FOUR TH E D I T I O N Child and youth misbehavi01JIV in SouthYÄf+ica

HOLISTICAPPROACH

CHRISTIAAN
BEZIJIDENHOUT



Child and youth misbehaviour in South Africa
A HOLISTIC APPROACH

Fourth edition

CHRISTIAAN BEZUIDENHOUT
EDITOR

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Dedication

My precious children Chestíne, Caylin and Christopher — my love for you is infinite!

About the editor

Prof. Christiaan Bezuidenhout holds the following degrees: BA (Criminology), BA Honours (Criminology), MA (Criminology), DPhil (Criminology), and an MSc in Criminology and Criminal Justice from the University of Oxford. He is currently attached to the Department of Social Work and Criminology, University of Pretoria, where he teaches psychocriminology, criminal justice and contemporary criminology at undergraduate and postgraduate level. He is also the coordinator of the Criminology Honours degree programme at the University of Pretoria, and has supervised several postgraduate studies (MA and DPhil students). Psychocriminology, policing and youth misbehaviour are some of his research foci. He has completed a cross-cultural study with an American colleague, the focus of which was on the legal and policing dilemmas of trafficking in humans, and he holds a research rating from the National Research Foundation in South Africa. During his academic career, Christiaan has published numerous scientific articles in peer-reviewed journals and has authored chapters in several books. He has also acted as editor-in-chief for various scholarly works. He has participated in national and international conferences, has been actively involved in various community projects focusing on crime prevention, and has assisted the South African government in the development Of different crime prevention initiatives. Christiaan also does court work as an expert witness. He is currently the president of the Criminological and Victimological Society of Southern Africa (CRIMSA).

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African states. Artz has worked as a technical consultant to a wide range of national human rights institutions, international development agencies and justice systems in Southern, Central and East Africa.

Lillian took up the role as the first female Chief Editor of Acta Criminologica: African Journal of Criminology (est. 1988) in 2017. She is an elected member and fellow of the International Penal and Penitentiary Foundation — which holds consultative status at the UN Commission on Crime Prevention and Criminal Justice, the United Nations

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Economic and Social Council, and the Council of Europe — and is a member of a number of international policing and security networks, such as the Global Law Enforcement and Public Health (LEPH) Research Network and the African Security Sector Network.

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Foreword

It is critical to the advancement of human civilisation that the positive and healthy development of children, adolescents and young adults be properly addressed by family, government and society at large. When humanity neglects to do so, then we have failed the future of mankind. In Child and youth misbehaviour in South Africa: a holistic approach, Christiaan Bezuidenhout and his colleagues have diligently taken on the task Of comprehensively examining the phenomena related to the progression of child and youth delinquency and misbehaviour within South Africa and across the globe. The mere fact that the fourth edition of this book has been published is clear evidence that many are paying warranted attention to these factors. It is the hope that parents, policy makers and government administrators will learn from the insight provided within this book and modify civilisation's mechanisms for addressing these dire circumstances from a reactive strategy that relies on punishment and reform to one that proactively seeks to enhance the development and progress of our youth and to deter deviance, delinquency and criminality from ultimately taking place. After all, the children of today will become the leaders of tomorrow.

Christiaan Bezuidenhout has formatted this text to provide all readers, whether they are researchers, policy administrators, government leaders, criminal justice professionals, academics, students or concerned human beings, with a thorough outline of the many complicated facets involving juvenile misbehaviour. While the text emphasises the situation and status within South Africa, the content and related analysis can be applied to all societies across the globe, whether they be developed or developing. The text has scrutinised this disturbing phenomenon from a plethora of angles in order to provide the reader with the most detailed set of facts and to entice discussion and appropriate societal response.

The first division of the book, Section A, examines the basic and intrinsic factors associated with the development of juvenile misbehaviour. Chapter I introduces the specific terminology broadly associated with this troubling topic. As Prof Bezuidenhout• has noted, there are clear "dilemmas" related to defining and understanding associated key terms, but strong attempts have been made within this text for more distinct clarification. Chapter 2 provides a methodical outline of the history of society's response to juvenile deviance. Chapter 3 continues with a comprehensive overview of juvenile and youth misbehaviour across South Africa. Chapter 4 examines the risk factors within South Africa that could draw youth into deviant behaviour and into the grasp of the criminal realm, while Chapter 5 outlines associated socio-moral considerations. Chapters 6 and 7 then articulate the traditional and contemporary theoretical explanations for youth misbehaviour respectively. Chapter 8 specifically analyses the perspectives of female juvenile misconduct. The new Chapter 9 in the fourth edition adds further detail to the analysis of female offending within South Africa, a disturbing phenomenon that has shown growth over the last few decades across many continents.

The second division of the text, Section B, outlines the roles that the criminal justice system has played in addressing youth misbehaviour. Preventing the development of delinquency in youth should be a critical priority in any society. Chapter 10 notes the numerous steps being taken within South Africa, while Chapter 11 outlines potential options for diversion. Chapter 12 specifically examines the legal guidelines available for addressing youth misbehaviour and criminality, while Chapter 13 analyses the spectrum of factors related to South Africa's Child Justice Act.

The final division of the book, Section C, takes a thorough look at the contemporary challenges pertaining to youth at risk within South Africa, with Chapter 14 examining child trafficking and Chapter 15 addressing juvenile prostitution. These issues are also global ones and need to be addressed in all earnest. Finally a revised Chapter 16 concludes with a thought-provoking summary and discussion of the key points raised within this impressive and insightful text.

Just looking at how thoroughly and detailed the fourth edition of the book that Christiaan Bezuidenhout and his esteemed colleagues have authored and edited has evolved, it is clear that this text will continue to provide every reader with the most comprehensive overview of the many factors that have influenced youth misbehaviour, particularly within South Africa, and the many options for addressing these phenomena in modern times. If society as a whole fails to take the necessary steps to guide and drive our youth in a positive direction, then we have failed in our mandate to steer the future of humanity away from the ethical predicament that we have already created. Today's younger generation must be properly cultivated to ensure that civilisation will continue to progress while using sincerity and morality as the "keels" to guide policy and practice, whether in the home or in the real world.

James F. Albrecht
Professor of Criminal Justice and Homeland Security
Pace University (New York City, USA)
January 2018

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Preface

The fourth edition of this book is again divided into three sections. Section A concentrates on youth misbehaviour in general, its nature and extent, as well as on other related risk factors. The first chapter focuses on certain concepts that are used throughout the book. These are often the source of controversy and confusion, so they are clearly defined to try to prevent any misunderstanding. The historical context of youth in South Africa is highlighted, different theoretical explanations are put forward, and socio-moral issues are debated in this section of the book.

In Section B of the book, a closer look is taken at youths who make contact with the justice system. The focus is on the newest policies, practices, prevention and control strategies, as well as on the diversion of youths from the formal criminal justice system. The female youth offender receives special attention in this new edition.

In Section C, contemporary challenges pertaining to youth at risk, such as child trafficking and prostitution, are discussed. This section ends with a philosophical look at future concerns and possible contemporary issues for a next edition. The contents have been structured as follows:

Section A: Youth misbehaviour. its nature, extent, related risk factors and explanations

Chapter l: Introduction and terminology overview
Chapter 2: A historical perspective of the youth offender
Chapter 3: The nature and extent of child and youth misbehaviour in South Africa
Chapter 4: Risk factors pertaining to youth offenders
Chapter 5: The socio-moral redirection of troubled youth
Chapter 6: Traditional theoretical explanations for youth misbehaviour
Chapter 7: Contemporary theoretical explanations for youth misbehaviour
Chapter 8: A historical overview of approaches to understanding female youth • misbehaviour
Chapter 9: Contemporary South African perspectives on young female offending: dismantling risk, rethinking vulnerability

Section B: Youth in contact with criminal justice

Chapter 10: The prevention and control of youth misbehaviour in South Africa Chapter 11: Diversion
Chapter 12: Juvenile offenders in South African criminal law Chapter 13: The Child Justice Act: practice and procedure

Section C: Contemporary challenges pertaining to youth at risk

Chapter 14: Child trafficking in South Africa
Chapter 15: Child prostitution
Chapter 16: Concluding thoughts

Christiaan Bezuidenhout
2018

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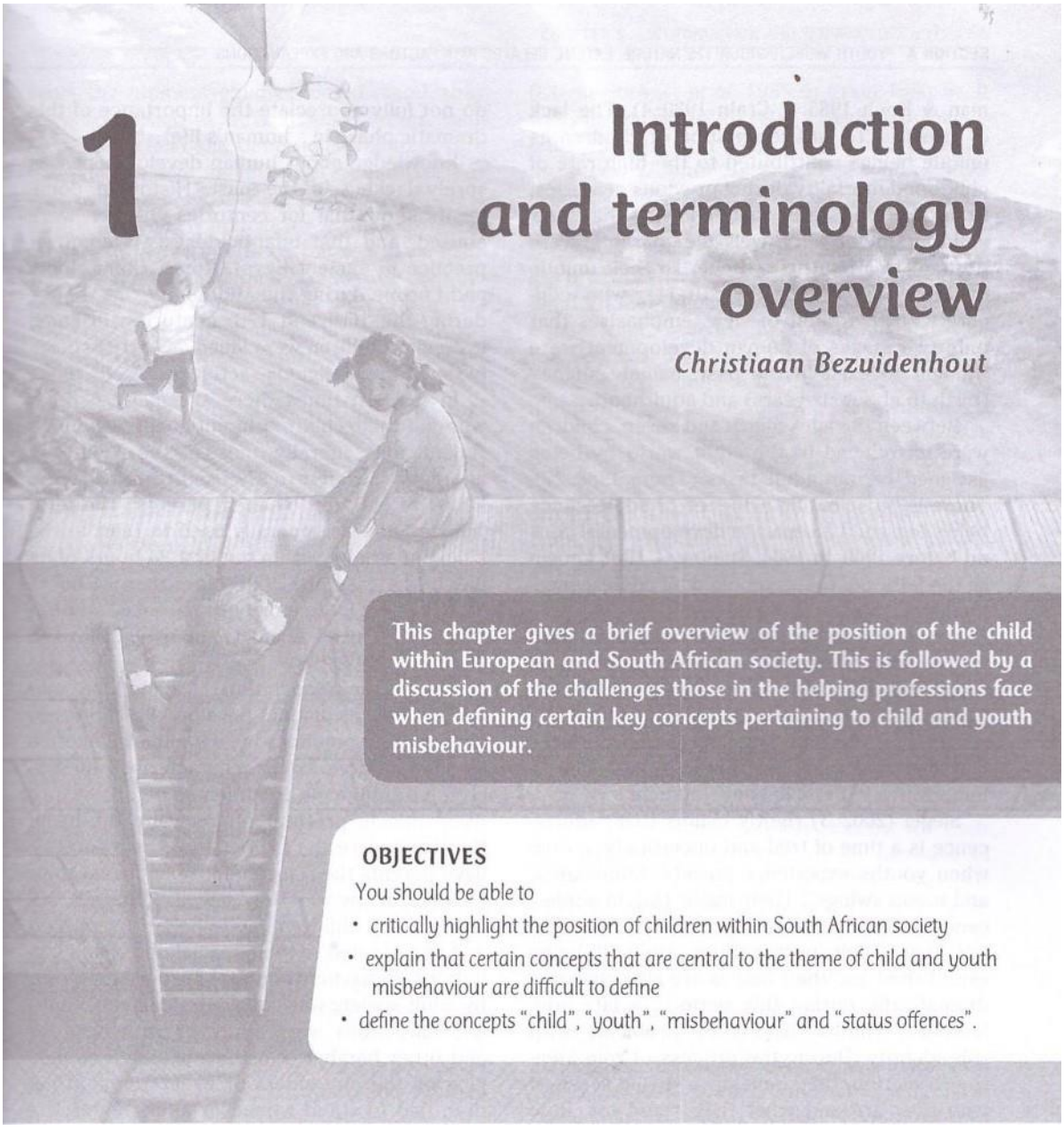
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SECTION A

Youth misbehaviour: its nature, extent, related risk factors and explanations

1 Introduction and terminology overview

Christiaan Bezuidenhout



This chapter gives a brief overview of the position of the child within European and South African society. This is followed by a discussion of the challenges those in the helping professions face when defining certain key concepts pertaining to child and youth misbehaviour.

OBJECTIVES

You should be able to

- critically highlight the position of children within South African society
- explain that certain concepts that are central to the theme of child and youth misbehaviour are difficult to define
- define the concepts "child", "youth", "misbehaviour" and "status offences".

1.1 INTRODUCTION

Throughout the world people believe that children should be cherished, nurtured and protected until they can fend for themselves. This, however, was not always the case. For centuries it was believed that children came into the world as miniature adults and as the property of the father. As little adults, children could therefore be assigned functions or roles, such as workers in coalmines or factories (in the case of boys) or chambermaids or wives from a certain age (in the case of girls). Until the 14th century, paintings depicted children as having adult body proportions and facial characteristics, distinguishable from adults only by their size. Socially they were treated like adults, although the privileges enjoyed by adults were denied them. Popular views of childhood during the 16th and 17th centuries differed radically from

those held today (Bezuidenhout & Little 2012: 369405; Clarke-Stewart, Friedman & Koch 1985: 4; Crain 1980: 4). The lack of attention to and recognition of children as unique beings contributed to the high rate of childhood mortality during previous centuries. Crain (1980: 5) states that "knowing that their children might very well die, parents were hesitant to attend to and cherish their unique qualities". Santrock (1983: 10—11), who concurs with this point of view, emphasises that only two stages of human development were thought to exist in the past, namely infancy (birth to about six years) and adulthood.

> Between the ages of five and seven, children were introduced to the adult world by being assigned certain adult tasks (Thom 1988: 27). There is no scientific evidence of adolescence being regarded a separate developmental period before 1900. In 1904, Stanley G. Hall, known as the father of the psychology of adolescence, published his two-volume book entitled Adolescence, and in so doing laid the foundation for the scientific study of adolescence and its recognition as a specific developmental period (Thom 1988: 30). Since the identification and recognition of this unique stage in a human's life, much has been said about its impact and importance in personal development.
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> Siegel (2002: 3) rightly claims that "adolescence is a time of trial and uncertainty, a time when youths experience anxiety, humiliation, and mood swings". Their major task in adolescence is to turn out to be their "own person" one day. Their personalities are still being established and their bodies are also changing dramatically during this period. In late adolescence, youths experience problems with role identity. During the process of role identity formation, they develop a strong sense of who they are and what they stand for. Role diffusion occurs when adolescents experience uncertainty and place themselves at the mercy of authoritative figures who promise them a sense of identity they cannot establish for themselves. To add to this confusion, youths between 16 and 18 yearn for independence from their parents. All these problems obviously impact drastically on any youth's life. Fortunately in this age we are well informed about adolescence. This is a difficult life stage that humans have to go through, and it takes almost 10 years for youths to become adults who can contribute positively to society. Unfortunately some Third World societies still do not fully appreciate the importance of this dramatic phase in a human's life.

Knowledge about human development was sorely lacking in the past. Historical documents show that for centuries children were abused, and that infanticide was a common practice in ancient Egypt, Rome, China, India and Europe during the Middle Ages as well as during the 16th and 17th centuries. In some instances children were killed as part of socially sanctioned religious sacrifices.

In modern times there are many parents who kill their children intentionally. Although "infanticide" literally means "the killing of an infant", it is currently used to refer to the killing of children by their parents. The term neonaticide" is generally used to refer to the killing of a baby within the first 24 hours of its life. In the case of a child older than 24 hours who is killed by one or both parents, the term "filicide" is used (Bartol & Bartol 2005: 319; 2011: 273; 2017: 298).

Before the recognition of childhood and adolescence as distinct developmental phases, child-rearing practices in England and America were, to a large extent, characterised by cruelty and inhumane treatment. The absence of legislation to protect children, and the belief that they were the property of their parents, gave parents the right to abuse and treat their children in any way they saw fit. Rules according to which children had to behave were rigid and not adapted to their special needs and limitations. Behaviour contrary to that laid down by adult society was considered misbehaviour, and infractions were punished with beatings and other harsher punishments, such as flogging by the city elders or even stoning. Children had to stand whenever adults entered a room, and remain standing and be silent until they were given permission to sit down or speak. Children who continually disobeyed their parents could be given the death penalty.

In European countries, infants were tightly swaddled and hung like bundles on the walls while parents went about their daily tasks. Noisy infants and children were sometimes given alcohol or opiates to quieten them. Behaviour today

considered as "cute" and essential to normal child development was then scorned or discouraged. Crawling, for example, was likened to animal-like behaviour and considered unacceptable by many adults.

From the moment children could stand, they were compelled to wear special clothes, reinforced with iron and bone. This was to ensure that they would have "adult" postures. For many centuries most scientists believed that a tiny, fully formed human, or homunculus, was implanted in the sperm or the egg at concepbon. It was claimed that a miniature person, who merely grew in size and bulk until birth, was created at conception (Crain 1980: 5).

Contrary to the previously held belief that all children were innately bad, the English philosopher John Locke proposed in 1690 that children were neither innately good nor bad at birth. He saw the child's mind as a tabula rasa or blank slate, and claimed that whatever the child became was almost completely as a result of learning and experience. Although Locke conceded that individual temperaments might be innate, he emphasised that the development of the mind was influenced by environmental factors. His focus on the importance of learning during infancy resulted in a gradual change in perceptions concerning child behaviour (Clarke-Stewart et al. 1985: 5).

During the era in which Locke lived, many children were sent away from home to work as servants as soon as they reached the age of six or seven. (Although this is the age at which South African children currently enter the first grade at school, in the past under the apartheid regime many young children were employed to sell newspapers, work in gardens, help with harvesting on farms or do domestic chores.) During the 17th century, children who started to work fulltime were treated even more harshly at work than at home. It was believed that if a child's will was not broken by harsh treatment, society would soon fall into disarray.

The Dutch, and later the British, who ruled South Africa adhered to the same socialisation practices that were the order of the day in their own and other European countries. Since it was believed that the main danger facing the youth was committing sin, the goal of child rearing was salvation (Thom 1988: 28). To achieve this, religious instruction, the stamping out Of sin by means of hard work and the regular meting out of severe punishment played an important role. In this way the innate tendency to sin and to behave according to the will of Satan could be controlled (Clarke-Stewart et al. 1985: 5; Crain 1980: 6). It was less important to raise a healthy or happy child than to save the child's soul. In many instances, playfulness and cheerfulness were seen as indicative of the devil's control of the child.

Knowledge of child health and child-rearing practices was seriously lacking, thus many children died because of poor health, an inadequate diet, unhygienic circumstances, ineffective care and abandonment. The lack of effective birth control methods and ignorance about procreation resulted in many unWanted children, and scant knowledge about the care of mothers during and after pregnancy led to a high mortality rate of both mothers and infants during and after childbirth. Unwanted, illegitimate and orphaned children were sometimes abandoned or killed.

From the outset, children were expected to fit into the adult world and to display adult behaviour without receiving adequate guidance and support. This lack of guidance and the meting out of harsh discipline for the slightest deviation from the prescribed behavioural code meant that many children were perceived to be exhibiting misbehaviour. Little or no understanding of the normal development of children and the reasons for their misbehaviour contributed to an increase in their abuse. Hyperactive behaviour was, for example, seen as naughtiness or demon possession that could be controlled by physical abuse. Fortunately today most cases of conduct disorders (CDs), hyperactive behaviour and attention deficit disorders are described in diagnostic terms that are used to refer to habitual misbehaviour or problem behaviour. This enables us to help children who manifest these characteristics. Therapy, support and, in some cases, medication can ensure that children with problem behaviour can be helped before they come into contact with the legal system (Bartol & Bartol 2017: 76), yet some parents continue to abuse their children constantly whether they display any behavioural problems or not. Cultural beliefs and customs that have been transferred from culture to culture still impact on disciplinary methods and abuse today.

Although child abuse has been rife for centuries, a turning point was reached during the 1960s when researchers and professionals from the caring professions started to focus on the seriousness of this problem. The social problem of violence towards children was highlighted in an article entitled "The battered-child syndrome", which appeared in the

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prestigious Journal of the American Medical Association in 1962 (Brown, Esbensen & Geis 2007: 469; Clarke-Stewart et al. 1985: 5). This article heralded the development of a collective consciousness regarding the plight of children, and resulted in legislation and global initiatives to care for and protect them. Although most countries in the world developed some form of juvenile justice over time, most juvenile justice systems can be attributed to a few major role players, which are the British, the North Americans, the Germans and the French (Kratcoski 2012: 1).

1.2 THE EUROCENTRIC INFLUENCE ON SOUTH AFRICAN CHILDREN AND YOUTH

In South Africa, as well as in other countries previously under colonial control, Eurocentric influence played a fundamental role in shaping the way in which white children were raised (Kasese-Hara 2002: 371). Although the socialisation and disciplining of black children differed among ethnic groups, these groups were not untouched by Eurocentric influences (e.g. the colonisation of South Africa by the Dutch and the British) since the education system, religious teachings and the criminal justice system with which they came into contact were largely based on the Eurocentric model. Even before being influenced by Eurocentric child-rearing practices, many black cultures also imposed severe punishment for misbehaviour, while abandoning children was also accepted traditionally among some black groups in South Africa. Although historic events and practices regarding the raising and disciplining of children are poorly documented in most black ethnic groups, tribes' word of mouth and meagre records from colonists say that sometimes ethnic groups on the move forced weary mothers to leave their infants behind in the bush to ensure that their fatigue would not jeopardise the progress of the group. In some groups it was customary to kill deformed or handicapped newborns. A ritual practised by some others was to offer a baby to the ancestors or to a totem, or to use specific organs of a baby in the preparation of muti (medicine) by a witchdoctor (Bezuidenhout & Klopper 2011: 198; Bartol 2002: 241; Brown et al. 1998: 450; Van Zyl, Malan, Marais, Olivier & Riordan 1994: 12).

The "New World" that was exported from Europe to Africa via the settlers and the colonial administrators resulted in a process of acculturation. This acculturation, in which black people found themselves caught between their traditional and Western culture, resulted in blacks adopting some Western views regarding childrearing and punishment for misbehaviour. In addition, formal employment (e.g. gardening or selling newspapers), the migration of labourers (from rural to urban settings), cheap labour practices (e.g. using children to sell newspapers on the street or to work on farms during harvesting time) and the brutal approach of their own families and societies to any unacceptable behaviour or genetic abnormalities had a severe impact on the black youth of South Africa. In addition, cultural practices currently make adolescence in South Africa a challenging stage for many black boys. Media sources often report on many conflicting issues between indigenous practices and Western advances. For example, initiation schools are held annually in the bush for adolescent boys from different ethnic groups (e.g. Xhosa) to prepare them for adulthood and to undergo Circumcision. However, many boys fall ill as a result of the circumcision procedure, with some losing sections of their genitalia or even passing away. The conflict lies in the decision to be circumcised in a hospital under clinical conditions or to go to traditional healers in the field and be circumcised as part of the traditional circumcision and initiation into manhood.

Another factor that significantly influenced the lives of black families and the way in which children were raised was the introduction of the apartheid system in 1948. Malpractices such as the imposition of the pass laws, forced removals to so-called homelands, the disruption of the family unit, inferior schooling, the lack of compulsory education and the use of children as labourers left most black youths and those of colour marginalised. Young people who grew up during the apartheid era

are generally referred to as the "lost youth" of South Africa. Many of these young people experienced alienation and became embittered. Furthermore, as they were unable to obtain an education and prepare for a career, they frequently experienced frustration and aggression, which predisposed them to becoming involved in acts of violence and crime.

Being socially and economically marginalised, many turned to political activism and exhibited radical behaviour that landed them in trouble with the criminal justice system (Kasese-Hara 2002: 371; Van Zyl et al. 1994: 9—18). The absence of proper child justice legislation resulted in high numbers of children being subjected to oppressive practices and inhumane treatment, both in prisons and in other criminal justice organisations (Stout & Wood 2004: 115). The struggle that ensued to rid the country of the oppression of apartheid used the power of the youth. Although the outcome was positive in that South Africa eventually became a democracy, the negative side was that the youth grew up in a culture of violence: violence perpetrated by the authorities to suppress the masses as well as by those who were trying to achieve freedom and equality resulted in a disregard for human life and property. Although the struggle is over and liberty has been attained, these conflicting energies still guide the thinking and actions of many South Africans.

This, in conjunction with poor or no education, the breaking of ties with traditions that previously aided the youth in their transition from childhood to adulthood, parental loss of control over children, a lack of supervision, child-headed households and a slow transition process following democratisation, has resulted in many youths turning to various forms of misbehaviour to compensate for their disappointrnent in what the change has to offer to them, along with their unfulfilled expectations of democracy.

Despite the dawning of a new era in South Africa, many previously disadvantaged families still have to endure the pressures and difficulties associated with factors such as poverty and competition in a labour market where skills and training are prerequisites and unemployment is prevalent. In addition, major technological advances (e.g. the internet, smartphones and computers) and changing paradigms (e.g. freedom of speech, equality and a human rights culture) have reshaped the international community, which in turn makes demands on South Africa for which communities and individuals have not necessarily been equipped (Hawes 2013: 87). Although South Africa has shown relative economic growth because of investment by foreign countries, the necessary skills are sorely missing. In addition, South Africa is experiencing a skills and brain drain because of the soaring crime situation and the fear of crime among a significant number of the people.

The juvenile justice landscape in South Africa has experienced many changes and influences up until now with regard to the treatment and processing of youths in the justice system. In addition to the legal changes, children are also confronted with other societal changes on a daily basis (Bezuidenhout & Little 2012: 369). For example, South Africa is on "junk status" because the government is finding it difficult to honour its debt payments and therefore finds it problematic to secure international loans. The impact of this is that many young people will struggle even more as the economy slows down and the cost of basic commodities rises. In addition, job opportunities are decreasing and many people run the risk of losing their jobs.

Change always introduces new challenges to children and the youth (Hawes 2013: 86). In South Africa, the challenges facing young people are in many respects greater than those that their counterparts in developed and other developing countries have to deal with. The democracy that followed the apartheid regime has brought about drastic changes, such as requiring individuals to function on a skills level for which the past did not prepare them. Youths in South Africa now have to be part of a process where the diverse groups that make up the population have to be integrated into one nation, the so-called rainbow nation. Educationally they have to prepare themselves on a Eurocentric-modelled schooling system to enter a labour market that requires international competitiveness. The political activism of the 1970s and 1980s now has to make way for political participation, while traditional views have to be attuned to the requirements of globalism.

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In addition, youths are influenced by the political climate in South Africa. Democracy also brought with it the freedom to strike. Teachers are sometimes absent from school because of national strikes for better wages or for other political and social reasons, and thus neglect their responsibility as educators. Such situations sometimes cause scholars to react out of frustration by vandalising their school. Although they may think this is the correct way

to react, it directly impacts on their schooling in the future. If a school is vandalised and infrastructure is, for example, reduced to ashes in a fire, schooling will still be affected by this after the strike has ended and normal schooling should have recommenced. Other signs of frustration with the current situation have materialised in the form of vandalisation of symbolic landmarks, such as statues from the former colonial South Africa. In 2016 during the "FeesMustFall" campaign, young people used violence and intimidation in their demands for free tertiary education for all, causing damage costing millions of rand to many tertiary institutions.

The saying "The future belongs to the youth" has taken on a new meaning in South Africa, since the youth have to face and prepare for challenges completely foreign to their parents. The Constitution that was drawn up following democratisation in 1994 is hailed as one of the most liberal in the world, as it addresses human rights as no constitution has before. This is also paradoxical if one considers that the youth who grew up in a culture of violence, where little respect and consideration were shown for human life, now have to internalise the human rights values as set out by the Constitution. Unlike youths in other democratic countries who are born into a culture of human rights, South African youths have had to acquire this culture gradually, which will most probably become a part of South African society in time. When this happens, it is possible that the extent of youth misbehaviour will decline. Currently, however, the increasing crime rate among youth, their incorrigible rejection of authority and intensified misbehaviour, as well as the general level of crime in South Africa, paint a dismal picture indeed. In addition, many children are being hindered in their endeavour to be properly educated in South Africa. Many schools struggle with simple matters like receiving prescribed material on time for the start of the school year, and incidents have been reported in the past where textbooks were found dumped instead of being delivered to schools in areas in dire need of them. This hinders many

- A dysfunctional schooling system
- Poorly qualified teachers
- Poorly equipped schools
- A lack of career guidance facilities
- A lack of bridging programmes
- High failure rates at schools
- Lack of employment for school leavers (both dropouts and those who completed school)
- A lack of or blocked opportunities
- School absenteeism
- The breakdown of established patterns of authority between young people and their parents, teachers, state authorities and other authority figures such as religious leaders
- Sexual ignorance
- High rates of teenage pregnancy
- Ignorance regarding HIV infection and AIDS
- Substance abuse
- Factors that forced children to run away from home
- Hostility towards the older generation and the wider community (characteristically caused by the acculturation process) • Non-existence of a youth policy
- Inequality
- Corporal punishment used by teachers and the criminal justice system
- Disunited family systems (e.g. due to influx control laws)
- Sanctions against South Africa

Many of these challenges are still being faced by South African youths. In addition, from the above

children from being properly educated in a safe environment — a guarantee that is stipulated in the South African Constitution.

The most widely documented problems South African youths faced before democratisation were the following (Van Zyl et al. 1994: 9—18):

it appears that, in the past, environmental (nurture) factors probably played a more significant role in the causes of misbehaviour in children and youths than inborn (nature) factors. Currently it is accepted that both nature and nurture are major forces in human development, as well as in the behaviour that is displayed (Clarke-Stewart et al.

1985: 5). Nurture is, however, at the forefront when the right of children to be brought up in a healthy environment is emphasised. The current approach in South Africa is to acknowledge the rights of children and to put legislation in place that will ensure that past atrocities are not repeated and that children enjoy adequate protection. Legislation specifically aimed at protecting children has been incorporated into Chapter 2 of the Constitution, as well as into the new Child Justice Act 75 of 2008. In addition, the South African legal machinery is trying to use restorative justice (R.D and diversion to ensure that past atrocities are not repeated. The challenge lies in the restoration of harmony if a child derails and in avoiding the brutalisation and rejection of the person.

The marginalisation of the youth In the past was not accepted unconditionally. History shows that the South African youth rebelled against their treatment in various ways. The Sharpeville incident in the 1960s and the Soweto uprising in 1976 show that young people played a fundamental role in the struggle against apartheid and the shaping of society. This eventually culminated in the democratisation of South Africa. With democratisatlon and the emphasis on human rights, the majority of the youth from all racial groups have participated actively in the process of transformation and in building a better South Africa (Van Zyl et al. 1994: 19). Although this ideal still exists, it appears that society has encountered problems in coping with the changes. This is evident from the high crime rate (which includes misbehaviour of children and youths) and the continuous reports of the abuse of children and youths in various ways (e.g. the rape of babies, children and adolescents). Children are also increasingly becoming the victims of sex predators, child trafficking and murderers in South Africa. These social ills definitely violate the post-apartheid vision for children in the new South Africa. According to Hawker and Smook (2007), children are raped, maimed and/or killed daily in South Africa (Geldenhuys, 2015:28). Formerly and at present, children of South Africa live with very few safe spaces and they live within a context of multiple and continuous exposure to traumatic situations. This still poses different social and psychological challenges to the youth of South Africa. It can result in various bio-psychosocial consequences for the child, among which could be behavioural, emotional and somatic problems (Van wyk 2011: 411).

A large proportion of South African youths have undoubtedly been negatively affected by the decades during which the majority of South Africans were in a disadvantaged position. The disempowerment caused by the previous political regime contributed to the derailment of many children and youths in the past, and this till exists today. Van Zyl et al. (1994: 20) point out that the aftermath of apartheid is "seen in the form of crime, substance abuse, disease, violence, homelessness and other forms of social pathology. It is these people who are sometimes described as alienated, marginalised or 'lost'". In addition, marginalised youths in the new South Africa still experience negative external circumstances which include unemployment, poverty, family disorganisation, poor discipline, inadequate or no housing, overcrowding, inferior status and position, limited or no educational opportunities, inadequate facilities for recreational and leisure pursuits, as well as a low standard of living. The lack of adequate health, social and municipal services often exacerbates this. Also, many youths in South Africa experience the brunt of physical and sexual abuse. The South African Police Service (SAPS) states in this regard that these types of crime against children are often sexual offences. Most of the victims of contact crimes committed against children are between 15 and 17 years old. Their analyses indicated that almost a third of the sexual offences against children involved those aged 0—10 years (SAPS 2010/2011). Victimised children often derail because of internal and external pressures as well as inner conflict. They experience uncertainty and lack confidence. Children are more often than not abused by their own parents, siblings or guardians. This compounds the inner conflict and lack of self-belief that they experience. In many instances vulnerable children are also abused by people in positions of power (e.g. a teacher or sports coach).

It is incorrect to view sex offenders as a homogeneous group. In addition many misconceptions about sexual intercourse with a child exist. An example is the misconception by certain males that sexual intercourse with a young virgin girl will cure sexually transmitted diseases or AIDS. The truth is that many factors play a role in the sex-offending behaviour of humans. It needs to be noted that no single profile encompasses the majority of sex offenders, and they are as diverse as those who are not sex offenders. This makes children even more vulnerable, and the prevention of sexual offences almost

impossible (Hesselink & Bezuidenhout 2012: 241).

This is one of the most difficult issues to address in a youth who becomes incorrigible because of sexual abuse by another human. Their naivety, spontaneity and zest for life will be damaged and corrupted, which impacts on many different levels of their existence. It usually leaves the innocent child victim confused, insecure and abstracted from reality. They cannot share the ordeal with a family member because in many instances the family member is the offending party. Children need to experience a sense of belonging, which is a basic human need. This may drive them to seek alternatives such as joining a group with similar feelings or a gang that provides a superficial sense of belonging.

Feelings of hopelessness and uncertainty could therefore contribute to the involvement of youths in misbehaviour and the formation of gangs. The level of organisation within a community determines the extent to which the environment exerts a preventative or stimulating influence on the commission of crime. Residential areas characterised by social disorder imply the existence of conditions that serve as a breeding ground for gang formation, the committing of crime and recidivism. Gang formation can be regarded as a phenomenon that arises mainly because of the particular needs of underprivileged youths in transitional areas of big cities. These areas are characterised by family disorganisation, inadequate educational and religious institutions, the exhibiting of superficial moral values, poor incomes and limited possibilities for participating in healthy recreational activities,' as well as abusiveness towards children. The external environment should, however, not be considered

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as divorced from individual-human factors, as a complex interaction exists between people and the environment they live in. This is why children are also abused in higher and more affluent social areas. The disorganised, informal poor areas are, however, more conducive to wrongs against children (Pistorius, Bezuidenhout, Mbokazi, Kotzé & Pretorius 2012: 25).

A new phenomenon that encompasses the challenge — the feeling of "belonging" — is when especially young girls fall prey to the so-called "blessers". This practice in South Africa entails the phenomenon where older men (sugar daddies) "bless" young girls and in turn expect sexual favours. A "blessing" could be a financial contribution, a shopping spree or gifts. There are different levels of "blessing", and some "blessers" even provide their "blessee" with an apartment and a vehicle. In some instances parents condone this practice as it often is the only source Of income for the household (Lamble 2016). Although it mostly occurs between older men and young girls, some adult women also "bless" young boys, who fall prey to such practices.

Besides environmental factors that may influence human behaviour, individual-human factors also play a role in determining human behaviour. Individual-human factors that could be involved in choosing to become a member of a gang or to commit a crime include personality defects such as setting egocentric objectives, poor impulse control, aggressiveness, the desire for the immediate gratification of needs, limited social skills and a tendency towards socially destructive actions. In addition, a poor self-image, limited communication skills, loneliness, alienation from the family, an inability to take responsibility and fulfil social roles, being emotionally labile, and being subject to emotional disorders or psychiatric conditions (e.g. schizophrenia or paranoia) could contribute to a person seeing the gang as a pseudo-family or alternative supportive structure.

- In the past it was the responsibility of the extended family to provide both children and adults with the space, opportunities and means to spend their leisure time in a positive way. However, the development of the nuclear family, technology and urbanisation has played a major role in shifting this responsibility to the community. As a result of overpopulation, limited or poor recreation facilities and poverty, a large number of youths are compelled to explore alternative recreational activities that may involve negative behaviour. Examples of this are train surfing, substance abuse and high-risk promiscuous sexual activities.

Although a minority of South African children and youths display serious misbehaviour, this cannot be condoned on account of the heritage of apartheid alone. In most countries, a number of children and youths misbehave despite the socioeconomic and political circumstances that prevail. Any country that cares about its children and youth is responsible firstly to identify and address the historical factors contributing to the misbehaviour. Secondly, the same should be done with factors within the current dispensation. Thirdly, care should be taken not to focus exclusively on the minority who misbehave, thereby alienating those who are positive in their

outlook and geared towards making a success of their lives. Focusing only on those who misbehave creates the impression that all children and youths show unacceptable behaviour. The attitudes of society can be influenced by the mass media also reporting on positive behaviour, while researchers need to establish why some children and youths do not misbehave. Knowledge gained in this way could be used to empower those who transgress and encourage them to change their behaviour for the benefit of society and themselves.

South Africa is following a growing international trend towards materialism, and this, combined with individuality, gluttony and indulgence, is becoming a cultural identity in South Africa, which is gradually impacting on the moral values and thinking of the youth. Three factors seem to play a fundamental role in determining success:

- What one earns (income or financial status)
- Where one lives (type of house and address)
- What one drives and the brand of clothes one wears

These factors, as well as those such as the absence of a proper guardian in concurrence with other social pressures, impact on the youth in South Africa in a very challenging way. Youths also face a scarcity of job opportunities. In addition, women are entering the labour market at a rapid rate, and children are sometimes left to their own devices, with childcare facilities and schools often being blamed for their misbehaviour. However, it has been shown that the instilling of a morality and conscience takes place in the first five years of a child's life. According to Sigmund Freud, all of the essential ingredients of a child's adult personality are determined by the age of five (Bartollas 1997: 197), thus children who do not receive the necessary healthy guidance, love, discipline and example from their parents or guardians are set up for derailment. Although the healthy guidance of either parent or a guardian is key in the rearing of any child, one cannot emphasise the role of a healthy male role model enough. Probably the biggest need a young child has in childhood is that of a father's protection, it does not necessarily have to be the child's father. Many young people grow up without any guidance from a beneficial male role model or are victims of abuse and manifest with misbehaviour and therefore derail at a young age.

In this book we will try to explain most of the reasons why children end up in conflict with the law. We will also try to highlight the most contemporary misbehaviours children commit, and underline the position of children in the legal machinery of South Africa. Before we embark on this journey, specific concepts that are controversial in youth misbehaviour research and texts globally will be clarified.

The use of certain concepts when referring to children and youths who misbehave has become a very sensitive issue in South Africa. Concepts such as "lost", "marginalised" and "alienated youth" have fallen into disrepute since 1994. On the other hand, those such as "youth at risk" have gained popularity. This has given rise to a terminology dilemma because all children and youths are at risk of becoming victims in the ongoing so-called crime conflict and crime wave in South Africa. To clarify this dilemma it is necessary to define the central concepts as they will be used in this book, such as "infant", "child" , "adolescence", "youth", "misbehaviour" and "status offence".

1.3 TERMINOLOGY OVERVIEW

In the following section, central concepts used in this textbook will be explained.

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1.3.1 Child and youth

Although all humans go through several developmental phases during their life, with each one bringing new challenges, it is not the purpose of this book to elaborate on this topic. Hook (2002:350—351) rightly warns researchers that concepts and categories generated within developmental psychology have an impact on how individuals live their lives, are raised and treated, and how they think of themselves. These different viewpoints on development translate into laws and legal identities. In this regard, Hook (2002:343) postulates that "of course these developmental norms are imported to other countries, often with problematic results". Another problem is that these norms are not free from cultural influence. Our understanding of the concepts "child" and "youth" is replete with social, political and cultural meaning. These meanings reflect our current times

and beliefs rather than being timeless and universal values.

Instead of trying to explain what each concept means — namely neonate (the few days after birth) and infant (birth to 18 or 24 months), toddler and early childhood (2—6 years), middle and late childhood (7—12 years) or adolescent (11—13 years up to 18—21 years) — it may be more appropriate to use the definition of a child from the 1996 Constitution of South Africa. In section 28(3), a child is referred to as anyone under the age of 18. In this book, the words "child" and "youth" will be used interchangeably and, where necessary, specific problems or issues with regard to specific developmental phases will be highlighted and explained.

Please note that the Child Justice Act 75 of 2008 defines a child as "any person under the age of 18 and, in certain circumstances, means a person who is 18 years or older but under the age of 21 years whose matter is dealt with in terms of section 4(2)". Gallinetti (2009: 13) interprets this section as meaning that "the Child Justice Act can apply to persons 18 or older but under 21 years if they had committed an offence when they were under the age of 18". The White Paper on Correctional Services (2005) classifies a juvenile or youthful offender as a person between the ages of 18 and 25 years. This underlines the leniency the government has with youthful offenders, believing

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that young offenders will most probably be rehabilitated and become meaningful contributors to the economy.

1.3.2 Misbehaviour

Eurocentric textbooks refer to child and youth misbehaviour as juvenile delinquency (Bartollas 1997: 7). Delinquency implies criminal activities and guilt, thus many children who are involved in minor misbehaviours are labelled juvenile delinquents (Siegel 2002: 6). This label in turn causes a great deal of negative reaction from the community, which can influence such children to become involved in serious misbehaviour and crime. The concept "misbehaviour" will therefore be used in this text to refer to any type of wrongdoing, and "juvenile delinquency" will be avoided where possible.

In this text we will try to address child and youth misbehaviour holistically. This implies that we are sensitive to the different degrees of misbehaviour, but to make deliberation easier, the concept of misbehaviour will encapsulate the concepts "criminal offences" and "status offences". These two concepts are clarified in the next section.

1.3.2.1 Criminal offences, crime or unlawfulness

Definition

Different people define crime in different ways. In contrast to individuals who have had legal training and see crime as an illegal action, those in the human sciences see it as behaviour harmful to the individual and to society. Some theologians define crime as sin, while those who place a high premium on truth are of the opinion that crime occurs when the moral code is broken and that it is a sign of dishonesty. Despite the different views on what the term "crime" entails, most definitions can be divided into either of two categories, namely juridical and non-juridical (Van Zyl 1996: 5).

The word "crime" is derived from the Latin word crimen, which means "judgement, accusation and defence". This root has resulted in the view that crime relates to actions that are legally prohibited. The juridical definition, therefore, stresses crime as an illegal action committed by an individual who can be blamed for it and can be punished by the authorities (Bartollas 1997: 3). This definition is supported by Van Zyl (1996: 7), who defines crime as "the illegal, wilful, human action that constitutes a transgression of the law; to which is linked sentencing by a court of law after a hearing and conviction" [own translation].

Crime consists of actions that are legally prohibited, such as robbery, rape and murder, and those that people perform or fail to perform. Failure to act is punishable when, for instance, people do not pay their taxes, fail to care for children in their custody or fail to stop when party to a hit-and-run accident. Law

must prohibit an action before it is considered a cnme.

Moral disapproval of behaviour does not make it a crime unless the action is legally prohibited. To witness someone drowning and do nothing about it is not a crime. In order for individuals to know what behaviour is considered a crime it is necessary for criminal law to explain, in language that is clearly understandable, what type of action is prohibited or required (Conklin 1998: 420).

Contrary to the juridical definition, Van der Walt, Cronjé and Smit (1985: 5) define the non-juridical approach as "an antisocial action that involves a threat, violation or infringement of the stability and security of society and its members" [own translation]. According to this definition, the study of certain actions falls within the field of study of criminology, even though they do not violate or contravene national laws and are therefore not legally punishable (Bartol & Bartol 2017: 24).

A criminal offence or an unlawful act therefore literally means "in contrast with or against the law". Criminal law addresses the question of whether or not the type of behaviour for which the child is charged is recognised by the law as a crime (e.g. murder, rape, robbery, theft, assault, etc.). This implies that a child can be charged with crime(s) and can be punished to the full extent of the law. If the child commits a certain crime, such as murder, he or she can be treated as an adult. One factor that ensures that a child is not treated with the same severity as an adult is his or her age or youthful status. The influence of age is very important in criminal law because it has a continued effect on a person's status. Age is an important factor in a court of law as it can, in fact, justify a criminal offence (see Chapter 11).

Age and criminal responsibility

Previously in South Africa it was legally stated that a child had limited legal capacity from birth until the age of seven. Such a child had no capacity to act or to litigate personally, thus he or she had an irrefutable lack of criminal responsibility. An infant consequently could not be held accountable or criminally responsible or legally guilty.

Refutable lack of criminal responsibility was applicable to children from the age of seven but under the age of 14. The general rule was that such children were not responsible for their actions, but this presumption could be disputed by the state. The state had to, however, prove that the child was criminally responsible at the time the offence was committed. This meant that the child had to have been able to comprehend the nature, extent and consequences of the act before the state could confer capacity to act on the child. In this respect a distinction had to be made between intellectual ability and the ability to judge.

Children of 14 years and older were considered responsible except when the opposite could be proven. Youthfulness, however, could always be considered a mitigating factor when imposing punishment. This is also known as refutable criminal responsibility. The law grants full capacity to act only to those who are in possession of both intellectual ability and the ability to judge.

Because of these different levels of responsibility, the law has typically distinguished between three groups: infant (from birth to seven years of age), minor (7—21 years of age) and major (21 years of age and older) (Davel & Jordaan 1998: 43—44).

A few changes have since been promulgated. The Child Justice Act 75 of 2008 came into effect on I April 2010, in which the minimum age of criminal capacity was raised to 10 years. In terms of section 7(1) of the Act, a child who (at the time of the alleged commission of the offence) is below the age of 10 years cannot be prosecuted. Nowadays there is a rebuttable presumption that a child between the ages of 10 and 14 years lacks criminal capacity. In both common and civil law, a rebuttable pre-

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sumption is an assumption made by a court, and is taken to be true unless someone comes forward to contest it and proves otherwise. For example, a defendant in a criminal case is presumed innocent until proven guilty. A rebuttable presumption is often associated with prima facie (face value) evidence. A child of 14 years lacks criminal capacity until proven otherwise. Essentially, this means that the presumptions of doli capax (i.e. that the child has criminal capacity) and doli incapax (i.e. that the child does not have criminal

capacity) are retained, while it is just the minimum age that has changed.

Further protections for children aged 10 years or older but under the age of 14 are contained in section 10 of the Act. In terms of this section, a prosecutor can only prosecute a child if he or she considers various factors, which are the following:

- The educational level, cognitive ability, domestic and environmental circumstances, and the age and maturity of the child
- The nature and seriousness of the alleged offence
- The probation officer's assessment report
- The impact of the alleged offence on any victim
- The interests of the community
- The prospects of establishing criminal capacity
- The appropriateness of diversion
- Any other relevant factor

This prevents prosecutors from prosecuting a child as an impulsive process, hoping that he or she will prove criminal capacity further during the course of the matter. This section requires the prosecutor to consider the likelihood of success based on the above factors before deciding to prosecute (Gallinetti 2009: 19). Diversion rather than prosecution is the preferred method of dealing with the youth in South Africa as since democratisation the state has adopted a human rights welfarist dogma.

There is furthermore a rebuttable presumption in our law that where a child commits a crime in the company or presence of a (more) adult person, the latter influenced or forced

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the child to do so. Here again, the state has to rebut this presumption beyond reasonable doubt. Consider the court case for the murder of the Afrikaner Weerstandsbeweging (AWB) leader Eugene Terre'Blanche. A 29-year-old black farmworker, Chris Mahlangu, was convicted of the crime while his alleged accomplice, 18-year-old Patrick Ndlovu, was acquitted of the murder but found guilty of house breaking. Either his age or the fact that Mr Ndlovu was deemed an indirect perpetrator, or both, contributed to his lenient sentence.

After turning 14 years, a child is usually deemed to be fully accountable and therefore in the same position as an adult. In this instance, the proof rests with the accused and legal presentation to prove on a balance of probability that he or she was not accountable at the time of the act.

In the South African legal system, first-time offenders under the age of 21 years are usually treated as youths or minors, and are not punished as harshly as adults. In this connection "minority" and "majority" refer to the developmental phase individuals find themselves in (emotionally, physically and intellectually). In Western society, "minority" implies that a person is dependent on others (e.g. parents), while "majority" means that the person has the ability to manage his or her own affairs. In the past, the coming of age level was deemed to be 21 years. This meant that society and the legal system considered a person to be an adult when he or she turned 21 years. This changed on I July 2007 when the then president, Thabo Mbeki, signed a proclamation that instituted the commencement of certain sections of the Children's Act 38 of 2005. One section regarding the legal age of adulthood or age of majority is now in power. "Adulthood" is now reached as soon as a person turns 18 years of age. This implies that 18-year-olds in South Africa can marry and sign contracts without the consent of their parents or guardians, as well as own a firearm and acquire a driver's licence (Government Gazette 2007: 3).

The age of majority must not be seen as synonymous with maturity as an adult. Adults are considered mature enough to manage their own affairs. In other words, the adult person is someone who has, in a legal sense, obtained the full ability and capacity to act independently. A large percentage of individuals will be in Grade 12 (if they are still at school) when they reach the age of majority in South Africa. Some may have reached a degree of maturity by the age of 18 years, but this will not be true of everyone. "Majority status" does not imply that the full ability and capacity to act independently has been reached. The criminal justice system, especially the courts, will probably still take youthfulness into consideration when a person is sentenced. It is also the author's opinion that the Department of Correctional Services will still be attentive to the issue of youthfulness when a person is sentenced to prison, and will still

consider separating 21-year-olds and those younger from the adult prison population. It is the author's opinion that the status of youthfulness will therefore still be used as a mitigating factor in our common law.

In the South African context, not all youths grow up in households that provide security, stability and average incomes. Before 1994, more than 40% of the black households in South Africa were headed by a female (Van Zyl et al. 1994: 44). This, together with many other social forces, led to various social distortions such as the effect the past system had on human development and the natural maturation process. Many youths, especially black youths, did not experience the normal stages Of development. It can therefore be argued that some young people in South Africa in their 20s or even 30s are still "youths" in their psychological and emotional development. Although these "youths" have reached adulthood, the current societal and political structure is hindering many of them in accessing opportunities to enhance their chances of becoming educated. This impacts on the ability of many young people in South Africa to develop into responsible independent adults. The law, however, provides enough leniencies for defendants to prove to the court that they are still infantile or not fully responsible for their actions. In view of this, it is not deemed necessary to elaborate further on the dilemma regarding age and development, and criminal liability in South Africa. In conclusion, it may be said that South African legislature is very lenient and sensitive with regard to youth matters. However, a youth's minority status also implies that certain actions, which are not against the law for adults, can bring him or her into contact with the criminal justice system.

1.3.2.2 Status offences

Age is one of the most important factors influencing a child's status. Young people under the age Of 18 years may come into contact with the law because of behaviour that is generally not seen as unlawful, such as rebelliousness, truancy, running away from home, sexual promiscuity, consuming alcohol, viewing pornography and smoking. Bartollas (1997: 4) also refers to these children as pre-delinquent, incorrigible, beyond control, ungovernable or wayward. In the case of adults committing these acts (status offences), nothing can or will be done to them because they are seen as majors. The criminal justice system therefore sees the conduct as illegal only because the child is underage (Siegel 2002: 15). This means that even though these acts do not violate or contravene national laws and are not legally punishable, many youths make contact with the justice system because general society perceives such acts as unbecoming for people under the age of 18 years (Bartol & Bartol 2017: 45; Bezuidenhout & Little 2012: 13).

1.4 CONCLUSION

CRITICAL QUESTIONS

I . List five ofthe most widely documented problems South African youths faced before democratisation.

2. Summarise the concept "status offence".

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This introductory chapter briefly reviews some of the more important concepts relevant to child and youth misbehaviour. It also outlines the child's historical position in society. The position of South African children is also alluded to. The approach adopted is largely objective and philosophical in the hope of stimulating further reading of the text and critical thinking by the students or practitioners of these matters.

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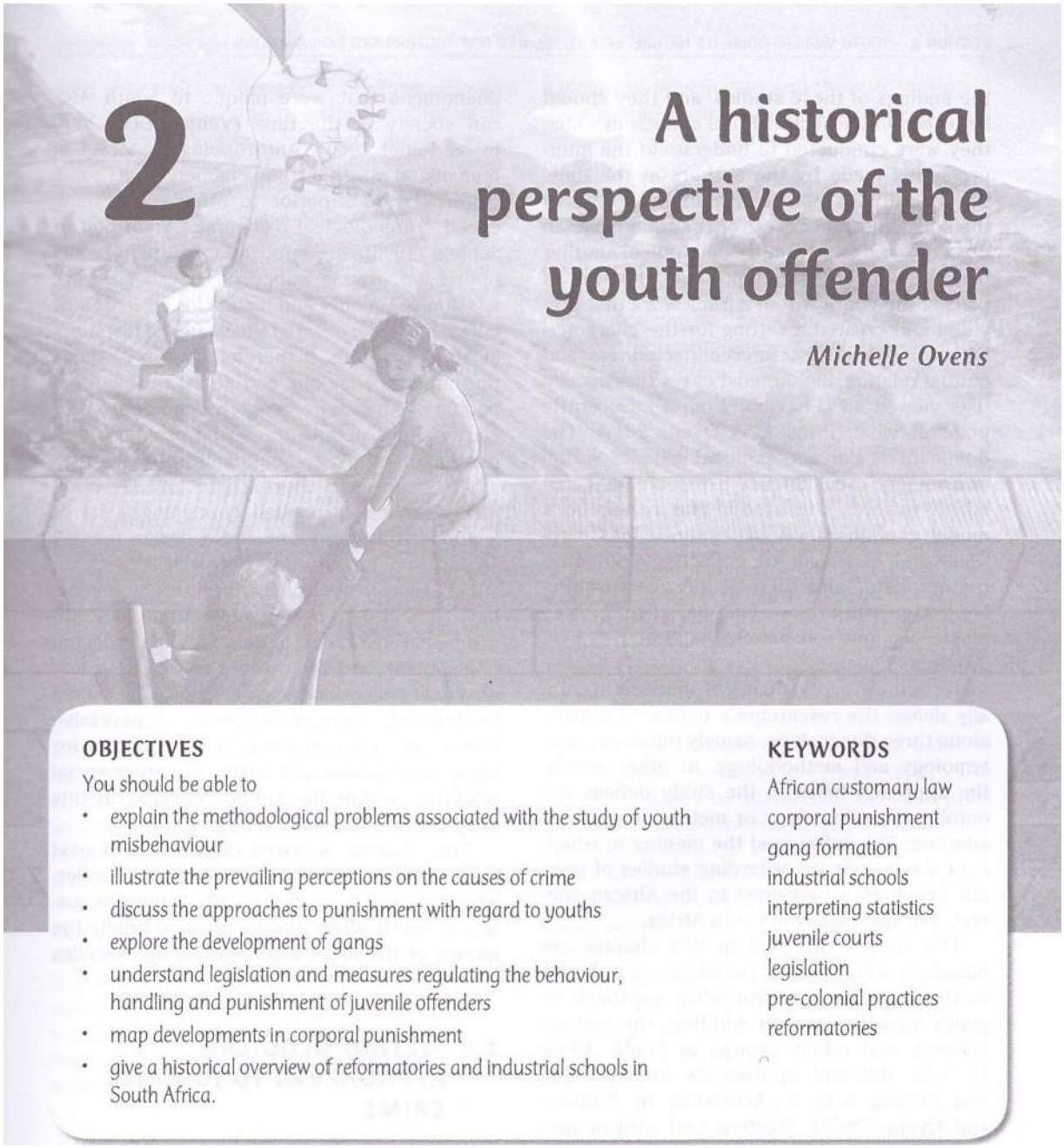
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2 A historical perspective of the youth offender

Michelle Ovens

OBJECTIVES

You should be able to

- explain the methodological problems associated with the study of youth misbehaviour
- illustrate the prevailing perceptions on the causes of crime
- discuss the approaches to punishment with regard to youths
- explore the development of gangs
- understand legislation and measures regulating the behaviour, handling and punishment of juvenile offenders
- map developments in corporal punishment
- give a historical overview of reformatories and industrial schools in South Africa.

KEYWORDS

African customary law
corporal punishment
gang formation
industrial schools
interpreting statistics
juvenile courts
legislation
pre-colonial practices
reformatories

2.1 INTRODUCTION

Juvenile misbehaviour, as a field of study within criminology, has been researched and written about extensively both nationally and internationally (Clifford 1965; Cronjé, Van der wait, Retief & Naudé 1980: 1; Waller 2006). If one delves into the historical development of juvenile justice in South Africa, various disciplinary studies have been conducted on juvenile criminality in many social and cultural settings (Albertyn 1935; Grobler 1941; Kieser 1952). As early as 1935, Albertyn conducted a psycho-criminological study on juvenile delinquency in the Cape, South Africa.

Research on juvenile criminology has a rich but somewhat chequered background. Prevailing social attitudes and perceptions influenced

the findings of these studies, and they should be placed in the sociocultural context in which they were conducted to understand the interpretations made by the authors at the time. These attitudes and perceptions specific to the sociocultural context of the time make an objective and empathetic evaluation of another person's "otherness" impossible. Instead of placing the youth within a framework that provided and created a setting for the characteristics of complexity, interconnectedness and mutual relationship, in most cases these scientists viewed all behaviour from a Eurocentric point Of view (Prinsloo & Ovens 2011). The dominant social and political climate within any society can influence a researcher's paradigm towards the study. The researcher's model contains a set of legitimised assumptions and a design for collecting and interpreting data, and all scientific research is conducted within a specific paradigm or way of viewing one's research material (De Vos, Strydom, Fouché & Delport 2011: 41). These philosophies or paradigms of thinking eventually define the researcher's nature of inquiry along three dimensions, namely ontology, epistemology and methodology. In other words, the approach taken in the study defines the ontology, epistemology or methodology to be adopted. This influenced the manner in which data was construed regarding studies of juvenile crime as it happened in the African context, and specifically in South Africa.

The studies included in this chapter are based on a Eurocentric paradigm, as a dearth exists regarding an Afrocentric approach to youth misbehaviour. In addition, the various cultures and ethnic groups in South Africa all have different approaches in explaining and dealing with it. According to Prinsloo and Ovens (2011), Western and African perspectives have different epistemological and ontological points of departure. Contemporary Afrocentric theory has developed into its current form through the advent of Western thought and should therefore be understood within a framework and awareness of the conflicting nature of the two ideas of Western and African knowledge systems.

Many authors in the past generalised about youth misbehaviour in South Africa without proper scientific foundations, or used Eurocentric theories and suppositions to explain phenomena that were unique to South African society at the time (Venter 1954; Venter & Retief 1960). Anthropological views of humankind at that time, namely that some cultures were superior to others, also influenced criminological discourse. According to Schiele (1996), the application on historically oppressed groups supports the social work mission of equality and justice for all. This paradigm has incorporated the values of traditional African culture. It therefore better explains the human behaviour and social problems of people of African descent, and can be used to clarify and deal with the social problems of a more multi-ethnic and multicultural society.

An Afrocentric approach to juvenile criminality models is applied containing a set of legitimised assumptions and a design for collecting and interpreting data (De Vos et al. 2011). Historical studies on juvenile misbehaviour and views on juvenile crime in South Africa merely reflect the relativity of crime and punishment, and the manner in which society produces offenders and develops measures to deal with deviant behaviour. A pervasive theme emerges and forms the foundation for many perceptions and beliefs of earlier social scientists within the studies covered in this chapter.

This chapter is based on a study of past research conducted on the youthful offender, which is used to map the path of juvenile justice in South Africa and to examine briefly the nature of the crimes committed by juveniles since 1931.

2.2 METHODOLOGICAL APPROACHES TO JUVENILE CRIME

Historically, research regarding juvenile misbehaviour has taken place on a multidisciplinary level. The South African sources consulted approach juvenile misbehaviour from various disciplines, ranging from an education perspective (Grobler 1941; Kieser 1952), a sociological perspective (Albertyn 1935), a criminological perspective (Venter 1954) to a socio-criminologiCal perspective (Retief 1958). Later researchers, such as Van Zyl Smit (2006), approached the topic from a legalistic perspective.

It is essential to study the context in which early research on juvenile misbehaviour was based, bearing in mind that these studies influenced criminological thinking for many years. Under

the system of apartheid, laws were passed that criminalised certain behaviour because the perpetrator was non-white. This created situations where many actions of nonwhite groups were criminalised by, for example, the pass laws and the Group Areas Act, thus increasing the level of blameworthy law-breaking behaviour among these populations.

Most early studies conducted in South Africa typically included non-white families with dysfunctional children without using control groups of functional non-white families who also had children with behavioural issues, as was the case with many families from other race groups in South Africa. This resulted in the labelling of non-white families as more dysfunctional than those of other cultural groups, and the behaviour displayed by dysfunctional non-white families in the studies was generalised and associated with all families of colour.

These generalisations had no proper scientific foundation. Retief (1958: 2) identified the need for an objective study of crime among the black population, and called for a strictly scientific investigation on the topic. However, it would take many years and extensive changes in the socio-political climate before an objective study was undertaken. The evolution of meta-modernistic approaches and the acceptance of Afrocentrism within research paradigms have slowly filtered down to influence the way in which society approaches juvenile misbehaviour, the manner in which such youths are dealt with by society and the criminal justice system, as well as punitive measures imposed to deal with their behaviour.

2.3 APPROACHES TO PUNISHMENT

As early as 1941, Grobler (1941: 4) wrote of the many reforms that were taking place in the South African criminal justice system. These changes were driven by influential leaders such as Brigadier-General Beyers, the Director of Prisons in 1941, and Justice Krause, the Judge President of the Orange Free State and the Supreme Court of South Africa. One such change envisioned by Grobler (1941: 5) was the "gradual abandonment of imprisonment as

a means of reformation and the substitution of the suspended sentence on condition of good behaviour, or the postponement of sentence ...on similar condition".

Regarding the rehabilitation and treatment of juveniles, he stated that it had become an accepted principle worldwide that juvenile offenders receive remedial attention rather than punishment. However, the failure to implement such remedial measures, he believed, was the result of society's view that youthful offenders were not as "formidable or dangerous to the community as the adult offender" (Grobler 1941: 6). Society's inability to comprehend the value of early intervention and the rehabilitation of young offenders perpetuated the practice of punishment over preventive or therapeutic interventions.

2.4 CLASSIFICATION OF YOUTHFUL OFFENDERS

The fact that no distinction was made between juvenile and adult offenders is an indication that the unique nature of juvenile misbehaviour was misunderstood and the value of rehabilitation overlooked historically. The literature makes no distinction between juvenile and adult Offenders before 1831. Grobler (1941) consulted the records of the Cape Colony from December 1827 to April 1831 and could find no evidence of a division between young offenders and adult perpetrators.

Prior to 1945, offences committed by juveniles were not categorised to distinguish between the crimes for which the perpetrators were being sentenced. After 1945, two categories of crime — serious and non-serious — were recognised.

In 1954, Venter (1954: 82) notes that a distinction was made between juveniles aged 7—16 years and young adults aged 17—20 years. Until 1963, young offenders were classified as juvenile offenders (7—16 years) or young adults (17—20 years). After 1963, young offenders were grouped according to the ages 7—16 years (youth) and 17—20 years (youthful offenders). This new grouping and classification showed a shift towards a better understanding of the needs of children and youths and the necessity for separate detention of these vulnerable individuals.

Now that the concepts of juvenile, youth and youthful offender have been placed in perspective, it is possible to examine the statistics on juvenile misbehaviour in South Africa's history for the period from 1911 to the 1990s.

2.5 INTERPRETING STATISTICS AND EXPLAINING JUVENILE CRIMINALITY IN A SOUTH AFRICAN CONTEXT

One encounters many difficulties when comparing the rates of juvenile misbehaviour from one country to another. Variations in the classification of juvenile offenders, as discussed in section 2.4, and also by the fact that crimes may be classified differently both over time as well as geographically, make comparative studies difficult. A further problem arises in using statistics to try to understand a phenomenon, as crime figures may not reflect the actual situation. Crime statistics are not always a true reflection of the level of crime in a society as many crimes are either undetected or unreported. Albertyn (1935) illustrates the problem of interpreting statistics in his work. Using European statistics, Albertyn (1935: 12) quotes figures from the Blue Book on crime in England and Wales published in 1926. In Baltimore in 1923, 11 261 serious crimes were recorded. In 1929 only 7 950 cases were documented, yet the rate of imprisonment rose from 5 097 in 1923 to 5 153 in 1929. Albertyn (1935: 12) concludes that statistics should not be used to determine the level of criminality in society. He argues that giving figures outside of their context is futile. Nevertheless, it is still valuable to examine statistics that have been recorded over time as they reflect the variances in juvenile criminology regarding the types of crime committed at different periods. When these are placed into context, environmental and societal cases and contributory factors can be studied in relation to time and geographical demarcation.

Venter (1954: 82) attributes the problems of comparing the incidence of crime rates among countries to the differences in the codification of crimes, legislation and application of law. A further denominator that complicates comparison is each country's ability to trace and apprehend offenders (successful arrests).

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Those nations with more successful criminal justice systems would, by implication, have a higher arrest and conviction rate than those with a lower rate of success in dealing with crime. A comparative historical study of young offenders from different countries therefore would have to include the contexts of each statistic as recommended by Albertyn (1935).

A further problem encountered in comparative studies is the influence of the scientists' belief system on the interpretation of the research findings. Albertyn's (1935) study on juvenile misbehaviour in the Cape Peninsula (Skiereiland) reflects the views of scientists and researchers of the time, yet it is less prejudicial and subjective than most others of that period. He adopts a sociological approach to juvenile crime in which he states that the problem must not be studied from a social-ethical perspective, but should rather be holistically understood and explained (Albertyn 1935: 2). Albertyn views juvenile misbehaviour as the perpetration of crimes

> ...that are seldom of a sensational nature ...[I]n society juvenile criminality comprises mainly of petty theft, lying to parents, disobedience against parents, theft of food or small change, and the most common crimes of truancy and loitering on the street [own translation](Albertyn 1935: 2).

These crimes are seen to emanate from the "normal nature of a child" and even in instances of sexual crimes, these acts are usually not the result of a deeper abnormality (Albertyn 1935: 11). He believes that more serious crimes such as murder may be committed by juveniles, but very seldom are (Albertyn 1935: 12).

