

# CHILD JUSTICE IN PRACTICE

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## The diversion of young offenders

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*South Africa's democratic transition ushered in a new era in child justice reform efforts. The Child Justice Act 75 of 2008 is arguably one of the best pieces of child justice legislation in the world. A central objective of the Act is to encourage the diversion of young offenders away from formal court procedures, giving children the opportunity to express their views on the circumstances of their offending behaviour. An intriguing issue remains the introspection of children themselves on their behaviour and how they are being dealt with by the justice system. This article reports on a preliminary analysis of feedback from children who were diverted to a particular diversion programme, to determine key reasons for youth offending behaviour and to understand their engagement with the diversion process and the diversion programme itself. The many intersecting risk factors at the individual, relationship, community and societal levels that are likely to impact on a child's likelihood of engaging in anti-social or criminal behaviour, are also highlighted.*

Responses to child and youth offending have gradually moved from punishing and incarcerating youngsters to a 'new penology'; concerned with the prediction of risk through 'identification, classification, and managing unruly groups'.<sup>1</sup> In fact, 'the growing importance and visibility of risk-orientated thinking and practice can be seen across the whole of the criminal justice system'.<sup>2</sup>

South African children are exposed to a number of risk factors.<sup>3</sup> As a result of intergenerational poverty and unemployment, caused by little or no education, children grow up in communities characterised by violence, crime and weak social cohesion.<sup>4</sup> Extensive international research has shown that exposure to violence and crime at a young age within the home, school and community environments, including acts of

personal victimisation, is likely to impact significantly on the individual's likelihood of engaging in anti-social or criminal behaviour at a later stage in life. Young people who are exposed to such incidents of violence within their communities and homes are also at greater risk of victimisation themselves.<sup>5</sup> Young males are more at risk of becoming victims of crime and violence, with almost one out of two (46%) males reporting victimisation, compared to 37% of young females.<sup>6</sup>

The long term and deep poverty in which many children grow up is part of a 'range of contextual drivers' to anti-social and violent conduct in young people.<sup>7</sup> Not only does poverty exacerbate the effect of other risk factors such as exposure to violent subcultures<sup>8</sup> and substance abuse, it may also increase the likelihood of youth turning to crime in order to 'redress the exclusion felt through not having material goods that define social inclusion'.<sup>9</sup>

It is imperative that the criminal justice system, when dealing with children in conflict with the law,

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recognises the realities facing children in South Africa and responds by placing greater emphasis on programmatic interventions that address the risks that children are exposed to in their communities.

## DIVERSION AND RESTORATIVE JUSTICE

The Child Justice Act 75 of 2008 (hereinafter referred to as the Act) has a strong restorative justice ethos and provides the framework for a criminal justice system specifically geared towards children in conflict with the law. Restorative justice is defined in the Act as ‘an approach to justice that aims to involve the child offender, the victim, the families concerned, and community members to collectively identify and address harms, needs and obligations through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation.’<sup>10</sup> Therefore, to be in line with the objectives of the Act, diversion programmes should include a restorative justice element that aims to heal relationships. This should include the relationship with the victim and or his/her family so as to ensure that the child understands the impact of his or her behaviour on others, including the victim(s) of the offence, and should, where possible, involve parents, appropriate adults, or guardians.

Not only does diversion seek to refer cases away from the formal criminal court procedure in order to protect children from the negative effects of the criminal justice system, it is also one way of managing children ‘at risk’. By assessing the child at the pre-trial assessment, the court is able to decide on the best diversion option for that child; keeping in mind the best interest of the child. Restorative justice-influenced reforms offer the prospect of a ‘more participatory and deliberative form of youth justice’,<sup>11</sup> whilst encouraging children to take responsibility for their actions and make amends for the crime committed.<sup>12</sup>

The objectives of diversion are clearly set out in the Act<sup>13</sup> and include the following: encouraging

the child to take responsibility, promoting reintegration, preventing stigmatisation and reducing the chances of recidivism. Diversion can be achieved at four levels: Firstly, prosecutorial diversion (for minor offences),<sup>14</sup> after the pre-trial assessment is conducted,<sup>15</sup> at the preliminary inquiry,<sup>16</sup> as well as during the trial in a child justice court.<sup>17</sup> The Act also sets out a number of diversion options,<sup>18</sup> including monitoring of a diversion option,<sup>19</sup> a diversion register,<sup>20</sup> and accreditation of diversion programmes.<sup>21</sup>

