AN EXPLORATION OF FAMILY GROUP CONFERENCING AS PART OF THE DIVERSION EXPERIENCE OF YOUNG MALE OFFENDERS

TEMBAKAZI TSHEM
AN EXPLORATION OF FAMILY GROUP CONFERENCING AS PART OF THE DIVERSION EXPERIENCE OF YOUNG MALE OFFENDERS

TEMBAKAZI TSHEM

Submitted in partial fulfillment of the requirements for the degree of

MASTER OF SOCIAL SCIENCE (SOCIAL WORK) Specialization in LEGAL SOCIAL WORK

at the University of Fort Hare (East London)

January 2009
Supervisor: Mrs. M. Maistry

DECLARATION

I, Tembakazi Tshem hereby declare that unless specifically indicated to the contrary, this thesis is the result of my own work. Furthermore, I declare that the material contained in this thesis has not been submitted to this or any other university in fulfillment or partial fulfillment of the requirements for another degree.

…………………………                                                             ……………….
T. Tshem                                                                                                 Date
Student number 200602200
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Declaration</th>
<th>i</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table of contents</td>
<td>ii</td>
</tr>
<tr>
<td>List of tables and figures</td>
<td>iii</td>
</tr>
<tr>
<td>Glossary</td>
<td>iv</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>v</td>
</tr>
<tr>
<td>Abstract</td>
<td>vi</td>
</tr>
</tbody>
</table>

## CHAPTER 1    INTRODUCTION

1.1 Introduction                                                          1
1.2 Problem statement                                                      6
1.3 Aims and objective of the study                                       10
1.4 Research design and methodology                                       11
1.4.1 Location and sample of the study                                    11
1.4.2 Data collection techniques                                           12
1.4.3 Data analysis                                                        12
1.5 Value of the study                                                     12
1.6 Ethical considerations                                                 13
1.7 Delimitation of the study                                              13
1.8 Organization of the study                                              14

## CHAPTER 2    LITERATURE REVIEW

2.1 Introduction                                                          15
2.2 Theoretical framework

2.2.1 Systems theory 15
2.2.2 Reintegrative shaming theory 18

2.3 Historical background and legislative reform 19

2.4 International and national instruments governing child justice 25

2.5 Introduction and development of diversion programmes in SA 29

2.5.1 Guidelines for diversion programmes 35
2.5.2 Minimum standard applicable to diversion programmes 35

2.6 Restorative justice and its benefits 38

2.6.1 History of restorative justice in SA 39

2.6.2 Values and elements of restorative justice 42

2.6.3 Difference between retributive and restorative justice 43
2.6.4 Restorative justice in practice 46
2.6.5 Sign posts of a truly restorative justice programme 47

2.7 The family group conferencing (FGC) 47

2.7.1 Origin and history of FGC 48
2.7.2 The FGC process 50
2.7.3 Aims of FGC 53

2.7.4 Similarities and differences between FGC and victim offender mediation 54

2.7.5 Potential dangers of FGC 54

2.8 Case studies on young offenders 55

2.9 Conclusion 57
CHAPTER 3 RESEARCH DESIGN AND METHODOLOGY

3.1 Introduction 59
3.2 Research design and methodology 59
3.3 Research process 61
3.4 Location and sample chosen 61
3.5 Data collection method 64
3.6 Data analysis 66
3.7 Challenges and limitations of the study 67
3.8 Ethical considerations 68
3.10 Value of study 72

CHAPTER 4 PRESENTATION OF DATA

4.1 Introduction 73
4.2 Presentation of data collected from young offenders 73
   4.2.1 Identifying details 73
   4.2.2 Offence committed 74
   4.2.3 Experience with SAPS 77
   4.2.4 Experience with Probation officer 77
   4.2.5 FGC experience 79
   4.2.6 Relations with victim 83
4.2.7 Recidivism 84
4.3 Presentation of data collected from parents/ guardians 84
   4.3.1 Identifying particulars 84
   4.3.2 Offence committed 84
   4.3.3 Experience with SAPS 86
## REFERENCES

## APPENDICES

A. Questionnaire for young offenders 124
B. Questionnaire for parents/guardians 127
C. Consent form 129

## LIST OF TABLES

<table>
<thead>
<tr>
<th>TABLE</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Number of children arrested, assessment, diversion</td>
<td>5</td>
</tr>
<tr>
<td>2</td>
<td>Diversion programmes implemented in Eastern Cape</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>Difference between retributive and restorative justice</td>
<td>43</td>
</tr>
<tr>
<td>4</td>
<td>Age of young person’s respondents</td>
<td>63</td>
</tr>
<tr>
<td>5</td>
<td>Schooling status of young people</td>
<td>63</td>
</tr>
<tr>
<td>6</td>
<td>Gender of parent/guardian respondents</td>
<td>64</td>
</tr>
<tr>
<td>7</td>
<td>Relations to young person</td>
<td>64</td>
</tr>
<tr>
<td>8</td>
<td>Reasons for offending by young people</td>
<td>76</td>
</tr>
<tr>
<td>9</td>
<td>Experience of Probation Officer by young people</td>
<td>78</td>
</tr>
<tr>
<td>10</td>
<td>Final outcomes of FGC</td>
<td>80</td>
</tr>
<tr>
<td>11</td>
<td>Reasons for offending given by parents/guardians</td>
<td>85</td>
</tr>
<tr>
<td>12</td>
<td>Experience of Probation Officer by guardians</td>
<td>87</td>
</tr>
</tbody>
</table>
TABLE 13: Final outcome of FGC (given by parents) 89

LIST OF FIGURES

FIGURE 1: Educational qualifications of young people 74
FIGURE 2: Category of offences committed by young people 75
FIGURE 3: Young person’s perception of FGC outcome 81
FIGURE 4: Rate of participation of young people in FGC outcome 82
FIGURE 5: First person to inform parent about young person’s involvement in criminal activity 85
FIGURE 6: Parents wish for treatment of children by SAPS personnel 87
FIGURE 7: Parents perception of FGC 90
FIGURE 8: Future improvement of FGC (given by parents) 92
FIGURE 9: FGC influence on recidivism 92
Keywords: family group conferencing, diversion programmes, young male offender, probation officer
LIST OF ABBREVIATIONS

CSVVR  Center for Study of Violence and Reconciliation
CJS    Criminal Justice System
DOSD   Department of Social Development
ECP    Eastern Cape Province
FGC    Family Group Conferencing
IMC    Inter Ministerial Committe
NICRO  National Institute for Crime Prevention and Rehabilitation of Offenders
OAU    Organisation of African Unity
PDOSD  Provincial Department of Social Development
RSA    Republic of South Africa
SALC   South Afican Law Commission
SAPS   South African Police Services
TRC    Truth and Reconciliation Commision
UNCRC  United Nations Convention on the Rights of the Child
VOM    Victim offender mediation
YES    Youth Empowerment Scheme

ACKNOWLEDGEMENTS

I would like to express my sincere appreciation to the following, who without their support this study would not have come to fruition.

First and foremost, to the God Almighty through whom all is possible.

I would also like to thank my father, Bonisile Tshem for his unconditional love and unwavering belief in me that I could and would make it.

The love, understanding, encouragement and patience I got from my husband, Bekisisa Mpapela and my three children, Zola; Sandanathi and Abenguni carried me through the study. Their cheering when I was down and doubting myself kept me going. You guys are the best and I love you.
I would also like to thank my supervisor, Mrs. Maistry for ongoing support, patience and her expertise and for not giving up on me even when I had started doubting if I would be able to make it through.

At last but not least I would also like to thank the participants (young offenders and their parents) who made this research possible by agreeing to be interviewed and for sharing their experiences. I am forever grateful to them for contributing towards improvement of diversion practice.

ABSTRACT

The aim of this study is to explore the experiences and evaluations of young male offenders who were diverted to family group conferencing in order to improve current services. An exploratory research design was chosen to obtain an understanding of what these young male offenders experienced during their conferencing and also to seek out their recommendations for future improvement of the family group conferencing diversion programme.

This study comprised two samples which were purposively selected. The first sample was made up of ten young male offenders and the second sample comprised of the parents and/or guardians of the young male offenders. The data was collected using structured interview schedules. The data was collected on separate occasions for the two samples. Each interview lasted about 30-40 minutes each.
The findings of this study showed that there is still a need to train probation officers on appropriate implementation of family group conferencing and that families also have a role to play towards successful implementation of diversion programmes. It is evident from the findings that young offenders need their families to support and care for them during difficult situations, as purported by the systems theory whereby society is regarded as a system with different parts and families are an important part of this system. Young offenders belong to families and families are part of communities and society. It is also important to note that victims are part of families, thus also part of society and the system. Family group conferencing provide an opportunity for all these parts to meet in a mediated environment to address the harm caused and make amends.

The findings of this study also showed that there is a need to educate the general public about child justice legislation and the emerging trends in the field of child justice including diversion programmes.
CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

The South African criminal justice system has a history of not being kind to children and youth in trouble with the law. During the 1970's and 1980's the arrest and detention of a large number of children in police cells and prisons for long periods of time without trial was the order of the day (le Roux in Bezuidenhout and Joubert, 2003:173). Sloth-Nielsen (2000) in (Davel, 2000:389) is of the opinion that the political beliefs of these children led to their detainment under the infamous emergency and security legislation. It is reported that although there was a large number of children detained for their political beliefs, there was an equal number of children detained and awaiting trial for non political crimes (Potgieter and Skelton, 2001). These children were detained with adults and exposed to hardened criminal activities and in appalling conditions that did not take their ages into consideration. According to Skelton (1997) in (Robinson, 1997:174) before whipping was declared unconstitutional in 1994 in Republic of South Africa, the South African courts were meting out more than 30 000 whippings per year.

In 1994 a democratically elected government came into power and this new government committed itself to protecting children and their rights. The former President Nelson Mandela, in his first parliamentary speech made a promise that the issue of children in detention would be addressed as a matter of urgency (Mandela; State of the Nation Address, 1994).

To keep the promise made by the former president, the Republic of South Africa ratified the United Nation’s Convention on the Rights of the Child (UNCRC) on 16 June 1995 (le Roux in Bezuidenhout and Joubert, 2003: 173). Article 40(3) of this Convention obliges state parties to establish and
enact law and procedures specifically applicable to children in conflict with law and that child justice systems should develop diversion options when appropriate and with structures to ensure the protection of children’s due process rights. The Constitution Act 108 of 1996 has sections that coincide with the recommendations in the United Convention on the Rights of the Child (le Roux in Bezuidenhout and Joubert, 2003: 174). South Africa’s new constitution provides and affords special rights to children.

Although campaigning for the drafting of separate child justice legislation can be traced back to the 1980s, it was only with South Africa’s readmission to the international community that this early advocacy work yielded results (Sloth-Nielsen, 1999:469). With the ratification of the Convention, South Africa was obliged to develop discrete child justice legislation and in December 1996, the Minister of Justice established a Juvenile Justice Project Committee for the purpose of drafting this legislation (Shapiro, 1997:13). The South African government was then also obliged to develop a legal framework that would both improve access to and regulate the administration of diversion. However, it was not just this obligation that led to diversion occupying a central place in the Bill, but rather the desire to “further entrench the reality of diversion as part of child justice practice” (SALC, 1997: Issue paper no 09).

In November 1997, the Inter-Ministerial Committee (IMC) on Young People at Risk circulated their Interim Policy Recommendations for the transformation of the child justice system. This was the first document to formally acknowledge the limited availability of diversion programmes and the unequal access to these programmes (Sloth-Nielsen, 2000:422). One of the recommendations of the IMC in order to remedy the above situation was that Family Group Conferencing should be piloted (Sloth Nielsen, 2000:469).

The enshrining of children’s rights in the South African Constitution and the ratification of the UNCRC not only provided the impetus to commence drafting the Bill, but also greatly influenced the legislation that was developed. The other documents introduced include: the National Crime Prevention Strategy; Social Welfare White Paper of 1997; White Paper for Safety and Security; and
the Child Justice Bill 49 of 2002. The South African government also became a signatory on a number of other international instruments, such as the African Charter on Rights and Welfare of the Child and the African Charter on People and Human Rights (Bezuidenhout and Joubert, 2003).

According to Skelton in (Bezuidenhout and Joubert, 2003:194) probation officers have a crucial role to play when it comes to the issue of youth offending. Probation officers are appointed in terms of section 2(1) of Probation Services Act 116 of 1991 and are mandated to undertake “reception, assessment and referral of an accused and rendering of early intervention services and programmes, including mediation and family group conferencing” (Section 3 of Probation Services Amendment Act 35 of 2002). According to Wood and Stout in (Dixon and Van de Spuy, 2004:119) diverting children away from the criminal justice system is the central feature of the proposed child justice legislation. In terms of section 2 of Act 35 of 2002 diversion programmes offered should be based on restorative justice. Umbreit (2000) believes that a restorative justice practice that has attracted much attention in recent years is family group conferencing. He further explains that family group conference is a structured gathering convened by a probation officer involving not only offenders and victims but also their support system, such as their respective families and other community members who may be able to contribute to the reconciliation process.

From the researcher’s professional experience as a Probation Officer, for the Eastern Cape Provincial Department of Social Development, it is noted that the process of offering diversions is not without its difficulties. At times probation officers encounter challenges and obstacles which are due to a lack of cooperation of the role players within the criminal justice system including communities and families. At other times a lack of cooperation of young offenders poses a challenge in the successful implementation of diversion programmes. When a young offender fails to adhere to the stipulated conditions of a diversion programme, probation officers make a recommendation to court that normal court proceedings should be instituted against the young offender.
The researcher of this study is employed by Department of Social Development in the Eastern Cape and is placed at Butterworth Area office in the Mnquma district as a Chief Probation Officer. The researcher has been a practicing probation officer for seven years, responsible for pre-trial assessments, diversions, pre-sentence reports and supervision of young offenders. The researcher is also responsible for coordinating probation services for three magisterial districts (Centane, Butterworth and Nqamakwe). As a coordinator for the probation services the researcher has knowledge of the number of children arrested, offences committed by these young people and the diversion options implemented in a particular month for the three districts. During January 2007 to December 2007, a period of twelve months 479 young people were arrested in the Mnquma area and the following information shows the prevalence and types of offences committed during this period:

- 125 children were accused of committing assault with intent to do grievous bodily harm
- 71 children accused of house breaking and theft
- 63 accused of murder
- 47 accused of theft
- 20 accused of rape
- 17 accused of robbery
- 14 accused of attempted murder

In the same period 63 family group conferences were convened and the criteria for inclusion was not only based on the offence committed but also on the circumstances surrounding the commission of the offence as well as the victim of the offence; for example a young person accused of assault with intent to do grievously bodily harm may be diverted to family group conferencing if both the victim and offender are willing.

The issue of youth offending is a widespread phenomenon in the whole of the Eastern Cape. The following shows the statistics of children in conflict with the law in the Eastern Cape during 2004/2005; 2005/2006 and 2006/2007 financial years.
Table 1: Number of children arrested, assessed and diverted

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrests</td>
<td>8964</td>
<td>6290</td>
<td>7054</td>
</tr>
<tr>
<td>Assessments</td>
<td>7981</td>
<td>5610</td>
<td>6487</td>
</tr>
<tr>
<td>Diversions</td>
<td>3205</td>
<td>2596</td>
<td>2976</td>
</tr>
</tbody>
</table>


The family group conferencing is one of the popular diversion programmes implemented in this area of study as well as in the rest of the Eastern Cape Province. The summary of diversion programmes implemented in the Eastern Cape for the three financial years mentioned above is as follows:

Table 2: Diversion programmes implemented in Eastern Cape

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Victim Offender Mediation</td>
<td>399</td>
<td></td>
<td>579</td>
</tr>
<tr>
<td>Family Group Conferencing</td>
<td>169</td>
<td></td>
<td>226</td>
</tr>
<tr>
<td>Youth Empowerment Scheme</td>
<td>1528</td>
<td>1317</td>
<td>47</td>
</tr>
<tr>
<td>Pre-Trial Community Service</td>
<td>474</td>
<td>345</td>
<td>279</td>
</tr>
<tr>
<td>Community Service Order</td>
<td>44</td>
<td>57</td>
<td>1222</td>
</tr>
<tr>
<td>Journey</td>
<td>107</td>
<td>50</td>
<td>59</td>
</tr>
<tr>
<td>SAYsTOP (South African Young Sex Offender Treatment Programme)</td>
<td>90</td>
<td>62</td>
<td>21</td>
</tr>
<tr>
<td>Combination</td>
<td>69</td>
<td>43</td>
<td>168</td>
</tr>
<tr>
<td>Choice</td>
<td>31</td>
<td>28</td>
<td>39</td>
</tr>
<tr>
<td>Other</td>
<td>95</td>
<td>12</td>
<td>140</td>
</tr>
</tbody>
</table>
During the financial year 2005/2006, 610 children were diverted to restorative justice programmes (Department of Social Development, annual report 2005/2006:57). It is assumed that these restorative justice programmes include family group conferencing (FGC) and victim-offender mediation (VOM) activities, as suggested by Mbambo (2005). In the financial year 2005/2006 there is no distinction made on the number diverted to victim offender mediation and family group conferencing.

In order to improve the quality of the diversion programmes, probation officers need to obtain regular feedback from the young offenders about the service provided. The focus of this study conducted in Butterworth in the Eastern Cape Province is to explore the experience of young male offenders whose diversion programme included family group conferencing. This study aims to obtain feedback from the participants on family group conferencing and their experiences of this particular diversion programme in order to assist probation officers in the Eastern Cape Province improve the quality of the diversion programmes that are implemented.

1.2 PROBLEM STATEMENT

The influence of the international community on South Africa has allowed the principles of restorative justice to be embedded in child justice legislation (Skelton, 2000). The restorative justice and diversion programmes are a fundamental part of South African child justice legislation. The newly revised Child Justice Bill 49 of 2002 defines restorative justice 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” (Section 1, Child Justice Bill 49 of 2002). Family group conferencing is defined in section 61 of the Bill as “an informal procedure which is intended to bring a child who is alleged to have committed an offence and the victim together, supported by their families and other appropriate persons and, attended by persons referred to in subsection (3)(b), at which a plan is developed on how the child will redress the effects of the offence” (Child Justice Bill 49 of 2002). Umbreit (2000) cited family group conferencing as one of the specific examples of restorative justice initiatives. He further suggests that family group conferencing is an intervention based on restorative justice which encourages active and full participation of all involved including the offender.

With family group conferencing the young offenders are expected to participate actively and fully if the goals of the family group conferencing are to be achieved. The ideal setting for family group conferencing is an environment in which the young offender feels safe and comfortable enough to actively participate, share and express feelings and to honestly respond to questions posed by the victim and other participants (Umbreit, 2000). From experience as a probation officer, more often than not most children are intimidated by adults and as such are unable to freely express their opinions, so it is possible for adults to hijack the conferencing and force the young offender to say what adults want to hear.

On any diversion programme young offenders are important constituents whose opinions could play a vital role in improving the quality of diversion programmes. From experience as a probation officer it has been noted that more often than not, children are not consulted even about matters that concern them. The children are not always given a chance to choose and evaluate the diversion programmes in which they participate. It is the probation officer who assesses the young offender and recommends an appropriate diversion programme to a prosecutor who has the discretion to withdraw charges upon successful completion of the programme.
The National Institute for Crime Prevention and Reintegration of Offenders (Nicro) which is a non governmental organization that seeks to empower the offender, the victim, the criminal justice system and the community to move towards a more restorative justice system (Muntingh, 1997) conducted a study on attitudes of prosecutors towards diversion. It as discovered that the majority of prosecutors had superficial knowledge of the content of various diversion programmes, which is probably due to lack of adequate training (Muntingh, 1998). This could mean that young offenders who have been diverted know more about the content of diversion programmes they were part of. The young offenders are rarely asked to provide input, opinions, suggestions or make recommendations about the particular diversion programme that they choose and undertake.

The study proposes that valuable use could be made of their knowledge and young offenders should be given a chance to contribute to the betterment of the diversion programmes by seeking their views and feedback on diversion programmes.