Venter and Retief's (1960: 1, 254) writings are a further example of the influence of scientists' views on the subject of a study and the Eurocentric approach that influenced their work. These researchers studied misbehaviour among black juveniles in 1954. In the preface of their manuscript, Venter and Retief (1960) state that they do not wish to compare white and black juveniles, yet go on to do exactly that in their discussion. Their interpretation of statistics is influenced by their views on the different racial groups. They are of the opinion that it is not possible to compare black and white juvenile offenders because of the differences in their levels of "civility and development". Their subjectivity is further reflected in statements they make, for example: "Unemployment among Blacks does

not cause feelings of inadequacy and inferiority ... as their social and moral values have not sufficiently developed to cause concern in this respect" (Venter & Retief 1960: 254). Elsewhere in their report they claim the following:

> When comparing a Native's degree of civilisation and development with that Of a European, sundry factors are responsible for the fact that he appears in an unfavourable light. On the one hand, he has not had the opportunity to develop to the degree to which he is perhaps capable. On the other hand, his backwardness, and the accompanying immaturity of mind do not spur him on towards improving his standard of living; nor are they conducive to higher aims in moral and ethical values. The lasting and stimulating effects on his criminality are apparent (Venter & Retief 1960: 266).

The above quotation reflects the general perceptions held by many social scientists of the time. Such conclusions illustrate the limitations in research methodologies and the use of generalisations devoid of proper scientific verification.

Crime statistics do not explain the phenomenon of crime but rather give a picture Of the occurrence of crime for purposes of Interpretation (HSRC 1975: 1). Against this background the statistics for the period 1911 to the 1990s will be discussed.

2.6 PRE-COLONIAL PRACTICES AND AFRICAN CUSTOMARY LAW

In pre-colonial times, the basic principle of African customary law was that of collective responsibility. The law involved the entire community and in matters dealing with children the damage caused was seen to be against all members. Restorative justice principles were applied by the elders and community leaders against young offenders to restore the peaceful coexistence and harmony within the community, as well as between the victim and the offender. During the pre-colonial era, according to Skelton and Tshehla (2008), childhood was not defined by age under African customary law but by other characteristics such as circumcision or the setting up of a separate household (Maithufi 2000: 140). This classification is based on very different criteria to that of Eurocentric principles of age and the level of intellectual and emotional development linked to it.

Offences were dealt with by traditional leaders' courts. Punishment did not take the form of imprisonment or institutionalisation of any kind. Offences committed by children and youths were treated as wrongs between individuals and families, to be solved in ways that promoted harmony and wellbeing in society. What happened to children or the way in which their behaviour was dealt with was related to the communal welfare of the extended family, tribe or group. Children's interests often took second place to the broader interests of the community (Maithufi 2000). This ideal is concomitant with the present ideal of restorative justice and the ubuntu principles (humanity towards others).

The colonisation of South Africa led to the replacement of the customary legal system by Roman Dutch and English laws. This resulted in the replacement of the African customary approach to child justice and the implementation of a more punitive form (Skelton & Tshehla 2008). Methods for dealing with young offenders included corporal punishment, deportation and imprisonment. Later, deportation to Robben Island became a common practice (Saffy 2003: 16).

2.7 JUVENILE CRIME IN SOUTH AFRICA DURING THE YEARS 1910 TO THE 1980s

2.7. I Incidence of crime

In 1911, the six reformatories in the Union of South Africa housed 271 juveniles. By 1918, this number had risen to 849. In 1919, a slight decrease took place, with 813 juveniles being detained in the six facilities. In 1921, the figures peaked at 1 055 and again in 1936 when they reached a total of 1 046 detained youths in reformatories. Between 1911 and 1935, the number Of detainees remained below 900

(Grobler 1941: 60), which may be attributed to World War I as research has shown that prison populations decrease during times of war.

In 1920, the 13 672 juveniles in prison accounted for of the prison population. This number remained the same until 1923, when it rose to 15 241. The figure peaked in 1933 with 21 526 detainees, with of the prison population consisting of juvenile offenders. However, the numbers decreased in 1934 owing to policy changes and the reclassification of certain crimes related to vehicle and stock theft.

From the crime statistics for 1931 one can determine that the percentage of juveniles under the age of 15 years who committed crimes comprised of the prison population and totalled 611 youths. Of these cases, 24 involved serious crimes. The age group 15—19 years made up 3,1% of the prison population and accounted for 5838 offences, of which 318 or 0,17% were serious (Albertyn 1935: 13). Because these statistics were not significant, they were disregarded by Albertyn. To him it was the effect of the crime on society rather than the incidence of crime that was important.

There are also statistics that reflect the recidivism rates. Cases documented at the juvenile courts in Cape Town in 1931 show that of the 200 juveniles between the ages of seven and 16 years who were sentenced during this period, 97 (almost 50%) had previously appeared in court (Albertyn 1935: 14).

The records also document the forms of punishment imposed on these children. In 1935 an Interdepartmental Committee on Destitute, Neglected, Maladjusted and Delinquent Children surveyed 33 centres in the Union of South Africa. Sentencing in 6 000 cases reflects the following proportions of types of punishment: 23% warnings; 24% canings; 17% fines; 10% suspended sentences and 4% imprisonments (Grobler 1941: 71).

In 1937, the juvenile crime figures for the Johannesburg court showed that 43 out of 883 convictions were for liquor- or alcoholrelated Offences. In 1938, successful convictions increased, and 94 juveniles were convicted in the 1 230 cases heard.

Kieser (1952:86) attributes the increase in juvenile crime worldwide to World War Il. In his opinion, an increase in crime is a potential threat to society, and a continued steady rise would lead to a society of thugs (boewe). This view contrasts with that of Venter (1954: 2).

According to Venter (1954: 3), there was a decrease in juvenile crime (7—16 year olds) during World War Il, followed by a steady increase after the war. Among young adults (17—20 years of age) criminal incidents increased from 421,1 cases per 10 000 in 1938 to 465,9 per 10 000 in 1954. In his opinion, the lower rates during World War Il can be attributed to two factors: firstly, the authorities were paying more attention to the war effort and, secondly, the police force had been reduced as many of its members had gone to war (Venter 1954: 7).

After 1949, crime figures among young white adults increased sharply, mainly on account of a change in legislation. In 1949, Offence 087, which dealt with driver's licence legislation, was declared a serious offence (Venter 1954: 51). In 1954, young white adult males were responsible for 40% of all the offences related to vehicle ordinances and traffic regIllations, and young Indian adults for 26,6% of them. Coloured (mixed race) youths were the main perpetrators Of economic crimes, and were responsible for 23,2% of these, whereas black youths were responsible for the most crimes against the person (12, 1%). Offences related to the misuse of drugs and alcohol occurred among all race groups and fell within the top three crime categories.

A study conducted by the Human Sciences Research Council (HSRC) (1975) regarding the conviction rates of juvenile offenders aged from 7—20 years for the period 1969—1970 shows the following rates per 10 000 of the group's population: whites 69; Indians 83; blacks 125; coloureds 390. All these juveniles were convicted mainly for economic offences in the following proportions to all offences per group: blacks 52,6%, coloureds 47,6%, Indians fractionally less at 46,2% and whites 41,2%.The differences in rates of conviction are ascribed to social, economic and other circumstances rather than inherent factors. Rip (HSRC 1975: 18) ascribes the high rate of juvenile crime among coloured youths largely to disorganised urbanisation within the coloured communities, meaning that the areas in which coloured people lived did not have the same infrastructure and facilities found in white communities, which can be deemed as aggravating the crime risk factors.

In 1974, Midgely, a sociologist, conducted research on the 898 cases recorded at the Cape Town juvenile court from 1968. He found the following breakdown of cases per age group: 18—21-year-olds accounted for 2% of the cases; 16—17-year-olds for 51%; 13—15-year-olds for 37%; and 7—12-year-olds for 9%. National crime

statistics showed that 17-year-olds appeared most frequently before the juvenile court, but in Midgely's (1974: 91) study, the 16-year-olds featured most. The study showed that relatively few very young children appeared before the court. Of the 898 cases, only 28 dealt with children under 10 years of age: six were aged nine and two were aged seven and eight years respectively. The gender ratio was one girl to every 10 boys.

The vast majority of the cases before the Cape Town juvenile court involved coloured children or young coloured people. Only seven involved Asian children — less than 1% of all appearances — while 3,5% and 4,5% involved African and white children respectively. The remaining 91% involved coloured children. Although the disproportionately large number of coloured children before the court was in part due to the demographic composition Of the Cape Town magisterial district, the proportion was larger than that of coloured children in the population of the area of the court's jurisdiction and in the population of the city as a whole (Midgely 1974: 91).

2.7.2 Causes of crime

The 1926—1927 report of the Commissioner for Mental Hygiene concluded that "accordingly lack of intelligence can be assumed to be a causative factor in the case of misbehaviour" (Grobler 1941: 22).

According to Grobler (1941: 18), the 1928 Interdepartmental Committee on Mental Deficiency was asked to investigate the position of "mentally retarded, mentally deficient and psychopathic children" in the Union of South Africa. The committee came to the conclusion that mental deficiencies and disabilities were not the sole cause of deviant behaviour, but that the environment of offenders also contributed to abnormal and psychopathic behaviour. The report of the Interdepartmental Committee on Mental Deficiency further found that juvenile offenders were actually not always mentally disabled, but that unfavourable home conditions increased the risk of deviant behaviour (Grobler 1941: 30).

Changed perceptions were further prompted by a paper read at a conference on child welfare in Cape Town in September 1937 by Advocate Bain. The authorities were thus forced to turn their attention to economic and social causes of crime (Grobler 1941: 32).

Many of the interested parties expressed the idea that to understand juvenile deviant behaviour, it is necessary to analyse the working of the juvenile's mind at the time of the offence. In response to this thinking, Grobler (1941: 56) states: "This introduces a totally new principle into the search for methods of reformation, again emphasising that rehabilitation and re-education of the young offender mean individualised treatment".

In his work, Kieser (1952: 88) insists that the use of dagga (marijuana) contributes to abnormal sexual desires. However, at this stage little research had been conducted on the effect of psychoactive (mood- and behaviour-altering) substances on behaviour, nor does he indicate how he came to this conclusion.

According to Albertyn (1935: 24), personality rather than race should be seen as a contributing factor to juvenile misbehaviour. Furthermore, he states that crime is not necessarily a result of personality characteristics causing antisocial behaviour or bad habits, but rather over- or underdeveloped natural characteristics that are sometimes channelled in the wrong direction. In contrast, Kieser (1952: 1) viewed juvenile crime as the result of a pathological condition within the perpetrator. Other researchers viewed child misbehaviour as a result of a disregard for the legal system (Venter & Retief 1960: 266-267).

In his investigations, Albertyn (1935: 42) acknowledges the effect of the community and living conditions on the levels of criminality among juvenile offenders. However, the subjectivity in the interpretation of the data at that time led to many skewed conclusions. For example, Albertyn (1935: 48—51) attributes the higher crime rate among coloured juveniles to "geen kultuuì' (no culture) and a desire

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by coloured people to be like white people, including in upbringing, moral standards, living conditions and leisure activities. In comparison, he states that the causes of crime among white juveniles could be attributed to social factors, which he categorises into those outside the family and those within the family. Factors outside the family include friends, gangs, limited space for play, schooling and urbanisation.

Early studies even sought to identify physiological differences among children with many personality problems and those with fewer (Prinsloo 1985: 12). However, these attempts remained inconclusive. From the research initiatives undertaken in South Africa since 1926, it is evident that social scientists

have grappled with the quest to identify the causes of crime among youthful offenders. These researchers have made the same error that scientists throughout the ages have made by interpreting their findings from their own frame of reference without understanding the cultural background of the subjects. When it comes to studies of deviant girls, these flawed research methodologies are again reflected.

2.7.3 Misbehaviour among girls

Historically, less attention has been given to criminality among girls in South Africa. This dearth in research also exists globally. While many studies have been conducted on the misbehaviour of boys, those on girls are limited and, as will be illustrated, skewed and subjective. The earliest figures for girls in detention can be traced to 1929. Records show that 50 white girls, 1 332 black and coloured girls, and five Indian girls were in institutions at that time. It must be noted that in those days individuals with mental disabilities and problems were incarcerated with criminal youths, so it is difficult to determine whether all the girls were convicted offenders. The figures remained quite constant with 52 white girls, 1 221 black and coloured girls, and two Indian girls in penal institutions and reformatories in 1932.

Social scientists' (and society's) views on girls at that time are reflected by their comments. Sydney A. Moseley stated the following in The truth about Borstal (in Grobler 1941: 281):

> It is generally accepted that the problem of girl offenders is a very difficult one and that in their re-education and rehabilitation the most systematic and scientific psychological principles should be adhered to.

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This statement could lead one to believe that the researcher would approach the subject of female juvenile misbehaviour objectively and scientifically, and that the rehabilitation of the girl offenders would be based on scientific principles. However, this expectation is shattered by Moseley's next observation:

> The boys' problem is bad enough, but the girls — well, there are men who frankly give it up (in Grobler 1941: 281).

It seems that the social scientists of that time found female misbehaviour very difficult to manage; in fact, it appears to have exasperated them. Luckily, this view of the female has changed, and the topic of female criminality currently receives adequate scientific investigation and discourse.

2.7.4 Development of gangs

An important component of the history of juvenile misbehaviour in South Africa Lis the role that gangs have played in society. Grobler (1941: 300) refers to the concept amalayitas among the black youth gangs of the time. However, he gives no timeline, so the exact date of the start of gang development is not known, but is assumed to be around 1938, the date of the earliest source this author found that refers to the development of juvenile gangs in South Africa. Grobler states that originally young black boys herded livestock in the veld, and channelled their superfluous energy into the formation of bands or gangs. They had leaders or inggwele (masterful boys) who would lead them as they played war games, for example attacking other groups they met out in the veld. The word amalayitas is thought to have come from the English word "light", and indicates activities that occur when the lights come on at night, thus the nocturnal activities of the young men.

Grobler (1941: 300) believes that these activities formed the basis for conflict with the law when these young men were urbanised. The more daring the actions of the gangs, the more social esteem was granted to the perpetrators.

A powerful and apolitical gang culture dominated black township life between the 1930s and early 1970s (Glaser 2000: 2). In the 1940s and 1950s, the youth gang (tsotsl) culture was prolific in the townships (Glaser 2000: 2), the Sophiatown gangs that originated in the 1940s being one example.

The 1940s and World War Il contributed to the increase in the number of gangs in Sophiatown, According to SAhistory.org (2017), this was due to the fact that at the time about 20 000 black teenagers were neither at school nor gainfully employed. These township youths were mostly

illiterate, did not have any work experience and were considered undisciplined and weak.

The period between 1968 and 1976 saw the rise of youth gangs in Soweto, which increased from 10 to over 50 identifiable groups, and included the Kwaitos, the Dirty Dozen and the Hazels. Gangs also developed in Diepsloot and Meadowlands. In Diepsloot, the Biafras of Zone Six, the Jaws of Zone One, the Damarras and the Mongols ruled the area. In Meadowlands, the Hong Kongs and the Black Power gangs dominated. According to Glaser (2000: 4), these gangs were expressions of young urban masculinity and, besides the women who were either girlfriends or lookouts, males dominated within this subculture.

Gangs also developed as a result of efforts to gain protection from existing gangs. The Japanese of Klipspruit and the ZX5 in Phiri originated as school-based defence networks to fight harassment from gangs. Later both became embroiled in gang violence (Glaser 2000: 132). Gang wars were fuelled by competition over women and recreational spaces, such as parks and leisure halls, and involved hundreds of youths at the time (Glaser 2000: 136—137).

At the beginning of the 20th century, South African youths often found themselves victims of political and sociocultural crises. "Subjected to poverty, serving as pawns in the political arena and falling victim to racial and other segregations reflected a situation that was ignored by the leaders" (Van Zyl Slabbert, Malan, Marais, Olivier & Riordan 1994: 1—10). These conditions led to the disenfranchised youth asserting themselves and forming organisations. Protests erupted because of the inadequate educational system and poor living conditions available to the black youth. Between 1960 and 1967, gangs became more political.

Prior to this, the objectives of the street gangs had only on some occasions coincided with those of political groups (Glaser 2000: 12). However, clashes with the police and other symbols of state authority, as well as the pass laws restricting the movement of gangs on the street, created common problems and thus a common purpose, which brought gangs and political groupings closer together. During the 1960s, the gap also closed between students, who were seen as the elite, and the gangs. Where students held a broader vision and were idealistic, gangs were more subversive and violent (Glaser 2000: 185—186); however, this merging of interests led to a combined force and greater resistance to the reigning authority.

Prison gangs are thought to have originated from the Ninevites who were active in the late 19th and early 20th century. The leader of the Ninevites was known as Nongoloza. The Ninevites were made up of young men who had left their homes in the rural areas to move closer to the towns. They lived in the caves scattered across the south-western perimeter of Johannesburg, and resorted to crime rather than working for white bosses. They infiltrated the labour compounds of the goldmines and later penetrated the Transvaal (Gauteng) prisons, introducing gangster ways and gang philosophy. By 1910, the Ninevites had been defeated by other gangs, yet they left a legacy that is still visible in current gang codes and lore. By 1930, every prison in South Africa had been infiltrated by gangs that had originated from the Ninevites (Steinberg 2004: xv—xvi). Today they are known as the number gangs and they still play a predominant role in correctional centres in South Africa, making prison management and control difficult.

2.7.5 Developments in youth care organisations

After 1920, many developments took place in South African society to assist youths who displayed problem behaviour. The South African Council for Child Welfare was instituted in 1924, which led to the development of the most important body in the prevention of juvenile misbehaviour (Grobler 1941: 45). The South African Council for Child Welfare became responsible for coordinating the activities of all existing organisations working with juveniles and all other activities within the field of child welfare (Grobler 1941: 46). On 4 May 1937, the Jan Kriel Special School was established for epileptics. At the time it was thought that children who had epilepsy had a "lowered power of inhibition" and that they needed a special facility to treat their behaviour.

Four years later, in 1941, the University of Cape Town opened a Child Guidance Clinic, which was one of a kind, providing assistance to "problem children of various kinds" (Grobler 1941: 46). Grobler does not elaborate

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on the exact meaning of the latter statement, but it shows that the methodology of the time was to put children with mental health problems in institutions along with those with behavioural problems.

The church also stepped in to assist with caring for the youth. The Dutch Reformed Church established 14 homes for orphans and destitute children: six in the Cape Province, five in the Orange Free State and three in the Transvaal (Gauteng) (Grobler 1941: 47).

Grobler (1941: 107) suggested that a system similar to that at Portland Borstal in England be instituted in South Africa, which allowed for the separation of first-time and repeat offenders. Boys with previous convictions would be separated from first-time offenders as it was found that these more experienced boys negatively influenced the others (Grobler 1941: 107).

Specialised courts were created by the criminal justice system to deal with problem behaviour among the youth. The Domestic Relations Court was established where magistrates and probation officers could assist families to deal with issues threatening the family (Grobler 1941: 48). Furthermore, specific legislation was introduced to deal with youth misbehaviour, such as the Child Protection Act of 1913 as amended in 1921 and 1931, and the Child Act of 1937.

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2.8 LEGISLATION AND MEASURES REGULATING THE BEHAVIOUR, HANDLING AND PUNISHMENT OF JUVENILE OFFENDERS FROM 1910-1960

From 1910—1960 (Union of South Africa) youth misbehaviour was regulated by the Child Protection Act of 1913 and the Child Act of 1937 (Albertyn 1935: 97). Section 31 of the Child Act of 1937 allowed the Commissioner of Child Welfare to place a child in the care of parents (natural and foster) or under the control of an approved society, and to impose a fine or corporal punishment, or imprisonment (if the youth was above 19 years of age) (Kieser 1952: 89).

Legislation to regulate the actions of black South Africans led to an increase in reported crime for this population group. The criminalisation of acts that were not considered crimes among the white population gave a skewed perspective of the levels of criminality among black youths in society. These offences were incorporated in the section that dealt with "native" behaviour, regulations, supervision and control. Sections 160—172 of the Act contained 13 such offences, including the contravening of pass laws and curfews, and the use of whites-only facilities and alcohol. These discriminatory regulations accounted for 33,4% of all the crimes committed by black youths, but if they had been committed by white youths, they would not have been seen as crimes.

Examples of such discrimination include 54% of all the crimes committed by black juvenile girls, being the contravention of curfews (Aandklokregulasies), and 37,6% of the crimes of black juvenile males being the contravention of the registration and provision of documents for natives (Registrasie en Voorlegging van Dokumente deur Naturelle). Among young black adult males, 34% of their convictions were related to this law, while the contravention of section 164 of the Act accounted for almost 12% of all crimes committed by young black adult offenders.

2.8. I Juvenile courts

By 1931 the government of South Africa had not yet established special courts for children and young persons, but did provide for the separate treatment of juveniles. The Child Protection Act of 1913, later amended in 1921 and again in 1931, regulated reformatories for two groups of young people: children under 16 years of age were detained separately from young persons aged from 16—21. Cases were heard in ordinary courts, but the magistrate presiding over them specialised in children and welfare matters (League of Nations 1931: 117).

2.8.2 Punitive measures

Punitive measures for juveniles ranged from the imposition of the death penalty to imprisonment or placement in reformatories. Children awaiting sentencing were placed in "certified hostels". Magistrates could also send juveniles there if they were found guilty of committing any offence except murder. Detained juveniles received schooling or, in the case of older detainees, were taught a trade. Others were allowed to work in the

community and returned to the hostels only for meals and to sleep (League of Nations 1931: 117).

Industrial schools were established to help prevent further crime rather than to punish juveniles. The court was held in camera, and children under 16 could be sent to an industrial school if they were in need of care (League of Nations 1931: I l 7).

2.8.3 Corporal punishment

According to Venter (1954: 3), in the early days of the 17th century in the Cape Colony, which was under the decree of the Dutch East India Company at the time, corporal punishment was administered to individuals convicted of petty misdemeanours. Often whippings of more than 100 lashes were ordered, frequently causing serious injury or sometimes even death.

After 150 years of Dutch rule under RomanDutch law, Britain took over power in the Cape in 1806, and as a result the legal and judicial system changed to an English one. In 1869, the courts of the Cape Colony could impose sentences of no more than 15 strokes on children under the age of 15 years.

In the 19th century, South Africa had four separate jurisdictions: the Cape Colony (or Cape of Good Hope), Natal, the Orange Free State and the South African Republic (later the Transvaal).

The punishments imposed differed from jurisdiction to jurisdiction. For example, according to Ordinance 7 of 1902 (O) section 63, read with Ordinance 7 of 1903 (O) of the Orange Free State, a sentence of 12 strokes with a cane or rod could be imposed on a youth under the age of 16 years. In Natal, under Act 21 of 1869 (C) and Act 22 of 1896 (N) section 22, the Magistrates' Court Proclamation 21 of 1902 CI^{T}) section 36, and Ordinance 7 of 1902 (O) section 65, a male aged 14 years and under could be given 10 "cuts" (strokes). Later, a male aged between 10 and 18 years who was convicted of a breach of a bylaw or a non-capital crime could be sentenced by a magistrate to 20 such strokes (Act 23 of 1909 (N)) (Venter 1959: 5).

From 1917, under the uniform laws following the unification of South Africa in 1910, males under the age of 16 years could be given "cuts" in lieu of any other punishment for a criminal offence (Act 31 of 1917 section 353). The maximum number of strokes was 15.

In 1935, the General Law Amendment Act 46 of 1935 section 64 provided that any male under the age of 21 could be given "cuts" in lieu of any other punishment for a criminal offence.

While the number of youths eligible for judicial caning grew over the years, the maximum number of strokes gradually decreased. In 1944 under Act 32 of 1944, the maximum number of strokes was 10 (Van Zyl Smit 2006). Whereas adult whippings (and all other serious sentences) by magistrates' courts were subject to automatic review by a higher authority, juvenile whippings were specifically excluded from this. The reason was put as follows by Centlivres JA in Ex parte Minister of Justice: In re R v Mayer [1943] AD 389 at 293:

> ... to enable such sentences to be promptly carried out and thus to render unnecessary detentions in gaol of juvenile offenders ... even for the short period which would normally have to elapse if their cases had to be submitted for review.

The 1955 Criminal Procedure Act 56 of 1955 provided in section 345 as follows:

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> If a male person of not exceeding the age of twenty-one years is convicted of any offence, the court before which he is convicted may, in lieu of any other punishment and as well in the case of a first conviction as of any subsequent conviction, sentence such person to receive in private a moderate correction of whipping not exceeding ten cuts, which correction shall be administered by such person and in such place and with such instrument as the court may appoint. The parent or guardian of such first mentioned person shall have the right to be present (Van Zyl Smit 2006).

In 1961, after leaving the Commonwealth and becoming a republic, South Africa introduced a much more repressive and authoritarian regime in which corporal punishment played a significant role. This was governed by Prison Regulation No. 100, and the Prisons Act 8 of 1959, which read that

> (I) subject to [other provisions] corporal punishment shall not be inflicted [... before the period for an appeal ...] unless the convicted person

> has indicated in writing that he has no intention of noting an appeal, and he agrees that corporal punishment may be inflicted before the expiry of the said appeal.

According to the Act, corporal punishment could be inflicted with a cane across the buttocks on a juvenile prisoner. The cane was approximately one metre in length and nine millimetres in diameter (Van Zyl Smit 2006).

The difference between parental and judicial canings was noted by the court in S v Manuel and Andre [1975] 3 SA 790:

> The imposition of strokes must be handled judicially in the case of juveniles. The infliction of strokes by an official in the police cells is in no way to be compared with the administration of strokes by a father in the exercise of his parental duty. The first method can in many cases have an injurious psychological effect on the child.

In the 1970s, corporal punishment imposed in prison was reduced considerably. In 1976 there

were 2 251 whippings (609 juvenile and 1 642 adult), of which 331 were related to prison discipline and 442 were court sentences of whipping without imprisonment. The remaining 1 478 canings were court sentences of corporal punishment combined with a prison term. The lower courts could order corporal punishment for male juveniles for any offence, but they had more restricted powers with regard to adult offenders (Van Zyl Smit 2006).

According to figures of the Department of Justice, the whipping of juvenile males in 1982 took place in approximately 39 000 cases. Ten years later, the figure was still high, namely 36 000 cases per annum (Van Zyl Smit 2006).

Besides corporal punishment, other measures such as the use of reformatories and industrial schools were also implemented to deal with youth misbehaviour.

2.8.4 Reformatories

In 1873, the Honourable Porter, the attorney-general of the Cape, left S20 000 in his will to establish the first reformatory in the cape (Grobler 1941:83). Eventually, in 1882, the reformatory envisaged by Porter was established at Valkenberg in Cape Town after numerous complications and disagreements regarding the use of the legacy had been sorted out.

Originally, around 1889, reformatories were established as facilities in which juveniles could be placed as punishment, and were thus seen as penal institutions (Grobler 1941: 88). In the 1897 Annual Report of Prisons, the need was expressed for reformatories or correctiehuise to be built to house juveniles who received prison sentences. The influence of hardened older offenders on juvenile offenders was of concern to the authorities; however, once the Anglo-Boer War broke out on 11 November 1899, the matter received no further attention until the first "whites only" reformatory was built in Heidelberg in the Transvaal (Grobler 1941: 91).

After the unification of the four jurisdictions in South Africa on 31 May 1910, reformatories and industrial schools became the responsibility of the Minister of Justice. At the time the country still had four separate penal systems, as each of the previously separate provinces had its own one, thus it was necessary to

establish a uniform prison system. This merger was instituted by the passing of the Prisons and Reformatories Act 13 of 1911 by parliament.

On the passing of this legislation, all juveniles in prison were sent to reformatories. Thirteen white boys and 122 coloured boys were sent to the Porter reformatory, and 49 white boys were transferred to Emmasdale. The Breakwater Prison in Cape Town became a reformatory for white male juvenile adults (Grobler 1941: 93).

At the same time, a section of Diepsloot Prison was converted into a reformatory for black male juveniles and young adults. Also in November 1911, the women's prison in Pretoria was used to house both white and coloured juveniles and young adults. In 1914, these girls from Pretoria were moved to the reformatory at Fort Dunford in Estcourt, which became an institution for white and coloured juvenile and young adult girls at the request of the prime minister at the time, General Louis Botha (Grobler 1941: 95). The prevailing conditions were not ideal, and in May 1927 the reformatory was closed and moved to Eshowe in Natal (now KwaZulu-Natal). The new reformatory in Eshowe was established for female juvenile offenders (Kieser 1952: 96).

In 1917, a reformatory was established at Fort Glamorgan in East London for black juveniles and young adults. This was done to obviate contact between black boys and coloured youths at the Porter reformatory due to the perception that the "Cape Coloured bullied and terrorised the natives, using them as tools" (Grobler 1941: 100). In April 1936, the Luckenhoff Institute for psychopathic girls in Durbanville was converted into a reformatory.

In 1934, the existing reformatories were removed from the management of the Department of Justice and became the responsibility of the Union education department, which later became known as the Department of Education, Art and Sciences (Kieser 1952: 98).

It should be noted that in 1919 the authorities in South Africa subjected the juveniles in reformatories to mental examinations for the first time. The tests were, however, soon phased out as, for unstipulated reasons, regular examinations could not be done (Grobler 1941: 24).

South Africa's annual expenditure on reformatories was S42 584 in 1935 and S51 421 in 1936, with a cost of SSI .55 per juvenile in 1935 and S51.13 in 1936. This was less than the cost of sending a child to school (Grobler 1941: 332). In 1948, six reformatories housed black juvenile offenders. They were located in Constantia, Diepsloot, Durbanville, Eshowe, Porter and Gemiddeld. For the government, the financial implications of running these reformatories were substantial. It cost the South African treasury S182.99, S67.28, S316.69, S68.71, S108.57 and S102.42 respectively to manage the latter institutions per juvenile per year.

It has not been possible to find national figures for other juvenile boys in other reformatories and industrial schools. From the available information, however, one learns that between 1917 and 1936, 1 068 juveniles were sent to the white section of the Tokai reformatory, of which 125 received sentences of five years. In 1935 and 1936, 564 and 639 juveniles respectively were released from reformatories (Grobler 1941: 228), and in 1937, 626 juveniles were released from reformatories under Act 31 of 1937 (Grobler 1941: 229).

From this brief historical review of reformatories in South Africa, it is apparent that these institutions played a major role in the detention of young offenders. However, the emphasis was generally on housing these youths and teaching them basic job skills, and little effort was made to rehabilitate and treat them.

2.8.5 Industrial schools

The idea of industrial schools originated from Scotland in 1850 where they were established to house destitute and delinquent children. These schools were intended for young and less-hardened juvenile offenders. After the unification of South Africa, children over 12 and under 14 years of age without previous convictions were accommodated in industrial schools (Grobler 1941: 110).

Legislation had existed in the four separate jurisdictions for the training and support of this category of child. In Natal this legislation was incorporated into Act 38 of 1901, and in the Orange Free State into Chapter 35 of the State Law Book for coloured children and Law 3 of 1899 for white children. Act 38 of 1909

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made provision for children to be housed in industrial schools in the Transvaal, but did not stipulate a minimum age, and children under 10 could be included.

However, Act 13 of 1911 stated that "...a minimum age should be set for boys

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expensive staff and equipment is wasted on babies and very young children" (Grobler 1941: 112). The promulgation of Act 25 of 1913, the Children's Protection Act, adopted a different approach and stipulated the ages.

In 1909, the first industrial school was built in Standerton. This was followed in 1912 by schools in Emmasdale and George, in 1915 in Paarl, in 1918 in Dewetsdorp, in 1921 in Tempe and in 1925 in King Williamstown and Die Vlakte (Grobler 1941, Appendix 1). These schools were controlled by a board of management as stipulated in Act 38 of 1909 and Act 7 of 1910.

In 1921, a hostel for "feeble-minded" girls was built in Standerton (Grobler 1941: 24). Four years later, in 1925, the Luckhoff Institute for "psychotic girls" was established in Durbanville. Juveniles from reformatories, industrial schools, and certified hostels and institutions who were found certifiable under the Mental Disorders Act of 1916 were sent to institutions for the feeble-minded at Maitland (Alexandria) and Potchefstroom (Witrand). This initiative later proved to be detrimental as these "defective delinquents" with "incorrigibly vicious propensities" had a negative influence on other juveniles (Grobler 1941: 26).

These types of institution deviated from the original Scottish ideal of industrial schools, which were intended to be an alternative to a prisonlike environment. However, without properly trained staff and officials this aim was difficult to achieve. Furthermore, prevailing views on the treatment of deviance or mental instability did not help achieve the aims of the industrial school.

2.9 YOUTH MISBEHAVIOUR IN SOUTH AFRICA FROM 1990-1999

2.9. I Post-apartheid legacy on juveniles in South Africa

According to Pelser (2008: 13), youth crime in South Africa is the consequence of a culture of violence, a "normalisation of crime and violence over the past 30 years". He maintains that the youth revolt that took place in 1976 and the rebellion in the 1980s had a profound impact on the attitude of youth towards the formal and informal authority of both their families and schools. Pelser believes that the youth is still a lost generation that has been let down by "a strategic misconception of the nature of crime in the country and, related to this, poor strategy options post 1994" (Pelser 2008: 13).

Pelser (2008) quotes Bundy, who blames the confusion that existed at the time about whether youths' actions were of a political or a criminal nature. In 1986, Qoboza (in Pelser 2008: 13) wrote about "the dark, terrible beauW" of the courage of the young township fighters, and acknowledged "a great shame that this is our heritage to our children: the knowledge of how to die, and how to kill".

Authors (Simpson, in Pelser 2008) identify the internalisation of violence and the emergence of a "culture of violence" in which criminal narratives are justified in terms of mainstream "business", "status" , "lifestyle" and "materialism".

Dolby (2001) writes that these youths' past, present and future "are neither completely defined by apartheid, nor completely free of it". She states that South Africa is a §ociety still divided and defined by race and that it is in constant conversation and conflict. Against this background we can look at the crimes committed by youths in the 1990s.

According to the Central Statistical Service (now Statistics South Africa or StatsSA), the total number of crimes committed by youths under the age of 21 years between 1 July 1990 and 30 June 1991 was 95 398. Among these youths, 11 of every 1 000 individuals aged from 7—20 years were found guilty of a serious offence (Moore 1994: 68). Amid the political turmoil of these years, the related violence also affected negatively on the youth, with about 11 000 individuals falling victim to such violence between 1990 and 1993. This in turn resulted in 50 000 children being displaced, 2 000 being physically traumatised and a further 7 000 being abandoned.

By September 1999, 2 026 awaiting-trial prisoners were youths, with a further 1 375 serving prison sentences. This situation was addressed in the South African Law Commission's review of the Child Care Act in terms of customary law, where it was found that there was a need to identify comprehensively the exact end of childhood and the commencement of adulthood.

Since this transition is marked by occurrences such as initiation, marriage, and physical and emotional maturity, all of these could contribute to the variations in defining a child. This lack of uniformity is not always reflected in the South African legal framework, and children aged from 14—17 are viewed as having criminal capability, and anyone 18 years or older is viewed as an adult.

In May 2004 there were 3 594 children under the age of 18 years serving time in prison. Of these, 52% were awaiting trial, and the other 48% had already been convicted. Of concern is that 12% were sex offenders.

Figures from the Inspecting Judges Report (Annual Report 2006) show that for the year ended 1 May 2005 there were 9 494 sentenced juveniles (18—21 years) incarcerated in South African prisons. In the same period, there were 9 079 juveniles awaiting trial. The report also indicates that 1 137 children (under the age of 18 years) were sentenced, while 1 217 were unsentenced or awaiting trial.

2.10 INTERVENTIONS AND CURRENT INSIGHTS

Many steps have been taken in the last decade to improve the child justice system. The Convention on the Rights of the Child, signed on 29 January 1993, served as a point of departure for the planning of policies and services to address youth misbehaviour. The United Nations Standard Minimum Rules for Non-custodial Measures and the United Nations Guidelines for the Prevention of Juvenile Misbehaviour further documented efforts in the fight against youth delinquency (Tshiwula 1998: 1-2).

However, with the establishment of the Child Justice Act we see a renewed effort to improve the child justice system. The Child Justice Act of 2008 was instituted to address the poor treatment of children and youth before 1994. The preamble to the Act states that historically

> South Africa, as a country, had not given many of its children, particularly black children, the opportunity to live and act like children, and also that some children, as a result of circumstances in which they find themselves, have come into conflict with the law.

The Act aims to "entrench the principles of restorative justice in the criminal justice system for children who are in conflict with the law".

This legislation goes on to define restorative justice within the child justice system as an approach to justice that aims to involve the child offender, the victim, the families concerned and community members to identify and address harms, needs and obligations collectively through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation. The aim is to divert youth offenders out of the correctional sphere into facilities and processes where rehabilitation and change can occur. Annually tens of thousands of youths are diverted from the mainstream legal machinery. Although the legal processes have been aligned to be more child friendly, children in South Africa face other challenges that place many of them at the coalface of an out-of-sorts socio-political system.

After more than 20 years of democracy, young people in South Africa are still living in poverty and are plagued by crime, violence, unemployment and lack of education. During 2016, the research company Afrobarometer published startling findings into how young South Africans feel about socioeconomic issues and South Africa's future. The survey said 64% of South Africans felt that the government was doing a poor job of managing the economy. More than half of South Africans rate the country's economic situation as "fairly bad" or "very bad", while 36% are unhappy with their living conditions. Another survey by StatsSA during 2016 where they profiled the social status of young people between the ages of 15 and 34 years revealed statistics that echo the bleak picture of young people in South Africa. The survey showed that millions of young people were living below the breadline. About 70% of South Africa's 20 million young people were more likely to be victims and perpetrators of assault, robbery and property theft than adults (35 years and above). StatsSA's Vulnerable Groups Survey found that 59% of South Africans aged between 16 and 34 years were victims of theft during the 2013— 2014 financial year, while 53,4% were victims of assault. This makes young South Africans more susceptible than any other age group to violence and crime.

Unemployment also continued to rise among the youth in South Africa (Seeth & Maphumulo 2016). This paints a bleak picture with regard to job prospects for South Africa's graduates and matriculants. Failure by government and business to provide proper jobs for the youth of South Africa is a great cause for concern and can only escalate into an unmanageable situation in

the lines of the Arab Spring (Arab revolutions). This revolutionary wave of both violent and non-violent demonstrations, protests, riots, coups and civil wars, fostered by the youth who experienced similar hardships as their counterparts in South Africa, affected many Arab countries, and the effects are still evident.

2.11 CONCLUSION

If we look back at the history of juvenile justice in South Africa since 1911, we may ask whether we are any closer to an ideal system. The move towards harsher punishments for youth offenders as illustrated by Pinnock (2006) contradicts the ideology supported by Grobler more than 60 years ago, who believed that many reforms were taking place in the South African criminal justice system (Grobler 1941: 4). One of the changes envisioned was the "gradual abandonment of imprisonment as a means of reformation and the substitution of the suspended sentence on condition of good behaviour, or the postponement of sentence ...on similar condition" (Grobler 1941: 14).

If we consider the use of mandatory sentencing and the number of young offenders receiving these sentences from 2005 rather than moving towards Grobler's envisioned "prisonless" society, it appears that we have started imposing harsher, more draconian sentences for serious criminal acts by the youth.

However, the Child Justice Act brings in a new vision and hope for South Africa to humanise the juvenile justice system and to restore these often vulnerable victims of their own actions to their rightful place back in society.

It is interesting to note a cycle which has taken place within our punitive paradigm. With the adoption of this new legislation, we have returned to a situation similar to that during the pre-colonial period of customary law. Society is reverting to dealing with youths within their communities, and restorative justice efforts strive to restore the relationship between young offenders and their families and communities in the spirit of ubuntu rather than punishing and rejecting derailed young persons. In some way, this stands in contrast to the social-political position of many youths in South Africa who live below the breadline and endure the harshest conditions bestowed on them by a highly volatile, unjust democratic society.

In the following chapters we will further explore the impact of the Child Justice Act and current initiatives in our juvenile justice system.

CRITICAL QUESTIONS

1. Explain how the social and political climate in South Africa influenced the manner in which data was construed.
2. Illustrate how the anthropological views of humankind at a specific period in time can influence criminological discourse.
3. Discuss the influence of Eurocentric paradigms on the explanation of youth misbehaviour in an African context.
4. Discuss the many difficulties that exist when comparing rates of juvenile misbehaviour.
5. Discuss early perceptions of the causes of youth misbehaviour.

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6. Explore the origin ofgangs in South Africa.
7. Provide a brief overview of corporal punishment in South Africa.
8. Critically map the development of reformatories in South Africa.
9. Illustrate how the idea of industrial schools that were established to house destitute and delinquent children failed in South Africa.
10. Explain the historical views of the experts on misbehaviour among girls and their prognosis for treatment and rehabilitation.

1 1 . Give a brief overview ofthe current position of youths in the South Africa legal system and also in the social-political domain.

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The nature and extent of child and youth misbehaviour in South Africa

Karen Booyens and Christiaan Bezuidenhout

OBJECTIVES

You should be able to explain the concept "status offender" discuss the background and characteristics of a person who displays high-risk behaviour define the concept "youth sex offender" discuss the difference between youth sex offenders who sexually offend against adults or their peers and those who sexually offend against children describe the characteristics of both male and female youth sex offenders discuss the similarities and differences between male and female youth sex offenders explain the concept "parent abuse" discuss the characteristics of youth who assault their parents discuss sibling abuse define the concept "bullying" set out the characteristics of the school bully describe cyber bullying as a "new" form of bullying discuss drug use among youths discuss gangsterism define the concept "hate crime" discuss youth homicide discuss train surfing and izikhothane as emerging trends in youth misbehaviour understand the correlation between child and youth misbehaviour and age, race, describe the chronicjuvenile offender distinguish between official and unofficial crime information sources.

KEYWORDS

ch ronic juvenile offender
family violence
school violence
substance abuse
youth sex offender

3.1 INTRODUCTION

This chapter gives a descriptive explanation of child and youth misbehaviour, therefore the information available in South Africa is depicted descriptively rather than analytically, and examples are used to illustrate the nature of youth misbehaviour.

Media reports often reflect the gruesome details of serious crimes committed by youth that include acts such as murder and rape. In 2014, Mpho Rakgwale, who started his criminal career at the age of 17 years in 2007, was sentenced to six life sentences and an additional 232 years' imprisonment. He was found guilty of 61 charges, namely 21 for rape, 17 for kidnapping, six for the unlawful possession of firearms, five for aggravated robbery, six for the unlawful possession of ammunition and six for robbery (Motumi 2014). In 2009 at the Nic Diederichs Technical High School in Krugersdorp, a suburb west of Johannesburg, 18-year-old Morne Harmse murdered a fellow learner by striking him with a samurai sword, and he also injured three other people. He was sentenced to 20 years' imprisonment (Langer 2009). Another case that drew media coverage was of a Satanist teenage girl who was sentenced to eight years' imprisonment after confessing to murdering another teenager by stabbing her in the chest, neck and stomach (News24, 2013). The alleged rape of a 17-year-old, possibly mentally handicapped, girl in Soweto by seven boys and men lead to national and international outrage. In another incident, children filmed a rape in progress at Jules High School in Johannesburg, and distributed the images via social networks (Masango 2012) (see discussion later in the chapter). Reporting of these cases in the media gives the impression that child and youth misbehaviour is out of control, and that children are more violent than ever before.

Statistics on youth offences also echo this perception. According to Jules-Macquet (2014: 10) children tend to be involved in aggressive crimes (45% or 378 children) followed by economic crimes (27% or 229 children) and then sexual offences (23% or 198 children). However, this is not the total picture, since many youths are also arrested for non-violent acts such as property offences (e.g. shoplifting and theft), but since these are not as sensational as the above cases, they do not make media headlines.

This chapter discusses the juvenile sex offender as well as violent and dangerous offences such as school shootings and stabbings, sibling abuse, bullying, cyber bullying, train surfing and izikhothane (dance battles in impoverished areas where expensive goods and items are destroyed). Youths are vulnerable to the use and abuse of drugs, and can also be guilty of hate crimes and youth homicide. Furthermore, this chapter outlines how youth misbehaviour differs according to gender, social class and age. The chronic juvenile offender is discussed, and this type of misbehaviour is illustrated in a relevant South African case study. In order to estimate the extent of child and youth misbehaviour in South Africa, a distinction is drawn between official and unofficial statistics, and a brief overview of the number of sentenced and unsentenced child and youth offenders in South African institutions is given.

3.2 THE NATURE OF CHILD AND YOUTH MISBEHAVIOUR IN SOUTH AFRICA

3.2.1 Status offences

Certain activities or behaviours are considered misbehaviour only when committed by children and youths, and would not be considered illegal if perpetrated by an adult (Siegel & Welsh 2011: 32). This is due to the youths' status in society. These misbehaviours are referred to as status offences and are not illegal in South Africa. In other words, the behaviour does not violate the criminal code. It is not dealt with by the criminal justice system, but is left to the discretion of parents and schools, and is prohibited only for youths because of their age (Bartol & Bartol 2017: 45; Bezuidenhout & Little 2012: 377). In this regard, Bezuidenhout and Little (2011: 13) state that "young people below the age of 18 years may come into conflict with the judicial system for behaviour such as truancy, alcohol consumption and sexual promiscuity". These "offences" are not deemed illegal for adults.

Status offences can be grouped into three types:

- Behaviour that is prescribed because the person committing it is considered under

the age of discretion and in need of protection

- Behaviour that is regarded as harmful to society or self-destructive. Children perpetrating such behaviour are regarded as status offenders and directed to a juvenile court when it is found that their parents cannot take care of or control them.
- Pervasive behaviour that indicates maladjustment to society's norms and values (Binder, Geis & Bruce 2001: 24; Siegel & Senna 2000: 22-23)

Examples of such behaviour comprise absenteeism from school (also known as truancy), alcohol consumption, running away from home, incorrigibility, disobedience and Immoral conduct (Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2015; Siegel & Welsh 2011: 33). These factors can interact with each other and collectively predispose the youth towards involvement in misbehaviour and/ or criminal behaviour. During 2007, a national study was conducted on learner absenteeism in South African schools, and a prevalence rate of between 5 and 15% was found. Absenteeism is defined as a situation where a learner is not at school for an entire day and one can distinguish between authorised and unauthorised absenteeism. The school and/or parents permit authorised absenteeism, whereas unauthorised absenteeism refers to absence from school for reasons that are not known to the school or parents. Learners who are frequently absent from school may become socially isolated, are more likely to become involved in illegal activities, struggle to understand basic concepts relating to the school curriculum, are more likely to become school dropouts and tend to be over-represented in the juvenile justice system. The five most commonly cited reasons for learner absenteeism were poverty, lack of transport, illness, lack of parental involvement and food insecurity (Community Agency for Social Enquiry & Joint Education Trust, 2007: 8, 13).

Under-age drinking is another common status offence. Alcohol is the most commonly used mood-altering substance among young people, surpassing tobacco and illicit drugs. Most alcoholic beverages such as beer, wine and distilled spirits are produced with the intoxicating ingredient ethyl alcohol, also known as ethanol. This is a powerful, moodaltering substance, and its use by teenagers poses serious health risks, clouding judgernent and interfering with the development of social skills and with school achievement (Kempen 2015: 10; Prinsloo & Ladikos 2005: 30). The adolescent brain, which is still growing, is especially vulnerable to alcohol's toxic effects, with the risk of cognitive deficits, poor executive functioning and poor long-term memory (Seggje 2012: 587).

In a study conducted in Atteridgeville, a township near Pretoria, alcohol was found to have the lowest mean age of initiation compared to other substances at 14 years (Moodley, Matjila & Moosa 2012: 8). In another South African study it was found that more than 60% of youth aged 18 years drink alcohol regularly. Of these 30% drink alcohol when they should be in school (Thomson 2013). Research shows that underage drinking increases one's involvement in criminal behaviour, such as vandal ism, assault, sexual offending and road traffic accidents. An association also exists between heavy episodic adolescent alcohol use and suicide, becoming a victim of crime, and high-risk sexual behaviour (Moodley et al. 2012: 609; Townsley 2011: 107). The legal age [de jure) of drinking in South Africa is currently 18 years or older. However. the government is considering increasing this to 21 years, a proposal which the activist group South Africans against Drunk Driving (SADD) has welcomed. The World Health Organization has also shown that raising the legal drinking age to 21 years is one way of bringing down preventable deaths and health problems related to the use of alcohol. Many underage drinkers are guilty of binge drinking, which often causes health problems or even death. Binge drinking means consuming five units of alcohol in quick succession. This causes damage to the brain that can lead to alcohol dependence. Also, if heavy drinking starts under the age of 18 years, there is a 20% chance of becoming dependent, which increases to 40% if this begins under the age of 15 years. If it begins over the age of 21 years, it would appear that the percentage decreases to 9%. These findings are important considering that South Africans are deemed the biggest drinkers in Africa, and the fourth worldwide

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when it comes to hard drinking and the risky consumption of alcohol (John 2015).

Surveys have shown a tendency to more harmful binge drinking among South African youth. Reasons for use and misuse of alcohol include peer pressure and a desire to fit in, parents condoning underage drinking, a poor home environment and boredom, ignorance of alcohol's harms, the relative cheapness of alcoholic products and the ease of access to alcohol (Seggie 2012: 587; Townsley 2011: 108).

Based on these risks, the Department of Trade and Industry put forward the National Liquor Amendment Bill in 2015, which proposed raising the legal limit of buying and consuming alcohol from 18 to 21 years of age. The proposed law also prohibits the manufacturing, distribution or retail sale of liquor in a rural or urban community from any outlet which is within 500 metres of, among other things, schools; restricting the advertising of alcoholic beverages; prohibiting sponsorship and promotion associated with alcoholic beverages; and making manufacturers and distributors of alcohol responsible and liable for damage and harm caused if a person is involved in a car accident or a crime while under the influence of alcohol (Gerber 2016; BusinessTech 2015; 2016).

Siegel and Senna (2000: 26—27) discuss posSible intervention strategies aimed at reducing status offences such as alcohol consumption. Introducing curfew laws has been suggested to restrict opportunities for children to get into trouble. Punishing parents for their children's misbehaviour was another suggested approach. An extreme form of this is actually to hold the parents criminally liable for the illegal acts of their children; however, it is doubtful whether punishing the parents will deter youthful offenders.

In the Western Cape, the Department of Community Safety has implemented its Truancy Reduction Project to address the problems of truancy and drug abuse. This project runs in the six areas most affected by crime, namely Mitchell's Plain, Khayelitsha, Elsies River, Bonteheuwel, Hanover Park and Manenberg, and targets four schools in each area. Each has a designated learners' support officer who is at the school every day to deal with learners who stay away from school regularly and to work with the teachers to identify them. The officers visit the learners' homes and see their parents, sometimes even calling on them at work. The aim of this project is to reduce youth misbehaviour and increase school attendance (Oosterwyk 2002). During the period August 2002 to June 2003, 80% of the 2001 truant learners that were identified and subjected to the programme were placed back in school. The programme is regarded by the Western Cape government as a success (Provincial Government of the Western Cape 2005: 12). Although updated statistics are not available, during 2016 the Western Cape government assured their commitrnent to the reduction of truancy as such interventions remain an important component of the school safety initiative (Western Cape Government 2016).

3.2.2 Characteristics of child and youth offences

Various background factors and personal characteristics as well as high-risk behaviours increase the likelihood of a child becoming involved in criminal behaviour. These are discussed below.

3.2.2.1 Age

A change in the age distribution of the population Significantly influences crime and misbehaviour rates. Juvenile males commit more crimes than any other population segment so, as a general rule, the crime rate follows the proportion of young males in the population (Tlhoaele 2003: 53). The younger the child is when he or she enters the juvenile justice system, the higher the risk is that the child will become involved in criminal behaviour (Siegel & Senna 2000: 8—9; Van der Merwe, Dawes & Ward, 2012: 58). A study by Livingston, Steward, Allard and Ogilvie (2008) of a cohort of juveniles born in Queensland, Australia in 1983 or 1984 and with one or more finalised juvenile court appearance identified three primary juvenile offending trajectories:

- Early-peaking moderate offenders, who showed an early onset of offending, with a peak around the age of 14 years followed by a decline, comprised 21% of the cohort and was responsible for 23% of offences committed by the cohort.

- Late-onset moderate offenders, who displayed little or no offending behaviour in their early teen years but had a gradual increase until the age of 16 years, comprised 68% of the cohort, but was responsible for only 44% of the cohort's offending.
- Chronic offenders, who demonstrated an early onset of offending with a sharp increase throughout the timeframe of the study, comprised just 11% of the cohort, but were responsible for 33% of the cohort's offending behaviour (Livingston et al. 2008).

Research indicates that the peak years for both offending behaviour and for being victimised are between the ages of 12 and 21. If we consider that the 12—21 age group is at risk Of committing crime, then it is clear that a large portion of South Africa's population falls within this "high risk" cohort (Burton, Leoschut & Bonora 2009: xiii). Adolescence is a time of complex physiological, psychological and social change (Haigh 2009). Progression through puberty has been shown to be associated with statistically significant changes in behaviour in both males and females, and may be linked to an increase in aggression and delinquency (Najman et al. 2009).

3.2.2.2 Psychological variables

Deficits in respect of the social competencies of a child or adolescent (i.e. tolerance, autonomy and emotional confidence) increase the risk of social and personal maladjustment in their future (Contreras, Molina & Del Carmen Cano 2011: 79). The more a child displays rebellious and non-conforming behaviour and has poor self-esteem, the higher the risk of engaging in misbehaviour (Bartollas 1997: 71; Siegel & Senna 2000:8—9). This is compounded if the child has learnt distorted cognitive scripts by observing significant others who show aggression and rebelliousness In their daily lives. A script determines what events are to happen in the environment, how the child should behave in response to these events and what the likely outcome of those behaviours would be. In addition, a child can develop hostile attribution bias. A child with this bias is more likely to interpret ambiguous innocent actions by peers as hostile and threatening, which in turn can cause bullying, victimisation and psychologically related incorrigible behaviour (Bartol & Bartol 2017: 147).

3.2.2.3 School performance

Academic failure, low bonding to school, truancy and dropping out of school as well as frequent school transitions have been identified as predictors of future violent and/or deviant behaviour (Van der Merwe et al. 2012: 72). The dropout rate in secondary education in South Africa is very high — of the one million students who enrolled for Grade 10 in 2014, only 610 178 wrote Grade 12 in 2016. Thus 44,6% of learners dropped out of the system or are currently repeating Grade 10 or Grade Il (BusinessTech 2017). Some of the major reasons for leaving school before the end of Grade 12 include poverty, frustration associated with the inexperience of teachers, a lack of relevance of the curriculum and teaching materials, the absence of parents at home, and the need to care for sjblings or sick family members (Human Sciences Research Council 2007). In addition, many children grow up in an HIV/AIDS-affected household and must often take over the care and nurturing responsibilities for their younger siblings if their parents pass away. Additionally, many children living in HIV-orphaned households are remarkably vulnerable to engaging in crime as an act Of desperation because poverty results in a shortage of basic needs such as food, clothing and shelter (Louw 2008: 222).

Attention deficit disorder, dyslexia and lack of motivation all contribute to scholastic underachievement and, among other things, to learners experiencing problems in areas such as memory, reading, writing, spelling and arithmetic. This in turn may result in underachievement, low self-esteem, motivational problems and behavioural misconduct (Van Niekerk & Prins 2001: 276).

3.2.2.4 Family integration

Many risk factors for youth violence are located in the family and include family conflict and violence, parental criminality and antisocial siblings, large family size, low maternal education and age, poor family management practices, harsh or inconsistent disciplinary

practices, and poor parental supervision and bonding

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(Van der Merwe et al., 2012: 69—70). Lack of family affection and cohesion, a high degree Of family conflict and a permissive parenting style are connected with children's problematic behaviour (Contreras et al. 2011: 77). Tlhoaele (2003: 56) cautions that it is not only the parenting style or ability that is important in moulding the life of a child, but also the nature of the family structure. In the context of farnily structure, McLean (2003: 7) uses the term "latchkey kids" to refer to children who are left to their own devices, usually outside school hours. This is a generation that arrives home to an empty house, where either both parents are working or an adult guardian is absent. The researcher reports that unsupervised adolescents are more prone to low self-esteem, depression, risk taking and substance abuse.

Increases in the number of single-parent families may also influence crime rates. Children living in single-parent homes are twice as likely to be impoverished as those in two-parent homes. Such children are especially at risk with regard to juvenile misbehaviour, a predictor of an increasing crime rate (Tlhoaele 2003: 54). According to Van der Merwe et al. (2012: 71), children from large families are more prone to misbehaviour because the size of the family makes it more difficult to monitor them. Hawkins et al. (2000) identified the following as risk factors in the family domain that could possibly predict future violent behaviour:

- Parental criminality • Child maltreatment
- Poor family management practices
- Low levels of parental involvement
- Poor family bonding
- Family conflict
- Parental attitudes favourable to substance misuse and violence
- Parent—child separation

There are also some forms of parental behaviour that influence children's antisocial behaviours, such as excessive drug abuse and alcohol consumption (Kofler-Westergren, Klopf & Mitterauer 2010). In many home environments, children whose parents or guardians abuse substances are influenced negatively, and frequent contact With such adults

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may encourage them to experiment with substances too. Poverty in these households compounds the challenges a child faces. Lower family income has been associated with poorer cognitive and social-economic functioning (Bartol & Bartol 2017: 54).

3.2.2.5 Drug and alcohol use

The earlier the age of use, the more frequent the use and the more potent the drug, the higher the risk of engaging in misbehaviour. Alcohol and drugs have also been found to act in a more potent way on juveniles than adults (Prichard & Payne 2005). Leggett (2002: 1-2) identifies three ways in which drugs may have an effect on crime. The first involves the effect that they have on individuals. Drugs may cause individuals to practise behaviour that they would ordinarily avoid by distorting perceptions and increasing the sense of bravado that could facilitate criminal behaviour. Secondly, drugs finance criminal enterprise. The sale of drugs is lucrative, and the proceeds are often used to sponsor other criminal endeavours. Finally, those individuals caught in the grip Of addiction with limited financial resources may resort to crime to feed their need for drugs. Drug use has been linked to fluctuations in the crime and misbehaviour rates. As the level of drug use increases, so too does the crime rate. Drug abuse may also have a more direct influence on teen crime patterns, for example when alcohol-abusing children engage in acts of senseless violence (Tlhoaele 2003: 53—54). Research indicates that substance use is a strong predictor of recidivism (Cottle, Lee & Heilbrun 2001).

3.2.2.6 Neighbourhood

The relationships young people develop with others occur within a particular geographic location that has specific characteristics (Treptow 2008: 46). A neighbourhood characterised by

poverty and unemployment is more likely to produce a child who is at high risk of engaging in misbehaviour (Van der Merwe et al. 2012: 77). According to Leggett (2004: 23), population density also correlates with juvenile misbehaviour. Hawkins et al. (2000) identified community disorganisation, the availability of drugs and firearms, the involvement of adults in crime and exposure to violence as well as racial prejudice as risk factors that could predict future violent behaviour. In South Africa, racial prejudice of the past has now been addressed as government enforced policies ensure that previously disadvantaged individuals are now preferred and recruited. For example, the police currently recruit and appoint mostly black candidates and the existing police organisation are representative Of the general population profile.

3.2.2.7 Exposure to violence and victimisation

Whether or not victimisation predicts offending has been addressed in several studies in the last two decades. Some of this research indicates that young people who have been victimised report greater involvement in violence. In South Africa, the 2009 study by Burton et al. indicated that youth who have been victims of violence were six times more likely to commit crime than those who had not experienced victimisation. According to Statistics SA (StatsSA), in 2014 about 70% of South Africa's youth were likely to be victims and perpetrators of assault, robbery and property theft than adults (35 years and older). Globally, young men constitute both the majority of perpetrators and victims of violence and crime (Harrell 2007; Saferspaces 2017; Seeth & Maphumulo 2016). Other studies report a relationship in the other direction — delinquent activity directly increases the risk of personal victimisation (Estevez & Emler 2011: 271). International studies show that exposure to violence and crime at a young age, including acts of personal victimisation, will significantly increase the likelihood of engaging in antisocial or criminal behaviour at a later stage in life. According to Daly (2008), the boundary between juvenile offenders and juvenile victims can easily become blurred. Cohorts of juvenile victims and juvenile offenders are unlikely to be entirely discrete, and research consistently shows that these phenomena are interlinked.

3.2.2.8 Risk taking and peer influence

Research on the development of the adolescent brain demonstrates that the second decade of life is a period of rapid change, particularly in the areas of the brain associated with response inhibition, the calibration of risks and rewards, and the regulation of emotions (Steinberg 2005). Two key findings have emerged from research that highlight differences between juvenile and adult offenders. First, these rapid brain changes often occur before juveniles develop competence in decision making, and secondly, in contrast with the widely held belief that adolescents feel "invincible"/ recent research indicates that young people do understand,' and indeed sometimes overestimate, personal risks (Reyna & Rivers 2008).

Changes in arousal and motivation, brought on by pubertal maturation, precede the development of regulatory competence in a manner that creates disjointedness between the adolescent's emotional experience and his or her ability to regulate arousal and motivation. This disjuncture is described as similar to "starting an engine without yet having a skilled driver behind the wheel" (Steinberg 2005: 70).

Adolescents engage in riskier behaviour than adults do (such as drug and alcohol use, unsafe sexual activity. dangerous driving and/or delinquent behaviour) despite understanding the risks involved (Boyer 2006; Steinberg 2005). It appears that adolescents not only consider risks cognitively (by weighing up the potential risks and rewards of a particular act), but socially and/or emotionally (Steinberg 2005). The influence of peers can, for example, heavily impact on young people's risk-taking behaviour (Gatti, Tremblay & Vitaro 2009). Importantly, these factors also interact with one another, as sensation seeking not only encourages attraction to exciting experiences, but also leads adolescents to seek friends with similar interests who further encourage risk-taking behaviour (Romer & Hennessy 2007: 98—99). Furthermore, during adolescence there is an increase in susceptibility to peer influence and a decline in susceptibility to parental influence (Bartol & Bartol 2017: 55).

According to Bartollas (2003: 286), most criminal behaviour occurs in groups, and

misbehaviour is related to that of one's peers. Research indicates that where juveniles are strongly attached to their peers and spend long periods of time with them, and there are

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extensive patterns of misbehaviour, their association with their peers who engage in serious misbehaviour has a strong, negative effect on their own misbehaviour (Bartollas 2003: 286— 287). The more a child's peer group is involved in misbehaviour such as truancy, drug abuse and gang-related activity, the higher the risk of the child engaging in misbehaviour, while affiliation with peers who disapprove of misbehaviour lowers its likelihood (Siegel & Senna 2000:8-9; Van der Merwe et al. 2012:73).

In view of the above factors, the South African Police Service (SAPS) estimates that 43% of South Africa's youth are at risk of becoming offenders (Dunlap n.d.), thus nearly half of South Africa's youth may at one time or another make contact with the criminal justice system.

In the US, various factors have been associated with child and youth criminal behaviour (Tshiwula 1998: 18), including the following:

- Being male rather than female (males are at higher risk than females)
- Living in a below-average or slum neighbourhood
- Negative self-image
- Being under the influence of criminal peer groups
- Growing up in a household where one or both parents have a criminal record
- Experiencing school failure and becoming a dropout
- Growing up in a broken home (e.g. divorced parents)
- Having few or no literacy skills
- Growing up in an area where education is not deemed important for improving one's social status
- Having to interact with peers and being limited to the ones that the environment offers (e.g. youth gangs in the Western Cape)
- Growing up in areas where the role models are criminals

Tshiwula (1998: 18) maintains that although this is the situation in the US, some of the factors can apply to South Africa. In addition to those mentioned, the following apply specifi cally in this country:

According to Pelser (2008: 6—8), the constant exposure of youth to crime and violence in the key institutions of their socialisation — their homes, schools and immediate social environments — has contributed to a significant proportion Of South Africa's youth-offending population. They learn to internalise this kind of behaviour and so it is replicated continuously. There is research that indicates that crime, and often violent crime, is a primary means for many young South Africans to connect and bond with society, to acquire "respect", "sta ‟tus" and sexual partners, and to demonstrate "achievement" among their peers and in their communities.

Before 2000, most juveniles were sentenced to imprisonment for property crimes, the four main categories being burglary, shoplifting, other theft, and theft from motor vehicles. Of the total number of juveniles arrested and convicted during 1999, 50,5% were convicted for property crimes, for aggressive offences, 14,5% for sexual offences, 0, 7% for drug-related offences and 3,4% for other offences. However, during 2014, this trend changed as aggressive offences increased and property-related offences decreased as 51 % of youth between the ages of 18—25 years were sentenced for an aggresSive crime compared to 29% incarcerated for an economic offence (Sloth-Nielsen & Muntingh 2000: 11; Jules-Macquet 2014: 10). Like the profile of sentenced juveniles, the awaitingtrial offence profile also showed a decrease in the number of juveniles awaiting trial on economic-related charges and an increase in the number of those held on charges for aggressive offences (Jules-Macquet 2014: 10).

Muntingh and Ballard (2012: 17) caution against the interpretation of this trend as meaning that children are committing more aggressive and sexual crimes. They are of the opinion that this rather means that fewer children are detained in prisons awaiting trial in general and that courts

appear to be less willing to remand children who have been charged with economic crimes.

Owing to the decrease in property offences and limited research in South Africa pertaining to youth property offenders, this offence will not be discussed.

Examples of the nature of offences for which juveniles are convicted are given below.

3.2.3 Sexual offences

323.1 The child and youth sex offender

A sexual offence carried out by a child or youth is defined as any sexual act perpetrated by a person under the age of 18 with a person of any age against the victim's will, without consent or in an aggressive, exploitative or threatening manner. Although those who commit sexual offences against minors are often described as "paedophiles" or "predators" and thought of as adults, it is important to note
that there are significant differences between the adult and the youth sex offender. A study by Bourgon, Morton-Bourgon and Madrigano (2005: 16) attributes these differences mainly to the developmental stage of adolescents, which is characterised by maturational changes that effect their overall functioning. Societal norms and values are being incorporated into their behaviour during a time that changes occur in both their psychosocial and psychosexual development. The researchers furthermore identified that the majority of adolescents do not express a clear pattern of sexual deviancy or deviant sexual thought. The youth in their study reported significantly more non-deviant sexual fantasies than deviant ones, and these mainly invoked ageappropriate partners. It further emerged from their study that family patterns play a critical role in the development of sexually deviant youth.

Sexual offences include both contact and non-contact sexual acts (Da Costa, Spies & Coetzee, 2016: 36; Omar & Patel, 2012).

- Non-contact acts refer to exhibitionism, voyeurism, inappropriate observation of a child and exposing children to pornography or involving them in the manufacturing thereof.
- Contact abuse entails masturbation, fondling, oral sex, penetration (with the penis, finger or objects).

According to Jules-Macquet (2014: 10) a total of 137 (25%) of South African children were in prison for crimes of a sexual nature. This does not necessarily provide an accurate picture of the problem. Harris and Bezuidenhout (2010: 28—29) postulate that the extent of youth sexual offending is difficult to establish due to the following reasons:

- Aggressive sexual attacks among young people are often rationalised as sexual experimentation.
- Many of the cases are not reported.
- Cases that are reported are not recorded due to the age of the offender.

It is estimated that in 2006 on a daily basis more than 80 children were charged With sexual offending against other children (Coetzee 2015: 19).