The Act applies to all criminal offences. However, it divides them into three schedules, depending on the seriousness of the offences. Schedule 1 contains the least serious offences and Schedule 3 the most serious offences.<sup>22</sup> These schedules then have different implications for children. For instance, children charged with Schedule 3 offences (the most serious) can only be diverted in exceptional circumstances. If a child is charged with more than one offence and these are all dealt with in the same criminal proceedings, the most serious offence will guide the manner in which the child must be dealt with.<sup>23</sup> Diversion may even be considered in suitable cases where a child offender has a record of previous diversions.<sup>24</sup>

Most specific to this discussion are the provisions relating to diversion at the pre-trial stage of child justice processes.<sup>25</sup> It is usually at the assessment and preliminary inquiry phase that the diversion determination is made. Every child accused of committing an offence is required to undergo an assessment, which assists investigators and prosecutors in deciding on the best treatment for the child. With the help of social workers (probation officers), the age of a child can be assessed and unique recommendations formulated, keeping in mind the ‘best interest of the child.’<sup>26</sup> The prosecutor can dispense with the assessment if it is in the best interests of the child; in which case the reasons for dispensing with the assessment must be recorded. A prosecutor can decide to divert if the matter is a Schedule 1 offence and a level 1 diversion option, and the matter then proceeds no further. The decision to divert will be referred to a magistrate in chambers, who will make the diversion an order of the court.<sup>27</sup>

However, if a case is not diverted by the prosecutor it proceeds to a preliminary inquiry, where a decision to divert can also be taken. In all cases, a matter may only be diverted if the child acknowledges responsibility for the offence; the child has not been unduly influenced to acknowledge responsibility; there is a prima facie case against the child; and the prosecutor indicates that the matter may be diverted.

Where a child is charged with a schedule 3 offence, the Director of Public Prosecutions (DPP) must agree to the diversion. In the case of schedule 2 and 3 offences the views of the victim, or any person who has a direct interest in the affairs of the victim, and the police official responsible for the investigation of the matter should be taken into account, where it is reasonably possible to do so. Other considerations include, inter alia, the seriousness of the offence and whether the child has a record of previous diversions.<sup>28</sup> In practical terms, diversion is also dependent on the availability of appropriate diversion programmes, and the presence of an NGO service provider for these programmes near the child's home.

Ideally the diversion programme should be 'restorative' in nature, where both victims and offenders are given the opportunity to participate in a restorative process, such as victim offender mediation or victim offender conferencing. However, not all diversion programmes are fully restorative in nature. In order to determine 'restorativeness', various factors are taken into consideration, namely; does it address harms and causes? Is it victim oriented? Are offenders encouraged to take responsibility for their actions? Are all stakeholder groups involved? Is there an opportunity for dialogue and participatory decision making? Is it respectful to all parties? While the central objective of diversion is to encourage children to take responsibility for the harm caused by their actions, thereby promoting the integration of the child back into the family and community, it also creates an opportunity for them to talk about the circumstances surrounding their offending behaviour.

The Act states that all diversion programmes should be 'structured in a way that their effectiveness can be measured'. Thus, service providers are expected to ensure that quality assurance takes place through the effective monitoring and evaluation of programmes. This preliminary study sought to examine the documentary records of children diverted to a specific diversion programme run by Khulisa, in Pinetown, Durban, in order to draw conclusions about, inter alia, the children participating in the diversion programme, their offences, their experiences of the diversion programme, and the efficiency and effectiveness of the programme.

## METHODOLOGY

The nature, scope and challenges associated with youth diversion in this country have been widely researched and written about.<sup>29</sup> This preliminary study, in which documentary records of children diverted to Khulisa's<sup>30</sup> 'Positively Cool' diversion programme were analysed, was conducted in June 2010.<sup>31</sup> A profile of the children was compiled from documentary/statistical information in 'divertee' case files at Khulisa's regional office in Pinetown. Triangulation was achieved through semi-structured interviews with two key informants; the diversion manager and the diversion programme facilitator of the programme. All identifying information, such as the names and addresses of the children, was deleted to protect the identity of the children and maintain anonymity and confidentiality. Due to the unobtrusive nature of the research, the data collection process did not affect the integrity of the data collected, and uniformity and objectivity was maintained in all cases. Both quantitative and qualitative content analysis was utilised to categorise and unravel textual recordings in 'divertee' case files.

