of a person, therefore for a probation officer to use her own discretion like to be allowed to use a Bill which is a draft document not yet passed as an Act, could be viewed as a risky situation because a recommendation is made according to a specific section of a particular Act.

Lack of uniformity when applying the law is a serious weakness that needs to be addressed because children of the same age, charged with similar offences could be sentenced differently either leniently or more harshly depending on who the probation officer is and what she has recommended. Thus the question of clear minimum sentences for certain types of offences committed by young persons needs to be attended to.

Again only respondent no10 mentioned that he makes use of the Attorney General's Circular no 4 / 1997. This also raises a concern as to the question of supervision, that is whether

probation officers are supervised by their seniors when they compile pre - sentence reports to ensure that they apply relevant laws and adhere to subsequent circulars like the one mentioned here. Supervision is an important component in the social work field, which appears to be lacking currently in the probation section. Although this is a relatively new field, this needs to be built up when probation services are being transformed as stipulated in the White paper for Social Welfare (1997: 60).

Respondent no 2 mentioned the (CRC 1989) which is an international instrument as also relevant and applicable when dealing with young persons in conflict with the law. One would have expected more respondents to mention the CRC because it emphasizes the importance of moving towards a ' rights ' culture of intervention and putting the best interests of children first whenever they are being dealt with. For example, the CRC (in Basic human rights 1995: 132) states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. This is one challenge that also needs to be addressed to ensure that probation officers make use of the international instruments that are binding to South Africa.

4.2.2. TABLE 1: FACTORS TAKEN INTO CONSIDERATION WHEN DECIDING WHICH ACTS TO USE IN CASES OF YOUNG PERSONS.

Respondents	Age	Nature of offence	Circumstances / Background of child	Admission of guilt	First offender	Strengths of the child
1	X	X	-	X	X	-
2	X	X	-	X	-	-
3	-	X	X	-	X	-
4	X	X	-	-	-	-
5	-	X	X	--	-	-
6	X	X	X	-	-	-
7	-	X	X	-	X	-
8	X	-	X	-	X	-
9	X	X	X	-	X	-
10	X	X	X	-	X	-
11	-	X	X	-	-	X
Total	7	10	8	2	6	1

X means Yes

- means No

Table1 above indicates that seven respondents regard **age** of the young person as one of the most important factors they take into consideration when deciding about which Acts to

use. For example the Constitution of the Republic of South Africa Act (Act 108 / 1996: sec 28(3); 28(1)(g) defines a child as a person under the age of 18 years and that the child has a right not to be detained except as a measure of last resort and that he may be detained only for the shortest appropriate period of time. Similarly to this section, the Child Care Act (Act 74 / 1983: sec 28) states that no child shall be detained in a police cell or be locked up without a commissioner to attend to his case for a period of one month.

All these sections clearly indicate that **age** is a mitigating factor when it comes to young persons in conflict with the law, in the sense that they have to be treated differently from adults when they are arrested. This is consistent with literature (Skelton 1998: 146; Juvenile justice issue paper 1997: 9) that according to law in South Africa, a child who has not yet turned seven years old is said to lack criminal capacity and therefore cannot be held criminally responsible for any act, whereas, a child between 7 and 14 years is presumed to lack criminal capacity, which can be contradicted if the state can prove that the child is able to distinguish between right and wrong and that he knew about the wrongfulness of the offending behaviour at the time of commission of the offence.

It is true that youthfulness of a person is invariably a mitigating factor with regard to sentencing of a young person. Thus, a probation officer cannot overlook this factor when preparing a pre - sentence report for the court especially when making recommendations as to what type of sentence could be imposed. This concurs with what Terblanche (1999: 224) suggests that in general, a court will not punish an immature young person with the same measure as an adult because the interests of society cannot be served by overlooking the interests of a young offender.

However, the fact that four respondents did not mention age as one of the most important factors they consider, raises some concern, and this again touches on the lack of uniformity

and guidelines for probation officers when writing pre - sentence reports, and this is a challenge that needs to be addressed too.

This study revealed that the majority of respondents (10) consider **the nature of the offence committed** as one of the most important factors they take into consideration when deciding about the case of a young person. The nature of the offence appears to influence the type of sentence that the probation officer may recommend in terms of the Criminal Procedure Act (Act 51 / 1977: sec 297). For example, a young person who has committed a petty offence like theft of a loaf of bread would definitely be sentenced differently from a young person who has committed a serious offence like murder.

It is important to mention that respondents viewed sentencing stage as a legal process, which does not serve the interests of a young person. This confirms the assertion by Saltzman & Proch (1990: 49) that after the hearing is over, the offender is left alone to live with the outcome of the case. This is where the probation officer's role as a counsellor comes in, as she has to continue to have contact with the young person so as to help him and his family accept the outcome of the case and comply with any orders imposed by the court.

It is also worth noting that although the Criminal Procedure Act (Act 51 / 1977) appears to be used mostly by probation officers during the preparation of a pre - sentence report and also during the sentencing stage, it was picked up from the responses gained in this study that it is an old Act which does not consider the best interests of children hence the need for the transformation of the child and youth care system arose.

Eight respondents mentioned that they also take into consideration the **circumstances or background** of a young person as an important factor when making decisions about what should happen to a young person's case. This finding concurs with Pitts (1990: 71) that probation officers receive requests from the court for pre - sentence reports mainly because

magistrates have to know the social circumstances or personal difficulties of a young person before imposing a sentence. One of the reasons why probation officers in this study regard this as an important factor could be attributed to the fact that all of them have a social work background training which considers the psycho - social circumstances of a person as important to understand so as to be able to make a proper intervention or recommendation.

Just more than half of the respondents (6) mentioned that being a **first offender** as a young person, is one of the factors they take into consideration. This finding is in line with what is stated by Terblanche (1999: 223) that being a first offender is a mitigating factor as far as sentencing is concerned. It is true that a first offender would generally not be regarded as a criminal in certain cases, although this would be done in relation to other factors surrounding the commission of the offence such as the degree of provocation, having acted in self - defense etc.

Only two respondents mentioned admission of guilt as an important factor they take into consideration. Other respondents did not regard admission of guilt as an independent factor as they said it was falling under the first offender factor. This finding is contrary to Terblanche (1999: 228) who considers admission of guilt as a mitigating factor.

Again it is worth noting that respondent no 11 considers the **strengths of the child** as another important factor that he takes into consideration when deciding about the case of a young person. This means that the probation officer focuses on what the child is good at and building those strengths / qualities rather than focusing on his weaknesses. This is in line with what is referred to as strengths - based (developmental) approach when dealing with young persons (IMC Report on pilot projects 1998: 38). The fact that only one person mentioned this factor raises some concern, as the researcher also believes that this is one of the most important factors. As probation officers are employed by the Department of

Welfare, they are expected to implement the policies of the Department like the White paper for Social Welfare (1997). This policy emphasizes that services to young persons and their families should be developmental in nature. One could attribute this difference to the fact that there are no clearly defined uniform guidelines for probation officers to follow when compiling pre - sentence reports, and that these factors are wide and scattered through a number of sources, thus making it difficult to combine. This is another challenge identified that needs to be addressed.

4.2.3. STRENGTHS OF THE CURRENT LEGISLATION USED BY PROBATION OFFICERS.

The majority of respondents (10) expressed that the present legislation especially the Criminal Procedure Act (Act 51 / 1977) does address what should happen to the category of young persons who have committed serious offences. According to them, as the Act provides sentencing options, it helps one when making a recommendation. They also stated that the fact that the same Act allows for a conversion of a child's case from a criminal court to a Children's court so that it can be handled in terms of the Child Care Act (Act 74 / 1983) is another strength because it saves the child from having a criminal record.

Another strength identified by respondents (7) is that the Correctional Services Act (Act 8 / 1959) also offers sentencing options like community services instead of imprisonment. Respondents also mentioned that the Probation Services Act (Act 116 / 1991) provides guidance to the probation officer on how to render probation services to offenders. From these responses, at least one could say that probation officers interviewed have an understanding of what the present legislation entails.