Examples of crimes of a sexual nature committed against female victims by child and youth sex offenders include the following (Meyer & Frean 2003):

- In a particularly horrific case, a 14-year-old boy was charged with the rape and bludgeoning to death with a stone of a 17-monthold girl.
- A five-year-old girl from Ulundi in KwaZuluNatal was allegedly raped by a 10-year-old boy.
- Five boys between the ages of eight and 13 were charged with raping an eight-year-old girl on her way home from school.
- Two boys aged 12 and 13 years respectively appeared in court for the rape of a nineyear-old girl.

According to Harris (2009: xi), youth sex offenders differ in terms of race, social class, victim preference, modus operandi to gain compliance, the level of aggression and physical violence, and motivation for committing a sexual offence. Youth sex offenders fall predominantly into two categories: those that sexually offend against adults or their peers, and those that sexually offend against children (Hunter 2000: 1). However, Rich (2006: 195) included a third category, namely those who target adults or peers and children. For the purpose of this chapter, the focus will only be on the two categories as indicated by Hunter (2000). There are both similarities and differences in the characteristics of these two categories in respect of their choice Of victim, offence pattern, and social and criminal history.

Youths who sexually offend against their peers or adults predominantly assault females and strangers, or casual acquaintances.

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Sexual assaults are more likely to occur in association with other types of criminal activity. These offenders have a history of non-sexual criminal offences and appear more generally delinquent and conduct disordered. Their offences are more likely to be committed in public areas and they display higher levels of aggression and violence. They are also more likely to use weapons and cause injuries to their victims (Coetzee & Bezuidenhout 2016: 18; Hunter 2000: 2).

According to Finkelhor, Ormrod and Chaffin (2009: l), more than one third of youth sex offenders abuse children. Youths who sexually offend against children have a higher number of male victims and victims to whom they are related, although female victimisation is slightly higher than that of males. As many as 40% of their victims are either siblings or other relatives. The offences reflect a greater reliance on opportunity and guile than injurious force.

Table 3.1 Categories of youth sex offenders

This appears to be particularly true when the victim and offender are related. The offender may trick, bribe or threaten the child with loss of the relationship in an attempt to obtain compliance. Youths that display high levels Of aggression and violence also display more severe levels of personality and/or psychosexual disturbances. These youths have often been characterised as suffering from deficits in self-esteem and social competency. They also struggle with resolving interpersonal conflicts and forming and maintaining healthy peer relationships. Those with a history of victimisation show evidence of depression.

Youths who sexually assault children and those who target peers of adults, share common characteristics:

- Between 30 and 60% have learning disabilities and academic dysfunction.
- Up to 80% have some diagnosable psychiatric disorder.

	Youth vs adults/peer	Youth vs children	Common features Of both victim groups
Victims	Mostly female — strangers or acquaintances	A slightly higher rate of male victims, yet most victims are still female in this category Up to 40% are siblings or relatives	Mostly female
Offence pattern	Often, sexual offence committed in conjunction with other offences, and in public areas High levels of aggression and violence Weapons used Injuries caused	Opportunistic Guile, bribery, trickery and threats used to gain compliance Assaults committed in private areas of residence	None indicated by researcher
Social and behavioural patterns	Generally antisocial	Self-esteem and social competency deficits Can include personality and/ or psychosexual disturbances Difficulty in maintaining interpersonal relationships History of past victimisation	Learning disabilities and academic dysfunction Difficulties in impulse control and judgement
Criminal history	History of other non-sexual offences More generally delinquent Conduct disordered	Generally no criminal history	Substance abuse, conduct disordered

Source: Adapted from Harris (2009:29)

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- There are difficulties with impulse control and judgement (Harris 2009: 3).

An additional distinction between the types of youth sex offender has been proposed by Campbell (2005: 19) and Finkelhor et al. (2009). These researchers studied the phenomena of pre-teen sexual offending as a separate category due to indications that perpetrators of sexual offences are from younger age groups. In a report on rape from the Eastern Cape, 10% of child rape involved children raping children (Kimberley 2012: 3). Campbell (2005: 18) maintains that an understanding of, specifically, the pre-teen sex offender could make a significant contribution to ending the deviant cycle as he or she might still be more accessible and responsive to intervention. Owing to the fact that this particular group of offender does not contribute significantly to the extent of youth sex offenders, research is limited in spite of a noted increase of offending in this specific developmental group.

During the 1980s, O'Brien and Bera (cited in Harris 2009; Omar 2010; Coetzee 2015) set out seven types Of youth sex offenders. This classification remains relevant and is cited in various contemporary South African studies on youth sex offenders. The classification is as follows:

- Group influences. These offenders often come from lower socioeconomic areas and experience a vast amount of peer pressure. They have to prove themselves to belong.
- Naïve experimenter. The abuse usually occurs as sexual curiosity. There is no bribery, coercion or trickery involved. Offenders are either victims of sexual abuse who become victimisers or there are external influences such as pornography. This particular type has a good prognosis for rehabilitation if detected early.
- Pseudo-socialised. These perpetrators use coercion and bribery to lure young children. They appear to be confident, and boast about the things they do.
- Under-socialised. These children are isolated and lack social and interpersonal skills, and turn to maladaptive means of dealing with this. They feel as if they lack power, and abusing is a way of gaining that power.
- Sexually aggressive. This type of offender has a disruptive family life and poor impulse control, and as a result displays a need for power and domination.
- Sexually compulsive. Such offenders come from dysfunctional families and live in small spaces with many other people. Enacting the sexual behaviour they see as a way of alleviating fear and anxiety, and as a result the behaviour becomes repetitive.
- Disturbed impulsive. These offenders often have learning difficulties, and personality and psychological disturbances. They often display conduct disorders such as lying, vandalism and aggressive behaviour.

Although there may be common characteristics among youth sex offenders, local researchers (Harris 2009; Harris & Bezuidenhout 2010) as well as international researchers (Lekay 1994; Finkelhor et al. 2009) agree that youth sex offenders are not a homogeneous population nor are there any specific measures which can distinguish them from youth non-sex offenders. According to Van Niekerk (2006: 104), this highlights the fact that the risk factors associated with youth sex offending are multiple for each offender and the makeup Of such risk factors is unique to each individual. A South African study (Harris 2009) identified the following as main themes in respect of risk factors that emerged from a qualitative study of first-time sex offenders:

- Incomplete family structure
- Substance abuse
- The "culture of violence"
- Pornography
- Rape myths
- Previous sexual conduct
- Previous sexual victimisation
- Peer influence

In another South African study conducted by Wood, Welman and Netto (2000: 45), the following characteristics were found among a group of male youth sex offenders between the ages of seven and 15 years:

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- High exposure to deviant peers
- Prior sexual or non-sexual offences
- Prior consensual sexual interactions
- Poor academic achievement and behaviour problems
- Physical and sexual victimisation
- Poor social skills and social isolation
- Deviant sexual interests

According to Da Costa et al. (2016: 39—40), female youth sex offenders share the following characteristics:

- There is instability and dysfunction within the family.
- They are themselves victims of early sexual and physical abuse.
- They tend to abuse young children within the immediate family, extended family or with whom they are familiar.
- They target mainly female victims, although sometimes male victims.
- They tend to be the victims of abuse at the same time that they are the offenders.

Although male and female sex offenders have some common characteristics, there are some differences (Da Costa et al. 2016: 39-40):

- There are fewer differences in relation to criminal and psychosocial histories as well as antisocial behaviour.
- The two groups are similar regarding specific sexual offence behaviour, and tend to target victims of either gender.
- Both groups have a high prevalence of sexual victimisation.
- Male and female youth sex offenders experience unstable and dysfunctional family and home life.
- The female sex offender has experienced more severe abuse compared to her male counterpart.

The characteristics of youth sex offenders are described by referring to age, family environment, intellectual and educational features, social development, victim—offender relationship, prior victimisation and gender.

Age

Early adolescence is the peak age for offences against younger children (Finkelhor et al. 2009: 2). Rape mostly starts in the teenage years. A significant number of men (approximately 75%) who rape do it for the first time before the age of 20 years (Dunkle et al. 2004: 1415). Research conducted by ChildJine shows that 54% of all child sex abusers and 51% of all abusers of children are themselves younger than 20 years of age (Booyens, Beukman & Bezuidenhout 2008: 32). In her study with 96 male youth sex offenders, Coetzee (2015) found that the majority of the offenders committed the offence when they were younger than 18 years old. Most youthful sex offenders are between 14 and 15 years old, but abusers as young as five have also been identified. It is estimated that 42% of all sexual assaults that take place against children in South Africa are committed by children younger than 13 (Meyer & Frean 2003). In 2010, Omar conducted research focusing on male children younger than 12 years who committed sexual offences against other children and were diverted from the criminal justice system. According to this research, the high-risk category ranged between 10 and 12 years, with the highest incidence of sexual abuse perpetrated by the 12-year-old group. The offences committed included fondling, attempted rape, rape and being an accomplice in or observer of a coerced sexual act. The majority of these young children committed these offences on one occasion only (Omar & Patel 2012: 279), The younger the sex offender is, the greater the likelihood of sexual recidivism, with the offences tending to become increasingly serious (Van der Merwe, Meys & Waterhouse 2012: 294).

Family environment

Youth sex offenders often grow up in families where violence and poverty are rife. They often witness or experience violence, which can contribute to a lack of empathy and insufficient sexual boundaries. Male sex offenders often do not have a positive male role model to look up to and may not know what acceptable behaviour

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towards females is. Research also indicates that youthful sex offenders come from single-parent families, specifically from female-headed households (Coetzee & Bezuidenhout, 2016: 14; Margari et al. 2015: 86; Omar & Patel, 2012: 282).

Intellectual and educationalfeatures

As with other categories of youth offenders, sex offenders are less likely to be intellectually advanced or verbally articulate. As can be expected, they are not good school achievers and may experience significant learning difficulties (Booyens et al. 2008: 32; Margari et al. 2015: 86).

Social development

The youth sex offender has a wide variety of social skill deficits, including difficulties with regard to being reserved, assertive, sensitive and empathetic. These characteristics are also highlighted in the research of Delport and Vermeulen (2004: 45). They reported that the majority of respondents in their study did not feel any remorse regarding the offences they had committed. A third of the respondents reported that they felt some degree of "sorrow" regarding their actions, while 45,8% denied any specific feelings towards the victirn. These results indicate that there is not only a lack of empathy, but also a denial of the behaviour of offenders towards their victim.

Coetzee (2015: 207) also found empathy deficits in her study, such as a lack of insight pertaining to the impact of the sexual offending on the victims. Even when the victim resisted, cried, screamed or asked the perpetrator to stop, this did not deter the offender from continuing.

Many sex offenders report being bullied at school and having few friends or social contacts, which may cause them to withdraw from society and to lead isolated lives. Low self-esteem is also a predictor of sexual offences as young offenders may commit such crimes as a way of gaining a sense of control and power to counter feelings of worthlessness (Van der Merwe et al. 2012: 296).

The victim—offender relationship

The research of Delport and Vermeulen (2004: 45) as well as Omar and Patel (2012: 280) supports the findings of Quinsey and Lalumiere (2001: 4—5), namely that victims of sexual crimes are more often acquaintances rather than strangers. This is also significant in cases where the offender and victim are under the age of 18. The high incidence of sexual abuse involving acquaintances possibly reflects the ready access many perpetrators have to children outside the family in the context of trusting neighbourhood and family relationships. In Omar's (2010) study with child sex offenders under the age of 12 years, the victims were peers and younger than the offender.

Prior victimisation

It is important to note that not all child sex offenders have been previously sexually abused; however, a history Of all kinds of abuse and neglect has characterised the childhood of a significant number of both male and female youth sex offenders (Burton, D.L. 2008: 104). It is argued that youth sex offenders who commit sexual offences in response to their own victimisation may not be aware of the harmful effects of their behaviour on the victim. Furthermore, they may not recognise their actions as deviant (Coetzee & Bezuidenhout, 2016: 14).

White, Kadlec and Sechrist (2006: 135) affirm that abusive sexual experiences have major psychological consequences, including frustration tolerance and specifically lowered self-esteem, which is another factor that predicts sex-offending behaviour.

Gender

Although the majority of youth perpetrators of sexual offences are male, a South African investigation showed that female youths also engage in sexual offences. A pilot study on sexual violence conducted among 9 300 learners in urban and rural schools by the Community Information Empowerment and Transparency Project found that many learners admitted to raping other children: 12—20% of boys and 5—13% of girls in both urban and rural areas admitted to having forced sex on children. The girls in this study made some shocking revelations, such as that it is not uncommon for a girl to have forced sex with another girl, or for a group of girls to force themselves on a boy (Magojo & Collins 2003). In a recent South African study (Da Costa et al., 2016: 36),

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researchers explored the perceptions of female youth sex offenders regarding the reasons for their offending. Firstly, family and environmental factors: according to this study the families of female youth sex offenders tend to be unstable and from lower socioeconomic backgrounds, and parents are unlikely to protect them. The second contributing factor is development need and social status, which refers to self-esteem and identity, assertion skills and social presentation as well as a history of personal and family substance abuse. Another contributing factor is school structure and community resources. Female sex offenders have poor school performance and lack of participation in extramural activities. The absence of positive role models also contributes to offending behaviour. Lastly, abuse and knowledge about sex are further contributing factors — the study found that female sex offenders were themselves sexually, emotionally and physically abused.

The fact that the number of children detained in prison for sexual offences is decreasing, albeit slowly, is probably due to some extent to the courts' increasing general unwillingness to sentence children to prison as a form of punishment and rehabilitation. This decrease would not be of concern were it clear that children accused of sexual offences were rather being dealt with through diversion programmes.

It has been suggested that, in many cases, children are not charged for a sexual offence because both professionals and the broader society regard some of their actions as "sex play" that they will outgrow. Such children are referred to as sexually reactive or presexualised children. In such cases, the children may mimic behaviour they have seen from a role model (e.g. an older brother, sister or the media). They usually do not intend to have sex or to achieve any sexual gratification from the act, but are merely copying behaviour that they have observed from the role model. It is sometimes difficult to distinguish between the true sex offender and the sexually reactive child. The difference in intent, the goal of the behaviour (sexual gratification) and knowledge of the act as well as human anatomy should help to determine the difference between the two categories (Bezuidenhout 2007).

However, it is the authors' opinion that if society closes its eyes to youth who sexually assault and rape, or to pre-sexualised children who do not have the psychological and emotional ability to contextualise their behaviour, we are guilty of encouraging future adult sex offenders (e.g. serial rapists).

The South African Law Commission (SALC 2002: 80) motivates the sentencing of youth sex offenders as follows:

- To encourage the child to be accountable for the harm caused during the act
- To promote the reintegration of the child into the family and community
- To ensure that the child receives the necessary supervision, guidance, treatment or services in the process of reintegration

In order to ensure that these purposes are fulfilled, it is suggested that youth offenders be diverted from the criminal justice system after careful consideration of the future of each child.

According to Delport and Vermeulen (2004: 46), sexual misbehaviour is a multidimensional phenomenon, and there is a clear need for professionals in the field to adopt comprehensive treatment approaches, informed by an interdisciplinary and multi-model approach, and involving relevant experts from a number of fields. More attention needs to be given to the development of intervention efforts designed to assist offenders to understand and to take responsibility for the impact that their crimes have on victims, on communities and on families. Based on the high incidence of sex crimes against and by children in South Africa, it is strongly recommended that all sex offenders be subjected to a compulsory treatment programme before release into the community.

3.2.4 Violent offences

Violence perpetrated by children and youths is discussed in the context of two main settings, namely the family and the school. Under family violence, the emphasis is on children abusing and murdering their parents or siblings, whereas violence perpetrated within the school context specifically focuses on school shootings and bullying.

3.2.4.1 Family violence

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It has been claimed that a person is most likely to be subjected to interpersonal violence within the family, thus murder, physical assault and rape often take place in the context of the

family. Types of intrafamilial violence committed by children and youths are parent abuse and murder, as well as sibling abuse.

Parent abuse and murder

Parent abuse is defined as any act by a child under the age of 18 years that is intended to cause physical, psychological or financial damage in order to gain power and control over parents or step-parents (Coogan 2011: 3481; Cottrell 2001: 3; Cottrell & Monk, 2004: 1080). These acts include assault with or without a weapon, emotional manipulation, verbal abuse and theft. The acts perpetrated by the child or youth causes the parent to feel threatened, intimidated and controlled (Kennair & Mellor, 2007: 204). Coogan (2011: 349) proposes the use of the term "child-to-parent violence" as this clearly identifies the parent as the victim of the abusive behaviour, and the child as the one who uses violence to disempower the parent.

Parent abuse and murder are topics that have been neglected by researchers. This may be because family violence is considered a private, domestic and even a "normal" phenomenon by the victims and perpetrators, and interference by outsiders is not tolerated. Parent abuse is often overlooked because it is not seen to be an extensive or problematic aspect of family interaction and few interventions are available. Parents are also not likely to report such abuse because they may blame themselves for the victimisation, they may feel that others will blame them for their children's behaviour or they fear retaliation by their children if it becomes known that they have reported the abuse (Coogan, 2011: 349; Cottrell & Monk, 2004: 1089).

Parent abuse involves physical attack, verbal and non-verbal threats, and emotional battering of one or both parents by a child. More specifically, parent abuse involves the throwing or use of objects as a weapon, pushing, grabbing, shoving, slapping, kicking, biting and threatening to use, or using, a knife or gun in an impulsive or situational episode against a parent. There are also subtler forms of abuse, such as personal and property theft, and leaving a disabled parent alone without food, water and help when the youth is away at school. Cursing and shouting at the parent to the extent that the parent experiences it as dehumanising is another form of parent abuse (Kennair & Mellor, 2007: 204). Recently, researchers have tended to focus on different groups of parent abusers. Some children commit parental abuse by causing physical, psychological or financial harm to their parents. Some abuse their parents on all these levels while others only abuse on one level (e.g. physically). In addition, one should distinguish between the normal parent—child conflicts many adolescents have with their parents and full-out abuse by adolescents who try to control and coerce their parents (Bartol & Bartol 2017: 303).

Youth who physically abuse their parents often display the following characteristics (Cottrell & Monk 2004: 1073-1074, 1082-1083, 1087; Hong, Kral, Espelage & Allen-Meares 2012: 434; Kennair & Mellor 2007: 205-207):

- They are likely to have friends who also display violence towards their parents.
- They approve of misbehaviour, including violence.
- They show weak attachments to their parents. They do not have close relationships or rewarding interactions with their parents, and are less likely to talk to them about their personal problems.
- They are more likely to be male. Female youth tend to be more emotionally and verbally abusive, while male victimisers are more likely to be physically abusive.
- They abuse alcohol and/or drugs. Youth acknowledged that they abused their parents when they were "high" or "coming down" from the drugs, but in most cases violence was directed towards parents because of an argument with them over issues related to substance abuse.
- They were physically or sexually abused as children. Some female youth who reported child sexual abuse attributed their violence towards a parent as the need to protect younger siblings from sexual abuse. In less frequent incidences, the violence was directed against the non-offending parent as a way of expressing anger toward the parent for not protecting the child.

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- They are more likely to have been exposed to incidents of domestic violence. Findings show that an abusive male youth will begin abusing his mother shortly after the violent father/male partner leaves the family home. This could be a combination of male role modelling, idealisation of the abuser or anger towards the mother for not protecting the family.
- They suffer some form of mental health problem (bipolar disorder, attention deficit/hyperactivity disorder, personality disorder, learning disorder or schizophrenia). Youth suffering from mental health problems often have difficulty with impulse control and interpersonal skills.

In a literature review (Cottrell & Monk 2004: 1073, 1084; Hong et al. 2012: 434; Kennair & Mellor 2007: 205-207; Walsh & Krienert 2009: 1454) of child-to-parent violence, the following emerged:

- The age, size and strength Of the adolescent was related to assault. Higher rates of violence towards parents correlates positively with an increase in these three factors.
- Mothers are most often the object of the abuse. A possible reason for this is that mothers are more often the primary caregivers, especially in single-parent families, and this could place them at increased risk of experiencing child-to-parent violence. It could also be that it seems that way because mothers are more likely to disclose abuse at the hands of their children than fathers are willing to do.
- Girls hit their mothers more than they hit their fathers.
- Boys hit their fathers more as they get older.
- While child-to-parent abuse does occur in two-parent families, it is more common in single-parent families.
- Parental assault is not influenced or determined by the same factors as child and spousal abuse.
- A common family pattern in child-to-parent violence is parenting styles. Currently there exists no definite conclusion in this regard. Some studies found that youth violence is directed toward parents who are excessively controlling. Tension in the family surfaces as soon as the youth displays an intense need for autonomy and parents try to react by maintaining the same level of control. As this power struggle continues, the youth uses violence in order to get his way. However, in other research studies it is suggested that a permissive parenting style may also contribute to youth violence towards parents. Lastly, conflicting childrearing styles, where parents contradict each other, have also been noted as contributing to parent abuse.

Some parents use all kinds of strategies or practices to achieve certain goals with their children (e.g. reading a book with the child every night to encourage reading). More intense, however, are parenting styles, which can be divided into four broad categories, namely the authoritarian style (trying to shape and control the child's life according to absolute standards); the permissive style (no control and very limited restrictions over the child); the authoritative style (expecting children to perform age appropriately and better, and applying firm and consistent enforcement of family rules and standards); and the neglecting style (being detached and unengaged in the child's life). Parents often fluctuate between styles and in some cases enmesh parenting styles. The context and the age of the child often determine the style employed. Research is not convincing regarding how a parenting style contributes directly or indirectly to misbehaviour in general. However, excessively abusive strict and rigid parents are sometimes on the receiving end of parental abuse once the child grows into adolescence (Bartol & Bartol 2017: 62).

An extreme form of parent abuse is parricide (i.e. the murder of one's parents). A distinction can be made between matricide (killing of the mother) and patricide (killing of the father) (Newhill 1991: 379, 381). According to Heide (1992: 6), parricide can be committed by any one of three types of perpetrator:

- A severely abused child who is pushed beyond his or her limits

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- A severely mentally ill child
- A dangerously antisocial child

Content analysis after an extensive search of international online databases pertaining to parricide cases conducted by Boots and Heide (2006: 426) revealed that boys were usually the primary offenders (78%). Firearms were used in 39% of the incidents, followed by knives or cutting instruments (20%). Blunt objects and multiple weapons were used in 12% of the cases respectively. In the remaining 17% of the incidents, parricide offenders used other weapons (6%), strangulation (3%), weapon not specified (3%), asphyxiation (3%), personal weapons (2%), and fire (0,4%) to kill their parents. In respect of motives, the study found five circumstances were suggested with some frequency in media reports: fighting and/or anger (51%); abuse (33%); money and/or insurance (24%); mental illness (17%); and alcohol and/or drugs (mentioned in 11%). Killings as a result of a business dispute or mercy killings were each suggested in 1% of incidents, and other motives were suggested in 3%. According to Walsh and Krienert (2009: 1471), fathers, and particularly stepfathers, are more likely to be murdered.

Parricide is not uncommon in South Africa. In March 2012, Nicolette and Hardus Lotter were convicted for the murder of their parents, together with co-accused Mathew Naidoo (Waterworth & Sanpath 2011). In 2014, Don Steenkamp was sentenced to an effective 20 years in prison for the murder of his mother, father and sister, the rape of his sister and defeating the ends of justice. These crimes occurred in 2012 when Steenkamp was 15 years of age (News24 2014).

Sibling abuse

Although it is difficult to find statistics pertaining to sibling abuse, researchers believe that it occurs more frequently than parent— child or husband—wife abuse (Button & Gealt 2010: 131). It is not uncommon for conflict to occur between siblings, but the following criteria distinguish conflict from abuse:

- The interaction becomes violent.
- A sibling feels that he or she is powerless to stop the interaction.
- The conflict persists over a period of time.
- The interaction is directed towards only one sibling.

The characteristics of sibling abusers are as follows (Hardy, Beers, Burgess & Taylor 2010: 65; Kiselica & Morrill-Richards 2007: 152):

- Prior victimisation by parents, older siblings or other non-family members • Alcohol and drug abuse
- Low self-esteem, which may increase the risk of suicide
- The likelihood of engaging in aggressive behaviour during adulthood
- Being labelled as a bully by others outside the family context
- At risk of developing conduct disorders and antisocial behaviour
- Use of coercion and force to control the victim

Sibling abuse can be physical, psychological or sexual in nature. Each of these types of abuse is discussed below.

Physical abuse

The most common form of physical violence between siblings is pushing and shoving, followed by hitting, kicking and slapping. Sibling violence that includes the use of objects and weapons to inflict pain are less common (Button & Gealt 2010: 132).

The family structure of the physical abuser appears to be important in sibling assault, especially the age of the abuser and the presence of violence in the family. Researchers found that younger siblings are more likely to engage in violence than older ones. It is postulated that the most common age for sibling violence (hitting, kicking and punching) is the six- to nine-year-old age category. Those in the 14—17 year age group are more likely to make use of objects and weapons to perpetrate violence. One aspect that researchers agree upon is that sibling violence tends to decline with age. It is also more likely to occur in families where other forms of family violence, such as intimate-partner violence and child abuse, exist. The reasoning is that children are likely to imitate the violent behaviour they witness in their own relationships with their sibling(s) (Button & Gealt 2010: 132—133; Krienert & Walsh 2011: 334).

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Psychological abuse

Psychological sibling abuse includes the following (Button & Gealt 2010: 132; Kiselica & Morrill-Richards 2007: 149):

- Verbal abuse aimed at ridiculing, insulting, threatening, terrorising or belittling a sibling
- Acts aimed at rejecting, degrading and exploiting a sibling
- Destroying the property of a sibling
- Torturing and killing of pets

Sexual abuse

Sexual abuse or sibling incest includes sexual behaviour between siblings that is long lasting and not motivated by age-appropriate curiosiW, and for which the victim is not developmentally prepared (Caffaro & Conn-Caffaro in Kiselica & Morrill-Richards 2007: 150). Sexual abuse between siblings not only includes vaginal and anal penetration, but also unwanted sexual advances, fondling, oral sex and forcing a sib- ling to watch pornography (Carlson, Maciol & Schneider 2006: 22; Kiselica & Morrill-Richards 2007: 150).

In the majority of cases, the perpetrator of sibling incest is an older brother molesting a younger sister. However, sibling incest can also include sexual assault between siblings of the same as well as the opposite gender. It appears as if there are two subtypes of sibling incest. The first is a powerful older sibling coercing an unwilling younger victim, and the second, siblings who engage in consensual sexual behaviour from a young age and continue with the relationship over time. The disclosure rate of this crime is very low as such victims fear punishment, blame, ridicule or not being believed by the parents (Carlson et al. 2006: 22-23).

School violence

Gevers and Flisher (2012: 177) opine that children are exposed to high levels of violence in schools as well as in their homes and communities. School-related violence encompasses a variety of acts perpetrated on the school grounds, such as hazing or initiation, assault, robbery, sexual assault and rape, gangsterism, drug-related offences and vandalism (South African Council for Educators 2011: 6). It is reported that hazing and initiation tend to occur more frequently in private schools, whereas explicit forms of violence such as robbery and stabbings tend to occur in township schools (South African Council for Educators 2011: 6). In 2012, a case of hazing made headlines when a 16-year-old schoolboy was assaulted during a rugby camp. The assault included having his eyebrows and head shaved, and a penis sketched on his bald head while he was in an intoxicated state. It was also alleged that he was sexually assaulted with a broomstick and a banana. All of this was recorded on the mobile phones of the abusers (Williams 2012). School-based violence may be perpetrated by fellow learners or school staff (teachers, principal), and at times perpetrators from the community or other schools enter the school premises with the aim of committing violent acts (Gevers & Flisher, 2012: 177).

Regarding teacher-on-learner violence, it is postulated that educators verbally abuse learners, use corporal punishment to discipline them (even though this violates South African legislation) and are involved in "love relationships" with them. Between January and October 2008, 27 complaints of sexual misconduct against teachers were received by the South African Council for Educators (SACE). In some instances, the teacher—learner sexual relationship took place with the consent Of the child's parents based on a financial agreement (Gevers & Flisher, 2012: 180—181; Mncube & Harber, 2013: 13). With learner-on-learner violence, girls are more likely to be victims of sexual assault and rape perpetrated by fellow learners as well as by male teachers, and boys the victims of assault and bullying (South African Council for Educators 2011: 7). When male learners are the perpetrators of sexual crimes against female learners, they often act in groups, making it difficult for them to escape, and also making them vulnerable to gang rape (Gevers & Flisher, 2012: 182).

Although recent newspaper headlines have once again highlighted the frequency of sexual relationships between teachers and learners, this problem will not be further discussed in this chapter. As a last word, the authors are of the opinion that teachers are in a dominant and powerful position in which parents trust them to have the best interests of their children in mind. In addition, adult teachers should never allow relationships of this ilk to flare up. The focus will

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now turn to school shootings and stabbings, bullying and cyber bullying.

School shootings and stabbings

Schools are fast becoming sites for gun violence and stabbings in which youths are the victims or the offenders, or both. The National Schools Violence Study (NSVS) undertaken by the Centre for Justice and Crime Prevention indicates that three in 10 secondary learners know of a fellow learner who has brought a weapon to school. Furthermore, according to primary- and secondary-school learners, it is easy to get a knife and/or firearm at school (Burton P. 2008: 9). The easy availability of knives is illustrated in the statement that during the first six months of 2012, 29 learners were stabbed in Western Cape schools alone (News24 2012a). In 2010, handheld metal detectors were installed at 110 high-risk schools in the Western Cape to ensure that no weapons (firearms or knives) were brought onto school premises. Random searches of learners' personal possessions and items can be conducted if it is suspected that they are carrying dangerous objects to school. Furthermore, if they are wearing a coat or jacket they may be requested to remove it. Random searches may only be conducted by the principal or an appointed delegate who must be of the same gender as the learner being searched (South African Government News Agency 2010).

Since no in-depth study has been conducted in South Africa on the nature of school shootings and stabbings, the incidents below describe some examples of accidental and intentional shootings and stabbings of learners and teachers by youths (IOL News 2011, 2012; Mail&Guardian 2017; News24 2011, 2012b, 2017a, 2017b; SowetanLive 2011; The Citizen

2016).

Learner-on-learner violence

- In 2017 in a viral video it can be seen how a male learner assault a female learner at Siyathuthuka Secondary School, Inanda, north of Durban.
- The Western Cape Department of Education is investigating an incident in which a pupil allegedly threw a brick at another pupil at a Cape Town high school.
- At Kasselsvlei High School in Bellville in the Western Cape, a 20-year-old youth died after being stabbed in the back three times by a 17-year-old fellow learner.

Learner-on-teacher violence

- A teacher was assaulted inside a classroom by three learners at the Emshukantambo High School in Soweto.
- A Glenvista High School male learner was suspended for attacking a male teacher with a broom and a chair.
- A 14-year-old learner stabbed his teacher at PJ Simelane High School in Soweto, Gauteng.

Teacher-on-learner violence

Despite the ban on corporal punishment in schools, teachers still regularly punish or assault school learners.

- The headmaster of Sanddrift Primary School in Brits, North West, paid a fine for assaulting one of his learners.
- A female teacher was suspended for allegedly hitting a pupil at the Glenbrack High School in Alberton, Gauteng.

One of the initiatives by the South African government to reduce gun-related violence in schools is the establishment Of Firearm-free Zones (FFZs). In April 2001, the Firearms Control Act 60 of 2000 was signed into law. This Act makes provision for FFZs — that is, any place that has been declared by the Minister of Safety and Security to be a firearm-free zone, such as a school, a hospital, the workplace or any other area. Once the minister has declared a place to be an FFZ, the following become criminal offences (Gun Free South Africa n.d.):

- Allowing any firearm or ammunition into the FFZ
- Carrying any firearm or ammunition in the
- Storing any firearm or ammunition in the

The penalties for contravening the stipulations of this law are very harsh:

- If a person in charge of an FFZ allows any gun or ammunition into the zone, he or she can be sent to prison for up to five years.
- If a person brings a gun or ammunition into an FEZ, he or she can be sent to prison for up to 10 years.
- If a person stores guns or ammunition in an FFZ, he or she can be sent to prison for up to 25 years.

Another initiative to make South African schools safer is the declaration in 2003 by the Department of Education that schools are also "dangerous-object-free zones". A dangerous object includes the following:

- Any explosive material or device
- Any firearm or gas weapon
- Any article, object or instrument which can cause bodily harm

The South African Schools Act 84 of 1996 further stipulates that no person may allow, carry or store any dangerous objects on public school premises.

Bullying in schools

Bullying started receiving academic attention and societal interest only during the early 1970s and was first defined by Olweus (1994: 1172) as "the negative actions of one or more persons repeatedly and over time". It encompasses direct actions (hitting, kicking and punching) or indirect actions (spreading rumours, ignoring someone and social exclusion) (Liang, Flisher & Lombard 2007: 162; Mncube & Harber, 2013: 8). Popp, Peguero, Day and Kahle (2015: 2) refer to bullying as a systematic and recurring type of aggression by more powerful peers toward weaker individuals. Girls are more prone to experiencing indirect bullying, while boys usually fall victim to direct bullying. However, recently several cases of direct physical bullying between girls have been reported in the media.

The act of bullying is characterised by six defining factors (De Wet 2005: 82; Neser, Ovens, Van der Merwe, Morodi & Ladikos 2003: 129):

- Intent to harm, with the bully finding pleasure in taunting others
- Intensity and duration, in that bullying continues over a longer period of time
- Exercising of power over the victim because of the bully's age, size, strength or gender
- Selection of victims who appear vulnerable due to their apparent inability to defend themselves
- Lack of support experienced by the victim, causing underreporting of incidents of bullying
- Long-lasting consequences, such as the victim withdrawing from school activities

Bullying can be physical, emotional and/or sexual in nature.

Physical bullying

Physical bullying includes physical acts such as punching, poking, strangling, suffocating, burning, poisoning, hair pulling, biting, stabbing and/or shoving. However, physical bullying also includes forcing someone to hand over pocket money or possessions, or demanding to copy someone's homework (De Wet 2005: 83; Neser et al. 2003: 128; Snakenborg, Van Acker & Gable 2011: 89).

Emotional bullying

This type of bullying includes a range of activities such as terrorising, defaming, humiliating, blackmailing and ostracising someone. It also includes deliberately excluding someone from group activities, spreading rumours and name-calling (De Wet 2005: 83; Neser et al. 2003: 128).

Sexual bullying

Sexual bullying can be verbal (making comments about someone's body, telling inappropriate sexual jokes or spreading sexual rumours), physical (grabbing a female learner's breasts, flashing of genital organs or mooning, pinching in a sexual way) or visual (displaying nude pictures, making obscene gestures) (Equal Rights Advocates 2012).

The characteristics of the school bully are generally as follows (De Wet 2005: 82; Liang et al. 2007: 162):

- They tend to evolve into antisocial adults.
- They are bigger and physically stronger than their victims.
- Some may enter the school armed with weapons.
- Perpetration and victimisation is more common among boys.
- They have a positive attitude towards violence.
- They are more likely to smoke as well as abuse alcohol and drugs.
- They display aggressive and impulsive behaviour.
- They are involved in violent acts independently of the bullying behaviour.

Neser et al. (2003: 129) identify three common categories of bully:

- Proactive bullies. They are more aggressive in nature and need no provocation to hurt or humiliate another person.
- Reactive bullies. They were previously victims themselves and retaliate by bullying other smaller and weaker people.
- Proactive victims. They provoke fights with other children. If challenged, they are quick to cry or display exaggerated responses.

This brings us to ask what can be done to prevent or reduce bullying at schools. Following are a number of anti-bullying strategies:

- Teachers, administrators and learners must understand what constitutes bullying.
- Teachers and school staff must Identify potential bullies and victims.
- Different forms of bullying must be identifled and described.
- The extent of bullying must be determined by means of observations and questionnaires. This may enable the school to develop an anti-bullying policy.
- An anti-bullying committee consisting of staff, parents and learners must be established, and it should plan awareness and prevention activities.
- Anti-bullying activities should become part of the school curriculum.

Cyber bullying

With the onset of the electronic era, a new type of bullying emerged, namely cyber bullying, which is now a worldwide phenomenon between youths (Bartol & Bartol 2017: 474). This is defined as "the use of electronic forms of communication by an individual or group to engage repeatedly in sending or posting content about an individual or group that a reasonable person would deem cruel, vulgar, threatening, embarrassing, harassing, frightening or harmful" (Snakenborg et al. 2011: 89). Cyber bullying is also defined as "sending or posting harmful or cruel text or images using the Internet or other digital communication devices" (Willard in Li 2006: 158).

Cyber bullying can be carried out by means of email, mobile phones, instant text messaging (SMS), picture and video clips ("sexting"), chat rooms and message boards, video-hosting sites (YouTube) and social networks (MXit, Twitter and Facebook) (Burton & Mutongwizo 2009: 2; Li 2006: 159; Snakenborg et al. 2011: 91; Wade & Beran 2011: 45). In South Africa, the primary means for cyber bullying is via mobile phone as more youths have access to these than to computers. Furthermore, most cyber bullies use MXit as a means to commit their acts as it is cheap and easily accessible (Rondganger 2012).

In the cyber world, the bully can act in a sexual or aggressive manner. Sexually, the bully can make use of sexting. This is a combination of the words "sex" and "texting", and involves the sending of nude or semi-nude photos or videos and/or sexually suggestive messages via mobile phone without the consent Of the person in the image. The photos or videos can be taken in the following scenarios (Badenhorst 2011: 2):

- Between two romantic partners, with the images staying between the partners
- Between two partners, but are then shared with others outside the relationship without the consent of one of the partners, usually to avenge a failed relationship
- Exchange where one of the users would like to start a romantic relationship

Sexting is a common practice among children and youth, and there are reports of children as young as nine years old sexting pictures of themselves in the

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nude. It is also stated that sexting is a daily occurrence, which is prevalent among children between the ages of 10 and 14 years in all population groups, with girls twice as likely than boys to send a naked photo to someone (Geldenhuys 2015: 32; Daily Mail 2014).

An extreme example of sexting is a case in 2010 where a 15-year-old schoolgirl was reportedly gang raped by two boys, aged 14 and 16 years at the Jules High School in Jeppestown, Gauteng. The boys filmed this incident on their mobile phones. The victim later said that the sexual acts were consensual, and the boys were referred to a diversion programme (Mukhuthu 2011). Children are not always aware that sending a photo of genital organs, the anus or female breasts to another child is a criminal offence and that they can be charged and convicted of contravening section 22 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Furthermore, a child spreading nude photos of children under the age of 18 years can also be charged with the distribution of child pornography according to the Films and Publications Act 65 of 1996.

Aggressive acts in the cyber world include the following: flaming, threats, manipulation, denigration, stalking, defamation, trickery, and happy slapping (Burton & Mutongwizo 2009: 2). Some of these concepts will briefly be explained (Burton & Mutongwizo 2009: 2—3; Rondganger 2012; Venter 2008):

- Flaming refers to online fights in which angry and vulgar text messages are exchanged between users.
- Denigration is the sending or posting of gossip or rumours about someone in order to damage his or her reputation. For example, a 16-year-old tried to commit suicide after her name was put on a "slut list" that went viral on BlackBerry Messenger and Facebook. Denigration also includes digitally altering photographs to portray victims in a sexualised way or in a way that harms their image. In 2008, three youths manipulated a photo of the vice-principal and principal of Hoërskool Waterkloof in a sexually compromising position. The heads of the two men were digitally imposed on the bodies of two naked gay bodybuilders, and the school's emblem was placed over their private parts. This picture was distributed among learn-

e

- Cyber stalking includes threats of harm through repeated online harassment.
- Happy slapping is a new type of bullying where learners walk up to someone and slap them while another captures this on a mobile phone video. This will then be distributed among other learners and often holds entertainment value for them.

The following are offered as possible reasons for cyber bullying (Burton & Mutongwizo 2009: 3; De Wet 2005: 83; Li 2006: 158; Rondganger 2012; Snakenborg et al. 2011: 90):

- It may be done for revenge, for entertainment, out of boredom or to get a reaction from peers and victims.
- It is carried out anonymously and the bully may think that he or she is getting away with the crime.
- Learners that are too afraid to engage in "traditional" bullying may resort to cyber bullying because of the anonymity it offers. • A number of targets can be bullied in front of a large audience without significant risk.

Vandebosch and Van Cleemput (2008: 1355) offer the following characteristics of the cyber bully:

- Moral approval of bullying
- Feeling disconnected from school
- Lack of perceived support from peers and adults
- Below-average school grades
- Consumption of cigarettes as well as alcohol and drugs

3.2.5 Drug use among youths

Young children are experimenting with drugs now more than ever before in the history of

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South Africa, and this appears to be widespread throughout the racial, cultural and economic sections of our society (Daniels 2007). In South Africa, a significant number of children as young as 10 years of age are addicted to drugs such as dagga (cannabis), heroin (dia-

cetylmorphine) and tik (crystal methamphetamine). No statistics regarding drug use are available as most schools and parents usually deal with their drug-taking children outside the legal system. A community pastor declared to the media that "drugs have become a cancer that erodes the moral value of our children" after Mandrax, ecstasy and cocaine were found in a raid on an East London syndicate (Jika, Makapela & Mgxitama 2007: l). Drug abuse in South Africa is more prevalent among males than females. Besides the use of dagga, overthe-counter and prescription medication, such as antiretroviral drugs (ARVs), painkillers and cough medicine, are the most abused substances among both males and females. According to the South African Youth Risk Behaviour Survey, 15% of learners admit to getting high on over-the-counter drugs (Williams 2016). Some of the indicators that often lead to substance abuse in youth are the following (Soul City Institute for Social Justice n.d.: 17):

- Low religious involvement
- Short-term goals in life
- Depressive symptoms
- Poor sense of wellbeing
- Low self-esteem
- Boredom
- Peer pressure from youths Who are already using substances

Drugs fall into one of four categories (Bezuidenhout 2004: 119; Kempen 2015: 10):

- Depressants (downers). Popular depressants among youths are alcohol, dagga, heroin, morphine, painkillers (e.g. WellconalÐ and sleeping pills (e.g. RohypnolÐ. Domestic depressants used by street children are glue, petrol and nail varnish remover, the fumes of which are inhaled.
- Stimulants (uppers). Stimulants favoured by youths are amphetamines (BenzedrineÐ, methamphetamine (ecstasy, ice and crack), caffeine, ephedrine (known as speed), cocaine and nicotine.
- Hallucinogens. The most common hallucinogens used by South African youth are lysergic acid diethylamide (ISD), dagga and ketamine (a dissociative anaesthetic intended for animals but used as a date-rape drug).
- Opiates. These provide pain relief, euphoria and sedation, and in increasing doses may induce coma. Heroin, morphine, opium and methadone are examples of opiates.

3.2.5.1 Tolerance

Tolerance can be defined as the need to ingest larger doses of a specific substance to achieve the same effect that was previously achieved with smaller doses. When one ingests any toxic substance, the body develops a resistance to it. If, for example, the nicotine present in 20 cigarettes is taken in a single dose, the person would die of nicotine poisoning. If, however, 20 cigarettes are smoked over a period of 12 hours, the smoker's body will develop a resistance to or tolerance of the toxic effect to such an extent that it will not kill the smoker immediately. Owing to the tolerance that develops, more and more of a substance can be ingested. Within a short period of time, the body no longer seems to be able to function normally if there is not enough of the substance present. The precise mechanism that causes tolerance is not known. Furthermore, it is striking that whereas tolerance develops rapidly, it does not disappear when the person stops using the drug. If the substance is not ingested, the physiCal and psychological

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need for it becomes more pressing and will eventually result in withdrawal symptoms (Bezuidenhout 2002: 2).

3.2.5.2 Popular drugs

Popular drugs that are abused by the youth in South Africa are discussed in the following sections.

Mandrax

- Mandrax was developed and manufactured in the sixties to treat sleeping disorders, anxiety and hypertension. It was banned and termed illegal in South Africa during the seventies due to its addictive properties. The common street names for Mandrax are buttons, MX, doodies, lizards, press outs, flowers, white pipe (witpyp) or whites.
- South Africa has the most abusers of Mandrax in the world. It is usually presented in tablet or powder form. Mandrax tablets

vary in colour ranging from white to blue, green and dark brown.

- Mandrax is a synthetic drug that is made by mixing chemicals to produce a tablet. The active ingredient in Mandrax is methaqualone.
- Mandrax is highly addictive. People become physically dependent on it and have severe withdrawal symptoms if they do not obtain their next dose timeously.
- Mandrax can be swallowed or injected, but is most often smoked. The tablets are usually crushed and mixed with dagga and then smoked using a pipe or the neck of a bottle. This is called witpyp (white pipe).
- Mandrax is used to relieve tension, mental stress and anxiety. After a few minutes the user feels relaxed, calm and peaceful. Some people become aggressive as the effect wears off.

LSD

- The common street names for LSD are acid, LSD acid, trips, blotters, microdots, tabs, doses, hits and sugar cubes.
- Common forms of LSD are microdots on paper, mini tablets or capsules, and gelatine sheets. It is colourless, tasteless and odourless, and is soluble in water and alcohol.
- It is commonly used as a "club" drug and is often used in addition to ecstasy.
- The effect of LSD can be felt within 30—40 minutes after it has been ingested and the effect can last up to 12 hours. Effects depend very much on the user's mood, where the user is, whom he or she is with, as well as the dose taken. They often include intensified colours and distortions of vision and hearing. Although true hallucinations — believing something is there when it is not - are rare, they may become more common on higher doses. Emotional reactions may include heightened self-awareness and mystical or ecstatic experiences. Users often report a feeling of being outside their body. Unpleasant reactions or a "bad trip" may include depression, dizziness, disorientation, fear, paranoia and panic (Puberty101 n.d.; Kempen, 2015: 14).

Cocaine

- The common street names are coke, powder, nose candy, blow, speedball (when mixed with heroin), hooter, white horse, soft snow and snow.
- The drug can be sniffed, smoked or injected.
- When smoked, cocaine is sometimes combined with other drugs, such as cannabis or heroin.
- Cocaine is an alkaloid found in the leaves Of the South American shrub erythroxyIon coca. It is a powerfully reinforcing psycho stimulant. The drug induces a sense of exhilaration in the user primarily by blocking the reuptake of the neurotransmitter dopamine in the midbrain. Dopamine is a chemical messenger vital to the regular functioning of the central nervous systern. Under normal circumstances, it flows into and out of neurons. However, cocaine blocks dopamine transporters from taking up dopamine, leaving it outside the cells, which excites the nervous system to the point where the cocaine user feels a high. The effects of cocaine are felt immediately and the effects last from one to two hours.
- Cocaine in its purest form is a white to offwhite product. In powder form, it is a salt or hydrochloride. On the market, this type of cocaine is frequently "cut" (mixed) with various powdery fillers to increase its weight. The substances most commonly used in this process are baking soda and sugars. Cocaine may also be "cut" with other stimulants such as methamphetamine. The most common forms are fine off-white powder or crystals called rocks or crack, full moon, half moon and quarter moon.
- Most users become physically dependent (Cocaine.org n.d.; Kempen, 2015: 12).

Dagga

- The botanical name for dagga is cannabis sativa or cannabis.

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- The common street names are grass, joint, zol, skyf, peperskyf, ganja, Swazi gold, Malawi gold, mabange, insangu, imya, lebake, splif, Transkei colly, Durban poison, pappegaai-slaai (parrot salad), rondkyktwak (tobacco for observing), marijuana or boom.

NATURE

- Most people start experimenting with drugs by using dagga. It is seen as the so-called gateway drug because most drug users indicate that they started with dagga. This is the primary substance of abuse among those younger than the age of 20 years (Department of Basic Education, 2013: 5). Recently, a landmark Western Cape High Court ruling stated that the issue of legalising the private use of dagga by adults in their home should be revisited. However, as it stands dagga is still an illegal drug and one cannot legally deal in or use it in the public domain.
- Dagga is a plant that resembles tobacco. It has leaves shaped like a five-pointed star, which are smoked. The psychoactive substance in dagga is delta-9-tetrahydrocannabinol (THC). The dagga (cannabis or marijuana) leaves are mixed with the flowering tops of the plant to increase its potency. Cannabis or hashish oil is an extract prepared from the tops of the plant as well as the resin, and is very potent.
- Cigarette smoking usually precedes the smoking of dagga. Most dagga users have experimented with other drugs or use dagga in conjunction with one. Mandrax is especially popular as a combination drug, a practice followed mainly in South Africa and known as the white pipe phenomenon (witpypverskynse[). Otherwise, dagga is smoked in its pure form or mixed with tobacco. It can also be mixed with batter and eaten as a biscuit or cake, or it can be used like tea leaves (infused) and then drunk.
- Dagga is dangerous because it contains more tar and carcinogenic (cancer-causing) agents than cigarettes. In the long run, the smoking of dagga causes bronchitis and other disorders that affect the respiratory system. It also increases the user's chances of getting lung cancer. When a person stops using dagga, the body needs 30 days to clear itself of the THC stored in the body cells (Bezuidenhout 2002: 11).

Heroin

- The street names of this drug include horse, H, herries and smack.
- Its use is spreading rapidly among the school-going population. It is used as a recreational drug for the intense euphoria it produces; however, this often disappears with increased tolerance.
- Heroin can be injected, sniffed or smoked. Some users mix it with cocaine in a so-called speedball or snowball, which is usually injected intravenously, although it can be smoked or dissolved in water and snorted. This causes a more intense rush than heroin alone, but is more dangerous because the combination of the short-acting stimulant with the longer-acting depressant increases the risk of overdosing on one or both drugs.
- Heroin is highly addictive. Addiction develops within two to three weeks, and is probably the most difficult to quit of all the addictions to illegal drugs. The effects include initial feelings of intense pleasure and a dulling of pain, flushing of the skin, a dry mouth, nausea, vomiting and severe itching (Kempen, 2015: 13).
- The death rate among heroin addicts is 20 times higher than that among other drug addicts who do not use heroin.

Ecstasy or MDMA (methylenedioxymethamphetamine)

- Street names for MDMA include ecstasy, Adam (the rearrangement of the letters MDMA), XTC, hug, beans, E, liquid X, disco biscuits, love drug, clarity, hug drug, blue kisses, lover's speed, Mercedes and white dove.
- The sought-after effect, which is usually felt within 30—60 minutes after ingestion and lasts up to 24 hours, is a feeling of emotional

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closeness to others as well as increased physical and emotional energy, loss of inhibition, increased vital signs including heart rate, body temperature and blood pressure. decreased appetite and sexual feelings.

- MDMA is frequently used at so-called rave parties. It is a synthetic, psychoactive drug, chemically similar to the stimulant methamphetamine and the hallucinogen mescaline.

- Side effects of ecstasy use can be depression in the short term. and brain and liver

damage in the long term. It is regarded as one of the most impure drugs on the market because the composition of an ecstasy tablet can vary from pure MDMA to MDMA mixed with ISD, caffeine, ephedrine, antihistamine, paracetamol, cold powders, morphine, heroin, strychnine, ketamine and methadone (a synthetic replacement for heroin). Ecstasy is not the "safe" social drug as is generally thought. On the contrary, it is a powerful stimulant that can cause chronic dehydration, over-hydration, serious exhaustion and "gloomy Tuesdays" the week after. Furthermore, it can cause the user's main blood supply to significant organs and systems to malfunction, resulting in an abnormal heart rate ("flutters"). In addition, it is highly addictive, and tolerance is very quickly established (Bezuidenhout 2002: 9; Kempen, 2015: 13).

3.2.5.3 New drugs on the market

New drugs on the market include tik, nyaope, whoonga and krokodil. Methamphetamine, otherwise known as tik, is part of the amphetamine group of drugs — potent as well as easy to make, and first identified in Cape Town in 2002. It also impacts on dopamine levels (see Cocaine) by overexciting the central nervous system. As it is relatively cheap, (between R30 and R40 per straw), it is one of the most popular drugs used by the youth on the Cape Flats (Health24 2010).

Nyaope is unique to South Africa. It originated in 2006 in the Pretoria townships of Soshanguve, Atteridgeville and Marnelodi, and has spread to other provinces. In Durban it is known as "sugars", in the Western Cape as "ungah", in Mpumalanga as "pinch" and in Johannesburg as "kataza". As with tik, this drug is also cheap, and sells between R35 and R40 per straw. It is also sold in plastic bank money bags for anything between R20—R25 per bag, and users can roll two "zols" from one money bag of drugs. Nyaope is a mix of dagga and heroin, but is also sometimes mixed with bicarbonate of soda, pool cleaner, Vim (a household cleaner) and even rat poison (Health24 2014; McCloy 2011). The drug is usually rolled in a Rizla cigarette paper and smoked like a "zol". The Mamelodi branch of the South African National Council on Alcoholism and Drug Dependence (SANCA) has a record Of one user smoking the contents of up to 14 plastic money bags per day. Nyaope users tend to be impulsive, and will get into habitual thieving behaviour to support their addiction. It also causes unusual shortness of breath, compulsive eating, persistent coughing and aggression, and blisters are usually visible around the mouth (Van den Berg 2012: 1). New amendments to the Drugs and Drug Trafficking Act 140 of 1992 make provision for the prosecution of the use and possession of nyaope. Both heroin and dagga, as the main components of nyaope, are listed as "undesirable dependence-producing substances" in the new amended Act (Department of Justice and Constitutional Development, n.d.). A recent trend among nyaope users is the so-called "bluetooth" (named after the technology that connects different electronic devices) where users exchange blood through a syringe to share the high (and ultimately the cost of buying the drug). This trend increases the risk of contracting and transferring HIV, hepatitis C and other blood diseases (Tshipe, 2017a; Tshipe, 2017b).

A variation of nyaope is whoonga, which has been available in the townships of KwaZulu-Natal since 2010. The word "whoonga" is derived from the Zulu word "wukeka" describing the

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severe stomach cramps addicts experience when they withdraw from this drug. Whoonga is also a mixture of dagga and heroin, but also contains antiretroviral (ARV) medication, which causes the severe stomach cramps. This drug costs R20 for a twist of the powder, and the effect lasts a day. The users will crush the ARV tablets and mix them with dagga, heroin and rat poison, which is then smoked. It has been reported that whoonga addicts will wait for patients at clinics and rob them Of their ARV medication, steal it from clinics and even attempt to contract the HIV virus so that they can get it free (Cullinan 2011; McCloy 2011).

Krokodil first appeared in Russia in 2002 and is now widely used in South Africa. The medical name for the drug is desomorphine (opiate) and the substances in this drug include crushed codeine tablets mixed with paint thinner, iodine, petrol, red phosphorous and hydrochloric acid. The liquid is injected into a vein, and users of this drug say that it has the same effects as heroin but at a much

cheaper price — about a tenth of that of heroin. If the addict misses a vein and the drug is injected into flesh, abscesses may develop and eventually gangrene may set in. Other side effects are ruptured blood vessels, burning or swelling of the veins, rotten teeth falling out, brain damage as well as liver and kidney damage. This drug is named after the crocodile because of the green, scaly and bumpy appearance an addict's skin takes on after repeat injections (Health24 2015; Krokodil n.d.; Krokodil (Desomorphine) turns people into "zombies", 2015).

An emerging trend among young schoolchildren involved in sport is the use of performance-enhancing substances CFS). In a study involving 100 young male athletes between the ages of 15 and 18 years in 1st and 2nd team high-school sport in Gauteng, 30 indicated that they use PES regularly, 4% use steroids, 5% use growth hormone, 4% use ephedrine and 2% use insulin to enhance performance. It is suggested that schools implement educational and behaviour change programmes to reduce the use of these substances in school sport (Department of Basic Education 2013: 5, 7). In addition, the pressure from parents, teachers and coaches on young children to perform should also be considered as a factor in the use of performance-enhancing substances.

Drugs can be obtained anywhere in South Africa. They are portable and easily concealed, and can be delivered to a person's home, thus drug-using children do not even have to go out to obtain them. Schools are commonly used as supply points (Daniels 2007).

The first comprehensive survey of youth drug use in South Africa was conducted by the staff of the University of South Africa's Department of Criminology during August 2000. The project included 2 281 learners from grades 7, 10 and 11 in the Pretoria school district. More than a third of the research participants (34%) were 15—16 years old. The following are some of the findings (Neser et al. 2001: 131—133):

- More than 33% of the respondents indicated that they could buy dagga within an hour.
- About 25% said they could obtain LSD, ecstasy, cocaine or heroin within one day.
- About 33% admitted to having smoked dagga (24% of them were under the age of 12).
- Around 25% indicated that they had inhaled glue, petrol or thinners fumes; 27% had swallowed, eaten or taken Mandrax, ecstasy, LSD and other hard-core drugs; while 22% had smoked crack, cocaine or Mandrax.

A study by Matthews (2004: iii) conducted among post-sentenced juveniles under the age of 21 found that dagga and Mandrax consumption was most popular among youths aged between 15 and 16. The use of softer drugs usually creates a gateway to the use of hard drugs. According to Bartollas (2003: 326), this process may be considered a continuum that begins with experimental use, proceeds to culturally endorsed use, and goes on to recreational use, eventually becoming compulsive use when the user becomes dysfunctional and his or her life revolves around obtaining, maintaining and using a supply of drugs.

This raises the following question: what can be done to reduce drug use among youths? A South African initiative known as the "Ke Moja — No thanks, I'm fine" drug awareness campaign was launched on 26 June 2002 in Gauteng. The aim of this campaign was twofold:

- Reduction of drug abuse and trafficking
- Curbing the spread of HIV/AIDS through needle sharing (Koch 2002: 53)

As a result of the success of the Ke Moja campaign, the Ke Moja Hip Hop Anti-Drug campaign was launched in 2008. This is an extension of the original campaign but also incorporates gymnastics, dance and fitness in addressing substance abuse. This campaign also provides ex-users with the opportunity to tell their stories of addiction and subsequent criminal behaviour and to ask forgiveness from the community (Swanson-Jacobs 2008).

There are several other NGOs and police anti-drug-use campaigns such as the Anti-Substance Abuse Social Movement, the National Youth Development Agency (NYDA) anti-drug awareness campaign and SANCA (SA National Council on Alcoholism and Drug Dependence). Students from universities or other tertiary institutions may consider undertaking community projects that focus on the prevention of drug abuse, a social ill which is of

grave concern in South Africa with intensified efforts needed to address it. More and more drug and alcohol recovery centres have been established in South Africa because of the high rate of dependency among young people and adults. Examples of such centres are Viewpoint Recovery Centre, Crossroads Recovery Centre, Tranquility House and Stabilis Treatment Center.

3.2.6 Other categories of youth offences

These include gangsterism, hate crimes, youth homicide and train surfing.

3.2.6.1 Gangsterism

The forming of groups by juveniles is a natural phenomenon that generally has a positive effect on their socialisation. Although it is posSible that juveniles who associate within a normal group context could easily be influenced to become involved in misbehaviour as a result of their being together and the influence exerted by the group, this misbehaviour is usually of a less serious nature, and frequently regarded as mischief or naughtiness. However, group formation (also known as play groups) may in some instances be the forerunner Of antisocial group formation that eventually leads to the formation of a criminal juvenile gang (Bezuidenhout 2002: 1). Schools are often chosen as sites for gang activity, particularly in the Western Cape, and males starting high school are often primary targets for gang recruiting. Gangs are disruptive in schools for three reasons: gang members conduct their business on school property; members demand payment from non-gang members in exchange for safety from gang violence; and they may force schools to close with threats or acts of vandalism and violence against staff and/or learners (Gevers & Flisher 2012: 179-180).

According to Leggett (2004: 24), when youths in urban areas spend a lot of time on the street, the group becomes a kind of surrogate family, but with a different set of norms. When the norms of the street become more important than those of the home, the setting for gang formation arises. The street group is seen as an alternative group with specific

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norms, and becomes a subculture. Stable and settled populations feed this phenomenon, and Leggett found that among the coloured community on the Cape Flats, long-term residence may lead local youth to identify with "turf" (the local area). Gangs usually want to dominate their turf and because they are confined to the area, members may pick on local victims. However, the face-to-face familiarity of stable neighbourhoods can deter gangs from selecting immediate locals as victims, with the result that the broader community becomes fragmented into factions, groups or gangs. Each group is usually protective of its turf or domain and aggressive towards anyone who wants to enter it.

There are various risk factors that increase youths' likelihood of joining a gang (Cooper & Ward 2012: 244):

- The use or selling of drugs
- Aggressive behaviour
- Attention and learning problems
- Antisocial belief system
- The struggle to resist peer pressure toward antisocial and criminal behaviour
- Violent parents or criminal siblings
- Poor attachment to parents and the school
- A need for independence and a sense of belonging

Although most gang members are male, female gangs are under-researched both in South Africa and internationally. However, limited South African research indicates that girls and young women are involved with gangs and male gang members, and may also be gang members themselves. Women in gangs fall into three traditional roles (Cooper & Ward 2012: 247):

- Victims of coercion by male gang members
- Girlfriends who enjoy the status provided by their gang-member boyfriend
- Men's property

They are aged anywhere from 12—20 years old and form groups such as the Vura Babes or the Vato Babes. They are directly linked to the male gangs, and play the role of girlfriend snitches or hiding contraband and weapons for the gangs. As

soon as these girls belong to a certain gang, they become part of its territory. Rival gangs may attack them to take revenge. In most cases, the girls are vulnerable if the male gang members are not around to protect them (Sefali 2014).

3.2.6.2 Hate crimes

In South Africa, hate or bias crimes are described in the Prevention and Combating of Hate Crimes and Hate Speech Bill (2016: 6) as an offence by a person that is motivated on the basis of that person's prejudice, bias or intolerance towards a victim because of one or more of the following characteristics or perceived characteristics of the victim: race, gender, sex (including intersex), ethnic or social origin, colour, sexual orientation, religion, belief, culture, language, birth, disability, HIV status, nationality, gender identity, albinism as well as occupation or trade. Hate crimes can be divided into two major types, namely crimes against property (e.g. robbery, burglary, arson, vandalism, etc.) and crimes against the person (e.g. murder, assault, rape, intimidation, etc.) (Bartol & Bartol 2011: 17).

Corrective rape, a phenomenon that has received attention in South Africa since 2000, can be considered a hate crime. This is defined as the "act of non-consensual sex, directed towards lesbian women and gay men by persons of the opposite sex with the aim of either punishing them or 'correcting' their sexual orientation" (Kinama 2011). In South Africa, black lesbian women are most at risk of becoming victims of this crime. If the above Bill is promulgated then corrective rape will be classified as a hate crime, which currently is not a distinct crime category.

Levin and McDevitt (1993) originally identified three categories of hate crime: thrill-seeking, reactive and mission hate crimes. In 2002 this was updated to include a fourth category, namely retaliatory hate crimes (Phillips 2009: 886).

Thrill-seeking hate crimes

Thrill-seeking hate crimes are typically perpetrated by groups of youths or young adults who, in return, gain the approval of their friends and are labelled as "cool". Such crimes are also committed to alleviate boredom and to seek excitement. The perpetrators deliberately seek out areas where the members of the group they want to victimise congregate. It has been suggested that in many thrillseeking groups the leader is the only one who really harbours hatred towards the victim. Many youths who participate in this type of hate crime would not engage in such acts on their own, but are manipulated and encouraged or goaded by the leader. Since the responsibility for criminal acts is shared by the group, an individual may take risks that he or she would otherwise find unacceptable. The randomness of thrill-seeking hate crimes makes it difficult for the police to apprehend the perpetrators, and therefore many go unpunished (Hall 2005: 84; Gerstenfeld 2011: 88; Levin & McDevitt 1993: 66).

According to Levin and McDevitt (1993: 70), the leading researchers on hate crimes, homosexuals are the most frequent targets for thrill-seeking young men. There are several reasons for this. Firstly, homosexuals meet in specific areas of major cities, making them easy to find. Secondly, homosexuals may threaten the male youths' developing sexual identity, hence these youths may attack them to prove their manhood and sexuality. Finally, homosexuals may be reluctant to report hate crimes to the police because they fear that their sexual orientation will be disclosed or that they will be discriminated against by members of the criminal justice system. Young "gay bashers" often have no criminal record and come from different lifestyles, backgrounds and social classes.

Reactive (defensive) hate crimes

The second type of hate crime was previously known as reactive crime, but has been renamed defensive crime. Whereas thrillseeking youths leave their areas to seek out victims, the perpetrators of reactive hate crimes do not have to leave their neighbourhood, school or workplace as the victimisation takes place in a local area, thus the offenders feel that their neighbourhood is being invaded by intruders or outsiders. The perpetrators are not necessarily associated with any organised hate group and they may not have any prior criminal record. The main aim of reactive hate crimes is to send a message to the intended victims and if there is no reaction to this warning, violence will be used to achieve a goal, for example to keep people of colour out

of a certain neighbourhood or prevent their getting a promotion. The offenders of defensive hate crimes do not have a criminal history and there is no record of their being involved in previous hate-related crimes (Hall 2005: 84; Gerstenfeld 2011: 89—90; Levin & McDevitt 1993: 75-77).

Mission hate crimes

This is the rarest of hate crimes and consists of an act carried out by an individual on a mission, namely to "rid the world of evil" by disposing of the members of the target group. The perpetrator is often psychotic, meaning that he or she suffers from a severe mental illness that may cause hallucinations and an impaired ability to reason. In this delusional state, the perpetrator may think that the world is conspiring against him or her and that he or she must seek revenge. The mission is Often suicidal in that after the perpetrator has eliminated the source of frustration he or she commits suicide (Hall 2005; Gerstenfeld 2011: 90).

Retaliatory hate crimes

This type of hate crime is sparked by "a desire to avenge a perceived degradation or assault on their group" (Phillips 2009: 887). There is a tendency that the offender will act alone and will travel to the victim's territory in order to retaliate against a perceived crime that he believe the victim or the victim's social group has committed (Chakraborti & Garland 2015: 104; Phillips 2009: 887-888). The offender(s) will therefore act in response to a hate crime against themselves or an individual in the group to which the offender belongs. Retaliatory hate crimes are committed after information or rumours, whether they are accurate or not, are circulated about a hate crime against the offender's group.

3.2.6.3 Youth homicide

In South Africa, homicide is the leading cause of death among male youths between the ages of 15 and 21. However, youths are not only the main victims of homicide, and are frequently also the perpetrators (Gun Free South Africa 2007).

There are several explanations for the involvement of youths in homicide and, according to Fox and Levin (2001: 75), the crack cocaine drug market is one. Since the demand for crack cocaine is so overwhelming, distributors have to recruit youth street merchants, who are generally willing to take the risks involved in dealing for some easy money and free drugs. There is also the perception that if caught and arrested by the police, the court officials may treat them more leniently. Because of the violence associated with the drug market, young dealers often carry firearms, which offer protection from buyers as well as from other dealers.

Another explanation for youth homicide is the role of group dynamics. It has been stated that youths are more likely to commit homicide with the help of accomplices or gang members, probably due to peer pressure and encouragement from group members. Without this support and help they would avoid such behaviour (Fox & Levin 2001: 77—78).