A purposive, non-probability sampling technique was adopted. Only children who had committed Schedule 1 and Schedule 2 offences and had been diverted by prosecutors from the Pinetown Court to the 'Positively Cool' diversion programme between 1st April 2009 and 30th September 2009, were included. This programme deals with youth between the ages of 14 and 18 years. One or more

of the following outcomes are expected of each programme: development of self-awareness, development of self-management skills, building self-esteem and self-image, replacing negative behaviour with positive behaviour, understanding the impact of behaviour on self and other people, rebuilding of damaged relationships in the community, and empowering self in peer relationships.

The facilitator is responsible for facilitating the diversion programme sessions, providing mentoring to the youth, and supporting the youth and his/her family by looking at what impact the diversion programme has had on the child. At the outset, both the child and his/her parents are interviewed in order to establish the needs of the child. Once this information is available to the facilitators, they complete a pre-programme assessment. The children also complete a pre and post behaviour assessment in order to establish whether or not behaviour changes have resulted due to the programme. Information on the participants' age, gender, level of education, and type of offence was extracted from the files, providing us with a profile of the children. Children's views and experiences, as recorded by the diversion facilitator, were also accessed from the files.

Six months after the completion of the programme, the facilitator makes telephonic contact with the family members and/or children to inquire about the children's progress. In this instance the last follow-up call would therefore have taken place by March 2010. This feedback is then recorded and captured in the offender files. Information on reoffending and whether or not the programme had an impact (if any) on the children's behaviour was accessed from these written records of the feedback from these calls (as recorded by the facilitator), as well as from face-to-face interviews with the manager and facilitator. These individuals provided further valuable insights on the impact of the diversion programme.

As highlighted in the discussion below, a major impediment in this study was incomplete record

keeping by the service provider, and in many instances important information was missing from the records.

## RESEARCH FINDINGS AND DISCUSSION

Fifty-four youth offenders were referred to the programme between 1 April 2009 and 30 September 2009. The oldest was 18 and the youngest only 13 years of age at the time of diversion. The mean age of the children was 15,5 years. While the children's educational levels and grades ranged from grade 5 to 12, most children were in grade 9 (n=10), grade 10 (n=12), grade 11 (n=5) and grade 12 (n=8) at the time of their offence. Interestingly, eight children were not in school, either temporarily or permanently. Textual

**Table 1:** A profile of the children in the Khulisa study

Demographic profile of children	Data set	Percentage
Number of cases	54	100
Number of perpetrators	54	100
<b>Age distribution</b>		
13 yrs	3	05,56
14 yrs	7	12,96
15 yrs	11	20,37
16 yrs	18	33,33
17 yrs	13	24,07
18 yrs	2	03,70
<b>Gender</b>		
Male	35	64,81
Female	19	35,19
<b>Current school grades</b>		
5	1	01,85
6	1	01,85
7	1	01,85
8	6	11,11
9	10	18,52
10	12	22,22
11	5	09,26
12	8	14,81
Not in school	8	14,81
Technical school	1	01,85
Unknown	1	01,85
<b>Types of offences</b>		
Assault	5	09,26
Assault (GBH)	7	12,96
Theft	33	61,11
Housebreaking	2	03,70
Drug-related crimes	6	11,11
Crimen injuria	1	01,85
<b>Classification of offences</b>		
Minor	22	40,74
Moderate	30	55,56
Serious	2	03,70

information was analysed according to the following themes: The child and the offence; family life and relationships; the impact of diversion; compliance; and programme evaluation.

## The child and the offence

Most referrals were for theft (n= 33), followed by assault with intent to do grievous bodily harm (GBH) (n=7) and common assault (n=5). Six children were involved in drug-related crimes, and two in housebreaking. For the majority of the children this had been their first offence; making them ideal candidates for diversion. Five children were repeat offenders but it was not apparent whether they had participated in a diversion programme on a previous occasion or not.

A prerequisite for diversion is that the child acknowledges responsibility for the offence. The majority of the children (n=43) accepted responsibility for their actions, with many expressing remorse for their actions: *'Yes, if I can turn back the hands of time, I wouldn't have done what I did.'* Only one child did not accept responsibility. The issue of accepting responsibility was not clearly indicated in the files of ten children.

Only nine children admitted to being addicted to some form of substance. The majority of children used alcohol and cigarettes. According to the facilitator, children sometimes arrived under the influence of alcohol and missed out on valuable lessons taught during the sessions.

Money and money-related issues was another popular reason for involvement in crime. Some of the reasons cited for stealing included unemployment of parents, hunger and to 'buy school shoes'.