In 1997 the Centre for the Study of Violence and Reconciliation(CSVR) conducted a study on 33 children and young people, 15 of them were in prison while 18 were on the streets and involved in criminal activities (Segal, 1998). The study sought to ascertain the motivation for involvement in criminal activities with a view to understanding young offenders as well as to find solutions to crime. Another consultative research was conducted by Nicro in 1999 on 70 children to elicit their opinions on the draft Child Justice Bill (Muntingh, 1999). The above studies, although not directly relevant to the current research, nevertheless, demonstrate the importance of consulting and seeking the views and experiences of young offenders in matters that concern them if future interventions are to be successful. Consulting and seeking views and experiences of young offenders should be an integral part of after care services if long term solutions to the issues of crime and juvenile offending is to be found.
The above scenarios have stimulated the researcher’s interest in exploring the opinions and experiences of young male offenders whose diversion included family group conferencing. The assumption is that all probation officers aspire to provide a positive diversion experience for each and every young offender, but without feedback from the young offenders themselves about their diversion experiences, the probation services offered by the Eastern Cape Provincial Department of Social Development cannot improve. At times a young offender who was previously diverted would re-offend; instead of evaluating the previous diversion programme offered, the probation officer would assume that the young offender was not willing to be rehabilitated.

The study seeks to obtain feedback from young male offenders who were diverted to family group conferencing on whether they viewed their family group conferencing experience as positive or negative; and if they could be given a chance to improve the practice of this particular diversion programme, what changes would they recommend. One of the stated goals of family group conferencing is to prevent future misconduct (Umbreit, 2000). This study will also evaluate the effects of family group conferencing by looking at the number of children who have rescinded into criminal activities.

In 1998 and 2000 Nicro conducted studies on 460 former participants of different diversion programmes, and it was found that the rate of recidivism was low (Muntingh, 2001). According to Schonteich (1999:22) South Africa is facing a serious challenge when it comes to criminal behavior, in that juveniles and young adults are more likely to commit crimes, with males surpassing older males or females of any age group. According to Muntingh (2001:7) family group conferences have a very important component, that of preventing recidivism and “all FGCs have to implement plans that will prevent further offending”. The researcher is of the opinion that receiving regular feedback from diverted young offenders would help toward improvement of the quality of diversion programmes implemented.
In undertaking this study, the researcher intended to explore the experiences and evaluations of young male offenders, as well to elicit their opinions and recommendations towards improvement of family group conferencing. Young male offenders were chosen because they more readily available than young female offenders in the area of research where more males offend than females. In the area of study, Mnquma, during January 2005 to December 2007, there were 757 young people arrested and charged with committing offences and out of this number, only 35 were females (Department of Social Development, Report on Mnquma area, 2005; 2006; 2007). Schonteich (1999:22) found that the rate of conviction of young males in South Africa is higher than that of older males or females of any group.

In order to achieve the objectives of the study the research asked the question: what are the experiences and evaluations of young male offender’s of family group conferencing?

1.3 AIMS AND OBJECTIVES OF THE RESEARCH

The overall aim of this study conducted in Butterworth in the Eastern Cape Province is to explore the experiences of young male offenders whose diversion programme included family group conferencing. The objectives of the study were:

- to obtain feedback from the participants on family group conferencing in order to gain insight and understanding of their experiences of this particular diversion programme
- to make recommendations for the improvement of family group conferencing to the Eastern Cape Provincial Department of Social Development (PDOSD).

In order to achieve these objectives, the aspects that were explored in the study included the offender’s understanding of the diversion process especially family group conferencing; the offender’s experience and
evaluation of family group conferencing; and the offender’s suggestions and recommendations to improve family group conferencing.

1.4 RESEARCH DESIGN AND METHODOLOGY

According to Welna and Kruger (2004: 46), a research design is a plan used by a researcher to obtain the units of analysis (participants) and to collect information from those participants. The research design should be specific on the number of participants to be used and how to select those participants. The researcher decided on an exploratory research design in line with the aim of the study. The study also employed a qualitative research methodology. Qualitative research methodology was chosen for this study in order to obtain a “more in depth understanding” of the offenders’ evaluation of family group conferencing (Dunsmuir and Williams, 1991:7).

The theoretical framework which underpins the study is the systems theory. The systems theory views society as a whole with interrelated parts, this means that each individual should not be viewed in isolation but as part of a family and community. This theory will be further discussed in chapter 2 under literature review.

1.4.1 Location and sample of the study

This study was based in the Butterworth area of Nqamakwe magisterial district in the Eastern Cape Province. The area of study was chosen because the researcher is employed in this area. According to Singleton, Straits and McAllister (1988: 163) a research sampling is a process of selecting a “subset of cases to draw a conclusion about the entire set”. Singleton et al (1988: 137) believe that the quality of sample is judged in terms of the sampling design chosen. A non – probability purposive sample was chosen for this study. The sample consisted of 10 young male offenders who completed all the requirements of the family group conference to which they were diverted and 10 guardians of these young offenders.
1.4.2 Data collection method

The data was collected using structured interview schedules with open and closed ended questions. Two different interview schedules were designed and administered by the researcher: one for young male offenders and one for their guardians. The interviews were conducted separately. The interview schedule for young male offenders aimed at exploring their experiences of family group conferences. The interview schedule for their guardians was used as triangulation for the information received from the male young offenders and knowledge gained from the researchers’ experience as a probation officer.

1.4.3 Data analysis

After data was collected, the responses were organized and categorized in order to obtain recurring themes. The use of tables and graphs ensured that responses of the same or similar nature were grouped together. The system chosen for this study was content analysis as the basic idea of content analysis is to reduce the total content of data collected to a set of categories (Singleton et al, 1988). Content analysis helped with bringing “order out of the chaos” of the data collected (Baker, 1988:243).

1.5 VALUE OF THE STUDY

The results of this study will be used to enrich future diversion programmes especially family group conference practice in the Eastern Cape Provincial Department of Social Development (PDOSD). The feedback of the young male offenders will be availed to PDOSD probation officers, as part of the professional development of the probation officers, and this will heighten the awareness of the probation officers when facilitating family group conferences in near future. The recommendations and suggestions of this study based on findings will have relevance to the improvement of diversion practice, not only for probation officers from the area of research but to all probation officers employed by the Provincial Department of Social Development.
1.6 ETHICAL CONSIDERATION

The study involved interviewing minor children so informed and parental consent was sought before continuing with each interview. The parents and/or guardians were also expected to consent to participating in the study. At the beginning of each interview the objectives and aims of the study were explained to all participants and how results would be disseminated. The participants were made aware of their right not to participate in the study for whatever reason, that participation to the study was voluntary.

All the respondents were assured of confidentiality, privacy and anonymity when publishing the results and pseudonyms would be used instead of their real names. Considering the sensitive nature of this study, as it involved the young offender’s past and present involvement in criminal justice system, the probing was done with care, sensitive and consideration.

The researcher in this study is a qualified social worker who is bound by certain code of conduct and social work professional ethics, so the researcher adhered to those professional ethics and maintained professional integrity for the duration of the study.

1.7. DELIMITATIONS OF THE STUDY

The sampling design and size chosen made it difficult to generalize the findings of the study to the entire population. The other challenge encountered during the conducting of the study was that although the interview schedule was written in English but the interview was conducted in IsiXhosa and there was difficulty in translating certain terms to isiXhosa. The researcher also noticed that the adult participants were keen and eager to participant and were forthcoming with information while the young male offenders showed some reluctance, but with gentle probing and assurance of confidentiality they opened up.
1.8 ORGANISATION OF THE STUDY

This study is presented as follows:
Chapter One- Introduced the research topic. It included an overview of the problem statement; aims and objectives of the research; research design and methodology; location and sample of study; data collection method; data analysis; value of the study; ethical considerations and delimitations of the study.
Chapter Two- Reviewed literature and examined theoretical framework guiding the study; the historical background of child justice and legislative reform in South Africa; international and national instruments governing child and youth justice; restorative justice; the family group conferencing; and case studies on young offenders.
Chapter Three- Presented the research design and methodology and included sampling; data collection; data analysis; ethical considerations and challenges and delimitations of the study.
Chapter Four - Presented findings of the study
Chapter Five- Presented discussion of findings; conclusions and recommendations
CHAPTER 2

LITERATURE REVIEW

2.1 INTRODUCTION

A literature review is a very crucial part of any research project as it is a way of relating the researcher’s idea to available and current literature. Reviewing available literature can also help any researcher in identifying gaps in studies conducted by other researchers, so instead of tackling a new study, a certain researcher may decide to replicate the study (Bailey, 1997). This chapter presents a review of literature related to the study comprising the theoretical framework underpinning the study followed by literature related to historical background and legislative reform in South Africa; international and national instruments governing the child and youth justice; restorative justice and history thereof in South Africa; family group conferencing; and case studies on young offenders. The issue of juvenile offending and child justice is often complex and not understood by many and as such, by reviewing the above mentioned aspects, the intention is to provide perspective on the past; present and the future of child justice.

2.2 THEORETICAL FRAMEWORK

The two theoretical frameworks guiding this research are systems theoretical framework and reintegrative shaming theoretical framework. The discussion about these guiding theoretical frame works will be discussed below.

2.2.1 Systems Theory

The systems theory views society as a system; a whole unit made up of different interrelated parts (Henslin, 1996:11). Haralombos and Horborn(1995:7) state that with the systems theory the whole is greater than sum of its parts and in order to understand any part of the system, that part must been
seen in relation to whole system. They write that in systems theory, the behavior of an individual is shaped by the system as a whole. There are two theoretical approaches under systems theory and both view society as a system and see human behavior as being shaped by the system; they are the functionalist paradigm and the conflict paradigm.

The functionalist perspective views society as a system of highly integrated parts that function together (Henslin, 1996:20). Each different part contributes to the smooth functioning of the whole and each part is analyzed according to the special function it performs both for society and for one another (Henslin, 1996). The functionalist perspective regards the family as a crucial and needed group in any society (O’ Donell, 1994:53). The family is a very important part of the system, and there is a basic function which the family is expected to perform, that of socialization (Haralombos and Holborn, 1995:8). According to O’Donnell (1994:53), the functionalist perspective see the family as having four functions and one of them is “educational or socialization”. He describes socialization as a process of imparting values, norms and culture from one generation to another. It is in families that children acquire norms and values and families are also expected to monitor and ensure that individuals conform to these norms and values. Neubeck and Glasberg (2005:158) state that it is necessary for any society to have mechanisms of influencing members to conform to the group’s values and norms. They claim that these mechanisms of social control can be negative; positive; formal or informal. A formal negative sanction is described as those “actions that express the institutionalized disapproval of a person’s behavior” and are usually applied within the formal organizations and enforced by specialized agencies or personnel (Neubeck and Glasberg, 2005:159-160).

The functionalist view commission of crime as a normal; inevitable and an integral part of healthy societies and may even have positive social functions in terms of its consequences. According to the functionalist theory, commission of crime may sometimes help to determine the form of collective sentiments and also bring together upright consciences (Macionis, 1997). Hughes; Kraelon and Van Zander (2002:20) write that the conflict theorists
also focus their attention on society as a system, which they claim is characterized by disorder, instability and conflict. They claim that this conflict is not necessary a bad thing as in some instances it may bring about change in a society. Neubeck and Glasberg (2005:157) also believe that conflict may prompt a group to organize and put mechanisms in place to prevent future deviance. One of the focuses of family group conferencing is to prevent recidivism. According to Wood (2003) in her occasional paper, titled *Diversion in South Africa: a Review of Policy and Practice*, in family group conferencing emphasis is placed on preventing recidivism and the input of other participants is viewed as important for developing a plan that will accomplish this objective.

The functionalist perspective holds that the family is the basic social unit most suited to meeting the needs of children and young people, providing a suitable environment for their growth, upbringing and development; a sense of continuity, identity and stability (Tischler, 2004). The conflict perspective also holds that the family is an important aspect of society and social life, but is characterized by conflict and social change which encourages flexibility in families (Ritzer, 1996). Both the functionalist and conflict perspectives have a holistic view of social life in that both view society as a system with interrelated parts and that these parts are either in consensus or in conflict. The functionalists believe that society is held together by a consensus among its interrelated parts, while the conflict theorists believe that even in the face of conflict society is often held together (Tischler, 2004).

Tischler (2004) writes that children live and grow up in families and it is often their exposure to their families that may lead them to the door of the criminal justice system. The personality and character of an individual is shaped by the family (Tischler, 2004). The victims are also members of families, communities and societies, which means that they are also part of the system. It means that harm caused to the victim is also experienced by their families, communities and the society as a whole. The involvement of families and communities in family group conferencing affirms the importance of families in educating children about the rights and wrongs of being involved in criminal
activities; as well as the caring and nurturing of members of families including victims.

2.2.2 Reintegrative Shaming Theory

The family group conferencing is premised on Braithwaite’s family model of the criminal justice system called “reintegrative shaming” (Braithwaite 1989:55). Braithwaite (1989) distinguishes between two types of shaming, reintegrative shaming and disintegrative shaming. He believes that disintegrative shaming is the stigmatization of an individual by the society or community, creating outcasts. Disintegrative shaming leads to individuals being rejected by family and community and this may lead to attachments to criminal subcultures (Braithwaite 1989:102). He explains that this acceptance by criminal subcultures paves the way for criminal role models and criminal careers, thus leading to the high crime rate. Disintegrative shaming creates “populations of outcasts with no stake in conformity, no chance of self-esteem within the conventional society-individuals in search of an alternative culture that allows them self esteem” (Braithwaite, 1989:102).

In contrast, Braithwaite (1989: 55) claims that integrative shaming means that the community or the family’s expression of disapproval of a particular act by an individual is followed by reintegration back to the family and community. Thus the shaming of an individual is followed by acceptance and forgiveness, and individuals are not marginalized. Integrative shaming takes place within that group which is important and meaningful to the young person (Braithwaite, 1989). The family group conferencing principle also works on the same principle.

Braithwaite (1989:77) believes that the family and community have a very crucial role to play in reintegrative shaming of other community members. This same principle of family and community involvement also applies to the family group conferencing practice. The community members play a very important role in reintegration of offenders back to the community. According to Braithwaite (1989:100) reintegrative shaming “is followed by efforts to
reintegrate the offender back to the community of law abiding or respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant”. The family group conference is a restorative justice response to crime that involves the offender and his family as well as the victim and own support system and the members of the community (Umbreit, 2000). Similar to reintegrative shaming, the family group conferencing plays a very crucial role in empowering and healing communities as it involves a broad range of people who have a stake in the criminal justice processes. The principle, on which the family group conferencing is based, is that commission of an offense victimizes a wider circle of people; and that the crime has both primary and secondary victims (Umbreit, 2000). Offenders are given an opportunity to restore imbalances and heal the harm caused by the commission of the offender in the presence and support of their own families who actively participate in the process. In a family group conference the criminal act is denounced, but the offenders are provided with a safe environment and are treated with respect and dignity.

In reintegrative shaming, the family is also cited as having a very important role to play, just as the functionalist and conflict theorists have claimed. The family is expected to play its role of nurturing, caring and forgiving the offender while also providing practical support and guidance on how to lead a proper life (Braithwaite, 1989:87). Societies that believe in reintegrative shaming have less crime (Braithwaite, 1989:80).

2.3 HISTORICAL BACKGROUND AND LEGISLATIVE REFORM

South Africa is a country with history of violence and conflict motivated by the political and racial segregation of the apartheid era, especially in the 1970’s and 80’s (le Roux in Bezuidenhout and Joubert, 2003:173). During the apartheid years in South Africa, children were arrested and detained for long periods without any trial (Koch and Wood, 2002: 1). Children were held and detained in adult prisons, exposing them to hardened criminal activities associated with prison life coupled with the appalling conditions of those prisons. Most often the children’s political beliefs led to their detainment in
terms of state of emergency laws of the time. While Koch and Wood (2002:1) state that a large number of children were detained for their political beliefs, there were an almost equal number of other children who were detained for other crimes, although non-political in nature, but were a result of the prevailing socio-economic problems.

With the change in political climate which came about when South Africa achieved democratic rule in 1994, a new system began to evolve, even for children in conflict with the law. This change also necessitated a legislative reform including a youth and child justice system, as there was no comprehensive legislation dealing with children, there were various sections of different Acts scattered among different government departments (Skelton in Robinson, 1997). On 24 May 1994 President Mandela made the following promise:

“I would like to say that the Government will, as a matter of urgency, attend to the tragic and complex question of children and juvenile in detention and prison. The basic principle from which we will proceed now onwards is that we must rescue the children of the nation and ensure that the system of criminal justice must be the very last resort in the case of juvenile offenders. I have therefore issued instructions to the departments concerned, as a matter of urgency, to work out the necessary guidelines which will enable us to empty our prisons of children and to place them in suitable alternative care” (Mandela, State of Nation Address, 1994).

The result of President Mandela’s promise was an amendment of section 29 of the Correctional Services Act 8 of 1959 (which became Correctional Services Amendment Act 17 of 1994, promulgated in May 1995); the ratification of United Nations Convention on the Rights of a Child (in June 1995) and other international instruments and the promulgation of Constitution Act 108 of 1996 (Koch and Wood, 2002:2).

On the first week of May 1995 President Mandela signed an order which brought the amended section 29 into operation (Correctional Services
Amendment Act 17 of 1994). The aim of this amendment was to prohibit the pre-trial detention of children in prison. When this amendment was put in operation all children were immediately released from prison. Koch and Wood (2002:2) state that this was so sudden that other departments, like Social Development (then Department of Social Welfare) were unprepared and not ready to receive such a large number of children. Koch and Wood (2002:2-3) further point out that the lack of proper inter-sectoral collaboration and alternative residential facilities to accommodate these children created a chaos, as there were about 800 children released from prison and about 600 from police cells. The available alternative residential facilities were not “ready” to accept and accommodate all those children (Skelton in Robinson, 1997:162). As a result of poor consultation and a lack of alternative residential facilities a structure called the Inter- Ministerial Committee (I.M.C.) was formed. This structure played a significant role in policy making especially with the management of children who come into conflict with the law (Koch and Wood, 2002:2). In 1997 the Inter-Ministerial Committee released their Interim Policy Recommendations for the transformation of the child justice system (IMC, 1997). Wood (2003:2) believes that this document was the first to acknowledge the limited availability and unequal access to diversion programmes. The Inter Ministerial Committee recommended the development of an effective referral process and different levels of diversion options. The Inter Ministerial Committee was also responsible for setting up a number of pilot projects to test out some of their policy recommendations, for example piloting, of family group conferencing (Wood, 2003:2).

The chaos created by the release of all those children from prison also necessitated the enactment of a new legislation which allowed certain categories of children to be detained in prison (Skelton in Robinson, 1997:162-163). This new legislation made provision for children over the age of 14 years charged with serious offences to be detained in prison while awaiting trial if there is no secure care centre within reasonable distance from the court. Skelton in (Robinson,1997:163) states that the Correctional Services Amendment Act 14 of 1996 created a new Schedule of offences which were: "murder, rape, armed robbery; robbery of a motor vehicle, serious assault,
assault of a sexual nature, kidnapping, illicit conveyance or supply of drugs, and any conspiracy, incitement or attempt to commit any of these offences”. Thus any child accused of committing any of the above mentioned offences can await trial in prison if there is no secure care facility within reasonable distance from the court. Le Roux, in (Bezuidenhout and Joubert, 2003:184) wrote that the magistrates, when deciding whether the detention of a young offender “is necessary and in the interests of justice” must take into consideration the possibility of the juvenile absconding from a place of safety; harming other juveniles in the place of safety; the likelihood of the juvenile committing further offences; the time already spent in custody; probable duration of the trial; the health status of the accused and causes for delays in the trial.

The ratification of the Convention on the Rights of the Child in 1995 committed South Africa to implement programmes that “shall respect and ensure the rights set forth...to each child” (UNCRC, 1990: Article 2). This obliged the South African Government to develop separate child justice legislation. This instrument also stated that children have a right not to be discriminated against; to participate in any decision that affect their lives and to be heard; and also the best interest concept.