Probably the main explanation for youth homicide is the availability of firearms. This, together with poverty, substance abuse, family pathology and the impulsiveness of youths, contributes to firearms being used for crime, for settling arguments, for protecting oneself against bullies and in gang warfare. Accordingly, firearm violence occurs most frequently between the ages of 15 and 24, but deCreases between the ages of 21 and 24 (Gun Free South Africa 2007).

In general, South African youths have become desensitised and are increasingly becoming involved in brutal fights and homicides. A very high percentage of youths are desperate to find work and an income after leaving school. The lack of opportunities for schooled and non-schooled youths acts as a catalyst for them to embark on a journey of brutality that usually ends in homicide or the severe assault of a victim. The following factors are deemed key in causing the high homicide rates among youths:

- The great availability of guns
- The illegal drug market
- Increasing racial discrimination
- Great exposure to violence

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- Increasing economic inequality (Brown, Esbensen & Geis 2007: 457—458)

Train surfing thrills bored youngsters

3

The above factors are interrelated and have a cumulative impact in a country with a high homicide rate like South Africa.

Some of the emerging trends in youth crimes in South Africa are train surfing and the so-called izikhothane practice, which are discussed below.

3.2.6.4 Train surfing

Train surfing, "staff riding" or "Spiderman" is a popular adrenaline-boosting practice among teenagers worldwide. Train surfing was made popular in the 1980s in Germany where it is known as S-Bahn surfing. It is also practised in other countries such as the UK, Denmark, Brazil, Russia and Australia. It is known as tube surfing in the UK as the youths usually surf trains in the underground rail tunnels (Carrington 2014; Damane 2015).

Train surfing is an illegal activity that involves getting on to the roof of a moving train and riding on it like a surfer would ride a surfboard in the sea, avoiding contact with 3 000-volt overhead cables. Train surfers in South Africa are usually young black township males between the ages of 15 and 25 years, they are unemployed and come from traumatic family situations where many have lost one or both parents to AIDS or drugs. The township slang used to describe some of the train surfers' moves are bhegos, which is a backwards-running move; isipharaphara, where the surfers hop in and out of a moving train by clinging to the hand rails and doors; the matrix, which is performed on the roof of the moving train and involves bending backwards to avoid deadly overhead electric cables; the gravel, which entails holding onto a handrail and jumping out of the train with their feet touching the gravel next to the track, which bounces them back into the train or allows them to slide alongside it; and the tsho dlozi, which is swinging outside a moving train with the doors closed and holding on to the train's roof edge. Their main aim is to show off to their peers or to a supporting audience of girls. The best surfers are seen as heroes and are usually encouraged by screaming girls who act as cheerleaders. In some cases, alcohol is consumed as part of the preparation for trajn surfing. Although the youths see it as a challenging sport, the danger cannot be emphasised enough. Many youths have been killed or maimed during a surfing event (Bezuidenhout 2007; Carrington 2014; Damane 2015).

According to Mbongwa (2006: 5), "teenagers have been doing it for years, but despite the obvious dangers, train-surfing remains a popular dare". Although children are being electrocuted and killed, maimed and deformed by the injuries they sustain (e.g. their legs or arms are ripped off), the "sport" is gaining popularity (Damane 2015).

The following case study highlights the problem of train surfing in South Africa and gives one a look into the world of a typical train surfer.

Tshepiso Ntohla, .aka Mzembe, is 18 years old — and he loves surfing the Soweto trains. He knows it's dangerous but the thrill keeps drawing him back to perform perilous stunts on moving trains to the cheers of his peers. Sporting a fancy cap and occasionally sipping a beer, Ntohla says he began surfing trains, or ukudlala istaff, when he was very young, He started with the most common surfing stunt, which involves jumping off a moving train and jumping back on board again. "No-one taught me to surf. I just observed what some of the bigger boys were doing and copied. But I started serious surfing in 2000 when I began doing daring stunts, " he says, throwing a pompous glance at his fellow practitioners, 24-year-old Nkosinami Mazibuko and Zanele Masinda.

There are different ways of surfing the train besides jumping on and off, says Ntohla. The most dangerous is hanging precariously from the bottom of a moving train with the steel wheels and the rails only a few centimetres away. Another suicidal stunt involves climbing on to the roofs of coaches

and dodging high-voltage cables, pylons and bridges. "l love doing the viva la raza, standing on top and shaking my shoulders like Eddie Guerrero, the wrestler, and watching cables and pylons zip past my face at a break-neck speed," he boasts. But it's a dangerous past-time and several youngsters have died while train surfing. Ntohla replies: "Yes, it is dangerous, and sometimes I have felt a choking fear grip me, especially when I am surfing under the train. But there is no space for fear in this game and one has to shrug the feeling off."

A scar runs from Ntohla's right eye to the centre of his forehead, telling the tale of an accident some months back when he was surfing a train from Naledi to Johannesburg. He displays it with pride, saying the incident did not dent his passion. "l do it for my pride, for the girls and for fun. Sometimes girls cheer us on and tell us they will come and eat salads at our funerals. But I am not scared of death A few months back during the security guards' strike, a boy living three houses away died surfing a train. He was young and inexperienced. His name was Lwazi but his death has not deterred us even a little bit." At Lwazi's funeral, his fellow surfers performed stunts on top of the buses carrying mourners to Avalon Cemetery in Soweto as a farewell gesture.

The surfers' favourite train is Number 9323. "It is convenient to surf this train because it is always moving fast with very few delays and it is always packed," says Ntohla, who adds that the pasttime originated in Mzimhlophe, a township in Soweto. And the "stars" have given themselves fancy nicknames, like Bitch Nigga, Bin Laden, Mrider and Sisqo. There are also two kinds of surfers, the "cheeseboys" and the "mvonqas". "The cheeseboys surfforfun while the mvonqas surf to get away from the guards after stealing bags or cellphones from commuters. I am a cheeseboy," Ntohla says smugly. Sometimes surfers are caught by the security guards, who beat them up. "Sometimes they make us do gym exercises." During the recent security guards' strike, three young men died and many more were injured. Trains were left unguarded and surfers grabbed the opportunity to up their game. Dimi Raphoto from Cinga Productions also saw an opportunity and produced a documentary about the lives of these daredevils.

Using a small camera, she captured some outstanding images of these teenagers dicing with death for the SABC3 television actuality programme, Special Assignment. [They] called [that episode] Soweto Surfing. "This is a new phenomenon that is growing by the day in Johannesburg," Raphoto says. "It's dangerous, senseless and is killing many kids." It took her two months to do the research necessary for her documentary, and a further two months to film the youngsters performing their stunts. "We interviewed the boys, their parents, principals, girlfriends and relatives. But what struck me was their background. They don't have swimming pools in their homes, they don't have any places of entertainment and this is their way of entertaining themselves." Lwazi died during the filming of the documentary and Raphoto says this should have been the turning point for the teenage surfers. "But Lwazi's death seemed to spur them on." Ntohla Stars in the documentary and says one day he is going to stop his dangerous hobby. "But notin the near future," he adds, fingering the scar on his face.

Source: Dlamini (2006)

326.5 Izikhothane (the lickers)

The izikhothane is a youth subculture in contemporary South Africa, the practice of which is to burn money, destroy expensive clothing and shoes, and pour bottles of expensive alcohol on the ground. This subculture gained notoriety in 2012, and emerged in the townships of Soweto and Diepsloot in Johannesburg and spread to other townships in Gauteng and the Eastern Cape. The term izikhothane is derived from an IsiZulu word and translates to "those who lick", "licking the snake" or "to lick each other". It refers either to the licking of the fingers to peel through money or being drenched in Ultra Mel, a brand of custard considered a luxurious dessert in black townships. The izikhothane are black middle-class youth between the ages of 12 and 25 years who are known for wearing wildly coloured branded clothes and engaging in "pantsula" (dance) battles. During these battles the youth go through extreme measures to show who is the wealthiest and it is not uncommon for them to break their mobile phones in public. The more expensive the phone, the more they are respected by their peers. Others destroy their clothes by burning or tearing them, and waste food by throwing it at each other or on the ground. These battles between different crews (groups) usually take place on a Friday or Saturday in public spaces. To become part of a crew the youth must purchase, wear and destroy expensive clothes. The member of the crew that destroys the most expensive item of clothing is declared the winner, and the individual as well as the crew earns respect. Achieving respect is important for these young men, who may lack access to tertiary education, social services and living in communities that experience violence on a daily basis. For them "respect becomes power and wealth in the face of powerlessness and poverty". There are a number Of other reasons for the battles to occur, such as to impress girls, to claim a certain territory or simply to have fun (Howell & Vincent 2014: 60, 65, 72; France24 2013; Mchunu, 2016: 5-6; Mnisi, 2015: 341).

Although the izikhothane claim to be nonviolent and deny that they are participating in any illegal activity, the burning of money in public or private is a criminal offence according to section 34(F) of the South African Reserve Bank Act 90 of 1989 (Bambalele, 2012). One can also argue that in order to maintain this lifestyle, some of the youth may commit crime to obtain money to buy branded clothing and expensive liquor. It is not uncommon for some to shoplift in an effort to obtain expensive clothes and items for the next izikhothane assembly. According to Mnisi (2015: 344—345), the izikhothane have aspirations of a better life — they want to escape poverty and conditions of deprivation, and ultimately want to be successful. These aspirations are apparent in the branded clothing and shoes, vehicles and food they consider to have high social status. For example, in a survey those that took part in the study voted luxury vehicles such as BMW, Mercedes Benz and Audi as the best vehicles to own. Regarding clothing and shoes, the izikhothane prefer brand names such a Nike, Adidas, Versace, Guess, Louis Vuitton and Carvela. According to the youth, Carvela shoes are the most highly prized in any battle and the first to be destroyed, usually by burning them or drinking alcohol out of them. For them the best fast-food places are McDonald's, KFC and Debonair's, and they voted Ultra Mel as the best dairy product. The izikhothane claim that the wearing of expensive clothes and eating or destroying expensive food makes them feel rich and gives them the appearance of being wealthy. According to them, this reflects a person who is worthy of attention and respect (Howell & Vincent 2014: 67; Mnisi 2015: 349).

If we have to explain this phenomenon in criminology terms, it would be fitting to describe it in terms of reaction formation. This is a type of defence mechanism in which a person acts in exactly the opposite manner to his or her own troubling or socially unacceptable thoughts, emotions and often social struggles. The mechanism time and again develops unconsciously and appears extravagant, perhaps in an effort to overcompensate for poor living standards, search for recognition and repress the repulsion they have about their own thoughts. They therefore do exactly the opposite of what they crave. By using reaction formation, their self-identity, true motives and desires remains safe and sound namely to be affluent, successful and recognjsed, and to live in a sought-after neighbourhood.

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3.2.7 The chronic juvenile offender

Since the 1970s, researchers have been concerned with what they term the chronic

juvenile offender. This refers to a small number of youth offenders who commit a significant percentage of all serious crimes, with many growing up to become chronic adult criminals. It has been postulated that chronic offenders begin their career at an early age (i.e. under 10 years old, referred to as "early onset"), have serious and frequent clashes with the law, and are excessively violent and destructive (Bartollas & Schmalleger 2011: 48; Siegel & Welsh 2011: 46).

One of the most surprising aspects is the indication that chronic juvenile misbehaviour can be predicted. According to Blumstein (cited in Bartollas & Schmalleger 2011: 49), seven factors distinguish chronic offenders from other offenders:

- They will be convicted of a crime before the age of 13 years.
- They come from a family with a low income. • They are rated as troublesome by teachers from the age of 8—10 years.
- They show poor public school performance by the age of 10 years.
- They have a low non-verbal IQ.
- They have a convicted sibling.
- They show psychomotor clumsiness (i.e. below-average problem-solving skills).

It has been suggested that there is an 80% chance of chronic juvenile offenders growing up to become chronic adult criminals, and a 50% chance of such offenders being arrested four or more times as adults. Juveniles who begin their criminal career with serious offences, or who quickly increase the severity of their offences, are most likely to become adult criminals. Severity rather than the frequency of offending has the greatest impact on the likelihood of later adult criminality (Siegel & Welsh 2011: 47).

A South African example of a chronic juvenile offender is that of Shaheed (not his real name). At the age of 13 he raped a 16-year-old girl near his home on the Cape Flats. Within a few weeks, he killed a person and was convicted of culpable homicide. For this crime he was sent to a reform school, from which he escaped. Then he raped another woman and mugged a man.

At the age of 15, he raped an 18-year-old woman and tried to sodomise a man he had robbed at an automatic teller machine. He was arrested and sent to await trial in Pollsmoor Prison. On 8 May 1995, all awaiting-trial prisoners under 18 years of age were transferred to so-called places of safety and again Shaheed escaped and raped a 17-year-old virgin. In June 1995, the then 16-year-old Shaheed was arrested again and appeared in the Wynberg Regional Court. On 7 May 1996 the magistrate found him guilty of rape, robbery and attempted sodomy, and he was sentenced to 30 years in prison (Farrell 1997: 11).

From this case study it is clear that Shaheed may be considered a chronic juvenile offender since he started his criminal career at an early age (13 years), he had regular run-ins with the law (he was arrested for three known crimes), and his offences can be classed as violent and destructive (they include rape, sodomy, culpable homicide and robbery). Please note that only a small percentage of juveniles become serious repetitive chronic offenders. In addition, they tend to be involved in a wide variety of offences and do not specialise in one type of crime. Incorrigible behaviour often commences at a young age and the more serious the behaviour, the earlier in the chronic offender's life this pattern appears. Bartol and Bartol (2017: 170) warn in this regard that long-term incarceration of serious chronic young offenders is not always the answer to rehabilitating them. Some scholars even believe that adolescents who have committed serious offences are not necessarily on a pathway to become serious chronic adult offenders. Young chronic offenders can benefit from intensive intervention in society rather than long prison sentences. The suggestion is to use short-term incarceration with intensive sustainable intervention during and after incarceration — in cases that warrant incarceration.

3.3 THE EXTENT OF CHILD AND YOUTH MISBEHAVIOUR IN SOUTH AFRICA

To determine the extent of criminal behaviour in South Africa, two sources can be used: official and unofficial crime information sources. The

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official statistics are those compiled by the SAPS, the Department of Justice and the Department of Correctional Services. Information from the different categories of official statistics is then collected and recorded by StatsSA, which is a government department. Unofficial sources refer to victim surveys and self-reported studies (Balgobind Singh 2011: 95—96).

3.3.1 Official crime information sources

The SAPS is the first of the four official crime information sources. Statistics from this source indicate how many crimes are reported, how many persons are arrested and how many are charged with a crime. A separate official tally is not kept of juvenile offences.

The Department of Justice and Constitutional Development provides information on how many persons are prosecuted in court, how many are found guilty or not guilty, as well as the number sentenced to imprisonment. All cases involving child offenders will be dealt with in the child justice court, which is at lower-court (district) level. The Child Justice Act 75 of 2008 proposes that the courtroom should, where possible, be located and designed in a way that is conducive to the dignity and wellbeing of children, the informality of the proceedings, and the participation of all persons involved in the proceedings.

Before a child can be found guilty by a child juvenile court, the age of criminal responsibility has to be determined. According to the law, a child under the age of 10 is presumed to lack criminal capacity and therefore cannot be prosecuted, thus in South Africa no child under the age of 10 can serve a term of imprisonment, but this is not to say that children of this age do not commit illegal acts. In this regard, one needs to consider criminal capacity and should distinguish it from criminal responsibility. Children older than 10 but below the age of 14 years are also presumed to lack criminal capacity. This, however, can be rebutted if it can be established that the child can distinguish between right and wrong. Children above 14 but under the age of 18 years are presumed to have criminal capacity. After a person turns 18 years of age, he or she is treated as an adult (Child Justice Act 2008). (In addition, see chapters Il and 12.).

The Child Justice Act 75 of 2008 clearly stipulates that no child under the age of 14 may be detained as an awaiting-trial inmate in a correctional centre. Children between 10 and 14 years of age should be detained at a child or youth care centre. Only children who have committed Schedule 3 offences (such as rape, murder, armed robbery, theft of a motor vehicle, sexual assault and dealing in drugs) can be considered for detention in a prison. Schedule 1 and 2 child offenders can therefore not be incarcerated unless the presiding officer finds "substantial and compelling reasons, including serious previous convictions against the child" (Ballard 2011: l). The total number of children (younger than the age of 18 years) sentenced to imprisonment during the period 2015—2016 was 187 (183 male; three female) (Department of Correctional Services, 2015/2016: 32).

The statistics from the Department of Correctional Services (DCS) consist of the number of persons sentenced to imprisonment (Balgobind Singh 2011: 109). It is important to note that the DCS classifies young persons according to three age categories, namely children (<18 years), juveniles (18—21 years) and youth (22—24 years). The DCS incarcerated 4 126 juveniles (4 023 male; 103 female) between 2015 and 2016 (Department of Correctional Services 2016: 32). According to the annual report of the Judicial Inspectorate for Correctional Services (JICS) (2014/2015: 48), 24 656 youth were incarcerated during 2014—2015, of which 819 (3%) were serving a life sentence. The DCS has established separate facilities for youths incarcerated in order to enhance their education, rehabilitate them and help them develop into law-abiding citizens. Some of the youth correctional centres per region are as follows (Department of Correctional Services n.d.):

- Western Cape: Drakenstein
- KwaZulu Natal: Durban
- Free State and the Northern Cape: Groenpunt
- Mpumalanga, Limpopo and North West: Rustenburg
- Gauteng: Emthonjeni, Boksburg, Leeuwkop and Johannesburg

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StatsSA is a government department that collects and records all the different categories of official statistics in South Africa. From these it is clear that South Africa is experiencing unprecedented levels of arrest and conviction among children and youths. Even more disturbing is the large number of children and youths who are locked up in police and prison cells awaiting trial. Here they are exposed to overcrowding, robbery, indecent assault, prison gang violence and corruption. The conditions in the prisons for convicted offenders are no better and, where possible, children and juveniles should be diverted from the criminal justice system.

3.3.2 Unofficial crime information sources

In describing, analysing and explaining crime, criminologists sometimes have to depend on the unofficial sources of crime statistics, hence they consult self-reported studies, victim surveys, biographies and observation studies.

Two of these unofficial sources, namely victim surveys and self-reported studies, will be discussed briefly. The information obtained from unreported crimes is also important since official sources do not always reflect the full extent of crimes committed. Victim surveys are designed to include members of society who have indicated that they have been victims of crime. An example is the Victims of Crime Survey (VOCS) 2015/2016, which was a countrywide household survey conducted by StatsSA with three objectives:

- To gain household and victims' perspective of the nature and extent of crime in South Africa
- To provide additional data on the level of crime in South Africa
- To ascertain perceptions of the effectiveness of the SAPS, prosecutors, courts and correctional services in the prevention of crime and victimisation

Some Of the key findings from the VOCS focused on issues pertaining to public perceptions about crime and safety, views about criminals, crime levels in South Africa as well as perceptions about crime prevention and response to crime by law-enforcement agen-

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cies. Although victim surveys cannot replace police statistics, the results can be used to develop policies and crime prevention strategies (StatsSA 2011). For a full review of the report, see the following website: http://www. statssa.gov.za

In contrast, self-reported studies on, say, youth misbehaviour draw a sample from a specific community, for example all persons under the age Of 18. The respondents have to complete an anonymous questionnaire to indicate whether they have ever committed a crime and what type of crime it was. Both victim surveys and self-reported studies are important, since they cast light on the so-called dark figures of crime (Balgobind Singh 2011: 91).

The number of crimes reported to the police does not always reflect the true extent of the crime problem. Generally, the dark figure — in other words, the number of crimes unknown to the police — is considered to be high. A substantial percentage of people accused of perpetrating crime escape possible conviction at each phase of the criminal justice system. It is also true that a considerable number of alleged offenders are never detected — the so-called secret deviants. The inability to detect offenders contributes to the high dark figure of the true crime rates. It is becoming more and more evident that a large number of crimes go unreported and the perpetrators are thus never tried. This phenomenon is also known as the criminal justice funnel, the attrition rate of crime or the sieve effect (Bezuidenhout 2006: 62-63).

3.4 CONCLUSION

In conclusion, it must be stated that statistics are not necessarily an accurate reflection of the true crime situation in South Africa. Furthermore, the involvement of youth offenders in crime is not always computed clearly and separately from adult offenders, and therefore a correct estimate of their involvement cannot be made. However, in this chapter we have attempted to highlight the nature and extent of youth crime in South Africa. It is clear from this chapter that youths commit the same crimes as adults, but that they are also in the difficult position of having certain of their actions

deemed criminal which, if perpetrated by an adult, would not be so, namely status

offences. Furthermore, youths are always look- time and thus involve themselves in illegal ing for exciting new ways to spend their leisure behaviour such as train surfing and drug use.

CRITICAL QUESTIONS

1. Discuss critically whether you think status offences should be regarded as illegal behaviour in South Africa.
2. Discuss the youth sex offender.
3. Explain the nature of sibling abuse.
4. Critically discuss bullying in schools.
5. Define cyber bullying, and distinguish between the sexual and aggressive acts perpetrated via electronic devices.
6. Provide a brief overview of the types of drugs youths are likely to use.
7. Distinguish between the types of hate crime.
8. Discuss youth homicide in South Africa.
9. Critically discuss the train-surfing and izikhothane phenomena in South Africa.
10. Discuss the chronic juvenile offender.

I l. Distinguish between official and unofficial crime information sources,

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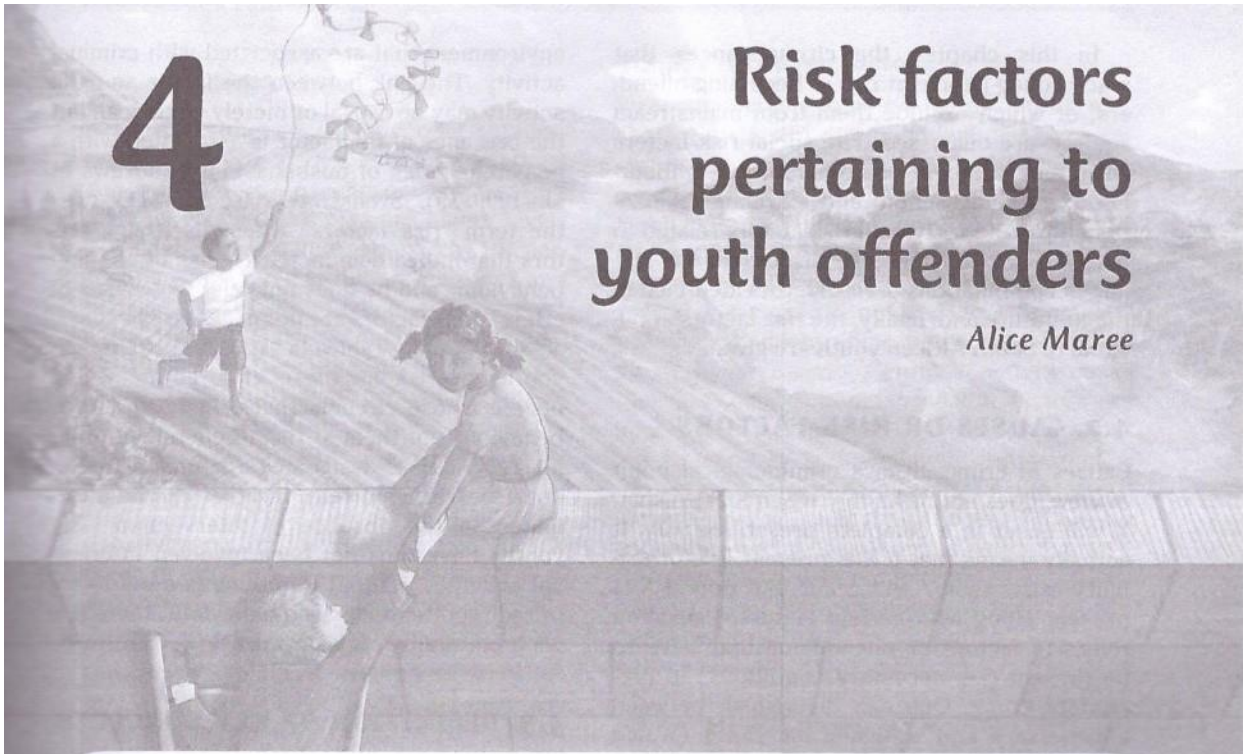
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4 Risk factors pertaining to youth offenders

Alice Maree

OBJECTIVES

You should be able to

- define the concept "risk factor"
- differentiate between "causes of crime" and "risk factors"
- distinguish between the different types of risk
- give an overview of the risk factors in the community, family, school and personality of the youth that promote criminal behaviour
- describe gang membership as a risk factor for youth offenders
- give an overview of risk factors applicable to the South African situation.

KEYWORDS

biographical variables
biosocial factors
community (macro-level) variables
crime risk factors
drug use and abuse
economic deprivation
family variables
gang membership
genetic factors
psychological factors
risk factors
school variables

4.1 INTRODUCTION

Social life can be reflected in two dimensions. On a personal (idiographic) level, the quality of human life involves life chances and life results — in other words, opportunities and outcomes. Paradoxically, people often make much of their lives in spite of poor opportunities, but the opposite is equally true. People who succeed against all odds and capitalise on whatever life offers them are usually those who make as much of their

lives as possible. On a collective (nomothetic) level, the quality of societal life refers to the happiness of its citizens, which includes how well society functions and maintains itself.

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In this chapter, the circumstances that place young people at risk of becoming offenders, or which exclude them from mainstream society, are discussed. The social risk factors with the variables of community/neighbourhood; parental, school and extrafamilial relationships; and individual risk factors related to personality/behaviour are discussed. An outline of combinations of risk factors identified in the literature and, finally, the risk factors applicable to South African youth are given.

4.2 CAUSES OR RISK FACTORS

Causes of crime, from a criminological point of view, does not mean that when X is present, Y will occur in a complete prescribed way. It actually means that if X is present, the probability exists that Y will occur, but only if X is present along with certain factors. Causation refers to factors or phenomena that have to be present (i.e. necessary conditions) to precipitate crime. One can distinguish between a necessary and a significant cause (Walsh 2014: 13). A necessary cause refers to a factor that must be present for criminal behaviour to occur, and in the absence of which criminal behaviour has never occurred. A significant cause, on the other hand, is a factor that is able to produce criminal behaviour without being amplified by some other factor.

For example, no force can be directly observed coming from poverty, economic inequality or deviant friends that drives a person to commit a crime. Conversely, no force can be observed coming from a well-developed superego, a stake in conformity, or a strong belief in the rules in society that restrains a person from committing a crime.

Binder, Geis and Bruce (2001: 69—70) agree that the precise meaning of "cause" remains complicated. "Cause" can be defined as something that brings about an effect or a result. For example, a person with criminal intent or a situation (such as a dysfunctional family) can bring about an action (criminal behaviour).

One of the themes in research and theory related to adolescent development involves the identification of risk and protective factors associated with normal and maladjusted development (Andrews, Bonta & Hoge 1990: 57). Crime-inducing or criminogenic risk factors are the variables within the individual or his or her

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environment that are associated with criminal activity. The link between the factor and the activity may be causal or merely statistical, but the presence of the factor is associated with a heightened risk of misbehaviour (Andrews et al. 1990: 59). Svensson (2002: 395-411) uses the term "risk factors" when discussing factors that indicate an increased risk of criminal behaviour, and he does not refer to "causes of crime". Risk factors are not necessarily causes.

Shaw and Tshiwula (2002: 1) refer to youths at risk as those children or young people whose circumstances, lifestyle and/or behaviour put them at risk of offending in the future. "At risk" designates a situation that is not necessarily current, but that can be anticipated in the absence of intervention. The youths have thus not been involved in criminal activities yet, but if nothing is done to try to redirect their lives and behaviour, there is a good possibility of this occurring in the future.

4.3 DEFINITION OF KEY CONCEPTS

4.3.1 Risk factors

A risk factor is a variable that predicts a high probability of offending (Walsh 2014: 150). Risk factors can therefore be regarded as those conditions that increase the likelihood that a child or young person will develop one or more behavioural problems in adolescence.

Different levels or categories of risk can be identified (McWhirter, McWhirter, McWhirter & McWhirter 2013: 8-11):

- Minimal risk. Youth generally at minimal risk for future trouble are those who attended good schools, who have loving and caring relationships, and whose families are of higher socioeconomic status. The term "no risk" cannot be used due to the complex ecology of stressors that young people face. All young people, no matter their circumstances, have to cope with death, family tension,

failure or unpredictable family factors such as bankruptcy, divorce or loss of home.

- Remote risk. Remote risk seems increasingly possible when markers of future problems appear. For example, demographic variables of low socioeconomic status, limited economic opportunity, lack of access to good education and gang membership are associated with greater dropout rates.
- High risk. Although dysfunctional families, poor schools, negative social interactions and numerous psychosocial stressors nudge a young person toward higher levels of risk, the final push is supplied by the person's own negative attitudes, emotions and behaviours. Characteristics that suggest a child is at "high risk" include, inter alia, aggression and conduct problems, impulsivity, anxiety, affective problems such as depression or bipolar disorder, and hopelessness, as well as deficits in social skills and coping behaviours. These characteristics both emerge from and enhance the negativity of the environment around the child. In other words, the causal pathway is dynamic.
- Imminent risk. Individual high-risk characteristics often find expression in participation in gateway behaviours. For example, a child's aggression toward other children and adults is a gateway to youth offending; the smoking of cigarettes is a gateway to alcohol and marijuana use, which can be a gateway to using harder drugs.
- At risk. The young person has passed beyond risk because he or she is already engaged in the problems or criminal activities discussed in the previous categories. For example, the young person who uses drugs can begin to abuse them and become addicted. This person can continue with violent crime during adult years.

4.3.2 Static risk factors

These represent variables or factors that are not amenable to change, or change only in one direction, for example age, a history of conduct disorders, large family size and ethnicity (Andrews et al. 1990: 50). The most robust static predictors of criminal recidivism are youthfulness, being male, the number of previous offences, age at first arrest, criminal versatility, poor parental supervision and earlyonset behavioural problems

such as lying, cheating or stealing (Blanchette & Brown 2006: 44; Andrews & Bonta 2010). These factors, although potentially potent predictors, are not open to treatment.

4.3.3 Protective factors

Protective and promotive factors represent characteristics of the individual or his or her circumstances that mediate or buffer the effects of the risk factors. These factors are associated with the concepts of resilience and desistance. They are helpful in explaining why some children who are exposed to multiple risk factors do not engage in antisocial behaviour and why some who appear to be on a path towards serious criminal activity cease their antisocial actions. Protective factors are important from the point of view of developing prevention and treatment programmes. Protective factors applicable to the youth include, among other things, being female, an appositive social orientation, a warm supportive relationship with parents and other adults, parents' positive evaluation of their child's peers, commitment to school, friends who engage in conventional behaviour, and a stable organised neighbourhood (Walsh 2014: 151). Blanchette and Brown (2006: 145) noted that a protective factor must be more than simply the absence of a risk factor, for example no substance-abuse problem.

The discussion that follows addresses several risk factors without categorising them according to the above description. The factors discussed are environmental or external factors as opposed to individual or internal ones.

4.4 RISK FACTORS ON A SOCIAL LEVEL

Risk factors on a social level can occur in the community, family, school and peer groups. These factors from the different variables do not

function independently but affect one another. No single risk factor is powerful enough to predict with certainty which youth will become violent or criminally involved. For example, one can argue that weakened communities with struggling households (families) produce schools that have a tenuous place in those communities and a limited capacity to prepare learners for participation in mainstream society or for establishing healthy extrafamilial relationships and personality types, thus contributing to an increased risk of youth coming into conflict with the law.

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4.4.1 Community or neighbourhood variables

The community/neighbourhood variables include risk factors on a macro (large) level: economic inequality and relative deprivation; unemployment; community disorganisation; the availability of substances (such as drugs and alcohol); and a climate of violence. These factors are illustrated by referring to research findings from South Africa and other countries, and the implications of the risks thus created for the youth are explained.

4.4.1.1 Economic inequality and relative deprivation

Economic strain and relative deprivation are universally accepted as factors contributing to crime. It is not poverty per se that does so, but how people experience their financial situation within their social environment. The majority of poor people do not commit crime, but those who feel deprived will often resort to it. Countries characterised by huge income disparities — as are most developing countries and those in transition, especially if these occur across racial or other social barriers — often have a high crime rate, for example the US, Australia and Africa, therefore high levels of crime are more prevalent in countries where there are large proportions of people who feel economically deprived. For example, while Australia may have a generally low level of poverty, it has a high degree of economic inequality (Daly & Lincoln 2006: 246). India's poverty levels remain higher than those in South Africa, but its inequality levels are much lower than those of Brazil and South Africa (Bhorat 2015). (Also see the challenges of youths in South Africa as highlighted in Chapter 2.)

The effect of income inequality in society will depend on the individual's relative income position. It is unlikely that an increase in inequality will induce the rich to commit crime. However, for the poor, an increase in inequality may be crime inducing, because such an increase implies a larger gap between the wages of the poor and those of the rich, thus reflecting a larger difference between income from criminal activities and that from legal activities. A rise in inequality may also have a crime-inducing effect by reducing the

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individual's moral threshold, therefore a rise in inequality will have a significant impact on (at least some) individuals' propensity to commit a crime.

In Dar es Salaam, the youths in a survey stated that people steal because of unemployment and poverty, and because life is difficult and it is hard to make ends meet, especially when relatives are not able to support them (Outwater, Mgaya, Msemo, Helgesson & Abraham 2015: 3). Unemployment and frustration, together with being disadvantaged, were the justifications given for committing most crimes. This finding is supported by the research findings of Wikström and Loeber (Walsh & Ellis 2007: 88) after they had studied the characteristics of 90 neighbourhoods in Pittsburgh, Pennsylvania. They concluded that boys at low risk for antisocial behaviour were mostly concentrated in the advantaged environments in comparison with those at high risk, who were mostly concentrated in the disadvantaged neighbourhoods.

Research results by Hoogeveen and Özler (2006: 87) showed that about 60% of all South Africans and about 66% of the African population were poor. An assessment of the poverty profile of South Africans on the income of the employed during the third quarter of 2016 indicates the monthly earning levels for the lowest 5% of all employees as R6 742 per month and the top 5% income as R18 104 per month (StatsSA 2017: 5).

4.4.1.2 Unemployment

There are unemployment problems in offender populations. Rapid urbanisation and economic recessions have resulted in a lack of employment opportunities and have caused many South Africans to fall into poverty. The youth unemployment rate in South Africa during the second quarter of 2017 was 55,90% (updated in June 2017 by Trading Economics 2017). In Spain and Greece, this has risen above 50%, and in the UK and US one in five youths is unemployed, one in four in Sweden, and one in three in Italy. In some Arab Gulf states, the rate runs over 90%.

Residential segregation may also have consequences that fuel social problems, and in turn contribute to lowered employment. When adults in a neighbourhood are themselves

unemployed, they cannot provide the role models of social and professional success with which youngsters can identify. Residential segregation also has a negative impact on social and work-related networks. Many jobs are found through personal contacts, but because semi- and unskilled workers, young adults and ethnic minorities mostly reside in disadvantaged neighbourhoods, they do not benefit from a high-quality network of job information. Many of the residents are unemployed and do not have professional contacts.

A further influence of residential segregation on the labour market is the reluctance of employers to employ workers from disadvantaged communities.

Unemployment in South Africa affects not only adults, but also indirectly the youth, the vast majority of whom have never been employed before. The implications of this pertain to the individual and the country's economy. While these individuals are unemployed, there is an erosion of skills, and the opportunity for older workers to pass on skills and expertise to younger workers is lost. The lack of previous employment results in people not being eligible for unemployment benefits, and leaves them more at risk than the average unemployed person of becoming involved in crime to survive.

Young employed people are less likely to engage in criminal activity than are those who are unemployed and have little hope of finding any worthwhile employment.

4.4.1.3 Community disorganisation

Urbanisation in South Africa has escalated tremendously. It is internationally accepted that the urbanisation of the youth and its accompanying social processes are extremely conducive to crime. Factors such as the continuous redistribution of neighbourhood populations and the loss of social control, cohesion and trust in the collective ability to direct the affairs of the neighbourhood in positive directions are referred to as social disorganisation.

When urbanisation occurs suddenly and on a large scale, and coincides with a massive influx of young work seekers (economic refugees in particular, usually from neighbouring countries), ideal conditions for crime are created. For instance, young people from as far afield as Nigeria, Morocco, Europe and China have flocked to South African cities, where a large number of undocumented migrants now live (South African cities 2016; Pota 2017). The number of Zimbabweans and Mozambicans in particular who enter South Africa illegally has increased since 2006 because they are in need of socioeconomic support.

However, their situation is made worse because of unemployment, poverty, a lack of education, the lack of proper housing, the need for food and disorganisation in the urban areas. Such influxes have led to large informal settlements being established around major cities in developing countries like South Africa, and these are particularly problematic in terms of effective policing and crime control. This is the direct result of the disorganised move to the cities. In these new communities it is difficult to uphold traditional norms and values, and the informal control and discipline of the family circle deteriorate. Parents tend to lose control over their children, who may become easy victims of crime. Although the majority of young people are also unemployed in rural situations, which may also be overcrowded, nevertheless there they can rely on the extended family (social network) and the subsistence economy to meet their relatively basic needs for food, clothing and shelter.

Apart from the criminological significance Of densely populated urban areas, uncontrolled urbanisation places an unmanageable strain on available resources, and creates conditions even more conducive to crime. This frequently culminates in a breakdown of traditional norms, values and family bonds. A high rate of urbanisation, coupled with the inability of the state to provide the necessary infrastructure such as housing, schools, hospitals, nursery schools, afterschool care facilities and leisure facilities, leads to increased crime at all levels. Experts agree on the need in South Africa for an inclusive social welfare system or "safety net" to help families and individuals in need. Problems are currently dealt with individually and on an ad hoc basis, therefore it is necessary to develop a national plan of action to assist families and destitute children. This, however, will take a long time, and in the meantime people in need and jobless youths may turn to crime.

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4.4.1.4 Availability of alcohol and drugs

It is not only the high level of substance abuse that contributes to crime. The existence of profitable criminal activities also means that the expected loot from crime is more attractive in certain countries such as South Africa and those in Latin America. The clearest example Of profitable criminal activity is the illicit drug trade, especially in countries where the raw materials are easily obtained, such as South Africa in the case of dagga (cannabis), and Colombia, Bolivia and Peru for cocaine. Countries that are located close to high drug consumption centres (such as Mexico in relation to the US) offer frequent and highly profitable opportunities for criminal activities. These include not only drug production and trade themselves, but also involve the elements of violence and official corruption required for them to occur. Young people in need of an income easily become involved in drug dealing.

Research (Cox, Allen, Hanser & Conrad 2014: 245—246) clearly shows a strong link between drug use and crime. People who use illegal drugs generally commit more crimes than those who do not. According to Harrison (cited in Thio 2007: 281), the drug enslavement theory States that drug and/or alcohol dependency and other social vices are expensive and may drive people to crime if they have no other means of supporting their habit. One can refer to "deficit users" who are subjected to the factors of living in poverty, having an inadequate education, lacking job skills, racial discrimination and other social disadvantages because they are relatively poor, uneducated and economically unskilled. Property crimes are widely associated with addiction to illegal

substances.

Substance abuse and even excessive alcohol use may contribute directly to violent crime, especially if this occurs in a group context where there is strong social pressure to conform to the group's rules, and where there are rituals. It is well known that gangs may have certain initiation rituals involving serious crimes of a violent nature such as rape and murder, thereby precipitating not only opportunities for violent crime but also the coincidental use of drugs. A high correlation between drug use and crime does not mean that drug use causes crime, because most drug

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users with a criminal record have committed crime before using drugs. Drug use by itself does not cause users to commit crime, but it does intensify criminal tendencies or increase the frequency of criminal activities. People under the influence of alcohol or drugs or who abuse drugs often behave in an irresponsible and reckless manner, which may spill over into serious crime. It is not the taking of drugs that initiates criminal careers, but this tends to intensify and perpetuate them. A positive association is thus to be expected between alcohol/ drug abuse and repetitive committing of crime (recidivism).

Laboratory studies of adults have found that acute intoxication with alcohol is related to aggression when an individual is provoked (White, Tice, Loeber & Stouthamer-Loeber 2002: 132). This heightened aggression is best explained by the fact that alcohol causes changes within a person that increase the risk of aggression. These changes may include reduced intellectual functioning, reduced selfawareness, selective disinhibition and the inaccurate assessment of risks. In contrast, laboratory studies indicate that marijuana has the opposite effect, as moderate doses temporarily inhibit aggression and violence. Findings such as these, together with epidemiological research on adults, underscore the fact that alcohol use is more strongly related to aggressive crime, whereas drug use may be more related to property crime. The behaviour of a person influenced by substance abuse depends not only on that person's level of aggression, but also on the dynamics of the situation and the strength of general, cultural and social control mechanisms.

Alcoholism and multiple drug abuse have been associated with the alarming rate Of crime and violence in South Africa, and there has been an increase in access to drugs among adolescents. The widespread availability of drugs and drug use in most of South Africa has heightened young individuals' participation and exposure to violence (Russell 2010). A questionnaire-based investigation by Morojele and Brook (2005 in Russell 2010) examined the

association between drug use, and peer, parental and environmental factors in predicting multiple violence attacks among adolescents in South Africa. Adolescents of both sexes aged between 12 and 17 were included in the study. Variables assessed were self, peer and parental drug use; self and peer delinquent behaviours; parent—child relationships; neighbourhood drug availability; and exposure to violence through television. The study showed a significant relationship between the frequency of tobacco smoking, marijuana and alcohol consumption, and multiple victimisation among adolescents, A higher rate of victimisation was found in Individuals who frequently smoked tobacco and marijuana and consumed alcohol more often as compared to their non-alcoholic, non-smoking counterparts. Parental cigarette smoking, alcohol use, parental rules and parent—child rapport were significant predictors of multiple victimisations, with the association between parental marijuana use and assault approaching statistical significance. The study's findings advance the current state of awareness regarding substance abuse among adolescents in South Africa. The use of drugs by individuals in an adolescent's environment as well as the heightened availability of drugs also seems to be associated with an increased likelihood of the adolescent's experiences of victimisation. Outcomes of the study have implications for prevention programmes addressing violence and victimisation among adolescents in South Africa. Potentially effective interventions for adolescent victimisation should be designed to address personal, family, peer and environmental risk factors. Healthcare policies and strategies should focus on millimising substance use in general. Strategies such as reinforcing government regulations on the minimum legal age of access to alcohol, improving policies regarding unlicensed liquor distributors, increasing taxation on alcohol products and cigarettes, and restricting alcohol commercials should be considered.

4.4.1.5 Climate of violence

Violence remains the most obvious characteristic of the crime problem in South Africa. As a result of political instability and unrest in South Africa, the crime rate has soared since 1990. The rate of violent crime is still high, especially in informal settlements. Children grow up in an extremely violent environment and in a culture of survival. For some children, vandalism, stealing and violence have become internalised and part of everyday living — almost normal and acceptable. When one looks at the prevailing value system in some communities, one finds that more often than not there is no strong moral foundation and that the moral fibre of the community is questionable.

Community-based violent victimisation has been found to be significantly associated with young adult criminal behaviour. Several researchers (cited in Siegel 2012: 336) have identified the following consequences of exposure to community violence: heightened psychological distress; low self-esteem; a heightened risk of displaying trauma-related symptoms; lower social competence; and poor school performance. The fact that they exploit others and in turn are exploited by those who are older and stronger contributes to their sense of hopelessness.

Kaser-Boyd (cited in Cox et al. 2014: 298) provided five indicators that serve as possible warning signs of potential gun violence among the youth: exposure to violence either in the home or community, including a preference for violence on television and portraying violent images such as artwork drawings in homework books or rough work; a lack of success with the normal tasks of adolescence, for example failing at school or having no extramural involvement; social rejection and poor social support; a build-up of intense anger from previous social deprivation events; and the inability to express or resolve intense feelings of anger in an acceptable way.

Exposure to regular violence will favourably assist the modelling of violent behaviour in the youth. In addition, this will develop into cognitive scripts pertaining to aggressive behaviour. Cognitive scripts are learnt and memorised through daily experiences. As events would happen in the environment, the youth will observe the response of others, and the likely outcome. Although each script is different and unique to each person, once established they become resistant to change and may persist. Scripts are established through rehearsing until

they become encoded and maintained in the memory, from where they are easily retrieved and used when an individual faces a problem (Bartol & Bartol 2017: 147).

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4.4.2 Family variables

The family or parents are usually the first institution with which an individual interacts. The importance of the family in socialising young people, teaching them the rules of behaviour in society and taking the appropriate steps to keep them within those rules cannot be overemphasised. The absence of these vital functions exposes the child to a risk of coming into conflict with the law. The following variables can expose young people to such risk: low socioeconomic status, family structure, lack of parental supervision, parent and sibling criminality or antisocial behaviour, family violence and abuse, and life on the street. Each is discussed with reference to research findings from various countries.

4.4.2.1 Socioeconomic status of the family

Despite decades of debate, consensus has not yet been reached about the true relationship between social class and youth misbehaviour. It is commonly accepted that a child is unlikely to avoid misbehaviour if he or she comes from a neighbourhood where crime prevails, or from a poverty-stricken family in which the parents are unable to provide for basic needs, or from an environment where friends are involved in and arrested for breaking the law. Consistent with this reasoning, the arrest rate of young offenders is higher in economically deprived and socially disorganised communities. McWhirter et al. (2013: 8—11) classify such youths as high risk because of their circumstances.

Based on a longitudinal study of almost 400 families in the UK, Farrington and Painter (cited in Blanchette & Brown 2006: 102) found that the following variables predicted misbehaviour more strongly for girls than for boys, namely socioeconomic risk factors such as low social class, low family income, poor housing and large family size. Research in Canada by Bélanger, Lanctöt and Le Blanc (cited in Blanchette & Brown 2006: 102) came to a similar conclusion: parental economic dependence or poverty has a significantly greater impact on the incidence of female misbehaviour in mid-adolescence relative to that of males. As a result of a family's low socioeconomic status, children may develop a negative self-concept and feelings of inferiority, shame and guilt.

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Overcrowded living arrangements are indicative of low socioeconomic status and class. Overcrowding leads to a lack of privacy and irritation with one another, and children may tend to wander around and even desert the home. They may land in bad company, be tempted and begin to use alcohol or substances. Crime is usually the inevitable outcome. These factors do not only put youngsters at risk of becoming involved in crime, but also of becoming victims.

There is no guarantee that high socioeconomic status will obviate the risk of children becoming involved in crime. Increasing materialism and rising costs force parents to work longer hours to meet the family's needs and to provide for a better lifestyle. Materialism has become a major concern, and families judge their status by their income, the area in which they stay and their type of transport. The media, the materialistic world and rich role models set criteria for success, but this comes at a price. The striving for enough money has a negative impact on steady parent-child relationships, the sharing of feelings, combined leisure activities and caring for one another, which normally would act as mitigating factors. Economic deprivation therefore increases the level of stress experienced by the parent, and this in turn may negatively affect the parent's affective relationship with the child and the quality of parenting.

4.4.2.2 Family structure

There is little doubt that family structure is related to youth offending in a variety of ways. Family structure refers to large and extended families, incomplete families and mixed families. Various factors such as the economic situation, urbanisation and unemployment have contributed to the changing family structure over the past years in South Africa. Homes and shacks become overcrowded because more people as well as extended family members stay together in one house or informal settlement. Family members flock to the cities with the intention of looking for work or completing their school education. The inadequate transportation network in South Africa

and neighbouring countries, and the ongoing unrest and conflict due to a lack of service delivery further

bute to the influx of people. Children are obliged to share space with adults and/or another. The negative implications include sing adult sexual encounters, sexual exploitation, physical and emotional abuse, the need to escape from these circumstances, well as the neglecting of schoolwork,

An incomplete family refers to the absence •t the father or mother. Homes without both together with poverty, were the two —an issues that youths involved in research mentioned as factors that influenced their decision to commit crime. Research in Dar es Salaam (Outwater et al. 2015: 7) indicates that youths from a single-parent housebold. with ruptured family ties and without a father figure, are more at risk of engaging antisocial behaviour. Results of the study show a close correlation between youths from broken homes and tense family situations, and their involvement with crime.

Research findings (Wedge, Boswell & Dissel 2000: 32) emphasise the implications Of incomfamilies for the youth. A study involving 23 young serious offenders reported that all bad a background considerably different from Eving with a father and mother in a stable environment. Many had no father figure at all or were raised by aunts, uncles, step-parents or grandparents. An absent father means there is no co-parenting, and this affects not only the mother but more importantly the children in terms of their social, emotional, physical and cognitive development (Hodgins 2011: 95). Osgood and Chamber (in Walsh 2014: 132) report a correlation between an increase in female-headed households and associated arrests.

The large, mostly male, prison population in South Africa, means that a great number Of I children in South Africa have an imprisoned father, leaving the family incomplete. This contributes to the risk of youths becoming involved in criminal activities. For many years the migrant labour system was an Important part of the South African workforce and economy. Migrant labour implies that people, mostly men, leave their homes to seek work elsewhere, such as the mines in South Africa. Although the money these fathers earn supports their households and families in the rural areas, the absence of a father figure has a negawith regard to boys.

tive effect on the socialising process, especially

In some households in South Africa, mothers are absent as a result of work responsibilities. Some are employed far from home and therefore spend many hours travelling. They leave home early in the morning and return late in the afternoon or evening. Others stay in town during the week, near their workplace and away from their spouse and family, and often spend only one weekend per month at home.

In some of these households, guardians such as the grandparents or older brothers and sisters have to look after the younger children. These children may lack parental love and care, and tend to show signs of behavioural problems from an early age. Sometimes the presence of a stepmother results in relationship problems with adolescents. The children may consider her an outsider and resist her authority. Owing to some unhappiness, children may run away from home to live on the streets, or become involved in gang activities, misbehaviour and crime.

Another concern that contributes to incomplete families in South Africa is the death of parents due to HIV/AIDS, which leaves many young children orphaned. Often these children stay on in their parents' home, mostly an informal dwelling. Older siblings, some as young as 14, seek employment or turn to crime in order to support younger brothers and sisters in these child-headed households. Although various non-governmental organisations are involved in the upliftment and financial support of these families, many still do not receive any assistance at all.

More prominent in South Africa, as in other countries such as the US (Cox et al. 2014: 47), are mixed families. A mixed extended family is when each parent brings children of his or her own into the family setting. With the high divorce rate in South Africa, the number of mixed extended families is on the increase. In such situations, children may have conflicts with one another or with the non-biological parent. They may start feeling unwanted, lose their self-confidence and neglect their school responsibilities. They may even withdraw from social contact, start using drugs or join a gang to fill the need to belong.

4.4.2.3 Lack of parental supervision

A lack of parental supervision correlates with criminal activity and misbehaviour. Poor parental supervision and family support will affect adolescents' behaviour, as youths then choose to associate with peers who may display diverse problematic behaviour (Klein & Maxson cited in Peterson 2012: 76). A metaanalytical study by Dowden and Andrews (cited in Blanchette & Brown 2006: 91) demonstrates that family process variables such as attachment, affection and supervision are robust predictors of recidivism.

The way in which these affect antisocial behaviour is not fully understood. For example, there is no clear answer regarding whether the lack of supervision simply represents a condition of freedom for the youths of which they will take advantage, or whether lax supervision normally associated with a cold or rejecting attitude on the part of the parent interferes with establishing the positive bond. This bond is important for internalising positive norms. It is therefore not clear whether lax supervision is the parent's reaction to a personality disorder in the youth which is, in turn, the cause of the criminal activity. In South Africa, it is not only a case of a lack of parental supervision, but also of parenting skills, as many parents are young or they fear their own children.

A study by Chaiken (2000: 7) found that the lack of adult supervision is probably the cause of violence during the hours immediately before and after school. The vast majority of boys in the study (75%) spent the afterschool hours unsupervised by an adult on one or more days each week, and almost half (48%) never received adult supervision during those hours. The 23% of the boys who reported being supervised by an adult every day after school tended to misbehave less than those who received little or no such supervision.

Cox et al. (2014: 47) refer to school-age children of working parents who return home from school to an empty house as "latchkey" children. Alston (cited in Cox et al. 2014: 48) estimated that between 5 and 11 million children in the US are left unsupervised after school. A Similar tendency is noticed in South Africa. Since parents need to leave the house early in the mornings for work, children need to get themselves ready for school and also look

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after themselves in the afternoons after school when parents are still at work. The economic pressure on parents to provide for their families requires them to work longer hours, and they often come home after their children are asleep. Many children are also on their own when preparing for exams, as well as during holidays. It is sometimes expected from older children, who are still young, to look after younger siblings. Owing to the lack of proper supervision, some children as young as six years old may loiter in shopping malls and games arcades, or spend time on the Internet, online chat rooms or pornography sites. Although some children do not experience any problems, others become involved in illegal activities without their parents' knowledge or even become victims of crime. Such an example is cyber bullying (also see Chapter 3). Cyber bullying is a form of bullying that relies on technological programs such as emails, instant messaging, websites and chat or bash boards to intimidate, shame and inflict unwarranted hurt and embarrassment on its unsuspecting victims (Beale & Hall cited in Cox et al. 2014: 247). Cyber bullying therefore relates to personal harassment via a digital platform, including SMS, email and social media networks. There is a growing percentage of children between the ages of 10 and 17 years that have become victims of cyber bullying in both the UK and the US. From this one can deduce that South Africa will have similar problems. A survey by the Centre for Justice and Crime Prevention in 2012 found high levels of aggression among youth in South Africa and it was reported that cyber bullying was on the increase (Alfreds 2013).

4.4.2.4 Inter-generational continuity in offending

Andersson and Stavrou (2001: 70) found a correlation between the probability of youths being involved in criminal activities and the involvement of other family members in crime. Studies in the US, Sweden and Denmark also show that children of criminal parents are at greater risk of becoming involved in criminal behaviour than those from non-criminal homes. It has also been found that if siblings are close and interact with one another, they may easily influence or encourage or discourage deviance in one another. Shared environmental experiences in a family might also

account for behavioural resemblance among siblings.

According to Smith and Farrington (cited in Pulkkinen 2012: 103), the maintenance of an antisocial lifestyle, including peer and partner relationships, is an important mechanism of intergenerational continuity of antisocial behaviour. They concluded that continuity in antisocial behaviour across three generations was not evident, but it did exist across two generations. Antisocial adults were more likely to have children with conduct problems, but this alone did not predict conduct problems in the children of a subsequent generation. There was a tendency among antisocial individuals to group with others of the same or similar kind. The risk of children developing conduct problems increased if they had two antisocial parents and witnessed conflict.

4.4.2.5 Family violence and abuse

Gelles and Straus (in Thio 2007: 114) describe the family as the "most violent institution, with the two exceptions of the police and the military". Two types of child abuse can be distinguished, namely sexual and other physical abuse. The following factors increase the risk for child abuse by parents: problematic interaction between parent and child; lack of parenting skills and knowledge about normal childhood behaviour; and punitive parenting.

The problems presented by children include antisocial behaviour, aggression, or mental and physical disabilities. Families may also experience an intergenerational transmission of violence. This occurs when parents think that violence is the only way to solve child-rearing problems because they themselves experienced abuse as children or observed how their parents and other significant adults used violence to express anger, react to stress or deal with marital problems. Social factors contributing to child abuse include poverty, unemployment, family problems and lack of education (Thio 2007: 123).

Family violence occurs among lower- and higher-income people, but the incidence is greater among poor people. However, sexual abuse rates show no significant difference related to social class and racial or ethnic groups. Sexual abuse of mainly daughters by fathers usually gives rise to a strong sense of shame, guilt, anxiety, depression and isolation in young victims. When they become adults, these victims are more likely than non-victims to be dissatisfied with sexual relationships and to encounter marital problems. In the main, however, child abuse is the physical, mental or sexual harm or ill-treatment deliberately inflicted upon children by their parents or caregivers (Lutya 2015: 260).

When compared with their non-abused peers, children who have been abused experience some of the following social and psychological problems: emotional and social difficulties; learning disabilities; poor academic performance; and running away from home, which may result in criminal behaviour. As adults they also are at risk of abusing drugs and alcohol, engaging in criminal activities, suffering from psychiatric disturbances, and becoming child abusers themselves (Thio 2007: 122).

In close to three-quarters of the cases of sexual assault, the crime is committed by a person who knows the victim, and the majority of offences occur in private dwellings. The highest rate of the offence is against girls between the ages of 10 and 14. Offences against males, although lower than for females, are highest in the under-IO age group. Some of these youngsters "escape" to the streets to avoid the trauma at home. There is a correlation between being young and higher rates of both victimisation and crime. According to Smith and O'Connor (in Wimshurst & Hayes 2006: 120), between 14 and 29% of young offenders were maltreated as children. Dennison and Waterson (in Wimshurst & Hayes 2006: 120) found that childhood physical abuse and neglect are especially linked to youth misbehaviour, more so than sexual abuse. These child victims are at risk of perpetuating violence against others or themselves as adolescents. Indermaur (in Wimshurst & Hayes 2006: 120) states that children exposed to family violence are more likely to interpret violence as normal in intimate relationships. This means that the child victim and the offending child are often the same person at different stages of his or her life.

4.4.2.6 Homelessness

Homelessness and living on the streets are linked to crime and criminalisation in many

ways (Adler cited in Stubbs 2006: 177). Homeless people may be vulnerable to victimisation on the streets, and are at risk of committing criminal offences to support themselves through stealing, prostitution and the drug trade. They often use alcohol and substances such as glue to assist them to escape the harsh realities of life on the street. Children living on the street are one of the fastest growing problems in Africa. Street children can be included under the family domain, as they usually come from disrupted families or have no family ties and are forced to fend for themselves on the streets in urban areas. Some communities see them as a nuisance and generally shun them and discriminate against them. These children include those sent out by parents daily to earn money by whatever means (usually returning home at night), children "Of the street" with loose family contacts (occasionally returning home to their families), children without any family contact (living in temporary shelters or with other street children in gangs), and children or adolescents permanently living on the streets.

Andersson and Stavrou (2001: 70) found that many of the street children and youths in Dar es Salaam chose to live on the street, justifying their action as being the only alternative to the realities of extreme poverty, disintegrating families and high levels of abuse. All the street children in their study were involved in some form of activity that generated a sul> sistence level of income necessary for survival. Generally, however, the majority of the street children came from rural areas, and a notable number saw their current situation as temporary, justifying it as a relief from abuse and an opportunity to gain an education or earn some money, and planned to return home at some stage. For many, surviving on the streets means becoming involved in criminal activities.

In Australia, Stubbs (2006: 177) identified the causes of homelessness as poverty, the lack of affordable housing in the private market, unemployment and inadequate social welfare policies. Children who have been in and out of home care, such as institutions or foster homes, are overrepresented as victims of abuse, offenders, inmates of youth detention centres and prisons, and clients of drug, alcohol and mental health services. In South

Africa, street children often live in slums and other deserted or dilapidated areas of cities; they have their own territory, and their gangs may specialise in crime such as pickpocketing, prostitution and begging. They are themselves especially vulnerable to victimisation.

4.4.3 School variables

The school variables consist of various risk factors. For the purpose of this discussion, the factors mentioned in the related research studies are grouped and discussed under the following headings: disorganised conditions in and around schools; the role of the learners; and the role of the educators/teachers,

In a study based on reports by teachers employed at the relevant schools, Quarles (1993: 3—4) identified various characteristics pertaining to schools in the US with the highest levels of student victimisation. These schools are situated in poverty-stricken, highcrime urban areas with a high unemployment rate. The majority of the students scored low in terms of their intellectual ability and had a high daily average absentee record, and many of the families received welfare hand-outs.

Maree (2000: 4), supported by the research findings of Van der Merwe (2015), states that the following are the main causes of crime in South African schools: involvement in gang

activities; lack of transformation in schools; negative perceptions among black, coloured and white learners; the presence Of guns and other weapons at school; the use Of dagga and Other substances: a lack of counselling services; intolerance towards learners of other races, religion and gender; parental apathy; and hero worship of criminals and gang leaders.

4.4.3.1 Disorganised conditions in and around the school

A school system needs to be fully functional to be effective in education and training. Aspects such as suitable facilities, proper discipline, qualified teachers and successful racial integration are powerful symbols of a functional school system. The absence thereof contrit> utes to dysfunctionality and disorganised conditions.

Conditions in the school refer mainly to the physical environment and the emotional safety of learners and teachers. The physical environment, besides being an occupational health and safety matter, needs to communicate that people in a certain place will be safe. It is preferable that children do not become stressed by the demands of the classroom. School should rather be a safe place in a pleasant area. When learners perceive their school as impersonal or unsafe, many will become disaffected. Maree (2000: 4) expressed concern about the state of schools in previously disadvantaged areas. which, in particular, have not improved to any significant degree since the abolishment of apartheid in South Africa. Little improvement of the situation is noticeable as Naiker, Grant and Pillay (2016:1) also refer to the first-class schools on the one end of the continuum and extremely dysfunctional schools on the other. At the one end of the scale, some schools have inadequate or no fencing at all. Many public schools in informal settlements do not even have the most basic facilities such as running water, toilets, tables and chairs for learners in the class environment, and writing boards for teachers, Paton-Ash (2012: 135) stated that more than 92% of schools in South Africa are not equipped with a fully functional library, 18% do not have electricity, and 20% are without running water. In 2015, a study (Paton-Ash & Wilmot 2015) was conducted to determine the issues and challenges facing school libraries in selected primary schools in Gauteng province. They came to the conclusion that school libraries are not playing an effective role in supporting and enabling quality education for all South African children and government needs to address this matter urgently. By comparison, at the other end of the scale most independent schools have electric fencing, are guarded by private security companies and are equipped with alarm systems and closed-circuit television cameras. Most of these independent schools have well-equipped science laboratories, computer centres, music centres, dancing studios and sports facilities.

This remarkable contrast might create a sense of relative deprivation among learners at public schools, leading them to commit antisocial and criminal activities aimed at their own facilities because they regard them as useless and degrading. It may also negatively affect learners' self-esteem, leaving them with a feeling of worthlessness. They may therefore be at risk of becoming involved in crime or misbehaviour because of their lack of regard for other people's lives or possessions.

Emotional safety depends on various factors such as the size of the school and the classes. According to Quarles (1993: 4), school crime increases with factors such as school size, the number of learners taught by each teacher and the extent to which teachers have access to the materials needed for teaching. Class sizes of fewer than 20 learners have been found to be especially beneficial for young and disadvantaged children, as class size mainly affects the social relationships and interaction among learners and with the teacher. Children in smaller classes tend to be more engaged and willing to cooperate, and less disruptive (Finn et al. cited in Porter 2007: 241).

If one takes the availability of schools and the resultant class sizes into consideration, then learners in large city schools are more prone to victimisation. followed by small city and then suburban schools (Quarles 1993: 4).

Crimes such as vandalism, housebreaking, and damage to and theft of property negatively influence the learning environment and result in huge financial losses. Both the Department of Education and the parents suffer financially as schools tend to use their minor unscheduled funds to repair minor damage caused by acts of vandalism. Some schools have to deal with such damage on a daily basis, but weekends are regarded as the worst time. Vandals have been known to damage windows, furniture and electric appliances. It has been said that vandalism may also be a symptom of an underlying problem such as poverty, where children steal classroom doors or aluminium from writing boards to sell in order to buy food (Lund 2000: 5). If one examines the crime and security situation at South African schools, one realises that the system is still completely unprepared to respond to crime-related problems.

South Africa's schools face various layers of violence: gang-related violence, bullying, fighting, and abuse by teachers (Van der Merwe 2015). Both learners and teachers are potential victims of offenders. Cases of teachers being robbed or shot and killed on school premises are reported regularly.

Bullying is another manifestation of crime directed at learners. A further factor that makes our schools dysfunctional is the presence of weapons. Learners take weapons to school because they think they need them to protect themselves, they believe their friends will think they are "cool", or they intend to commit crime. Guns are not the only weapons: knives, box cutters, razors, screwdrivers, forks and blades also feature. In Australia in cases of student-on-student assault at school, the perpetrators often claimed that they were defending themselves against bullying and harassment, Such aggressive students tend to come from families where punitive discipline is the norm, and they attend schools where discipline and rules are not applied consistently (Wimshurst & Hayes 2006: 119).

The launch and continuation of the safer schools programme in South Africa, which involves keeping violence off the school premises, is indicative of the problem of violence some schools experience (Frank 2006: 39; Safer Schools 2017). The situation is aggravated by the fact that perpetrators are often part of the school body itself, thus the teachers struggle to educate children and to teach them respect for life and property. There is also a lack of support from school governing bodies or good parenting examples. Furthermore, communities allow children to grow up in an atmosphere where violence is considered the only solution (Lund 2000: 5).

Schools in South Africa are not as functional as it was hoped they would be. Problems that render them dysfunctional include staff incompetence, lack of discipline, political and union interference, and a shortage of teachers. Continuous strikes arranged by unions, especially those before the final exams for Grade 12s, have a negative influence on learners' preparation for their examinations and on the pass rate.

Lack of discipline is a common problem that has not improved since the arrival of the new democracy in South Africa. In fact, violence appears to be escalating in schools, thereby aggravating the existing lack of discipline and impacting negatively on learners.

All these factors contribute to a disorganised and dysfunctional school system, and can be regarded as criminogenic risk factors.

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4.4.3.2 The learner

Failure at school is caused by poor academic performance, poor attendance or, more likely, expulsion from or dropping out of school. Expulsion is an important factor in predicting future criminal behaviour as there is a strong association between a child being expelled and his or her engaging in misbehaviour (Chaiken 2000: 9). In the six-month period prior to Chaiken's study, the number of incidents of misbehaviour by boys who had been suspended averaged more than triple that of those who had never been suspended.

When learners are expelled or suspended from school, they are released into the community without supervision, as many parents work outside of the home. Without structured activities and care, many of these learners are free to commit illegal acts. If parents, school administrators, government agencies and youth organisations do not find ways of offering safer and more meaningful activities to expelled and suspended learners during school hours, they will be increasing the risk of these youths becoming involved in criminal activities. Rather than allowing them to wander the streets unsupervised, the authorities should consult additional measures such as alternative classes with fewer learners and with teachers specifically trained to address behavioural problems.

Dropping out of school reduces the chances of youths developing the social skills gained there, such as meeting deadlines, following instructions and being able to deal constructively With their peers. School is one of the most important socialising agents in society. Adolescents who do not have consistent access to school run the risk of becoming involved in antisocial behaviour. However, having access to a school does not necessarily imply a positive influence, as the relatively poor performance Of the respondents from the Dar es Salaam project indicates. Furthermore, only a little primary school education does not guarantee a functional level of literacy. Unless a primary school level of education improves the youths' chances of obtaining work, it is unlikely to be a protective factor against deviant behaviour. Low levels of literacy, poor social skills and the failure to find work can often result in negative peer associations (Andersson & Stavrou 2001: 40—41).