Five children admitted that they were provoked and reacted in anger. Of these, three claimed that they were accused of stealing and ended up fighting, while another (who stabbed his friend with a nail clipper), claimed that he did it out of anger. Another child who was in a fight with a group of boys claimed that they were provoked and acted in 'self-defence'.

## Family life and relationships

Family environment is one of the most important influences on the psychosocial development of young people.<sup>32</sup> At least half of the children said they had a good relationship with their families and extended families. Eight children described their relationships with their parents or guardians as strong, and had realised how their crime had affected not only themselves, but also those closest to them. Only three children described their relationship as poor, and another four said their relationship was 'average'. In the case of twelve children, this information was not available. However, in the majority of cases (n=17) the children came from homes where parents were divorced, single, or had never married, while in seven cases one or both parents had died. Again, this information was missing in seventeen cases.

Twenty-two of the forty-two children said that they wanted to change either themselves and their behaviour or their relationships with their families and friends. Many children wanted to *'be a better person'* and to make their families proud. One child even wrote that she wanted to change her bad behaviour and *'learn harder'*, while others said that they want to be *'a good friend to rely on'* and *'a good listener'*. One child, who was adopted, said that he wanted 'different parents'.

Ten children admitted falling prey to peer pressure from their friends. This is not surprising, since deviant youth seek out other deviant youth, and the greater the exposure the youth has to deviant peers, the more likely s/he is to be influenced negatively by them. Some children realised that their friends can be a bad influence on them and said they want to 'change friends'. One child said that his three wishes were to *'quit being a criminal, quit having bad friends and quit smoking.'* Quite a few children also mentioned how they would like to get closer to God.

The school environment plays a major role in the lives of children; not only in the development of their self-esteem but also profoundly influencing their hopes and dreams. At least 30 children had a positive attitude towards school and said that they

enjoy school and learning new things. Only four children had a negative attitude towards school, claiming that they disliked school, the teachers, and just school life in general. For 20 of the children this information was not available. Of the 46 children that were still schooling, 25 had never failed a grade, and were doing relatively well in school. However, the majority of the children had failed grades at school. In one case, a 13-year old child was still in Grade 5.

## The impact of diversion

The diversion programme facilitator is responsible for making follow-up calls to parents and/or family members to ascertain if, and in what way, the programme has impacted on the child's behaviour; and whether or not the child's behaviour has improved, remained the same or deteriorated.

The majority of the children (n=43) were able to sustain the positive outcomes of the programme during the six months since participation in the programme. Deterioration in behaviour was noted in the cases of two children. Both children were female, black, had committed theft, were 16 and 17 years old and came from poorer areas such as Hammersdale and Chesterville (urban townships). Both children came from incomplete families where the parents were either single or had never married, and both parents reacted with punishment to their child's offence. Of the children that could be reached, the majority had not reoffended. According to the facilitator this meant that these children had not committed any further offences and had not come into conflict with the law since attending the programme. Four children and/or their families could not be reached to ascertain this fact.

## Compliance

Attendance and participation is compulsory for all the children. Forty-two children (out of 54) attended and participated well in the programme, going on to graduate from the programme. Of the 12 children that did not complete the programme, one child was referred to another programme to complete the sessions he had missed, and 11

children did not complete the programme. These children displayed very poor attendance or no attendance, showed a lack of interest, and some didn't attend the programme at all. These files were closed and their cases referred back to court. According to both the manager and facilitator, some of the reasons for non-compliance included non-interest, bus strikes (inability to attend), and dishonesty. Some children do not complete the programme because of transport costs. However, even where children were given money for transport, some still did not attend. This may be due to a lack of commitment and interest, and the fact that at the beginning of the court process, the case against the child is withdrawn. Thus there is no compulsion to complete the programme. Although children are warned of the consequences of not attending and completing the programme, in some cases the child's full commitment is lacking.

## Programme evaluation

Interviews with the facilitator revealed that Khulisa uses both short term and 'long' term evaluation. Short term evaluation is based on the child's attendance, homework, involvement in group discussions, and their overall interactions. Once the follow-up calls are made, the facilitator will tick one of three options: reoffended, deteriorated or improved. She explained that she often went beyond what the diversion manual prescribes and would give the children little 'tasks' to do at home.

I normally ask the children to do just little acts of gratitude at home, you know, make your mom some coffee, just wash the windows, just once off and see what the reaction will be. So once they've done that, they come back to class and we say to them okay 'share how that made you feel, don't you want to feel like that forever, like all the time? That means you must keep doing this...' The children are aware that these little 'tasks' are not a part of the programme and that they won't be punished for not doing them. In some instances the children will come to the session the next day and say; 'you know, I tried that, I made my mom coffee and she was so happy that she gave me five rands'.