4.2.4. PROBLEMS EXPERIENCED WITH REGARD TO THE PRESENT LEGISLATION.

A common problem identified by most respondents (8) was that the current legislation does not provide clear sentencing options on how young persons who have committed petty offences should be dealt with. For example the sentencing options provided are for children who have committed serious offences. It becomes difficult therefore for them (probation officers) to make a recommendation. For example according to respondent no 10 "diversion programmes are not considered as sentence options by some magistrates because they say they are not stipulated in the Statutes that they use ".

Another weakness identified by respondents (7) was that there is no emphasis by the current legislation that imprisonment of young persons should be the last resort as many children are still being imprisoned. Although the sample of this study was very small, the problems raised by respondents are truly some of the major concerns that have led to the IMC's transformation of the child and youth care system in South Africa.

On the other hand it is interesting to note that three respondents said that they could not think of any problems regarding the present legislation despite attempts by the researcher to try and probe or rephrase the question.

4.2.5. RECOMMENDATIONS REGARDING YOUTH JUSTICE LEGISLATION IN SOUTH AFRICA.

Five respondents recommended that the proposed Child Justice Bill should be finalised and become an Act so that it can be implemented very soon. According to the researcher, this is viewed as one of the most important recommendations because it is going to address quite a number of challenges facing probation officers, which were identified and discussed under legislation. For example it is hoped that it will promote uniformity and proper guidelines within the country in terms of how young persons are treated within the criminal justice system.

Four respondents recommended that diversion programmes should be legislated so that they can be recognised by all magistrates as sentencing options when recommended by probation officers. This would ease the problem faced by some probation officers who mentioned that some magistrates are not willing to accept diversion as a sentence option because they say it is not contained in the Statutes. It is true that diversion is not legislated yet because it is a new concept contained in the IMC policy guidelines and in the proposed Child Justice Bill (IMC Interim policy recommendations 1996 (b): 39). This concept of diversion will be discussed further in the next section under programmes offered to young persons in conflict with the law.

Four respondents recommended that enforcement of registration of births by the Department of Home Affairs should be legislated because it is very problematic and difficult to assess the age of young persons who do not have birth certificates. These findings on the age problem are consistent with what is stated in the IMC Interim policy recommendations (1996 (b): 37) that a serious problem that faces probation officers and the police when a

young person is arrested is the difficulty in determining the exact age of a child because many children do not have documentary proof of their birth dates. Even though the Criminal Procedure Act (Act 51 / 1977: sec 337) provides for age estimation by the judicial officer (magistrate), or examination by the district surgeon to assess the young person's age, these findings show that there is still a problem around the lack of documentary proof (birth certificates) for young persons. Thus enforcement of registration of births could be a solution although long - term.

Another recommendation made by two respondents was that there should be legislation, which guides tribal courts on how they should handle cases of young persons who have committed petty offences. For example, one of the respondents said "clear guidelines and limits should be set for tribal courts because sometimes they tend to severely punish young children".

According to the researcher, this is an important fact as well because tribal courts might not be aware of the new paradigm shift emphasized in the transformation of the child and youth care system, which is based on the principle of reconciliation as opposed to retribution and punishment which is said to be practiced by some tribal courts on young persons. The manner in which they are said to be punishing young persons (like excessive beating on the body until the child cannot walk) is contrary to the CRC (in Basic human rights 1995: 152) and the Beijing Rules (1986: 6).

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4.3. PROGRAMMES OFFERED TO YOUNG PERSONS IN CONFLICT WITH THE LAW.

4.3.1. TABLE 2: Types of programmes recommended most.

Respondents	Diversion (YES)	VOM	FGC	Individual counselling	Other (Community service)
1	X	X	X	-	-
2	X	X	X	-	-
3	X	X	X	-	X
4	X	X	X	-	X
5	X	X	X	-	X
6	X	X	X	-	X
7	X	X	X	X	-
8	X	X	X	-	X
9	X	X	X	-	-
10	X	X	X	-	X
11	X	X	X	-	X
Total	11	11	11	1	7

X means Yes

- means No

Table 2 above shows that all eleven respondents stated that they offer the following programmes to young persons in conflict with the law:

- Diversion (Youth Empowerment Scheme).
- Victim - offender mediation and
- Family group conferencing.

Another programme that is being used by most respondents (7) is community service both pre - trial and after sentencing. Although this was a small-scale study, these findings are consistent with what is stated in the IMC Interim policy recommendations (1996 (b): 42); Skelton (1998: 154) that the above-mentioned programmes are the most commonly used at present in South Africa.

All probation officers interviewed view these programmes as "good, implementable, effective, restorative and that they have shown to have a positive impact on young person's lives". For example respondent no 10 said that "diversion programme teaches a child about crime and its consequences, life skills and decision - making". It is clear from these responses that at least there is a positive shift from the old paradigm characterised by retribution and punishment to a more developmental and restorative justice which is characterised by reconciliation and reparation when dealing with young persons (Haines & Drakeford 1998: 229).

What is good about all these programmes is that they are all community - based treatment programmes as against institutional treatment (i.e. imprisonment). As it was highlighted in the literature, if young persons are sentenced to undergo community based programmes, they benefit more because a child continues to live with his family, goes to school and stands a better chance to reform (Terblanche 1999: 333). Whereas if a child is imprisoned, he becomes exposed to hardened criminals and suffers from isolation and the stigma attached to imprisonment.

The fact that young children in conflict with the law are said to be benefiting from these community – based, programmes concurs with research findings by Gensheimer & Associates (in Ezell 1992: 50-51) that the younger the diversion client, the more likely that intervention will have a positive effect on the young person's life.

It is interesting however, to note that one respondent mentioned that he still prefers mostly individual counselling than other programmes because according to him "it suits the young person's individual needs". From the researcher's point of view, although this finding is different from what the majority of respondents, it is also a good point because even though treatment of young persons as a group is much more convenient and is said to be effective, dealing with them as individuals first is also necessary before they can join a group session / programme. This is because each individual child gets more attention and could also open up about his problems when he is with the probation officer alone.

It is also worth noting that most respondents (7) also identified some shortcomings about some programmes even though they use them. For example, with victim - offender mediation, which usually requires compensation of the victim's loss e.g. damaged property, they argued that with this programme it is parents who suffer because they have to pay / fix the property on behalf of their child who is not working. Thus, the child may not really be accountable for his actions. The weakness of YES programme that was identified is that it needs a group of young persons (about 6) and it becomes difficult to continue with the group when some members do not turn up or decide not to complete the six sessions.

Although the above short - comings were mentioned, every programme has its strengths and weaknesses, but what is important is that the strengths outweigh the weaknesses and that the weaknesses are acknowledged. For instance in this study respondents stated that victim - offender mediation works successfully in most cases because it is applied to parents who

voluntarily agree to it and can afford to repay the damage, and this helps the child to escape the stigma of having a criminal record. In New Zealand for example, in a case of a young person in conflict with the law, his family agreed that he would fix the victim's fence that he smashed and that he would also pay all the money that he earned doing odd jobs towards repairing the facilities of a recreation centre that he vandalised (Redgrave 1999: 55 - 56).

4.3.2. Figures of youths reached through programmes.

This study revealed that an estimated total number of 273 youths were reached through the community - based (especially diversion) programmes during the 1998 / 99 financial year. The numbers ranged between 5 - 60 youths per district as mentioned by the respondents.

Although the sample of this study was small, the above figures show that the problem of young persons in conflict with the law is real. This is consistent with what is stated in the White paper for Social Welfare (1997: 59) that child and youth crime is on the increase in South Africa as thousands of children under the age of 18 years are being sentenced every year.

The findings of this particular study also concur with research findings from the Stepping Stones One Stop Youth Justice Centre in Port Elizabeth (IMC Report on pilot projects 1998: 60) which showed that between 15 August and 31 August 1997 (which is less than a month) a total number of 67 youths were channeled to various diversion programmes like YES and pre - trial community service orders.

Based on the above stated figures on the number of young persons in conflict with the law within one year, one could say that this is one of the major challenges facing probation

officers. Thus their intervention through programmes for youths who have already entered the criminal justice system is crucial to ensure that they do not re-offend, as well as prevention programmes for those who are at risk.