Low education levels are associated with high crime levels, particularly crimes Of violence, because low education levels result in lower income and unemployment — conditions that are particularly prevalent in developing countries. On the one hand, however, higher levels of education may be associated with higher expected legal earnings and through their civic component — education — may also increase the individual's moral stance. On the other hand, education may increase the value (loot) involved in the crime because it may open opportunities for an individual to enter more lucrative areas of crime, hence the net effect of education on the individual's decision to commit a crime is, at best, ambiguous. One may surmise, however, that if legal economic activities are more skills or education intensive than illegal activities, then it is more likely that education will encourage individuals not to commit crimes. In addition, if one bears in mind the high crime rate among the youth, it is possible that simply being enrolled in a school (independent of their level of educational attainment) reduces the time youths have to participate in crime,

4.4.3.3 The educator or teacher

In South Africa, there are significant problems with teacher misconduct, ranging from absenteeism to sexual abuse, alcohol abuse, negligence of duties and bullying. Teachers in disorderly schools are discouraged by the circumstances in which they work. Their reactions to their situation may put the learners at risk and contribute to youth misbehaviour and crime. Some teachers may stop making the considerable effort required to educate the young. Others may quit teaching for other jobs or take teaching positions in independent schools. Some take early retirement, while others carry on grimly, but take as many days off as they are entitled to and also waste teaching hours attending union meetings, protests, strikes or other activities. Absenteeism among teachers is both a symptom of disorder in the school and a cause of further disorder, as it has a negative effect on the education of learners and promotes an irresponsible attitude. Any absence from class by a teacher is exploited by the learners.

Teachers in South Africa share in the worldwide problem of controlling learners' misbehaviour during school hours, therefore there are several reasons for the situation in South Africa. Teachers complain about the banning of corporal punishment, but their complaints are not necessarily based so much on their support for the practice as on the lack of an effective alternative (Maree 2000: 2). The challenge is to equip teachers to manage conflict in nonviolent ways. All these factors may affect the teachers' self-confidence negatively and create uncertainty, therefore the above factors can be regarded as risk factors.

A comparison of the situation of present-day teachers with that of those from the previous generation shows that the role of teachers no longer commands the automatic respect of learners and their parents. Many youths do not consider their teachers to be role models. Parents are less involved in school decision making and management committees. Teachers cannot confidently rely on the support of parents to promote a climate of discipline in school. This latter fact is particularly problematic for the less-experienced teacher. It is also true that some teachers downplay their disciplinary role. For example, they may object to having to do supervisory duty, especially during examination time when learners are not writing a paper but are supposed to study. There are teachers who refuse to supervise these children, stating that they are not policemen or that they are afraid of confronting them if they misbehave. These teachers fear for their own safety, as learners might become aggressive and assault or murder them. If one considers the conditions in South African schools, these fears are not unrealistic as some have been stabbed, assaulted and robbed during school hours.

However, the abdication of control by the teacher in a classroom situation affects teaching negatively. Children often will not do their homework, but spend the time roaming the streets or becoming involved in gang activities. Teachers' reluctance to reprimand

misbehaving learners may be part of the cause of the high levels of disorder in some schools. The lack of interest in schoolwork and their disrespect for teachers contribute to the drop in teacher morale, which in turn reduces the teachers' motivation to try to control the learners' misbehaviour.

How learners are handled at school may also become a risk factor. Some teachers or school staff may label a child or dramatise a situation of non-compliance with school rules without trying to understand the child and be compassionate. Generalisation is the seed of prejudice, and prejudice can harm a child for life. The results of the Cambridge-SomerVille Project in the US illustrate this. As part of this project, experts identified teenagers at risk of becoming involved in crime and gave them intensive support. The result was that they had a higher rate of suicide, experienced less educational success and even seemed to have fewer social skills. They also acquired more extensive criminal records than other teenagers not included in the project. It is posSible that the selected group started seeing themselves as "potential delinquents" as they started talking about their difficult life circumstances, The lesson learnt from this project is that prevention must be delivered in non-stigmatising ways and caution must be exercised with regard to programmes that cater only for "potential delinquents" (Cherney & Sutton 2006: 382).

4.4.4 Extrafamilial relationship variables

Youths are also involved in extrafamilial relationships that can contribute towards their feeling positive about themselves and acting positively towards others. Despite the fact that peers can make unique and powerful contributions to a child's development in many domains, peer influence is often regarded with suspicion. There is a reasonable assumption of a strong (negative) correlation between peer delinquency and peer collective efficacy. Researchers have identified peer misbehaviour as one of the strongest predictors of law breaking, although the effect of belonging to a gang has not been separated from the effect of simply associating with misbehaving peers (Battin-Pearson, Thornberry, Hawkins & Krohn 1998: 1). The Seattle Social Development Project and the Rochester Youth Development Study are research studies in this regard. Youths with misbehaving peers were not necessarily members of a gang in the survey year, but claimed that at least two of their three

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best friends had been arrested or had broken the law. It was found that the rate of committing offences was lowest for youths with nonmisbehaving peers, higher for youths with misbehaving peers, and the highest for gang members (Battin-Pearson et al. 1998: 2), thus association with antisocial peers becomes highly significant.

4.4.4.1 Antisocial peer associations

The dynamic factor of antisocial associates is routinely hailed as among the most potent predictors of recidivism. Teenagers and adolescents have a powerful urge to be around their friends at a time in their life when the need to associate with their peers and to minimise the importance of relationships with their parents is great. "Hanging out" with friends does not, however, necessarily mean joining a gang. Although there is general agreement that youth misbehaviour occurs most frequently within a group context, there is much less understanding of the nature and quality of young offenders' relationships with their friends or about the relationship between peers and young offenders. The quality of the relationships of those who persistently misbehave with their friends is also uncertain.

The idea that misbehaving youths have comparatively warm, intimate social relations with their peers seems to be a myth, as Chaiken (2000: 6) reports that youth offenders feel different or isolated from their peers ("I usually keep to myself because I am not like other people my age"). Researchers generally agree that most misbehaviour, especially the more violent forms, is committed in groups, but they disagree on the quality of the relationships within these groups and on the influence of

groups on law-breaking behaviour (Bartollas 2013: 87).

There seems to be some agreement that the causal path of law-breaking youths is from peers to criminal behaviour. The association with deviant peers increases the likelihood that a young person will engage in antisocial behaviour. Males and females differ in exposure to misbehaving peers, with males being more likely than females to have antisocial friends and appearing to be more strongly affected by their peers (Andersson & Stavrou 2001: 71). Another factor to take into consider-

ation is that adolescent females are more likely than adolescent males to date older partners, who may provide them with drugs and alcohol. Such relationships may also create more opportunities to socialise away from adult supervision, giving such girls access to cars and increasing their exposure to antisocial and offending activities such as truancy. Young and D'Arcy (cited in Anderson 2012: 47) postulate that girls with older partners may have a history Of psychological vulnerabilities that makes them more susceptible to the advances of older men. As a result, they become involved in the activities of their dating partners With little or no regard for the consequences of their behaviour.

This conforms to the trend that most youths who commit offences and are arrested with peers are under the influence of alcohol or drugs at the time of the misbehaviour. If one takes account of these research findings, one can debate whether a group of peers may get "high" together by using alcohol and/or drugs and then encourage one another to commit illegal acts. This is known as the group psychopharmacological effect, and peers may actually group together with this intention.

4.4.4.2 Gang membership

Definitions of the concept "gang" varies in the literature. The most common criminological definition of "gang" according to Hall (2014:207) is "a durable and structured group, often territorial and hostile to others, which regards crime and violence as integral to its identity". For the purpose of this discussion, a gang can be seen as a group of young people who form an allegiance for a common purpose. Compared to boys, girls are less likely to be members of gangs. According to Sharp, Aldridge and Medina (cited in Mallicoat 2012: 397), involvement in so-called delinquent youth groups peaked at ages 14—15 (12%), decreasing by 9% at ages 16—17 and another 2% at ages 18-19.

Klein and Maxson (cited in Peterson 2012: 76) evaluated 20 studies and identified the following six risk factors that mostly supported gang membership, namely lack Of parental supervision; negative life events (such as serious illness, school suspension and intimate relationship disruption); early problem behaviours (i.e. reactivity, aggression and impulsivity); antisocial beliefs; delinquent peers; and commitment to deviant peers. Although Cox et al. (2014: 314) are in support of the identified risk factors, they also include prior gang membership of a family member as a risk factor. Based on the discussion below, prior gang membership of a family member is an indicator for both male and female involvement. Evident is the gang families on the Cape Rats in South Africa.

Peterson (2012: 77—78) finds that many risk factors appear to be shared by girls and boys (for fun, for protection, because a friend was in the gang, and to gain respect), although there are factors unique to each gender, for example school factors, which are more influential for girls than for boys. Sharp et al. (cited in Mallicoat 2012: 397) postulate that risk factors for gang involvement among boys are being drunk in the past year and an attitude to certain criminal acts. Risk factors for girls include disorder problems in their local area, little or nothing to do in their local area, and a poor perception of school. The common risk factors for both genders include having friends who are in conflict with the police, having run away from home, and having been suspended from school. Females tend to become involved in gangs as a result of being sexually abused at home, exposure to domestic violence, having drug users and criminals in their family, and their desire for friendship, solidarity, self-affirmation and a sense of new possibilities (Peterson 2012: 77; cox et al. 2014: 318).

Not all gangs are a danger to the community, although they may put their members at risk of breaking the law. Gang membership and gang-related crime are primarily a youth problem. Gang membership, especially at an early age, is strongly associated with future criminal activity, and many gangs exist only for crime. Often, crime is committed to control the local drug market, as well as to extort money for the freedom to walk unmolested to and from school; to use gang turf; to obtain protection from extortion or from being attacked or abused; or to use certain school hallways, gymnasiums or cafeterias.

Criminal action is not the only outcome of being a gang member. The following manifestations are also part of gang membership: distinctive clothing (the colour, style or man-

ner of dress); body markings such as tattoos; extreme haircuts like punk or skinheads; signs and symbols such as graffiti, hand signs and jewellery; peer associations; attitude

and behaviour such as rebellion, anti-authoritarianism or being disruptive; drug use or abuse; and low self-esteem (Quarles 1993: 42). Chandler and colleagues (cited in Howell & Lynch 2000: 2) identify the most frequent criteria students recognise as indicating the presence of gangs at schools in the US, namely allocating names for different gangs, associating with other members of a gang, wearing clothes or other items to identify gang membership, tagging or marking turf, and engaging in violent gang activities.

The following main indicators of gang membership in South Africa are outlined by Shaw and Tshiwula (2002: 14): rumours or more reliable information that a youngster has not been home for several nights; evidence of increased substance abuse; abrupt changes in behaviour and personality; newly acquired and unexplained wealth, often showered on or shared with peers; requests to borrow money; hanging around others but not having meaningful discussions with them; evidence of mental or physical abuse; a dress style adopted by only a few (e.g. a specific colour, style or item of clothing); and a particular hairstyle.

These indicators of gang membership are significant because they shed valuable light on the motives or reasons for youths initially becoming gang members. For example, uniform clothing reflects group cohesion, and a violent act expresses frustration or rage. In this context, gang membership and expressing interest in gang membership can be regarded as risk factors.

The Cape Flats in the Western Cape province of South Africa is known for its gangs and associated violent activities. There are some 100 000 gang members and roughly one gang-related murder a day in gang-dominated areas. Mncube and Steinmann (2014: 203), noted that

> ...the fear of gang-related violence at school can be as harmful as primary victimisation and personal experiences of violence, causing learners to drop out or avoid school, or to lose concentration in the classroom and in learners developing

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> healthy pro-social relationships as actual victimisation. Gang violence has a negative effect on the delivery of quality of education.

Male youth gangs are linked to serious crime problems in elementary and secondary schools in the US (Howell & Lynch 2000: 1). A strong correlation is found between the presence of gangs and both guns and drugs in schools, and the presence of gangs more than doubles the likelihood of violent victimisation at school. Cox et al. (2014: 317) pointed out that younger gang members maintain the turf-oriented activities and street crime while adults move into more organised criminal activities.

Youth surveys consistently show that the misbehaviour rate for female gang members is lower than that for male gang members, but higher than that for non-gang females and even non-gang males (Kerig & Becker 2012: 133—136). Female gang members commit fewer violent crimes than their male counterparts, and are more inclined to commit property crimes and status offences. Female gang members admitted to being involved in gang fights, carrying a weapon for protection and attacking another with a weapon. Drug-related offences are among the most common offences committed by female gang members. According to a report by the Chicago Crime Commission (Reid 2012: 459), female teen gangs selling their own drugs are willing to participate in violent criminal activities at the same rate and level as their male counterparts.

4.5 RISK FACTORS ON AN INDIVIDUAL LEVEL

Variables discussed in this section are age and gender as biographical factors, and biochemical, neurophysiological and genetic factors as

biosocial variables.

4.5.1 Biographical variables

4.5.1 .1 Age

As a general rule, the crime rate follows the proportion of teens in the population. A high crime rate may be attributed to the high percentage of crimes committed by young people, as criminal careers of the youth usually start during adolescence and early adulthood (17—20 years) and peak during adulthood (at 30 years of age), declining rapidly thereafter (Siegel 2012: 52). About 70% of South Africa's 20 million young people are more likely to be victims and perpetrators of assault, robbery and property theft than adults older than 34 years (Seeth & Maphumulo 2016).

Based on the results of his study, Chaiken (2000: 6) reports that the boys who misbehaved least were the youngest (with a median age of 14,65) and the ones who misbehaved most were the oldest (with a median age of 15,83 years). Newburn (2002: 540) states that self-reported studies confirm that committing an offence in the teenage years is relatively common. The peak age for offending juveniles is higher for males (18) than it is for females (15). The age—crime curve varies between 14 and 18 years (Bliesener 2012: 57).

Age on its own cannot be regarded as a risk factor. It is not a personal characteristic, but •an index of the likely stage that someone has reached in a partly predictable sequence of development, and is an indicator of social standing. Smith (2002: 702) argues that the explanation for the effects of age lie in the detailed process of development and in associated meanings and social roles. Various studies have found a link between aggressiveness in childhood and later criminality because Of a combination of characteristics including both aggressiveness and hyperactivity (Smith 2002: 714—715). Similarly, a longitudinal study conducted in Sweden showed that hyperactivity at the age of 13 predicted police-recorded violence up to the age of 26 (Farrington 2002: 667). Another such study done in New Zealand on the link between childhood temperament and later misbehaviour found that where a dimension of temperament (restlessness, impulsiveness and poor attention span), which predicted aggression, was undercontrolled, self-reported acts of misbehaviour and convictions in the age group of 18—21 occurred (Farrington 2002: 666).

4.5.1.2 Gender

When one considers gender as a risk factor, one should focus on characteristics associated with the young, such as impulsivity, rebelliousness and deceitfulness. Girls do not necessarily experience these to a lesser extent, but boys are more exposed to risk factors than girls.

Boys generally live in a wider geographic area than females, spend more time outside the home, have greater freedom of physical movement and engage less in adult role activity compared with young females. They are more influenced by their criminal peer associations, carrying weapons, alcohol abuse and aggressive feelings. Based on these risk factors, males become engaged in antisocial activities.

Girls are more home and family bound. Their criminal behaviour, according to Zahn and colleagues (cited in Cox et al. 2014: 70), significantly correlates with family risk factors such as negative and critical mothers, harsh discipline, inconsistent discipline, family conflict, frequent family moves. multiple caregivers, longer periods of time with a single parent and growing up in socioeconomically disadvantaged families. Females seem to be more influenced by their place of residence, childhood, stress, depression, fearfulness. romantic relationships and suicidal thoughts (Benda cited in Siegel 2012: 314).

Although cognitive differences between girls and boys have been determined, this mostly affects behavioural variations. For example, girls are more empathetic than boys and therefore tend to have a better understanding of others' feelings. When confronted with conflict, females are more inclined to negotiate. These behavioural patterns would deter them from committing antisocial acts. Boys, on the other hand, are more inclined to compete for material success. Young males also tend to act more aggressively than young females, with the result that some become involved in violent types of crime such as assault, rape and malicious damage to property. When confronted with conflict, males will respond physically, which may result in harm or death.

Distinct gender differences exist in the crime rate. Male criminals far outnumber female ones. Official statistics of arrests,

victimisation data and self-reported studies show that adolescent females are involved in less frequent and less serious misbehaviour than adolescent males (Newburn 2002: 547—548; Siegel 2012: 53). However, the patterns of female youth misbehaviour are changing globally.

The altering role of females in society and the differential handling of female offenders by the criminal justice system play a part in accounting for the increase in female youth crime (Blanchette & Brown 2006: 2-3).

4.5.2 Biosocial factors

Biosocial factors include information about both environmental and biological risk factors. Any trait, characteristic or behaviour of any living creature is always the result of biological factors interacting with environmental ones.

4.5.2.1 Biochemical factors

The debate around the role of biochemical factors as a risk factor in developing abnormal behaviours such as violence and aggression is ongoing. Some researchers support the view that the chemical composition of the body is controlled by diet, blood chemistry and allergies, which have an effect on personality traits such as aggressive tendencies and depression (Siegel 2012: 144).

Various researchers reported that a diet with a high intake of artificial colouring in food, milk and sweets, and high levels of sugar and caffeine causes hyperactivity and aggression in children (Walsh 2012: 140). Other studies (Siegel 2012: 146) have linked the excessive consumption of refined sugar to hyperactivity, aggressiveness and violence. Hypoglycaemia is a condition that arises when glucose levels in the blood drop below an acceptable level, which impairs the function of the brain, and results in headaches, anxiety, confusion, exhaustion and aggressive behaviour. High levels of reactive hypoglycaernja have been found in groups that have habitually violent and impulsive behaviour (Siegel 2012: 146).

Although the relationship between the intake of sugar and deviant behaviour remains unclear because of conflicting research findings, it has been found that the diets of young people in detention differed from those of non-offending young people. The role of food and diet in producing criminal behaviour, however, has not been well established. Deficiencies in certain essential nutrients such as vitamin C, niacin, thiamine, pantothenic acid, vitamin B6 and minerals such as magnesium, calcium, copper, iron and zinc may also improve aggressive behaviour. Ross (2016: I) provided some for the idea that supplements, in conjunction with cognitive behavioural therapy may reduce aggressive behaviour in children.

According to Siegel (2012: 146), there is an association between episodes of violent behaviour and abnormal levels of male sex hormones known as androgens. Other androgenrelated male traits that are also linked to antisocial behaviour are sensation seeking, impulsive behaviour, dominance and limited verbal skills. Owing to the changes occurring in their growing bodies and the relationship between hormonal changes and mood, adolescents will experience more intense mood swings and increased anxiety and restlessness than older people. Boys with high levels of the male sex hormone testosterone (the most abundant androgen, which controls secondary sex characteristics such as facial hair and voice timbre) show less tolerance of frustration and are more likely to display antisocial behaviour. Sample surveys Of inmates indicate that testosterone levels were higher in men who committed violent crimes than in other prisoners (Siegel 2012: 146). The outcome of a study in 2002 by Rowe (cited in Walsh 2014: 140) on the effect of testosterone among 4 462 males are supported by the abovementioned findings. Antisocial behaviour more than doubled (from 14,7 % to 30, 1%) among those males from a low socioeconomic status (SES) with a high testosterone level, in comparison with males with a low SFS and normal testosterone levels. High SES and high testosterone levels do not have an effect on antisocial behaviour. It is clear that the effect of testosterone depends quite a lot on social context, and therefore it would not

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be wise to separate biological and environmental variables when striving towards a better understanding of complex behaviour. Maughan (cited in Walsh 2014: 140) determined in 2005 that testosterone levels were unrelated to conduct problems for boys with "non-deviant" or "possibly deviant" friends, while problems elevated among boys with high testosterone who associated with "definitely deviant" peers.

Although the relationship between the female menstrual cycle and criminal behaviour has been found to be too vague and indirect, a drop in serotonin levels in the female brain just prior to menstruation might explain the agitation and irritability sometimes associated with the premenstrual syndrome. Serotonin is also referred to as the behaviourregulating chemical, since animal studies have demonstrated a link between low levels of the neurotransmitter present in the brain and aggressive behaviour. Low serotonin levels in humans have been linked to offending and IOW self-control (Walsh 2014: 142). Fjshbein (cited in Siegel 2012: 1473) indicates that a significant number of incarcerated females committed their crimes during the premenstrual phase and that at least a small percentage of women appear vulnerable to cyclical hormonal changes, which makes them more prone to anxiety and hostility. However, the overwhelming majority of women who do suffer anxiety reactions prior to and during menstruation do not actually engage in violent criminal behaviour.

4.5.2.2 Neurophysiological factors

Neurophysiology focuses on the study of brain activity. Some researchers believe that neurological and physical abnormalities occur during the perinatal stage or through birth-delivery trauma, and that these control behaviour throughout the person's life (Siegel 2012: 149). Research findings show a significant relationship between aggressive behaviour and impairment in executive brain functions such as abstract reasoning, problem-solving skills and motor behaviour skills. This relationship can be detected at a young age. Children who suffer from measurable neurological deficits at birth are more likely to become criminals later in life (Siegel 2012: 149). The electric impulses given off by the brain are measured with an electroencephalogram (EEG). According to Siegel (2012: 149), violent criminals have far higher levels of abnormal EEG readings than non-violent or one-time offenders. About 50—60% of adolescents with known behavioural disorders have abnormal readings.

The neuroendocrine system that controls brain chemistry provides a key to explaining aggressive behaviour. Antisocial behaviour and drug abuse are associated with a chemical imbalance in the chemical or hormonal activities of the central nervous system.

Neurological functions associated with aggression and violence are complex. Children with behavioural disorders may have identifiable neurological defects such as impairment in the prefrontal lobes, thalamus, medial temporal lobe, superior parietal and left angular gyrus areas of the brain (Siegel 2012: 149). The resultant behaviour includes poor impulse control, inadequate social skills, hostility, temper tantrums, destructive behaviour and hyperactivity. Scientific investigations have associated slow brain activity with young offenders.

There is also a neurological pattern called minimal brain dysfunction (MBD). This is an abnormality of the brain structure that results in behaviour that is detrimental to a person's lifestyle and social adjustment. Learning disability is one specific type of MBD. MBD includes perceptual impairment, brain damage, dyslexia and developmental aphasia, to name a few. Research findings differ with regard to learning disabilities as a risk factor for youths becoming involved in criminal activities (Siegel 2012: 149).

Organic brain disorders caused by traumatic brain injuries, brain tumours and psychomotor epilepsy lead to disrupted neural functioning, which in

turn causes disorders in thinking, often resulting in feelings such as fear, anxiety, anger and depression, and unexpected outbursts. Depending on the location of the brain tumour, certain personality changes such as irritability, fear, slovenliness and outbursts of anger can contribute to the risk of becoming involved in aggressive behaviour.

4.5.2.3 Genetic factors

In the context of this work, genetic factors refer to an inherited aggressive predisposition and inherited conditions associated with crime, such as an impulsive personality. Chapter 6 discusses individual positivism regarding the belief that criminality runs in families. The focus of the discussion in this current chapter covers how genes and environments work together to develop the holistic traits of the person, such as height, weight, IQ, impulsiveness, blood sugar levels, blood pressure, and so on. According to behaviour geneticists, genes do not cause the way individuals behave or feel, but facilitate tendencies or dispositions to respond to their environment. Genes contribute to the choices people make and therefore to the ease or difficulty in living with

> a person. Personality refers to the relative, enduring, distinctive, integrated and functional set of psychological characteristics that result from people's temperaments interacting with their culture and developmental experiences (Walsh 2014: 272).
>
> Behaviour is the result of biological factors such as genes interacting with environmental factors. There are no specific genes "for" criminal behaviour, but there are genes that lead to particular traits such as low IQ and low self-control that increase the probability of criminal behaviour when combined with certain environments, such as community disorganised environments, high unemployment or communities with gang activities. The role played by the environment and an individual's genes are therefore related. Yochelson and Samenow (cited in Schmalleger 1996: 284— 285) identified 52 "errors of criminal thinking" that form the criminal's personality. These include a lack of interest in schooling; pervasive intense anger, sometimes expressed or often just under the surface; manipulativeness; an inflexible, high self-image; chronic lying; super-optimism; and a view that other people's property is one's own (entitlement). Other factors included here are high levels of energy; fear of injury, rejection or death; present orientation and no contemplation of long-term consequences; and the deriving of enjoyment from reckless and law-violating behaviour, such as
>
> vandalism.
>
> Some of these abnormal thinking patterns seem contradictory, for example fearfulness and super-optimism. This, however, is a sign of the fleeting quality of the criminal's emotions. The criminal's thinking is dominated by self-centredness and selfishness. Such a person demands to be treated with respect and consideration, while displaying no respect for the rights, feelings or property Of other people.
>
> Various studies (cited in Walsh 2014: 132) postulate that a correlation exists between genetic factors and the different family structures in which an individual finds him- or herself, such as broken families or intact homes. The type of family structure is a variable often linked to antisocial behaviour. The family type that is more at risk to produce antisocial behaviour is the broken family With a divorced or single mother with children fathered by different men or raised by the mother only. The

risk to show antisocial behaviour is lower in the structured healthy family with both biological parents present.

4.5.3 Psychosocial factors

Psychosocial factors refer to a combination of social conditions conducive to crime and the individual's psychological willingness to commit crime.

453.1 Intelligence as factor

Intelligence is the mental, motivational and behavioural capabilities to understand and adapt effectively to varied situations and environments

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(Livermore 2011: 25). Walsh and Ellis (2007: 170—173) debate the relationship between intelligence quotient (IQ) and misbehaviour. They found the link between a learner's average marks at school and antisocial behaviour to be a better predictor than IQ. Academic achievement is a measure not only of intelligence, but also of other personal and situational characteristics such as hard work, good study habits and supportive parents. According to the National Longitudinal Study of Youth (Walsh & Ellis 2007: 173), a low IQ does, however, affect many areas of life and increases the probability of misbehaviour. Low intelligence as measured by IQ tests is difficult to be linked to crime because people with a low IQ are said to lack the ability to calculate correctly the costs and benefits of committing crimes, and temperament is linked to crime largely in terms of impulsiveness. In addition, IQ scores (psychometric intelligence) and intelligence per se should not be confused. A person's IQ merely refers to a standardised score from an IQ test. However, intelligence is seen as an all-encompassing ability that defies the score on an IQ test, as it is more relevant to how people in different strata in life perceive intelligence. Often, intelligence is related to competence, wisdom, intuition, judgernent, sense of humour and skills in different areas (e.g. musical talent vs mathematical genius) and it is a good marker for adaptive success in modern society (Bartol & Bartol 2017: 72).

Other forms of intelligence can be identified, although their roles as risk factors for youth misbehaviour have not necessarily been researched. Emotional intelligence (EQ) is the

ability to detect and regulate one's own emonons and those of others. Social intelligence (SQ) is the ability to understand and manage people, and to act appropriately in social interactions. Practical intelligence (PQ) is the abilzy to solve practical problems as opposed to academic or theoretical ones. All three of these intelligences — emotional, social and practical — predict the likelihood of being effective in various situations. Another type of Intelligence, namely cultural intelligence (CQ), is the capability to function effectively in a variety of cultural contexts such as ethnic, generational and organisational cultures. CQ can be used to become better able to relate to peer groups, classmates and neighbours who come from other parts of the world, which is even more important today as technology connects people from different cultures around the globe.

453.2 Personality traits

Personality traits refer to the type of behaviour people continuously choose to display. This behaviour reflects their approach to all their experiences and is generally pervasive, not a once-off or isolated event. All people have different personality traits but in varying degrees of intensity. A person's traits will influence his or her behaviour in a particular way in a particular situation. People often say: "We are all the same, but different" which implies we all have similar needs and are similar regarding mind, thoughts and feelings, yet every individual is unique in his or her own way. This difference and uniqueness often relates to personality type, namely the so-called introvert and extrovert. When a person is reserved and does not open up easily, recharges by being alone, struggles with change and listens more and says less, he or she is referred to as an introvert. On the contrary, when a person is sociable and talkative, is distracted easily, likes attention and makes friends quickly, then his or her personality type is extrovert (Costa & McCrae 1980: 668)

Many theories which refer to the poor ability of a person to control his or her behaviour recognise the presence of traits such as impulsiveness, hyperactivity, restlessness, clumsiness, heedlessness, a poor ability to plan ahead, short time horizons, low self-control, sensation seeking, risk taking, and a poor abil-
ity to delay gratification. This section focuses on traits such as impulsiveness, sensation seeking, conscientiousness, empathy, altruism and moral reasoning, and their relation to crime. Criminal behaviour is almost always the result of a group of risk factors rather than of any single one.

According to Agnew (cited in Walsh & Ellis 2007: 176), impulsiveness is a potent risk factor for criminality and it becomes more so if negative emotionality is added. Sensation seeking refers to a desire for novel, varied and extreme sensations and experiences, and it may result in the taking of physical and social risks to obtain such a sensation. There is a statistically significant relationship between sensation seeking and various kinds of antisocial behaviour (Walsh & Ellis 2007: 178). Conscientiousness, a trait preferred by employers in their employees, includes aspects such as being well organised, disciplined, responsible and paying attention to detail. In contrast, there are also traits like being disorganised, careless, unreliable, irresponsible and unscrupulous.

Conscientious individuals are more likely to be successful, whereas the less conscientious are less likely to compete effectively in complex industrial societies. On the more social front, empathy — another trait — enables a person to understand another's feelings and pain, a trait that not all people have. Research by Baron and Byrne (Walsh & Ellis 2007: 179) shows that offenders are significantly less empathetic than non-offenders, and are therefore also less eager to contribute to the wellbeing of others. Altruism is another trait more common to non-criminals, as is moral reasoning. Moral reasoning is supported by personality traits such as empathy and altruism, and is related to an individual's IQ (Walsh & Ellis 2007: 179). Although not all immoral behaviour is criminal, there are certain commonalities such as violating social expectations and ignoring obligations towards others.

4.6 HISTORY OF CONDUCT DISORDER AMONG YOUNG

OFFENDERS

Research findings show that the type of crime a youth commits as a first offender is significant (strategic offence), since the offence itself

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is indicative of a certain lifestyle, which in turn involves the risk of a continued criminal career. It is a well-known fact that a small percentage of offenders are responsible for a large proportion of crime. Chaiken (2000: 5) reports that property offenders (31,9% of the sample he cites) who commit offences such as burglary and vehicle theft are responsible for the greatest number of violent crimes. One may conclude that boys involved in a spectrum of crimes, including robbery and property crimes such as burglary and vehicle theft, are more at risk of being in more serious conflict with the law later in life than those who assault others, or deal in drugs and occasionally get into fights.

Svensson (2002:408) identifies vehicle theft as the most common strategic offence. Robbery and other theft are also designated as Strategic offences. If one examines the principal offences of an individual's first and secOnd convictions, risk combinations emerge. A person whose first and second convictions are both for vehicle theft runs a 60% risk of becoming a chronic offender. Vehicle theft in combination with another strategic offence, namely other theft, produces a 54% risk of the individual becoming a chronic offender (no matter which of the two types of offence comes first). The combination of a drug offence and a theft is also a high-risk one. The combination that produces the lowest risk (2%) involves a first conviction for vandalism and a second for assault. The combination of shoplifting as a first and second offence is also a low risk, with only 7% Of such individuals becoming chronic offenders.

Cox et al. (2014: 337—345) list the primary offences committed by young offenders in South Africa as theft, robbery, smuggling, prostitution, the abuse of narcotics and drug trafficking. In Asian countries, the crimes committed by the youth include drug trafficking and other drug-related offences, as well as violent crimes.

When comparing the crime rate of South Africa and Asia (Cox et al 2014: 340), South Africa reported more crimes that are violent. The question can be asked if the appearance of violent crimes among South African youth as a first offence could be the reason for the high crime rate.

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4.7 IDENTIFIED COMBINATIONS OF RISK FACTORS

The more risk factors present, the greater the chances of behavioural problems. Exposure to one risk factor alone does not condemn a child to problems in later life; however, exposure to a number of risk factors increases the chances of this occurring.

Some may say it is too difficult to identify risk factors for young people while they are still in the at-risk category. It is true that risk factors involve complex, systemic processes, but some researchers believe that such factors can be identified and even go as far as listing the most common ones. Tremblay (2012: 3—16) assesses and summarises various research findings pertaining to environmental, genetic and epigenetic influences (risk factors) on antisocial behaviour as follows:

- Developmental trajectories of disruptive behaviour from early childhood to adulthood are the consequence of genetic and environmental endowment.
- The early environment is created by the parents' own developmental history and has a major impact on disruptive behaviour through its impact on gene expression and brain development.
- Mothers appear to have the greatest impact on early gene expression.
- As children grow older, the larger environment, such as peers, has an impact on disruptive behaviour partly through gene expression.
- The genetic and environmental effects on disruptive behaviour development also have numerous other negative effects such as mood disorders, obesity, allergies, asthma, substance use, school non-achievement and unemployment.

Cox et al. (2014: 337—345) posit a global picture related to risk factors. These are similar, although different nuances were shaped by internal and external factors unique to a particular region or

country. The key risk factors in Africa include poverty, malnutrition, unemployment related to rapid population growth, living in informal settlements with unhealthy housing, a rise in the number of street children due to incomplete families and the effect of HIV/AIDS. In Asian countries, youth unemployment and drug addiction are prominent, Risk factors associated with Latin America Include economic problems, unemployment, homelessness, government corruption and military skirmishes. In some countries in the Middle East the risk factors are urbanisation, economical factors and the increasing heterogeneity of the population, as well as conflict between Arab-Islamic values and modern views imported from other areas of the world. In Eastern Europe, unemployment and low family income are the main contributors to youth offending. Family factors further add to the risk factors, namely dysfunctional families with parents often being alcoholics and/or drug addicts, with mental health issues or criminal backgrounds.

Based on the international research findings discussed in this chapter, the main risk factors can be grouped into five broad areas: those present in the child or young person; in the family; in the school environment; in extrafamilial relationships; and in the environment or wider community. Most researchers Identify factors present in the family as the main risk factors, followed by individual risk factors, those in the school and in the community, and those based on extrafamilial relationships.

The grouping of risk factors in South Africa corresponds with international research findings, but there are differences in ratings. In South Africa family factors are the most influential in contributing to misbehaviour. These are followed by risk factors in the community, in the school, in extrafamilial relationships and in the individual.

Examples of the risk factors listed in research findings are summarised in Table 4.1.

Table 4.1 Risk factors

Broad area	Specific risk factors
Family or home factors	An economically stressed fami y; incidence of physical and sexual abuse; poor parental monitoring and support; loveless parents; a lack of supervision; parents using alcohol and/or drugs; a negative relationship with parents; harsh and erratic parenting; broken families; child-headed households
Community factors	Poverty; neighbourhoods with a high crime rate; unemployment; socioeconomic conditions with reference to a lack of shared decision-making power between sexes and races; illiteracy; violence (including political); a lack of community involvement; the disparity between rich and poor; a conflict of norms; HIV/AIDS; awareness of freedoms and rights, but not responsibility; child prostitution; substance abuse; the lack of spirituality
School factors	Lack of education; poor academic performance; failing; truancy; problems at school; poor schooling; inconsistent discipline; inadequate or no school facilities; lack of role models; poor learner— educator relationship; lack of parental involvement; peer pressure
Extrafamilial relationship factors	Associations with deviant peers; peer pressure; gang membership

4.8 CONCLUSION

The risk factors in South Africa correspond with those identified elsewhere in the world, but the emphasis differs. Throughout the world it is felt that most of the listed risk factors originate in the family or home. While international researchers list individual factors as the highest, and environmental factors In the penultimate position, many South African researchers identify family and home factors first, followed by factors in the community, with individual factors in the last place. Some

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researchers do not even refer to the role of individual factors, whereas others deem them important. No consensus exists with regard to the role of individual factors, community factors and family influences in the causation of crime. It is safe to assume that a complex interplay between all the factors as illustrated in Table 4.1 in a person's life contributes to the behaviour he or she displays.

Although certain risk factors can be identified, this must not be seen as an excuse for engaging in crime as such an approach will make people less accountable to society, and will slow down rather than encourage their maturation process. Young Offenders who commit crimes might believe that they are not responsible because of their circumstances, and thus instead of addressing the problem, society increases its own vulnerability to these youthful offenders.

Individual factors	Age (early onset of aggressive behaviour); gender; feeling that life is oppressive; lacking hope for the future; feeling alienated; difficult personality; personality type; cognitive scripts; brain disease; mental disorder; poor refusal skills (internal buffers); IQ; temperament; level of attachment and bonding; genetic predispositions; neurophysiological factors; self esteem

Overall, research findings support the conclusion that no single cause or risk factor accounts for juvenile misbehaviour and that no single path leads to a life of crime. To date, however, research has not clearly identified all the causal paths that lead to youth misbehaviour or the factors that cause different individuals to pursue different paths in life.

CRITICAL QUESTIONS

I . Critically explain your viewpoint regarding the definition of the concept "risk factor" and distinguish between the different types of risk.

2. Consider the different types of risk factors as offered in this chapter. Indicate those that you would suggest as being present in most research findings.

3. Describe the community variables applicable to the South African situation that have a negative effect on the child and increase the risk of criminal behaviour.

4. A variety of risk factors in the family creates a situation where the child is likely to develop criminal tendencies. Critically debate this statement.

5. Discuss the incidence of crime and violence in schools.

6. Identify and debate seven main risk factors mostly supporting gang membership.

7. Indicators of gang membership are significant because they shed valuable light on the motives or reasons for youths initially becoming gang members. Debate this statement.

8. Analyse the main indicators ofgang membership in South Africa.

9. Various studies have found a link between aggressiveness in childhood and later criminality because of a combination of characteristics including both aggressiveness and hyperactivity. Debate this statement by referring to the following risk factors: age, genetic factors and personality traits.

10. Debate how the risk factors of poverty, unemployment, socioeconomic status of the family and biochemical factors may influence a boy's engagement in antisocial and criminal activities.

1 1. Evaluate the following statement: "Children who suffer from measurable neurological deficits at birth are more likely to become criminals later in life."

12. Debate the relationship between intelligence (IQ) and misbehaviour.
13. Identify offences whose appearance early on in a criminal career indicates a risk of the continuation of such a career,

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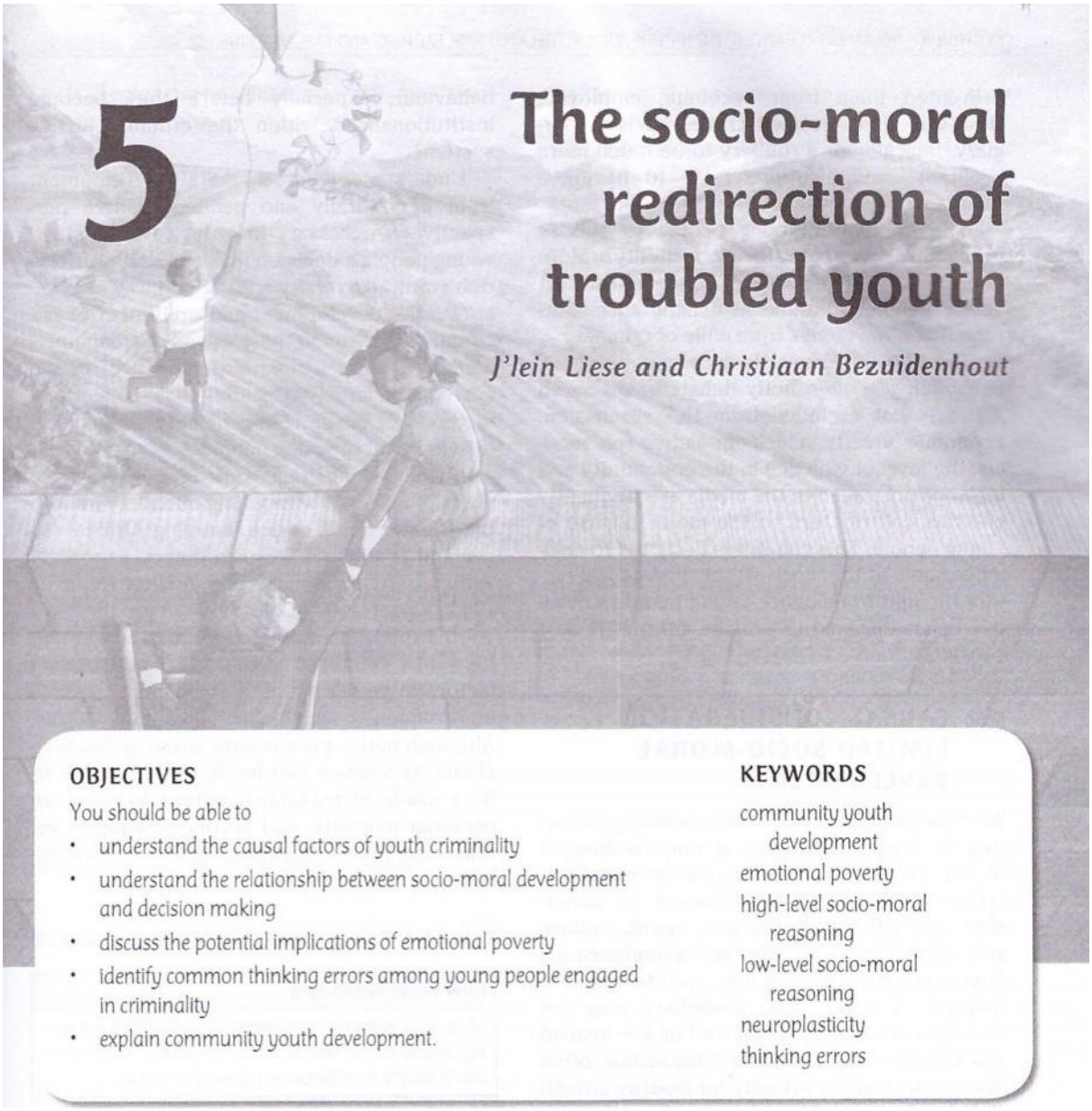
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5.1 INTRODUCTION

During discussions between the first author of this chapter and juveniles at Pollsmoor Prison in Cape Town in July 2001, one young prisoner rationalised his incarceration as being due to the fact that he could not get a job. He firmly believed his criminal activity was justified because of a lack of opportunity in his community rather than the result of his own decision making, yet deeper probing found that he had



5 The socio-moral redirection of troubled youth

J'lein Liese and Christiaan Bezuidenhout

OBJECTIVES

You should be able to

- understand the causal factors of youth criminality
- understand the relationship between socio-moral development and decision making
- discuss the potential implications of emotional poverty
- identify common thinking errors among young people engaged in criminality
- explain community youth development.

KEYWORDS

community youth development
emotional poverty
high-level socio-moral reasoning
low-level socio-moral reasoning
neuroplasticity
thinking errors

held a job in the past, but it required too much structure and paid much less in comparison to what he could make selling drugs on the street. The second author regularly visits youth correctional facilities and interacts with the youths. During one project at such a facility during 2016, the youths were asked why they committed crime. Most of the violent offenders stated altruistic expressive reasons. However, the majority of the other young offenders stated that blocked opportunities and job scarcity

prevented them from becoming employed. However, many deemed crimes such as burglary, hijacking or a robbery to be much more profitable, and also preferable to having a mundane, low-paying job.

What motivates young people to choose criminality over social responsibility? More importantly, what can be done to redirect young people from the avalanche of misfortune that often comes from a life of crime?

Globally, the causal factors of youth misbehaviour are often hotly debated, and South Africa is not excluded from this discussion. Economic poverty, a lack of positive role models, the level of violence in the community and violence portrayed in the media are frequently cited as contributors to the moral demise of young people. This chapter is designed to challenge some of the more established causal factors thought to influence young people's negative behaviour, and to provide alternatives for consideration.

5.2 CAUSAL CONSIDERATION 1: LIMITED SOCIO-MORAL DEVELOPMENT

With frequent incidences of criminality occurring in many South African communities, it is not uncommon for community members, youth workers and practitioners to generalise that children today lack morals, values and respect for authority, and sometimes for human life. However, we may need to consider that young people who misbehave may not be lacking in morals or values but are instead stuck in low-level socio-moral reasoning, often due to a lack of opportunity for healthy growth and development. Many young offenders may consider their actions, irrespective of whether or not they break laws and rules, as moral, just and right.

For example, those whose gang becomes a replacement for their nuclear family, perhaps providing them with the emotional euphoria that comes from feeling accepted and valued, and giving them a sense of belonging, may believe that acting to protect the gang's best interests — regardless of society's laws and rules — is morally justified.

What is the reason for this justification and how can youth practitioners and community members redirect children's negative behaviour, especially before they become institutionalised within the criminal justice system?

Understanding socio-moral development from a culturally and gender-sensitive perspective is necessary in order to understand young people's decision making. South Africa's rich cultural diversity and African way of ubuntu (i.e. the development and upliftment of the community through the goodwill of community members) offer a unique perspective on the current and largely Western debate concerning methods of ensuring the healthy socio-moral development of young people.

The following framework is a result of 13 years of research with young offenders in both the US and South Africa, merging African values and traditional Western theory, especially With regard to welfare and justice (Munsey 1980; Piaget 1997; Cole 1997). Working with youths in community, school and prison settings has demonstrated specific motivational factors in young people's socio-moral reasoning, frequently with behavioural implications. Although nothing is absolute, these motivational factors suggest two levels of thinking: firstly, a low-level reasoning pattern focusing on personal interests; and secondly, a high-level reasoning pattern focusing on social responsibility.

Table 5.1 Socio-moral development framework

Low-level reasoning
Motivational factor 1 : limited consequential thinking; motivational factor 2: individualism; motivational factor 3: interpersonal relationships
High-level reasoning

Motivational factor 1: social order; motivational factor 2: individual rights and responsibilities; motivational factor 3: ubuntu

5.2.1 Low-level socio-moral reasoning

5.2.1.1 Motivational factor I: limited consequential thinking

Motivational characteristics are the following:

- It demonstrates high concern for fear of punishment.
- It demonstrates little concern for "right" versus "wrong".

Attitude: "It's only a mistake if you get caught!"

The fear of consequences as opposed to concern for "right" or "wrong" is one of the key motivational thinking patterns associated with low-level socio-moral reasoning. Fear of consequences should not be equated with socially responsible thinking, as the motivation for good behaviour in this case is not sympathetic or empathetic consideration for others, but the desire to avoid punishment. Kohlberg (in Bartol & Bartol 2017: 369) refer to this early conventional stage as the "good boy" or "good girl" orientation.

5.2.1.2 Motivational factor 2: individualism

Motivational characteristics are the following:

- "Right" versus "wrong" is defined in terms of personal needs and interests.
- Obeying society's laws and rules is secondary to self-protection and self-preservation.

Attitude: "My actions are moral and right if I am protecting myself or my interests."

The thinking pattern of individualism is motivated by self-interest. If young people believe their actions are motivated by self-protection or self-preservation, regardless of society's laws or rules, they will often consider the actions to be justified. For instance, those who cannot afford a meal might steal food from a local shop. Although they understand that they are breaking the law, hunger has a stronger influence on their decision making than respect for other people's property.

However, it is important to remember that a one-time incident of stealing food does not translate into socio-moral decline. It is only when juveniles adopt stealing as a lifestyle, convinced that it is the only method of survival, and justify their behaviour through selfabsorbed thinking that it becomes a limitation in their development. In line with this is their awareness of their situation. This is a crucial aspect of how they use their mind to alter the course of their life. In addition to an awareness, their mental processes start regulating their life, cognitive scripts and interaction with society. Their interactions with society and other humans are key in determining their mind processes and awareness. Siegel (2012: 1—7) states in this regard that the mind is not an activity of the brain "but instead can be seen as an emergent, self-organizing process that arises from bodily processes as a whole as well as from our relationships". If juveniles interact with like-minded youths and peers (stimulating their contextual awareness), they will receive the necessary confirmation and justification to continue with their deviant lifestyle.

5.2.1.3 Motivational factor 3: interpersonal relationships

Motivational characteristics are the following:

- "Right" versus "wrong" is defined in terms of protecting the needs and interests of the people one cares about most (friends, family).
- A gang mentality or subcultural value logic prevails.

Attitude: "Regardless of laws and rules, my actions are moral and right if I am protecting the people I care about."

The focus on interpersonal relationships is potentially positive in that the young person has moved from a "me" orientation to one of consideration for others. The challenge, however, is that

the young person's reasoning tends to be limited to the people he or she is in direct relationship with versus strangers or "others" who are not considered to be part of the immediate social circle. This is often the motivational factor in gang participation, where the young person may rationalise his or her decisions and actions as protecting the gang's interests and wellbeing and therefore they are moral, just and right. As far back as 1993 Bartollas (1993: 55—56) mentioned specific attitudes that most serious youth offenders displayed:

- If they do not look out for themselves, nobody else will. Usually street-smart, hardened youth offenders believe they have to fend for themselves.
- Respect has to be earned through aggression. Violence must be used to show others their prowess and to instil fear in them.
- Tomorrow does not matter. Only the present matters as they have nothing to lose.
- The weak will be exploited in every possible way. They must retaliate. If they do not do so, others will bully them, take their property, and hurt them because they are weak.
- The group is needed for protection and emotional support. The gang replaces the family, and they will do anything for the gang or subcultural group to which they belong.
- The system treats them unfairly and discriminates against them. It sets them up for failure.
- Material things are what life is all about. They want what the gang leaders or corrupt individuals have in their neighbourhoods — nice vehicles, money to splash around and a street reputation. They want this because it gives them recognition.

Individually or combined, practitioners may find young people's behaviour motivated by any of these low-level reasoning factors or attitudes. They seem either unable or unwilling to consider the larger community when rationalising their misbehaviour. Although it is part of human development to experience these thinking patterns, sometimes young people become stuck in low-level thinking, and it is the responsibility of the people, systems and institutions involved in their lives to help them to develop higher-level socio-moral thinking and decision-making skills.

5.2.2 High-level socio-moral reasoning

5.2.2.1 Motivational factor I : social order

Motivational characteristics are the following:

- "Right" versus "wrong" is defined by social norms that protect the best interests of the overall population.
- It supports the need for society to set up laws and rules to maintain social order, as well as consequences for non-compliance.

Attitude: "We need laws and rules that everyone follows, otherwise there would be chaos."

At this level of thinking, young people realise that if everyone in a community were concerned only about their personal interests, there would be a higher likelihood of conflict and unrest, thus they begin to recognise a need for an overarching social order comprised of laws and rules that everyone should be required to respect and obey. Developmentally, young people begin to move from a perspective of "what's in it for me?" to recognising how humanity is linked interdependently as defined in the ubuntu philosophy of "I am because we are" or "a

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person is a person because of other people". This is obviously a complex process and usually a difficult one. It is much easier to fall back into familiar behaviour and to blame the system. Those juveniles who have been raised in a disorganised social order that condones violence and crime, and have experienced violence on a daily basis will find it easy to engage in reprehensible behaviour because they can justify the morality of their actions against the backdrop of the adverse social order. They will rather have values and norms that are distinct from those held by the majority. This is typical in different subcultures, such as the conflict subcultures, the satanic subcultures and the deviant subcultures. The youth conflict subculture will adhere to norms that oppose that of the majority culture. Members of a youth satanic culture will embrace sexual promiscuity, drugs and deviance as these go against the principles of most religious denominations and the majority of society. The deviant subculture will do things that are out of the ordinary to show their rebelliousness and opposition to the existing social order. Activities such as train surfing, binge drinking, truancy and crime are most likely to be displayed in this subculture.

The challenge of social order as a motivational factor for young people embracing high-level socio-moral reasoning is that "not every bad guy is caught". In most communities, there tend to be more crimes than police can solve, resulting in some perpetrators not being brought to justice, therefore the injustice of wrongs remaining unresolved may cause

regressive thinking patterns, once again motivated by self-interest. In addition, youths can convince themselves that their behaviour is trivial and not so bad when compared to that of others — even those in authority like politicians. Justifications such as "the government is corrupt so why should I respect the law?" will facilitate repressive thinking patterns.

5.2.2.2 Motivational factor 2: individual rights and responsibilities

Motivational characteristics are the following:

- It supports the need for society to set up laws and rules to maintain social order. The social order must maintain laws that support equal rights and responsibilities for all members of society.
- If the laws appear unjust, the focus is on changing them (e.g. the civil rights movement, the ending of apartheid, the women's movement).

Attitude: "The system is supposed to be just and fair, otherwise it should be changed through responsible social activism."

The motivational influence of valuing the importance of individual rights and responsibilities results in young people developing an even deeper understanding of the interdependent nature of humanity and the social responsibility it requires. In high-level socio-moral reasoning, young people are not only intellectually aware of their personal rights, but also take cognisance of their responsibility towards others to maintain a fair and just society.

However, if laws and rules are unjust, high-level socio-moral reasoning is likely to motivate action for social change. The struggle against apartheid is a prime example of this. During the struggle, people fought for a new social order (high-level thinking) versus individualism (low-level thinking motivated by personal interest). As a result, South Africa now has one Of the most liberal human rightsoriented constitutions and social policies in the world. Whether all youths understand the responsibility that goes with these newly achieved liberal rights is debatable because the social order changed; liberal laws were implemented, many of which have a specific focus to protect children; and many leniencies regarding children were introduced. However, it seems that high-level moral reasoning is absent in this context as individual

responsibilities are not accepted in many cases and the apartheid system is still being blamed for the current challenging position of youths in South Africa. The ever-increasing criminal activities by youths support this enigma. Other activities that support this notion are the political conflict groups that pressure government to agree, for example, to free education at all levels. Instead of high-level socio-moral reasoning and negotiations, these groups damage schools and universities, and attack innocent individuals as a way of "negotiating" with the government.

5.2.2.3 Motivational factor 3: ubuntu

Motivational characteristics are the following:

- It supports fair and just laws and rules, and respects similarities and differences among people.
- It recognises the benefits of diversity and freedom Of cultural expression.

Attitudes: "I am because you are." ; "A person is a person because of other people"; "Within our similarities and differences, we are interdependent and interconnected."

Behaviour motivated by the principles of ubuntu is arguably one of the highest levels of social development a person can attain. Living according to these principles implies socio-moral decision making motivated by the recognition of the interdependence of humanity, the need for social order and the value of individual rights and responsibilities.

Often, the high-level socio-moral motivational factors illustrated in this framework operate independently as well as together as a young person develops. In addition, the degree to which a young person's behaviour is motivated by the recognition of the need for social order, individual rights and responsibilities and the extent to which it is grounded in the principles and philosophy of ubuntu may be a determining factor in his or her ability to maintain social responsibility, even when faced with adversity.

Furthermore, it is possible for young people to engage in either low- or high-level socio-moral reasoning on a situational basis. It is when young people, especially young offenders, exercise chronic low-level thinking patterns that this can be perceived as a problem. Should young people get stuck in this low-level mode of thinking, they tend not to even think about the consequences of their behaviour and will find it difficult to develop the ability to decide between right and wrong. The focus becomes their own needs — a selfish orientation that could become a permanent way of thinking even as they grow into adulthood. This chapter hypothesises that young offenders are often stuck in low-level socio-moral development and never get an opportunity to develop high-level socio-moral reasoning attributes. These are some of the other contributing factors limiting healthy growth and development.

5.3 CAUSAL CONSIDERATION 2: EMOTIONAL POVERTY

A series of workshops in four provinces facilitated for the Council for Scientific and Industrial Research (CSIR) Crime Prevention Centre was held in 2002. Workshop participants included members of the South African Police Service (SAPS), the departments of Social Development, Correctional Services and Education, as well as magistrates, prosecutors and local non-governmental organisations. It followed from these discussions that although economic poverty is considered a significant causal factor for youth misbehaviour in South Africa, in the country's poorest townships the majority of residents do not engage in criminal activity.

What causes some young people who live in economically impoverished environments to engage in low-level socio-moral thinking, often resulting in criminality, and others, living in the same circumstances, to operate from a higher level of decision making?

First, it is important to broaden the scope and definition of poverty. Expanding the definition from simply a lack of money needed to purchase essentials for survival to including Other things such as hopelessness, prejudice and discrimination creates a multidimensional perspective illustrating how poverty can be both a cause and an effect (Duffy & Wong 1996).

For instance, in A framework for understanding poverty, Payne (1998) defines poverty as the extent to which an individual does without resources. Resources necessary for survival and success include financial, emotional, mental, spiritual and physical support systems, relationships and role models, and knowledge of hidden rules. Of particular interest is Payne's assertion that young people need emotional resources in order to have the stamina to withstand difficult and uncomfortable emotional situations and feelings.

Abraham Maslow demonstrated back in 1954 how poverty is more than economic limitation. Beyond the basic needs of food, shelter and water, Maslow's hierarchy of needs included emotional needs such as safety, belonging, love and being held in esteem by others as important components to healthy development. Similarly, Garbarino (1999) stresses the importance of a child feeling loved by a person with whom he or she feels a strong personal attachment as being a critical component influencing his or her capacity for resilience. If not, insecurity develops and the child acquires an ambivalent or resistant attachment. From this, an avoidance relationship will most probably develop as the child learns that the caregiver is not a consistent and regular part of his or her life. The child uses the avoidance tactic as a survival strategy but knows deep down that he or she needs positive relationships with other humans (Siegel 2012: 21—22). Feeling loved and valued and having a

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sense of belonging are not only Strong emotional needs of children, but also resources aiding healthy development. Thus emotional poverty — defined as the deprivation of emotional resources that normally come from healthy nurturing and supportive human interaction — is a potential causal factor in low-level socio-moral reasoning and negative behaviour that needs to be considered.

For instance, young people who grow up feeling emotionally impoverished, perhaps due to family violence, bullying from peers or oppression, may find themselves in a chronic pattern of deep emotional pain that directly influences their actions and behaviour.

In addition to chronic pain, emotional poverty perpetuated through experiences of rejection, abandonment or abuse is likely to elicit

additional feelings including shame, fear and anger. These are further motivational factors for low-level socio-moral reasoning resulting in aggression and violence. Many youths in South Africa experience rejection and poor rearing because of absent parents or guardians. This feeling of rejection and poor socialisation compound the incorrect styles of moral reasoning and respect. Their social and aggressive behaviour is largely controlled by cognitive scripts learnt and memorised through daily experiences (Bartol & Bartol 2017: 147). Their ability to develop higher cognitive methods of reasoning will not be stimulated appropriately if they are victims of rejection, abuse and neglect on a regular basis. Their awareness and cognitive script determine how they must behave in response to environmental stimuli and what the outcome of the behaviour will be. Awareness is a fundamental aspect of human beings' mental experiences with which they have the subjective sense Of knowing or being (Siegel 2012: 5-1). It can be a subjective felt sense (perhaps regarding unfair treatment), a knowing of something (perhaps knowing that a certain action is against societal rules) and a known (perhaps mindfulness that criminals usually end up in a prison). Parents or caregivers play a fundamental part in the development of cognitive scripts and awareness. A cognitive script of self-absorbed thinking eventually becomes very resistant to change once it has been "programmed" into the memory. The evaluation of the "appropriateness" of the cognitive script plays an important role in determining which scripts are stored in the memory for later retrieval and used when necessary, and which are used regularly, for example a violent script (rebelliousness) with regard to resisting authority and discipline. The environmental factors and their awareness of who they are and where they fit in are cues or stimuli in a person's life and determine which script is fitting for the occasion (Bezuidenhout & Klopper 2011: 187; Siegel 2012: 1-7; 5-1). In this regard, Bartol and Bartol (2017: 147) insist that

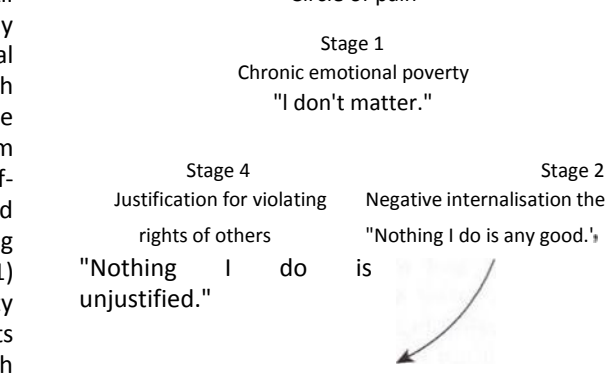
> [a]n individual with poorly integrated internal standards against aggression, or who is convinced that aggressive behavior is a way of life, is more likely to incorporate aggressive scripts for behaviour. Importantly, the aggressive child is apt to instigate aggressive reactions from others, confirming his or her beliefs about the aggressiveness of human nature in a circular, perpetuating fashion.

Furthermore, where victimisers and bullies are described as lacking sympathy or empathy for their victims, research has demonstrated a lack of emotional competence necessary for developing pro-social behaviour (Salovey & Sluyter 1997). Most alarming is that many of these children show little understanding of and a lack of empathy for the damage and pain they inflict on others through their behaviour. Empathy exists in two domains, namely affective and cognitive. Affective empathy encompasses an emotional response that manifests in feelings of concern for another individual and the longing to assist that person to relieve their distress. Cognitive empathy is one's ability to understand another person's frame of reference and not being blinded by one's own point of view. When one shows affective empathy, one experiences another person's pain, discomfort or distress. Understanding another's emotions shows that one has achieved a level of cognitive empathy.

These two modes of empathy are not exclusive and are intertwined; however, one can be more deficient than the other. Moreover, most children who show a lack of empathy, remorse and guilt have deficiencies in both dimensions of empathy. A lack of these emotions has been associated with psychopathic traits in youth offenders. Children with psychopathic tendencies might understand the emotions shown by a peer (cognitive), but they have no inkling of what their peer is experiencing and therefore do not have the ability to experience the shown emotion (affective) (Bartol & Bartol 2011: 42, 188; 2017: 216).

It may thus prove useful when working with young offenders to consider emotional poverty as a potential causal factor for negative behaviour and decision making. A foundation of feeling loved and valued, and a sense of belonging have a greater likelihood of

promoting pro-social behaviour and the capacity for sympathetic and empathetic involvement in other people's experiences. All of these are necessary components for healthy development and high-level socio-moral reasoning. This will imply that the youth reason, imagine and behave from a perspective of the larger good. For a youth to change from low-level socio-moral reasoning and self-absorbed thinking to sympathetic and empathetic high-level socio-moral reasoning will need a process of what Siegel (2012: 8—11) refers to as "neuroplasticity". Neuroplasticity entails the ability of the brain to change its structure in response to experiences. With therapy and early intervention, the firing pathways of the neurons and synapses in the brain could be changed in certain youths. The focus of attention and ongoing stimulation of the neural firing pathways of synapses and neurons could change selfabsorbed thought processes or Figure 5.1 even the cognitive scripts over time regarding a perception about something, or even allow for the development of empathy and remorse. The downside is that constant negative experiences can also alter the brain structure in long-lasting ways that could make life very difficult for that youth.



Circle of pain: chronic patterns of deep emotional pain

5.4 CAUSAL CONSIDERATION 3: THINKING ERRORS

The concept of thinking errors was initially formulated by Yochelson and Samenow (1976) and is an example of low-level socio-moral reasoning. It involves young people attempting to alter reality to avoid taking responsibility for their actions.

Common thinking errors young offenders may use include the following:

- Assuming. A young person may assume he or she knows what another person is thinking or feeling, and will often take action before verifying the facts. ("He looked at me like he wanted to fight so I had to hit him first'")
- Blaming. A young person justifies his or her negative behaviour as being due to someone else initiating the incident. ("It's not my fault— he started it!')
- Minimising. The young person will attempt to make what he or she did seem less bad. ("I barely touched him! That didn't hurt!')

Other common thinking errors include telling lies, justifying or coming up with excuses for behaviour, being intentionally vague such as saying "I don't know" when asked for information, or taking on the role of the perpetual victim who is always abused and never the abuser.

Thinking errors are often formed through faulty interpretation of facts. For instance:

Fact: Physical abuse exists in the home.

Interpretation: Parents are supposed to hit their children.

Thinking error: "One day I will hit my child."

High-level socio-moral reasoning would facilitate the following interpretation of the same fact:

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Fact: Physical abuse exists in the home.

Interpretation: Parents are not supposed to hit their children.

Socially responsible thinking: "I will not hit my child one day."

Everyone engages in thinking errors at some point and this does not automatically translate into a life of criminality; however, many young people who engage in criminal behaviour will use thinking errors to justify their actions. Utilising a cognitive restructuring model in diversion and rehabilitation programmes, focusing on the redefinition of interpretations of life experiences, is a key component in developing high-level socio-moral thinking. Should no intervention take place, young people could develop hostile attribution bias — that is, the likelihood of interpreting ambiguous actions as hostile and threatening (Bartol & Bartol 2011: 125; 2017: 147) — in addition to using thinking errors to justify their behaviour. Compared to their non-hostile counterparts, children with hostile attribution bias are twice as likely to see or interpret innocent behaviour from a peer as a hostile action. Children with this warped idea consequently adopt hostile goals, define their social problems in a hostile context, and do not work out amicable solutions for their problems but tend to prioritise a hostile and aggressive solution to an issue (e.g. bullying instead of negotiation and accommodative communication).

5.5 DEVELOPING EFFECTIVE INTERVENTIONS: COMMUNITY YOUTH DEVELOPMENT

In the preceding sections, three interlinked causal considerations were outlined as potential risk factors for child and youth misbehaviour. This final section will briefly discuss strategies for positive youth development.

Although it is well known that young people do not grow up in programmes but in communities, many youth interventions are still programme focused. Community youth development (CYD) was initiated in the early 1990s to put into practice a new philosophical, sociological and educational movement designed to encourage communities to engage in and embrace their role in the development of children (Hughes & Curnan 2000: 7).

As a methodology, CYD advocates the merging of community development practices with youth development to provide a "wraparound" approach for addressing young people's psychosocial needs and their need to develop competency in life skills, and engaging them to work in partnership with adults to create safe, just and healthy communities. A CYD approach to diversion or rehabilitation for young offenders incorporates the following values:

- Actively engaging them in the process of their own development
- Making them aware of their needs and involving them in the decisions that affect their lives
- Commitment to positive youth development goals of competence, character, confidence and connection
- Providing them with opportunities to contribute to the welfare of the community
- Participatory decision making
- Redirecting them morally

Strategies may include the following:

- Youth/adult partnerships. Often, traditional models of youth/adult relationships risk adults objectifying young people (Lofquist 1989) and even engaging in professional thinking errors such as "children are broken and need to be fixed". A CYD approach believes young people have the ability to partner with adults and share in the process of their own development.
- Providing viable life skills. The concept of life skills is often loosely defined, comprising everything from HIV/AIDS education to conflict resolution. Given the motivational factors of low-level socio-moral reasoning, emotional poverty and thinking errors influencing youth misbehaviour, it is essential that young people receive foundational life skills to aid them in developing social, emotional,

ethical, physical and cognitive competence. In addition, methodologies that consider different learning styles and cultural ideologies should be used in programme development.