The facilitator further explained that this is how she is able to measure the impact; 'they want to feel special, they want to feel loved, so it's up to them what they want to do, over and above the programme.'

Internal 'long' term evaluation takes place only in the form of one or two follow-up calls made by the facilitator four to six months after completion of the programme to ascertain the progress of the children. Parents and/or guardians provide information on the behaviour of the child, the child's school attendance and performance, challenges that parents may be facing, and whether and how the programme has impacted on the child's life. Khulisa only contacts those children that have graduated and thus no information was available on the eleven closed files.

## DISCUSSION

As emphasised by Ward et al in the opening paragraphs of this paper, the discussion below highlights the fact that risk factors act as 'contextual drivers' to anti-social conduct, and that children grow up within 'an ecology of contexts where smaller more intimate contexts such as family and school are nested within larger contexts such as neighbourhood'.<sup>33</sup> Family and community factors also intersect with the levels of violence occurring at schools. Results from the 2012 National School Violence Survey highlight the extent to which this happens; showing that by the time young people enter secondary school many of them have already been exposed to violence, either as victims or witnesses, in their homes or communities.<sup>34</sup>

The findings indicate that the majority of the child offenders referred to the programme are male, isiZulu speaking,<sup>35</sup> in Grade 10, and come from a poor socio-economic and disadvantaged background. They reside in areas plagued by widespread poverty, unemployment, a high prevalence of HIV infection, crime, abuse, domestic violence, orphaned children, dysfunctional households, low levels of education, and a general lack of support.<sup>36</sup>

One of the most powerful factors in the development of antisocial behaviour is deviant peer influences, which can affect an adolescent both directly and indirectly. In the case of direct peer pressure, children are coerced into taking risks. Due to the fear of rejection, or the desire for peer approval, the child will be indirectly influenced by his or her peers. 'The peer group can be enormously powerful in transmitting culture, values, and norms that influence behaviour.'<sup>37</sup> At least ten children admitted to falling prey to negative peer influences.

Non-compliance of diversion orders is a major challenge to the implementation of diversion programmes, and is plagued by inconsistency and uncertainty. The study found that at least 11 children displayed very poor attendance or no attendance, showed a lack of interest, and that some didn't attend the programme at all. This is a cause for concern, especially in the light of the fact that the Act is specific on compliance and the procedures to be followed in cases where compliance is lacking.<sup>38</sup>

However, the lack of commitment of children must be seen against certain problems in the way the system deals with non-compliance. A recent research report<sup>39</sup> highlighted a number of challenges experienced by diversion service providers, due to the lack of uniformity in the official forms used by the courts and inconsistencies among presiding officers and/or prosecutors who deal with diversion matters. This may be due to a lack of commitment and interest on the part of court officials. Some courts withdraw the charges before the child can attend the diversion programmes and others withdraw the charges after successful completion of the programme. Some courts require reports on completion of diversion programmes and others just want to know whether the child was compliant or not. Some courts are not even interested in whether the child complied with the diversion order or not. Some courts want the child to come back to court after completion of the programme, and others close the file once the child is diverted. Therefore, service providers also tend to be lax in emphasising and monitoring compliance.

The Act has a strong restorative ethos, and diversion programmes are just one of many mechanisms through which restorative values and practices may be incorporated. In order to determine whether or not a programme or process is restorative, practitioners and scholars refer to and make use of a 'continuum' of restorative justice. In so doing, they are able to declare a programme to be less or more restorative. Thus, if a diversion programme addresses the harms and causes of the offence, and encourages the offenders to take responsibility, but ignores the victims of the crime, it can be said that the programme is 'potentially' or 'partially restorative'.<sup>40</sup> The 'Positively Cool' diversion programme answers 'yes' to three of these questions. It addresses the harms and causes, encourages the child to take responsibility, and provides the child with an opportunity for dialogue and participatory decision-making. However, the involvement of the victim is minimal or non-existent. This means that all parties are not involved in the decision-making process, and thus the programme can only be described as 'partially restorative'.