The Constitution of Republic of South Africa (RSA) Act 108 of 1996 also makes provision that steps taken against the children should always be in their best interest. Some sections in the RSA Constitution coincide with the recommendations of the United Nations Conventions on the Rights of the Child (1990), which emphasizes that the best interests of children are of paramount importance in all actions taken on their behalf. The RSA Constitution has a section which only deals with children; this section affords South African children with particular rights and protection. Section 28(1) (g) of the Constitution Act 108 of 1996 states that, the detainment of children can only be exercised as a measure of last resort and if detained (section 12 and 35 of Constitution also applies), he/she must be kept separately from adult detainees, and must be treated in a careful and sensitive manner that takes into consideration the child’s age.
According to Koch and Wood (2002:2), the South African Law Reform Commission (SALRC) established a project committee called the Juvenile Justice Project Committee. This Juvenile Justice Committee was made up of a number of experts from civil society who had both practical and theoretical knowledge about the way in which children are processed through the criminal justice system. The Committee started looking into the situation regarding the issue of juvenile crime in the country in 1997 (Koch and Wood, 2002:2). The South African Law Reform Commission (SALC) first published in 1997 an issue paper (No 79), which invited comments and contributions. SALRC explained the problems in the current system and made broad recommendations for change (SALRC, 1997). The Juvenile Justice Committee undertook a number of intensive consultations with police, prosecutors, and magistrates, judges, NGOs and academics. The final report of the Commission's Committee on Juvenile Justice was handed to the Minister of Justice in August 2000. The draft Bill accompanying the report, called the Child Justice Bill, was then scrutinized by the Directorate Parliamentary Legislation, and was approved by Cabinet in November 2001 (Koch and Wood, 2002:2). There was also a specially designed consultation process undertaken to obtain the views of children with regard to the draft Bill. The draft Bill was approved by Cabinet and introduced to Parliament in 2002 as the Child Justice Bill 49 of 2002. The Bill was to apply to all South African children under the age of 18 years at the commission of the crime. The Child Justice Bill was introduced and proposed that children accused of crimes should be diverted away from the formal criminal justice system to community based non custodial programs as soon as possible (Koch and Wood, 2002). The aims of the Child Justice Bill are:

- To establish a criminal justice process for children accused of committing offences aimed protecting their rights as provided for in the Constitution and the Convention and other international obligations.
- To recognize the present realities of crime in the country and the need to be proactive in crime prevention by placing increased emphasis on effective rehabilitation and reintegration of children in order to minimize the potential for re-offending.
- To provide for the minimum age of criminal capacity
- To provide for mandatory assessment of every arrested child.
- To promote diversion of cases away from the criminal justice.
- To create an informal, inquisitorial, pre-trial procedure, designed to facilitate the disposal of cases in the best interests of children by allowing for the diversion of matters involving children away from formal criminal proceedings in appropriate cases.
- To provide for creation of child justice courts for those children not diverted.
- To provide for a wide range of appropriate sentencing options specifically suited to the needs of children.
- To take into account the rights of victims
- To promote restorative justice processes.

What is of paramount importance in the new South Africa is the consideration of the best interests of the child in every matter concerning the child as described in Section 28(2) of Act 108 of 1996 and article 3 of the United Nations Convention on the Rights of the Child. The National Program of Action for Children (1996) in South Africa, which is the instrument by which South Africa’s commitment to children being carried out suggested certain child protection measures. These measures aimed at ensuring that the best interests of the child were protected within the criminal and civil justice. This would involve establishing a separate juvenile criminal justice system; eliminating imbalances existing in the criminal and civil justice system in respect of children; and promoting justice that is sensitive to children with an emphasis on the training of personnel who work with children in the justice system. They are also there to promote and strengthen partnerships within state departments, and organizations in civil society which are involved in the administration of justice and link the entire question of the children in the civil and criminal justice system to broader developmental issues and to promote the Convention on the Rights of the Child within the broader framework of a human rights culture and to make the public and people in the justice system aware of it.
The National Program of Action is not a separate plan for children, but an integration of all policies and plans developed by government departments and Non Governmental Organizations (NGOs) to promote the rights of children as embodied in the Convention.

2.4 INTERNATIONAL AND NATIONAL INSTRUMENTS GOVERNING YOUTH JUSTICE

The need for a separate justice system for young people in South Africa is acknowledged and supported by national and international instruments. A brief look at the objectives of these national and international instruments is as follows:

- Correctional Services Act 8 of 1959, as amended prohibits pre-trial detention of young offenders.
- Criminal Procedure Act 51 of 1977 makes provision for procedures to be followed in criminal proceeding, arrest, release of accused person on warning or bail. The Criminal Procedure Act 51 of 1977 also contains some sections which deal with young or juvenile offenders. The various sections of Criminal Procedure Act 51 of 1977 that determine the release of young offenders while awaiting trial are section 59, section 71 and section 72.
- Child Care Act 74 of 1983, as amended is for those young offenders who are found to be in need of care and the criminal court case is converted to a children’s court inquiry.
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985 provides a set of minimum standards for handling of young offenders. It promotes the use of diversion programmes and that institutionalization should only be imposed after careful consideration for shortest period of time and only for those young offenders accused of committing serious offences.
- United Nations on the Convention of Rights of the Child, 1989, states that the “best interest” of the child is of paramount importance in any
matter concerning the child; the sense of dignity and worth of accused young people should be promoted; certain measures to be implemented before the formal justice system when dealing with young offenders.

- United Nations Rules for the Protection of Juveniles deprived of their Liberty (JDLs), 1990, provides that schooling and training opportunities, recreational facilities, and regular contact with wider community and initiatives that promote successful reintegration into society should be accessible to detained youth.

- United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh guidelines), 1990, has a set of sixty five principles aimed at preventing juvenile offending. This instrument proposes a social policy focusing on the identification and modification of social risks situations and their causes.

- United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo rules), 1990, states that community based alternatives are more beneficial than imprisonment.

- Probation Service as 116 of 1991 provides for the establishment and implementation of programmes aimed at combating crime. It also provides for appointment of Probation Officers.

- Schools Act 84 of 1996 also abolishes corporal punishment of children.

- South African Constitution (Act 108 of 1996), section 28(1) (g) of the Constitution Act 108 of 1996 states that, the detention of children can only be exercised as a measure of last resort and if detained (section 12 and 35 of Constitution also applies), he/she must be kept separately from adult detainees, and must be treated in a careful and sensitive manner that takes into consideration the child’s age.

- Inter-Ministerial Committee Policy Recommendations on Young People at Risk (1996) puts emphasis on programmes and activities aimed at restoring societal harmony and correcting the wrongs rather than on punishment when dealing with young offenders.

- National Crime Prevention Strategy (1996) emphasizes that a victim centered and restorative centered system that seeks to encourage full
rehabilitation, especially young and juvenile offenders is preferred as it will also help the juvenile offenders to avoid a criminal career.

- Social Welfare White Paper (1997) section 155 of this paper provides that services to offenders and victims of crime and their families must be aimed at restorative justice and to take into consideration the victim’s account. Also according to this paper, the institutionalization of young people should always be a last resort.

- White Paper on Transforming Public service Delivery, 1997, provides a regulatory framework and a practical implementation strategy for a more efficient; effective and equitable provision of public services (Batho Pele principles).

- Criminal Law Amendment Act 105 of 1997 provides for imposition of minimum sentences.


- African Charter on the Rights and Welfare of the Child, 1990, states that reformation, reintegration and rehabilitation are some of the key aspects that need to be taken into consideration when decisions about accused or arrested persons are made.

- White Paper on Safety and Security - In service of safety (1999-2004) this paper deals with aspects of crime prevention and mentions different types of crime prevention, for example developmental crime prevention which focuses on young people and their families.

- Promotion of access to information Act 2 of 2000 gives effect to the Constitutional right of access to any information held by the State.

- Probation Service Amendment Act 35 of 2002, provides for the appointment of Assistant Probation Officers who are appointed to assist and work under the supervision of Probation Officers.

- Child Justice Bill 49 of 2002 is a comprehensive child justice legislation that incorporates all the legislation dealing with children accused of crimes into one user friendly piece of legislation. It also provides for mandatory assessment of all arrested children; preliminary inquiries.
• Children’s Act 38 of 2005, section 18(2) responsibility of parents to care and maintain the child.

• Criminal Law Amendment (Sexual and related matters) Act 32 of 2007 which provides for “prosecution and adjudication of consensual sexual acts” between children who are above 12 years of age but below 16 years of age.

• Children’s Amendment Act 41 of 2007 provides for establishment and registration of child and youth care facilities e.g. secure care facilities. Section 144(1) (h) also legalizes diversion programmes and reads as follows “prevention and early intervention programmes must focus on diverting children away from the criminal justice system. Section 147 provides for minimum norms and standards for those diversions programmes.

The study proposes that the aim of all these legislation is to protect young offenders from harm, while holding them accountable for their actions and to ensure that they do not become victims of the system itself. The abolition of corporal punishment for juveniles is among the many ways in which South Africa as a country shows its commitment towards a justice system that deals with children in a fair, careful and sensitive manner. The researcher believes that the proposal for a separate child justice system does not mean that those children who are accused of committing serious, aggressive and violent crimes will be excused, but the proposed system is a system that promises to deal with those of children swiftly and firmly. According to the South African Law Reform Commission (1997:6), only 10% of children commit serious and violent offences. The 90% of children who commit less serious offences need to be diverted away from the criminal justice system to programmes aimed at restoring the harm caused by the offence without the child acquiring criminal record.
2.5 INTRODUCTION AND DEVELOPMENT OF DIVERSION PROGRAMMES IN SOUTH AFRICA

As the transition to democracy began to unfold during the 1990s, detention without trial stopped, as did the need to focus on children as political actors or victims of repression. At that time non-governmental organizations (NGO’s) concerned with youth crime began experimenting with non-residential diversion programmes as alternatives to prosecution and incarceration (Sloth-Nielsen, 2001). These NGO’s forged an informal arrangement and relationship of understanding with courts especially prosecutors, that they would channel children away from the criminal justice system in return for withdrawal of charges on satisfactory completion of a diversion programme by the young offender. According to Shapiro (1994:90), diversion is “channeling of certain conditions of prima facie cases away from the criminal justice to extra judicial programs at the discretion of the prosecution”. Article 40(3) (b) of United Nations Convention on the Rights of a Child, stipulates that those who have ratified the Convention are obliged to develop diversion programmes. The Beijing Rule centralize the principle of diversion, Rule 11.1 provides that “consideration shall be given, wherever appropriate to dealing with juvenile offenders without resorting to formal trial by the competent authority” (United Nations, 1985).

Wood (2003:1) writes that the development of diversion programmes is “concurrent with the establishment of separate child justice”. Wood (2003:1) claims that when diversions were first introduced, they were based only within the institutions and were aimed at curbing re-offending, thus used for “treatment; moral re-education”.

Wood (2003:2) writes that the National Institute for Crime Prevention and the Re-Integration of Offenders (NICRO) was the first non governmental organization to launch diversion initiatives in South Africa in the 1990s. The first diversion programs to be launched were the Youth Empowerment Scheme (YES) and Pre-Trial Community Services, but NICRO expanded its diversion programs to include Family Group Conference (FGC); Victim
Offender Mediation (VOM) and Journey. Wood (2003:2) believes that with the rise in advocacy towards restorative justice, Nicro was compelled to introduce diversion programmes that focused on repairing the harm caused by the offending behavior.

According to Wood (2003:2) these diversion programmes were practiced although there was no regulating policy framework. She claims that the prosecutor’s discretion to withdraw charges was the only legal mechanism that permitted the use of diversion programmes and this according to her led to unequal access to diversion programmes.

The Child Justice Bill 49 of 2002 proposes an expanded range of diversion options with three different levels of diversion options: Level one comprising the least onerous and includes amongst others, oral or written apology; formal cautioning; reporting order not more that 3 months. Level two comprising of more intense programmes than those at level one, and can run for a maximum period of six months and include, for instance, compulsory attendance at a specified centre or place for vocational training, or community services under the supervision of an individual or an institution and referral to a family group conference or a victim-offender mediation programme. Level three diversions can only be applied to children of 14 years or older if the court believes that upon conviction, the child would be sentenced to detention for a period not exceeding six months (Wood,2003). The Bill also proposes that the diversion options should incorporate a restorative justice element (Wood, 2003).

Muntingh(1997:6-7) states that the central feature of the new juvenile justice system in South Africa is diverting children away from the formal criminal justice and penal system. He claims that the diversion programs are based on the belief that in many cases the full right and cost of the criminal justice system is not required to achieve the objectives of the law or the community, meaning that the diversion programs are more cost-effective. According to Muntingh (1997:6) these diversion programmes are not intended to make the offenders less accountable for their actions, but is an opportunity to do away
with criminal activities without getting a criminal record. Muntingh (1997:7) and Cupido(2005:41) claim that the diversion programs are aimed at making offenders responsible and accountable for their action; providing an opportunity for reparation; at identifying underlying problems motivating offending behavior; preventing most first time offenders from receiving a criminal record and being labeled as criminals as this may be a self fulfilling prophecy; to provide educational and rehabilitative programs to the benefit of all parties concerned and to lessen the case load of the formal justice system.

According to Muntingh (1997:7) these diversion programmes, besides promoting the well being of the young offender in an individualized manner, they also make the criminal justice system seem more humane and more effective. He believes that the purpose is to encourage the young offender to be accountable for wrong doing, the victims also get a chance to express how the criminal activity has affected them and their feeling about the harm caused (Muntingh 1997:7). With these programmes the victims can obtain restitution. Diversion options should have a positive outcome for the young offender, in that the young offender must be helped to understand the impact of his/her own actions to others. Wood(2003)states that diversion does not only mean formal placement of a child in a program but also includes other interventions such as formal police cautions, writing an apology letter, participating in an alternative dispute resolution forum or being placed under supervision. Wood (2003:1) also believes that although the practice of diversion programmes has noticeable advantages but there are also some disadvantages such as the following as:

- The power to divert often depends on the discretion of a public prosecutor which means that there is no uniformity. Wood (2003) writes that when it comes to decisions to divert, prosecutors are “dominis litis”, meaning that they decide which cases to divert or to prosecute taking into account a range of factors such as the circumstances of the child, the safety of the child and the community, and protecting the rights of the victim. The power to divert is often given to prosecutors who are granted a
wide discretionary authority. This can result in race, class and gender prejudices influencing which children are afforded access to diversion interventions (Wood, 2003).

- The absence of a regulating legal framework for the practice of diversion. Wood (2003) writes that diversion has been occurring in the absence of a regulating legislative framework to govern referral procedures, access and delivery of diversion intervention to ensure protection of children’s rights. This situation will undoubtedly improve with the enactment of the Child Justice Bill (49 of 2002) drafted specifically to promote and regulate the diversion of cases away from formal court procedures, but at the present moment the Children’s Amendment Act 41 of 2007 legalizes the use of diversions and provides for establishment of minimum standards for the diversion programmes.

- Diversion programs result in “net-widening”. Chajkoski and Wollan (1989:219) describes net widening as an “extension of the criminal justice system to persons who might not otherwise be captured, the system broadens its power even further to spread non-legal or extra-legal standards of behavior which support the kind of world favored by the managers of the system”.

Palmary (2003:14) also states that there are certain difficulties observed with diversion programs. Palmary (2003:14) has cited amongst others a lack of resources in some areas, particularly rural areas, a shortage of probation officers who are located long distances from the community and the involvement of communities in the rehabilitation of offenders is not always positive and could be punitive. Another disadvantage pointed out by Shapiro (1994) is the lack of follow up sessions or support services. This, according to Skelton (2000) highlights the need for ongoing monitoring of the implementation of diversion as stipulated in section 51 of the Child Justice Bill.

According to Wood (2003:8), the Bill proposes that probation officers should play a key role with regard to the assessment of a child and recommendations of an appropriate diversion programme and placement of the child awaiting trial. The Probation Service Amendment Act 35 of 2002 made provision for
the appointment of assistant probation officers. These assistant probation officers are also designated family finders who are expected to make every effort to locate the child’s parents or an appropriate adult to attend both the assessment and later the preliminary inquiry. The presence and involvement of families during the assessment of a young person and preliminary inquiries is also acknowledged by the advocates of systems theory, who believe that if the system is to survive, the families are expected to guide, assist and support the young person, thus fulfilling a certain function. The functionalists would argue that the cooperation of families during assessment of a young person is another way of working towards consensus of the society. With the reintegrative shaming, the presence of families during the assessment would signify the start of the reintegrative shaming process and families would be expected to nurture and care for the young person. Both the systems’ theory and reintegrative shaming emphasize the importance of involvement of families in addressing the issue of crime.

After arrest the probation officer is required and expected to submit an assessment report which indicates the appropriate age of the young offender and whether the child acknowledges and accepts the responsibility for offence and the recommended diversion option (Beukman, 2005). According to Wood (2003:1) the new system, proposed by the Bill, emphasizes the mandatory individual assessment of each child and tries to find alternative ways to deal with children, keeping them within their families and communities and protecting them from the damaging effects of courts and prison as far as possible. She also believes that the restorative justice and diversion form a fundamental part of the Child Justice legislation.

Leschied (1989) is of the opinion that constructive and non violent options that allow the offenders to take responsibility for their actions and help the victims would be a better option than sending the juvenile to prison. He claims that the rate of re offending after imprisonment among Canada teenagers was 92%; therefore in his opinion detention does not work and the diversion should be given serious consideration. Consedine (1995) also came to a similar conclusion on a research he conducted among British teenagers. Both
Consedine and Leschied are of the opinion that restorative justice should replace the retributive approach and imprisonment. Riley (1999:17) believes that diversion programs are suitable for children and young people who are more likely to rehabilitated than adults and that prison and detention facilities are more likely to have a negative impact on the physical and emotional well being of the young person.

According to Cupido (2005:41-43), diversion is currently one of the popular options in an attempt to treat juvenile crime differently. According to Muntingh (1999) there is a general criterion that is applied when determining suitability for diversion is as follows, but this selection criterion only serve as a guide:

• the child suspected of committing an offence voluntarily acknowledges responsibility for the alleged offence
• there is sufficient evidence to prosecute;
• the child and parent consent to diversion and the option,
• and the young offender has a fixed address,
• child be between 12 and 18 years of age

According to section 51 of Child Justice Bill 49 of 2002, a child may only be diverted if the child “voluntarily” admits to committing such an offence; is fully conversant of his /her right to remain silent; that there is prima facie evidence against the child; and that the child and parent agree to diversion and the chosen option.

These diversion programs have come to be used as pre-trial diversion options, obviating the need for court appearances and criminal trials (Sloth-Nielsen, 2003). Davis, in (Bezuidenhout and Joubert, 2003:154) claims that participation in diversion programs require the young offenders to give up their spare time and commit to leaning a new way of life. According to Muntingh (1997:7), the diversion procedures adhere to the principles of restorative justice, and any diversion option selected must comply with the minimum standards which are aimed at ensuring that children are not exploited or harmed. Diversion options should have a positive outcome for the child.
offender, in that it must help the child offender to understand the impact of their action on others. The diversions also afford the victim the opportunity to heal and be positively affected through programs such as victim offender mediation and family group conferencing (Muntingh, 1997:5).

2.5.1 Guidelines for diversion

Beukman (2005) writes that when a decision is made about diverting children away from the criminal justice system, the best interest of the child should always be considered; children should not be unfairly discriminated against; diversion should not include corporal punishment and public humiliation. Both the United Nations Convention on the Rights of the Child and the Constitution Act 108 of 1996 have sections that endorse that the best interests of the child are of paramount importance in any matter that concerns the child and prohibits unfair discrimination and degrading and inhuman punishment of children in trouble with the law.

2.5.2 Minimum standards applicable to diversion programmes

On 13 July 2007, the Deputy Minister of Social Development launched a minimum norms and standards booklet on Diversions (Swanson- Jacobs, 2007). In section 55(1) of the Child Justice Bill 49 of 2002 there are means put in place for the purpose of standardizing the practice of diversions such as the inability to pay any fee is not a reason to exclude any child from diversion; the age of child and maturity should be taken into consideration when diverting children aged 10 or over into community services. Any chosen diversion option must “promote the dignity and well being of the child, and the development of self worth and ability to contribute to society; not be exploitative, harmful or hazardous to a child’s physical or mental health; be appropriate to the age ; and not interfere with the child’s schooling”(Child Justice Bill 49,2002:33).Section 55(2) of Child Justice Bill 49 of 2002 provides that diversion options must , “impart useful skills; include a restorative justice element...include an element which seeks to ensure that the child
understands impact of his/her behavior...be presented in a location reasonably accessible to children...”(Child Justice Bill 49,2002:33).

Mbambo (2005:2) believes that in addition to the above standards, there are also guiding principles that must be adhered to. She writes that these guiding principles should include the identification of predisposing weaknesses and strengths in communities; the provision of intensive contact with children and provision of strength based intervention. She also believes that the children’s relationship should be taken into consideration when dealing with children; focus should be on education and strong family support; cooperation of community members should be encouraged and focus should be on school attendance, positive peer role models and creating opportunities for work especially among the adolescent population.

This research argues that the South African government does not believe in sending young children to prison subsequently, methods are in place to deal with children who are in trouble with the law. The researcher believes that the South African government realizes that children who are in trouble with the law should be treated differently from adults, because children can be influenced by adults to commit a crime or the financial circumstances of the child can lead to theft, for example. So instead imprisoning a child who has committed an offence, that child may be referred to a probation officer who will assess the child and find out why the child committed the offence. Diverting children away from the criminal justice system has certain benefits over criminal prosecution, and those benefits are as follows:

- Children avoid criminal record, which can brand them for life and impair their chances of obtaining certain kinds of employment (Muntingh, 1997).
- Life skills are imparted on children during the diversion programs.
- Longitudinal studies appear to show that diversion is effective in preventing recidivism. (Muntingh, 1998)
- Diversion programs are cost effective (Sloth-Nielsen, 2003).
• Children are no longer stigmatized by exposure to the rigors of criminal justice system (Muntingh, 1997).
• Court time is saved because prosecutors usually withdraw cases from the court roll on condition that young offenders comply with the requirements of diversion programs (Muntingh, 1997).