All respondents in this study do get referrals from the court in respect of young persons who have committed serious offences. However, there are no special programmes that they offer to these youths. According to respondents, the current diversion programmes they offer like YES and VOM are meant for young persons who have committed petty offences. This is one of the challenges facing probation officers because they only prepare pre-sentence reports for the court without any intervention in terms of programmes to help this group of young persons. This really raises a concern because these young offenders are still children, whose best interests, survival and development have to be protected even though they have done wrong to society. Thus Terblanche (1999: 225) argues that the interests of society cannot be served by overlooking the interests of a young offender.

4.3.3. Period that the criminal justice system takes to finalise cases of young persons.

All eleven probation officers interviewed mentioned that the criminal justice system takes about one to three months to finalise cases of young persons who have committed petty offences. This is viewed by the researcher as a positive step that shows some transformation in the criminal justice system as it appears that young persons' cases are given some priority and finalised within the shortest reasonable period as recommended by the IMC Interim policy recommendations (1996 (b): 37). However, although this is commendable, cases of young persons who have committed serious offences are said to be taking six months to one year and above to be finalised on the average according to the

findings of this study. A period of one year and above appears to be very long and is contrary to the CRC (in Basic human rights instruments 1995: 150) and the Beijing Rules (1986: 11) which state that every child deprived of his liberty, shall have a right to a prompt decision as his case shall be handled expeditiously without any delay.

Respondent made an interesting difference no 8 on this aspect of duration of finalising cases of young persons. She made a distinction between young persons who have pleaded guilty and those who have not pleaded guilty in the manner in which their cases are finalised even though they have both been charged for committing petty offences. The difference is with the latter group (pleaded guilty) as the criminal justice system is said to take about six months to finalise such cases. Although one respondent mentioned this point, it is striking because the difference of three months between a person who has pleaded guilty and the one who has not is significant according to the researcher and it needs attention if cases of young persons are to be finalised quickly.

All eleven respondents mentioned quite a number of factors that contribute to delays in finalising cases of young persons who have committed serious offences. These factors include postponement of cases several times due to:

- Unavailability of magistrates (because on the average there is generally one magistrate per district in the Eastern region) (6 respondents).
- Referral of cases to the Attorney General's office for a decision (5 respondents).
- Pending police investigations (4 respondents).
- Lack of transport for probation officers to conduct investigations so as to prepare pre-sentence reports (3 respondents).
- Unavailability of lawyers (attorneys) who represent either the plaintiff or defendant (3 respondents).
- Unavailability of witnesses (3 respondents).

- Lack of documentary proof (sufficient evidence) of date of birth of the young offender (3 respondents).
- Parents refusal to come to court because they are tired of their children who always commit offences (2 respondents).

Although this was a small scale study, the above findings give an indication that these are some of the challenges facing probation officers in the Eastern Region, who have the responsibility to ensure that children's rights are protected and not violated through trials that drag over long periods. The researcher is also of the opinion that this shows a need to improve and strengthen the juvenile justice system so that all relevant role players are available at the same time in court so as to prioritize and finalise cases of young persons within the shortest possible period of time.

4.3.4. Recommendations with regard to programmes offered to young persons.

The findings of this study have revealed that all eleven probation officers interviewed are quite happy about the types of programmes offered to young persons in conflict with the law like YES, VOM, FGC and Correctional supervision (community services). However, some respondents emphasized a few points that need to be addressed in order to strengthen the implementation of these programmes. For example two respondents (no1 and no 7) mentioned that the judicial personnel especially magistrates, should be trained on the diversion programmes so as to have an understanding of what they entail so that they can accept them when recommended where appropriate.

Respondents no 3, 8 & 11 recommended that educational video programmes of successful cases of young persons, who managed to complete diversion programmes, should be made available as this could help other youths to learn from peers that crime does not pay.

Respondents no 4 and no 11 mentioned that material assistance like money for transport and food for youths who come from very poor families should be made available because these programmes are conducted in the afternoons mostly so as to accommodate those children who are schooling. This is because children who come from school are usually hungry by the time the programme starts and therefore their concentration becomes affected.

The above findings are consistent with literature (Bazemore & Terry 1997: 696 - 697) that subjecting youths to restorative community - based programmes adds value to the offender and the community, thus, paving the offender's way for enhanced re - integration into the community. Although this was a small - scale study, the researcher is of the opinion that the recommendations made by some respondents (no 1, 3, 4, 7, 8 & 11) regarding the improvement of certain aspects of the programmes offered to young persons, also need to be taken cognizance of. This is because these programs are relatively new and therefore feedback on challenges encountered and achievements made during their implementation is important.

4.4. THE ROLE OF INTER - SECTORAL APPROACH WHEN DEALING WITH YOUNG PERSONS.

All the probation officers interviewed, mentioned that their understanding of the role of inter - sectoral approach when dealing with young persons, means the involvement of all the relevant role players / stake holders like the Departments of Welfare, SAPS, Justice,

Correctional Services, Health, Education, Agriculture and NGO's like NICRO as well as parents of the young person in conflict with the law. This finding confirms what is stated in (Children in prison in South Africa 1997: 3) that the responsibility of children in conflict with the law in South Africa is shared between several departments like those mentioned by respondents. Given the involvement of so many stakeholders, one could say that there is a big challenge to ensure that services to young persons are offered in a co - ordinated manner.

4.4.1. Reasons why inter - sectoral approach is working.

Six respondents mentioned that the inter - sectoral approach is working quite well in their districts. Some of the reasons why the approach is said to be working in six districts include the following:

- All the relevant role players like the investigating officer, probation officer and correctional official work together from the arrest of the young person, refer cases to each other, conduct the necessary investigations and communicate when preparing reports for the court as to what recommendations should be made.
- If there is any relevant department that has not been involved at any stage, the case is postponed by the magistrate and is referred back to that particular department / stakeholder for its intervention.
- Each department gets an understanding of how each works and this helps because all aspects of the case are looked at, thus good working relations with other professionals are maintained.

- Communication and teamwork are promoted as crime prevention programmes like awareness campaigns are conducted jointly in the communities and in schools by various stakeholders and this contributes to an integrated approach.
- The availability of a juvenile court at the assessment centre in one of the districts which is conducted once a week has made the inter - sectoral approach to work better because all the relevant role players come to court at the same time and then the case of a young person is finalised more quickly.

The above mentioned reasons on how the inter - sectoral approach works in six districts, appear to be positive points that are in line with the ideal inter - sectoral approach proposed by the IMC in its policy recommendations (1996 (b): 66) and this is commendable. Even the major role players involved are consistent with those cited in literature as crucial in the formation of pre - sentence evaluation committees (Manual for probation services 1994 (1): 44).

It is also interesting to note that crime prevention programmes are conducted jointly as suggested in the White paper for Social Welfare (1997: 59). This gives an indication that integrated developmental programmes on crime prevention and restorative justice are at least being implemented even if this is on a small scale.

4.4.2. Reasons why inter - sectoral approach is not working.

Four respondents mentioned that the inter - sectoral approach is not working in their districts. Some of the reasons which make the approach not to work are as follows:

- Some role players do not see the approach as important. For example some prosecutors and magistrates always complain about shortage of personnel in their department which makes them unable to attend inter - sectoral meetings.
- Some SAPS personnel do not refer cases of young persons to probation officers and therefore probation officers only get some of those cases from the court.

The above findings confirm what Pitts (1990: 52) argues that what a juvenile justice system becomes, is determined by the ways in which the various role players within it choose to use their power. This lack of inter - sectoral collaboration in four districts could be viewed as one of the challenges facing probation officers because they are supposed to play a central role in the formation and functioning of pre - sentence evaluation committees which should be inter - sectoral in nature according to the Probation Services Act (Act 116 / 1991: sec 5). The researcher is of the opinion that the issue of inter - sectoral collaboration is therefore crucial, as it is one of the areas where the effectiveness of a probation officer could be tested as she is charged with the responsibility of ensuring that all the relevant role players are participating, so that the interests of young persons are protected and their cases are dealt with fairly and more quickly.