- Facilitating and modelling healthy relationships. During early development, children imitate what they see and experience (Piaget 1997) and even as they get older, they are more likely to act in accordance to what has been modelled versus what they are told. For instance, during a community workshop hosted by the Participative Development Initiative in KwaZulu-Natal in 2001, a young person from KwaMashu said that even though his parents had always told him not to drink alcohol or use drugs, he learnt how to smoke dagga by watching his father.

It is critical, therefore, that adults model healthy relationships with young people. In addition, resiliency research has repeatedly demonstrated the need for caring adults to redirect negative behaviour in children (Garbarino 1999). It is clear that troubled youth

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often lack proper beneficial socialisation. They bear the brunt Of adults who have also been wrongly socialised. Many of these youth learn by copying the behaviour of their role models. Both socialisation or social learning (nurture) and genetic factors (nature) play an important role in the manifestation of an absent level of empathy in youths. In general, children model their behaviour on three main role models, namely their family members (e.g. mother, father, older siblings, grandfather, grandmother, uncles and aunts); members of a subculture (e.g. a gang) or the peer group (e.g. friends at school); and the media (e.g. specific programmes that encourage and support the use of violence or electronic games where aggression is the basis of the contest) (Bezuidenhout & Klopper 2011: 187).

This partly addresses the nurture part and the possible influence of the society and role models. The question then is: how do we address the nature part of cognitive sociomoral thinking? Considering the brain's ability to change and the influence that interaction with society and other humans has in determining the youth's mind processes, certain key elements have to be in place in a youth's life to make moral changes possible and perhaps redirect a troubled youth. Siegel (2012:8) highlights eight factors that could assist in healthy cognitive development and change:

1. Healthy activities and aerobic activities can support brain growth and neuroplasticity.
2. Adequate sleep assists us in consolidating our learning from the past day.
3. Healthy substantial nutrition is deemed the soil of the brain. The brain needs good healthy food, water and omega 3 vitamins for attention and proper functioning.
4. Attachment and healthy relationships with others support healthy and vibrant brain

activity.

5. New activities and stimulation are needed from time to time to get out Of a rut and keep the brain growing.
6. Focusing on one task at a time with proper attention stimulates the release of chemicals that support neuroplasticity. Multitasking and distractions actually prevent this process.

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7. Making time for oneself as inward reflection and engaging with one's own thoughts and feelings encourage integrative neural pathways in the brain.

8. Regular humour in a person's life promotes the healthy development of the brain.

From the above we can deduce that a child needs proper nurturing, attachment and a healthy lifestyle to hopefully eventually develop into a higher-order social-moral reasoning human being. One aspect in the nature aspect of human life is the predestined genes a person is born with. Some humans are born with a common or underlying factor (Bartollas 1997: 70) in their genetics that makes them significantly more vulnerable to derailment and staying on a lower level of socio-moral reasoning. Such people stay stuck in low-level moral development no matter what the environment, nurturing, attachment or lifestyle may be. These youths show problem behaviour from a young age no matter their social class, level of nurturing or attachment — "they are just (in)different". We cannot predict or pinpoint this genetic underlying factor in humans, but fortunately it affects only a small percentage of society.

5.6 CONCLUSION

This chapter outlined three interconnected causal factors of child and youth misbehaviour. Socio-moral decision making is often motivated by issues of welfare and justice (Munsey 1980) and can be divided into two levels of reasoning. Although it is part of human development to engage in both levels of socio-moral reasoning, the influences of emotional poverty and thinking errors put young offenders at risk of becoming stuck in low-level development. This in turn could impact on the development of hostile attribution bias or even psychopathic traits.

It is the responsibility of the people, systems and organisations impacting on young people's lives to support healthy growth and development. Key to achieving positive youth development goals and redirecting youth misbehaviour is engaging young people as partners in their own development, combined with viable life skills and healthy relationships. All children are capable of success and it is the job of caring adults, youth practitioners and community members to ensure that every child is given an opportunity to develop to his or her full potential.

CRITICAL QUESTIONS

1. Distinguish between low- and high-level socio-moral reasoning.
2. Differentiate between affective and cognitive empathy.
3. Explain the concept of hostile attribution bias.
4. Define the concept "neuroplasticity".

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Traditional theoretical explanations for youth misbehaviour

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OBJECTIVES

You should be able to

- clearly understand traditional explanations of youth misbehaviour in the classical school
- control behaviour learning theories
- recognise the influence of traditional explanatory theories in the moral development

KEYWORDS

traditional explanations of youth misbehaviour
control theories
learning theories
moral development

development of contemporary theories.

positivism
strain

6.1 INTRODUCTION

A primary aim of the field of criminology is to explain the committing of crime and criminal behaviour. Such explanations attempt to address the question of why crime occurs and, based on these explanations, to predict the onset of criminal behaviour. In an endeavour to explain youth misbehaviour, various explanatory theories have been developed over centuries. Some of these theories, called microtheories, involve the actions of individuals, and attempt to explain why young people break the law. Others focus on the larger social and cultural context in which people act, and address the issue of why the incidence of crime among young people is higher in some settings or among some collections of people. The latter are called macrotheories.

Although definitions of what a theory actually entails may differ, Shoemaker (2000: 7—8) emphasises that the social scientist (such as the criminologist) sees a theory as an attempt to make sense out of observations. Tibbetts (2012: 2) defines theory "as a set of concepts linked together by a series of statements to explain why an event or phenomenon occurs", thus a view on youth misbehaviour will be recognised as a theory if it attempts to explain or understand youth crime, regardless of the level

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of its causal assumptions and irrespective of the sophistication of its concepts and propositions. This view of theory is rather broad, but Maguire and Radosh (1999: 157—159) highlight four pertinent criteria for determining the ideal characteristics of a good theory.

- Plausibility. A theory needs to be a plausible explanation of the relationship between two or more facts (i.e. it has to make sense).
- Real-life evidence. The degree of real-life support the theory enjoys (based on empiriCal research findings), gives credence to its validity.
- Falsifiability. Scientists such as criminologists seek to produce explanations that are precise enough to allow for testing, and the essence of scientific testing is the effort to disprove — that is, to falsify. Thus the arguments of a theoretical explanation can never be absolutely proven, only refuted.
- Predictability. Scientists seek valid explanations of the physical world, the natural world and the social world. A criminologist, for example, is chiefly interested in the social behaviour of humans. All scientists, however, value most highly those explanations that have predictive power. The best criminological theories will provide not only a compelling account of past and present behaviour, but also sound predictions for future behaviour. By anticipating future behaviour, a good theory of crime will suggest fairly specific policy implications that can be used to develop helpful programmes and sanctions.

In addition Tibbetts (2012:2) insists that a good theory should be measured by parsimony, scope, logical consistency, testability,

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empirical validity and policy implications. Parsimony can be achieved if the relevant phenomenon is explained in the simplest posSible way. Scope entails the characteristic that addresses how much of the phenomenon one would like to explain. Logical consistency focuses on the ease of understanding. Are the concepts and propositions in a theory clear and do they make sense? Many theories over-generalise and are sometimes vague or not plausible because they lack logical consistency. Testability refers to the extent to which a theory can be tested and empirically verified.

Certain theories might sound very logical but cannot be substantiated or empirically correct because they cannot be tested. Empirical validity entails that theory has been verified by research. Increasingly integrated models of crime causation are being verified by scientific research. An important feature of a theory is whether it will have policy implications. With an empirically validated theory one can endeavour to influence politicians and the legislator to change, adapt or promulgate legislation and policy.

In this chapter, various traditional theoretical perspectives on youth misbehaviour are addressed. Two main schools of thought, namely the classical school and the positivist school, represent the foundation of traditional explanations. The influence of both schools, however, can be discerned in contemporary explanations of youth misbehaviour, which are addressed in the next chapter (Chapter 7). Please note that it is impossible to elaborate on each traditional contribution in the framework of one chapter. However, a comparative number of these contributions to stimulate further examination of this subject matter will be highlighted.

6.2 CLASSICAL SCHOOL OF CRIMINOLOGY: 18TH CENTURY BELIEFS ABOUT THE CAUSES OF CRIME

From a historical perspective it can be said that certain standards of behaviour were prescribed for members of groups through the ages. To ensure that these were upheld, those who transgressed had certain penalties imposed on them. People in biblical times, for example, were stoned or crucified, or had holes drilled into their cranium to release or drive out the evil spirits in the skull that were thought to have caused the unacceptable behaviour in the first place. Before the 18th century, the causes Of crime were attributed to supernatural powers such as devils, demons, evil spirits and witches. It was believed that human beings were cursed with the burden of original sin. This insinuates the original sin, also called ancestral sin, is the Christian doctrine Of humanity's state of sin resulting from the fall of man, stemming from Adam and Eve's rebellion in Eden, namely the sin of disobedience in consuming from the tree of knowledge of good and evil. Other ways in which the condemned were executed up to the 18th century included drowning, being buried alive, decapitation, stoning and the breaking of the body on a wheel. These gruesome practices, which were in full swing before the advent of the classical period, gave rise to a powerful reformation movement that had as its purpose to understand crime and to promote the application of justice (Austin 2012: 9; Brown, Esbensen & Geis 2001: 178; Chamberlain 2015: 21; Merzbacher 1993: 174).

From 1500 to 1750, philosophers who were studying the crime problem emphasised that people have the freedom to choose between right and wrong. This emphasis on "free will" accentuates the notion that people are responsible for the consequences of their own behaviour. Along with this point of view, the assumption was made that fear of the consequences of their actions, and particularly fear of pain that may be part of these consequences, could control people. The state therefore had to be the primary institution to impose punishment and by so doing should create fear that would be so strong that it would prevent people from being involved in criminal actions. These ideas laid the foundation for the development of modern criminology, which had its onset during the 18th century (the age of enlightenment) and of which the classical school of criminology forms part (Barkan 2012: 14; Barkan 1997: 118; Conklin 1998: 40; Glick 1995: 71). At that stage in history, classical criminology

emerged because of rapid socioeconomic and political change. In this time natural explanations for misbehaviour replaced the religious ones (Chamberlain 2015: 21).

The origins of the classical school are traced back to the writings of 18th century philosophers, particularly Cesare Beccaria's book Of crimes and punishments, published in 1764, and Jeremy Bentham's Introduction to the principles of morals and legislation, published in 1789 (Hoge 2001: 51: Jones 2001: 95-98). Classical theorists criticised Western criminal justice systems for their cruel and oppressive practices. The goals of the classical theorists were to reduce the severity of existing punishments and to achieve equal justice for all. The classical school, giving the first naturalistic explanation for the occurrence of crime, replaced the age-old explanation that crime is a supernatural phenomenon. This period is important to take note of because it gave rise to the basic ideas for the operation of the justice system and the processing of criminals as it stands today. Current concepts such as civil rights, testimony, due process, sentencing and deterrence were incubated in this period (Williams & McShane 2010: 15).

According to Cesare Beccaria and Jeremy Bentham, two of the mainstream classicists, human nature is characterised by three central features (Empey, Stafford & Hay 1999: 113):

- People are not bound by original sin but have the freedom to choose; people choose all their behaviour, including criminal behaviour.
- People are rational and are capable of using their reason to govern their lives.
- People are motivated to pursue their own self-interests at the expense of others.

A key premise of the classical theory is that humans are rational creatures, endowed with a free will. This argument implies, according to Hoge (2001: 52), that all criminal acts are wilful — that is, people commit crimes because they choose to do so. Rational beings are capable of taking decisions in a logically reasoned way by taking the costs and benefits of alternatives into account. Free will means that people may act as they choose. Deterrence not to commit a crime is based on the premise that the threat of punishment will influence decisions and behaviour. People are hedonistic and their behaviour should be deemed purposive. As rational actors, humans operate on the pleasure—pain principle. Punishment serves as the pain function. Specific punishment for specific offences should be written into law and should not be based on interpretation or discretion by the presiding officer in the court". The law must apply equally to all citizens and no one should get advantageous treatment. It implies that every human who is found guilty of a specific crime should suffer the same prescribed punishment (Burke 2005: 25).

Young offenders therefore are seen to be rational decision makers who choose to commit crime, and their choices can be controlled by fear of punishment. This view may provide an explanation of why affluent youths from "good" families choose to break the law. Their behaviour can be controlled only by punishment severe enough to convince them to choose conventional (law abiding) behaviour over criminal behaviour. Siegel and Senna (2000:81) argue that gang leaders are surely rational decision makers who consider matters such as how to make more money in the context of a business deal, what the chances are of getting caught and where to find a good lawyer. In South Africa, joining a gang may be a rational decision in that such membership can, for example, protect someone in prison from being violated by other inmates, or is a means of survival in a community where gang activities are prevalent, such as on the Cape Flats.

Classical theory further implied that young people would be deterred from committing crimes if they were threatened with punishment that was certain, unavoidable and swift. Subsequently, should the pain Of punishment (such as a probable prison sentence) outweigh the benefit of illegal gain (such as possessing stolen articles), then crime could be

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deterred or prevented. Following this reasoning, punishment should be graded according to the seriousness of the crime. "Let the punishment fit the crime" is the slogan of the classicists.

According to classical thinking, punishment could deter only if it were proportional to the crime. Proportionality means (a) that the severity of the punishment corresponds with the severity of the harm done by the crime so that more serious crimes receive more serious punishment; and (b) that the type of punishment resembles the crime so that others in society can best associate the punishment with the crime (Carrabine, Igansky, Lee, Plummer & South 2004:33).

Cesare Beccaria, writing in 1764, formulated three principles of punishment that later became characteristic of the deterrence principle. According to these, crime is dependent on the certainty, swiftness and severity of punishment:

- Certainty principle. If the observed certainty of punishment increases, the probability that laws will be broken decreases.
- Celerity (swiftness) principle. When the rate of punishment reaction accelerates, the extent to which rules are broken diminishes. If, on the other hand, the enforcement of punishment is slow, the probability is high that laws will be broken.
- Severity principle. The severity of punishment has deterrence value if it does not exceed a certain level. If the punishment for one crime is 40 years and for another 50 years, a person will not be deterred from committing the crime for which a longer sentence may be imposed in view of both sentences being unreasonably long.

Beccaria was of the opinion that the first two principles are the most important (Barkan 2012: 116; Barkan 1997: 119; Bartolias 2003: 99; Brown et al. 2001: 182; Conklin 1998: 40; Glick 1995: 71; Martin, Mutchnick & Austin 1990:3). Beccaria and Bentham believed that the severity of the punishment was the least important element of deterrence. They saw certainty of arrest as the most important element (Chamberlain 2015:22). In addition, Bentham claimed that it was not necessary to mete out punishment in the following instances:

- When the punishment was groundless (the act to be punished was not really seen as misbehaviour or deviant)
- When the punishment was deemed inefficacious (the punishment was ineffective as a deterrent)
- The punishment was too expensive (the type of punishment generated too many costs and the inconvenience it caused exceeded the benefits)
- The punishment was needless (punishment was not necessary if the crime could be prevented or suspended in another way) (Chamberlain 2015:22).

Despite criticism against the classical school, it still enjoys the support of some criminologists due to the fact that it brought about humanitarian reform. It also serves as a cornerstone for most criminal codes published in the Western world. During the second half of the 20th century, a revival of the classical school once again started taking place (Conklin 1998:40). In this context one should understand that the humane punishment of offenders is still often debated as it seems as if punishment is still an unfortunate necessity to prevent and control crime. In line with this, Lanier and Henry (2010: 61) state that the original ideas and concepts that were presented by utilitarian thinkers such as Beccaria are now well-known practices in current criminal justice processes. These include principles such as innocent until proven guilty, equality before the law, fair treatment and trials, as well as objectively regulated discretionary powers by the legal fraternity.

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6.3 THE GROWTH OF SCIENCE: POSITIVIST SCHOOL OF CRIMINOLOGY

With the growth of science during the 1800s, a thirst for knowledge emerged, which Empey et al. (1999: 114) describe as an intellectual revolution. The assumptions of the classical school on the rationality and free will of human nature were questioned, and a new school of criminology — the positive (or positivist) school — began to take shape. On questions such as: "What sort of creature is the human animal?" and "How is society organised and maintained?", an increasing number of positivist thinkers turned to the methods of science for answers, specifically to the use of scientific research techniques such as observation, experimentation and comparison. Technological progress in biology, chemistry, physics and medicine resulted in scientific research methods being accepted in criminology with time. Positivism can be defined as an attempt to use the scientific methods of sampling, control and analysis to study social phenomena. Contrary to the classical theories that were not based on empirical facts, the positivists established the tradition of empirical research and verification in criminology.

Positivism is based on three basic assumptions, as set out in Bartollas (2003: 71):

- The character and personal backgrounds of individuals explain youth misbehaviour. Positivists look for the cause of misbehaviour within the young person.
- The existence of scientific determinism is a critical assumption of positivism. Youth misbehaviour, like any other phenomenon, is seen as being determined by prior causes — it does not just happen — thus positivists reject the view that the young person exercises freedom, possesses reason and is capable of choice.
- The young offender is seen as fundamentally different from the non-offender. The task then is to identify those factors that have made this young offender a different kind of person. Positivists have concluded that offending youths are driven into crime by something in their physical makeup, by psychological impulses or by the harshness of their social environment.

In broad terms, the theoretical input of the positivist school can be divided into two major groupings:

- Theories of a biological and psychodynamic nature, also referred to as individual positivism
- Theories of a social nature, also referred to as sociological positivism

Most research within the positivist school attempts to isolate key differences between offenders and non-offenders, based on the belief that criminality has a particular set of characteristics. Some theorists focus on biological and psychological factors, thus locating the sources of crime primarily within the individual and bringing to the fore questions of individual pathology and abnormality. This approach, as indicated by Muncie (1999: 86), is central to individual positivism. In contrast, sociological positivism argues that the key causative factors lie in the social context external to the individual. Here crime is more a matter of social pathology. From this one can construe that positivist criminology focused on the criminal not the crime per se, as classical criminology did (Chamberlain 2015: 36).

6.3. I Individual positivism

This approach first emerged in the late 19th century and represented a radical departure from the dominant conceptions of crime, law and justice at the time, when criminal behaviour was regarded as a

matter of free will and individual choice. Two interrelated developments took place: one strand of scien-

tific research attempted to provide biological explanations for criminal behaviour, while the other focused on psychological factors associated with criminality.

6.3.1.1 Biological theories (the born offender)

Biological positivism was first popularised through the work Of the Italian physician Cesare Lombroso entitled The criminal man, which he introduced in 1876. Lombroso is often called the father of modern criminology (Muncie 1999: 85; White & Haines 2001:43). By studying the body shapes of executed criminals, Lombroso attempted to prove scientifically that those who had broken the law were physically different from those who had not. He pointed out that criminals had multiple physiCal abnormalities. Lombroso also reported that criminals manifested traits of sensory impairment and displayed a lack of moral sense, particularly the absence of remorse, they used slang language and had tattoos (Williams & McShane 2004: 37; Williams & McShane 2010: 31). For Lombroso the offender was born, not made.

He also referred to atavism (derived from the Latin word atavus, meaning "ancestor" or "father of great-grandfather") in his book. This rests on the principle that the behaviour of criminals represents a return to a more primitive and earlier period of evolution (Glick 1995: 78; Martin et al. 1990: 29). Put differently, atavism is the phenomenon that one finds when someone displays the physical and psychological characteristics Of his primitive forebears. These people therefore display behaviour that has already disappeared in evolutionary terms in their peer group, and can thus be regarded as "born out of time" or "throwbacks" (Barkan 2012: 135; Barkan 1997: 124; Brown et al. 2001: 241; Conklin 1998: 42). Consequently, atavists can be classified as "born criminals". In this regard, Williams and McShane (2010: 30—31) state that Lombroso "pointed out that criminals have multiple physical abnormalities of an atavistic (subhuman or primitive) or degenerative nature". He regarded such physical characteristics as stigmata. He believed stigmata did not cause crime, but that atavism caused criminal behaviour (Chamberlain 2015: 39).

Initially, Lombroso believed that all offenders were born criminals. Later he changed his point of view and by the time of his death he argued that the crimes of only one-third of the criminal population could be attributed to "born criminality", the other two-thirds consisting of crimina10id types or subordinate criminals. Lombroso (quoted in Martin et al. 1990: 31) described this type as follows: "Criminaloids are epileptoids who suffer from a milder form of the disease so that without some adequate cause criminality is not manifested". Members of this group therefore did not differ markedly from the general population, but became caught up in crime as a result of mental disorders or because the opportunity to commit crime presented itself. In opposition to this he believed that born criminals were dangerous and chronic offenders.

Biological explanations of this kind, however, did not present any positive solutions to prevent or deal with crime. Despite the criticism that can be levelled against Lombroso's work, it formed the basis for research that was undertaken at a later stage concerning the connection between crime and biological factors, such as chromosome aberrations, neurohormonal imbalances (transmitters in the brain), the premenstrual syndrome and abnormally high testosterone levels (Brown et al. 2001: 244; Martin et al. 1990: 40).

Other biological theories have focused on a variety of potential mechanisms, such as genetic factors underlying antisocial behaviour. The family histories of criminals have been examined and criminal heredity traced to certain ancestors. Other hereditary factors have been considered through the examination of twins. In this form of research, the behaviour of identical twins has been

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compared. The argument is that if one twin is criminal, then the other should be the same. Johannes Lange's study of prisoner twins and twins who were not institutionalised found a high degree of concordance — Often both twins had engaged in criminal behaviour, but the effect of environmental influences was ignored Nilliams & McShane 2004: 39).

Another example is the WY hypothesis, which postulates that males who inherit an extra Y chromosome have a propensity to heightened aggression and a heightened risk of criminal activity (Hoge 2001: 53). "Normal"

males have an XY sex chromosome configuration. The chromosomal aberration is found where males have an additional Y chromosome, which usually makes them tall, aggressive and mentally retarded. Research findings showing that some males with an XYY chromosome combination are inclined to commit violent crimes led to the view that all males showing this chromosomal aberration would display criminal behaviour. Although the posSible link between criminal behaviour and the XYY chromosomal aberration has stimulated the interest of researchers, there is no proof beyond reasonable doubt that all males with this aberration commit violent crimes.

Support for these and other biological theories has been quite limited, largely because they lack empirical support and are logically inadequate (Hoge 2001: 54; Empey et al. 1999: 134). Many Of these theories did not adhere to the "good theory" qualities Tibbetts (2012: 2) proposed, namely parsimony, scope, logical consistency, testability, empirical validity and policy implications. Even if most offenders share some biological traits, this might be the product Of some environmental condition such as poor nutrition and not necessarily a genetic factor.

6.3.1.2 Psychological theories (the made offender)

In terms of psychological positivism, crime is seen as the result of externally caused biological factors (e.g. brain injury) or internal psychological factors (e.g. mental illness) that are treatable. The offender (as opposed to Lombroso's argument) is made, not born, and the task of the criminal justice system is to understand the underlying causes of criminality and to find the appropriate treatment strategy (White & Haines 2001:45).

A diverse body of theories developed under the umbrella of psychological theories. Barkan (1997: 139—146) subdivides these theories as follows: • Psychoanalytic or psychodynamic explanations

- Moral development and crime
- Intelligence and crime
- Personality and crime

Psychoanalytic explanations

According to this view, the incidence of crime results from internal disturbances that occur in early childhood because of interaction problems between parents and children. This argument stems from the work of Sigmund Freud (1856—1939), the founder of psychoanalysis, who believed that we all carry with us residues of the most significant emotional attachments of our childhood, which then guide future interpersonal relationships (Barkan 2012: 148; Barkan 1997: 139; Siegel 2003: 154).

According to psychodynamic theory, the human personality contains three major components, which operate simultaneously:

- The id is the unrestrained, primitive, pleasure-seeking component with which each child is born. The id is not seen as evil but is deemed amoral (Chamberlain 2015:56).
- The ego develops through the reality of living in the world, and helps manage and restrain the id's need for immediate gratifi-

cation.

- The superego develops through interactions with parents and other significant people, and

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represents the development of conscience and the moral rules shared by most adults.

The argument put forth by the psychodynamic theory is that an imbalance in personality traits caused by a traumatic early childhood can result in long-term psychological difficulties. Siegel, Welsh and Senna (2003:84) illustrate this argument as follows: if neglectful parents fail to develop a child's superego adequately, the child's id may become the predominant personality force; the absence of a strong superego results in an inability to distinguish clearly between right and wrong. Later the youth may demand immediate gratification, lack compassion and sensitivity for the needs of others, and act aggressively and impulsively. A defective superego can contribute to antisocial and aggressive behaviour. In addition, the inability to show emotion, feelings and remorse, and a lack of empathy and guilt are linked to the defective superego (Van der Westhuizen 2011: 132). These characteristics are linked to psychopathy and antisocial personality disorder. In this regard, Bartol and

Bartol (2017: 216) insist that researchers are increasingly focusing on juvenile psychopathy.

Psychoanalytic explanations have been valuable in emphasising the importance of early childhood experiences for later behaviour, but their value in understanding crime is limited for several reasons, as indicated by Barkan (1997: 141):

- Antisocial behaviour is regarded as mentally disordered behaviour. (This is not true for most individuals.)
- Social factors are neglected, and childhood experiences are overemphasised. (Later life cycle influences such as peer influences, performance at school and career possibilities are also important.)
- Research relies on case histories of individuals under treatment or on samples of offenders in institutions such as prisons and mental hospitals. (These subjects do not necessarily represent the vast majority of offenders who are not under treatment or institutionalised.) (See also Chapter 10 in this regard.)

Moral development and crime

Since the time of Jean Piaget (1896—1980), psychologists have been interested in children's mental and moral development. Piaget was particularly interested in the intellectual changes that occur in the child's patterns of thought. He argued (as cited in Siegel et al. 2003: 88—89) that a child's reasoning processes develop in an orderly fashion beginning at birth and continuing until age 12 and older.

Following in Piaget's footsteps, Lawrence Kohlberg first applied the concept of moral development to issues in criminology. Kohlberg argued that everyone begins life without a notion of what is right and wrong, but through recognisable stages of development they acquire a moral sense as they age. "Moral sense" refers to the development of the ability to distinguish right from wrong, and to determine the ethically correct course of action in complex circumstances.

Kohlberg's (cited in Siegel et al. 2003: 89) stages of development are as follows:

- Stage 1: Right is obedience to power and avoidance of punishment.
- Stage 2: Right is taking responsibility for oneself, meeting one's own needs, and leaving to others the responsibility for themselves.
- Stage 3: Right is being good in the sense of having good motives, having concern for others, and "putting oneself in the other person's shoes".
- Stage 4: Right is maintaining the rules of a society and serving the welfare of the group or society.
- Stage 5: Right is based on recognised individual rights with a society with agreed-upon rules — a social contract.
- Stage 6: Right is an assumed obligation to principles applying to all humankind — principles of justice, equality and respect for human personality.

Each individual must develop the features, skills and judgement of a lower moral stage before attaining a higher level (Bartol & Bartol 2017: 366). In terms of explaining criminal behaviour, Kohlberg (cited in Ellis & Walsh 2000: 316—320) asserts that offenders develop more slowly through the stages of moral development than do persons in general. Subsequent research with delinquent youths has shown that a significant number are in the first two moral development categories, while higher stages of moral reasoning are associated with such behaviours as honesty, generosity and non-violence.

Moral development theory makes pertinent predictions such as the following:

- Academic performance will be negatively related to frequent involvement in youth misconduct. Doing well in school will increase the chances that learners will stay in

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school and have a favourable attitude towards education.

- Supportive family relationships will be associated with low involvement in crime. This is consistent with evidence of a positive relationship between misconduct and poor parent—child relationships, and abusive family discipline practices.
- Parents whose approach to discipline is based on reason will be less likely to have children who break the law. Children who are frequently subjected to harsh physical punishment are more likely to become involved in crime. Parents should encourage their children to consider the moral consequences of their behaviour from an early age.
- With regard to empathy, altruism and role-taking ability (i.e. placing oneself in another person's shoes), taking other people into consideration will be negatively associated with involvement in crime.
- Involvement in deception and dishonesty will be associated with criminal behaviour.

Intelligence and crime

Offenders were believed to have inherently substandard intelligence and thus seemed more naturally inclined to commit crime. It was thought that if the authorities could determine which individuals had a low IQ, they might identify potential criminals before they committed socially harmful acts.

Most research on the relationship between IQ and misbehaviour focuses on adolescents, and it appears there are several reasons to explain the apparent causal link between low IQ and youth misbehaviour. Barkan (1997: 142) explains this causal link as follows: first, youths with low intelligence do poorly at school, and poor school performance in turn leads to lowered attachment to school and greater alienation from it, which results in a higher rate of misbehaviour. Second, low intelligence leads to a lower ability to engage in moral reasoning and to delay gratification, increasing the likelihood of misbehaviour. Third, adolescents with low intelligence are thought to be less able to appreciate the consequences of their actions and to be more susceptible to the influence of peers who break the law (Barkan 2012: 151).

Criminologists Travis Hirschi and Michael Hindelang maintain that IQ is more important than race and social class for predicting youth misbehaviour. They propose that low IQ increases the likelihood of criminal behaviour through its effect on school performance. Youths with a low IQ do poorly in school, and school failure and academic incompetence are highly related to youth misbehaviour and later to adult criminality (Bartol & Bartol 2017: 71; Siegel 2001: 176). Hirschi and Hindelang accepted that IQ is not entirely related to heredity and may be influenced by environmental factors (Jones 2001: 347).

Despite these explanations, assumptions on the connection between intelligence and crime are regarded as highly questionable and need to be treated with caution. The debate on the link between IQ and crime continues. The real argument seems to focus on what IQ tests actually measure.

Personality and crime

Personality can be defined as the reasonably stable patterns of behaviour, including thoughts and emotions, that distinguish one person from another (Siegel 2001: 172).

Most of the research on the issue of personality and crime focuses on childhood temperament. Temperament is "a natural mood disposition determined largely by genetics and biological influences". (Bartol & Bartol 2017: 89). Temperament is seen as an innate readiness to respond to events and objects as they are encountered over a variety of situations and interactions (Bartol & Bartol 2017: 89). Many studies, some of them longitudinal, link temperament problems during infancy and childhood with behavioural problems during this time and also during adolescence (Barkan 1997: 145). Temperament problems include matters such as attention deficit, impulsiveness,

hyperactivity, irritability, coldness and suspiciousness. Children with temperament problems are more likely to display problematic behaviour in unstable families marked by inadequate parenting than in stable ones where parents are loving and supportive. Parents and caregivers are therefore co-creators of the ill-tempered temperament of the child. Parental responsiveness, nurturance and warmth are important in the child—parent relationship (Bartol & Bartol 2017: 89). The child that shows constant ignorance and ill-tempered behaviour can easily become a frustration to the parents and caregivers such as teachers. They become overwhelmed and feel helpless, and their attitude and behaviour feed into the behaviour of the child, causing reciprocal negative behaviour that deeply disrupts the parent—child relationship. This can cause abusive behaviour towards the child that in turn stimulates the ill-tempered behaviour of the child.

Sheldon and Eleanor Glueck (cited in Siegel 2001: 173) identify a number of personality traits that they believe characterise antisocial youth:

- Self-assertiveness
- Resentment
- Hostility
- Mental instability
- Poor personal skills
- Defiance
- Sadism
- Distrust of authority • Lack of concern for others
- Suspiciousness
- Impulsiveness
- Feeling unappreciated
- Destructiveness

Since the Gluecks' findings were published, other research efforts have attempted to identify personality traits that would increase the chances for misbehaviour. A common theme is that young offenders are hyperactive and impulsive individuals with a short attention span, which makes them prone to problems such as sexual promiscuity and violence.

Psychologist Hans Eysenck (cited in Siegel et al. 2003: 91) identified two important personality traits that he associated with misbehaviour: extroversion and neuroticism. Eysenck defines extroverts as impulsive individuals who lack the ability to examine their own motives and behaviours. Neuroticism, according to Eysenck, produces anxiety, tension and emotional instability. Youths who lack self-insight and are impulsive and emotionally unstable are likely to interpret events differently than those who are able to give reasoned judgements to life events. While the former may act destructively, for example by using drugs, the latter will be able to reason that such behaviour is ultimately self-defeating and life threatening.

Research on personality and crime has important implications for reducing crime, according to Barkan (1997: 145). Early childhood temperament problems need to be addressed by means such as preschool and early family intervention programmes, as these may reduce youth misbehaviour.

As in the case of biological theories, there are problem areas that limit the application of personality theories. Several studies on the link between personality and misbehaviour find no differences between offenders and non-offenders. Also, because most personality research on youths examines offenders in institutions, their personality problems may be the result and not the cause of their institutionalisation. Aspects such as socioeconomic status and education are not considered, and the research has methodological problems.

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6.3.2 Sociological positivism

Sociological approaches stress the importance of social factors as causes of crime. Their broad aim, as indicated by Muncie (1999: 99), is to account for the distribution of varying rates of crime in given populations. Philosophers such as Auguste Comte and Claude Saint-Simon first developed a sociological form of positivism in the mid-19th century (MunCie 1999: 100). Comte's argument that society shapes the individual psychologically provided the foundation for sociological positivism.

According to Hoge (2001: 56), the many theories included in this category are united by two related features:

- All employ social class-based constructs in one way or another to explain criminal behaviour.
- All reject individual characteristics as relevant to the analysis of antisocial actions.

Brown et al. (2001: 283) identify two main branches of these theories: social structure theories and social process theories.

6.3.2.1 Social structure theories

The primary premise of social structure theories is that the lower classes (or the underprivileged) engage in criminal behaviour to a higher degree than the middle class. In short, the disadvantaged economic class position is a primary cause of crime. Brown et al. (2001: 284) point out that structural theories are not intended to imply that only poor people commit crimes, nor do they mean that people located at the lower levels of the social structure have no choices or are devoid of responsibility for misbehaviour. These theories do, however, assume that crime is primarily a lower-class problem, and point to flaws within the social structure that increase the odds of a person within that social stratum resorting to illegal behaviöur.

Social structure theories focus less on the individual offender because the causes of criminal activity are viewed as being determined by structural variables. Structural features that contribute to poverty, unemployment, poor education and racism are viewed as indirect or root causes of the high crime rate among members of socially deprived groups (Barkan 2012: 161; Brown et al. 2001: 284; Tibbetts 2012: 131: Van Der Westhuizen 2011: 135).

Of interest is that the majority of the theories are based on studies of young people and direct attention to social inequality in society. Several theories have been identified as social structure theories and have been subdivided into three broad categories for classification purposes: social disorganisation, strain and cultural deviance.

Social disorganisation theories

These theories focus on the social environment and specifically on urban conditions that affect crime rates. Social disorganisation centres on three variables: poverty, residential mobility and racial heterogeneity. These factors generate social disorganisation, which in turn contributes to crime. A disorganised area is one in which institutions of social control, such as the family and school, have broken down and can no longer function properly. Indicators of social disorganisation include high unemployment and school dropout rates, deteriorated housing, low income levels and large numbers of single-parent households (Siegel 2001: 192—193). Informal settlements in South Africa display such indicators of social disorganisation. Housing structures are dilapidated, many residents are unemployed, and Single- or no-parent households occur partly owing to the AIDS pandemic. According to social disorganisation theorists, residents in these areas experience conflict and despair, and as a result antisocial behaviour flourishes.

Social disorganisation theory or social ecology was popularised by theorists Shaw and McKay, who studied the city of Chicago and found that areas with a high crime rate were characterised by a decreasing population, a high percentage of foreign-born heads of families and a low rate of home ownership (Tibbetts 2012: 132; Van der Westhuizen 2011: 135). The theory therefore highlights the relationship between social disorganisation and deviance. Crime and delinquent behaviour become the alternative mode of socialisation as soon as a breakdown occurs in informal social controls and youths become attracted to these deviant lifestyles (Tibbetts 2012: 132; Van der Westhuizen 2011: 135).

In such socially disorganised areas, there are high rates of truancy, infant mortality, tuberculosis, mental disorders and adult criminality (Tibbetts 2012: 132). Shaw and McKay (cited in Hunter & Dantzker 2002: 88) reasoned that deteriorated neighbourhoods lead to a loss of control over youth and encourage gang activities. Social disorganisation is the opposite of social control, and refers to a state of disarray in these lower-class neighbourhoods. Disorganisation is highlighted by the absence of support networks, the lack of proper supervision for the youth, population density, singleparent or child-headed households, poverty, marginalisation and dilapidated (informal) housing. This sets in during times of rapid social change, and leaves individuals adrift and frustrated (Barkan 2012: 161; Van der Westhuizen 2011: 135).

Shaw and McKay (cited in Jones 2001: 117) found that in the misbehaviour of youth, social problems declined with increasing distance from the city centre, and that this picture remained true over a considerable period of time. The inner city was characterised by general instability arising from a constantly changing population and its heterogeneity, and the competing forces of different cultures and legitimate and illegitimate activities. Urban crime therefore was portrayed as resulting from the failure of the inner-city environment to encourage proper integration and a sense of community for its different cultures. Because the basis of their theory was that neighbourhood disintegration and slum conditions are the primary causes of criminal behaviour, Shaw and McKay paved the way for many community action and treatment programmes (Siegel 2001: 195). Recently, more focus has been put on the injustices in society to explain crime, so instead of blaming the person, researchers are

focusing on the high-risk neighbourhoods and informal settlements with high levels of social disorganisation that create forces of strain, frustration and disorganisation that inherently create crime. The emphasis is on the injustices against the human, and the specific individual factors are somewhat avoided.

Strain theories

Criminologists who view crime as a direct result of lower-class frustration and anger are referred to as strain theorists. They argue that people are more likely to engage in crime when they cannot get what they want through legitimate channels. Most people desire wealth, material possessions, power, prestige and other life comforts. Members of the lower class are generally unable to acquire these symbols of success through conventional means. They may become frustrated or angry, and as a result they may try to get what they want through illegitimate or criminal channels, strike out at others in their anger, or make themselves feel better through illicit drug use (Agnew 2006:421). Consequently, they feel anger, frustration and resentment, which are referred to as strain. Lower-class (or deprived) citizens can either accept their situation and live as socially responsible, but unrewarded, Citizens, or they may opt for an illegal means of achieving material success, such as theft, violence or drug trafficking.

Strain theory was developed from the work of Emile Durkheim's notion of anomie (from the Greek a nomos, meaning "without norms") and Robert Merton, who looked at the cultural imbalance that exists between the goals and the norms of the Citizenry, especially in poor areas. Anomie was later expanded to include "a total absence of a moral sense, disregard for divine law and lack of conformity" (Fattah 1997:236). According to Durkheim, an anomic society is one in which the rules of behaviour (norms) have broken down during periods of rapid change or social crisis, such as war or famine. In South Africa, the new political dispensation brought expectations of a better life, particularly for the previously disadvantaged, and promised proper housing, job opportunities and quality education. These expectations have not been met, which has resulted in feelings of frustration and discontent. The ongoing service delivery protests against the inefficiency and incompetence of the majority of local governments, and more specifically municipalities within the various national government departments, all point to systemic problems and ineffective governance. Poor service delivery compounds the strain many impoverished and forsaken citizens in South Africa experience (Ngantweni 2011:306).

An anomic society is not able to control human aspirations and demands, which means that anomie undermines a society's control function. Under these circumstances it can become a strain to obey the law, and criminal actions can result (Siegel 2001: 200—201).

Durkheim's ideas were applied to criminology by Robert Merton (1910—2003) in his theory of anomie, which was the first major strain theory of crime. In his work Social structure and anomie (1938), Merton argues that people are encouraged to pursue the goal of monetary success, but that lower-class (underprivileged) individuals are often prevented from achieving this through legitimate channels, such as obtaining a good education and then a good job. The inability to achieve economic success creates much frustration, and individuals sometimes respond to this by engaging in crime such as theft and substance abuse (Agnew 2006:421).

Merton argues that each person has his or her own concept of society's goals and the means to attain them, thus various adaptations to strain caused by restricted access to the socially approved goals and means can occur. Merton identifies five modes of adaptation:

- Conformity. This is the most common social adaptation. Individuals embrace the conventional goals of society (e.g. studying hard to achieve success) and also have the means at their disposal to attain them. Such persons are law abiding. Merton maintains that if most people did

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not follow this adaptation, the very existence Of society would be threatened (Williams & McShane 2004: 101).

- Innovation. This is the adaptation mechanism most closely associated with criminal behaviour. Innovation occurs when an individual accepts the goals of society, but rejects or is incapable of attaining them through legitimate means. Many (young) people desire material goods and luxuries, but lack the financial ability to acquire them. The resulting conflict may entice them to adopt illegal solutions for their dilemma, for example stealing or drug dealing (Siegel 2001: 201). In South Africa, a large number of crimes, especially theft, are committed by young offenders (Crime report of the SAPS, 2010/2011; Terblanche 1999: 33).
- Ritualism. Ritualists gain pleasure from practising traditional ceremonies with set manners and customs, irrespective of whether they have a real purpose or goal. Ritualists should have the lowest level of misbehaviour because they apparently have abandoned the success goal, which is at the root of criminal activity (Siegel 2003: 193).
- Retreatism. Retreatists reject both the goals and the means of society, and do not buy into the idea of conventional hard work (Tibbetts 2012: 113). This category includes psychotics, chronic drunkards, drug addicts and street people (Carrabine et al. 2004: 58).
- Rebellion. This mode of adaptation to strain involves substituting conventional goals and means with an alternative set. An example would be revolutionaries who wish to bring about radical change to a social structure, or rebel in reaction to a corrupt and hated government (Williams & McShane 2004: 102). Tibbetts (2012: 113) believes that "most true rebels are criminals by definition, largely because they are trying to overthrow the current societal structure". In addition, one person can apply different modes of adaptation simultaneously.

Some questions are left unanswered by this theory based on anomie:

- Why do people choose to commit certain types of crimes? For example, why do some young people shoplift and others rape?
- Why do most young offenders desist from crime as adults? Does this mean that perceptions of anomie dwindle with age?

Cultural deviance theories

In these theories, elements of both the strain and social disorganisation theories are combined, and the distinct differences between social classes are emphasised. According to this view, a unique lower-class culture develops in disorganised neighbourhoods due to strain and social isolation. These independent subcultures maintain unique values and beliefs that are in conflict with conventional (law-abiding) norms, thus criminal behaviour is an expression of conformity to lower-class subcultural values such as excitement, toughness, taking risks, fearlessness and immediate gratification, as opposed to middle-class values, which emphasise hard work, delayed gratification, formal education and being cautious (Siegel 2001: 209). The lower-class subculture is an attractive alternative because the urban poor find it impossible to meet the behavioural demands of middle-class society. The poor and marginalised in South Africa cannot aspire to the so-called middle-class measuring rod. Bezuidenhout (2007: i—vii) contextualises it as follows:

> Children are guided by a materialistic carefree society that craves gluttony but detests the very poor and marginalised. Beggars and street children are usually treated as the outcasts of society. The typical aspects that determine a person's success are: "What you drive"; "What you earn" and "Where you live". These materialistic yardsticks also apply to our youth. Branded clothing, cell phones and financial independence put a huge burden on youths who are not in a position to compete on this level Poor youths and other marginalised youths resort to violence, drug abuse and other dangerous activities such as train surfing or engage in criminal activities because of amongst others a lack of parental

involvement and constructive leisure time activities in their area.

The concept that the lower (or underprivileged) class develops a unique culture as a response to strain can be traced to Thorsten Sellin's classic work, Culture, conflict and crime, published in 1938. Sellin's main premise is that criminal law expresses the rules of the dominant culture. The content of the law may therefore create a clash between conventional, middle-class rules and splinter groups, such as ethnic and racial minorities. The latter groups maintain their own set of conduct norms — rules governing the day-to-day living conditions within these subcultures. Sellin argues that criminal behaviour is an expression of conformity to lower-class cultural values and traditions that are fundamentally different from, and create conflict with, laws designed by the middle and upper class (Hunter & Dantzker 2002: 95).

In socially disorganised neighbourhoods such as Khayelitsha, Manenberg and Guguletu in the Western Cape, conventional values such as honesty, Obedience and hard work make little sense to youths whose role models may include the affluent neighbourhood drug dealer or pimp. Siegel et al. (2003: 118) maintain that those adolescents who share lower-class values and admire criminals, drug dealers and pimps find it difficult to impress authority figures such as teachers or employers. They experience a form of culture conflict and are rendered incapable of achieving success in a legitimate fashion. As a result, they join gangs and engage in crime. Gangs and subcultures are smaller and more localised, and exhibit a distinctive shape or structure to make them look different from the dominant culture (Clarke, Hall, Jefferson & Roberts 201 1: 51).

6.3.2.2 Social process theories

The consistent theme of social process theories is that deviant socialisation and intimacy with criminal peers breed criminality (Hunter & Dantzker 2002: 104). These theories assume that deviant behaviour is learnt through social interaction with others (Tibbetts 2012: 141). This can be compared to teaching someone to ride a bicycle. They draw attention to the interactions people have with various organisations, institutions and processes of society. Family relationships, peer group associations, education experiences and interactions with authority figures influence most people, including teachers, employers and agents of the criminal justice system. If these relationships are positive and supportive, people can succeed within the rules of society and remain law abiding. If they are dysfunctional, conventional success may be impossible and criminal actions may become a feasible alternative (Siegel 2001: 224).

Social process theories share one basic idea: all people, regardless of their race, class or gender, have the potential to become lawbreakers. Although members of the lower class may have to deal with the added burdens of poverty, racism, poor schools and disrupted family lives, these social forces can be counteracted by positive peer relations, a supportive family and educational success. In contrast, even the most privileged members of society may turn to antisocial behaviour if their life experiences are intolerable and destructive. Process theories thus account for the occurrence of misbehaviour in all classes of society.

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Traditionally, social process theories include social learning theories and social control theories.

Social learning theories

Social learning theorists believe that crime is a result of learning the norms, values and behaviours associated with criminal activity. Social learning can involve the actual techniques of crime (e.g. how to handle a firearm or roll a joint), as well as the psychological aspects of criminality (e.g. how to deal with the guilt and shame associated with crime) (Siegel 2001: 228). Social learning theories see law-breaking socialisation as occurring through a process by which young offenders are taught that criminal behaviour is acceptable and perhaps even more desirable than legitimate (law-abiding) behaviour.

One of the most prominent social learning theories is Sutherland's differential association theory, first mooted in 1939 and finalised in 1947. Sutherland describes criminal behaviour as normal learnt behaviour (in the same manner as learning to read or write) (Carrabine et al. 2004: 56; Tibbetts 2012: 143). It involves the learning of deviant ideas and beliefs in the process of associating with other people. Criminal behaviour is a product of such ideas and beliefs (Vold, Bernard & Snipes 1998: 199). People actively learn criminal ways as they interact with other individuals who serve as teachers and guides to crime, thus criminality cannot occur without the aid of others. Learning criminal behaviour therefore occurs within intimate personal groups of significant others. Intimate social companions such as family, friends and peers have the greatest influence on a person's conduct and attitude development. For example, children who grow up in homes where parents abuse alcohol are more likely to view drinking as socially acceptable (Siegel 2001: 229; Tibbetts 2012: 144).

Learning criminal behaviour includes learning the techniques of committing crime (e.g. young offenders learn from their associates how to train surf, shoplift or obtain drugs). They also learn the accepted terminology for their acts, and their violations of the law are approved. For example, learning how to flick a knife and getting high on drugs are behavioural patterns usually acquired from more experienced companions. Young offenders must also learn how to react properly to their illegal acts, and when to defend them, rationalise them or show remorse.

Sutherland's theory has had a massive impact on criminology. At the time, physicians and psychiatrists who were searching for the causes of criminal behaviour in biological and psychological abnormalities dominated criminology. Vold et al. (1998: 198) are of the opinion that Sutherland's theory, more than any other, has been responsible for the decline of the prevailing opinion and the rise of the view that crime is the result of environmental Influences acting on biologically and psychologically normal individuals.

In addition to Edwin Sutherland's theory, one should also take heed of the social learning theory of Albert Bandura, who insists that the learning process begins in early childhood. Children develop many behaviours merely by watching their parents, significant others and different role models in their environment, a process known as modelling or observational learning. A child's behaviour pattern therefore is often acquired through the modelling or imitation of other people, real and imagined, in the child's direct environment. This implies that the conditions most conducive to the learning of aggression are those in which the child (a) has many opportunities to observe aggression; (b) is reinforced by others for his or her own aggression; or (c) is often the object of aggression (e.g. abuse by the father). Bandura claims that the highest incidence of aggression is found in communities and groups in which aggressive models are plentiful and fighting prowess is regarded as a valued attribute. He identified three major types of models in a young person's life that have a significant impact on the behaviour they model, namely the family members (e.g. an abusive rowdy father), the subculture (e.g. peers who are gang members), and symbolic models that are provided by the media (e.g. a heroic character such

as the one in the Grand Theft Auto video action adventure game) (Bartol & Bartol 2011: 121; Bartol & Bartol 2017: 145).

Social control theories

The central theme in all versions of control theory is that human behaviour is largely the result of how children are socialised (Ellis & Walsh 2000: 321). This socialisation determines the extent to which children come to trust and rely on others, and in turn become emotionally and intellectually committed to them. Control theorists believe that this emotional and intellectual (cognitive) commitment gradually emerges from a long process of being nurtured and socialised by parents and guardians.

Control theorists assume that human nature is the motivator for criminal behaviour, and that if some type of outside controls did not exist, individuals would more readily commit crimes (Hunter & Dantzker 2002: 107—108), meaning that people would naturally commit crimes if left to their own devices. People are therefore free to break the law in any number of ways but certain controls prevent them from doing so (Chamberlain 2015: 157). The key question then is why do most people not commit crimes? Individuals are said to commit crimes because of the weakness of controlling forces restraining them from doing so, not because of the strength of forces driving them to do so (Void al. 1998: 201).

The most popular version of social control theory is the one presented by Travis Hirschi in his book Causes of delinquency published in 1969, which identifies the social bond between people as a strong controlling force (Chamberlain 2015: 157; Siegel et al. 2003: 122). People with low social bonds and self-control will be more inclined to commit crime compared to those who have a solid bond with their significant others and strong self-control (Barkan 2012: 201).

There are four elements in the socialisation process by which lasting bonds between a child and society are formed:

- Attachment This is the first and most important element of Hirschi's social bond theory, and refers to the trust, respect and intimacy that develop between children and their parents or guardians. It also refers to the individual's capacity to form effective relationships with other people and institutions. The young person should attach to parents, family, peers and the school (Burke 2005: 208). Attachment comes from the dedicated supervision and guidance that parents give to their children whenever opportunities or temptations for criminal behaviour arise. Through this initial aspect of bonding, the beginnings of a sense Of moral commitment to others start to form (Ellis & Walsh 2000: 322). When children develop a general sensitivity to the opinions of others (parents, peers and teachers), it is an indication of attachment. The primary attachment and interaction are thus with the parents, and should be closely followed by attachment to peers, teachers, religious leaders, sports coaches and other healthy mentors of a community.
- Involvement. Involvement in conventional activities is the second element of Hirschi's bonding process. By devoting time to conventional work, actions and pastimes such as sport and church activities, the young person cannot find the time and does not feel the need to engage in criminal behaviour. Schoolwork, recreation and hobbies are time-consuming activities, leaving no room for boredom. Hirschi (1969: 187) stated in this regard that "the child playing ping-pong, swimming in the community pool, or doing his homework is not committing delinquent acts", therefore the opportunity for deviance would rarely arise because the child is too busy with and involved in acceptable activities (Burke 2005:209).
- Commitment. This refers to how invested the individual is in conforming to the rules of society. Hirschi (Cited in

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> Moyer 2001: 149) explains that "most people, simply by the process of living in an organised society, acquire goods, reputations and prospects that they do not want to risk losing". The prospect of what one hopes to obtain is also vital, thus ambition and/or aspiration play an important role in produc-

ing conformity. Commitment plays a role in the fear of law-breaking behaviour by a person. In this context a committed person implies someone who will first consider the value of his or her commitments before perpetrating a deviant or criminal act. Committed youths will think of their parents, their grandparents, their teacher, their religious leader, their close family and their friends, and they will think through the risks of losing the investment they have made in these relationships and previous conventional behaviours such as attending school and church before they act criminally. The rational actor will consider the cost—benefit ratio and it is assumed that the youth that invested a lot of commitment to family and school have a greater stake in conformity and a lot to lose if they break any rule or law (Burke 2005: 209).

- Belief. This refers to the inner feeling that children acquire with regard to the legitimacy and reasonableness of the boundaries being placed on their behaviour by those in authority (Ellis & Walsh 2000: 322). Respect for the authorities, and understanding the importance and having respect for the law are indicative of positive beliefs. Belief therefore refers to the existence of a corn, mon value system within a society which is adhered to. Hirschi states that people are more likely to conform to social norms when they believe in them. It is therefore a set of impressions and convictions that needs to be constantly reinforced (Burke 2005: 209).

Empey et al. (1999: 224) illustrate Hirschi's argument on the social bond as follows:

> If socialisation is effective, and if children are attached to others and believe in the morality of law, the social bond will develop. In turn, a strong stake in conformity will be created, and conformity to the law will result. However, if socialisation is ineffective, natural human impulses will remain unrestrained. Children will be free to violate the law, and misconduct will be a consequence. What children must be taught, therefore, is not how to break the law, but how to restrain their natural impulses and how to be law abiding.

The four elements (attachment, involvement, commitment and belief) all affect the bond between an individual and society. Since all individuals exhibit some bonding to society, the question for criminologists is how much these bonds need to be weakened before misbehaviour results. Crime and delinquency will most likely occur when an individual's ties to conventional order or normative standards are weak or absent (Bartol & Bartol 2017: 27). What is less clear in Hirschi's theory is the extent to which a weakening or absence of any one component of the bond affects the other elements. Williams and McShane (2004: 201) pose the following question: does the Strong presence of three elements, and the absence of a fourth, mean misconduct will result? In addition, Bartol and Bartol (2017: 27) contend that Hirschi's theory postulates that self-control is a stable trait that is fully in place in childhood by about eight years of age and that it will not really alter after that. However, recent research has highlighted that self-control can develop at a later stage or age.

6.4 A SHIFT FROM THE POSITIV1ST SCHOOL: LABELLING AND RADICAL THEORIES

From the 1960s to the 1980s, a new group of theorists became preoccupied with society's reaction to lawbreakers.

According to the social reaction or labelling theory, inadequate families, poverty, lack of opportunity or peer group associations do not cause crime. Instead, society's reactions to youthful lawbreakers produce serious misconduct — what labelling theorists call secondary deviance (Empey et al. 1999: 116). Identifying, labelling and stigmatising children in the juvenile justice system worsen their behaviour. Tibbetts (2012: 173) maintains that personal identities are highly influenced by the way that society or authority categorises humans into offender groupings.

The labelling approach thus argues that criminological analysis should begin with how people come to be defined as deviant, and examines the implications that such definitions hold for future offensive behaviour. This approach is widely associated with the work of Howard Becker. He claims that deviance is

> not inherent in any action, but is created when rules and sanctions are applied to behaviour considered to be offensive (Muncie 2006: 229).

One result of such stigmatisation is that some (young) offenders who have been negatively labelled not only engage in further criminal behaviour, but also seek out or find comfort in the company of others who have likewise been cast as outsiders. White and Haines (2001: 84) present this process of labelling as follows:

1. Negative labelling
2. Stigmatisation
3. New identity formation in response to negative labelling
4. Commitment to the new identity based on available roles and relationships

Labelling theorists assume that human nature is relatively flexible and subject to change. Most young offenders are viewed as relatively normal youths who will eventually desist from law violations on their own. However, if they persist in committing crime, especially serious crime, this is not due to any evil tendencies on their part, but to the negative effects of the police, judges and correctional officials on them. Thus the key to understanding law-violating behaviour lies in the ways in which social institutions — including the family, schools and the criminal justice system — respond to conduct viewed as exceeding the limits of acceptability. Labelling and reacting to offenders as "deviant" have unanticipated negative consequences, deepening criminal behaviour and making the crime problem worse. Barkan (2012: 15) states in this regard that official labelling leads to "deviance amplification, or the commission of continued deviance and the adoption of a deviant lifestyle". Labelling theorists also assume that the social order is characterised by value conflict, which is usually resolved in favour of people in positions of power and influence. Social rules and their imposition will reflect their interests and not those of less powerful groups. Empey et al. (1999: 116) maintain

that a distrust of legal and other social institutions is implied in labelling theory.

However, recent research suggests that a weak relationship exists between official labelling and its effect. In fact, some researchers

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believe no relationship exists between official sanctioning and labelling effects. It appears that informal forms Of labelling such as labelling by parents, friends, employers and the community show a stronger link to the labelling effect and change in behaviour compared to official labelling initiatives (Tibbetts 2012: 175). Those with whom one interacts daily will therefore have more impact in terms of how one feels about oneself than official labelling by the authorities. The latest research shows that official labels by the authorities are temporary and situational. This has paved the way for theories like John Braithwaite's re-integrative shaming theory, which proposes that crime rates of individuals and groups are directly influenced by the shaming process. Re-integrative shaming does not allow the action to be labelled and to become the master status trait. Re-integrative shaming disapproves of the action but still keeps the relationship intact. Certain processes and ceremonies are held to certify and decertify the deviant deed. After the deed has been certified as a wrongdoing, and the naming and shaming process has occurred, the transgressor's place as a member of society is reinstated.

Within the broad classification of radical criminology there is a diverse range of theories that contest the behavioural questions posed by positivist criminologies. It is suggested that the root cause of misbehaviour is to be found less in individual characteristics and environmental conditions, and more in relationships of power and selective processes of criminalisation. In labelling, this is expressed in terms of a society that creates rules, and in Marxism it is expressed in terms Of a capitalist State that has the power to criminalise those behaviours that are deemed threatening (Muncie 1999: 134; Tibbetts 2012: 175).

Marxist criminology directs attention towards the social harms perpetrated by the powerful within society (the "haves" or the bourgeoisie). The law becomes a tool by which the bourgeoisie controls the proletariat and keeps them in a disadvantaged position (Tibbetts 2012: 176). Economic power can be transformed into legal or political power, and accounts for the general disempowerment of the masses. Based on this power, the class situation in a society becomes crucial and Marxist theorists

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try to link class to specific types of crime. They make a broad distinction between the crimes of the powerful and those of the less powerful (the "have nots" or the proletariat):

- Marxist theorists link crimes of the powerful to a personal desire to accumulate wealth and to compete successfully in a capitalist economic system. Economic crimes such as fraud and corruption are examples in this category.

- Crimes of the less powerful stem from a combination of economic and social motivation. The person commits crime to supplement his or her basic income and this decision is due to varying types of sociocultural alienation. Examples are shoplifting, vandalism and assault.

Thus the cause of crime is found in the structure Of unequal class relations in a society (White & Haines 2001: 99). Several versions Of conflict theory exist, and the basic premise in them is that different groups will always compete for control over political and economic processes. Usually an imbalance exists in power relationships, which contributes to conflict. Some conflict theorists believe that conflict between groups is healthy as it reminds the populace to consider whether the current status quo

in a society is acceptable or whether change is needed. If a society is in a state of oppression or if inequality is rife, conflict between groups can be expected (Chamberlain 2015: 108; Tibbetts 2012: 177).

More recently the so-called school of new criminology has markedly broadened this theoretical area of debate. They see the influence of income, poverty, social class and level of education as being very important. Materialism, greed and the middle-class measuring rod or yardstick for success, and the division Of labour that exists within the economic and political systems are deemed to be the key ingredients in the construction of crime. The power structures in society (the politicians and the "haves") manipulate processes and influence the criminalisation (e.g. smoking in public buildings and restaurants) and decriminalisation of behaviour (e.g. prostitution, the private use of dagga in the home) within society. This school of thought finds it necessary to replace the existing social order with a non-capitalist system (Brown et al. 2007: 15). The new criminologists suggest that there will be less crime in a fair, equal and just society (Bezuidenhout & Little 2011: 16).

6.5 EVALUATION OF TRADITIONAL PERSPECTIVES

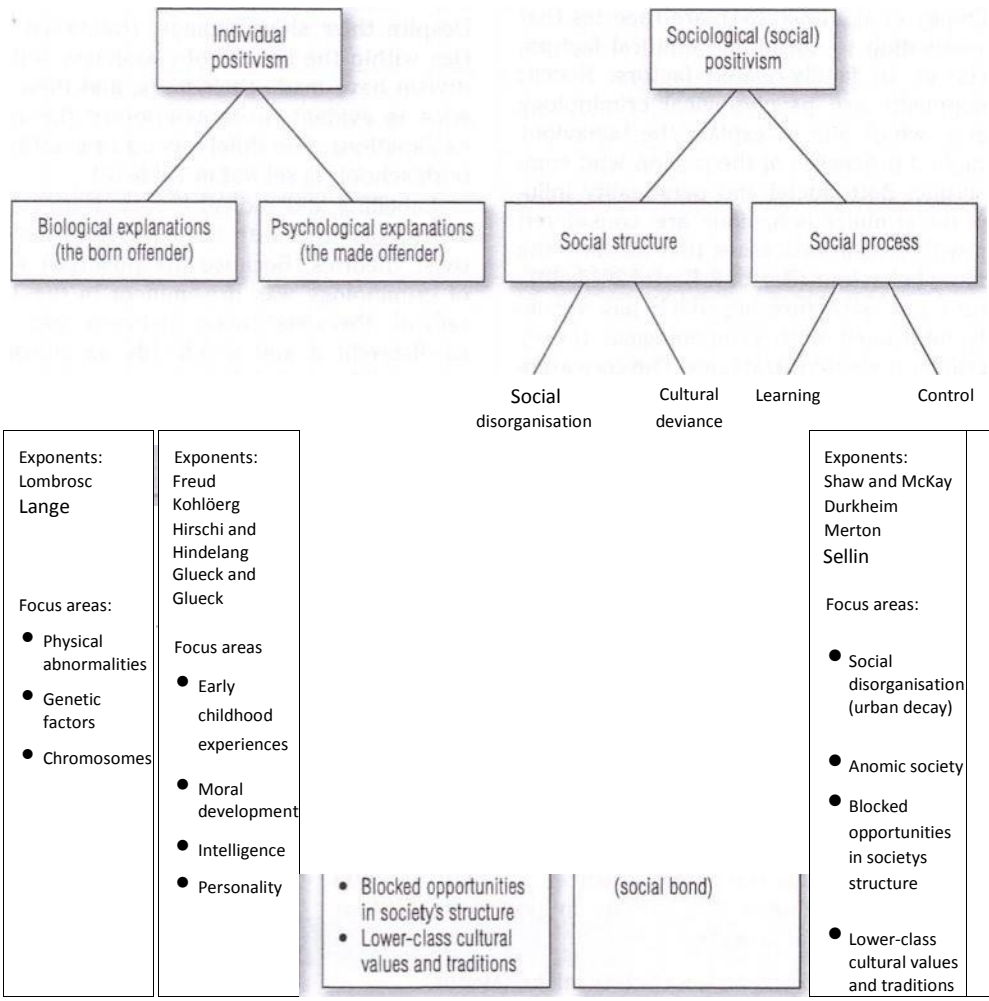
This chapter has dealt with two major schools of thought — the classical school and the positivist school — from which various theoretical explanations have emanated.

Classical criminology has little concern for the person — the focus is exclusively on the criminal act and judicial responses to it. However, it has had a tremendous impact on the criminal justice system. Actions such as an independent judiciary, the reduction of brutal punishments and the abolition of the death penalty, as well as now designing prisons to be more humane places for punishing offenders (e.g. the Emthonjeni Youth Centre at Baviaanspoort Correctional Centre outside Pretoria) illustrate the influence of the classical approach in the South African legal system.

A further outcome of the classical influence has been the development of rational theories. These are addressed as contemporary explanations in the next chapter.

With regard to the positivist tradition, a significant number of explanatory theories for crime have also been developed, of which only a few have been addressed in this chapter (see Figure 6.1).

Despite criticism, individual positivism formed the bedrock of criminological studies for the first half of the 20th century (Chamberlain 2105: 35; Muncie 1999: 98; Tibbetts 2012: 65). In general, individual positivism assumes that all human behaviour is deter-



re 6.1 Traditional positivistic explanations

mined by biological, psychological or environmental factors, or a combination of these. What is noteworthy, comments Muncie (1999: 8), is that these theories focus on individual motivations and provide very specific representations of the young offender as either "born bad" (e.g. through genetic inheritance) or "made bad" (e.g. through the inability to develop a conscience). Notions of adolescent disorder and parental neglect could now be entertained as defences for misconduct.

Recent biological theories reflect a growing body of knowledge about the complex relationships among many biological and environmental factors. Human beings are unique as people with similar genetic inheritance who are exposed to similar environmental stimuli can and often do behave differently when placed in the same situations (Chamberlain 2015:48). In psychological theories it has become clearly evident that criminologists cannot ignore psychological motivation. What has been lacking, say Empey et al. (1999: 134), are theories that link motivation to social and cultural factors, as well as to family-related factors. Recent developments are psychological criminology theories, which aim to explain the behaviour and mental processes of the person who commits crime. Both social and personality influences on criminal behaviour are considered along with mental processes that mediate the offending behaviour (Bartol & Bartol 2017: 30).

The social structure approach has significantly influenced both criminological theory and crime-prevention strategies. The core argument is that people who are socially isolated and live in socially disorganised neighbourhoods are more likely to be subjected to criminal influences. In view of the high crime rate, misbehaviour and gang activity that occur in the deteriorated slum areas of large cities, the main argument of structural theorists seems to be valid.

Social strain, a variation of the social structure approach, dominated American sociologiCal theory of crime during the 20th century, but declined in popularity during the 1970s. Agnew (cited in Brown et al. 2001: 300—301) attributes this decline in popularity to four major aspects:

- Focus on lower-class misbehaviour
- Neglect of goals other than middle-class status and financial gain

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- Failure to consider barriers to achievement other than social class
- Inability to account for the fact that only some people who experience strain turn to criminal activity

Siegel (2001: 213) elaborates on the criticism of social strain theory. Even if the higher crime rates recorded in lower-class areas are valid, it is still true that most members of the lower class are not offenders. A vast number of urban poor remain honest and law abiding. It is also questionable whether a distinct lower-class culture actually exists. Several researchers have found that gang members and other misbehaving youths seem to value middle-class concepts, such as sharing, earning money and respecting the law, as highly as middle-class youths do. Criminologists contend that lowerclass youths also value education as highly as middle-class students do.

Despite their shortcomings, traditional theories within the sphere of classicism and positivism have made their mark, and their influence is evident in contemporary theoretical explanations. The difference in orientations of both schools is set out in Table 6.1.

Labelling and radical theory, however, are sharply at odds with both classical and positivist theories. Because the positivist school of criminology was pre-eminent in the 1900s, radical theorists' main concern has been to discredit it and to identify an alternative approach for explaining and controlling crime.

These notions have shifted the criminological agenda away from popular ideas of causation. As a result, radical theorists have been criticised for addressing "political interpretations to the detriment of posing or answering empirical questions" (Muncie 1999: 134). Reactive criminology, such as labelling and radical

theories, tends to romanticise young offenders and underplay the damaging consequences of their criminal actions. This idealised view by these theorists is echoed in the increasing efforts to divert youths from the criminal justice system by incarcerating fewer of them and restoring those who derail.