According to Mbambo (2000), diversion programs should provide a range of opportunity for victims to express their views about how the incident has impacted on their lives and what would they like as an outcome. She also believes that families have the capacity to deal with the offending behavior and prevent future offending. One of the diversion programs that incorporate these two principles is the family group conference.

In order to maintain peace and order in any country, all citizens are expected to adhere to the rules and regulations of that country including children. A separate child justice legislation is only there for those children who happened to commit crimes and is only meant to give preferential treatment to child offenders, taking into consideration their age and maturity. As mentioned by Davis, in (Bezuidenhout and Joubert 2003: 138) children usually commit crimes due to different reasons for example, inability to control the child or being used by adults to commit crimes or due to lack of financial resources in their families. The collaboration of all role players in the criminal justice system will ensure and promote an honest appraisal of the circumstances relevant to the child’s commission of the offence, and seek solutions to this in a participative way.

The researcher of this study also believes that the aim of the new child justice system is to promote the well being of the child, and to deal with each child in an individualized manner. The focus is to divert children who have committed less serious offences away from the formal criminal justice system. The involvement of family and community is of vital importance, as is sensitivity to culture and the empowerment of victims.
2.6 RESTORATIVE JUSTICE AND ITS BENEFITS

According to Mousourakis (2004:2) the traditional criminal justice system’s failure in preventing and reducing the rate of crime as well as meeting the needs of the offenders; victims and communities has sparked the growing interest in “restorative justice”. He believes that this interest signifies “a reflection of not being satisfied with the traditional criminal justice theory”. Mousourakis (2004:2) writes that the traditional system with its focus on determination of guilt and punishment has resulted in a “contest” between the offender (who is trying by all means to escape punishment) and the state (which is focused on a conviction).

Mousourakis (2004:2) believes that the traditional system is governed by “impersonal and systematic rules” which allow the state to be only active “participant” in the whole process. He believes that the passive participation of the other participants who have a stake in the commission of the crime (offender; victim and communities) results in the offender being unable to grasp the human impact of their actions on the victims; and “the victim remains just that, a victim” (Mousourakis, 2004:2).

The definition of crime in terms of traditional justice theory is “transgression of rules and regulations laid down by the state in order to maintain peace and harmony”; while in the restorative justice theory crime is defined as “violation of people and relationships, and this affect the victim, communities and offenders themselves” (Mousourakis, 2004:2). The South African Law Reform Commission (1997:4) defines restorative justice as “a way of dealing with victims and offenders by focusing on the settlement of conflicts arising from crime and resolving the underlying problems which caused it”.

According to Umbreit (2000:1) restorative justice emphasizes the importance of elevating the role of victims and community members through more active involvement in the justice process, holding offenders directly accountable to the people they have violated and providing a range of opportunities for dialogue, negotiation and problem solving which can lead to a greater sense
of community safety, social harmony and peace for all involved. He believes that restorative justice relies on the capacity of individuals, families and communities to work out solutions that suit their situations. He also states that restorative justice reflects belief that justice should invite full participation and consensus; full and direct accountability; to heal what has been broken; to reunite what has been divided and to strengthen the community to prevent further harm. Restorative justice allows for the participation of the young person, his/her family and support system and the victim and own support system and relies on reconciliation, not on punishment and the involvement of the victim (Umbreit, 2000).

According to the South African Law Commission (1997:9) “the process of restorative justice seeks to redefine crime, interpreting it not so much as breaking the law, or offending against the state, but as an injury or wrong done to another person”. Umbreit (2000:4) is of the opinion that the available research proves that restorative justice programs yield higher levels of satisfaction for both the offenders and the victims, and reduced fear among the victims.

2.6.1 The history of restorative justice in South Africa

Skelton and Batley (2006:19) write that the concept of restorative justice has its roots from the African traditional system which preceded colonization. According to Skelton and Batley (2006: 19) the practice of restorative justice in South Africa dates back to 1992 when, South Africa participated in the “modern international movement of restorative justice”. South Africa has been involved in number of initiatives that were used to promote “restorative justice” (Skelton and Batley 2006:19-21).The Probation Services Amendment Act 35 of 2002 is the first to mention “restorative justice” in South African legislation. In section 1(d) of the Probation Services Amendment Act 35 of 2002, restorative justice is defined as “the promotion of reconciliation, restitution and responsibility through the involvement of a child, the child’s parents, family members, victims and communities concerned”.

53
The Inter-Ministerial Committee has adopted the core concepts of restorative justice as its “practice principle” (IMC 1996:24). The South African Law Reform Commission (1996) has undertaken several projects and some of which have mentioned the importance of restorative justice, and they are as follows:

- The Juvenile Justice Project (106) contained a draft Child Justice Bill (49 of 2002). The issue of restorative justice is at the core of this Child Justice Bill. One of the objectives of this Bill is to “entrench the notion of restorative justice system in respect of children in conflict with the law” (Bill 49 of 2002). This Bill also proposes that sentences should reflect a restorative justice.

- Sentencing: A New Sentencing Framework (discussion paper 82) states and proposes that partnerships should be forged between the state, the public and victims of crime during the sentencing process. Compensation of the victims should be given explicit attention.

- Community Dispute Resolution Structures (project 94) proposes that community based dispute resolution forums like “makgotla, inkundla, ibunga and imbizos” should be encouraged and nurtured.

- In terms of section 155 of White Paper For Social Welfare (1997), the services offered to offender, victims and their families be based on restorative justice and the involvement and needs of victims and communities are of paramount importance for promotion of reintegration and social cohesion. Section 155 of White Paper for Social Welfare (1997) also provides that imprisonment should only be exercised as a measure of last resort and for those who are a danger to the society and community, sentences should be developed and maintained at a level which will command credibility with the courts as an alternative to imprisonment (section 155(f) of Social Welfare White Paper, 1997).

- The Inter-Ministerial Committee on Young people at Risk (1997) recommended that the best way to approach young people in trouble with the law is to focus on interventions that are aimed at restoring the imbalance caused by the commission of crime and on addressing the harm caused rather than punishment.
• In 1996, the Inter- Ministerial Committee authorized a study tour to New Zealand, after which a Family Group Conference project was piloted in Pretoria (Skelton and Batley, 2006:20).

• The National Crime Prevention Strategy (1996) proposes and recommends that victim centered, restorative justice system should be given a priority if crime prevention strategies are to be effective.

In 2004, a Service Charter for Victims of Crime in South Africa was launched which stated how victims of crime should be treated and the importance of placing victims at the core of the justice system. Other initiatives by the South African government include the launch of a Victim Empowerment Programme (VEP) by the Department of Social Development and the introduction of restorative justice in prison by the Department of Correctional Services.

Nicro was the first NGO to establish a Victim Offender Mediation project in Cape Town (Skelton and Batley, 2006:19). In 1995, a Survivor-Offender Mediation (SOM) was established and convened by the Center for the Study of Violence and Rehabilitation (CSVR), with an aim of offering services to the victims or survivors and offenders during the seating of the Truth and Reconciliation Commission (TRC) (Skelton and Batley, 2006:20). In 1999, the Restorative Justice Centre launched a Victim Offender Conference (Skelton and Batley, 2006:21).

Skelton and Batley (2006:23) believe that the concept of restorative justice is “attractive to the policy makers in South Africa”. They state that this is shown by a number of trainings conducted in South Africa by people from outside the country and this also points towards commitment to the establishment of restorative justice in South Africa. Howard Zehr was in South Africa on two different occasions to give training; Gabriel Maxwell was also in South Africa in 1990; Ted Wachtel and Evan Kiernan in 1999 who are experts in the field of restorative justice (Skelton and Batley, 2006:23).
2.6.2 The values and elements of restorative justice

Van Ness and Strongs (2002:56) have identified four values, which have a number of elements that characterize restorative justice: encounter; amends; reintegration and inclusion. According to Skelton and Batley (2006:6), other writers have added other values like “democracy, responsibility, safety, healing, dignity, respect and belonging”. According to Umbreit (1994:42) the concept of restorative justice lies in the philosophy of conflict resolution, accountability and active involvement of all the relevant stakeholders.

Steyn (2005:13) writes that restorative justice is based on belief that criminal acts and behavior cause harm to victims and the community at large and that victims, offenders and communities should play an active role in repairing harm caused, thus taking ownership of the process and the government should work to preserve law and order, while communities establish peace.

Skelton (2005:239-248) claims that the modern restorative justice process has certain features that are also available in the traditional justice system. She believes that these common features include reconciliation, restoration of peace and harmony; value for dignity and respect; vague distinction between civil and criminal justice; simple and informal procedure. She claims that the modern restorative justice and traditional justice are both catalysts for change; victims get restitution and compensation; and there is participation and ownership of all involved and it also promotes a normative system that stresses both rights and duties. Mousourakis (2004:4) writes that voluntary participation; truth telling; acceptance of involvement in criminal activity by the offender; face- face interaction; ability to hear and challenge each other’s version of the story are some of the essential elements of restorative justice.
2.6.3 The difference between retributive and restorative justice

The proposals for a new comprehensive separate justice for children were based on a shift away from the retributive system to restorative justice system. A brief look at the differences between the two systems is necessary. Muntingh (1997:7-8) has summarized the difference between the two justice systems as tabulated below:

Table 3: Difference between retributive and restorative justice

<table>
<thead>
<tr>
<th>Retributive</th>
<th>Restorative</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Crime violates the state and its laws, so the state is the victim, State vs. So</td>
<td>Crime violates people and relationships, people and communities are victims</td>
</tr>
<tr>
<td>2. Focus is on blaming and proving guilty</td>
<td>Focus is on needs and obligations and responsibility</td>
</tr>
<tr>
<td>3. The participants are: the state which plays an active role and offenders who play a passive role</td>
<td>Participants are: victim; offender community and the state</td>
</tr>
<tr>
<td>4. Adversarial, authoritarian, technical, impersonal</td>
<td>Participatory, mutual agreement information and dialogue</td>
</tr>
<tr>
<td>5. Aim is to inflict pain and suffering - punishment</td>
<td>Healing, restitution, making things rights, rehabilitation, problem solving</td>
</tr>
<tr>
<td>6. Eye for an eye</td>
<td>Repair the harm done by making things right</td>
</tr>
<tr>
<td>7. Victims are ignored</td>
<td>Process is victim sensitive and centered</td>
</tr>
<tr>
<td>8. The offence is categorized in legal terms</td>
<td>Broader terms used to describe the offence</td>
</tr>
<tr>
<td>9. acquiring of a criminal record</td>
<td>Restoration removes stigma attached to the offence</td>
</tr>
<tr>
<td>10. Legal and social professional play a major role</td>
<td>Community involvement</td>
</tr>
</tbody>
</table>

According to Mousourakis (2004: 3) both the restorative and retributive justice aims at "restoring equality between the offender and the victim", but the means of achieving this “equality” is different. He believes that with the retributive justice the process is dependent upon “a set of punitive practices and stigmatic punishment”, and the focus is on “what happened” instead of generating a “solution”. On the other hand restorative justice is concerned with repairing the damage caused by the commission of the offence between
the offender and victim and community (Mousourakis, 2004:3). Mousourakis (2004:4) further writes that with retributive justice, the main focus is on what happened in the past and although restorative justice does look into the past, it is done only in order to improve relationships for a “better future”. Mousourakis (2004:4) also believes that restorative justice is flexible and the focus is on the outcome and on seeking to bring about future social equality between parties, thus contributing to the prevention of future deviance.

Mousourakis (2004: 3) has mentioned another form of justice called “corrective justice”. He states that corrective justice is applied when there is transfer of material resources from the offender to the victim to compensate for the material losses suffered by the victim. He believes that with restorative justice the wrong is adequately addressed only if the broken relationship has been restored back to normal (Mousourakis, 2004:3). He explains that with restorative justice, the victims experience justice when their needs, material, psychological and spiritual are addressed and they have a voice in the process. At the same time offenders also experience justice when they are encouraged to take responsibility for their own actions and are encouraged and given an opportunity to make things right, and participate in the process. He also believes that restorative justice reflects a belief that justice in order to have the maximum positive impact should invite full participation and consensus; seek full and direct accountability, heal what has been broken and reunite what has been divided and strengthen the community to prevent further harm. Mousourakis (2004:5) writes that the restorative justice is an advantageous process for the offenders; victims and the communities. When people are the victims of any criminal activity, they lose their “self respect and dignity” and they are overwhelmed by feelings of “grievance, resentment and disempowerment” (Mousourakis, 2004:5). He writes that unless the victims are given a chance and a platform to express their feelings and experiences in connection with the crime committed against them, they will continue to feel disempowered. A sense of control and safety only comes when the victims feel that their rights have been “vindicated” (Mousourakis, 2004:6).
Mousourakis (2004: 6) has made a distinction between two types of victims, “primary and secondary victims”. He believes that primary victims should be given priority. Sometimes victims are often stigmatized as a result of the offence and it is of vital importance that those victims are reintegrated back into the community (Mousourakis, 2004:6). Mousourakis (2004:7) believes that restorative justice also provides reconciliation for the offenders and reintegration into the community. He claims that it is very important for offenders to be reintegrated back to the community as they may have a lasting stigma attached to them; and may be labeled as being “deviant and dangerous” (Mousourakis, 2004:7). The integration of the offender also plays an important part towards reparation, as “access to the means to do so must not be impeded” (Mousourakis, 2004:7).

Mousourakis (2004:9) mentions that restorative justice is also beneficial for communities in that they experience a drop in crime rate and a reduction in re-offending; social equality; healing from the harmful effects of crime and the active participation of the community members leading to restoration of control of justice by citizens. Mousourakis (2004:6) also states that with restorative justice victims can receive compensation for material losses and a sense of acknowledgement of the harm caused; the offenders will develop an increased awareness of the impact of their crime on other people and the capacity to contribute positively to the community; the communities will be willing and ready to accept and integrate offenders, and will have an increased understanding of the justice system.

Griffith, Kennedy and Mehanna undertook a study in Egypt on youth justice and found that the traditional negotiating systems of social control were in operation in villages and only serious cases were referred to court (Hudson and Galney, 1989). They found out that the traditional negotiating systems were more effective in addressing the issues of all concerned. According to them, community and extended family support networks are used extensively to assist in this traditional method of justice, in which the primary objective is to restore harmony and order. Skelton (2002) writes that the process of restorative justice involves offenders taking responsibility of making amends
for any wrong doing and restoring a belief that the process they are involved in is fair and just, as are the outcomes reached. The goal is that offenders will as a result rejoin the law abiding community.

2.6.4 Restorative justice in practice

Mousourakis (2004:9) states that there are many practices of restorative justice to be found in many indigenous and traditional societies. He writes that the current use of the term “restorative justice” is understood as referring to mediated meetings between the victim and offender aimed at reparation and reconciliation and first implemented in mid 1970’s. He claims that in recent years the role of the community in restorative justice has been given special attention.

Mousourakis (2004:14) believes that restorative justice can be practiced when dealing with other social problems such as “domestic violence, child neglect and school bullying”. Mediated meetings between students, teachers and parents, for example may yield good results in the reduction and prevention of school violence (Mousourakis, 2004:14). The South African Truth and Reconciliation Commission (TRC) is another example of a restorative justice model used to address conflicts and injustices committed during the apartheid years (Mousourakis, 2004:14). According to Mousourakis (2004:14) the TRC as a restorative justice model “returned power to victims and their families, demanded accountability from offenders and sought to provide some level of reparation to those who had suffered”. The establishment of the TRC was necessary, because South Africa is a nation with a history of violence and conflicts caused by the previous apartheid regime. In order to be a “truly rainbow nation” and to build a “positive future” a “dedicated consideration of the past was necessary” (Maepa, 2005:1). Mousourakis (2004:10) writes that “conferencing” is a restorative justice practice that has received much attention in the recent years. Family group conferencing will be discussed later in this chapter.
2.6.5 Sign posts of a truly restorative justice programme

Zehr (1990) states that a truly restorative justice programme focuses on the harms of wrongdoing more than the rules that have been broken; empowerment and restoration of victims and responding to their needs as they see them; has equal concern and commitment to victims and offenders and their involvement in the process of justice; and support of offenders while encouraging them to understand, accept and carry out their obligations. He further proposes that in a truly restorative justice programme obligations by offenders are not intended to be punitive and are achievable; opportunities for dialogue, direct or indirect, between victims and offenders are encouraged; there is respect for all parties; involvement and empowerment of the affected community in the justice process also increases its capacity to recognize and respond to community bases of crime, and there is collaboration and reintegration rather than coercion and isolation.

2.7 THE FAMILY GROUP CONFERENCE

According to Umbreit (2000:3) a family group conference is one of the specific examples of restorative justice programmes. A family group conference is defined as “a gathering convened by a probation officer as a diversion option to devise a restorative response to the offence” (Probation Services Amendment Act 35 of 2002). In Issue paper 7 project 82, the South African Law Commission claims that “family group conferencing is a means to establish a greater degree of community control and is aimed at reparation rather than retribution” (SALC, 1999). According to Branken, in (Muntingh and Shapiro 1997:41) it is families and communities that know best how to deal with the offending behavior. With the family group conference the victims have an opportunity of voicing their pain and feelings about the incident and the offender is given the chance to understand the impact of his/her actions on the victim and to be forgiven.
2.7.1 The origins and history of family group conferencing

According to Umbreit (2000:5) formal conferencing was first pioneered and institutionalized in New Zealand in 1989 in a bid to overcome problems created by children and young people who commit offenses and to incorporate the value system of the indigenous Maori tribe. Mousourakis (2004: 11) writes that family group conferencing in New Zealand was introduced "primarily as a response to problems pertaining to the treatment of juvenile offenders".

Mousourakis (2004:11) claims that in 1989, Children, Young Persons and Their Families Act was introduced in New Zealand. He states that this Act was developed in “part as response to Maori demands for a system of justice more sensitive to their traditional culture and values”. Umbreit (2000: 5) claims that the value system of the Maori tribe elevates and emphasizes the importance of family and community involvement when addressing a wrong doing. The Family Group Conference which was introduced and legalized in New Zealand through the introduction of the Children, Young Persons and their Families Act in 1989, is a process born of the customary rights, values and practices of the indigenous people of New Zealand (Umbreit, 2000). The Act emphasizes that prosecutions against children are only a measure of last resort and encourages community-based solutions in which families, extended families, sub tribes, tribes and family groups take prime responsibility for their own children and young persons (Umbreit, 2000). According to Mousourakis (2004:11), family group conferencing is used for all juvenile offences except violent and serious offences.

In a restorative justice and community prosecution conference held in Cape Town on 21-23 February 2007, Judge FWM McElrea stated that the family group conference is a meeting of all significant others in a child’s life as well as the victim and own support system. Morris and Maxwell (1998:12) claims that family group conferences in New Zealand are used as a platform for making decisions and recommendations and to plan the best way of dealing
with the offending behavior. They write that the aim of family group conferencing in New Zealand is to repair the damage caused by the commission of an offence, and the involvement of all those affected by the offending behavior is of paramount importance.

Mousourakis (2004:11), writes that family group conferencing in New Zealand is a meeting attended by those people who are most affected by the crime, including the offender’s advocate, a police representative. He claims that the parties are brought together by a trained coordinator. He writes that the conferencing begins with a prayer or blessing, and the facilitator then explains the nature and objective of the conference (Mousourakis, 2004:11). During this stage the young offender is given an opportunity to accept or deny involvement in the offence, and after acknowledgement of the offence the victim is also given a platform to describe his or her “experience and feelings…the effects of the offence”(Mousourakis, 2004:11). It is at this point in time that the rest of the participants enter the discussion, with the facilitator directing the participants into discussing means of repairing the damage. After this, the offender and support system are given an opportunity to deliberate in private so as to reflect on a plan to repair the damage (Mousourakis, 2004:11).

Umbreit (2000: 5) believes that family group conferences are rooted in the theory of “re integrative shaming”, as proposed by Dr Braithwaite in 1989, who believed that re-integrative shaming is designed to heal the breach in social relationships caused by the commission of the offence (Braithwaite, 1989:100). The re-integrative shaming is rooted in the assumption that children are more amenable and responsive to the process, which involves making the child ashamed of their actions, as their personalities are still developing, and the process involves people close to them such as their parents and families (Braithwaite, 1989). Morris and Maxwell (1998) are of different opinion to that of Braithwaite. They believe that all the participants in a family group conference have a very important role to play including the offender. They believe that the physical inclusion of the offender in the
sanctioning process reaffirms that the offender has an important interest in the outcome.