It is interesting also to note a deviation on this issue of inter - sectoral approach, where one respondent (no 9) mentioned that in her district the approach works sometimes, at other times it does not. One reason she mentioned to this effect is that cases of young persons are referred to the probation officer at the discretion of the judicial and SAPS personnel. In other words, there are cases of children under the age of 18 years that are processed and finalised without the involvement of the probation officer and other stakeholders if the police and the magistrate feel that there is no need to refer the case. This practice of not referring some of the cases to a probation officer, is contrary to the assertion that in cases where the offender is under the age of 18 years of age, the court cannot decide that it is unnecessary to

obtain a pre - sentence report from a probation officer (Haines & Drakeford 1998: 124). Again this is a challenge that needs to be taken into consideration so as to ensure that law-enforcement officers do not use their discretion to the disadvantage of children.

4.5. HUMAN RESOURCE NEEDS AND DEVELOPMENT.

4.5.1. Human Resources.

4.5.1.1. Number of probation officers per district and their experience.

This study was conducted in the Eastern region, which forms part of the Eastern Cape Province. The region consists of nine magisterial districts.

The findings of this study show that there is generally one probation officer in each of the eight districts of the Eastern region. The difference is with the ninth district, which has three probation officers. Some of the reasons why this district has more probation officers than others are the following:

- This district is the biggest within the region in terms of population figures (Eastern Cape epidemiological notes 1999: 8) and in terms of infra - structure.
- There is an RAR centre, which is one of the IMC's national pilot projects, and it is the only project of this nature in the region.
- The monthly statistics on young persons during the 1998 / 99 financial year have always been higher in this district compared to other districts within the region (Department of Welfare: Eastern region monthly reports 1998 / 99).

There seems to be a reasonable number of probation officers servicing this particular district compared to other districts where there is only one probation officer. However, respondents from this district still expressed a need for more probation officers.

All eleven probation officers interviewed are social workers by profession registered with the South African Council for Social Work, now known as the South African Council for Social Service Professions (SACSSP). This confirms what is stated in the IMC Interim policy recommendations (1996 (b): 73) that at present in South Africa, probation services are rendered by social workers who are referred to as probation officers.

Table 3. Experience as a probation officer.

Number of years	Number of respondents
1 year	5
2 years	4
3 years	2
Total	11

Table 3 above shows that all respondents in this study have between 1 - 3 years working experience as probation officers of which about half of them have one year experience. These findings give an indication that probation services in respect of young persons is a relatively new field of specialisation in South Africa which was initiated in June 1995 (IMC Report In whose best interests 1996 (a): 2).

Another interesting finding on this aspect of experience is that the majority of the same respondents (7) are relatively new even in the field of social work directly from the university. They were employed in September 1997 that is about 2 years ago. Whereas, the other four respondents have quite a reasonably longer experience as they were employed between 1991 – 1995 which is about 5 - 8 years social work experience.

Given the above findings on experience, one could say that the lack of experience from a majority of probation officers, is one of the challenges facing them which shows that there is a need for thorough and constant supervision of their work by their supervisors.

4.5.1.2. Work load.

As it has been mentioned above, this study has shown that generally, there is one probation officer per district in the Eastern region (with the exception of one district). Three of these probation officers render probation services only, whilst the rest (8) are also doing other social work services. This shows that there is lack of uniformity in this region in terms of how probation officers are allocated work, and this is one of the challenges identified as facing them that needs to be addressed.

On the average, the eight probation officers who are not specialising, share equal time between probation work and other social work services. The average caseload per probation officer per month ranges between 10 - 15 cases, and the estimated total caseload ranged between 35 - 200 cases during the 1998 / 99 financial year. Apart from case work and group work services for young persons, all respondents mentioned that they also render crime prevention programmes to the communities which according to them "are more time consuming".

Even though this sample was small, the above results on work load, show a similarity to what is stated in the White paper for Social Welfare (1997: 59), that probation officers are overloaded and understaffed and most of them are still doing other social work duties whereas they are also required to render integrated developmental programmes on crime prevention and restorative justice to young persons, their families and communities.

The fact that there is mostly one probation officer per district, who has to do all probation services from prevention, early intervention, statutory and continuum of care as well as other social work services, gives an indication that there is a shortage of human resources in both fields, and this could cause probation officers not to render a quality service that is expected of them. This shortage of human resources is also one of the challenges facing probation officers. It is contrary to what the White paper for Social Welfare (1997: 60) commits itself to do, that is to employ more personnel in the field of probation. Thus most respondents (9) recommended that more probation officers should be employed, at least on the average two additional officers per district. This could contribute to improved service delivery.

Two respondents (no 4 & 6) however, felt that there is no need for additional probation officers in their districts. This could be attributed to the fact that their caseload appears to be lower than their counter parts during the 1998 / 99 financial year. It is worth noting that generally, the caseload per probation officer in this study seems to be reasonable and fair in comparison to what Schmalleger (1995: 427) asserts that caseloads of 250 clients per officer are common. This difference could be attributed to the fact that probation services with young persons is a relatively new field of specialisation in South Africa, whereas in the USA it has been in existence for quite a longer time.

This study has also revealed that one of the challenges facing probation officers in this region, is the shortage of transport. All respondents mentioned that they do not have transport allocated to them to perform probation services. There is one vehicle per district that is shared by all social workers who are about six in each office. In one particular district, there is no vehicle at all. They depend on other departments like Justice and SAPS as well as on the social security section when they are not paying out social grants. One respondent (no 7) mentioned that there is no telephone in her office, which she needs desperately for official purposes.

There seems to be a tremendous shortage of transport in this region, whereas transport is a necessary resource that should be made available for each probation officer in each district, so as to enable them to render probation services more effectively and efficiently. For example, respondents mentioned that some of their duties that require transport include the following:

- To conduct home investigations in respect of each young person.
- Go to the young person's school and to relatives or significant others before compiling a pre - sentence report for the court.
- Attend community meetings as well as to conduct crime prevention programmes in the communities and in schools.

The lack of transport in this region is contrary to what is stated in the Financing policy for developmental Social Welfare services (1999: 23), that the government is committed to fund all activities aimed at providing an integrated service to children and youth, and this includes funding of transport and personnel costs.

4.5.2. Training.

All 11 respondents in this study have received some training on probation work with young persons in conflict with the law. The trainings were in the form of short courses and workshops ranging between one day to two weeks. The majority of respondents (9) received the trainings in 1998 with the exception of two respondents who were first trained in 1996. This finding is consistent with what is stated in the IMC report *In whose best interests* (1996 (a): 68), that most probation officers have received only minimal training with regard to probation work. However, the duration of these trainings differs from the Australian and Japanese systems. For example in Australia, the initial training takes three months and then it is followed by additional training on specific skills. In Japan, probation officers receive three annual courses, which take 15, 20 and 35 days (Hamai & Ville' 1995: 143; 149).

All respondents mentioned that their trainings focused on areas like legislation e.g. specific sections of the Criminal Procedure Act, law of evidence, probation officer's pre - sentence report and how to present it in court as an expert witness, diversion, transformation of the child and youth care system, developmental assessment approach, relevance of international instruments like the Beijing Rules and the CRC. The kind of trainings received by probation officers in this study is indeed minimal, however, their training appears to be standardised and relevant as it is according to the proposed South African juvenile justice system. The knowledge and skills gained from these trainings appears to be implemented by probation officers in their work with young persons.

One of the things that is worth noting, is that only probation officers have been trained according to the new paradigm shift (restorative and developmental approach) on probation

work. None of their supervisors have been trained on probation work. For example respondent no 1 stated that "supervisors need to be trained on probation work with young persons because they do not know it since it is new, and as such are not helpful when you want to discuss a case and you need some advice". This finding is contrary to what the IMC Interim policy recommendations (1996 (b): 39); Haines & Drakeford (1998: 126) recommend, that supervision of probation officers must be adequate and be of a high standard based on a developmental approach and that supervisors should assist in preparation of good professional pre - sentence reports.

The fact that supervisors are not trained on probation work, is one of the challenges facing probation officers, as they do not get the necessary support and guidance from their supervisors. If supervisors are not trained, their supervisory role could be less effective, old fashioned and contrary to the principles of the transformation of the child and youth care system. That is why it is important that this challenge should be addressed.