Table 6.1 Basic concepts of the classical and positivist approaches

Outlook	Classical theory	Positivist approaches
Definition of crime	Legal • Violation Of law	Natural • Violation of social norms (extends beyond a legal definition)
Focus of analysis	The criminal act • Specific offence • The criminal law	The offender • Characteristics of the offender (biological, psychological and social traits)
Cause of crime	Rationality • Individual choice • Pleasure principle	Pathology • Individual deficiency
Nature of offender	Voluntaristic • Free will, hedonistic, rational (capacity to reason) Morally responsible for own behaviour	Deterministic and/or predisposed to certain types of behaviour Human nature is determined by biological, psychological and social traits • No moral responsibility
Response to crime	Punishment • Proportional to the crime • Fixed or determinate (prescribed in advance by the law)	• Scientific experts determine the social harm, and sentences are indeterminate (of a variable length until the offender is cured)
Crime prevention	Deterrence • Reform of the legal system to make it more accessible	Diagnosis and classification • Early intervention

Source: Adapted from White & Haines (2001: 25, 41)

6.6 CONCLUSION

One can conclude from these diverse theories that the search for a full understanding of youth misbehaviour has been characterised by a mixed bag of ideas and assumptions. To reach a general conclusion from this vast array of information, Empey et al. (1999: 303) suggest that the following questions need to be answered:

- Have the theories identified any causes that actually predict youth misbehaviour?
- Do the theories predict youth misbehaviour with considerable accuracy?
- Given the causes identified, what are the appropriate policy implications?

Most traditional theories obviously fail in terms of accurate predictions and efficient policies. Some exceptions, however, are the moral development theory (Kohlberg), Hirschi's social control theory and Bandura's social learning theory, since their predictions are relatively consistent with numerous studies on youth misbehaviour.

Contemporary theoretical developments acknowledge the contributions of traditional perspectives, but pertinently address their shortcomings.

CRITICAL QUESTIONS

I . Discuss the characteristics Of a good theory.

2. Compare the arguments of the classical school of thought on crime with those of the positivist school.
3. The four groupings of psychological theories underline the argument of the made offender. Explain this statement.
4. Discuss Merton's theory of anomie.
5. Hirschi's theory of social bonding emphasises the socialisation process. Discuss this statement.

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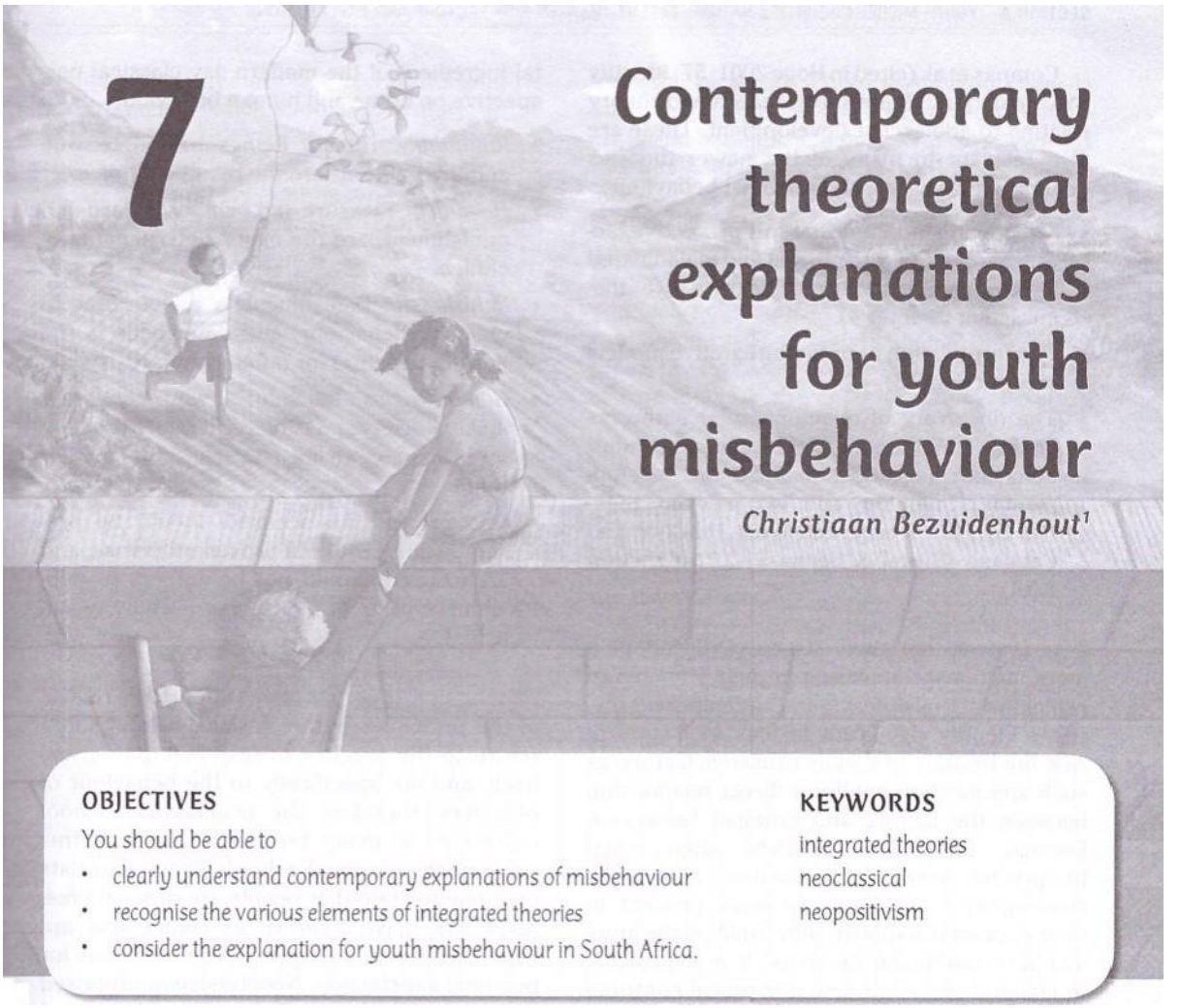
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7 Contemporary theoretical explanations for youth misbehaviour

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OBJECTIVES

You should be able to

- clearly understand contemporary explanations of misbehaviour
- recognise the various elements of integrated theories
- consider the explanation for youth misbehaviour in South Africa.

KEYWORDS

integrated theories
neoclassical
neopositivism

7.1 INTRODUCTION: PARADIGM SHIFT IN THEORIES OF YOUTH MISBEHAVIOUR

A number of new theoretical formulations have emerged to account for youth misbehaviour. However, most of these are based on the arguments of traditional theories of criminal behaviour, together with recent empirical research findings on the correlates and causes of youthful antisocial behaviour, therefore many of them are in actual fact reformulations of existing (traditional) theories that have progressed to integrative theories and become contemporary explanations of youth misbehaviour. Integrative theories should be seen as theories that combine the concepts and central suggestions from two or more prior existing theories into a new single set of integrated concepts and proposals. Theorists therefore take two or more traditional theories and merge them into one cohesive model (Tibbetts 2012: 195). Integration can take several forms. In this regard, Williams and McShane (2010: 217) highlight the so-called end-to-end model where theories are put together in a sequential, straight-line style. In the other integrative approach, several key constructs are borrowed from several theories and are then combined in a new blend to form a so-called fully integrated model or theory. To contextualise integration one can look at emerging themes or developments in scholarly work on youths and youth misbehaviour.

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Compas et al. (cited in Hoge 2001 : 57) identify three emerging themes in research and theory relating to adolescent development. These are also relevant to many of the newer theories dealing specifically with antisocial behaviour:

- The identification of risk and protective factors associated with normal and maladjusted development (such risk factors are discussed in Chapter 4)
- The formulation of broad integrative models (see section 7.3)
- The discovery of developmental pathways linking childhood, adolescent and adult behaviour (see section 72.2 on deve101> mental criminology and, in particular, theories by Thornberry, and Weis, Hawkins and Catalano (Siegel & Senna 2000) in section 7.3.4)

It is evident that theorists currently adopt a more multifactor approach in their attempts to explain youth misbehaviour. Contemporary theorists identify significant factors as factors of risk, but hesitate to specify causative factors, as such specification implies a direct relationship between the factors and criminal behaviour. Because traditional theorists often failed to predict youth misbehaviour accurately, contemporary theorists are more prudent in their approach, although they build on the arguments of traditional theorists. It is impossible to elaborate on each new theoretical contribution in the framework of a chapter. However, a comparative number of the mainstream contributions will be highlighted to stimulate further examination of contemporary theoretical developments. In addition, general discussions pertaining to the integrative effort will be forthcoming instead of particularisation of specific theories.

7.2 REFORMULATIONS OF TRADITIONAL THEORIES

7.2.1 Neoclassicism: a revival of the classical school

The classical school influenced criminological thinking for a long time. The heritage left by this school is still operative today (Chamberlain 2015), and Schmalleger (1996: 142) points to five principles, each of which is a fundamental ingredient of the modern-day classical perspective on crime and human behaviour:

- Rationality. Human beings have free will, and their actions are the result of choice.
- Hedonism. Pleasure and pain, or reward and punishment, are the major determinants of choice.
- Punishment. Punishment is a deterrent to unlawful behaviour, and deterrence is the best justification for punishment.
- Human rights. Individuals who cooperate make society possible, therefore society owes respect to its citizens, as it is their right.
- Due process. An accused should be presumed innocent until proven otherwise, and an accused should not be subject to punishment prior to guilt being lawfully established.

Neoclassical theorists have supported a revival of the principles of the classical school and a return to the practice of responding to crime itself, and not specifically to the behaviour of offenders, therefore the neoclassical school represents no major break with the basic theories of the classical school. These theorists continue to state that people are rational creatures who have freedom of choice and are motivated to pursue their own self-interests for personal satisfaction. Neoclassicism proposed three modifications to the traditional classical school, many of which are still part of most criminal justice systems of the world. Firstly, they acknowledge that free will is important but also that in some instances it can be constrained by physical and environmental factors (e.g. a poor

person steals a loaf of bread from a shop because if he does not eat something his mental and physical health will further deteriorate). Secondly, they proposed that courts needed to take into consideration offenders' past biographical and criminal history when considering their sentence or punishment. Thirdly, the neoclassicists insisted that certain individuals are generally less capable of exerting free will in their choice to commit a crime. These include children, the aged and the mentally ill. They still stressed that most humans have the free will and choice to commit crime but that some individuals are in certain situations where they are not in a position to do a cost—benefit calculation before they do so (Chamberlain 2015: 25). Neoclassical theorists can be divided into three groups, namely utilitarian philosophers, just deserts philosophers and rational choice theorists (Empey, Stafford & Hay 1999: 234).

7.2.1.1 Utilitarian philosophers

Utilitarian philosophers such as Ernest van den Haag and James Q. Wilson believe that legal punishment serves two vital functions:

- It deters persons from committing further crimes.
- It protects society from those whose (criminal) acts threaten the social order.

Wilson maintains that persons who are likely to commit crime lack inhibition against misbehaviour, value the excitement and thrill of breaking the law, have a low stake in conformity , and are willing to take greater chances than the average person. If they could be convinced that their actions would bring severe punishment, only the very irrational would be willing to engage in crime (Siegel 2001: 115).

7.2. I .2 Just deserts philosophers

In direct contrast to the utilitarians, these philosophers, such as Andrew von Hirsch, question the utility Of legal punishment as a means of deterring crime. They advocate using it only because those who commit crimes deserve to be punished, and emphasise two basic principles in terms of sentencing (White & Haines 2001: 31):

- No one other than a person found guilty of a crime must be punished for it.
- Punishment must be proportional to the gravity of the offence and the culpability of the offender.

This implies that proportionate sentencing requires that sanctions should relate to the harmfulness of the conduct in terms of the behaviour and the liability of the wrongdoer (Quirk 2006: 955-959).

7.2.1.3 Rational choice theorists

Rational choice theory originally developed from the classical school of thought (man is a reasoning actor with a free will who weighs costs and benefits, and makes rational choices) but was later heavily influenced by economic models of decision making (Barkan 2012: 119). Economists such as Gary Becker argue that the principles of classical criminology can be used to construct scientific theories for explaining criminal behaviour. Choice theorists are of the opinion that offenders take a decision to break the law after considering both personal factors (such as the need for money, revenge, thrills) and situational factors (how well a target is protected and the efficiency of the police force). Thus before choosing to commit a crime, the reasoning criminal evaluates the risk of apprehension, the seriousness of the expected punishment, the potential value of the criminal enterprise, and his or her immediate need for criminal gain (Siegel 2001: 115).

To illustrate this process, Maguire and Radosh (1999: 174) outline the main argument of Becker's economic model of crime published in 1968. Independently of any and all social forces (such as family attachment and subcultural norms) that may influence behaviour, human actors ultimately do a cost—benefit analysis of their actions in society. Individuals will pursue those behaviours that hold the greatest promise for gratification (e.g. the use of drugs to gain acceptance within a peer group) and/or the least probability of personal cost. Although Becker portrays the offender as a rational actor, this

does not imply that the offender has a perfect knowledge of the total situation. It does mean, however, that the criminal offender is a knowing agent, not someone so overwhelmed by internal and external forces as to lose a personal sense of reason.

Becker acknowledges that although many people operate under an elevated moral and ethical constraint, criminals or individuals who decide to commit an unacceptable act rationally ascertain that the benefits of their crime outweigh the cost, such as the probability of apprehension, conviction and punishment, as well as their current opportunities. Rational choice theory insists that crime is calculated and deliberate. All criminals are rational actors who practise conscious decision making, and simultaneously work towards gaining the maximum benefits of their present situation. Crime therefore can be influenced by opportunity,

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situational context, possibility of detection, and the ready availability of a suitable target. In addition, opportunities are dependent on the individual's current surroundings and the probability Of ensuing factors.

7.2.2 Neopositivism

Since the 1980s there has been a renewal of interest in positivist criminology.

7.2.2.1 The biological approach

The approach of individual positivism has undergone several changes in recent times. Shoemaker (2000: 41) highlights three major ones:

- Modern biological theorists do not see (young) offenders as born criminals, as postulated by Lombroso. The modern view characterises biological factors as predisposing certain individuals to misbehaviour rather than determining crime. People are exposed to biological and psychological processes that shape their personalities in childhood. Once the child is introduced to school, his or her personality manifests itself in certain types of behaviour. The social influences encountered in the school or community environment may then further contribute to antisocial behaviour, depending on the initial personality formation.
- Research on the biological contribution to explaining (youth) misbehaviour is much more sophisticated than in the past. Control groups are used more often, longitudinal designs are beginning to emerge, and definitions of key variables are being revised and refined. Recent research examines the effect Of genetic inheritance on criminal behaviour and the impact of biochemical differences such as hormonal activity on human behavioural patterns. Other factors that are considered are diet, brain development, genes, neurotoxins, and the central and autonomic nervous systems, as well as the effects of substances such as alcohol and popular drugs (e.g. dagga, cocaine and amphetamines) on criminal behaviour (Bartol & Bartol 2017: 92; Chamberlain 2015: 50; White & Haines 2001:49).

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- Modern theories are much more interdisciplinary than in the past. Personality factors and environmental conditions are often considered, if not formally included, in the propositions of the theories and in research designed to test them. A blending of individual and social positivism has occurred, which is referred to as biosocial explanations. Biosocial approaches are perhaps the most important and most recent on how someone becomes a criminal as both genetics and the environment play a role in this regard (Tibbetts 2012: 97). Hans Eysenck's theory of personality and crime is a good example of this. He argues that human beings are not totally governed by their biology, nor are they totally unaffected by their social circumstances. He proposes that criminal behaviour is the result of an interaction between certain environmental conditions and inherited features of the nervous system.

According to Eysenck (cited in Williams & McShane 2004: 46), a person's conscience develops through a learning process called conditioning. Two key variables, which both focus on conditioning, characterise Eysenck's theory (White & Haines 2001: 48):

- The differential ability to be conditioned. This refers to the way in which genetiC inheritance can affect one's ability to be conditioned. The sensitivity of the autonomic nervous system that is genetically inherited will determine whether a person is an introvert or extrovert, and this in turn influences how well a person is able to be conditioned in society.
- The differential quality of conditioning. This refers to the effectiveness and efficiency of the family in using appropriate conditioning techniques. The content and method of child rearing will have an impact on the child's subsequent behaviour.

The essence of Eysenck's theory is that individuals with a certain type of nervous system (introverts) condition better or learn the mores of society much more readily. Introverts will link transgressions with disapproval much sooner than others do. Some people would say introverts have a stronger conscience, and experience more fear prior to their transgressions and more guilt after committing them. In addition, this could also be the reason why individual differences correlate differently to classical conditioning (Bartol & Bartol 2017: 105; Bartol 1995: 56).

Shoemaker (2000: 41) feels that in general the explanatory power of biological factors appears to be diminishing, but that many of the biological explanations that are currently emerging are plausible and worthy of continued investigation, particularly those theories that address the biological influences on cognitive development and learning capabilities. In summary, he believes that society will see increasing youth misbehaviour figures if children interact in a disorderly environment. This is grounded on the premise that the conditions within the immediate home and school are not conducive to the development of conditioned conscience toward the avoiding of misbehaviour and delinquency (Bartol & Bartol 2017: 106; Bartol & Bartol 2011: 80). This implies that the personality is linked to criminal behaviour via socialisation processes. Youths who commit misbehaviours are developmentally immature and are regarded as selfish and motivated by immediate gratification. During healthy and balanced socialisation, children are taught to delay gratification by means of conditioning, which eventually acts as a buffer against selfishness and immediate gratification, inversely decreasing the chances of offending.

According to Bartol (1995: 124, 138), few contemporary psychologists believe that young offenders are emotionally disturbed or psychologically maladjusted youths in need of conventional psychotherapy. Rather, mainstream psychology views misbehaviour, including the actions of frequent offenders, as learnt behaviour, acquired and maintained like all other human behaviour. The psychological perspective on youth misbehaviour is becoming increasingly cognitive. Research and theory now focus on how young offenders acquire, internalise and develop personal values and beliefs. In this regard, Bartol and Bartol (2017: 89) suggest that the way in which youths approach and interact with their social environment is linked to their temperament or natural mood disposition. It is also important to consider the level of advancement in bio-psychological approaches and techniques. Biology has advanced significantly and many "problem" behaviours in the past can be addressed with therapy and medication. Many behavioural scientists are voiceless on the topic of a genetic or biological disposition causing a child to become a serious offender. However many behavioural scientists agree that factors such as genes, hormones, toxins, brain injury and diet can influence the early development of a child and can give rise to problematic behaviour. Perhaps the most important revelation with regard to biological studies is "that the interaction between biologiCal factors and environmental deficiencies has the most consistent effect on predicting criminality" (Tibbetts 2012: 98).

7.2.2.2 The social approach

Contemporary social positivist theorists use new techniques such as self-reported and victimisation data to examine, for example,

crime trends over time in particular communities (Brown, Esbensen & Geis 2001: 314). A disorganised community such as that in Hillbrow in Johannesburg lacks the stability and resources to formulate or achieve collective goals as a community, and this leads to higher rates of crime, which has implications for the society's social structure.

Process theories enjoy continued popularity. Learning and control perspectives feature prominently in recent developments of general and integrated theories. A third branch of process theories (next to learning and control) has been developed and is known as developmental criminology. This is defined by Brown et al. (2001: 431) as the study of the development and dynamics of deviance and misbehaviour with age, and focuses on the identification of explanatory or causal factors that predate, or co-occur with, the behavioural development and have an impact on its course. According to this perspective, as adolescence begins, children are expected to engage in social processes that will determine their future wellbeing. They begin thinking about careers, leaving their parental homes, establishing relationships, and eventually marrying and beginning their own families. If these transitions are disrupted, the outcome is destructive and promotes criminality. Some young

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people are already at risk because of socioeconomic problems or family dysfunction, and are the most susceptible to disrupted transitions (Siegel & Senna 2000: 186).

A number of theories have been constructed based on developmental views. These theories are multidimensional, suggesting that criminality has multiple roots, including maladaptive personality traits, educational failure and poor family relations. Crime cannot be attributed to a single causative factor, since people are influenced by different social processes as they mature. Because factors vary in terms of their influence at different stages of a person's life, the multidimensional nature of these theories is reflected in integrated theories such as the social development theories. Developmental theories are dynamic rather than static, and are effectively concerned with three main issues: the development of offending and antisocial behaviour, risk and protective factors at different ages, and the effects of life events on the course of development (Casey 2011: 13). Developmental theories emphasise the dynamic process of delinquency. Developmental changes or the developmental trajectory Of individuals changes over their lifetime. This encapsulates an individual's cognitive, emotional and social growth as he or she grows into adulthood. Numerous experiences along the way will influence the child's developmental pathway. Some children experience negative situations while growing up, show no effect, and grow into calm and balanced adults. Others will show conflicting behaviour throughout childhood but eventually may "grow out of it". Some children will show a deviant hostile pathway and will continue with this into adulthood (Bartol & Bartol 2017: 173). The social development model of Weis et al. and Thornberry's interactional theory represent good examples of this approach.

The social development model posits that children are socialised through different processes that involve four constructs:

l. Perceived opportunities for involvement in activities and interactions with others
2. The degree of involvement in activities and interactions
3. The skills to participate in this involvement and interaction

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4. The reinforcement they perceive from this involvement and interaction

If children have more perceived opportunities for involvement, this will actually lead to more involvement, which in turn leads to more direct and indirect rewards and recognition. The skill level of a child pertaining to mastering certain challenges also affects the amount of reward and recognition he or she receives. When these socialising processes are consistent, a social bond of attachment and commitment develops between the individual and the socialising agent. Once established, the social bond inhibits behaviours that are

inconsistent with the beliefs held and behaviours practised by the socialisation unit through establishment of an individual's stake or investment in conforming to the norms, values and behaviours of the socialising agent to which he or she is bonded. It is hypothesised that the behaviour of the individual will be pro-social or antisocial, depending on the predominant behaviours, norms and values held by those individuals or institutions to which the individual is bonded (Wortley 2008). Lee (2003:4) states in this regard that Thornberry's interactional theory is based on the premise that human behaviour occurs in social interaction and can be explained by models that focus on interactive processes. Delinquent behaviour is formed by relationships with other people and social institutions over time.

7.3 INTEGRATIVE THEORIES

Until today, debate continues as to whether theories from different fundamental points of departure can be combined. Some theorists believe it is better to explain behaviour from a specific vantage point. Others disagree and believe it is better to combine the best sections of different theories to explain phenomena more holistically — the so-called eclectic approach to crime explanation. Brown et al. (1998:389) posit in this regard that theory integration has become a familiar feature among academics. Furthermore, statistical analysis of research data has become very advanced when compared to the past, which allows academics to integrate different theories and to measure all correlating relevant variables to enable integration.

One of the major developments of recent decades involves attempts to integrate two or more theories to produce better explanations for (youth) misbehaviour (Tibbetts, 2012: 196), the earliest of which were referred to as multifactor theories. These suggest that social, personal and economic factors all influence criminal behaviour, and as a consequence, variables from different theoretical perspectives are combined. According to this multifactor approach, many youths are at risk of committing crime, but relatively few face all the hazards that result in a criminal career, such as an impulsive personality, a dysfunctional family, a disorganised neighbourhood, deviant friends and school failure (Siegel 2001:289).

Integrated theories are often very different from one another, which is probably due to the lack of consensus about how to achieve theoretical integration (Empey et al. 1999: 310). Some integrated theories are more complex than others, particularly when new theoretical concepts are introduced. Different forms of integration exist (Tibbetts 2012: 198—201). For example, end-to-end integration implies that one theory will come before or after another in terms of temporal ordering. It is sequential in nature as theories follow each other (X must occur for Y to follow). In side-by-side integration, also known as horizontal integration, two different theories can both be accurate in explaining behaviour depending on what type of individual or misbehaviour is relevant (parallel explanation of misbehaviour by means of two theories that complement each other). In up-and-down integration, deduction is used. This method is seen as the classic way of theory integration. One section of a theory is complemented within another part of a theory (the key parts of theory A are absorbed into the broader framework of theory B to explain misbehaviour more clearly). There are multiple ways of developing theory, or of building straightforward, one-dimensional models of crime explanation. There are even more ways of constructing complex models of criminal behaviour or of integrating criminological explanations. Most theorists who Integrate crime explanations connect, link, combine, and/or synthesise the relations and sections of different models and theories into formulations of crime and crime control that are more comprehensive than the more traditional and one-dimensional explanations that dominated criminology theory until the 1980s.

The integration of theories includes the total spectrum of traditional theoretical developments that underlines their value as the foundation for the explanation of criminal behaviour. Hunter and Dantzker (2002: 135—145) illustrate this full spectrum by means of various examples.

7.3.1 Integrated classical theories

Integrated classical theories merge classical and positivist approaches to crime prevention based on the individual's rationality and freedom of choice as expressed in classical theory. This ability to choose is merged with positive theory's use of empiricism to understand how choices are influenced by situational factors. For example, Cornish and Clarke's theory of rational choice emphasises situational aspects (Hunter & Dantzker 2002: 135). It argues that crime prevention can be accomplished by focusing on those situational aspects that influence the committing of particular types of crime. Offenders do not randomly select their targets. Instead, they rationally choose both the crime that they will commit and the target of that crime (Chamberlain 2015: 29; Hunter & Dantzker 2002: 135).

Derek Cornish and Ronald Clarke (cited in Maguire & Radosh 1999: 176; Chamberlain 2015: 29) developed the concept of choice-structuring properties. In essence, this concept refers to the three Rs: risks, rewards and requisites. What are the perceived risks involved in committing a particular offence? What are the rewards likely to be realised? What skills or resources are required to perform the criminal act successfully? Rational choice theory emphasises that the risks, rewards and requisites will vary from offender to offender, from offence to offence, and from initial to continued involvement, to possible desistance. Rational choice theory seeks to account for both risks (the probability of being caught, imprisonment) and rewards (financial gain, prestige, enjoyment) (Maguire & Radosh 1999: 176).

Also, Cornish and Clarke posit that potential offenders not only reason about the benefit of their prospective crime but also take other advantageous factors into consideration

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such as the fun, excitement and prestige they will experience after the act. In addition, they state that offenders do not always have the luxury of time to gather sufficient information to make an informed accurate decision about the wrongdoing they are about to commit. Clarke and Cornish (1983: 8) maintain that crime actions are a product Of "choices and decisions made within a context of situational constraints and opportunities". The most important contribution of this approach is that Of explaining the decision-making process by individuals to do something against social norms. Two factors play a role in this, namely the situational factors (e.g. the immediate environment — target-hardening devices, closed-circuit television camera monitoring, police patrols, street lighting) and the availability or non-availability of opportunities for the transgressor to commence with his or her action. Cornish and Clarke (1983) view the offender and non-offender as very similar beings — as "normal" law-abiding citizens who sometimes commit a wrongdoing because the demand and attraction presented themselves. In such cases the usually law-abiding citizen will assess the situation and commence with the deed because it presents a never-to-be-repeated opportunity (Barkan 2012: 121).

In addition, knowledge of the rational choice theory can assist in crime prevention strategies. Cornish and Clarke highlighted the fact that offenders use decision sequences known as "crime scripts" in a criminal event. There are five scripting stages relevant to most intentional pre-planned crimes:

1. Preparation — plan and hone skills (knowledge, resources and skills).
2. Target selection — find a suitable location where the crime can be committed (break into a weakly secured home in an affluent area to steal a TV).
3. Commission of the act — commit the actual deed (jump over the fence, force the sliding door open, remove the television).
4. Escape — leave the house in the same way it was entered or because of prior planning and surveillance, via another less conspicuous point.
5. Aftermath — different results can culminate in the aftermath depending on the type of crime (sell the TV to a fence, a willing

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buyer or swop shop, or keep it for own use).

By breaking down these basic broad scripting processes, authorities can develop prevention strategies regarding different crimes (Chamberlain 2015: 29).

Bartollas (2000: 91) addresses the question of whether youth misbehaviour is rational behaviour. The antisocial behaviour of young people often appears purposeful and rational. Some youthful offenders clearly engage in crime because such behaviour has a low cost since age is regarded as a mitigating factor, therefore in early adolescence the risk potential of all but the most serious forms of criminal behaviour is relatively slight.

Offenders may also decide that the risks of continued criminal behaviour are not justified by the rewards. Howard J. Parker (cited in Bartollas 2000: 91) found that many in a group of adolescents gave up shoplifting and the opportunistic theft of car radios when increased police activity resulted in some of their numbers being apprehended and placed in custody.

Most persistent offenders appear to desist from crime as they reach their late teens or early 20s. They claim that continued criminality is incompatible with the demands of holding a full-time job or settling down to marriage and a family, thus desistance from crime, which is maturing out of crime, is a process of deciding that the benefits of crime are worth less than the advantages of discontinuing to commit crime. Bartol and Bartol (2017: 217) concur, and highlight the fact that many deviant characteristics are often either a passing phase in the difficult transition to adulthood or the adolescent's "defence" mechanism to appear tough and non-caring.

It is clear that Bartollas (2000:91) supports the cost—benefit analysis of rational theory, but he places some limitations on rationality per se. For him there are three important qualifications in assuming too much rationality in youth offending (Bartollas 2000: 92):

- First, rationality is based on the notion that criminal behaviour is planned. Planning has to do with formulating a scheme or a procedure for doing something before doing it or having an intention of acting. It has to do with assessing the possible alternative courses of action available, choosing a particular course, and constructing a complex set of acts to achieve the intended results. However, studies of youth misbehaviour have reported that most criminal behaviour is not planned and that impulsive decision making most frequently characterises juvenile wrongdoing.

- Second, the concept of rationality assumes that individuals have free will and are not controlled by their emotions. Many youngsters, however, do not appear to have such control. Youth who are mentally ill or who engage in obsessive-compulsive acts such as compulsive arsonists, kleptomaniacs or sex offenders, seem to be held in bondage by their emotions.

- Third, in examining the actual process of rationality, it appears that there are degrees of freedom for all young offenders and that rationality is contextually oriented with juveniles. The notion of the degrees of freedom proposes that young offenders are neither wholly free nor completely constrained, but fall somewhere between. The contextual nature of rationality suggests that in most situations young offenders do have some control over their acts, but in other situations they may have little or no control. To illustrate this, Bartol and Bartol (2011: 147) state that some youths almost purposefully engage in stubborn, defiant and disobedient behaviour at a young age and become progressively more confrontational as they grow older into adulthood. Others show no signs of rebellious behaviour as children but become confrontational during adolescence, while some youths never become hostile and antisocial during their lifetime (Bartol & Bartol 2017: 173).

These three different patterns leave the reader with the question: to what extent does rational choice play a part in each of the three scenarios?

In summary, therefore, although some youths' involvement in crime may be largely related to cost—benefit decisions and to a rational process, for other youngsters their law-breaking behaviour arises without much forethought as they interact with their environ-

ment. The violent nature of the South African milieu could be relevant in the context of why some youth act violently or commit serious violent crimes. In addition, an intense emotional reaction to a situation or deep involvement in a peer group seems to lead them to bypass any rational process.

7.3.2 Integrated biological theories

Integrated biological theories stress the importance of physiological factors with regard to an individual's behaviour. They also seek to explain how these natural features are influenced by psychological and/or sociological factors. Genetic factors in humans play just as important a role in a person's life as environmental factors (Chamberlain 2015: 46; Lanier & Henry 2010: 104).

An example of an integrated biological theory is Wilson and Herrnstein's human nature theory put forward in 1985. Wilson and Herrnstein (cited in Schmalleger 1996: 188) contend that genetic makeup, body type and intelligence have a considerable impact on human behaviour. They argue that mostly males commit crime and that the tendency to break the law declines throughout life (age). A disproportionate number of offenders have a mesomorphic (athletic and muscular) build (body type), and criminality is said to be clearly and consistently associated with low intelligence. An individual's personality is influenced by those physical features that shape how they see themselves as well as how others see them.

According to Wilson and Herrnstein (cited in Hunter & Dantzker 2002: 137), human decision making is a product of the interactions of biological, psychological and sociological influences. Human nature theory thus contains a strong element of rationality Since crime is regarded as a function of rational choice. Both biological and psychological traits influence the choice to commit crime, with rewards such as material gain, sexual gratification, revenge and peer approval. The unpleasant consequences include pangs of conscience, victim reprisals, social disapproval and the threat of legal punishment (Siegel 2001: 292). To overcome predispositions that may lead to crime-oriented choices, Wilson and Herrnstein advocate programmes to aid families and schools in teaching children moral standards. They see these pre-crime interventions as preferable to imposing harsh punishments after criminal behaviour has occurred.

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7.3.3 Integrated psychological theories

These theories explain how social factors can influence self-perceptions. They can also be called psychosocial theories or social psychological theories. An example of an integrated psychological theory is David Farrington's delinquency development theory. His 1988 study was a serious attempt to isolate those factors that predict lifelong continuity of criminal behaviour.

Farrington uses his analysis of longitudinal studies of offending boys to theorise that antisocial behavioural patterns emerge early in life, and that these behaviours become more developed as the child matures. He thus maintains that there is a continuity in criminal behaviour that reaches from early childhood into the adult years. He sees social and economic conditions as influencing children and their parents, and the actions of parents and older siblings in response to these conditions serving as models for children. Those raised in poverty who have role models who are criminal are likely to adopt criminogenic tendencies (Bartol & Bartol 2017: 170; Hunter & Dantzker 2002: 139).

Farrington (cited in Siegel 2001: 310) found that the traits present in persistent offenders could be observed as early as eight years of age. The chronic offender, typically a male, is born into a low-income, large family headed by parents who have criminal records, has deviant older siblings, and begins as a property offender. The future criminal receives poor parental supervision, including being subjected to harsh or erratic

punishment and child-rearing techniques, and his parents are likely to divorce or separate. The chronic offender tends to associate with friends who are also future criminals. By the age of eight, he exhibits antisocial behaviour, including dishonesty and aggressiveness. At school he tends to have low educational achievement and is restless, troublesome, hyperactive, impulsive and often truant. After leaving

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school, the persistent criminal tends to take a relatively well-paid but low-status job, and is likely to have an erratic work history and periods of unemployment.

The development of a deviant personality, therefore, is the likely product of poor child rearing, economic deprivation and resentment of social responses to prior deviance. After the deviant personality has emerged, it is reinforced by continued criminal activities. Life experiences influence future behavioural choices. Some individuals will abandon their offending behaviour in adulthood. However, the deviant personality is often so well established that behavioural change is not possible. The cycle of criminality continues as the children of these deviant-personality adults are subjected to the same bonding and social learning influences that shaped their parents' personalities (Hunter & Dantzker 2002: 139).

These hard-core persistent offenders sometimes seem calloused and indifferent to others and the impact of their negative behaviour. Some of them show no remorse and never learn from any disciplinary interventions. In view of this, more and more researchers in the field of integrated psychology believe that psychopathy begins in childhood and continues throughout adulthood. The childhood of a young psychopath is often spoiled by family difficulties, neglect, abuse, antagonism, poor parental supervision and rejection. More often than not, such children also experience hardships at school because they often manifest with hyperactivity, impulsivity and conduct problems as well as attention difficulties (Bartol & Bartol 2011: 201). Research in this regard is difficult as many youths who commit a variety of antisocial acts often escape detention, which compounds the challenge to generalise about this group of youth offenders. Bartol and Bartol (2017: 217) observe that "certain problem characteristics in children and adolescents — for example, conduct problems, hyperactivity, impulsivity, and attention difficulties — resemble features of the adult psychopath and suggests that the term 'juvenile psychopath' may have some validity".

Another area where integrated psychological criminology (psychocriminology) has been expanding is in the field of profiling, where criminologists with a psychological background are able to draw on different biological, social and psychological theories to help explain serial crimes committed from a young age (Chamberlain 2015:66).

7.3.4 Integrated sociological theories

Integrated sociological theories include integrated strain, learning, control and conflict theories.

7.3.4.1 Integrated strain theories

In 1985, Elliott, Huizinga and Ageton (cited in Vold, Bernard & Snipes 1998) developed an integrated strain theory that draws heavily on social learning and control theories. Strain within the family and school results in weakened bonds with conventional society, promoting stronger bonds with deviant peers, which increases the likelihood of youth misbehaviour (Vold et al. 1998: 302). This view differs from traditional social bonding theories, in which socialisation is seen as promoting conventional behaviour and reducing the risk of criminal behaviour. Instead, in the integrated strain theory, socialisation is similar to that in Sutherland's differential association theory in that law-breaking behaviour may be learnt and reinforced with the socialisation and bonding process (Hunter & Dantzker 2002: 144).

This theory explains how the bonds within the family and school are weakened by strain from various social factors. Living in disorganised communities, believing that legitimate opportunities for success are unavailable, and involvement in petty crimes lead to feelings of hopelessness. Strain occurs, which then causes deviant groups and activities to appear as acceptable substitutes. Experimentation with drugs and other problem behaviour result in the development of a deviant lifestyle (Hunter &

Dantzker 2002: 144). Strain has both a direct effect on misbehaviour and indirect effects on the individual by weakening the inhibitions of the social bond and increasing the youth's involvement with delinquent peers. Strain mainly occurs because of three impelling forces: blocked goals, loss of treasured objects, and the influences of negative stimuli (pull factors) (Paternoster & Mazerolle 1994: 253).

7.3.4.2 Integrated learning theories

Integrated learning theorists emphasise social learning theory as the foundation for their explanations of criminal behaviour. One example is Terence Thornberry's interactional theory put forward in 1987.

In this theory, Thornberry incorporates social learning theory, social bonding, cognitive theory and social structure theories to explain criminal behaviour. Thornberry (cited in Siegel & Senna 2000: 194) suggests that the onset of crime can be traced to a deterioration of the social bond during adolescence, which may be marked by a weakened attachment to parents, reduced commitment to school and diminished belief in conventional values. Peer groups then become more important.

Youths growing up in socially disorganised environments are at the greatest risk of having a weakened social bond and are subsequently more likely to commit crime, particularly when law-breaking values and attitudes can be learnt and reinforced by peers. Adolescents who come from a stable environment may engage in crime, but their actions are better controlled by stronger social bonds and associations with peers who engage in conventional behaviour (Hunter & Dantzker 2002: 141).

According to Siegel and Senna (2000: 196), what makes this theory unique is its key assumption that causal influences on youth crime are reciprocal. Weakened bonds with society lead youths to develop relationships with deviant peers and so become involved in crime. More frequent occurrences of law-breaking behaviour further weaken these bonds, making it difficult to re-establish links with conventional peers.

Interactional theory has a developmental emphasis — it holds that adolescents pass through different stages of reasoning and sophistication as they mature. During early adolescence, attachment to the family is the single most important determinant of whether a youth will adjust to conventional society and is the best shield from criminal behaviour. By mid-adolescence the influence of the family is replaced by the world of friends, school and youth culture (Siegel & Senna 2000: 196).

As young people enter their late teens, the influence of peers gives way to perceptions of their own roles in society (i.e. work activities,

involvement in social institutions and domestic relationships). As commitment to these conventional influences increases, deviant activities decrease. Thornberry argues, therefore, that involvement in crime is a dynamic social process that changes over time (Hunter & Dantzker 2002: 141). His theory rests on life course assumptions: events and relationships that develop during a person's life cycle influence his or her behaviour. In short, humans learn virtually all their behaviour, beliefs and tendencies from the social environment (Bartol & Bartol 2017: 27).

7•3.4.3 Integrated control theories

These theorists use the social control perspective as the foundation for their integrated approaches. An example is the social development theory of Joseph Weis, David Hawkins and Richard Catalano and their associates. This model is based on the social control theory, complemented by social learning and structural modelling.

According to the social development model, a number of personal, psychological and community-level risk factors make some children susceptible to developing antisocial (criminal) behaviour during the course of their life. The key to preventing such behaviour is found in the socialisation experience, and the model emphasises the formation of pro-social bonds with society (Siegel & Senna 2000: 191).

Weis and his associates maintain that young children are socialised through family interactions. The opportunities, the degree of involvement, and the skills and reinforcement for participating in interactions all affect the family bonds that develop (Bartol & Bartol 2017: 27; Hunter & Dantzker 2002: 142). TO form socially oriented bonds with society, the family must provide positive (pro-social) opportunities and reinforce them with consistent positive feedback. The process begins when a child forms an attachment to his or her parents, which will have a profound influence on the child's behaviour throughout his or her life, determining both the nature of the school experience as well as personal beliefs and values.

For those with strong family relationships, school will be a meaningful experience marked by academic success and commitment to education. These children will be more likely to develop conventional beliefs and values, become committed to conventional activities, and form attachments to conventional others (Siegel & Senna 2000: 192). If the family bonds are lacking or the family's commitment to conventional (law-abiding) behaviour is weak, the child will be more susceptible to developing antisocial behaviour. The socialisation that usually keeps human nature in check is therefore incomplete or faulty.

Although Weis and his associates stress the importance of strong family support in the development of children's socially oriented bonds, interactions with peers and other adults outside the family become significant as the child matures. The quality Of these interactions, the young people's position within the social structure, the strength of their family interactions and their perceptions of the rewards of engaging in criminal behaviour are factors that can determine whether or not they will develop antisocial values and participate in crime (Hunter & Dantzker 2002: 142). The social development model suggests that interaction with antisocial peers and adults promotes criminal behaviour and substance

abuse.

Many of the core assumptions of the social development model have been tested empirically and their validity has been verified. This model has also guided treatment interventions that promote the development of strong bonds to family and school, showing youths how to use these bonds to resist any opportunity or motivation to take drugs or to engage in crime.

7.3.4.4 Integrated conflict theories

Mark Colvin and John Pauly's structural Marxist theory of 1983 is an example of an integrated conflict theory. These theorists explore domestic relations in which the coercive workplace environment of capitalism contributes to coercive family environments. They maintain that negative relations in the workplace create strain and alienation in the domestic setting. Frustrations that the parents bring home from their jobs are displaced onto family members. In particular, parents are likely to exercise excessive controls over their children to compensate for their powerlessness at work in a capitalistic society. This

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repressive home environment causes strain in the family, and the normal bonds of family are drastically weakened (Hunter & Dantzker 2002: 145). Youths in this situation are very likely to experience feelings that they do not count for anything. When they meet others who are in the same position, they almost inevitably come into conflict with the law.

Coercive school situations further aggravate the frustrations that these young people feel. In expressing their frustrations and hopelessness, they may act in a violent manner and/ or engage in criminal behaviour as a means of seeking positive rewards that are otherwise unattainable.

Colvin and Pauly claim that under a true Marxist regime, youth crime would disappear because there would be no reason for young people to commit acts against others or the state, because they would not themselves be victimised (Binder, Geis & Bruce 2001: 174). This theory is seen as a significant contribution to Marxist literature in that it clearly demonstrates how capitalism can promote youth crime. There are several types of conflict theory that basically all posit that the capitalist system, social configuration, diversity and group conflict usually cause crime and discord (Tibbetts 2012: 178). It is either the "haves" that oppress the "have nots" or the in-group forcing its way of living onto the so-called outgroup. Empirical tests of conflict theories are very rare. Perhaps the nature of the framework and the generalisation concern makes it difficult to do research on conflict theories in general, and specifically on the integrated conflict approaches. On paper, their message seems clear and logical. However, one should also look at countries where the conflict dogma was introduced, such as Russia and Cuba, and examine their social structure and crime rate. In both countries, poverty and adversity is rife and crime rates are high. In contrast to this, a capitalistic country like Sweden has very low rates of poverty and crime.

7.4 A GENERAL THEORY OF CRIME AND CRIMINALITY

In 1990, Gottfredson and Hirschi proposed their general theory of crime as an allencompassing theory for explaining not only all types of crime but other antisocial actions as well (such as drinking by adolescents). They question the definition of crime because they regard the legal definition of crime (i.e. crime being whatever is not permitted by law) as unnecessarily limiting. They state that crime is a form of behaviour, but that it is not separate or distinct from other behaviour. Gottfredson and Hirschi (cited in Moyer 2001: 151) define crime as an act of force or fraud undertaken in pursuit of self-interest.

The theory itself hinges on two basic features: the lack of individual self-control, which is the main factor, and the opportunity to commit a crime. Given such an opportunity, a person with low self-control is more likely to offend than one with high self-control. For Gottfredson and Hirschi (in Brown et al. 1998: 335), lack of self-control is found in individuals who prefer quick solutions over protracted consideration, generally lack perseverance, and are prepared to take risks. They are also insensitive and selfish, traits which arise at an early age and never completely disappear.

Gottfredson and Hirschi's general theory Of crime (also known as general theory of low self-control) merges concepts of control theory with rational choice, routine activities, and biological and psychological explanations. They see (young) people who engage in criminal acts as having low self-control. These (young) people engage in many conventional behaviours, but due to their low self-control, they are predisposed towards committing crime if the opportunity arises. Youths with low self-control want instant gratification, lack patience, are adventuresome and active, and possess few cognitive skills.

Gottfredson and Hirschi (cited in Moyer 2001: 153) attribute lack of self-control to child-rearing practices. In order to teach a child self-control, the following minimum conditions must be met:

- Someone (a caregiver) must monitor the child's behaviour.
- That caregiver must recognise unacceptable (criminal) behaviour when it occurs (i.e. recognise right from wrong).

- Wrongdoing must be punished.

These conditions are frequently missing in the backgrounds of young offenders.

In line with the value of proper child-rearing practices, it is logical that these theorists see a significant link between parental criminality and youth crime, as criminal parents tend not to supervise their children well, do not recognise or discourage criminal behaviour in their children, and do not punish appropriately. Children from larger families are also more likely to break the law, given that the time and energy of the parents must be divided among all the children. Children who come from singleparent families are more likely to commit crime, as are children of working mothers.

According to Gottfredson and Hirschi (cited in Hunter & Dantzker 2002: 153), the causes of crime are an impulsive personality, low self-control, weakened social bonds and criminal opportunities. They maintain that an impulsive personality develops from certain biological and psychological factors; that low self-control is a product of an impulsive personality, combined with social factors such as deviant parents and poor supervision; and that weakened social bonds are the product of low self-control and the subsequent development of alternative attachments, involvements, commitments and beliefs. Tibbetts (2012: 166—167) hypothesises that the theory assumes that individuals are born predisposed toward selfish, self-centred activities and that only effective child rearing and socialisation can create self-control. Without the necessary adequate socialisation, humans will naturally follow their tendencies to become selfish predators. The core assumption of this theory is that although the development and formation of controls are linked to healthy socialisation practices, the distinguishing characteristic is the individual's ability to control himself.

If criminal opportunities present themselves, the combination of low self-control and weakened social bonds will very likely result in crime. Recent research (Tibbetts 2012: 167) has, however, highlighted that low self-control may also be influenced by an emotional disposition some humans are born with. The research shows that individuals with low self-control also have significant low levels of anticipated shame. In contrast, they show elevated levels of perceived pleasure in committing a wrongful deed. In addition, research on physiological aspects and low self-control purports that chronic offenders show greater arousal toward danger and risk taking than toward the possibility of punishment. The findings suggest that certain human beings are "physiologically" encouraged to commit risky behaviour due to physiological mechanisms in the brain that reward their risky behaviour by releasing pleasure hormones (probably endorphins).

The general theory of crime is widely posited as one of the most valid theories in explaining crime. This is explained in terms of the fact that the theory focuses on one primary factor, namely self-control, which is linked to a series of personality traits and behaviours. These include risk taking, impulsiveness, self-centeredness, short-term orientation and a short temper (Tibbetts 2012: 167).

It is evident that the basic arguments of the general theory have their roots in the assumptions Of the classical school. Crime is viewed as rational: it is the result of the offender's choice. Also, crime and all other actions are the result of a natural human desire to maximise pleasure and avoid pain.

7.4.1 The general aggression model (GAM)

During 2011 a general model aimed at explaining aggression also saw the light. Several theories of explaining human aggression were combined in an effort to integrate the common features of previous efforts. Nathan DeWall and Craig Anderson state that "GAM provides the only

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theoretical framework of aggression and violence that explicitly incorporates biological factors, personality development, social processes, short-term and long-term processes, and decision processes" (DeWall & Anderson 2011: 255). The theory attempts to include most factors that can cause aggression. It draws heavily on social-cognitive and social learning theories. Aggression and violence depend on how a person perceives and interprets the social environment, expectations about various outcomes, knowledge and beliefs about how people usually respond in certain situations and the degree to which a person believes he or she has the ability to respond effectively. Eventually reactions might be complicated but with time, through cultural teachings and repetitive experiences, the person's judgement and choices in different situations become automatised. Eventually a person judges situations and other people without effort based on their appearance, race, religion and other characteristics. In addition, GAM posits that violence often occurs because of an escalation cycle. A trigger event must take place to effect the action between two people, two groups or any type of dyad — even two countries. Once the trigger event occurs, the other person or group will likely retaliate. Reciprocal retaliation can occur because both parties usually deem the reaction or retaliation as unjustified. Persistence of the retaliation often occurs because the role players get caught up in a tangle as the opposing parties perceive the other party as acting with malice or evil intent and deem their own behaviour as acceptable and appropriate in the relevant situation.

An important aspect of the GAM theory, which echoes the level of violent incidents between groups and individuals in South Africa, is that violence and aggression can ignite in a wide range of situations and because of many triggers. They state in this regard that "if you want to create people who are predisposed to aggression and violence, begin by depriving them of resources necessary to meet basic needs — physical, emotional, psychological, and social" (DeWall & Anderson 2011: 26). In South Africa, people are provided with multiple examples and models of aggression and violence. These are also deemed successful tools in achieving something. If people are provided with cognitive beliefs and values that dehumanise the out-groups and are exposed to events of violence against them, desensitisation will eventually occur. If the necessary cognitive scripts about the out-group exist, high levels of violence will follow (Bartol & Bartol 2017: 152). For example, the perceptions some South Africans hold with regard to immigrants from neighbouring countries have resulted in violent xenophobic attacks. The violence and destruction by some youths that occurred during the #FeesMustFall campaign can also be explained along these lines.

7.5 EVALUATION OF CONTEMPORARY DEVELOPMENTS

The neoclassical school did modify the administration of law based on the views of the classical school. They also modified the doctrine of free will by stating that the freedom to choose could be affected by incompetence, age or insanity. Furthermore, they introduced the concept of premeditation and mitigating circumstances (Chamberlain 2015: 25; Moyer 2001: 27). In terms of specific explanations for criminal behaviour, the rationality of young offenders' actions seems to be a matter of contention — as pertinently pointed out by Bartollas (2000). It seems to be more realistic to speak of a limited rationality that emphasises pleasure seeking without carefully weighing up choices, particularly with regard to youth misbehaviour.

Neopositivists adopted a multidisciplinary approach and integrated biological, psychological and sociological (social) variables in their explanations of criminal behaviour. Such an approach is constructive, as single-factor explanations are inadequate for explaining youth crime.

Integrated theories incorporate various models of explanation. These different models are often used to weave together variables from existing theories. Such a combination, it is claimed, will provide a more accurate and comprehensive understanding of criminal behaviour than any of the particular theories will alone. Table 7.1

summarises the various integrated theories discussed in sections 7.3 and 7.4 in terms of type, their exponents and main risk factors.

According to Vold et al. (cited in Binder et al. 2001: 188), the abundance of theories does not enrich but rather impedes scientific progress. Theory is supposed to direct research and to accumulate into a coherent, understandable product. Vold et al. maintain that the disparate theories of youth crime would serve our understanding much better if the strengths of the various approaches were abstracted and combined.

Integrated theory, therefore, presents a variety of problems in its attempt to offer a coherent explanation of youth crime. Binder et al. (2001: 190) point to the following shortcomings:

- Logical incompatibility is a major issue in that the different elements of an integrated theory can often form a rather disorganised set of postulates.
- The lack of consensus regarding the definitions of common terms is problematic.

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Table 7.1 Integrated theories

Type of integration	Exponent	Risk factors emphasised
Classical	Cornish and Clarke (rational choice theory)	Rewards rationality and pleasure seeking Choice-structuring properties (risks, rewards, requisites)
Biological	Wilson and Herrnstein (human nature theory)	Genetic makeup Intelligence Physical features Body type
Psychological	Farrington (delinquency development theory)	Deviant personality Poor child raising Economic deprivation
Strain	Elliott, Huizinga and Ageton (integrated strain theory)	Strain within the family and school Disorganised communities Blocked opportunities for success
Learning	Thornberry (interactional theory)	Weakening of social bonds during adolescence Influence of the peer group Socially disorganised environments Life cycle Developmental phase-changing influences
Control	Weis, Hawkins and Catalano (social development theory)	Family interactions, family bonds, supportive families Interaction with others — peers/adults Position in the social structure

Conflict	Colvin and Pauly (structural Marxist theory)	Domestic relations Strain in the workplace and parents' frustration Excessive control of children
General	Gottfredson and Hirschi (general theory of crime)	Low self-control, instant gratification Lack of patience, adventuresome and active, few cognitive skills Child-rearing practices (supervision and discipline) Parental criminality Large families Single parents
Aggression and violence	DeWall and Anderson (general aggression model)	Judgement and choice to use aggression in certain circumstances beconnes automatised Reciprocal retaliation Dehumanisation of the out-group High levels of aggression that desensitise the in-group, with aggression becoming a sUccessful tool to achieve things

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- Key variables are measured imprecisely.
- The same variables are used in different ways in different theories (empirical indeterminacy).

The complexities of some integrated theories limit their application in explaining specific criminal behaviour. Integrated theories must emphasise both the physical and social environments, otherwise they offer little more than single-factor explanations do. However, integrated crime explanations cannot simply provide a broad framework for the explanation of criminal behaviour. Theoretical integration can be useful if the selected theories to be integrated complement each other.

We should, however, realise that it is difficult to explain human behaviour such as crime from a one-dimensional approach. Some scholars believe that a more comprehensive understanding of crime might be achieved by integrating different aspects of different theories such as social process, biological and structural explanations in an integrated manner (Barkan 2012: 207). Moreover, Williams and McShane (2010: 217) posit that "not everyone is in favor of integration, and some theorists have claimed that the process of integration is doomed to failure".

On the positive side, one must realise that all of these integrated theories are relatively new and have not yet been fully tested. Real advances have been made in our understanding of criminal behaviour due to recent theoretical analyses of criminal and other antisocial behaviour in young people (Hoge 2001: 59). Hunter and Dantzker (2002: 153) are of the opinion that the self-control theory of Gottfredson and Hirschi comes nearest to providing an integrated explanation of crime and criminality.

7.6 EXPLAINING YOUTH MISBEHAVIOUR IN SOUTH AFRICA

7.6.1 Introduction

Having considered the trends and arguments of traditional theories and contemporary developments, and taking cognisance of relevant risk factors as set out in Chapter 4, one can now try to explain youth misbehaviour in South Africa. However, a suitable explanation should meet the

following requirements to accommodate the shortcomings of other theoretical developments:

- Provide an integrated explanation incorporating psychological and social variables.
- Accommodate specific crime risk factors applicable to the South African situation to enhance its predictive potential.
- Take into account the behavioural development of young people and the varying influences to which they are subjected.
- Present policy implications as constructive crime-control measures.

In addition, Tibbetts (2012: 2) insists that a good theory should be measured by parsimony, scope, logical consistency, testability, empirical validity and policy implications.

Meeting these requirements seems a daunting task, particularly when one considers the preponderance of disruptive (risk) factors prevalent in South Africa's society at large. These negative factors are addressed in Chapter 4 and because of the gravity of particularly environmental issues in the four domains of the community, family, school and peer groups, it logically follows that social risk factors should represent the point of departure of our explanation.

7.6.2 Social risk factors as point of departure

7.6.2.1 Caregivers

There is general consensus among theorists on the crucial importance of family life, whether from a psychological orientation (such as Farrington), a control perspective (such as Weis et al.), a conflict perspective (such as Colvin and Pauly) or a general theory orientation (such as Gottfredson and Hirschi). The disintegration of family life in South Africa cannot be ignored. Serious problems such as the death of parents due to AIDS, incarcerated parents, single-parent families, child-headed households, and emotional, physical and/or sexual abuse by parents and family members abound.

Caregivers are needed to provide a haven of security and affection, to care for the young, to lead by example and to instil basic values

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regarding socially acceptable and unacceptable behaviour. When peer influences become more prominent in the young adolescent phase and the major influence of caregivers might diminish, loving and consistent discipline should remain to reinforce positive values and support socially acceptable behaviour. Many children in South Africa grow up without the guidance of a parent. If they are not completely abandoned, countless children grow up in a fractured family or a single-parent household. Those who do not have parents are often raised by their elder siblings in so-called child-headed households, and thousands live on the streets. Many youths never attend school because of these dire situations. The following examples illustrate the challenges youths could experience during different life stages:

- The young child. The lack of basic care of infants and young children is an expanding problem in South Africa. AIDS-orphaned children, for example, require care and shelter. There are many cases where young children have become victims or potential targets of rape and murder because they have been left unattended. These have been described in the media as South Africa's greatest shame.
- Early and middle adolescence. There is a lack Of proper supervision and discipline due, for example, to parents being away when looking for employment, being detained in a remand correctional centre, or serving a prison sentence. Owing to the absence of caregivers, young people loiter unprotected on the streets and are subject to negative influences. Street children often find refuge in old rundown houses and face problems with municipalities

because they illegally occupy them. Most street children are either orphans or have run away from home because of serious abuse. Without care, they will most likely resort to criminal behaviour to survive.

- Young adults. Poor child rearing provides an inadequate frame of reference for socially acceptable and moral behaviour. Alcohol and substance abuse by caregivers sets a poor example for young people in their formative years.

Many violent criminals in South Africa come from disrupted families and "broken homes".



They are typically from poor and disorganised neighbourhoods, and often have little or no school education (Bezuidenhout 2007: iii; Zinn 2011: 170).

7.6.2.2 Institutional deficiencies

Social structure theories portray crime as the product of deficiencies in the social structure of a society. Various institutions dealing with health, the economy, justice and education form part of society's social structure. Schools are a key institution involving young people. Next to family life, school has become a major concern and a vital risk factor in respect of youth misbehaviour. The integrated theory of Elliott, Huizinga and Ageton points to strain within the school as a risk factor:

- Young (school-going) children. Learners without the benefit of proper care will not experience caregiver involvement that promotes a climate of learning in their school activities. Many public schools, schools in rural areas and schools in informal settlements do not provide the same facilities that private schools do, such as a variety of sports and recreational facilities to promote constructive leisure time. Private schools also have fewer learners per class so as to ensure individual attention. In contrast, many public schools are often characterised by crime and violence (particularly stabbings and bullying) and lack of discipline.

- Early and middle adolescence. Educators are faced with problems such as gangrelated activities, the carrying of weapons in school, drug trafficking on the school grounds and racial incidents. Furthermore, some teachers set a poor example for learners by frequently being absent, implementing erratic discipline and selling examination papers to learners for additional income. Sexual assaults among learners take place on school grounds, according to the news media, as do sexual relationships between teachers and learners.

- Young adults. The quality of education and school facilities varies. Problems in the schools of provinces such as the Eastern Cape and Limpopo result in some young people being inadequately prepared for continuing their education to tertiary level and therefore they face the prospect of being unemployed. Furthermore, learners in public schools are often failed by the system as they are left without textbooks because the Department of Education sometimes fails to procure or deliver books on time or to address other immediate needs of learners. School violence and sexual pressures are also rife for this group.

7.6.2.3 Economic deprivation

Bhorat and Kanbur (2006: 1—14) assert that post-apartheid South Africa is negatively affected by increasing inequality, poverty and unemployment. According to these authors, clear trends emerged in the analysis of welfare shifts in the post-apartheid period:

- An increase in both absolute and relative income poverty
- An increase in income inequality (social theories of crime imply that inequality

leads to higher levels of both property and violent crime)

- An increase in unemployment rates as a result of the rapid expansion of the labour force. The broad unemployment rate is estimated to be between 30 and 40%, and has been steadily increasing since 1995, making South Africa's unemployment rate one of the highest in the world (Hoogeveen & Özler 2006: 59). Pali Lehohla, the current statistician-general of Statistics South Africa, recently released the Quarterly Labour Force Survey of 2017 and indicated that South Africa's unemployment rate is 27,7% — the highest figure since September 2003 (Daily Maverick, 2017). The Bureau for Market Research believes this figure is substantially higher

  In addition, South Africa does not have a thriving informal economy where the jobless can take refuge, which compounds poverty and lack of opportunities.

- Increased migration and immigration
- An environment of tepid economic growth rates. Crime is so prevalent that it leads to the emigration of South African professionals of all ethnic groups, which discourages investment and stifles growth

In addition, South Africa has experienced an almost uncontrolled increase in illegal immigrants from neighbouring countries who also struggle to provide for their citizens. Many illegal immigrants believe South Africa to be a land of opportunity. However, uncontrolled influx places a huge burden on the economy, and more specifically on job opportunities, living quarters and basic service delivery. Also, many illegal immigrants turn to a life of crime as they find that legal opportunities in South Africa to earn a living are limited. The lack of job opportunities and the hardship many South Africans experience cause many frustrations, which often boils over in xenophobic attacks. The outbreak of xenophobic violence can be explained by an unfavourable combination of a few factors: an already violent society; the acceptance, and even encouragement, of xenophobia; massive inequality; the increased threat of poverty, which is exacerbated by consistent service delivery failure; and demographics. There is competition among poor people not only for basic materials such as food and shelter but also for commodities that allow them to be more included in society, for example TVs, cellphones, better clothes and computers. Soaring food and basic commodity prices worsen poverty and the perceived competition within townships for resources. This could increase the level of xenophobic violence as many local South Africans believe that immigrants take their job opportunities from them.

7.6.3 Strain owing to social risk factors

Based on these social risk factors Of inadequate caregivers, school problems and economic issues, the following argument is posed. Strain arising from structural deficiencies, particularly from problems regarding primary care, educational shortcomings and economic issues, is evident in South Africa. This explains why the preponderance of the country's risk factors, as set out in Chapter 4, is of a social nature. Strain inevitably sets reactions in motion:

- Opportunities for criminal behaviour are created, which are enhanced by the criminal actions of significant others such as parents and peers.

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- A climate of learning crime is created by frequent associations with lawbreakers, particularly when young people grow up in socially disorganised communities.

If there are high levels of strain in important societal structures, a need for social control is evident. Following Hirschi's argument, young people's behaviour in particular should be regulated and controlled within a bond of attachment (affection and care) and constructive involvement. This would help them develop a belief system and a moral compass that reflects a personal will to display socially acceptable and law-abiding behaviour.

Such a personal will to conform can only be realised when young people feel committed to society. Although Hirschi regards attachment as the most important element of the social bond, he has underplayed the value of commitment. Young people have to invest in

South Africa's future, but such an investment is posSible only when proper care is taken of the young, when sound educational policies exist and when job opportunities are created. This matter is further complicated by factors such as malnutrition and poor diet, which impact on physiological processes and development. In addition, many youths with specific confrontational extrovert temperaments struggle to cope in an adverse society that subscribes to a culture of violence. Children thus have weak bonds and attachments; they support a value system of violence and present with a character of defiance, which indirectly sets them up for failure.

7.6.4 Personal factors: addressing serious crime

Having ascertained that South Africa experiences serious social problems that create risk factors for youth involvement in criminal actions such as shoplifting, vandalism and substance abuse, one must now mention that it is a major concern that young offenders also commit serious types of crime such as rape, robbery and murder. While considering social risk factors, one has also to consider variables on a more personal level to address the element of violence in youth misbehaviour.

Gottfredson and Hirschi claim in their general theory of crime that all crime can be explained by people's pursuit of self-interest. This argument simplifies the motives for youth misbehaviour, particularly against the background of diverse social problems. Yablonsky (2000: 389) maintains that the most useful concept for understanding youth crime is related to the young person's self-concept. This factor has sociological roots and is reflected in the psychological personality of the young offender.

Yablonsky (2000: 394) explains that youth misbehaviour has several related phases and characteristics:

1. The child or youth is sexually, physically or emotionally abused, neglected or abandoned by his or her primary socialising agents — that is, parents and caregivers.
2. As a result of being treated negatively and with limited respect, the child feels humiliated, demeaned and unworthy. As a consequence of this pattern of negative socialisation, the child develops a low selfconcept and feels self-hatred.
3. Together with this low self-esteem, the child or youth develops a rage against the people who have abused or neglected him or her, which is often displaced onto people in the general society.
4. Children with a negative self-concept tend to care little about what happens to them. Not only do they not value themselves, but this also carries over into their attitude towards other people in their world. Their attitude of "I don't give a damn about anything" mixed with the rage that stems from being abused may create a person who is apt to be violent, and disrespects the rights of others.

Yablonsky's arguments help to explain the committing of violent crimes by South African youths in particular. Perpetrating acts of rape and murder requires a driving force, and Yablonsky recognises and accommodates this force in terms of rage.

Youths growing up in informal settlements and other substandard environments are especially at risk. They usually lack supervision, do not experience love and security, and lack important essential skills such as respect, problem solving and conflict management. Often they do not develop the necessary moral compass to enable them to develop respect for other property and respect for life. The result is many "lost" youths with a "don't care" attitude to life and a lack of opportunities to succeed. If one considers the general model of aggression as this juncture, South Africa is creating people who are predisposed to aggression and violence as many young people are deprived of the resources necessary to meet their basic needs — physical, emotional, psychological and social.

7.6.5 Moral development

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It is expected of humans to conform or at least show a degree of conformity to conventional standards of moral conduct. If everyone believed in a code of conduct that applied to all who could understand it and could govern their behaviour, crime and misbehaviour would rarely exist. However, humans do not always adhere to these prescribed codes of conduct because Of faulty moral development. Bartol and Bartol (2011: 343) state that "[m]oral development refers to the gradual development of a person's concepts of right and wrong, conscience, ethical and religious values, social attitudes, and behaviour". From the foregoing discussions, it is clear that many youths in South Africa never have the opportunity to develop morally according to a universal and conventional standard of moral conduct.

Theories pertaining to moral development highlight that ineffective or absent moral development correlates strongly with youth misbehaviour. Should poor moral development be a variable in a child's life, certain predictions can be made, which take the following into account:

- Social factors, such as family relationships (support and discipline based on reason)
- Educational matters (academic performance)
- Personal variables, such as the ability to show consideration and develop empathy for others
- Negative characteristics, such as deception and dishonesty

As Kohlberg's theory suggests, the moral maturation of young offenders is slow, which in South Africa is aggravated by social conditions that promote criminality. Since moral development is a gradual process, many youths experience too many hardships and contaminated influences that negate the possibility of their healthy moral development.

7.7 CONCLUSION

The first half of this chapter dealt with contemporary explanations for youth misbehaviour. Neoclassicists view young offenders as rational creatures, who, being free to choose their actions, could be held responsible for their behaviour. Youth misbehaviour was viewed as purposeful activity resulting from rational decisions in which the pros and cons were weighed and the acts that promised the greatest potential gains were performed. Punishment was therefore justified because of its usefulness or utilitarianism. The aim of punishment was the protection of society, and its dominant theme was deterrence.