2.7.2 The family group conferencing process

Umbreit (2000: 4) describes the family group conference as the involvement of those people who are most affected by the commission of the crime: the victim; the offender; and the family and support system of both. Umbreit (2000: 4) further purports that a family group conference involves all those people affected by the crime to put forward a resolution to the criminal act. Before deciding on a family group conference as a diversion option, there should be an identifiable victim. According to Umbreit (2000: 4), the family group conference process starts when the facilitator explains the process to the offender and victim after which they are invited to participate in the family group conferencing. Umbreit (2000: 4) explains that no one should be forced to attend the family group conference, and there can be no conference without the offender first acknowledging and accepting responsibility for the crime committed. Muntingh and Mohaneng (1997) claim that although there is no hard and fast rule about the selection criteria for a family group conference, but there is a general criterion which serves as a guide. They stated that the offender’s age must be between 14 and 18 years; the offence committed must be less serious; offender should admit guilt voluntarily and there must be an identifiable victim. They also construct the family group conferencing referral process as follows:

- after commission of the crime the police may arrest the child offender and inform the local Probation Officer and also refer the matter to Court;
- probation officer assesses the child offender before appearance in Court and recommends family group conferencing to the Prosecutor.
- prosecutor may agree that the case be diverted;
- after the prosecutor agrees to a diversion the probation officer contacts the victim, offender’s family and victim’s family or any other support system and decides on a venue and time for the actual conference;
• During the actual conferencing, decisions are made and a plan of action is drafted. The offender is expected to comply with the agreed plan;
• probation officer reports back to the court with a final diversion report and recommends that charges against the offender be withdrawn; and
• sometimes the young offender does not comply with the agreed plan, in which case the probation officer may decide to convene another family Group Conference or refer the matter back to Court. The Prosecutor may decide to prosecute or may refer the case back to the Family Group Conferencing (Muntingh and Mohaneng, 1997).

Umbreit (2000: 4) claims that the actual conference starts with the offender who is expected to describe the criminal incident. According to Branken, in (Muntingh and Shapiro, 1997:39) a family group conference has three phases, preparation; facilitation and monitoring. He emphasizes the importance of each phase for the success of the family group conference. He also writes that the preparation phase is very critical as it can prevent a number of problems which may arise and that all participants should be prepared for the conference. He states that preparation of the family should include the procedures to be followed during the conference, cultural practices to be included, language, time and venue for the conference and family issues. He also claims that although the offender is prepared along with the rest of his family, it is important to spend some time alone with the offender to find out about certain family issues like the nature of relationships at home.

The second phase of the family group conference is the facilitation phase (actual conference), and on this day depending on the levels of conflict between the offender and victim, a sensible thing to do is to have separate waiting rooms (Branken in Muntingh and Shapiro, 1997: 45). According to Branken in (Muntingh and Shapiro, 1997:46) during this phase the offender is given an opportunity to acknowledge the offence and the victim is afforded an opportunity to speak and ask questions and receive clarity. All the participants then discuss a possible outcome and an agreement is reached. Umbreit
(2000:4) states that during this phase the participants should reach and sign an agreement which outlines the plan. The last phase is monitoring which is also critical for both success and confidence building and one person should shoulder the responsibility of overall monitoring of the plan (Umbreit, 2000).

Morris and Maxwell (1998:6) write that the young offender’s role in a family group conference should be an active one. They believe that active participation by the young offender on how best to restore the damage done is of paramount importance, as exclusion from the process signals that the offender’s concerns are minor or unworthy of consideration, which perpetuates the feelings that often underlie offending. They also further claim that the offender’s inclusion is not a result of an intention to shame, but rather an intention to help the offender understand the harm caused and to support them in taking full responsibility for that harm and to provide the offender with a sense of ownership in the means and end of the outcome and the subsequent fulfillment of it. It also signals an affirmation by the offender of the community's legal norms and the desire to be part of a legitimate society so that their participation is a first step towards re-integrating them into the community (Morris and Maxwell, 1998).

Morris and Maxwell (1998:3) emphasize that all the participants in a family group conference have a very vital role to play through their active participation. The participants in a family group conference in New Zealand are the accused young person and family and support system; the victim and own support system; a police representative; a mediator or manager (employed by Department of Social Welfare) and sometimes a lawyer. They further claim that the presence of the offender’s family goes beyond being there to support the offender. They also state that the family of the offender is instrumental in finding and determining the outcome and in facilitating the formulation of an appropriate plan.

Morris and Maxwell (1998:7) write that the presence of a victim and the description of their injury prevent the young offender from denying the offence. They also state that the victim’s perspective can act as a “catalyst”
and may reveal to the offender and family which course of action to take in order to repair the harm caused. Family group conferencing contributes to the empowerment and healing of the community as a whole because it involves more community members in the meeting called to discuss the offense, its effects, and how to remedy the harm (Morris and Maxwell, 1998). By involving a broader range of people affected by the crime, far more citizens become direct stakeholders in the criminal and juvenile justice processes. Morris and Maxwell (1998) provide that family group conferencing leads to greater satisfaction for all involved especially the victims.

The researcher of this study, through her own experience as a probation officer and family group facilitator believes that the involvement of victims in a family group conference makes compensation possible which discourages vigilantism, due to dissatisfaction with the results of the formal court.

2.7.3 The aims of family group conferencing

Muntingh and Mohaneng (1997) claim that family group conferences aim to make the offender realize the impact of his or her action on the victim. They further argue that the offender needs to actively participate in the process of finding solutions to restoring the damage caused by his/her own actions. They also believe that family group conferencing provides an opportunity for the offender to go through this process with adequate support from his/her family. They write that family group conferencing provides a platform for victims by acknowledging and giving them an opportunity to express their feelings about what has happened; acknowledges the offender's family as the primary guardians of the offender who should be given the chance to deal with the situation in their own family way; gives an opportunity and responsibility to the offender to participate in finding a way to repair the damage done to the victim. They also believe that family group conferencing allows the participants to reach a solution satisfactory to both offender and victim in a non-hostile situation and to provide a supportive and healing environment to the victim, the offender and to his/her family; and that it also prevents recidivism. During the piloting of family group conferencing in Pretoria, 23
family group conferences were convened and it was found that all the children who participated in these family group conferences did not re-offend (Wood, 2003).

2.7.4 Similarities and differences between the family group conferencing and victim offender mediation

Umbreit (2000: 5) claims that the similarities and differences between the family group conference and victim offender mediation is what gives the family group conference strength. He claims that both the family group conference and victim offender mediation provides victims with an opportunity to express how the crime has affected them; to receive answers and clarity about the crime. The offender is also afforded an opportunity of giving his own version of the offence and repairing the harm (Umbreit, 2000:6). The family group conference allows for “empowerment and healing of the community” as more people being affected by the criminal behavior of the young person are involved (Umbreit, 2000:6). Mousourakis (2004:10) states that a family group conference is “essential an extension of victim–offender mediation process” which does not involve offender and victims only but also their support systems.

2.7.5 The potential dangers of family group conferencing

Umbreit (2000: 6-8) has identified situations where the success of a family group conference could be in jeopardy. He believes that inadequate preparation of all parties before the actual convening of the conference could jeopardize the success of family group conferencing. The preparation phase is the first stage of the family group conference as explained by Branken in (Muntingh and Shapiro, 1997:43), who claim that this phase is very crucial to the success of the whole family group conference. Braithwaite (2000:12) also claims that inadequate preparation of all participants could jeopardize the success of family group conferences. The preparation of all the participants as well as the preparedness of the facilitator is crucial (Branken in Muntingh and Shapiro, 1997: 43-44).
Umbreit (2000) further claims that the coercion of the victim to participate in the family group conference and insensitivity in the procedures during the conferencing, for example allowing the offender’s family to be seated first, could also have a negative effect on the success of family group conferences. Turman (2000:2-3) warns that the participation of a victim should be voluntary and victims must be allowed the freedom to choose whether they want to meet the offenders or not. Turman (2000:3) states that participation in a family group conference by the victim is a personal decision that each victim must make on his/her own.

The presence of so many adults, including the police representative, may lead to young offender passiveness during the conference and the offender may experience a “shaming and blaming encounter” (Umbreit, 2000:7).

According to Umbreit (2000:8), a truly restorative family group conference should be clearly and explicitly grounded in restorative justice values. He argues that facilitators should be trained in mediation and conflict resolution skills and the effects of victimization and the needs of victims; and the experiences and needs of offenders as well in cultural and ethical issues that are likely to affect the conference process and participants. He also claims that family group conferencing should be sensitive to the victim as much as possible and there must be proper and thorough preparation of all parties.

2.8 CASE STUDIES ON YOUNG OFFENDERS

In looking at the available research on children in trouble with the law in South Africa, the most available information is about the children in the criminal justice systems. Most attention was directed to conditions in South African prisons. The other focus has been on places of safety, schools of industries and reform schools and their suitability as alternatives to prison (Sloth–Nielsen and Muntingh, 1999). The statistics generated on these institutions are used to demonstrate trends in numbers within these institutions (Sloth-Nielsen and Muntingh 1999). Another available research is
on the roles and responsibilities of stakeholders in the criminal justice system, from arrest through to monitoring (Steyn & Foster, 2001). The above researches mainly concentrated on children in institutions and roles and responsibilities of different departments and personnel involved in dealing with children in trouble with the law. These researches did not concentrate on the realities of their lives; views and experiences and in obtaining their first hand experiences. The researcher believes that, although official statistics provide bases for tracking the number of children in the criminal justice system, but understanding the realities of their lives and experiences in context is of vital importance.

It is only recently that the South African research has focused on obtaining the views of children about their lives and experiences. There was a small-scale qualitative pilot project carried out by the Centre for the Study of Violence and Reconciliation (CSVR) in 1997 that focused on the background of 25 young men with similar types of offences (Wedge, Boswell and Dissel, 2000). The purpose of the study was to provide an insight into the background factors of juveniles committing violent offenses. The other purpose of this study was to gain insight to be able to offer recommendations for policy and practice. This study was unable to come up with conclusive evidence due to the small scale size of the project. During the same year CSVR undertook another study, and although small scale in size the young people had different offence profiles. The aim of the research was to prove that understanding young offenders and their motivations for offending is important for both long term solutions to crime and for all those involved in dealing with crime and its victims (Segal, 1998).

In 1998, NICRO did a longitudinal study of the participants of the diversion programmes (Muntingh, 1999). During this study it was found that most respondents rated their diversion experiences as positive and that they learned a lot from the diversion programmes, and were able to understand the implications of getting involved in criminal activities. A case study of 31 children with experience of criminal justice was conducted by Koch and Wood in association with Child Justice Alliances, and they found that those who had
experienced a diversion programme reported a positive experience, and even those who had no experience of diversion but when the concept was explained to them, thought they would have benefited from such a programme (Koch & Wood, 2002). Both these studies concentrated on all diversion programmes.

Gabrielle Maxwell and her colleagues from the Social Policy Agency in New Zealand undertook a study in 1990-91. They collected data on 195 young offenders referred to a Family Group Conference. They observed and recorded what happened at the Family Group Conference, collected data from police, coordinators and social workers’ files and interviewed family members, young people, police officers, coordinators and social work staff members who were involved in the Family Group Conferences. In 1994 Maxwell et al re-examined reconviction data on 161 on these young offenders. The results showed that more than a third of the young people had not been reconvicted at all, and 14% had been re-convicted only once. Just over one quarter had been reconvicted within one year and just over a quarter had persistently re-offended (Maxwell, 1995). The above studies confirm that family group conferencing can prevent recidivism, as stated by Muntingh and Mohaneng (1997).

2.9. CONCLUSION

The group areas act, pass law and migrant labor system which was prevalent during the apartheid years in South Africa is still impacting negatively on many South African communities; families and more especially on children even to the present day. The present level of poverty is a contributory factor in children’s engagement in criminal activities as well as vulnerability to exploitation, for example being used by adults to commit crimes. Many children face many challenges that may compel them to clash with the law. The prevalence of HIV/Aids has led to a rise of completely new forms of families: the child headed families as well as families headed by grandparents. Some of the conditions the children from these families live under predispose them to conflict with law. According to Palmary (2003:2), the
responsibility that faces these children, who through no action of their own find themselves in positions of having to be parents to younger siblings, minimizes their chance of obtaining good education. Lower levels of education are also a predisposing factor to conflict with law.

The responsibility of caring for its children is an enormous task for the developmental state of democratic South Africa. The Government, if it is to succeed in its effort to curb crime, must also improve the quality of life of the families and communities by creating job opportunities and instituting compulsory school attendance of all children of a certain age. The four decades of apartheid in this country has created vast inequalities in the people of this country. The mainstream of black people fall under the most disadvantaged group, which is characterized by unemployment and lack of resources and opportunities. These social ills also affect children and young people and can lead to young people being in trouble with the law.
CHAPTER 3

RESEARCH DESIGN AND METHODOLOGY

3.1 INTRODUCTION

The purpose of this chapter is to discuss the research process that was employed in carrying out the research. It includes the research design and methodology; research process; location and sample chosen; data collection methods; data analysis; challenges and limitations of the study; ethical considerations and value of study. Bailey (1987: 10) believes that each research is unique depending on a number of variables, for example, the time, place and approach of that particular research, but all research projects “must have a clearly stated research problem or goal…each project will have a research design that tells how the data will be gathered and analyzed”.

The overall aim of this study is to explore diverted young male offender’s experiences of family group conferencing as part of the diversion process. The objectives of the study were as follows: to explore diverted young male offenders experience and to make recommendations for the improvement of family group conferencing to the Eastern Cape Provincial Department of Social Development (PDOSD).

3.2 RESEARCH DESIGN AND METHODOLOGY

Bless and Higson –Smith (1993:63) define a research design as “planning of any scientific research from the first to the last step”. Outlining the research design of each study is very important so as to enable other interested researchers to replicate the study (Bailey, 1987:12). Singleton et al (1988: 67) claims that a research design is deciding about the units of analysis, what is of interest about those units and the anticipated results.
Leedy (1993: 139) believes that the choice of a research design and methodology is dependent upon the nature of the data and problem for research. Singleton et al (1988:90) believes that the different types of research conducted, whether the study being conducted is exploratory; descriptive or testing relationships will have different implications for the research design. Bless and Higson-Smith (1995:67) are of the opinion that a carefully tailored research design that meets the exact needs of the researcher and the stated problem is a requirement of each and every research project.

As stated in Chapter 1 of this study the objective of this study was to explore what the participants had experienced during family group conferencing. The aim of this study was not to generalize the findings, but to feel what these young offenders felt when they were part of the family group conferencing as part of their diversion process. This study was investigative, qualitative and exploratory in nature. According to Singleton et al (1988:90) an exploratory study is conducted when there is no information about a particular subject. The researcher in this study had no information about how the diverted young male offenders perceived the family group conferencing they were involved in as part of their diversion. This exploratory research was undertaken to explore, investigate and to gain insight and understanding of how the diverted young male offenders evaluate family group conferencing they were part of.

The aim of this study was to explore in a qualitative manner the experiences of young male offenders who have been through the criminal justice system, but were diverted to family group conferencing. The study aimed to attain the young offenders own frame of reference. The study was exploratory and qualitative in nature. The choice of an exploratory design was motivated by a need to gain insight and an understanding of experiences of young male offenders who were diverted to family group conferencing.

According to Taylor et al (1984:7) a qualitative researcher is able to know the participants personally as he/ she is drawn into the world of the participants.
Dunsmuir and Williams (1991:7) agree with Taylor et al, in that with qualitative research there is a “more in depth understanding of a situation”. Leedy (1993:144) believes that a qualitative research provides the “most meaningful data” as it is the account of those who have first hand experience, and the researcher is able to gain a “holistic view of what is being studied”. Leedy (1993:144) further claims that qualitative research is “flexible; exploratory and discovery oriented”. The qualitative nature of this study allowed the researcher to gain an understanding of how these young male offenders evaluated the family group conferencing they were involved in, as part of their diversion process. The qualitative nature of this study also allowed the researcher to obtain a full understanding of the young male offender’s perception of the family group conferencing they were involved in according to their own “frame of reference” (Taylor and Bogdan, 1984:6). Leedy (1993:142) claims that a qualitative research methodology is a “warm”, approach as it is concerned with human beings, their interpersonal relations, values and beliefs system.

3.3 RESEARCH PROCESS

The research was conducted in Nqamakwe which is a magisterial district under the Mnquma area (Butterworth). The reason for choosing this area is because the researcher was a social worker for six years at Nqamakwe and is very familiar with the locality as well as the people. When the request to carry out the research was made to the parents and young people the researcher was not a stranger so it was not difficult to obtain consent.

3.4 LOCATION AND SAMPLE CHOSEN

According to De Vaus (1986:52) a sampling is a method employed by a researcher who instead of studying the whole population collects information from a group identified and chosen from the population of choice. Singleton et al (1988:92) explains that when a researcher decides on the unit of analysis, the number of units and how to choose those units, that is called sampling. Sampling is necessitated by a certain number of practical reasons,
for example, size, time and costs. Singleton et al (1988:136) writes that these practical considerations compel the researchers to obtain a “perfect sample” that is representative of the entire target population. They further argue that it unlikely that one will draw a perfectly representative sample. The quality of a sample depends upon the type of sampling design chosen.

Bailey (1987: 87) claims that a sampling design can either be probability sampling or a non probability sampling. The sampling procedure chosen for this study was a non probability sampling. Singleton et al (1988: 152) defines a non probability sampling as non random sampling. Singleton et al (1988:152) believes that although a probability sampling has more advantages than non probability which has certain weaknesses like researcher bias, but non probability sampling can be more practical and appropriate for certain studies. Non probability sampling is appropriate for this study as the objective was to become more informed about the experiences of young male offenders who were diverted to family group conference.

Bailey (1987:92-95) mentioned that non probability sampling has different types, and the researcher of this study chose a purposive sample. De Vaus (1986: 68) defines a purposive sample as “a form of non probability sampling where cases are judged as typical of some category of cases of interest to the researcher”. As this was a study of a limited scope, purposive sampling fitted the aim of this study very well, as the researcher deliberately chose to study young male offenders whose diversion experience included family group conferencing. De Vaus (1986:68) claims that although purposive sampling does not ensure “representativeness, but such a method of selection can provide useful information”

The other reason for choosing this type of sampling is because the researcher is not planning to generalize the findings beyond this sample. Bless and Higson- Smith (1995: 67) refer to purposive sampling as judgmental sampling where the units of study are “judged to be typical of the population under the investigation”
Two samples were drawn in this study, one was comprised of 10 young male offenders and the other comprised of 10 parents/guardians of these young people. The issue of youth offending is a widespread phenomenon which is not only confined in urban areas. More and more children from less urbanised environment are involved in criminal activities and in order to curb and reduce the rate of youth offending views of all children both from urban and rural need to be sought. The study was conducted in Nqamakwe magisterial district which is mostly rural. The study is a first of its kind to be conducted in this area. All the young offenders had successfully completed the family group conferencing as part of their diversion. The researcher decided to choose young male offenders because they were more readily available in the area of study, than young female offenders. They were selected by the probation officer who facilitated the family group conferencing. These young offenders were from different localities, and the selection mostly depended on who was available; the probation officer checked the availability of the young offender first by either phoning or by a home visit before inclusion in the sample. The researcher in the study conducted a pre-interview meeting with participants to arrange time and place of meeting for the actual research.

The young male offenders were accused of different offence categories ranging from shoplifting to assault. The study was conducted a year after successful completion of the family group conferencing, meaning that they were a year younger when they committed the offences. The following table shows the ages of respondents at the time of the study:

Table 4: Ages of young offenders

<table>
<thead>
<tr>
<th>AGE</th>
<th>NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>01</td>
</tr>
<tr>
<td>16</td>
<td>05</td>
</tr>
<tr>
<td>17</td>
<td>03</td>
</tr>
<tr>
<td>18</td>
<td>01</td>
</tr>
</tbody>
</table>
Most young offenders were at school during the commission of the offence and were still schooling at the time of the study. The following table shows the number of children who were schooling when the study was conducted.

Table 5: Schooling status of young offenders

<table>
<thead>
<tr>
<th>Schooling</th>
<th>09</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not schooling</td>
<td>01</td>
</tr>
</tbody>
</table>

The study comprised of two samples one of young male offenders and the other of their parents and/or guardians. All the parents/guardians respondents were also part of the family group conferencing with the young offenders. The following tables show the gender of parents and their relationships to the young person.