All respondents mentioned that with the training they have received, they feel adequately equipped to work with young persons. However, some respondents (7) recommended that they still need some more training on the following aspects:

- Legislation - particularly on the new proposed Child Justice Bill.
- Developmental assessment - especially on how to make an individual development plan of a young person.

Although probation officers in this study mentioned that they are adequately trained, some advanced formal training to improve qualifications could be useful and advantageous especially on the child and youth care system. This would be in line with the Beijing Rules (1986: 12) which emphasize the need and importance of professional education and other

refresher courses in order to maintain the necessary professional competence of personnel dealing with young offender cases especially probation officers.

4.6. PROBATION OFFICERS' FEELINGS ABOUT WORKING WITH YOUNG PERSONS.

This study has revealed that more than half of the respondents (7) became probation officers because they volunteered in their offices to do the job. This happened when the IMC introduced the field and each office was required to submit the name of a person who will be responsible for probation services to the head office. Two respondents (9 & 11) mentioned that they were nominated by head office. One respondent (no1) mentioned that she was forced by the circumstances in the office to do the job. This was because the person who was doing probation work had to take a supervisory position, so she (respondent) had to take over probation work. Respondent no 10 mentioned that "I just happened to attend a meeting in Bisho in 1995 when this field was introduced, and then I was asked to attend similar follow - up meetings until I ended up doing the job".

The above responses show that all probation officers in this region did not apply for the job they are doing. This is because these posts were not advertised, instead, most of them volunteered and then their social work posts were converted into probation officers' posts as recommended in the White paper for Social Welfare (1997: 60). The manner in which probation officers were allocated in this field, gives an indication that there is no uniformity in terms of how decisions made by the management are implemented, whereby others are nominated by head office, others volunteer and others are forced by internal office circumstances.

The majority of respondents (10) in this study, expressed strong positive feelings towards their work with young persons. For example some of them (3, 4, 5, 6 & 11) responded like this:

- "Excellent, I love the work".
- "I like the job and I do it to the best of my ability".
- "It is challenging and I feel good about it".
- "It is a challenging field that needs a person who is willing and committed to work with children in trouble with the law".
- "I feel good about being a probation officer".

There seems to be a correlation between the way probation officers in this study happened to do probation work (i.e. volunteering) and the way they feel (positive attitude) towards their work.

It is interesting however, to note that the respondent (no1) who said that she was forced by the circumstances in the office to do probation work, is the only one who expressed ambivalent feelings about her work. For example she said "sometimes I like probation work with young persons, but sometimes I don't". "I become miserable when the magistrate postpones the case many times and when young persons do not co - operate..... but I feel good when I have been able to help young persons".

4.6.1. Feedback received by probation officers about their work.

It appears that probation officers' positive attitude towards working with young persons, is also motivated by the positive results and feedback that they receive from young persons and their families. The following are some of the examples to justify that:

- Respondent no 6 mentioned that she managed to re - unify a street child with his family.
- Respondents no 1, 2, 5, 7 & 11 mentioned that some children who were out of school due to truancy, returned to school as a result of their intervention.
- Respondents no 3, 4, 6 & 11 mentioned that some children who were involved in crime - related activities showed improved behaviour after completing some programmes.
- Respondents no 3, 7, 8, 9 & 10 mentioned that some parents came personally, others wrote letters to tell them how their intervention helped them (parents) and their children.
- Respondents no 3 & 9 mentioned that some community members tell them that the rate of crime has dropped in their areas as a result of their crime prevention programmes.

The above responses give an indication that at least the probation officers' interventions at the different levels like prevention, and statutory, have some positive impact in some of the young persons' lives and their families.

4.6.2. Specialisation of probation services.

The findings of this study have revealed that more than half of the respondents (7) feel that probation services should be a registered field of specialisation. This finding concurs with

what is stated in the White paper for Social Welfare (1997: 59). Some of the reasons mentioned by respondents to motivate for specialisation are the following:

- Specialisation would enable probation officers to grow professionally and know where they belong, whereas now there is confusion between probation officers and social workers.
- More resources like transport would be available when this field is independent, not depending on the Department of Welfare.
- One would specialise whilst at the tertiary level and get thorough training on probation field.

Four respondents on this aspect of specialisation, felt that probation services should not be a specialised independent field, but rather it should continue to be under the Department of Welfare. They argued that social work training is unique and it helps a person to understand a young person better. Social workers know how to investigate and compile a psycho - social report and make appropriate recommendations. The researcher found all arguments in favour of and those against specialisation interesting. However, for the time being, it would be better for probation services to remain a speciality or directorate within the Department of Welfare, until such time that the tertiary institutions have developed a special under graduate curriculum whereby intensive training of about 3 - 4 years would be available for those who want to be probation officers.

4.6.3. Promotion opportunities for probation officers.

The findings of this study have revealed that there are no promotion opportunities available specifically for probation officers. Respondents expressed different feelings about this

aspect. For example six respondents mentioned that they are not bothered or affected negatively by this because they get promoted when other social workers are promoted.

Five respondents mentioned that they do not feel good about the lack of promotion opportunities because they see probation as a specialised field that needs to be developed and have levels such as senior and chief probation officers. Although this concern was mentioned by slightly less than half of the respondents, it is similar to what Schmallegger (1995: 427) asserts, that another difficulty facing probation officers is the lack of career mobility and that unless retirement or death claims the supervisor, there is little chance for other officers to advance.

The fact that probation officers get promoted like other social workers seems to be an acceptable and appropriate arrangement presently since they are all social workers. However, if probation is to be developed as a specialised independent field in the long term, it would be proper to have a clear structure that will create promotion opportunities up to the level of a Director as well as in terms of better salaries or allowances so that people could be attracted especially if personnel will be drawn from a variety of appropriate disciplines as proposed in the IMC Interim policy recommendations (1996 (b): 80).

4.7. CONCLUSION.

A total of eleven probation officers were interviewed for this research. Although this was a small - scale study, the findings have revealed that probation work with young persons, is a relatively new field of specialisation that is necessary and is being implemented according to the IMC interim policy recommendations.

This study has shown that there are a number of challenges facing probation officers working with young persons. They use quite a number of statutes when making recommendations to the court as to what should happen to the case of a young person. These include the Criminal Procedure Act, Probation Services Act, Correctional Services Act and the Child Care Act. However, they find it difficult to use all of these different statutes. Thus they recommended that the proposed Child Justice Bill should be finalised very soon and be enacted as the South African legislation to govern the juvenile justice system in this country, as they believe the Bill is more comprehensive and more applicable.

All eleven respondents are quite satisfied with the kind of programmes which they offer to young persons. These include YES, VOM, Correctional supervision (community services) as well as crime prevention programmes to the schools and the communities.

The role and importance of inter - sectoral collaboration when working with young persons appears to be well understood by all respondents. Although it is said to be working in six districts, one of the challenges facing probation officers is that there is a need to strengthen and improve this approach in five other districts, so that all role players could render an integrated, developmental and child centred service to all young persons.

This study has shown that there is a need to develop this field of probation services especially in terms of human resources, on going in service training and formal training, transport, funding of programmes as well as supervision of probation officers.

The majority of respondents in this study like their job. They have strong positive feelings towards their work with young persons. There seems to be some positive feedback that

respondents get from young persons, their families and in the community as a result of their interventions.

Although there are no promotion opportunities specifically for probation officers, more than half of the respondents are not bothered or negatively affected by this.

The next chapter will draw conclusions based on these findings and then some recommendations will also be made.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1. INTRODUCTION.

In this chapter, the researcher will make some conclusions drawn from the findings of this study as discussed in chapter 4. Specific recommendations will also be made although the researcher is aware that the sample was small, comprising of eleven probation officers from the Eastern region, of which the results cannot be generalizable. However, this study has revealed some valuable information, which could contribute to the development of probation services as it explored the challenges facing probation officers working with young persons in conflict with the law.

5.2. CONCLUSIONS.

Conclusions on this research project are based on the main aim of this study, which was to explore the challenges facing probation officers working with young persons, with special focus on the following main themes, which were basically the goals of this study:

- Legislation which probation officers use when making decisions (recommendations) pertaining to young persons.
- Types of programmes that probation officers offer to young persons for diversion (statutory intervention) and prevention purposes.
- Resources which probation officers have and need in order to work with young persons.
- Probation officers' feelings / experiences about their work in general in the field of probation services with young persons.