## RECOMMENDATIONS

Recent research indicates that 'good [outcome] evaluation practice is lacking in South African programmes'.<sup>41</sup> As was evident in this study, service providers tend to not pay much attention to an evidence-based approach to programme delivery, and do not put in place adequate mechanisms whereby the efficiency and effectiveness of the programme can be properly measured. It is extremely difficult to effectively monitor and evaluate diversion programmes if accurate and reliable statistics are not available. In this study, for example, information in the children's files was at times found to be inconsistent and incomplete. This in turn impacts negatively on the service provider's information management systems. It also raises the question whether the integrated information management system as envisaged by the Act<sup>42</sup> has been established and implemented. Role players and decision makers in the child justice sector need accurate and reliable information, not only on the

number of children in the system, but also on their 'pathways', once diverted from the system.

Intake forms and pre and post assessment forms used by service providers, containing information on the child, the crime and his or her background, should be standardised and consistent for all service providers. This would contribute to better record keeping and synergy between government departments and NGO service providers. These should form part of a national data base for court personnel (prosecutors and magistrates) which would lead to better monitoring and evaluation of programmes.

While Khulisa uses both short term and 'long' term evaluation interaction, there are no clear indicators set out to measure success. It is not enough to merely talk to the parents six months after the programme has been completed. In addition to the follow-up calls, face-to-face interviews and assessments with the children and their parents or primary care-givers would go a long way towards understanding how children experienced the programme and whether it has made a difference to their behaviour. This would enable one to obtain a more comprehensive picture of how children themselves experienced the programmes, whether it made a difference in their lives, and how they viewed criminality. Interviews with educators (if the child is in school) on the child's behaviour in school would also provide valuable insights. A more focused and in-depth follow-up process would yield better information, which can be used to strengthen and improve the programme.

An in-depth qualitative study that seeks the opinions and experiences of the children themselves is recommended. In addition, a national comparative study of programmes offered by other service providers would prove to be extremely beneficial in identifying good practice, sharing information and providing guidance for less resourced service providers in the NGO sector. This would lead to a greater understanding of the individual risk factors that contribute to reoffending. Greater support for children through community mentors and/or a buddy system could



go a long way towards providing children with the necessary support to sustain the outcomes of the programme.

Evaluation research in South Africa has utilised mostly non-experimental designs.<sup>43</sup> While some writers view such studies as having absolutely no form of control or comparison and being 'of almost no scientific value',<sup>44</sup> and believe that only a randomised experimental design can provide reliable information on the impact of a programme, there are others that disagree. Even though true randomised experimental designs are seen by some as the best way to determine the impact of a programme, quasi-experimental methods/approaches that have many, but not all, of the attributes of the true experimental design may be seen as a powerful alternative.<sup>45</sup> The choice of method will depend upon the nature of questions being asked, how time consuming it is, and the human and financial resources available, especially in the South African context.<sup>46</sup> While it may be unrealistic to expect service providers to monitor the effectiveness of every diversion programme, they should make a dedicated effort, in collaboration with researchers, to 'conduct a small number of carefully designed outcome studies of different diversion programmes to inform good practice'.<sup>47</sup>

Even though only 11 children did not complete the programme, non-compliance of diversion orders is a major challenge to the implementation of diversion programmes and is plagued by inconsistency and uncertainty.<sup>48</sup> However, this problem may be generated by the system itself, where some children do not feel compelled to complete the programme, since the case is sometimes withdrawn at the beginning of the court process. Although children are warned of the consequences of not attending and completing the programme, in the main the child's full commitment is lacking. Therefore, it may be better to keep the case pending until the child has completed and graduated from the programme, and only withdraw the case if the child shows commitment to the programme, shows genuine remorse, and there is evidence of positive behaviour change.

One of the biggest challenges facing service providers in the youth diversion sector is accessing adequate funding. According to the diversion manager, while the Department of Social Development provides substantial funding for the implementation of diversion programmes, it does not cover operational costs. For this, heavy reliance is placed on international and national donor funding. Funding constraints also impact on the ability of the NGO to attract and retain suitably qualified staff for the development and implementation of programmes.

Another challenge raised by the facilitator was the training of facilitators. Facilitators are usually trained in English, while the majority of children in the programme are isiZulu speaking with 45 out of 54 children (83,3%) speaking isiZulu. In order to retain the quality of the message provided by the programme, it is recommended that cultural and linguistic backgrounds of children be accommodated in the content and delivery of diversion programmes.