Table 6: Gender of parents/guardians participants

<table>
<thead>
<tr>
<th>GENDER</th>
<th>NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Females</td>
<td>08</td>
</tr>
<tr>
<td>Males</td>
<td>02</td>
</tr>
</tbody>
</table>

Table 7: Relations to young offenders

<table>
<thead>
<tr>
<th>RELATIONSHIP</th>
<th>NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biological parents</td>
<td>07</td>
</tr>
<tr>
<td>Maternal relative</td>
<td>02</td>
</tr>
<tr>
<td>Neighbor</td>
<td>01</td>
</tr>
</tbody>
</table>

The sampling type chosen limited the ability to generalize the findings to the entire population, but as stated above the objective of this study was to obtain feedback from young male offenders in this area who were diverted to family group conferencing. The researcher wanted to get a feel for what these young offenders experienced during their diversion programme. The sample of young offenders was both heterogeneous and homogenous. Heterogeneity was based on their ages; social background, offence category and level of education. Homogeneity was based on gender as they were all males and all involved in a family group conferencing diversion programme.

3.5 DATA COLLECTION METHODS
Once the researcher has completed the research design, the next step is data collection. The method of data collection also depends upon the nature of the study (research design). Since this study is exploratory and qualitative in nature, the data in this study was collected by means of structured interviews administered by the researcher. The researcher decided to use this instrument of data collection because of certain advantages as mentioned by Bailey (1987: 174) and De Vaus (1986: 101) which amongst others include the ability to monitor and observe the non-verbal behavior of the respondents and the high response rate as compared to mailed questionnaires. Singleton et al (1988: 235) writes that a face to face interview makes it possible for a researcher to elicit more information and complete responses especially if respondents have weak writing skills. Since the respondents in this study had different educational levels and one had dropped out of school during early grades, a face to face interview administered by the researcher was appropriate.

The interview schedules had both open and closed ended questions. The interview schedules were pre-tested with five social workers who were not involved in probation work, and again on five young offenders who were not part of the sample. The aim was to ascertain whether the questions were correctly phased to achieve the desired results and would be clearly understood by the participants, and also to determine the average time it took to complete each interview. The interview schedule was based on predetermined themes for both sample groups.

The participants in the study were given an opportunity of choosing where they would feel most comfortable during interviews, and all preferred to be interviewed in a social worker’s office. The interviews were conducted at Nqamakwe, at the social workers’ offices. Each interview lasted between 45-60 minutes and interviews were conducted over a period of three days. The data was collected at Nqamakwe social workers’ offices over a period of three days with each interview lasting between 45-60 minutes.
The objectives of the study were explained to the participants and they were encouraged to ask questions. The interview with each young offender sought to obtain information about their personal details; their experience in the hands of the South African Police Services (SAPS); their family group conferencing experience as well as the roles they played during the process; their recommendations for future improvement of the family group conferencing practice and their current criminal status after family group conferencing.

The interviews with parents and/or guardians also sought to obtain information about the roles played by young offenders; what they thought of the family group conferencing as parents and to verify data collected from young offenders.

The interviews were conducted in IsiXhosa since it is the first language of both the researcher and the participants, although the interview schedule was written in English. The legal custodians and young offenders were interviewed on separate occasions in order to allow the young offenders to openly discuss any information. The researcher made use of audio tapes for each interview so as to correctly and accurately capture the responses of the participants. Hall & Hall (1996:162) claim that the use of an audio tape during an interview is “more like a conversation and all exchanges are recorded”. The researcher was aware that some respondents did not feel comfortable knowing that what they were saying was recorded, but permission to use an audio tape was sought and the purpose of the audio tape was explained fully, and any fears were allayed. Although the interview schedule was structured, the researcher probed respondents during the interviews in order to gain more insight and clarity.

3.5 DATA ANALYSIS

The study used an interview schedule with open ended questions, so this led to large volumes of data, and as a result data analysis was time consuming.
The researcher was compelled to reduce some of the data and this process according to Bailey (1987:332) is called “data reduction”. The data collected was coded in order to gain an understanding of the experiences of the young male offenders at the time. According to Singleton et al (1988: 345), there are three ways of analyzing collected data, historical interpretation; content analysis and cohort analysis. The system chosen for this study was content analysis as the basic idea of content analysis is to reduce the total content of data collected to a set of categories. Content analysis helped with bringing “order out of the chaos” (Baker, 1988:243). According to Singleton et al (1988:348) content analysis is carried out in three steps, select and defines content categories; define the unit of analysis and decide on a system of enumeration.

The content analysis employed was also based on data received according to predetermined themes. The researcher collated answers to each question and information was sorted into categories according to pre-determined themes. A report of each interview was compiled and the data was then categorized into the personal circumstances of the young offender; experience in the criminal justice system; perception of the family group conference and recommendations given for improvement. The researcher then represented major findings in a qualitative manner. In some instances where the emotions and experiences of the respondents were strongly manifested the researcher decided to quote some of those expressions in the presentation of data. As this was a small scale study the researcher, it was relatively easy to identify similarities and differences emerging in each category.

3.6 CHALLENGES AND LIMITATIONS OF THE STUDY.

The study made use of non probability purposive samples with 10 young male offenders and 10 parents and guardians. The sampling design and size chosen makes it impossible for the researcher to generalize the findings of the study as it is not representative of the entire population.
The level of education of some participants necessitated translation of certain terms to their indigenous language of the participants. The difficulty experienced in translating certain terms for example, translating family group conferencing to IsiXhosa, necessitated an explanation of the whole process of diversion, and this could have led to interviewer bias.

The researcher was also aware of the tendency of participants to give an answer considered appropriate but not necessarily honest in order to please the researcher. The researcher was also aware that the physical presence of the interviewer could create an unnatural environment where the participants may deliberately give incorrect information just to please the researcher; this could lead to distorted findings.

Another identified limitation of this study is that this study was a once-off, and the disadvantage was the inability to build trust with the participants. Bailey (1987: 12) is of the opinion that it is necessary and important for each researcher to repeat the study after the conclusion so as to confirm that the findings were not an “accident”. Due to time and economy constraints, this study could not be replicated, but the researcher has outlined the research design to enable another researcher to replicate this study.

The signing of the consent led to uneasiness in some participants especially those with a low level of education, as they felt they were threatened. The use of audio tapes at first also inhibited some participants from being honest about their experiences, fearing that it may be used against them. The age difference between the young male participants and the researcher was also a problem as they saw the researcher as an adult and were not too forthcoming about certain vital information. However with gentle probing they opened up.

3.8 ETHICAL CONSIDERATIONS

Singleton et al (1988: 444) believes that just as much as practical considerations are important for implementing an ideal research design,
Ethical considerations are also important. According to Singleton et al. (1988: 444), ethical considerations can be divided into three areas:

- Ethics of data collection and analysis
- Ethics of responsibility and society
- Ethics of treatment of participants

Ethics of data collection and analysis occur when the researcher omits negative findings and falsify or change data (Singleton et al., 1968). The researcher was able to present the findings truthfully and honestly not omitting any relevant data.

In relation to ethics of treatment of participants, Singleton et al. (1988: 445) identified four problems: potential harm; lack of informed consent; deception; invasion of privacy. Since this is a social research physical harm was highly unlikely, but Singleton et al. (1988: 446) believe harm could either be physical or otherwise and may include, humiliating and embarrassing the participant. The participants in this study were expected to reflect deeper into past memories, therefore there was a need to debrief the participants. The researcher provided those participants with contact details for possible counseling.

With informed consent, the participants were not forced to participate in this study. The researcher explained to the participants that their participation was voluntary. The researcher also made sure that the respondents knew and were aware of their right not to participate in the study for whatever reason.

The objective and value of the study was explained to participants in order to allow them to make an informed decision about participation. Written consent was signed by the participant and legal guardian. This study involved interviewing minor children and the rights of children as stipulated in our Constitution, were always in the forefront of my mind at all times. So since some of the participants in this study were minors, parental consent was also sought. It was made clear that participation in the study was voluntary and
participants were free to refuse to participate and consent and informed consent was sought.

The researcher in this study did not mislead the participants about the purpose and aim of the study. During the recruiting stage, the purpose of the study was explained to the participants and that the study was a part requirement for my Masters degree. At the beginning of each interview the researcher also explained the rationale of doing the study, and the way in which results would be disseminated.

In terms of section 14 of Constitution Act 108 of 1996, everyone has a right to privacy. The researcher was sensitive so as not to violate this basic human right as entrenched in our Constitution. Singleton et al (1988: 454) advises that the use of concealed devices without the knowledge of the participant constitutes violation of privacy. The researcher in this study requested consent to use audio tapes during the interviews. Privacy goes hand in hand with anonymity and confidentiality. To ensure anonymity and confidentiality of participants, Singleton et al (1988: 455) recommends the following: removal of names and identifying information from the data as soon as possible and not disclosing individual identities in any report of the study.

All the respondents were assured of confidentiality and anonymity in order to protect their identities when publishing the results, pseudonyms were used instead of real names. Considering the sensitive nature of this study, that is involving the young offender’s past and present involvement in the criminal justice system, the probing was conducted with care, sensitivity and consideration. In order to ensure confidentiality of participants pseudonyms were used. It was also made clear that participants would not receive any financial compensation by participating in the study.

Since all the participants were IsiXhosa speaking and not familiar with certain terms used in child and youth justice like family group conference which are
not easily translated to IsiXhosa, this necessitated an explanation of these terms before continuing with each interview.

The researcher is a qualified social worker and as such the topic chosen, the research problem stated and the objectives of the study are clearly stated and are based on the researcher experience as a social worker and a probation officer. The researcher has enough knowledge about challenges experienced by social workers and probation officers while executing their professional duties. The researcher also clearly understands the nature and extent of problems encountered when implementing diversion programmes.

The dilemma that faced the researcher when undertaking the study was how to balance ethical and legal obligations as a social worker with a role of being a researcher, for example what happens when participants become distressed during an interview. Do you as a social worker with clinical skills at your disposal reach out to the participant to relieve distress by offering counseling? The topic being studied although it involved past criminal activities it was not very sensitive and none of the participants were distressed during the interviews. A respectful and non judgmental relationship was established and professional integrity was maintained throughout the duration of the study.

The literature reviewed includes among others theoretical framework guiding the study; legislative mandate; introduction and development of diversion programmes in South Africa and restorative justice. By reviewing this literature the aim was to provide a logical sequence to understanding the issues and challenges to youth justice and care in the current democratic context of the country.
3.9 VALUE OF THE STUDY

The study results will be used to enrich future diversion, family group conference practice. The results of this study will be disseminated to all probation officers and the Provincial office in the hope that the findings will have relevance to the improvement of diversion practice and future planning.
CHAPTER 4

PRESENTATION OF DATA

4.1 INTRODUCTION

In this chapter the data collected from two samples using structured interview schedules, will be presented. The major themes that have emerged from the data collected from the two samples will be presented. The themes emerging from the two samples will be presented separately. One sample consisted of ten young offenders who successfully completed a family group conferencing as a diversion option. The second sample consisted of ten parents or guardians of these young offenders. In all, twenty people were interviewed.

4.2 PRESENTATION OF DATA COLLECTED FROM YOUNG OFFENDERS

4.2.1 Identifying details

The aim of this research is to explore the experiences of young male offenders who successfully completed a family group conference as their diversion. The sample comprised of only young male offenders. All ten participants were born and raised in the various rural areas of Nqamakwe. The first language of all the participants was IsiXhosa. The ages of the young offenders ranged from age 15 to 18 years of age. Five young offenders were aged 16 years, three 17 year olds, one 15 year old and one 18 year old. According to section 7 of Child Justice Bill 49 of 2002 children who are 14 years and older are presumed to have criminal capacity and such can be tried and prosecuted in a court of law (Child Justice Bill 49 of 2002). Likewise all the children in the sample were 14 years and older when they committed the crimes.

Nine of the young offenders were schooling at the time of the commission of their offence, and were still schooling at the time of the research. Only one
young offender was not schooling at the time and is still not schooling. He stopped schooling while in grade 4. The highest education level of education was grade 10 and the lowest was grade 4 at the time of commission of offence. Of the ten young offenders interviewed, four of them were in grade 08, three in grade 9, one in grade 10, one in grade 07 and one in grade 04. The following chart shows the educational grades of young offender participants:

![Educational qualifications of young offender](image)

**Figure 1: Educational qualifications of young offender**

4.2.2 Offence committed

The participants in the study were accused and diverted for assault with intent to do grievously bodily harm (GBH), common assault and house breaking and theft. All the participants were first time offenders when they were diverted to family group conferencing. The research was begun a year after the commission of the offence and successful completion of the diversion programme. Six children were accused of committing assault (GBH) which is an aggressive offence, three were accused of house breaking and theft (a socio economic offence) and one was accused of common assault. More than 50% of participants in the sample were accused of committing violent crime, that of assault with intent to do grievous bodily harm. This is consistent with what Steyn (2005:7) alluded to that “the perpetrators are becoming younger” and that the rate of serious and violent crimes is on increase.
The following figure shows the number of children who committed particular offences:

Figure 2: Offences committed by young people

All the victims and the young offenders are from the same area. Victims were either a community member as was the case in eight cases, or a neighbour as was the case in two of the remaining cases. The victim and young offenders knew each other before the incident. The fact that the offender and victim were from the same community points towards use of restorative justice programme when addressing the harm caused which gives communities a larger stake in resolving the causes of crime(SALC,1997). The harm caused to the victim varied but in most cases it was grievous bodily harm as six respondent were accused of assault GBH; followed by loss of property as three respondent were accused of house breaking and theft and one victim was subjected to indignity and defamation of character as one respondent was accused of common assault.

All the participants had accomplices when they committed the offence and they gave a variety of reasons as to why they committed the offence. The most popular reason given was that of being not guilty but was part of group that committed the offence, followed by mischief, self defence and being threatened. According to Rutttter, Giller and Hagell (1998), during adolescent
stage association and involvement of young people in antisocial group is more prevalent and so is involvement in criminal activities. Prinsloo and Geldenhuys (1991) also pointed out that young people need to associate with their peers; the only problem is when the chosen group is involved in antisocial activities with entry criteria that involve commission of crime for all those who wish to join the group.

Table 8: Reasons for offending by young people

<table>
<thead>
<tr>
<th>Reason</th>
<th>Number of participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self defence</td>
<td>02</td>
</tr>
<tr>
<td>Threat</td>
<td>01</td>
</tr>
<tr>
<td>Mischief</td>
<td>03</td>
</tr>
<tr>
<td>Innocent but was with the group</td>
<td>04</td>
</tr>
</tbody>
</table>

4.2.2.1 Self defence

Two of the young people interviewed reported that they only assaulted the victim because they were defending themselves from him. They reported that the victim was drunk and started beating them up with a stick for no reason and when they ran away he chased them; then that is why they decided to fight back.

4.2.2.2. Threat

One of the children interviewed reported that an older boy coerced him into assaulting the victim. He reported that this older boy threatened to hurt him if he did not assault the victim who earlier had had a quarrel with the threatening older boy. This is the child accused of common assault.

4.2.2.3 Mischief

Three young offenders, who were accused of house breaking and theft, reported that it was just sheer mischief as they had no other reason.

4.2.2.4 Innocent but was part of group that committed the offence
Four of the participants reported that they never participated in the commission of the offence but were part of a group in which some of the young people committed the offence. They reported that they acknowledged responsibility for the offence because they never did anything to prevent the other boys from committing the offence and they cheered them on during the commission of the offence.

4.2.3. Experience with police officials

The participants were asked to describe the role played by the police in the offences; only three respondents reported being arrested by police at home and of spending night in the police cells. The same respondents reported that the arresting officers were actually good to them during the arrest but their luck changed when they were in the detention cells. These respondents reported that they were mixed with adult inmates and as such, were assaulted and their clothes were taken by the fellow adult inmates. These respondents reported that they spent about 24 hours in the police cells before being released into parental custody. The other three respondents reported being assaulted by police officials when giving their statements, while the rest gave favourable reports about police officials including those who spent the night in the cells.

When the young offenders were asked how they would treat other children in trouble with the law if they were police officials, all of them reported that they would treat them well and would teach them the dangers of getting involved in criminal activities.

4.2.4 Experience with Probation officer

All the young offenders who participated in the study recall being referred to a social worker by police officials. When they met the social worker she asked questions about their personal and home circumstances; details of the offence and whether they acknowledged the offence or not. They reported that they
remembered being assessed by a probation officer before first appearance in court. When the Child Justice Bill 49 of 2002 is enacted it will be mandatory to assess all arrested children before appearing in a preliminary inquiry (Section 34 of Child Justice Bill 49 of 2002). All the young offenders were assessed in presence and assisted by their parents /guardians. Parental assistance for children throughout the criminal justice processes is what is proposed in sections 38 and 65 of Bill 49 of 2002. All the young offenders did not recall the social worker telling them why they were being assessed, but they remember her telling them that they had to meet up with victim and would inform them of the date and venue of the meeting. All the respondents reported that after their first meeting with the Probation Officer they went to court where the prosecutor postponed their cases pending attendance of a diversion programme recommended by the probation officer.

When asked why they thought they were referred to a social worker, all the respondents reported that they were referred to a probation officer because they were minors and as such were not expected to go to court. When asked to describe their experiences of the social worker, they gave various responses most of which were positive (see table below).

<table>
<thead>
<tr>
<th>Experience</th>
<th>Number of children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social worker was very friendly and nice</td>
<td>4</td>
</tr>
<tr>
<td>Social worker gave words of hope</td>
<td>4</td>
</tr>
<tr>
<td>Social worker was impatient with me</td>
<td>1</td>
</tr>
<tr>
<td>Social worker ignored me and posed all questions to my parent</td>
<td>1</td>
</tr>
</tbody>
</table>

When asked about other occasions when they met the probation officer, seven respondents reported meeting the probation officer when she visited their families to tell them about the victim’s acceptance to meet with the accused and his family; and the time and venue of the meeting. The other two respondents reported that when the probation officer informed their family of date and venue of meeting with the victim, they were not home, but heard from the family about the visit. One respondent reported that the probation
officer phoned the family about the venue, date and time of the meeting. The three respondents met the probation officer for the second time on the day of the actual family group conference.

4.2.5 Family group conferencing experience

When the young offenders were asked about their knowledge of diversion programmes, they all said they knew nothing about them. When rationale for diversions was explained to them they said they understood but were not aware that there were different diversion programmes or those they were part of only one out of many. They claimed that it was never explained to them and were never given an opportunity to choose. A similar situation occurred when asked about family group conferencing, but when it was explained, they recalled meeting with the victim and a support system. One of the guiding principles for implementation of Child Justice Bill is that young offenders should have a say in all decisions affecting them. The United Nations Convention on the Rights of the Child also provides that children must be afforded an opportunity to make decisions about any matter that concerns them. So if participants in the study reported not being afforded an opportunity to make those important decisions, it is a direct contravention of the above mentioned instrument.

All the respondents reported that it was the probation officer who suggested that they should meet with the victim, and three of them remember being scared of facing the victim while the rest said they had no problem. When asked what they thought was the aim of this meeting with the victim, eight of them said it was to make peace and ask for forgiveness while two said they did not know.

All the young offenders recall being prepared by the probation officer before meeting with the victim, even the three who did not see the probation officer before the actual conferencing, recall being informed on what to expect during their assessment.
Nine of the respondents reported that they finally met the victim and support system in the social worker’s offices and one reported that he met with victim during conferencing at the victim’s house, and he reported that he was very scared, and he would have preferred a neutral place. For the nine participants whose conferencing took place at the social worker’s offices, only three reported that they were scared to even look at the victim. When asked about the victim’s reaction when he/she saw the young offender, all of them reported that they did not notice anything. When asked about their reaction to the victim’s side of the story, the three participants who were accused of assault (GBH) reported that they were appalled because the victim lied; Zuzu(16) said “Mr Mfengu lied and said we took his R150, but we did not”. The rest of the participants reported that the victim’s side of the story was very similar to their version.

When asked about the outcome of the family group conferencing, all the participants reported that all the victims wanted financial compensation and payment of costs incurred, for example doctor’s fees as well as transportation costs. Mahle (17) who was accused of house breaking and theft in a spaza shop reported that the shop owner wanted payment of R1250, but they only stole cigarettes amounting to less than R100, and if it was not for the social worker their parents would have paid the money demanded by the victim. The final outcomes of the family group conferencing were as follows:

Table 10: Final outcomes of family group conferencing

<table>
<thead>
<tr>
<th>OUTCOME</th>
<th>NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apology</td>
<td>03</td>
</tr>
<tr>
<td>Service rendered to victim in lieu of compensation</td>
<td>03</td>
</tr>
<tr>
<td>Assignment to present at an awareness campaign to be held in school</td>
<td>02</td>
</tr>
<tr>
<td>Regular school attendance and family time order</td>
<td>01</td>
</tr>
<tr>
<td>Positive peer association and prohibition to go to taverns</td>
<td>01</td>
</tr>
</tbody>
</table>
When asked what they thought of the final outcome, they responded as shown in the following figure.