5.2.1. SECTION A: LEGISLATION.

On this aspect of legislation, the main aim of the researcher was to find out which legislation probation officers use when making decisions pertaining to young persons, as well as what factors they take into consideration when making recommendations to the court using such legislation.

One of the major findings of this study on legislation (as discussed in detail in chapter 4) is that all 11 probation officers interviewed use quite a number of statutes when dealing with young persons. These statutes include the following:

- The Criminal Procedure Act (Act 51 / 1977).
- The Child Care Act (Act 74 / 1983 as amended).
- The Probation Services Act (Act 116 / 1991).
- The Correctional Services Act (Act 8 / 1959).

This finding gives an indication that at present in South Africa there is no comprehensive legislation for the management of young persons caught up in the criminal justice system,

instead limited provisions are spread throughout a number of statutes like the ones mentioned above. Although this sample was small, this finding confirms what is stated in the Juvenile justice issue paper (1997: 1).

This is one of the challenges identified as facing probation officers as they find it difficult to master all these Acts when they have to make decisions about young persons. Another conclusion reached is that probation officers in this region rarely make use of the international instruments like the Beijing Rules and the CRC. This is viewed as a serious shortcoming that needs to be addressed since South Africa is a signatory to these instruments.

Another finding of this study is that the following factors are mostly considered by probation officers when they make decisions or recommendations to the court:

- Age of a young person.
- Nature of the offence.
- Circumstances / background of the young person.
- Young person being a first offender.

These are some of the most important factors that influence the recommendation of the probation officer and the kind of sentence to be imposed by the court. Most of the time these factors act as mitigating factors as far as sentencing is concerned as suggested by Terblanche (1999: 223; 224). However, there are some of the factors which respondents do not consider whereas they are also important and this is another challenge facing probation officers.

A meaning derived from this finding is that there are a number of factors that need to be considered by probation officers when compiling pre - sentence reports, which should all, be thoroughly explored in each case of a young person. It is apparent from these findings

that there is a need for a comprehensive legislation on young persons in conflict with the law as the present legislation has some flaws hence the transformation of the child and youth care system was introduced.

It is therefore concluded on this section that the finalisation of the proposed Child Justice Bill is necessary, so that it can be implemented as soon as possible as it appears to include all the basic principles pertaining to children like restorative justice, developmental approach and the best interests of the child. It is hoped that the Child Justice Bill will address quite a number of challenges facing probation officers that were discussed in detail in chapter 4. The goal of the researcher on this aspect of legislation was achieved as she managed to get more information on the challenges facing probation officers with regard to legislation.

5.2.2. SECTION B: PROGRAMMES OFFERED TO YOUNG PERSONS.

- All respondents who participated in this study offer a number of programmes to young persons at the level of statutory intervention. The programmes that are mostly used are the following: diversion (YES), victim - offender mediation, family group conferencing and correctional supervision (community services). These programmes are being implemented according to the IMC Interim policy recommendations (1996 (b): 42). This also confirms the assertion by Skelton (1998: 154) that these are the types of programmes mostly used presently. Probation officers in this region also conduct some crime prevention programmes to the schools and communities.
- Although the sample was small, the estimated total number of young persons reached through these different types of programmes which is 250, gives an indication that the

problem of young persons in conflict with the law is real. Based on this finding, it can be concluded that young persons are benefiting from these programmes. One of the advantages being that these programmes are community based as against institutional treatment (imprisonment) which has proved to have negative effects on the lives of young persons in the past. It is quite clear that these programmes should be continued, of course with continuous evaluation and some improvements in certain aspects as suggested by respondents (see page 85).

- It has been noted from the findings of this study that cases of young persons who have committed serious offences take a longer time to be finalised by the criminal justice system (see page 89). This situation is unacceptable and needs to be addressed as it is contrary to the CRC (in Basic human rights instruments 1995: 150) and the Beijing Rules (1986: 11). Young persons are still children who need to be protected even if they have done wrong to society. This is one of the challenges facing probation officers as they are assigned to play a leading role in this field, to see to it that this situation is rectified.
- All respondents have a relevant and common understanding about the role and importance of inter - sectoral approach when working with young persons. Six districts that make use of this approach seem to be rendering an effective and integrated service to young persons, which is characterised by quicker processing and finalisation of cases. However, the fact that there are five districts in which the approach is not working, is identified as one of the challenges facing probation officers. This is attributed to the lack of co - operation as mentioned by respondents from the Justice and SAPS personnel, whereas their participation is crucial for the success of this approach.

- It can be concluded from the above finding that a joint training programme for all the relevant role players is necessary. The training could be conducted by the lead department in this field which is Welfare, as well as separate trainings for each stakeholder conducted by trained personnel of that particular department or organisation who are actively involved in the juvenile justice system. The researcher is of the opinion that this goal was also explored fairly well and was therefore achieved.

5.2.3. SECTION C: HUMAN RESOURCE NEEDS AND DEVELOPMENT.

- The Eastern region consists of nine magisterial districts. There is generally one probation officer per district with the exception of one district, which has three probation officers. All of the 11 probation officers interviewed are social workers by profession. Apart from doing probation work, they are still doing other social work duties. They share almost equal time between the two fields. This finding concurs with what is stated in the White paper for Social Welfare (1997: 60). Based on this finding, it can be concluded that there is a shortage of personnel (human resources) in the field of probation services whereas they are overloaded. It is important therefore that this challenge should be addressed by employing more personnel as it was also recommended by most respondents.
- Shortage of transport is one of the major challenges facing probation officers. There is generally one vehicle per district that is shared by all social workers who are about six in the office. In one particular district, there is no vehicle at all for both social workers and the probation officer (see page 99). Transport is one of the most needed resources for probation officers especially to carry out investigations in respect of young persons who

are supposed to be assessed within 24 -48 hours after arrest and appear before court as soon as possible.

- All probation officers in the Eastern region have received some basic standardised training on probation work with young persons. All trainings were in the form of short courses and workshops with the duration of 1 day - 2 weeks. Although all respondents felt that they are adequately equipped to work with young persons, some still expressed a need for further training on legislation and developmental assessment of young persons. A major flaw that has been identified is that supervisors of probation officers are not trained on probation work. As a result of this weakness, there is lack of supervision. This is a serious challenge facing probation officers especially because the majority are relatively new even in the field of social work (with less than 3 years working experience) (see page 96). This is contrary to literature (IMC Interim policy recommendations 1996 (b): 39; Haines & Drakeford 1998: 126) which emphasizes the need for a high standard and adequate supervision of probation officers in order to produce good professional pre - sentence reports. On this aspect of training, it can be concluded that formal training, in - service training as well as workshops are necessary for probation officers and their supervisors so that they can improve and broaden their knowledge and skills in this field.

5.2.4. SECTION D: PROBATION OFFICERS' FEELINGS/ EXPERIENCES ABOUT WORKING WITH YOUNG PERSONS.

- This study has revealed that there is lack of uniformity on how the respondents became probation officers. Seven respondents volunteered, two were nominated by head office

whereas the other two were forced by circumstances in their offices. It is interesting to note that there is a positive correlation between the way probation officers were allocated to do probation services (volunteering) and the way they feel (positive attitude). The majority of respondents in this study expressed a great deal of job satisfaction despite the challenges facing them. This job satisfaction could be attributed to the successes they have had in some cases of young persons, their families and the community.

- Respondents expressed different feelings as to whether probation services should be a specialised independent field or it should remain as it is now (under the department of Welfare). Both arguments in favour of and against specialisation were interesting. However, it can be concluded that the present situation of probation officers falling under the department of Welfare seems to be more practical and somehow acceptable at this stage. This is based on the fact that slightly more than half of the respondents mentioned that they are not bothered by the lack of opportunities. However, for long term purposes, it would be advantageous if this field could be independent so that it can be developed further.

5.3. RECOMMENDATIONS.

It follows from the above conclusions, that the following issues which the researcher and the respondents view as crucial, need to be attended to by the management of the department of Welfare as well as policy formulators. Some of these issues need further research so that they could be explored in greater detail.