## CONCLUSION

The research found that the majority of children that attended the diversion programmes can be considered to be 'at risk' due to the various negative social conditions they find themselves in. As emphasised in the opening paragraphs of this paper, and highlighted in the findings and discussion above, risk factors act as 'contextual drivers' to anti-social conduct, and children grow up within 'an ecology of contexts where smaller more intimate contexts such as family and school are nested within larger contexts such as neighbourhood'.<sup>49</sup> Risk and protective factors 'operate and interact on a number of levels, typically at individual, familial and community levels and in everyday settings where young people interact regularly and frequently'.<sup>50</sup>

The children in this study live in disorganised neighbourhoods where poverty and crime is rife. They perform badly in school, are exposed to negative peer influences, abuse substances, and live in unfavourable conditions where only one parent is working. Despite programmatic

interventions such as diversion programmes, the social conditions that children grow up in and return to on a daily basis, unfortunately remain the same. Sustaining the outcomes of the diversion programmes therefore remains a challenge. Much broader interventions at the individual, relationship, community and societal level, as well as those that specifically address ‘developmental pathways towards anti-social behaviour’,<sup>51</sup> will have to be undertaken simultaneously. Furthermore, South African diversion programmes have some way to go in terms of basing interventions on systemic and ecological approaches, and incorporating adequate programme theory at the programme development stages.<sup>52</sup>

Despite the many challenges facing diversion programmes, they do have the potential to positively influence the behaviour of children and reduce the risk of further exposure to crime, violence and victimisation while the child is in the criminal justice system. However, there is an urgent need for government departments to strengthen the delivery of a wide range of social services, to review the implementation of policies that prioritise the creation of safe environments for young people, and to provide support and interventions for those exposed to ongoing violence and crime. The need for the efficient and rapid implementation of an integrated and coherent youth safety strategy, involving a wide range of relevant stakeholders, cannot be overemphasised.<sup>53</sup>

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## NOTES

1. See M Feeley and J Simon, The New Penology: notes on the emerging strategy of corrections and its implications, *Criminology* (30)(4) (1992), 455.
2. T Newburn, *Criminology*, Willan Publishing: Cullompton, Devon, 2008, 333; See also R Ericson and K Carriere, The

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3. See C Gould, We can't ‘fight’ violence, *The Star*, Thursday, 21 February 2013, 15; See also M Malan, Creating a new normal for SA's men, *Mail & Guardian*, February 22-28, 2013, 7.
4. F Steyn, *Approaches to Diversion of Child Offenders in South Africa: A Comparative analysis of programme theories*, Doctoral Thesis, Faculty of Humanities, Department of Criminology, University of Free State, 2010, 6.
5. See P Burton, Snapshot results of the 2005 National Youth Victimization Survey, Centre for Justice and Crime Prevention, Research Bulletin, No 1, May 2006, 3.
6. Burton, snapshot results, 1.
7. A Dawes, C Ward & A van der Merwe, The development of youth violence: An ecological understanding, in C Ward, A Dawes & A van der Merwe (eds), *Youth Violence: Sources and Solutions in South Africa*, UCT Press, 2012, 53.
8. See A Walsh and C Hemmens, *Introduction to Criminology*, London, Sage, 2011, 362. ‘A subculture of violence is a subculture in which the norms, values, and attitudes of its members legitimize the use of violence to resolve conflicts.’
9. See Ward et al, The development of youth violence: An ecological understanding, 53.
10. J Gallinetti, *Getting to know the Child Justice Act*, The Child Justice Alliance, The Children's Rights Project, Community Law Centre, University of Western Cape, 2009, 14.
11. T Newburn, *Criminology* (2008), 420.
12. J Sloth-Nielson, cited in C J Davel, *Introduction to Child Law in South Africa*, The Rustica Press: Ndabeni, Western Cape, 2000, 420.
13. The Child Justice Act 75 of 2008, Section 51.
14. Child Justice Act, Section 41.
15. Child Justice Act, Section 34.
16. Child Justice Act, Section 52 (1)
17. Child Justice Act, Section 67 (1)
18. Child Justice Act, Section 54.
19. Child Justice Act, Section 57.
20. Child Justice Act, Section 60.
21. Child Justice Act, Section 56.
22. See Appendix B in Gallinetti, *Getting to know the Child Justice Act*, Community Law Centre, University of Western Cape, 2009, 66-67, for a full description of the different types of offences that constitute schedule 1, schedule 2 and schedule 3 offences.
23. Gallinetti, *Getting to know the Child Justice Act*, 16.
24. C Badenhorst, *Second Year of the Child Justice Act Implementation: Dwindling Numbers*, Child Justice Alliance Research Report, The Child Justice Alliance, The Children's Rights Project, Community Law Centre, University of Western Cape, 2012, 3.
25. The Child Justice Act 75 of 2008, Section 34 (1)
26. Child Justice Act, Section 35.
27. Child Justice Act, Section 41.
28. Child Justice Act, Section 52.
29. See A Skelton, Restorative Justice as a framework for juvenile justice reform, A South African Perspective, *British Journal of Criminology*, 42 (2002), 496-513; Gallinetti, *Getting to know the Child Justice Act*; L M Muntingh, Policy Issues in Child Justice, in C Gould (ed) *Criminal*