Figure 3: Young person’s perceptions of family group conferencing outcomes

Eight young offenders regarded the final outcome as fair while one said it was unfair, but he was the one whose final outcome was to stop frequenting taverns and associating with friends who were not at school. The last one did not know how to rate the outcome.

When asked about the role they played in coming up and deciding on a family group conferencing outcome, the participants gave various responses; only two reported being involved because they were asked what they thought should happen. Seven reported not being involved and claimed that although their opinions were asked about certain things during the family group conferencing, it was the parents who made decisions about the final outcome. Two other young offenders were not sure whether they were involved or not. The following figure shows the involvement of young offenders on deciding about the outcome during the family group conferencing.
When asked to describe the family group conferencing experience, nine participants reported that they would describe the family group experience as good, as they were around their families and their views were respected and when they were talked everyone listened and did not interrupt. One participant said he was uncomfortable around adults and was also embarrassed because he was the cause of the gathering, he said “I am always tongue tied in front of adults especial if one of my parents is there”

When asked about what part of the family group conferencing was more appealing to them, five reported that they liked the part where they were asked about their views on how to address the wrong done. Kamva further reported that” initially when the social worker sought my views, I thought she was trying to put me on the spot and embarrass me, but then I realised that she genuinely wanted me to contribute in addressing and resolving the problem. That made me resolves to participate fully and be honest about my feelings.”

The other three reported that when the social worker asked the victim to leave so that the offender’s family could plan and decide about the outcome of the family group conferencing, they were then asked how to right the wrong, and were then able to give their views and opinions on what should happen without further offending the victim. They reported that they felt like they had an important part and role to play in addressing the harm caused by the offence. Two of the participants reported that their favourite part of the family
group conferencing was when they apologised to the victim and the victim accepted the apology unconditionally.

All participants reported that the only part which was not to their liking during the family group conferencing was when the victim demanded financial compensation; however when the probation officer intervened and it was later decided that financial compensation was out of question. One participant, Sanelisiwe (17) said “I became so scared when the victim asked for R700 because I knew my parents would not afford it”. One participant reported that she did not like it when his mother began crying.

When asked for their input on the future improvement of family group conferencing, all the children reported that they would not change anything and if given a second chance, they would opt for family group conferencing and would recommend it to their family and friends because they were able to learn that their actions were not only hurtful to the victims, but also to the offender’s family; one participant Sipho reported that he never realised how hurt his mother was about what had happened until the day of the family group conferencing. He further provided that “all arrested children with an identifiable victim should be given an opportunity to be part of family group conferencing so as to understand the human impact of their actions towards others”.

4.2.6 Relations with victim

All the respondents knew their victims prior to the incident as they were all from the same villages. All the participants reported that they had good relations with the victims prior to the incidents and the relationship only broke down after the incident, but was later repaired during family group conferencing. At the time of the research, all the respondents reported that they still had good relations with the victims.
4.2.7 Recidivism

All the participants reported that they have not been involved in criminal activities after the family group conferencing, and all those who were schooling (09 of them) are still continuing with their studies.

4.3. PRESENTATION OF DATA COLLECTED FROM PARENTS/GUARDIANS

4.3.1 Identifying details

Out of the ten guardians who participated in this study only two were males and all of them were IsiXhosa speaking. Seven of the participants are biological parents of the young offenders, one is a neighbour, one a maternal grandmother and the last one is a maternal aunt. All these parents and guardians were present during the arrest; assessment and family group conferencing. Most participants are unemployed and dependent on social grants; even those employed did not earn much as they were either domestic workers or contract employees.

4.3.2 Offence committed

Nine young offenders who took part in this study were either living with their parents or a close family relative at the time of commission of offence; only one young offender was living alone at the time of the commission of the offence as his mother was in Cape Town at the time and his father had since passed away five years ago. This young person was accompanied by a neighbour who was asked by the mother to act as the young person’s guardian. The parent or close family relative who was living with the young offender at the time of the commission of offence was the one present during assessment and family group conferencing.

When parents were asked about how they found out about their children’s involvement in the offence, their responses were as follows.
Four parents/guardians reported that it was neighbours who first informed them of the child’s involvement in the offence; three parents were told by the young offenders themselves; two were informed by the victim. One parent (Mrs Meze) first heard of the offence when the police arrived to arrest the young person, she said “I will never forget that day when a police van arrived at my house to arrest my son, I nearly died of heart attack because of shock and embarrassment especially since I am a church going person”.

When parents were asked what they knew of the offence, all their versions were similar to the children’s versions.

When parents were asked what they thought was the reason for offending by young offenders, they gave the following reasons (see table below).

Table 11: Reasons given by parent/guardian for offending

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Number of parents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol and peer pressure</td>
<td>06</td>
</tr>
<tr>
<td>Mischief</td>
<td>03</td>
</tr>
<tr>
<td>Self defence</td>
<td>01</td>
</tr>
</tbody>
</table>
4.3.3 Experiences with police officials

Three parents whose children were arrested and detained in police cells reported that the police did not use any violence during the arrest of the young offenders. They thought it was necessary and police officials were well within their rights to arrest the young offenders. When the children reported being mixed with adults and being assaulted, they did not blame the police. One parent said "we cannot blame police for doing their job because their job is to arrest all people accused of committing crimes." Mrs Gabe reported when she heard that her child was mixed with adults in police cells said to her child "tshotsho" (which is a Xhosa name implying that you have asked for it and got your due).

The other seven parents reported that the police arrived at their homes and informed them of their children’s involvement in the offence and asked them to accompany the children to the charge office the following day.

All the parents reported that they were unaware that children under the age of 18 years were not supposed to be mixed with adults and also that detention could be exercised only as a last resort. The parents of the other 03 children, who reported being assaulted by police when giving their statements, also did not blame the police as they thought the police were doing their job.

When parents were asked how they thought children should be treated by police, they responded as shown in the figure below:
Five parents responded that children should not be detained as this exposes them to hardened criminal activities; four said it would be good if police would not assault children when taking statements and three (including 02 of the parents who said no to detention) parents said statements of children should be taken in private. Most parents in the study believed that children should not be detained at all as it may harm children. The sentiments of these parents are shared by Riley (1999:17) who believes that prison and detention facilities are seen as “schools of crime”.

4.3.4 Experience with probation officer

All parents reported that they were referred to a social worker because their children were minors. All the parents viewed referral to a social worker as a good thing because it meant no court appearance. The parent's view of the social worker during assessment is depicted as follows:

<table>
<thead>
<tr>
<th>Experience</th>
<th>Number of parents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social worker very professional</td>
<td>3</td>
</tr>
<tr>
<td>Social worker very helpful and warm</td>
<td>3</td>
</tr>
<tr>
<td>Social worker knowledgeable about the criminal justice system</td>
<td>2</td>
</tr>
<tr>
<td>Social worker able to allay fears</td>
<td>2</td>
</tr>
</tbody>
</table>
4.3.5 Family group conferencing experience

When parents were asked about their knowledge of diversion and various other options, all of them were uninformed, but when it was explained to them and the rationale for diversion, they said they understood but were not aware of the different types of diversion programmes; two of them reported that they only knew about a programme where young offenders were referred to a local clinic to “work for free”. All the parents reported that they were unaware that their consent was required before inclusion of any child in a diversion programme and that they also have a right to object to the chosen diversion programme.

A similar situation prevailed when asked about the family group conferencing, but when it was explained, they recalled meeting up with the victim and the support system. Nine of the parents reported that when the probation officer suggested that they should meet with the victim, they were happy because it meant restoring peace with the victim and an opportunity to ask for forgiveness on behalf of their children. Only one parent reported that he was not happy when it was suggested that they should meet with victim because he knew the victim would demand financial compensation. When asked to describe the young person’s reaction to the suggestion of meeting with the victim, all of them reported that they did not notice any reaction. One parent said it would not have mattered whether the young person reacted negatively to the suggestion because that meeting was not about the young person, but about restoring peace with the victim.

All the parents reported that they were prepared by the probation officer before meeting with the victim. Nine of the parents reported that they finally met the victim in the social worker’s offices and one parent reported that the actual conferencing was held at the victim’s house; this parent reported that this was not a problem for her as she knew the victim as a peaceful person.
and meeting at his place was also a way of showing respect and making sure that the victim did not incur additional costs for the conferencing.

Only one parent reported noticing that the young offender was at first scared of the victim during the conferencing (the one whose conferencing took place at the victim’s place); nine parents reported that they did not notice anything.

When parents were asked what they thought of the victim’s side of the story, and the young person’s reaction to it, all the parents reported that they believed it as the true version of the incident even in cases where it was different from what they heard. Three parents reported that they noticed that the young offenders wanted to contradict the victim’s story but where stopped by a stony stare from one of the parents. Seven parents reported that the victim’s version was very similar to the young person’s version.

When asked about the outcome of the family group conferencing, all the participants reported that all the victims wanted financial compensation and payment of costs incurred, for example, doctor’s fees as well as transport costs, but the social worker intervened and informed the victim that all the young offenders were unemployed and as such were unable to compensate the victim financially but provided them with alternative, available options from which the victim could choose. The final outcomes of the family group conferencing were as follows:

Table 13: Final outcomes of family group conferencing

<table>
<thead>
<tr>
<th>OUTCOME</th>
<th>NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apology</td>
<td>03</td>
</tr>
<tr>
<td>Service rendered to victim in lieu of compensation</td>
<td>03</td>
</tr>
<tr>
<td>Assignment to present at an awareness campaign to be held in school</td>
<td>02</td>
</tr>
<tr>
<td>Regular school attendance</td>
<td>01</td>
</tr>
<tr>
<td>Positive peer association and prohibition to attend taverns</td>
<td>01</td>
</tr>
</tbody>
</table>
When parents and guardians were asked to rate the final outcome of the family group conferencing, they responded as follows:

Figure 7: Parent's perception of final FGC outcome

When asked to describe the role played by young offenders during conferencing and deciding on a family group outcome, the parents gave various responses. Six said the young offenders were children and would be unable to come up with a right decision; two reported that it would give them too much power and that they decide on an outcome advantageous to them but not necessarily appropriate for the victim. The last two reported that the young offenders were given an opportunity because their opinions were asked during the conferencing, but they also thought as parents they had to play an active role in restoring peace with the victim.

All parents reported that the young offenders liked being part of the family group conferencing because the probation officer made sure that they were treated with respect, their opinions were sought and they were given an opportunity to correct their mistakes. All the parents thought that the young persons learnt a lot from the family group conferencing.

When asked to describe the family group conferencing experience, all the parents reported that it was a very positive experience as there were ground rules and they mentioned that they particularly liked the one where no one
was allowed to talk while some else was talking and one had to raise a hand before talking. Although they all reported that the conferencing experience was positive, two of them also voiced that it was a soft option as some victims decided that an apology would be appropriate but the young offenders were not punished in any other way. All the parents reported that they were very grateful that their children were part of this diversion programme because it meant avoiding a criminal record and they were also able to voice their feelings to the young people of how the incident had affected them as parents. One parent said it was an emotional session for her as she listened to how the incident affected the victim and entire family; she said “I could not help crying when I heard how my child’s action not only affected the victim but the whole family”

Most participants reported that they did not like when the victim demanded financial compensation, but when the probation officer intervened and it was later decided that financial compensation was out of question, they felt better.

When asked for their input on future improvement to family group conferencing, four reported that they would not change anything; three said it should be combined with a life skills programme that addresses criminal behaviour; two said it should be combined with compulsory community service which would serve as a punishment. One parent felt they were not properly prepared by the social worker, so more time must be spent on preparing families on what to expect during the actual conferencing. Their response is shown as follows (see figure below).
4.3.6 Recidivism

All the parents reported that none of the children became involved in criminal activities after family group conferencing. When asked whether they thought it was the inclusion in family group conferencing that led to children not reoffending, they responded as follows: three claimed that they believed that family group conferencing played a very important part in preventing recidivism; two said no while five of them said they were not sure. Their response is shown in the figure below.
4.4. CONCLUSION

This chapter looked at presenting data collected from two samples, and key themes were identified and categorised. Graphs, tables and pie charts are used to depict some of the responses. Findings emanating from these results will be discussed in the next chapter as well as conclusions and recommendations.
CHAPTER 5

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODUCTION

In this chapter a discussion of the findings will be presented as well as conclusions and recommendations based on the findings.

5.2 FINDINGS FROM DATA COLLECTED FROM YOUNG OFFENDERS

5.2.1 Identifying details

Looking at the age of the children accused of committing offences it is clear that children commit crimes at a younger age. According to Booysens in (Bezuidenhout and Joubert (2003:45) “criminals are getting younger”; the average age of a young offender was 22 years of age in 1998 while it was 17 years of age in 2002. Siegel and Senna (2000:8) believe that if children engage in criminal activities at a very young age, it is highly likely that the child will continue getting involved into more criminal activities. It is also reported that males are more likely than females to start offending at an early age and to continue into adulthood. Siegel (2000:38) believes that although this is the case, it is a small number of young offenders who become “chronic juvenile offenders” and later “chronic adult offenders”. Siegel and Sienna (2000:57) claim that the majority of young offenders experience what they term as “aging out” where the likelihood of offending decreases with age. They state that a number of factors may contribute to this aging out and they mentioned maturity and changes in personalities; ability to assess and evaluate risks and consequences of criminal activity; and fear of sanctions. Braithwaite (1989:45) is of the same opinion that offending decreases by age, in that offending sharply increases from age 10 and reach its peak at 15-18 years of age and sharply declines to reach low levels by late 20’s.
Almost all the young offenders who were schooling at the time of the commission of the offence were able to continue with their studies for the duration of the offence and were still schooling at the time of the research. Only one young offender was not schooling at the time and is still not schooling. Almost all the participants were very positive about their desire to further their studies. It became clear that these young offenders became aware that involvement in criminal activities would impede their chances of furthering their education.

5.2.2 Offence committed

It is clear that the respondents were all first time offenders at least in the area of study. Most of the respondents were accused of committing aggressive offences that is assault with intent to do grievous bodily harm. When the respondents gave explanations of their offences, it became clear that there was a group influence, particularly during school holidays and after attending initiation ceremonies where there is access to alcohol. In the area of study, aggressive offences like assault GBH; attempted murder and murder can be regarded as seasonal offences which are likely to occur during school holidays where there is a prevalence of ceremonies with an abundance of alcohol. Young people often have free access to alcohol during these ceremonies and they usually consume this alcohol in the presence and acknowledgement of adults, as hosts know they must give “ibhekile yamakwenkwe” (a bucket of umqombothi to young people) usually accompanied by bottles of brandy.

All the respondents knew their victims before the incident, as they were either neighbours or from the same locality and it is clear that there was no preceding animosity between the victims and offenders. This also confirms that the use of alcohol and group influence played a major role in the commission of offences.
5.2.3 Experience with police officials

The experiences of children at the hands of the police were different and varied. Some children were arrested and they experienced detention in police cells for up to twenty four hours. These children were detained with adult offenders which led to ill treatment by the fellow inmates. Other children reported being assaulted by the police officials themselves when their statements were taken. All the respondents do not recall being informed of their rights and of the procedure to follow.

It is evident that some police officials do not yet adhere to the national and international instruments that govern arrest; detention and treatment of young offenders. In May 1997 Lubabalo Mazeleni who was 13 years old at the time was murdered in a holding cell in Butterworth (Muntingh, 2001). Lubabalo Mazeleni was being held on a charge of shoplifting and was murdered by his 21 year old cell mate who was being held after he viciously assaulted his sister (Muntingh, 2001). This proves that locking a young person up with an adult, even for five minutes, maybe fatal. Lubabalo’s murder proved this, and yet some children are still being detained with adults.

The Constitution Act 108 of 1996 prescribes in section 28 that detention of children should only be exercised as last resort, and that detained children should be kept separately from adult detainees. This is also supported by other international instruments like the United Nations Convention on the Rights of the Child and United Nations Standard Minimum Rules for Administration of Juvenile Justice. The ill treatment of young offenders by police officials is also prohibited by for example, the African Charter on Human and People’s Rights which prohibits the inhuman and degrading punishment of young offenders. This negligence by police could have far reaching consequences for the young offenders, which may include death.

Most of the respondents felt that detention and ill treatment of children was unnecessary instead certain measures should be put in place before formal measures when dealing with young offenders. This view is also supported by

5.2.4 Experience with probation officer

All the respondents recall meeting with the probation officer for assessment and they all reported that their being young age was the reason for referral to a probation officer. All of them reported that meeting with a probation officer gave them an opportunity to talk about their offences as well as their personal and home circumstances. Most respondents reported that their encounters with the probation officer were positive and they were informed of what was to follow regarding meeting with the victim. Most respondents rated their encounters with the probation officers as positive.

5.2.5 Family group conferencing experience

All the respondents were unfamiliar with terms like diversion, family group conferencing, and legislation governing the use of diversion. All the respondents reported that it was the probation officer who suggested meeting with the victim. Since all the respondents did not know that they had that option of meeting with the victim after the case had been reported to the police officials, it required the probation officer to suggest a meeting with victim and support system. Most children welcomed the probation officer’s suggestion as they reported it as necessary and as a means of asking for forgiveness and making peace with the victim.

Most respondents remember being prepared separately by the probation officer before meeting with the victim and support system. According to Branken in Muntingh (1997:41) the family group conferencing has three different phases, preparation phase; the actual conferencing and monitoring. He further submits that the preparation phase is a critical phase that could make or break the success of the family group conferencing. Adequate preparation of the parties should be done separately in order to minimize
numerous problems which may arise often attributed to poor preparation. The participants who should be prepared are the families of the offenders, victims, and the young person. It is clear from the reports given by the respondents that the probation officers adhered to this requirement.

Most of the conferences took place at the social worker’s officers, I believe this was important since the venue was neutral and the probation officer as a facilitator, was in familiar surroundings and able to exercise control over the proceedings of the actual conferencing.

All the respondents reported that the conferencing started with them being given an opportunity to describe the crime and then the victim was given an opportunity to express feelings about how the crime had impacted on his/her life. They also reported that the victim was also given an opportunity to ask questions, obtain clarity and also asked to identity their desired outcome. Most respondent reported that they accepted the victim’s side of the story as it was very similar to theirs.

With regards to the desired outcomes by the victims, most respondents reported that all the victims wanted financial compensation. It is evident from this response that the aim of family group conferencing could be misunderstood and be seen as an opportunity to obtain financial compensation not to address the harm caused. This misunderstanding could be attributed to perhaps inadequate preparation of victims.

With regards to the respondent’s role in reaching a final outcome, most respondents reported that it was parents who played an active role although the probation officer sought their views now and then. The presence of so many adults may have been so intimidating to the young offenders such that they felt uncomfortable expressing themselves and sharing their feelings and thoughts in front of the adults. It is also evident from the respondent’s explanation that the probation officer was able to create an environment in which they felt safe to actively participate because one respondent said “the
probation officer always encouraged me to express myself and everyone listened when it was my turn to voice out my thoughts.”

Most respondents were happy with the final outcome of the family group conferencing and they affirmed that family group conferencing was a good idea. They also thought that the most appealing part of the conferencing was when their views were sought as a result they felt that they played a very important role in addressing the offence, and that they had not been coerced to say what the parents wanted to hear; they were able to express their feelings honestly and genuinely.

5.3 FINDINGS FROM DATA COLLECTED FROM PARENTS

5.3.1 Identifying details

Most of the young offenders were staying with their biological parents or a close family relative with whom the young offender grew up. The offence then cannot be attributed to loss or absence of a parent as there is some research that suggests that the loss of a significant other in a child’s life may result in emotional disturbances which may later contribute to aggressive behaviour (Dissel, 2000).

With regards to the personal and home circumstances, most of the parents/guardians are dependent on social grants. It is clear then that the majority of the young offenders are from economically disadvantaged backgrounds, although most of them were not accused of socio economic offences in which satisfying basic needs could have been a motivating factor. The problem of limited resources could compel parents and guardians to seek work and thus not have time to be involved in their children or provide limited supervision.

5.3.2 Offence committed

Most parents heard about the incident from community members and they then asked the children. It is worthy noting that when parents were asked
about what they know of the offence their versions were similar to those given by the young offenders. The reason for offending given by most parents was the use of alcohol and peer pressure. These parents are aware that the use of alcohol in underage children makes them easy targets and they yield easily to negative peer pressure. It is also worth noting that in most cases it is adults, who give these “underage” children alcohol, and they consume it in front of other adults and when they commit offences while under the influence of alcohol, adults blame it on underage drinking.