5.3.1. Legislation.

- It is recommended that the Department of Welfare should take a leading role to facilitate and ensure that the proposed Youth Justice legislation is enacted by Parliament, so that it can be implemented by all the relevant role players working with young persons including probation officers. It is believed that the implementation of this Act will address some of the challenges facing probation officers, which were discussed in this chapter under 5.2.1.

5.3.2. Programmes offered to young persons.

- It is recommended that the different diversion programmes offered by probation officers to young persons, which were identified in this chapter under 5.2.2, should be continued. Continuous evaluation and some improvements in certain aspects of these

programmes is also recommended like flexibility in terms of the number of youths to be included in YES programme and availability of educational video programmes.

5.3.3. Training.

- It is recommended that probation officers and their supervisors be thoroughly trained on legislation so that they can better understand the legal process, terminology and all the relevant Acts. Specific training on the proposed Child Justice Bill, which is believed to be more comprehensive, should be conducted immediately after being passed as an Act. Joint and separate trainings for personnel like probation officers, police, magistrates and prosecutors on the Bill should be conducted so as to promote common understanding and co - operation at the implementation phase.
- Structured, comprehensive and continuous in - service training on probation work with young persons in general, is also recommended for probation officers so as to keep up the high level of motivation.

5.3.4. Resources.

- It is recommended that at least one additional probation officer per district be employed by the department of Welfare so that there can be two probation officers. This would lessen the burden of workload on the existing staff as well as contribute to improved service delivery to young persons. It is also believed that more time would be spent on

crime prevention programmes in the communities according to the new paradigm shift emphasized in the White paper for Social Welfare (1997: 59); and in the Financing policy for Developmental Social Welfare Services (1999: 12).

- It is also recommended that at least one vehicle per district be allocated by the department of Welfare, specifically for probation services only.

5.3.5. Supervision.

- It is recommended that the department of Welfare should set up guidelines on how supervision of probation officers should be structured. As soon as supervisors are trained on probation work, constant and adequate supervision should be implemented immediately since there is none presently in this region. This is needed more for purposes of providing moral support as well as professional guidance to probation officers who are relatively new in both fields of social work and probation.

5.3.6. Future research.

It is recommended that further research in the field of probation services with young persons, be conducted by other interested researchers as well as social work students. It is advisable that such research should focus on the following aspects:

- Explore how young persons perceive the intervention of probation officers through the various programmes mentioned under 5.2.2 at the statutory level of intervention. Focus on young persons who have been involved in these programmes.
- It also came out from this study that the core major role players when dealing with young persons are probation officers (Welfare), police (SAPS), magistrates and prosecutors (Justice). It would be interesting if another research could focus on the perceptions and experiences of these three departments regarding co - operation of each other when dealing with young persons.
- Although the main finding of this study on resources, focused on personnel and transport, it is recommended that further research be conducted to explore other resources available or needed by probation officers like telephones, offices, information technology and any other relevant resources.

5.4. CONCLUDING REMARKS.

Even though the sample was small, this study aimed at exploring the "challenges facing probation officers working with young persons in conflict with the law". It can be said that this aim was achieved as valuable information has been gathered although it is limited and therefore cannot be generalised. The researcher believes that this study has laid a foundation for future research.

A number of challenges have been identified which need to be addressed by the department of Welfare, so that the child and youth care system can be successfully transformed for the benefit of all children.

A copy of this document will be made available to all probation officers as well as to the provincial department of Welfare, so that they could be encouraged to implement some of these recommendations which could contribute to the development of probation services.

The document will also be available for use by other interested individuals and organisations that are involved in the transformation of the child and youth care system in South Africa.

BIBLIOGRAPHY

- Babbie E.** 1998 (8th edition). The practice of social research. Johannesburg: Wadsworth.
- Baldry A C.** 1998. Victim - offender mediation in Italian juvenile justice system: the role of the social worker. The British Journal of social work, 28 (5): 738 - 741. United Kingdom: Oxford University Press.
- Bazemore G & Terry W C.** 1997. Child welfare: Journal of policy, practice and program: developing delinquent youths: a re - integrative model for rehabilitation and a new role for the juvenile justice system. xxvi (5): 696 - 697. Washington: Child Welfare League of America.
- Blaxter L, Hughes C & Tight M.** 1996. How to conduct social research. Buckingham: Open University.
- Bless C & Higson - Smith H C.** 1995 (2nd edition). Fundamentals of social research methods: an African perspective. Cape Town: Juta & Co.
- Bosman - Swanepoel H M & Wessels P J.** 1995. A practical approach to the Child Care Act. Pretoria: Digma.
- Child Care Act, 74 of 1983 (as amended)**. Pretoria: Government Printer.
- Community law centre.** 1997. Children in prison in South Africa: a situational analysis. Cape Town: University of Western Cape.
- Community law centre.** 1993. Report of the international seminar on children in trouble with the law. Cape Town: Esquire Press.
- Constitution of the Republic of South Africa Act, 108 of 1996**. Pretoria: Government Printer.
- Correctional Services Act, 8 of 1959**. Pretoria: Government Printer.

Criminal Procedure Act, 51 of 1977. Pretoria: Government Printer.

Eastern Cape. Department of Welfare (Eastern region). Monthly reports for 1998 / 99 financial year. Unpublished.

Eastern Cape epidemiological notes. 1999 1(5): 8. Bisho: Department of Health.

Ezell M. 1992. Juvenile diversion: the ongoing search for alternatives, in Juvenile justice and public policy: toward a national agenda, edited by I M Schwartz. New York: Lexington.

Friedman B D. 1998. The research tool kit: putting it all together. U S A: Brooks / Cole.

Gochros H L. 1981. Research interviewing, in Social work research and evaluation, edited by Grinnel R M. Illinois: Peacock.

Grinnel R M. 1988 (3rd edition). Social work research and evaluation. Illinois: Peacock.

Guasch M. 1995. Juvenile justice in Spain. Catalonia at the vanguard in socio - educative intervention for young offenders. The British Journal of Social Work. 25: 509 - 510. United Kingdom: Oxford University Press.

Hamai K & Ville' R. 1995. Probation as a profession, in Probation round the world: a comparative study, edited by K Hamok, R Harris, M Hough & U Zvekic. London: Routledge.

Haines K & Drakeford M. 1998. Young people and youth justice. London: Macmillan.

Hakim C. 1997. Research design: strategies and choices in the design of social research. New York: Routledge.

Judd C M, Smith E R & Kidder L H. 1991 (6th edition). Research methods in social relations. Philadelphia: Harcourt Brace Jovanovich.

Mason J. 1996. Qualitative researching. London: SAGE.

Marlow C. 1998 (2nd edition). Research methods for generalist social work. U S A: Brooks / Cole.

New Dictionary of social work. 1995 (Revised & comprehensive edition). Cape Town: CTP Book Printers.

Pitts J. 1990. Working with young offenders. London: Macmillan.

Probation Services Act, 116 of 1991. Pretoria: Government Printer.

Redgrave T. 1999 (March). New Zealand's youth justice revolution, in Reader's digest. Cape Town: The Reader's Digest Association of South Africa.

Rubin A & Babbie E. 1997 (3rd edition). Research methods for social work. U S A: Brooks / Cole.

Rubin H J & Rubin I S. 1995. Qualitative interviewing: the art of hearing data. California: Sage Publications.

Saltzman A & Proch K. 1990. Law in social work practice. Chicago: Nelson - Hall.

Schmallegger F. 1995 (3rd edition). Criminal justice today: an introductory text for the 21st century. Englewood Cliffs: Prentice Hall.

Schroeder L O. 1995 (revised edition). The legal environment of social work. Washington: NASW.

Skelton A. 1997. Children, young persons and the criminal procedure, in The law of children and young persons in South Africa, edited by J A Robinson. Durban: Butterworths.

Skelton A. 1998. Children accused of crimes, in Children and the law. Pietermaritzburg: Lawyers for Human Rights.

South Africa. Department of Welfare. 1999. Financing policy for developmental Social Welfare services. Pretoria: Government Printer.