- (In)justice in South Africa, Institute of Security Studies, Pretoria, 2009.
30. See www.khulisaservices.co.za for a full range of services offered by this national NGO.
  31. See also another study on the same diversion programme delivered in the North-West Province in D van Biljon, C Strydom & A Vermeulen, The Influence of a Diversion Programme on the Psycho-social Functioning of Youth in Conflict with the Law in the North-West Province, *Acta Criminologica*, 24(2) (2011), 75-93.
  32. J J McWhirter, B T McWhirter, E H McWhirter & R J McWhirter, *At Risk Youth: A Comprehensive Response for Counselors, Teachers, Psychologists and Human Service Professionals*, Brooks/Cole, Cengage Learning (2013), 132.
  33. Ward et al, The Development of Youth Violence: An ecological understanding, 54, further emphasize the need to understand risk and anti-social behavior in terms of an ecosystemic model where all the elements are linked and that none can be viewed in isolation. See also Figure 3.1: Established sources of risk for child anti-social behavior.
  34. P Burton & L Leoschut, *School Violence in South Africa*, Results of the 2012 National School Violence Study, Centre for Justice and Crime Prevention, Monograph series, No 12, Cape Town, March 2013, xiii.
  35. The study took part in KwaZulu-Natal, where the majority of children are isiZulu speaking. Therefore this finding should not be taken out of context.
  36. See also Ward et al, The Development of Youth Violence: An ecological understanding, 75.
  37. See McWhirter et al, *At Risk Youth*, 17-18; See also Ward et al, The Development of Youth Violence: An ecological understanding, 73.
  38. See The Child Justice Act 75 of 2008, Section 57.
  39. See C Badenhorst, *Overview of the Implementation of the Child Justice Act, 2008 (act 75 of 2008) Good intentions, questionable outcomes*, Criminal Justice Initiative of Open Society Foundation for South Africa, 2011, 31.
  40. A Skelton & M Batley, *Charting Progress, mapping the future: restorative justice in South Africa*, Institute for Security Studies, Restorative Justice Centre, 2006, 7.
  41. A Dawes & A van der Merwe, Interventions for young offenders: What we know about what 'works' in diversion programmes, in Ward et al (eds), 363, criticise South African diversion programmes for not incorporating 'highly structured cognitive behavioural approaches or inter-personal social skills training'.
  42. The Child Justice Act 75 of 2008, Section 96(1)(e).
  43. Research that is conducted to evaluate effectiveness of programmes that use non-experimental designs means that a single group is studied only once after the programme has been delivered. See R Bachmann & R K Schutt, *Fundamentals of research in criminology and criminal justice*, London: Sage, 2008, 247-269.
  44. Campbell & Stanley, as cited in R Bachmann & R K Schutt, *Fundamentals of Research in Criminology and Criminal Justice*, 262.
  45. See R Bachmann & R K Schutt, 247-269.
  46. H Hargovan, Evaluating restorative justice: *Working out what 'works'*, *Acta Criminologica*, 24(1) (2011), 78.
  47. See A Dawes & A van der Merwe, Interventions for young offenders: What we know about what 'works' in diversion programmes, 365-366.
  48. See C Badenhorst, *Second Year of the Child Justice Act Implementation: Dwindling Numbers*, 2012, 15.
  49. Ward et al, The Development of Youth Violence: An ecological understanding, 53.
  50. Ibid.
  51. See Figure 3.2 in Ward et al, The Development of Youth Violence: An ecological understanding, 63, for a description and explanation of 'developmental pathways for anti-social behaviour'.
  52. Dawes & van der Merwe, Interventions for young offenders, 349, highlight the fact that diversion programmes are not specialised, hence different types of offenders are likely to attend the same type of intervention, making it difficult to refer children to interventions based on individual need and that 'currently diversion programmes tend to overlook some of the explicit theories of the change process they seek to bring about'. Furthermore, desired programme outcomes (a reduction in anti-social and/or violent behaviour) are not directly linked to the programme activities and objectives'.
  53. See P Burton, *Snapshot results of the 2005 National Youth Victimization Survey*, 4.