5.3.3 Experiences with police officials

Most parents felt that those children who had had bad experiences at the hands of the police deserved it. They felt those police officials were doing what the law expects of them in order to curb crime rate. They also felt that although the actions of the police against the children especially those who were detained and those assaulted by police officials was not desirable, but it was appropriate.

With regards to how they wish their children could be treated by police officials, most of them felt that detention of children must only be for those who are dangerous or had multiple previous criminal records. It became obvious that most parents do not know the difference between awaiting trial in police cells and being sentenced to term of imprisonment, because one parent said “by detaining my child they were already assuming that he was guilty”

5.3.4 Experiences with probation officer

All the parents reported that their children were sent to a probation officer because they were under the age of 18 years. All the respondents had very positive reports about the probation officers. They felt that their encounter with the probation officer was fortunate as the probation officers were able to inform them of the procedure and answered their questions, thus allaying their fears. Most reported that the warmth and respect shown by the probation
officer was the most commendable. One parent said “when I went to her office, I was overwhelmed with fear and uncertainty, but she was so warm and was able to allay my fears”

5.3.5 Family group conferencing experience

All the parents were in similar a situation with the young offenders when it came to knowledge of diversion programmes and family group conferencing in particular. All of them had no prior knowledge of the terms and content of diversion programmes. When it was explained to them that when they met with the victim and support system it was a family group conferencing; all of them remembered it as a good idea. Most parents have never had to go to criminal court and they are afraid of the hostile courtroom environment. When they were told about not going the normal court proceedings route and coupling this with an opportunity of asking forgiveness on behalf of their children they were very happy and grateful to a probation officer for suggesting it.

Most parents always take responsibility for their children’s behaviour, in so much that when the victims demanded financial compensation, all the parents felt obliged to pay even those who could not afford the exorbitant amounts demanded by the victims.

With regards to the negotiated final family group conferencing outcomes, most parents viewed the final outcomes as fair but some felt it was not punitive enough as they believed it did not address the criminal behaviour.

With regards to the roles played by the young offenders in suggesting with the final outcome, most parents viewed the active participation of young offenders as not necessary. They felt that children would not be able to think of an outcome satisfactory to the victim as they were still children who were not able to think ahead; if they had that ability to think ahead, the offences would not have happened. They believed that their presence and active participation as parents was necessary as it showed the victim that they cared and leaving
the decision making to the young offenders would have been disrespecting the victim. The researcher believes that parents believe that by virtue of being parents they have a duty and an obligation to take and accept responsibility for their children’s behaviours and actions. They believe that the children’s bad behaviour reflects badly on them as parents, as if they were unable to exercise the right control and discipline on their children.

When asked whether they thought the young offenders liked being part of the family group conferencing, all parents said the young offenders liked it very much as they were not treated as “criminals” and all adults present listened when the young offenders spoke. One parent said the young offenders were treated as “stars” during the family group conferencing.

When asked to describe the family group conferencing, most parents reported that they liked participating in the family group conference as there was a lot of respect; empathy; a safe environment; developmental discussions and although quite emotional at times, it was very “fulfilling”. The least appealing part of the family group conferencing for all parents was when the victims demanded financial compensation even though they felt they were obliged to pay; however they knew they would struggle to make payments.

With regards to the future improvement of the family group conference 40 percent felt there was no need for any changes, while 30 percent felt that the current family group conferencing practice should remain the same but be coupled with a life skills programme that would empower young offenders with practical necessary life skills.

5.3.6 Recidivism

All the parents reported that none of the children involved themselves in criminal activities after the family group conferencing. When asked whether they thought it was principle of inclusion in the family group conference that led to children not re offending, most were not sure, but suspected that the young offenders were shamed during the conferencing, although in a positive
way. This feeling by parents coincides with Braithwaite’s theory of reintegrative shaming. Braithwaite (1989:55) describes reintegrative shaming as those “expressions of community disapproval which may range from mild rebuke... followed by gestures of reacceptance into the community of law abiding citizens” Braithwaite (1989:69) believes that “sanctions imposed by relatives, friends or a personal relevant collectivity have more effect on criminal behaviour than sanctions imposed by a remote legal authority”

5.5 RECOMMENDATIONS

Considering the above findings, the following are some of the recommendations that should be considered when addressing the issue of children at risk and those already in conflict with the law.

5.5.1 Integrated crime prevention programmes

Children and young people are prone to many risk factors, and as such, crime prevention should be planned taking into consideration the identified risk factors (Davis, in Bezuidenhout and Joubert, 2003:138). Crime prevention strategies can be primary; secondary or tertiary (Davis, in Bezuidenhout and Joubert, 2003: 15). Tertiary crime prevention only deals with those young people who have already “knocked on the door” of the criminal justice system, so the aim of this type of prevention is to curb recidivism, (Davis, in Bezuidenhout and Joubert, 2003: 152).

Socio economic factors like low or no household income; delinquent role models; substance abuse; a child whose emotional needs are not adequately met; lack of appropriate adult supervision and immoral families are some of the risk factors that may make children and youth prone to involvement in criminal activities(Davis, in Bezuidenhout and Joubert, 2003:138).

The United Nations Guidelines for the Prevention of Juvenile Delinquency( Riyadh guidelines) proposes that programmes aimed at preventing juvenile offending should focus on the identification and addressing of various risk
factors and causes that contribute to offending. The early identification of these factors contributing to crime would significantly reduce the initial risk of offending. Young people should be provided with opportunities, resources and be capacitated and have access to basic needs as this would increase their sense of responsibility and curb involvement in criminal activities. The involvement and participation of young people in the planning and execution of the programmes aimed at combating crime is very important if these programmes are to be sustainable, as well as intersectoral collaboration of all the stakeholders.

The role of the family cannot be emphasized enough. Families have a responsibility to educate and socialize children, and crime prevention should form part of this socialization process. On the other hand families also need support; by empowering families with parenting skills; behavior management; and effective communication skills interaction between children and families would improve; families would be able to provide a nurturing family environment that fosters a sense of belonging; mastery; independence and generosity.

The inter-sectoral collaboration of all the stakeholders in the criminal justice system including communities at large in the planning and implementation of crime prevention programmes is also important. The active involvement of schools, police officials and the media can contribute to crime prevention. These stakeholders should plan and execute effective and sustainable crime prevention strategies that address the developmental needs of young people.

The programmes aimed at combating crime must attempt to change the individual and social environment so as to prevent young people in becoming involved in criminal activities. The identification of predisposing weaknesses and strengths in communities, as well as creating employment opportunities for youth can also help in preventing criminal activities among children and youth. The use of positive youth mentors, who can act as responsible big brother/sister to those identified as being at risk is also another way of preventing involvement in criminal activities. The training of identified youth in
life skills programmes would enable them to make informed decisions about peer pressure; alcohol and drug abuse. The trained youth can also be used as peer counselors for other youth in trouble with the law.

5.5.2 Effective early intervention programmes

For those children and youth already in conflict with the law, the aim is to prevent relapse. There must be guidelines put in place around the arrest, assessment and placement of young offenders, contacting parents or guardians, and liaising with reception centers. The release of young offenders into the custody of their parents should be the first priority and places of safety established for those who cannot not be released to parental care. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice emphasizes the promotion of rights for those children in conflict with the law as well as use of diversion programmes. It also provides that institutionalization should only be a last resort.

The use of professional foster parents who are trained in behavior management; parenting skills and developmental assessment should be promoted for those young offenders who cannot be released to parental custody; this is one of alternative to detention. Programmes like these should be promoted and utilized in all areas.

Mbambo (2005) claims that effective early intervention programmes provide intensive contact with children; are strengths based intervention; takes into consideration children’s relationships; encourage involvement and cooperation of families and communities and focus on education and school attendance. These are some of the aspects that need to be taken into consideration when implementing diversion programmes. The focus should also be on widespread use of diversion programmes based on restorative justice; that allows offenders to take responsibility for harm caused and to actively participate in addressing the harm caused. There is also a need to involve victims and give them opportunity to express their views on how to address the harm caused. Family group conferencing is a restorative justice
centered approach that brings together the offenders, their families, the victims, their support system and the community into addressing the harm. The active involvement of the families, communities and all other stakeholders and continuous monitoring and evaluation is important for the successful implementation of these diversion programmes.

5.5.3 Public education

It is clear from the findings of this study that the general public is unaware of the national and international instruments that govern child justice. Most of the parents in this study were unaware that detention of children is legislated by the Constitution Act 108 of 1996; especially section 28 and that it can only be exercised as last resort. Most people, especially from rural areas, do not know that they have a constitutional right to accurate, relevant and full information about public services, and they can demand to be provided with it if it is not forthcoming.

The communities and families need to be educated on the Constitution Act 108 of 1996, Promotion of Access to Information 2 of 2000; the Children’s Amendment Act 41 of 2007; the Probation Services Act 116 of 1991; the White Paper on Transforming Public Service of 1997 (Batho Pele principles) as well international instruments in which the Republic of South Africa is a signatory.

5.5.4 Family education on moral and value system

Children are born and grow up in families and it is often their exposure to their families that leads them to the doors of the criminal justice system. The family is the most important group involved in the formation of a person’s character and personality. The family has a very important function to perform in shaping the personality and character of its members. Therefore dealing with children in isolation from their families is like treating the symptom rather than the cause. The whole family may need intensive support, guidance and even treatment. The functionalist perspective holds that the family is the basic
social unit most suited to meeting the needs of children and young people, by providing a suitable environment for their growth, upbringing and development; a sense of continuity, identity and stability. It is recommended that when necessary families must be capacitated in a grounded moral, value system that they can impart to their young people.

5.5.5 After care and Integration of services:

Shapiro (1997) has cited lack of follow up sessions or support services as one of the disadvantages of diversion programmes. The need to maintain contact with a young offender and family after successful completion of diversion programme is very important and could prevent regressing back to criminal activities. After care services are means of monitoring progress on reintegration back to the family and community as well as identifying other predisposing circumstances and difficulties the young person may be exposed to after diversion. It is then recommended that after care services should be fully rendered to the family and young person regularly after the successful completion of family group conferencing. There should be a carefully planned and executed exit strategy which must include integration of services from various sub- programmes as well as collaboration of all stakeholders in the criminal justice system including the young offender and family. The family and young person should also be referred to other appropriate intervention services like substance abuse programmes and family preservation services in order to ensure successful integration of the young person and family back into society, and to limit chances of regressing back to criminal activities. The young offenders may also be channeled towards community youth development programmes by providing them with opportunities to partner with adults and contribute to the welfare of communities, which could also limit the chances of re-offending resulting in safer communities.
5.5.6 Continued and specialized training of personnel dealing with children and youth in trouble with the law

From the findings of this study it is also clear that family group conferencing is not properly implemented as it should because most young offenders reported that they felt they were excluded from decision making during the conferencing. Morris and Maxwell (1998) state that during the family group conferencing the young offender should play an active role. During the actual phase of the family group conference, probation officers are expected to prevent adults from hijacking the process and allow young offender to play an active role.

Branken in (Muntingh and Shapiro, 1997) emphasizes the importance and interdependency of the three phases of family group conferencing for the success of the whole process. He further claims that adequate preparation of all parties is crucial for the success of the second phase, that of actual conferencing. Braithwaite (2000) also claims that inadequate preparation of all parties could put the success of family group conferencing on jeopardy.

The findings of the study shows that the family group conference process is not followed properly. Although this is a small scale study, it is a possibility that even in other areas, this is the case. This could be attributed to lack of training of probation officers on proper implementation of family group conferencing. This therefore means that there is an urgent need to train probation officers on restorative justice and proper implementation of family group conferencing as well as its objectives.

Continued and specialized training of all probation officers would empower them with the skills and knowledge of proper implementation of family group conferencing. All probation officers and assistant probation officers also need to be trained in developmental assessment; family preservation programmes in order to limit removal of children from their families and on reunification services to help with successful reintegration of children back to their families and communities. The probation officers and assistant probation officers also
need to be trained on mediation, conflict resolutions, cultural and ethical issues and on effects of crime to victims as stated by Umbreit (2000).

It was also discovered that young people and families were uninformed about child justice and diversion programmes. It is therefore necessary for probation officers to give out as much information about diversion programmes available and rationale behind during assessment stage so as to enable them to make informed decisions and to be familiar with the terms used.

5.6 CONCLUSION

The criminal justice system has been processing cases of young offenders in much the same way as adults. The emphasis was on retributive punishment, which neither curbed crime nor helped people to rehabilitate; many of these young offenders simply ended up back in the system often more brutalized by their experiences than before. This conventional method does not encourage the involvement of the young offender.

The remedy for the above situation is a Child Justice Bill 49 of 2002 with restorative justice as one of the underlying principles. The aim of this Bill is to create a separate comprehensive justice system for children in conflict with the law with specific focus on diversion and mandatory assessment of all arrested children. The second reading of this Bill on 25 June 2008 in the National Assembly provided hope that it would be enacted in the not too distant future. In the meantime the enactment of Children’s Amendment Act 41 of 2007 legalises and formalises the use of diversion programs. Section 144(1) (h) of this Act reads as follows “prevention and early intervention programmes must focus on diverting children away from the criminal justice system. Section 147 provides that those diversion options should adhere to the established minimum norms and standards. Family group conferencing is based on the principles of restorative justice and if properly implemented it can lead to a reduction in re offending, would lead to greater satisfaction of victims and communities would be empowered in
justice processes and would be able to deal with the future offending of its members.

The training of all personnel dealing with children in trouble with the law is very important as this will lead to knowledge of the legislative mandate and increased knowledge on the proper implementation of diversion programmes especially family group conferencing. The Provincial Department of Social Development has a role to play in making sure that newly appointed probation officers and assistant probation officers are trained on all aspects of child justice. It is also the responsibility of PDOSD to make sure that all personnel dealing with children in trouble with the law are updated on national and international trends on child justice and related matters.

The enactment of laws and legislation will not be effective if various predisposing risks and weaknesses identified are not addressed. There are personal risk; family risk and community risks that are associated with youth offending. Our democratic government has a major role to play through partnership and involvement of youth by providing adequate housing, health; education, creating employment opportunities for youth and other social upliftment programmes. The engagement and partnering of young people in their own development initiatives, combined with foundational life skills and families with grounded moral values system could be a key to preventing youth offending.
REFERENCES


SANCA website [http://www.wn.apc.org/sanca](http://www.wn.apc.org/sanca); Child Justice Project Diversion Database.


Shapiro, R.1994. *Diversion from the criminal justice system and appropriate sentencing for youth*. Pretoria: HSRC.


Sloth-Nielsen, J. 1999. Towards a new child justice system, *Article 40(1)*:4-5. Cape Town: University of Western Cape, Community law Centre


Sloth-Nielsen, J. 2003.*Community law centre’s submission*. *Bellville: University of the Western Cape*


South Africa. Inter-Ministerial Committee on Young People at Risk. 1997. *Interim Policy Proposals for the Transformation of the Child and Youth Care System.* Pretoria, IMC.


APPENDIX A

QUESTIONNAIRE – YOUNG PERSONS

Date of interview…………………………
Name of interviewer …………………….

A. IDENTIFYING PARTICULARS:
1. Name………………………………………………………………………………
2. Date of Birth……………………………………………………………………
3. Place of birth……………………………………………………………………
4. Occupation……………………………………………………………………
5. Residential area………………………………………………………………

B. OFFENCE
11. Describe the offence that you committed……………………………………
…………………………………………………………………………………………
…………………………………………………………………………………………
12. How old were you when you committed the offence and what were you doing at the time (i.e. schooling or employed)………………
13. Who was the victim………………………………………………………………
…………………………………………………………………………………………
14. Describe the harm done to the victim…………………………………………
15. Did you have any accomplices when committing this offence………
16. Describe the role played by accomplices in the offence………………
…………………………………………………………………………………………
17. Why do you think you committed this offence ………………………

C. EXPERIENCE WITH SAPS
18. Describe the role played by police in this offence…………………………
…………………………………………………………………………………………
…………………………………………………………………………………………
19. How would you describe your experience of the police (i.e. was it good, bad)………………
20. If you were a police how would you handle other young people in trouble with the law…..?
…………………………………………………………………………………………

D. EXPERIENCE WITH PROBATION OFFICER
21. Tell me about your first meeting with the Probation Officer…………………………
…………………………………………………………………………………………
…………………………………………………………………………………………
22. Why do you think the Probation Officer met up with you …………………………

138
23. What happened after your first meeting with the probation officer

24. What other occasions did you meet the probation officer.

E. FAMILY GROUP CONFERENCING EXPERIENCE

25. Tell me what you know about diversion programmes

26. What is your understanding of family group conferencing?

27. Who suggested that you and your family should meet with victim and own support system. What was your reaction to that suggestion.

28. In your own opinion, what do you think was the aim for meeting with victim and family

29. Did the probation officer prepare you and family before meeting with victim and support system

30. Where did you finally meet the victim and his/her family

31. How did you react to the presence of the victim

32. How did the victim react when he/she saw you on the day of meeting?

33. What was your reaction to the victim's side of the story

34. How did the victim react to your side of the story

35. What was the outcome of the FGC

36. What role did you play in coming up with this outcome

37. How would you describe your FGC experience

38. What did you like about the whole process (FGC)

39. What did you not like about the FGC

40. What would you change/add/improve about the FGC

41. What lesson did you get from the FGC

42. If given a second chance, would you voluntarily repeat the (FGC) experience? Give reasons for your answer

43. Would you recommend your family/friends to participate in an FGC... Give reasons
F. RELATIONS WITH VICTIM

42. How was your relationship with the victim before the incident?

43. How is your relationship with the victim now?

G. RECIDIVISM

44. Have you been accused of any crime after the FGC?

If yes, what?

When and what is the outcome?

46. What are you doing at the present moment?

- Schooling
- Employed
- Self employed
- Nothing
- Other Specify
APPENDIX B

PARENT/GUARDIAN- QUESTIONNAIRE

1. IDENTIFYING PARTICULARS
   1.1 Name of parent/guardian ..................................................
   1.2 Name of young person......................................................
   1.3 Relationship to young person .........................................
   1.4 Residential area..............................................................
   1.5 Occupation................................................................

2. OFFENCE
   2.1 Was the offender staying with you at the time of the offence? ..............
       Yes     or No
       If no, who was staying with the young person at the time....................
   2.2. Tell me how you find out about the offence......................................
   2.3 Describe what you know of the offence............................................
   2.4 Why do you think he committed the offence ......................................

1. EXPERIENCE WITH SAPS
   Describe the role played by police in this offence................................
   How would you describe the way the police handled the offence( was it good or bad)...............................................................support your answer..............
   How would you like children to be treated while in hands of police............

2. EXPERIENCE WITH PROBATION OFFICER
   Tell me about your first meeting with the PO .................................
   Tell me about the Probation Officer you met

3. FAMILY GROUP CONFERENCING EXPERIENCE
   Describe the young person’s reaction when it was suggested that you should meet up with victim and support system.................................
   Describe your meeting with victim and support system........................
   Describe the young person’s reaction when he saw the victim on this meeting .................................................................
   Describe the young person’s reaction to the victim’s side of the story
   Tell me about the outcome of the FGC...........................................
   How would you rate the final FGC out come.................................
What would you change/add/improve about the FGC……………………………

Describe the role played by the young person in coming up with the outcome …………..

Do you think the young person liked being part of FGC…………give reasons…………………………

3.10 Do you think the young person managed to learn from something during the FGC……………………………………………Give reasons………………

Tell me about the young person's comments about the FGC………………

Describe your family group experience

4.  RECIVIDISM

4.1 Has the young person been accused of any crime after FGC………

If yes, what………………………………., when…………… and what is the outcome……

4.2 What is the young person doing at present?
   *Schooling
   *Employed
   *Self employed
   *Nothing
   *Other………… Specify……

4.3 Describe the role played by FGC in preventing recidivism.
APPENDIX C

CONSENT FORM

We,………………………………….(name of parent/ guardian) and………………………………….(name of young person), hereby consent to an interview being conducted between Tembakazi Tshem, who is a Master of Social Science student at University of Fort Hare, East London campus, and the afore mentioned people (young person and parent/guardian)

We understand that the interview involves asking the participants about particular details of past criminal behavior and inclusion in a family group conferencing.

We understand that all information provided will remain confidential between the researcher and the participants and that the privacy of participants will be protected by not disclosing their names.

We understand that participation in the study is voluntary and participants will not receive any compensation for taking part in this study. The objectives of the study have been clearly explained to us.

Signature of parent/guardian…………………………………..
Signature of young person……………………………………
Signature of researcher………………………………………..
Date…………………………………………………………