South Africa. Department of Welfare. 1994 (1) (2nd edition). Manual for probation services. Pretoria: Department of Welfare.

South Africa. Department of Welfare. 1997. White paper for Social Welfare. Pretoria: Government Printer.

South Africa. First supplementary report to the United Nations convention on the rights of the child. 1999. Cape Town: CTP Book Printers.

South Africa. Initial country report to the United Nations convention on the rights of the child. 1997. Cape Town: CTP Book Printers.

South Africa. Inter - ministerial committee on young people at risk. 1996 (a). In whose best interests: report on places of safety, schools of industry and reform schools. Pretoria: Promedia.

South Africa. Inter - ministerial committee on young people at risk. 1996 (b). Interim policy recommendations. Pretoria: Promedia.

South Africa. Inter - ministerial committee on young people at risk. 1998. Report on pilot projects. Pretoria: IMC on young people at risk.

South Africa. Juvenile justice for South Africa: proposals for policy and legislative change. 1994. Cape Town: Juvenile Justice Drafting Consultancy.

Terblanche S S. 1999. The guide to sentencing in South Africa. Durban: Butterworths.

United Nations convention on the rights of the child, in Basic human rights instruments. 1995 (2nd edition). Geneva: United Nations Center for Human Rights.

United Nations standard minimum rules for the administration of juvenile justice (The Beijing Rules). 1986. New York: Department of Public Information.

Yegidis B L & Weinbach R W. 1991. Research methods for social workers. New York: Longman.

APPENDIX " A "

INTERVIEW SCHEDULE

BIOGRAPHICAL INFORMATION:

Name of office:

Number of probation officers in your district:

Number of years as a probation officer:

SECTION A: LEGISLATION.

1. According to your opinion, which Acts / Statutes deal with young persons in conflict with the law in South Africa?

.....
.....
.....

2. Which of these Acts do you mostly make use of when making recommendations to the court in respect of young persons in conflict with the law?

.....
.....
.....

3. What factors do you take into consideration when deciding which Act(s) to use?

.....
.....
.....

4. According to your opinion, does the present legislation address the following categories of young persons in conflict with the law?

- Youths who have committed petty offences YES / NO
- Youths who have committed serious offences YES / NO

5. If no, to any of the above describe why not.

.....
.....
.....

6. What are the strengths of the current Statutes that you are using?

.....
.....
.....

7. What are the problems you are experiencing regarding the present Statutes?

.....
.....
.....

8. What recommendations do you have, if any, regarding Youth Justice Legislation in South Africa?

.....
.....
.....

SECTION B: PROGRAMMES FOR YOUNG PERSONS IN CONFLICT WITH THE LAW.

9. Of the following types of programmes, which one/s do you offer to young persons in conflict with the law?

- Diversion
- Victim - offender mediation
- Family group conferencing
- Other

10. Which programme/s do you recommend most from the above?

.....
.....
.....

11. Describe why you prefer the programme/s that you mostly recommend?

.....
.....
.....

12. What are the reasons for not using others?

.....
.....
.....

13. How many youths were reached through these programmes during the 1998 / 99 financial year?

.....
.....

14. Do you get referrals from the court in respect of young persons who have committed serious offences classified under schedule 1?

YES

NO

15. If yes, do you have special programmes for those children?

.....

16. Briefly explain the nature of programmes referred to above.

.....

.....

.....

17. Generally, how long does the criminal justice system take to process the case of a young person in conflict with the law who has committed a petty offence?

.....

.....

18. Generally, how long does the criminal justice system take to process the case of a young person who has committed a serious offence?

.....

.....

19. If there are any delays, what factors contribute to cases taking longer than three months to be finalized?

.....

.....

.....

20. What recommendations do you have, if any, with regard to programmes offered to young persons in conflict with the law?

.....

.....

.....

21. Describe your understanding of the role of inter - sectoral approach when dealing with young persons in conflict with the law?

.....
.....
.....

22. Does it work in your situation?

YES

NO

23. If yes, describe how?

.....
.....
.....

24. What recommendations do you have, if any, with regard to the role of inter - sectoral approach?

.....
.....
.....

SECTION C: HUMAN RESOURCE NEEDS AND DEVELOPMENT.

(a) Human Resources.

25. Do you render probation services only or are you also performing other social work services?

- Probation services only
- Other social work services

26. If you are also doing other social work services, how much time is spent on that per month?

.....
.....

27. What is the average caseload per probation officer per month?

.....
.....

28. What was the total caseload during the 1998 / 99 financial year?

.....
.....

29. Do you render any crime prevention programmes to the community?

YES

NO

30. If yes, describe how much time is spent when conducting a programme.

.....
.....
.....

31. How frequently are these programmes offered per month?

.....
.....
.....

32. Considering the above-mentioned workload, would you say there is a need for more probation officers in your district?

YES

NO

33. If yes, please motivate.

.....
.....
.....

34. What recommendations do you have, if any, regarding human resources?

.....
.....
.....

(b) Training.

35. According to your opinion, do you think that probation work should be a registered field of specialisation?

YES

NO

36. If yes, explain why?

.....
.....
.....

37. Should probation officers be social workers only?

YES

NO

38. If yes, explain why?

.....
.....
.....

39. If no, who else could be a probation officer?

.....
.....
.....

40. Have you received any training on probation work in relation to young persons in conflict with the law?

YES

NO

41. If yes, when was the training?

.....

42. How long was the training?

.....

43. What was the focus area/s of the training?

.....

44. Explain how relevant / implementable was the training to your situation?

.....
.....
.....

45. With the training that you received, would you say that you are adequately equipped to work with young persons in conflict with the law?

YES

NO

46. What recommendations do you have, if any, with regard to training (mention focus areas)?

.....
.....
.....

SECTION D: PROBATION OFFICERS' FEELINGS TOWARDS WORKING WITH YOUNG PERSONS IN CONFLICT WITH THE LAW.

47. How did you become a probation officer?

- Applied for the job
- Nominated by Head Office
- Volunteered in the office
- Other

48. Describe generally how you feel about your work as a probation officer?

.....
.....
.....

49. From the evaluations that you receive from young persons and their families, do you feel that your intervention has a positive impact on young persons in conflict with the law?

- YES
- NO
- SOMETIMES
- DO NOT KNOW

50. If yes, please elaborate by giving examples.

.....
.....
.....

51. What promotion opportunities are available for probation officers within the Department of Welfare?

.....
.....

52. Describe how you feel about this?

.....
.....
.....

53. What recommendations do you have, if any, regarding probation services in general in South Africa?

.....
.....
.....

APPENDIX " B "

APPLICATION TO THE DEPARTMENT OF WELFARE

12 NQADU ROAD
HILLCREST EXTENSION
UMTATA
5100
15 FEBRUARY 1999

TO: THE REGIONAL DIRECTOR
DEPARTMENT OF WELFARE
UMTATA

DEAR SIR / MADAM

**APPLICATION TO CONDUCT AN ACADEMIC RESEARCH IN THE
EASTERN REGION.**

I hereby apply to be granted permission to conduct an academic research at welfare government agencies in the Eastern Region.

I am currently registered with Rhodes University - East London campus, for a Master's Degree in Social Work. One of the requirements for the degree is that a student should conduct a research project in order to fulfill the requirements for the degree.

I have chosen to include social workers who are probation officers in my sample as subjects because my research topic reads as follows: "**Challenges facing probation officers working with young persons in conflict with the law**".

I hope that my application will receive your favourable consideration.

Yours faithfully

NOBUBELE VOLSAK

APPENDIX "C"

APPROVAL FROM THE DEPARTMENT OF WELFARE

Department of Welfare

Private Bag x 6000

Umtata

5100

14 May 1999

Enquiries: Ms Koto

Tel: 047 - 5312366 / 5312375

Ms N Volsak

Department of Welfare

Mqanduli

Dear Miss Volsak

APPLICATION TO CONDUCT RESEARCH: YOURSELF

Your request to conduct an academic research has been received and is hereby approved.

The Region takes this opportunity to wish you success in your studies.

V N TITUS

REGIONAL DIRECTOR: WELFARE

APPENDIX "D"

MAP OF THE EASTERN CAPE PROVINCE



□ Magisterial districts