Contemporary biological positivists or biosocial theorists stress the interaction between the biological factors within the individual and the influence of the particular environment (Bartollas 2003: 73). They claim that what produces misbehaviour, like other behaviours, is a combination of genetic traits and social conditions. It became evident that the single-factor explanations for youth misbehaviour belong in the past among traditional explanations.

Recognition for the inclusion of multiple factors in the explanation of youth misbehaviour is accommodated in both developmental and other integrated theories. Numerous examples of integrated theories were discussed, as set out in Table 7.1. In the process of integration, traditional theories are reassessed and incorporated, but the multiple roots of criminality are strongly emphasised. The latter might explain why some integrated theories are criticised for being too complex.

The direction of theory appears to be set, maintain Williams and McShane (2004: 313). Judging from the number of research studies and commentaries in the criminological literature, self-concept and developmental theories with a focus on factors affecting young children appear to enjoy theoretical supremacy.

The explanation of youth misbehaviour in South Africa incorporates the social explana

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tions of strain, learning and control. Pertinent psychological explanations — namely Kohlberg's theory of moral reasoning and Yablonsky's integrated social-psychological view — are also included. Figure 7.1 illustrates the integration of various theoretical concepts.

At all levels, caregivers and institutions such as schools and the government have a vital role to play in addressing youth misbehaviour in South Africa. Firstly, there is a need for an extended family network to compensate for the limitations of current caregivers. Secondly, the government should address education as a key issue. It is not sufficient to provide funds — a hands-on policy

addressing the needs of both educators and learners is required. The high level of crime is a serious concern; the high crime rate among young people, particularly when of a violent nature, is intolerable.

Taking cognisance of the requirements of a theoretical explanation for youth misbehaviour in South Africa as set out in section

Level Variables

7.6.1, criminologists have succeeded in identifying risk factors for criminal behaviour and Of subsequently developing theoretical explanations for such behaviour. This includes both psychological and social variables as well as the behavioural development of young people and the varying influences to which they are subjected.

The major challenge in addressing youth misbehaviour in South Africa is the swift development of youth programmes to be implemented at school level with the aim of underlining responsible behaviour, instilling discipline, and promoting a heightened awareness of the realities and consequences of crime. At the same time, future prospects for the country's young population, such as employment opportunities, should be improved significantly. Parents, guardians and caregivers should work tirelessly to build gradually a sense of morality in youths. They cannot leave it entirely to the government to socialise and educate the children of South Africa.

Theoretical orientation

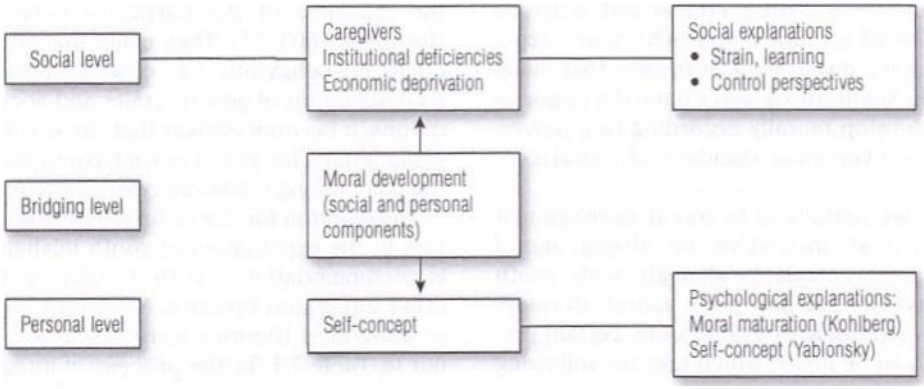


Figure 7.1 Explaining youth crime in South Africa

CRITICAL QUESTIONS

1. Briefly explain what is meant by the integration of theories.
2. Name the five principles that are the fundamental ingredients of the modern-day perspectives on crime and human behaviour.
3. Explain what Cornish and Clarke's theory of rational choice entails.
4. Contextualise the role that moral development plays in the possible prevention of youth misbehaviour.

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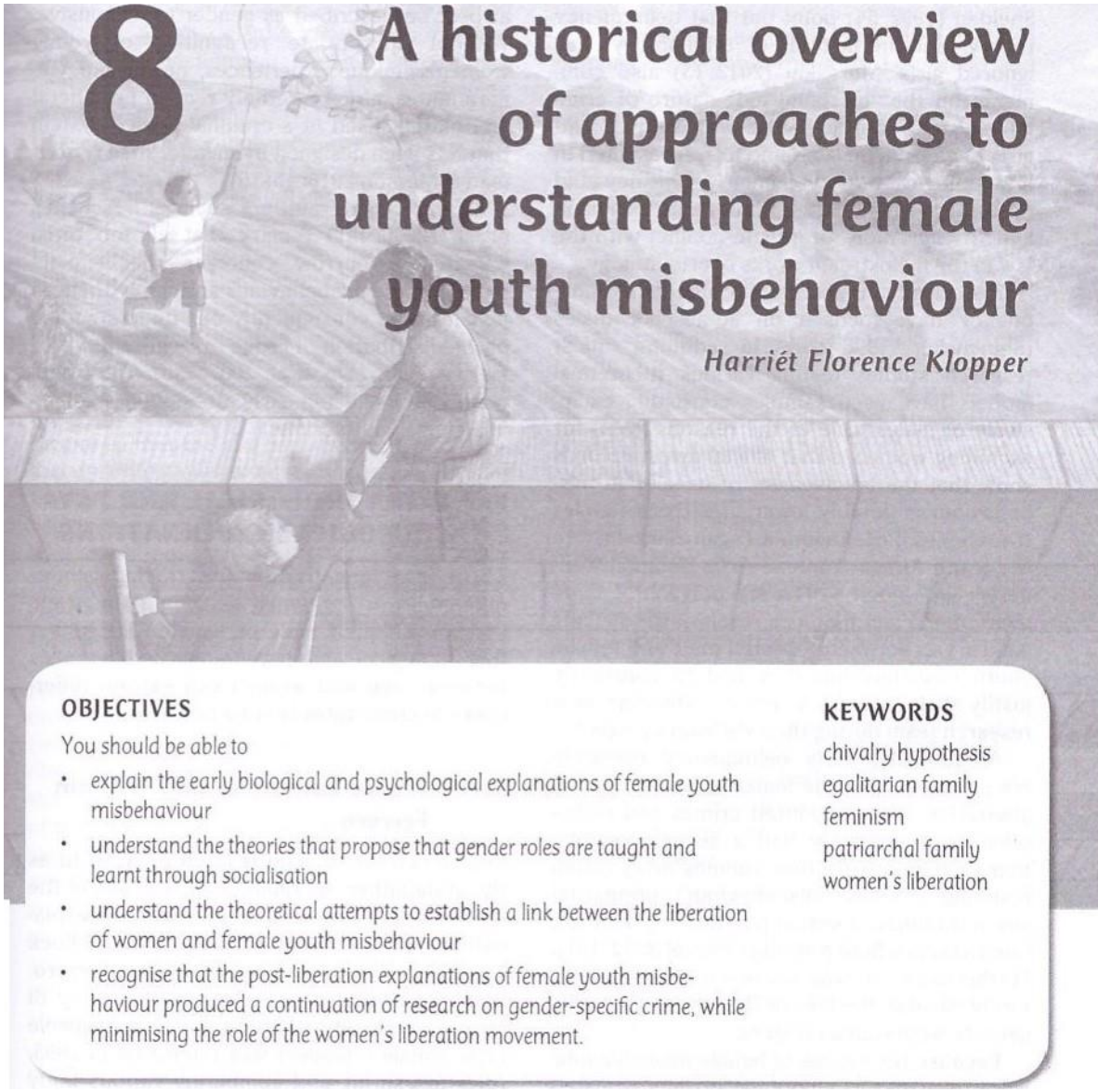
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8 A historical overview of approaches to understanding female youth misbehaviour

Harriét Florence Klopper

OBJECTIVES

You should be able to

- explain the early biological and psychological explanations of female youth misbehaviour
- understand the theories that propose that gender roles are taught and learnt through socialisation
- understand the theoretical attempts to establish a link between the liberation of women and female youth misbehaviour
- recognise that the post-liberation explanations of female youth misbehaviour produced a continuation of research on gender-specific crime, while minimising the role of the women's liberation movement.

KEYWORDS

chivalry hypothesis
egalitarian family
feminism
patriarchal family
women's liberation

Note: Although the concept "juvenile delinquency" is not used in this book for the reasons given in Chapter 1, it will be used in this chapter where relevant to highlight the androcentric and chauvinistic attitudes of theorists towards females since the first attempts were made at explaining the behaviour of young females at risk. Furthermore, although today the term "sexuality" is considered an emotive and sensitive one, the author will, for the sake of authenticity, refer to the "sexual nature" of females, as well as their "sexuality", because these terms have been used thus by the authors whose works are under scrutiny in this chapter.

8.1 INTRODUCTION

A major shortcoming of criminology has been misbehaviour and deviant behaviour to a place its relegation of female involvement in crime, of secondary importance. Chesney-Lind and

Shelden (1992: 54) point out that delinquency theory, and in fact all of criminology, has ignored girls. Muraskin (2012: 13) also comments on the "masculinised" nature of criminology, and critiques the way women and girls have been negated and misrepresented in criminological inquiry. Similarly, Chesney-Lind (2010: 564) refers to the remarkable exclusion and "trivialisation" of girls in conflict with the law in the mainstream works of criminology.

Historically, theories of crime and delinquency have focused on adolescent males (Shoemaker 1996:226). In addition, most research studies testing various theoretical models have used samples consisting exclusively of males. One of the reasons given for excluding women is that official arrest records show that the involvement of females in misbehaviour is notably lower than that of males (Deschenes, Rosenbaum & Fagan 2000: 431). In the South African context, Artz, Hoffman-Wanderer and Moult (2012: 27) poignantly comment on the fact that as a result of the striking gender gap between reported male and female youth misbehaviour, they had to constantly justify their interest in female Offending as a research team during their Pathways Project.

Additionally, early delinquency researchers proposed that the female offender was an aberration who committed crimes and status offences that mostly had a sexual connotation such as prostitution, running away (often resulting in sexual misbehaviour), premarital sex and crimes of sexual passion (e.g. killing a boyfriend in a fit Of jealousy) (Siegel 2002: 131). Furthermore, it was assumed that females rarely violated the law, or if they did, their illegal acts were status offences.

Because the causes of female misbehaviour were relegated to emotional or family-related problems, criminologists did not take any serious interest in the subject. As a result, the major criminological theories suffer from a lack of generalisability to female criminality (Brown, Esbensen & Geis 2007: 138). Although there has been an increase in research on female youth misbehaviour in recent years, theoretical development has been either lacking or inappropriate (Muraskin 2012: 24). It is not surprising that the paucity in theoretical understanding of female youth misbehaviour has led to criminal justice responses towards young females in conflict with the law that can at best be described as gender unresponsive. Without appropriate recognition of young women's unique experiences, needs and vulnerabilities, girls regretfully remain peripheral and marginalised in a criminal justice system that has been designed by men for men (Osterman & Masson 2016: 15—16).

In this regard, authors such as Deschenes et al. (2000: 431) remark that all too often researchers borrow concepts that explain male juvenile misbehaviour and apply them to females, and consequently our understanding of the distribution of crime by gender tends to be biased (Brown et al. 2007: 138). This chapter reviews selected early attempts at explaining female youth crime.

8.2 EARLY BIOLOGICAL AND PSYCHOLOGICAL EXPLANATIONS

There is a long tradition of tracing gender differences in criminal behaviour to traits that are uniquely male or female. The notion that biological and psychological differences between men and women can explain differences in crime rates is not a new one.

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8.2. I Cesare Lombroso and William Ferrero

Cesare Lombroso, who is often referred to as the grandfather of criminology, was one of the first theorists who attempted to Offer an explanation for women who commit crime (Pollock 1999: 130). With his son-in-law, William Ferrero, Lombroso became a pioneer in the study of female criminality when La donna delinquente (The female offender) was published in 1895. After measuring and comparing various body parts of criminal and non-criminal women, they concluded that criminal women were biologically inferior and that they represented evolutionary throwbacks to a primitive state.

As enthusiastic proponents of social Darwinism, they maintained that women were lower on the evolutionary scale than men. According to Lombroso and Ferrero, women who committed crimes could be distinguished from "normal" women by means of particular physical characteristics such as occipital irregularities, narrow foreheads, prominent cheekbones, excessive body hair, an abnormal cranium,

wrinkles and a virile facial form (Brown et al. 2007: 241; Siegel 2002: 137). Furthermore, they argued that delinquent females were closer in their physical appearance to men than to other women. Campbell (1981: 48) refers to this as the masculinity hypothesis that suggests that delinquent girls have excessive masculine characteristics.

Lombroso and Ferrero reported finding fewer degenerative physical features among female offenders than among their male counterparts. However, prostitutes had more of these atavistic qualities than other female offenders. In addition, they argued that the evil tendencies of female offenders were more numerous and varied than those of men. They proposed that the maternal instincts and ladylike qualities of female offenders were suppressed and that they were more merciless when they committed violent crimes than their male counterparts. They also believed that female criminals were overgrown children with' a limited sense of morality (Brown et al. 2007: 241).

Criminologists often find Lombroso and Ferrero's suggestion that women are lower on the evolutionary scale than men puzzling because they viewed primitivism as the key element in producing criminal behaviour, yet the crime rate of women was lower than that of men. Their explanation of this inconsistency was that most girls were restrained from committing crime by neutralising or counterbalancing traits such as maternal feelings, lack of passion, sexual apathy (coldness), weakness and underdeveloped intelligence (Brown et al. 2007: 241; Muraskin 2012: 16; Pollock 1999: 130; Shoemaker 1996: 227; Siegel 2002: 138).

According to Chesney-Lind and Shelden (1992: 56), Lombroso and Ferrero accepted that females were congenitally less inclined towards crime than males because of their more passive natures and their biological roles as caretakers of children. In their opinion, female criminals were anomalies (rare creatures) and, although women were often inclined towards childlike, jealous and vengeful behaviour, most of them were controlled by their maternal feelings, piety, weakness and low intelligence. They did warn, though, that when women did deviate, they became the most dangerous criminals of all. They also speculated that women's crimes were often caused by a preoccupation with sexual matters. Chesney-Lind and Shelden (1992: 56) emphasise that this theme in Lombroso and Ferrero's work set the tone for much of the later work on female juvenile criminality.

For many years, theories about female crime continued to focus almost exclusively on the anatomy of women, as well as their sexuality in particular. For example, in 1925, Cyril Burt suggested a link between female delinquency and menstruation, and in 1926, William Healy and Augusta Bronner argued that the physical superiority of males enhanced their criminality. According to Siegel (2002: 138), the research of these authors showed that about 70% of the delinquent girls they studied were of abnormal weight and size.

8.2.2 W.I. Thomas

In 1923, W.I. Thomas continued Lombroso's focus on women's sexuality in his book Unadjusted girl. He postulated a biological difference between men and women that affected their psychological makeup. According to him, women were frustrated because they were aware that they were being deprived of wishes or desires during a time of rapid social change. He argued that four basic wishes or desires influenced behaviour, namely the desire for new experiences, security, response and recognition. These desires accounted for most delinquency and crime. Thomas stated that a woman's desire for response was more intense than that of a man (Muraskin 2012: 17).

As evidence of women's intense desire for response, he referred to their maternal drives, their propensity to care of the sick and helpless, and their general altruism. Thomas proposed that even prostitutes displayed a desire for response because, in his opinion, women engaged in this crime to fulfil their need for love and tenderness rather than for purely economic reasons. Similarly, he considered shoplifting to be an expression of the desire for a new experience, as well as recognition and response, because girls were likely to steal goods that would beautify them (Pollock 1999: 131).

According to Chesney-Lind and Shelden (1992: 56), Thomas introduced another major theme into the early work on female misbehaviour, namely the notion that girls could

be saved, particularly from their sexuality, through early intervention in their lives. Based on his evaluation Of case records, Thomas determined that nearly all female misbehaviour was an expression of sexual problems.

For example, he asserted that young women in general were not involved in sexual activity out of curiosity, but rather were encouraged to use sex as a means to obtain valued goods such as money, clothes and other luxuries (Shoemaker 1996:225). Thomas did not condemn this, but criticised the social class-based system that made it possible for upper-class women to sell themselves once only by getting married and which forced poor women to settle for less.

He singled out bad family situations and demoralisation as the sources of female misbehaviour. As a solution to these problems, he was very enthusiastic about the services that were offered by the family court. In his opinion, these courts were much wiser than the parents of children and could remedy problems through sensitive and enlightened casework (Chesney-Lind & Shelden 1992:57).

8.2.3 Sheldon and Eleanor Glueck

In their book Five hundred delinquent women (1934), Sheldon and Eleanor Glueck, like Thomas, are very enthusiastic about extensive intervention in the lives of girls and young women (Chesney-Lind & Shelden 1992:58). They documented the life histories of institutionalised female offenders and concluded that the majority had been involved in sexual deviance that began in their early teens. According to them, sexual misbehaviour and general maladjustment in girls developed at the same time as their unstable home lives. The Gluecks believed that extensive work with these girls, including lengthy sentences in reformatories and even voluntary sterilisation, could contribute towards the prevention of female misbehaviour (Siegel 2002: 144).

8.2.4 Otto Pollak

Otto Pollak links female criminality to the impact of biological conditions such as menstruation, pregnancy and menopause in his book The criminality of women (1950). According to Chesney-Lind and Shelden (1992: 58),

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this work is a continuation of the reliance on a biological model of female misbehaviour as a way of explaining women's deviance and a return to the distrust Of female criminals originally found in Lombroso's work. Pollak, unlike most Other theorists, believed that women were just as criminally minded as men (Pollock 1999: 131). He asserted that the crimes of women were underreported, were less likely to be detected and were treated more leniently by the criminal justice system (the chivalry hypothesis) (Brown et al. 2007: 140).

Pollak noted that official statistics showed that women committed substantially fewer crimes than men. He did, however, maintain that crimes by women were underreported, as already stated. In discussing this masking of the criminality of women, he proposed that the majority of the types of crime that women committed (e.g. illegal abortions, prostitution, stealing from customers and stealing from employers) were such that they were hidden with ease. In addition, he asserted that women were deceitful, a characteristic he believed was not only socially induced, but also related to the female physiology (Brown et al. 2007: 140; Shoemaker 1996:229). In this regard, he referred to the passive role of women during sexual intercourse and the fact that women were able to conceal or manufacture sexual arousal, while men were not so privileged and had to achieve an erection. Pollak believed that women acquired the confidence to deceive men through their sexual playacting and faked sexual response (ChesneyLind & Shelden 1992:58).

With the assurance gained through their power to deceive men, women were able to commit crimes that went undetected (Brown et al. 2007: 140). Pollak emphasised that the social roles appropriate for women (e.g. homemakers, caregivers Of the sick and the young, and domestic workers) put them in a position to commit certain types of crime that could be easily hidden, for example abusing young children and poisoning the sick and the young. He also claimed that women

were the instigators rather than the perpetrators of crime — that is, they masterminded crimes behind the scenes, while men carried them out (Brown et al. 2007: 140; Siegel 2002: 138).

Pollak added that women used their sexual attractiveness to charm men in the criminal justice system and thereby Obtained differential treatment. He specifically believed that male police officials often faced a conflict when confronted with female offenders, because of a sense of chivalry as well as the notion that women should be protected from the criminal justice system. As a result, officials were less likely to suspect and arrest female offenders. This notion, referred to as the chivalry hypothesis, holds that low female crime and delinquency rates can be explained by the fact that male officials treat female criminals with leniency in the criminal justice system (Brown et al. 2007: 143; Muraskin 2012: 19; Sealock & Simpson 1998: 427).

8.2.5 Gisela Konopka

The classic work Of Gisela Konopka, entitled The adolescent girl in conflict (1966), represents an effort to gain a better understanding of the world of adolescent females. She interviewed 181 óf them, most of whom were offenders and unmarried pregnant girls. She noted that most of the behaviour that brought young women into contact with the criminal justice system was "accompanied by some disturbance or unfavourable behaviour in the sexual area" (Konopka 1966: 4). Through a multitude of case studies, Konopka, a clinician, observed that female offenders tended to originate from extremely poor home environments.

She emphasised that uncertainty, loneliness, poor communication skills and identification with a delinquent mother characterised the lives of delinquent girls. Other key elements in female delinquency, according to Konopka (1966: 1 19), included the "dramatic biological onset of puberty", "the changing cultural position of women" and the "faceless adult authority". She also believed that delinquent girls suffered from a lack of education. This ultimately resulted in women being ensnared in low-paying jobs with little hope for improvement.

These conditions led girls to relieve their frustrated ambition through destructive behaviour. She described the world of such girls as hostile, with adult authorities telling them what to do and no one listening to their needs. She asserted that the families of delinquent girls were not able to give them the care and nurturance that they needed. In her opinion, the delinquency of girls therefore stemmed from their need for support. She suggested that official intervention should focus on restoring, instead of tearing down, the girls' self-esteem, and proposed a more caring and enlightened approach to female delinquents than she had observed in Official reactions (Konopka 1966: 40). In other words, she was convinced that social intervention administered by sensitive and informed individuals could help young women with their problems.

Chesney-Lind and Shelden (1992: 61) point out that although Konopka's work represents a more sophisticated understanding of the reality of female misbehaviour than previous works, it still assumes that girls and women are largely controlled by their biology and sexuality. Similar to most of the earlier authors, Konopka argued that most female misbehaviour was either sexual or relational rather than criminal in nature.

8.2.6 John and Valerie Cowie, and Eliot Slater

In Delinquency in girls (1968), John and Valerie Cowie, and Eliot Slater offer an analysis of the interrelationship between psychological and other factors in the development of misbehaviour. These authors try to explain female crime on the basis of discussions with 318 girls who were kept in a juvenile institution in Great Britain during 1958. According to them, the girls had to be removed from society and placed in the secure environment of the institution much more for their own sake than to protect society. Most were incarcerated for offences that the authors considered to be sexual misconduct (Pollock 1999: 131).

They postulated that social and psychological factors such as poverty or broken and/ or poor home environments seemed to offer better explanations for female than male delinquency. In comparing delinquent girls and boys, they came to the conclusion that girls came from economically poorer homes, with more mental abnormality in the family, poorer moral standards, worse

discipline, more often a broken home, more frequent changes of home, more conflict at home and more disturbed intrafamilial relations. In addition, they maintained that the academic performance of girls was worse and that as a result they

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developed a hostile reaction towards school, rejected the influence of their family to a larger extent, and that their career prospects were worse than those of boys (Pollock 1999: 131).

Cowie and associates also suggested that delinquent girls had defective intelligence and deprived childhoods. They described the female personality as being timid and lacking in enterprise, and suggested that this may protect girls from delinquency. They also noted that an alarming number of girls indicated that they ran away from home because a near relative had made sexual advances towards them. This important matter was, however, mentioned only in passing by the girls and, according to Chesney-Lind and Shelden (1992: 60), dropped very quickly from the discussion.

Although these authors recognised environmental factors, they believed that biological predisposition also played a role in female delinquency. In their opinion, biological factors generally insulated women from criminal behaviour, and only women under extreme pressure were not controlled by these predispositions (Pollock 1999: 132). Therefore, it can be said that although they recognised that women were subject to greater social control, they did not accept that this factor accounted for the gender differential in crime rates. FOIlowing from this, they argued, one had to search for chromosomal and genetic factors to explain differences in male and female delinquency rates (Chesney-Lind & Shelden 1992: 59).

8.2.7 Clyde Vedder and Dora Somerville

In The delinquent girl (1970), Vedder and Somerville examine the backgrounds of girls in training schools in the US and propose that female delinquency is usually a result Of problems in adjusting to family pressure. They found that an estimated 75% of institutionalised girls also had serious problems in the male-dominated culture with its sometimes rigid and unjust social practices (Siegel 2002: 143).

Vedder and Somerville (1970: 147) established that 75—85% of the offences leading to the incarceration of delinquent girls were sexual ones. However, they did comment that these offences were masked in the official records

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as innocuous charges such as running away, incorrigibility and ungovernability.

They occasionally criticised the genderbased double standard that, for example, resulted in the institutionalisation of pregnant girls, but also explained that this was necessary because of the lack of other resources for them. Chesney-Lind and Shelden (1992:60) describe these authors' attempt to deal with incest as "troubling". In this regard, they cited a theorist who suggested that girls ran away from home because they feared the incestuous consequences of their own impulses. Vedder and Somerville (1970: 154) speculated that girls ran away from home to escape this disturbing situation.

Although they urged greater reliance on community-based programmes to deal with the high numbers of incarcerated black girls in metropolitan areas, Vedder and Somerville (1970: viii) were great supporters of court intervention in the lives of female delinquents and of traditional family norms. They stated: "When you train a man, you train an individual; when you train a woman, you train a family."

In summary, then, the early biological and psychological theories of female crime suggested that biological and psychological differences between men and women could explain the lower crime rate of women. Female criminality was assumed to be primarily sexual or relational. Those who did commit crime were seen as coming from more dysfunctional backgrounds. It was therefore postulated that these backgrounds succeeded in overcoming or triumphing over the "natural" and "biological" predispositions of women against criminality.

8.3 GENDER ROLES AND DELINQUENCY IN GIRLS

While most of the early theorists identified inherent biological and/or psychological differences between men and women, a few focused on other differences. The difference between the theories discussed in the previous section and those in the next section is that the following theories did not propose that gender role differences in youth are inherent or innate.

In the 1950s, another explanation for female misbehaviour that emphasised the influence of gender roles began to appear. Essentially, this explanation proposed that women act and think according to the roles they have been taught and are expected to play. According to Shoemaker (1996: 229), these theorists argued that women are expected to be passive, orderly and motherly. Conversely, when they are ambitious, the expectation is that they are deceitful, sly and cunning, because women are unlikely to be given occupational responsibilities and social power freely outside the boundaries of the home and family.

The importance of this perspective lies in its contention that gender roles are taught and learnt through socialisation and do not automatically exist because of biological differences (Pollock 1999: 136). While it is a fact that biological differences exist, this approach maintains that acting as expected as a male or female is not necessarily inborn or a biological predisposition, but is rather the influence of cultural and social definitions that one learns from childhood (Shoemaker 1996: 229). This perspective claims that traits such as maleness• and femaleness are biological, whereas the concepts "masculinity" and "femininity" are socially learnt roles.

8.3.1 George Grosser

One of the earliest theorists to apply the concept of gender roles to the study of female delinquency was Grosser. His unpublished dissertation entitled Juvenile delinquency and contemporary American sex roles (1952) is a study of both boys and girls. He contended that delinquency represented role-expressive behaviour for both sexes (Heidensohn 1995: 136). He asserted that the differential gender role socialisation of males and females pushed women to achieve success through affiliation (e.g. marriage) and encouraged males to achieve success through accomplishment (Chesney-Lind & Shelden 1992: 134).

While he saw male delinquency as linked to the demands of the masculine gender role for economic performance, he ascribed the delinquency of girls to a function of their basic sexual nature. He suggested that female sexual delinquency was the functional equivalent of male theft, vandalism and gang behaviour (Heidensohn 1995: 136).

According to Grosser, therefore, delinquent boys were predominantly involved in theft because stealing was daring and risky, and something that males did. Furthermore, stolen goods could serve to fulfil the masculine role of provider, such as paying one's way on dates. In contrast, females tended to steal less often than males because this did not directly express the qualities of femininity. However, Grosser maintained that some girls stole because the stolen property could help them to maintain their feminine appeal (Heidensohn 1995: 137).

8.3.2 Talcott Parsons

In his work entitled Essays in sociological theory published in 1954, Parsons presents a psychological theory identifying sex role identification as the reason for the different crime patterns of males and females. He suggested that the low rate of female juvenile delinquency was the result of a close and nurturing female figure on which adolescent girls could model themselves. Conversely, male children were frustrated by the lack of close role models, and engaged in delinquency in reaction to the omnipresent female authority figures in their lives (Pollock 1999: 135).

He emphasised that women were largely responsible for the socialisation of children. In this context, boys often saw the "goodness" of their mothers as weak because generally society displays little value towards women, therefore they rebelled against their mothers, thus creating the "strong tendency for boyish behaviour to run in antisocial directions" (Parsons, in Pollock 1999: 135). Contrary to this, girls did not experience gender identity conflict and were content to conform to the role model of their mothers.

8.3.3 Ruth Morris

Ruth Morris accepted the notion that female delinquency was deeply influenced by male and female socialisation. In her dissertation entitled Comparison of female and male delinquency (1963) and two subsequent papers in 1964 and 1965, she attempted to develop a comprehensive theory of female misbehaviour that would explain both its sexual character and its lesser frequency (Chesney-Lind & Shelden 1992: 71).

To explain the smaller number of female

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delinquents, Morris highlighted the limited access women have to illegitimate means of reaching economic goals of success, as well as the greater social disapproval of female deviant acts compared with those of their male counterparts. In addition, Morris speculated that a stronger sense of guilt or disapproval would accompany the deviant behaviour of females, and that such misbehaviour lacked subcultural and cultural support. More particularly, she found that girls experienced greater shame than boys when questioned about their involvement in delinquent acts, and that girls tended to deny their involvement in such acts to a greater extent than boys did. Morris also found that there was less disapproval of boys than girls who committed the same offence (Chesney-Lind & Shelden 1992: 71).

In an attempt to explain the preponderance of status offences among girls, she pointed out that because factors that interfere with achieving culturally defined goals of success via legitimate means were most likely to lead to deviancy, and because these goals were different for men and women, the sources as well as the nature of delinquent behaviour would be different. Following from this, she proposed that delinquency in males would most likely be caused by obstacles to economic power and status, while obstacles to maintaining positive affective relationships would be likely to produce misbehaviour in girls (Chesney-Lind & Shelden 1992: 71).

8.3.4 Dale Hoffman-Bustamante

In her article entitled The nature of female criminality (1973), Hoffman-Bustamante emphasises that women are socialised very differently from men. She maintains that besides the fact that boys are allowed much greater freedom than girls while growing up, they are also encouraged to be more aggressive, ambitious and outgoing. Girls are expected to be nonviolent and therefore also do not possess the technical skills to commit violent acts (Brown et al. 2007: 141).

Hoffman-Bustamante (1973: 117) described sex roles as the controlling factor in explaining the difference between the crime rates of males and females. She identified the following factors as contributing to the differences:

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- The existence of different role expectations and socialisation patterns. Girls were expected to be nurturing, and carried more responsibilities to perform domestic tasks in the home. In addition, they were less likely to learn skills, such as the handling of firearms or fighting, which would be important for engagement in delinquent acts. • The differences, based on gender; in the application of social control. Girls were more likely than boys to have earlier curfews. They were expected to be at home rather than allowed freedom of movement after school.

- The differences in opportunities available for committing particular offences. Since girls were more likely to be confined to their homes, there was less opportunity for them to engage in delinquent acts such as vandalism, theft, fighting and other forms of misbehaviour.

- Gender differences in terms of access to criminal subcultures and careers. Girls were less likely to belong to gangs or to have other criminal associations.

- The classification of offences by the legal structure in a manner that relates to sex role differences. Girls were more likely to be caught up in the juvenile justice system for status offences than for delinquent acts because their sexuality was more controlled than that of boys.

To summarise, the sex role theories emphasised socialisation differences between men and women. They postulated that differences between men and women were not inherently biological or psychological, but rather learnt. Sex roles were considered to be one of the most fundamental factors in identity (Naffine 1981: 83). During childhood, girls and boys recognised and absorbed what was appropriate and inappropriate behaviour for the sexes. Pollock (1999: 136) points out that during the 1960s and 1970s when sex role theory was popular in criminology, the sex roles of men

and women incorporated characteristics that were more amplified than they are today.

This included that males were breadwinners and women were homemakers; also that males were strong, assertive and analytical, while women were passive and nurturing. The models for sex role identification in the case of boys were "cops, crooks and cowboys", while the models for girls were almost exclusively housewives (Pollock 1999: 137). Women were only beginning to venture into non-traditional areas in the labour force and these women were invariably viewed as odd and exceptions to the rule. At the time, gender socialisation patterns were only beginning to change.

Chesney-Lind and Shelden (1992: 73) propose that the sex role theorists were hampered by stereotypical assumptions about the concept of gender as well as the nature of youthful female misbehaviour. These theorists widely accepted two assumptions. First, most female misbehaviour was sexual or interpersonal in nature, in contrast to male misbehaviour, which was assumed to be more aggressive and criminal. Second, disparity in the socialisation of male and female children played a significant role in the generation of basic personality characteristics and, as a consequence, it was less likely that women would consider illegal behaviour. Young women who deviated from stereotypical feminine characteristics would become more criminal because criminality was assumed to be expressive of masculine characteristics and values. Various studies attempted to evaluate what generally became known as the "masculinity hypothesis" (Chesney-Lind & Shelden 1992: 73-74; Pollock 1999: 134-136).

8.3.5 Masculinity hypothesis

Tests Of the masculinity hypothesis produced mixed results. Cullen, Golden and Cullen (1979: 301—310), using a university student sample of 182 respondents, found partial support for this thesis. They devised a masculinity scale consisting of six stereotypically masculine traits, namely aggression, independence, objectivity, dominance, competitiveness and self-confidence. One of their findings was that females who possessed male traits had a higher likelihood of involvement in self-reported delinquency. However, they also found that "while male traits seemingly increased the likelihood that members Of both sexes will engage in delinquency, their effects [were] greater for males than females" (Cullen et al. 1979: 307). In other words, when controlling for masculinity, men still committed higher rates of delinquent acts than women. Pollock (1999: 160) does warn, though, that one should view these findings with some suspicion, since the types of delinquent acts that were considered in the research were not very serious.

The study by Norland, Wessel and Shover (1981: 421—433) offers less support for the masculinity hypothesis. These authors used a sample of 1 002 high school students and defined masculinity by such measures as leadership, competitiveness, aggressiveness, successfulness and ambition. Their findings indicated that masculinity was directly related only to status offences and not to property and violent offences. For females, those exhibiting more masculine characteristics were less involved in delinquency than those reporting fewer such traits. The authors explained this by stating that females showing these traits are more likely to be attached to conventional (lawabiding) peers.

Using self-reported data, Loy and Norland (1981:275—283) used a more sophisticated conceptualisation of masculinity. They developed two Likert-type measures of gender-role expectations — one for traditional masculinity and the other for traditional femininity. Respondents were characterised as androgynous when they scored above the midpoint on both scales. Traditional males and females were those who scored significantly higher on their respective scales.

The authors also developed an "undifferentiated" category for those who scored below the midpoints on their scales. Further, they divided the self-reported delinquency of both sexes into property, status and aggressive offences. Loy and Norland (1981:280) found that undifferentiated females were far more delinquent in all areas than their traditional or androgynous counterparts. More particularly, the average number of aggressive acts for undifferentiated females was approximately six times that Of either of the other two groups of girls. Conversely, a different pattern was found for males. Traditional

males reported the greatest number of delinquent acts and, in particular, aggressive behaviour.

Wisdom (1981: 33—48) tested both masculinity and femininity using the Bem Sex Role Inventory, but unfortunately used a sample Of only 73 women in custody and a control group of 20 women. Her findings provided no clear

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support for the masculinity thesis. Offenders were no more masculine than non-offenders, but repeat offenders (recidivists) were less feminine.

Bunch, Foley and Urbina (1983: 66—79) also used a prison sample consisting only of violent offenders and found that they did not exhibit high scores on a masculinity/femininity scale. Interestingly, they found that female scientists and university athletes had higher androgyny scores than female criminals. They concluded that female prison inmates seemed to be more conventional in their personality characteristics than women who had chosen atypical careers. They also found that violent female criminals in prison expressed less favourable attitudes in support of the women's liberation movement than did high school or university students.

Pollock (1999: 136) contends that the tests Of the so-called masculinity hypothesis are extremely problematic, and suffer from poor measurement tools. In addition, these studies make explicit and implicit assumptions of masculinity and femininity that are at least debatable. For example, what does it mean to be masculine or feminine in this particular society? And have these definitions changed? It is important to address such questions comprehensively before attempting to apply these concepts to the study of crime.

8.4 LIBERATION AND CRIME

One of the most widely held beliefs concerning female youth misbehaviour and crime is that, as a result of the women's liberation movement during the 1960s and early 1970s, there was a dramatic increase in female criminal activity. The argument advanced was that, as women become freer to develop their individual potential and to achieve their goals in life, they simultaneously become exposed to the crime-inducing frustrations and stresses of life that have characterised the male experience for years, as well as to increased opportunities to commit crime (Shoemaker 1996:231).

Since the 1800s, criminologists have been warning that the emancipation of women would result in a dramatic change in the character and frequency of female criminality. Chesney-Lind and Shelden (1992: 75) refer to Lombroso, who spoke of the dangers of edu-

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cating women. He cautioned that removing the constraints of domesticity and maternity would reveal the "semi-criminal" lurking within women. Similarly, Shoemaker (1996: 232) discusses the work of Pollak in which considerable attention was given to the criminological effect of increased participation of women in the labour force. In fact, Pollak asserted that a rise in female crime due to the emancipation of women had been predicted by criminologists since at least the 1870s. Two books by prominent female criminologists, Freda Adler and Rita Simon, were published in the mid-1970s and explored the links between female liberation and crime.

8.4. I Freda Adler's masculinisation theory

Adler proposed a slightly different version of the masculinity hypothesis discussed earlier. She essentially associated criminality with masculinity, and then proposed that the so-called liberation of women in the 1960s and 1970s caused women to take on more stereotypically masculine traits such as competitiveness and aggressiveness.

In her book, Sisters in crime, Adler (1975: 12—13) states:

> Women are no longer indentured to the kitchens, baby carriages or bedrooms ... Allowed their freedom for the first time, women by the tens of thousands have chosen to desert those kitchens and plunge

> exuberantly into the formerly allmale quarters of the working world In the same way that women are demanding equal opportunity in the fields of legitimate endeavour, a similar number of determined women are forcing their way into the world of major crimes.

Brown et al. (2007: 141—142) also highlight the importance of this particular passage in their analysis of Adler's work. Adler asserted that, by striving for independence, women began to alter the institutions that had protected males in their traditional positions of power. Her argument was that female delinquency would be affected by the changing role of women. As females entered new occupations and participated in sports, politics and Other traditionally

male endeavours, they would also become involved in crimes that had before been male dominated. She predicted that delinquency rates for males and females would then converge.

She also highlighted the fact that girls were becoming increasingly involved in traditionally masculine crimes, such as gang activities and fighting. The women's movement would therefore produce rapid increases in the rate of female delinquency because it created an environment in which the roles of males and females could converge. She predicted that the changing female role would produce female criminals who were similar to their male counterparts (Adler 1975: 10—11). She also suggested that younger females to a large extent emulated their mothers and older sisters in their quest for increased freedom, thus all of the different types of crime that might be expected Of adult women might also be expected of girls.

While Adler argued that one of the changes that the women's movement had created for adolescent girls was in the area of sexual behaviour, she reasoned that the effects were most notable in two areas. First, it produced a general imitation of masculine behaviour, as evidenced in the greater involvement of girls in fighting and gang behaviour. Second, it created an increased rate of delinquency in general because the confusion accompanying liberation added to the turmoil and uncertainty of adolescence. With respect to violent crime and delinquent behavioural changes, Adler indicated an increase in gang involvement among girls, both in their traditional roles as auxiliaries and accomplices to male gangs, as well as members of exclusively female gangs (Brown et al. 2007: 142).

Adler (1975:250) thus connected the rise in female crime in the 1960s and early 1970s to the rise in women's assertiveness brought about by the women's liberation movement. She contended that there were now fewer restraints yet greater pressure on women stemming from their enhanced position. As a result, women were becoming susceptible to the same criminogenic forces that men faced, therefore it was likely that with the convergence of role expectations, female crime would begin to resemble male crime (Brown et al. 2007: 142; Muraskin 2012: 21).

8.4.2 Rita Simon's opportunity theory

Rita Simon, in her book entitled The contemporary woman and crime (1975), stated that women's employment opportunities would also create opportunities for crime and that women would then take advantage of these. Analysing the statistics of female crime over a number of decades, she examined the possible effect of the women's movement on the criminality of women (Brown et al. 2007: 142). Simon (1975: 10) used data on the status of women in the labour force, marriage and fertility rates, income, education and crime statistics in her analysis. She predicted that some types of crimes (predominantly white-collar offences) would increase, while other types (violent crimes in particular) would decrease.

She believed that these changes would occur as a result of the changing position of women in society. She reasoned that since women's frustration would decrease with greater educational and employment opportunities, their involvement in violent crime should decrease. On the other hand, women's expanding opportunities would increase their chances of embezzling and defrauding employers to such an extent that an increase in property and economically motivated crimes would occur. Simon concluded that as women became accepted into various legitimate fields that had been dominated by men before, the criminal justice system would start to deal with women as it does with men. Consequently, she argued, women would no longer benefit from chivalrous treatment by police and court officials (Brown et al. 2007: 142; Muraskin 2012: 21).

Simon thus explained how the increase in female criminality was a function of the changing role of women. As women were empowered economically and socially, they would be less likely to feel dependent and oppressed. They would be less likely to attack their traditional targets, namely their husbands or lovers and their own children. Instead, she argued, their new role as breadwinners might encourage women to engage in what were traditionally male crimes such as theft.

Although the works of Adler and Simon broke new ground, it should be noted that the contention that female crime would increas as

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a result of the women's liberation movement, did not receive unqualified support. In fact, various authors have disputed that changes in the female

crime rate relate to the liberation of women (Cernkovich & Giordano 1979: 131—145; Figueira-McDonough 1984: 325—342; James & Thornton 1980: 230—244; Steffensmeier & Cobb 1981: 37—49; Steffensmeier & Steffensmeier 1978: 566—584; 1980: 62—85). It therefore seems that the extensive analyses of existing data have so far been unsuccessful in establishing links between the women's liberation movement and increased criminality. Authors such as Miller (1983:59) have even gone so far as to characterise the whole debate as an "intellectual dead end". Similarly, Chesney-Lind (1980:29) has compared the liberation—crime relationship to past witch-hunts that sought to enforce female sex roles.

8.5 POST-LIBERATION EXPLANATIONS

Since the empirical links between women's liberation and increased female criminality are at best weak, the 1980s and 1990s have seen a continuation of research on gender-specific crime which minimises the role of the women's liberation movement.

8.5. I Socialist/Marxist explanations

James Messerschmidt, an influential feminist scholar, argues in Capitalism, patriarchy and crime (1986) that the capitalist society is marked by both patriarchy and class conflict. He defines patriarchy as a "set of social relations of power in which the male gender appropriates the labour power of women and controls their sexuality" (Messerschmidt 1986: x). He formulated a theoretical model to show how misguided concepts Of "masculinity" flow from the inequities that are inherently part of patriarchal capitalism. According to him, men dominate business in capitalist societies, and men who cannot function well within its parameters are at risk of committing crime. In such societies, women are inherently powerless, and their crimes reflect their limited access to both legitimate and illegitimate opportunities.

He also emphasised that capitalists control workers, and that men Similarly control women, both economically and biologically. This double marginalisation explains why females in a capitalist society commit fewer crimes than males do. Women are not only isolated in the family and have fewer opportunities to engage in so-called elite deviance (e.g. white-collar and economic crimes), but they are also denied access to male-dominated street crimes. Since capitalism renders women powerless, they are forced to commit less serious crimes, such as the abuse of drugs (Messerschmidt 1986:3).

Messerschmidt (1986:4) thus asserted that gender and class shape one's opportunities. He identified definite gender- and class-appropriate forms of conforming and non-conforming behaviour. He related low female criminality to the subordinate position Of women in patriarchal capitalist societies. Owing to female subordination in the family, young women are more closely supervised than their male counterparts, and consequently have less opportunity to engage in serious crime. He argued that when women do commit crime, it reflects their subordinate position in the gender/class hierarchy (Messerschmidt 1986: 43—44).

8.5.2 Power control theory

Hagan (1989: 2) advanced a power control theory to explain female misbehaviour. He referred to his approach as "structural criminology" by proposing that the structure of the labour system divides people into those who control and those who are controlled. He stated that while mothers are the primary socialisjng agents of children, especially girls, in the family, girls engage less in delinquency because their behaviour is more closely controlled by the father in the patriarchal family. He further postulated that what is taught to children is influenced by the economic power position of the household head in the workplace. According to Hagan (1989: 45), it thus follows that when one has power over others at work, one will also be in control of children (especially girls) at home.

This theory assumes that girls and boys are controlled differently by their parents, and that this leads to risk preferences. This means that boys take more risks than girls because they are

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subjected to less parental control. Risk preferences may then lead to delinquency.

Hagan (1989: 145) further indicated that gender also influences delinquency in terms of the way behaviour is officially labelled, meaning that girls are more likely to be targeted for sexual misbehaviour. According to Pollock (1999: 154), this theory revives the traditional view that delinquency is fun, exciting and dynamic, and that girls are boring and passive because they do not engage in delinquency to the same degree as boys.

This is because girls are disproportionately controlled and not allowed "the fun of delinquency". In Hagan's (1989: 154) view, this parental control "diminishes the preferences of daughters to take risks". Furthermore, he argues that as women enter the workforce, the informal controls of the family decrease and, conversely, formal controls of the state increase (Muraskin 2012: 18). This presumes that egalitarian families would have more delinquent daughters (Pollock 1999: 155). Siegel (2002: 150) describes an egalitarian family as one in which the husband and wife share similar positions at home and in the workplace.

Hagan's theory maintains that in egalitarian families, daughters gain a kind of freedom that reflects reduced parental control. These families therefore produce daughters whose law—violating behaviour mirrors that of their brothers. Hagan (1989: 183) concluded that when both the father and mother occupy equally valued managerial positions, the similarity between the extent of the daughter's and son's misbehaviour is greatest.

To summarise, it can be stated that the power control theory encourages a new approach to the study of youth misbehaviour by addressing sex and gender differences, class position and family structure. However, because of the increase of single-parent homes, authors such as Siegel (2002: 150) emphasise that the pattern Hagan has identified may change and that the decline of the patriarchal family may produce looser family ties for girls, changing gender roles and increased delinquency. This predicted increase in young females who are in conflict with the law as a result of disconnected family ties and changing gender roles remains unconfirmed and unexplored in criminology. Although Chesney-Lind and Shelden (1992: 97) mention that further exploration of the varieties of social control that girls experience and the relationship of such control to their deviancy are needed, they state that Hagan should be commended for focusing on the importance of gender and patriarchy in the shaping of both male and female criminal behaviour.

8.5.3 Feminist theory of delinquency

According to Bartollas (1997: 202), the feminist theory of delinquency is an expression of radical feminism. He contends that the relationship between female victimisation and female crime has been systematically ignored. Muraskin (2012: 22) also investigates the notion that personal victimisation ultimately leads women to crime. Cited as an indicator that victimisation may become a pathway to female offending is the fact that a large percentage of female criminals have a life history that includes drug-abusing parents and violent partners, as well as sexual abuse and rape in childhood.

Chesney-Lind and Shelden (1992: xi), major proponents of this position, point out that a leading reason for the presence of girls in juvenile courts is the insistence of parents on their daughters' arrest. What has been established fairly recently, according to this perspective, is that substantial numbers of these girls are victims of both physical and sexual abuse (Muraskin 2012: 22).

When female adolescents run away from home and use drugs, they may be reacting to abuse, and their attempts at survival are consequently labelled as delinquent. Chesney-Lind and Shelden (1992: xi) propose that a feminist perspective on the causes of female delinquency includes the following arguments:

- Girls are frequently at the receiving end of violence and sexual abuse; however, unlike boys, their victimisation and their response to it are shaped by their status as young females.
- The victimisers (usually males) have the power to call upon official agencies of social control to keep girls at home and vulnerable.
- As girls run away from abusive homes, characterised by sexual abuse and neglect, they are pushed into a situation in which

they are unable to enrol in school or take a job to support themselves because they fear detection. As a result, they are forced to engage in petty theft and occasional sex work to survive.

- Girls who run away from abusive or impoverished homes do not become involved in criminal activities that exploit their sexuality by chance. Since society has defined physically perfect young women as desirable, girls on the streets (who have little else of value to trade) are encouraged to use this resource.

Considerable numbers of research findings support the above views. Bartollas (1997:204) lists the following results:

- Silbert and Pines found that 60% of the street-based sex workers they interviewed had been sexually abused as children.
- In a survey of 192 female youths in the Wisconsin juvenile justice system, Phelps found that 79% (most of whom were in the system for petty theft and status offences) had been subjected to physical abuse that had resulted in some form of injury.
- Chesney-Lind and Rodrigues investigated the background of adult women in prison and established that virtually all of them had been victims of physical and/or sexual abuse during their childhood. In their sample, more than 60% had been sexually assaulted and approximately 50% had been raped.

Verrecchia (2009:80) also suggests that the majority of women who are involved in the criminal justice system are typicallY a victim first and an offender second. Likewise, Osterman and Masson (2016: 16) highlight that young women who come into conflict with the law commonly deal with a range of problems, including living with the consequences of trauma and abuse. In the chapter that follows (Chapter 9), Lillian Artz examines more recent criminology theoretical insights into young women who find themselves in conflict with the law, and most importantly, within a South African

context.

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8.6 CONCLUSION

This chapter reviewed early efforts to explain female youth misbehaviour. The early theorists, beginning with Lombroso, emphasised the role of biological factors in the causation of female crime. Much of what followed was greatly influenced by the notion that girls' anatomy and their sexuality played a role in causing their misbehaviour. This theme was repeated in the works of Thomas, Pollak, the Gluecks and many others.

The chapter also considered research on the connection between gender roles, and gender role socialisation and female delinquency. These studies, although hampered by stereotypical assumptions regarding the concept of gender and the nature of female misbehaviour, began to explore the supervision of young people, the greater stigma attached to female misbehaviour and the role of family conflict in misbehaviour. Contentions that masculinity may cause misbehaviour were highlighted, and the mixed findings of various researchers were stressed.

Next, the notion that the women's liberation movement of the late 1960s and early 1970s and girls' misbehaviour are linked was scrutinised. Theorists supporting this perspective argued that as the roles of women change so will their crime patterns. Although a number of studies support this view, some theorists question its validity.

Finally, the chapter includes various recent post-liberation explanations of girls' misbehaviour. In general, the material in this chapter suggests that if a theory of female misbehaviour is to emerge, it must draw on the best of a heritage that could be described as imperfect and at times fallacious. With the accumulation of evidence of various factors contributing to female misbehaviour, it is becoming increasingly clear that no simple answers are to be found for girls' misbehaviour. It does appear, though, that criminology has come a long way from the simple, often paternalistic, views of the nature of women and their transgressions that prevailed less than a century ago.

CRITICAL QUESTIONS

1. Critically map the early biological and psychological explanations offemale youth misbehaviour.
2. Discuss the relevance of theories that focused on the influence of gender roles in causing female youth misbehaviour.
3. Evaluate the theories that attempted to establish a link between the liberation of women and female youth misbehaviour.
4. Discuss the post-liberation explanations offemale youth misbehaviour.

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Contemporary South African perspectives on young female offending: dismantling risk, rethinking vulnerability

Lillian Artz

OBJECTIVES

You should be able to
- understand the origins and influence of historical theories of female criminal offending
- understand the development of contemporary theories on young female criminal offending
- understand the influence of critical and feminist frameworks on theories of victimisation
- understand the social contexts in which female criminal offences occur
- understand the social contexts of male and female vulnerabilities to, and risks for, criminal offending
- differentiate the factors, conditions and antecedents offemale criminal offending from male criminal offending.

KEYWORDS

derivative offending
female criminal offending
female offending on the risk
offending subordinate offending
vulnerability

9.1 INTRODUCTION

This chapter focuses on contemporary perspectives of youth, gender, risk and crime, with a special focus on young female offenders. It begins with a brief reflection on the theories espoused in classical and positivist works on female criminality, and argues that while the empirical and theoretical underpinnings of these perspectives have largely been challenged by contemporary critical theories on crime and "deviance", there are still remnants of these perspectives within criminological scholarship and criminal justice practice. The reluctance to see female criminal offending as something other than the product of "madness", "badness" or as a response to

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unavoidable vulnerability perpetuates a particularly distorted view of female offenders. It will be argued that the recognition of history, social context and geopolitical spaces, as well as the methods we choose to study female offending, might work towards the demystification of the causes of female offending and improve our responses to it.

A

9.2 HISTORY, "HERSTORY" AND OTHER THEORETICAL (MIS)-CONCEPTIONS ABOUT FEMALE OFFENDING

Through her historical chronology of perspectives on child and youth misbehaviour, Harriét Klopper (Chapter 8) sets out a solid foundation for a more in-depth analysis on "youth, gender, risk and crime" within the South African context. Klopper draws our attention to the persistent fixation on biological and physiological factors that featured prominently in theories on the causation of female criminality during the classical and positivist periods in criminology, including those by influential theorists such as Cesare Lombroso and Guglielmo Ferrero (1895), w.l. Thomas (1923), and Otto Pollak (1950). This was a period in which women were treated analogously with children and the mentally ill, all Of which were considered lacking in basic moral reasoning, and where women's behaviour was based on explicit assumptions about the physiological and psychological "nature" of women — assumptions which have been largely discredited by contemporary criminological theories on female offenders and offending. The emergence of postmodernism and post-structuralism persuasively challenged the intrinsically racist, classist and sexist dispositions of these theories — theories which defined "femininity" in terms of the more "highly developed, white race" (Yerbury 1985) and which fashioned the concepts of "hysterical (female) offenders" and "female lunatics" who were susceptible to mood changes, delusions and destructive behaviour (Pollock 1978). These biologically determined and physiologically centred constructs and explanations of female delinquency were countered by theories which turned to functionalist explanations (i.e. strain, opportunity and control theories), interactionist explanations (i.e. differential association, labelling and conflict theories), and feminist perspectives (radical, socialist and liberal theories) of criminality, which explored important situational, social and structural antecedents to criminal offending (cf. Merton 1938; Sutherland, 1963 Becker 1963; Quinney 1970; Adler & Adler 1975).

Without retelling the historical unfolding of theories of female offending behaviour provided by Klopper, it is important to understand the impact of this theoretical evolution on how criminology has come to think about, and respond to, female offending. Despite progressive empirical evidence — which has largely emanated from the West — on the social, structural and personal contexts which contribute to young female offending, the treatment Of these offenders has yet to escape the perpetual emphasis on biology and "female psychology", both of which are based on implicit assumptions about the "inherent nature" of women and overlook the disruptive developmental, social and environmental factors that contribute to female offending. Gisela Konopka's (1966) The adolescent girl in conflict is an early example of how postmodern feminist criminology began to produce both rigorous and compassionate scholarship on juvenile female delinquency which, through individual case histories, simultaneously evidenced "individuality" and took into account girls' structural positions in

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society. It represented an emerging analysis of female criminality in terms Of social differentiation and differential illegitimate opportunity structures, without any engagement with biological and physiological factors (Smart 1976).

Despite this study being published 50 years ago, and the publication of a few seminal pieces on young women in conflict with the law since then, responses from our justice system, and even from more recent "crime and violence" scholarship, shows a continued preoccupation with the biological and physiological aspects. These preoccupations are masked as an unease over girls' physical vulnerability, and in relation to this the reasons for offending and other high-risk behaviour. In many domains — including media, societal and judicial ones — women who commit crime are more likely to be represented as either "really bad" or "very mad", primarily because of their gender (Artz 2013).

Another tenacious theory that emerged in the 1970s was the attribution of female crime to women's emancipation. Such theories, in essence, suggested that as women became freer to develop their individual potentials — namely the liberation of women from traditional roles — they simultaneously became exposed to the "crime-inducing frustrations and stresses of life that characterised the male experience for years, as well as to increased opportunities to commit crime" (Shoemaker

1984: 225). There are a number of obvious concerns with this perspective. Firstly, even if legitimate opportunities have increased for girls and women, this does not necessarily result in increased illegitimate opportunities. Secondly, it implies that women have become emancipated and see their status equal to that of men, engaging in criminal activities that have historically been attributed to the involvement of men. South African women, however, continue to live in a remarkably inequitable context. The suggestion that women's liberation results in criminalisation is therefore a simplistic and injudicious understanding of "emancipation, its influence upon consciousness and social institutions, and its location within and alongside other social and historical developments" in our understanding of female offending (Smart 1976: 76; Mann 1984). However, the notion that increased opportunities equate to increased criminal opportunities — and indeed an eager readiness to embrace these — has not quite been dispelled in the criminal justice sector.

Both classical and modern theories of female juvenile delinquency (referred to here as young female offending, and further defined as female offenders under the age of 18 years) have also had a particularly parsimonious engagement with differential social and cultural contexts and how these produce different "norms and forms" for female offending behaviour. We are now acutely aware that social context is critical. For instance, the brutal social and economic conditions under which many young South Africans live is qualitatively different from the conditions of poverty that one might find in North America, for example, and therefore our understanding of the determinants of criminal behaviour are, in part, different to these contexts. Some of these conditions and contexts will be addressed in this chapter, but for now it is important to highlight the importance of history, and of geopolitical and social contexts, when referring to, engaging with and importing theoretical frameworks about young offenders from contexts that are different from South Africa's (or those of other contexts in the "global South"). This requires a certain consciousness of the everyday realities of South African youth and the choices they make — or are forced to make — on the basis of these realities.

9.3 CRIME IN CONTEXT

Understanding crime in context means looking beyond specialised categories of offenders and requires some reflection on the broader social and criminogenic factors that contribute to criminal offending. This includes bringing "official" crime rates, detention rates and general socio-demographic data into the analysis of female youth offending. Many of these key factors are addressed throughout this book, including those that focus on "traditional" theoretical explanations, risk factors and the prevention of criminal offending by youth. However, it is important to draw attention to prevalence rates and other empirical findings in putting young female offending into context.

9.3.1 Crime rates, crime reporting and imprisonment

Using South African crime rates as a starting point, according to the South African Police Service (SAPS) Annual Report of 2015/2016 there were 18 673 cases of murder in that period of time, which equates to 51 murders a day, a figure which is five times higher than the global average. Among other forms of interpersonal violence that were included in this report were attempted murder (18 127 or 49,7 per day), sexual Offences (51 895 or an average of 142,2 per day), assault with the intent to inflict grievous bodily harm (182 933 or 501 per day), and common assault (164 958 or 452 per day) (AfricaCheck, 2016). The 2016/2017 South African crime statistics paint an even bleaker picture as most violent crimes again showed an upward trend. For example, the murder rate increased to 19 016 or 52 murders per day (EWN 2017). These data reflect inordinately high levels of crime and violence in the country and could — to some degree of reliability — be used as a proxy for the analysis of rates of female offending. However, the SAPS does not disaggregate their data in a way that generates data on how many of these offences were committed by, or indeed against, women and female children under the age of 18 years. They also do not disaggregate data based on population groups. The most recent and accessible data at the time of writing (Muntingh & Ballard 2012) found that 75 453 children were charged by the police from April 2010 to March 2011.

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International and local incarceration rates can also be used in building part of the picture

of young female offending, but these must also be used with some caution. Incarceration rates do not capture the profile of young girls "at risk" of offending or those who have not come into contact with the legal system as a result Of offending. They also exclude those who have come into contact with the criminal justice system, but have been diverted from it through formal youth justice processes, or those who have been arrested but whose charges have been dropped during the investigation or prosecution stages of the criminal justice process. They also say very little about the factors that contribute to offending. It is still, however, worth putting the available female youth incarceration rates that we do have into perspective. According to the latest edition of the World Prison Population List (WPPL), an annual review researched and compiled by Walmsley (2016), more than 10,35 million people are held in penal institutions throughout the world. The WPPL goes on to report the world prison population rate, based on UN estimates of national population levels, as 144 per 100 000, with the median rate for southern African countries at 188 per 100 000. It further reports that since the year 2000, the world prison population total has grown by almost 20%. The total female prison population — and it is not clear whether this includes young people under 18 years of age — has increased by a staggering 50% since 2000, while the equivalent figure for the male prison population is 18%. The rate of incarceration in Africa is reported to have increased by 22,6% during this same period. A separate World Female Imprisonment List (Walmsley 2015) shows that 700 000 women and girls are held in penal institutions throughout the world, either as pre-trial detainees/remand prisoners or having been convicted and sentenced.

In South Africa, according to the South African Department of Correctional Services (DCS) Annual Report of 2015/16, of the 161 984 offenders in South African prisons, 4 193 are women, which is a 5% increase from the previous year (n = 3915) and an 18% increase from three years earlier (n = 3 380 in 2012/13). This clearly indicates that custodial sentencing of women is on the increase. The last available and publicly accessible data from DCS on the offences for

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which women are most likely to be sentenced comes from their 2013/14 Annual Report (the 2015/16 report does not contain this breakdown), which states that most crimes committed by women were "economically related" (45%) — though this term is not defined anywhere— with "aggressive crimes" being the second most prevalent type of offence for which women are incarcerated (38%).

Young offenders in South African prisons constitute of the prison population of 161 984 (including pre-trial detainees). The 2015/16 Annual Report of DCS reports on child and youth detention by separating this population into three categories: "children" who are under 18 years of age; "juveniles" who are between 18 and 20 years of age; and "youth and adults" who are 21 years of age and older. According to this report, there were three female and 184 male sentenced child offenders in South African prisons. During the same periOd, there were 103 female and 4 023 male sentenced juvenile offenders in prison and with respect to youth and adult offenders, 2 946 were female and 109 692 males. There is no data available on how many children and juveniles are awaiting trial in correctional services facilities at this time.

However, in 2012 Muntingh and Ballard reported on the conditions of children in prison in South Africa, where they found that juveniles were detained for an average of 120 days awaiting trial (and 294 days once sentenced). They reported a general lack of services available to such children, including educational, social work, therapeutic, developmental and recreational activities, and that 85% of prison officials working in these facilities had no specific training in working with children. Of particular concern is that "children of compulsory school-going age in awaiting trial facilities are excluded from educational programmes and that conditions of detention are wanting in many regards in several facilities surveyed due to limited infrastructure overcrowding and 'staff shortages'" (Muntingh & Ballard 2012: 3). Of child prisoners, 39% had reported not receiving visits for three

months and there were no obvious steps taken by prison officials to ensure that children remain in contact with families.

There are also children and youth at risk within child and youth care centres (CYCTs) across the country. UNICEF (2017) reported that statistics on children in institutional care were not complete and transparent. However, they accepted that there are 345 registered children's homes in South Africa that care for approximately 21 000 children. These facilities are regulated under Children's Act 38 of 2005, which established a system of specialised alternative childcare programmes for children and youth, including those considered "at risk". Chapter 9 (Part 1, s 150) of the Act defines children in need of care and protection as children who are:

- abandoned or orphaned without visible means of support; • displaying uncontrollable behaviour;
- living or working on the streets and begging for a living;
- addicted to substances and unable to access treatment; • exploited or potentially exposed to exploitation;
- living in or exposed to circumstances that may seriously harm the physical, mental or social well-being of the child; • mentally or physically neglected; and
- being maltreated, abused, deliberately neglected or degraded by a parent, caregiver or other person in control of the child.

What these data show is that while young women are a relatively small part Of the bigger "crime picture" in South Africa, they are also remarkably overlooked by prison population and penal researchers, as well as by the correctional services system.

9.3.2 The socio-demographic context

Also of considerable relevance in establishing the context of youth offending are the sociodemographic conditions within which young female offenders, and youth in general, live. Statistics South Africa (StatsSA) (2015) published The Vulnerable Groups Series in which they reported on the social profile of South African youth (2009—2014). "Youth" in this series is defined as those over 16 and under 35 years of age. There are three key indicators that inform social context in our analysis of conditions that may be relevant to understanding offending: (i) living conditions and poverty; (ii) morbidity and mortality; and (iii) victimisation and perpetration of crime. Starting with living conditions and poverty, StatsSA reported that approximately one-fifth Of South African youth live in traditional or informal dwellings, with one in 10 living with six or more people in one-bedroom households. Over half of South African youth are unemployed. In terms Of youth morbidity and mortality, StatsSA reported that youth made up 16,4% of all recorded deaths in 2014, with the two leading causes being "certain infectious and parasitic diseases" (e.g. TB, intestinal infectious diseases, HIV, viral diseases) and "external causes of morbidity and mortality" (i.e. unnatural death, for example car accidents, murder). Male youths mainly died due to the latter, and female youth from the former. The South African Demographic and Health Survey (2016) also reports that

> over one-quarter of men (28%) exhibit risky drinking behaviour and one in six men (16%) reported signs of problem drinking [and for women] risky drinking was most common in the 20—24 year age group (9%) and lowest among women age 15—19 and 65 and older (2% each) (Statistics South Africa 2016: 39).

With regard to victimisation and perpetration, StatsSA reported that youth aged between 16 and 34 years were more likely than adults to be the victims and perpetrators of assault, robbery and property theft. Younger youth between the ages of 16 and 24 years were recorded as being more likely to be victims of assault and property theft, while those experiencing robbery were likely to be older (25—34 years). Over 16% were involved in committing assault. These data were not disaggregated by gender.

These conditions are critical to understanding offending. Household and family life, crime and violence exposure, early offending, and health and mental health issues all play some role in a young person's

sense of safety, their perceived victimisation risk and the way in which they navigate their spaces to combat risk. The range of risk factors for young people is as long as it is varied, but prevalence and incidence research on South African children's exposure to violence is beginning to provide

more local "substance" to what international studies — and indeed local population-specific qualitative studies — have carefully explored. The combination of international and local evidence on the antecedents, impact and nature of crime and violence by and against young South Africans takes us one step further towards prevention. An example of a national prevalence study on children's exposure to and experiences of violence is described below.

9.3.3 Violence exposure as an antecedent to offending?

Conditions of poverty, mortality and general victimisation not only provide the social context in which offending occurs, but may also reinforce (or even challenge) existing theoretical perspectives on young offenders. There is also more specific context-setting data on youth and violence exposure to consider. In light of the staggering rates of sexual offences against children in South Africa, data on those who have experienced sexual offences and other forms of violence and maltreatment will be presented here. A study published by Artz, Ward, Burton, Leoschut & Kassanjee (2016) — known as the Optimus Study on child abuse, violence and neglect in South Africa — interviewed 9 717 children between the ages Of 15 and 17 years. Of these, 5 631 were interviewed in a household survey and 4 086 in a school setting. There were a number of key findings that expose both the prevalence and nature of victimisation of youth in South Africa. This national prevalence study has challenged existing evidence on the vulnerability and risks of young people to violence, particularly in terms of violence exposure differentiated by gender. When asking youth about exposure to sexual abuse or maltreatment, the researchers asked whether adolescents had been exposed to the following: (i) coerced (unwanted or by force) and consensual sexual touching; (ii) exposure to intimate body parts or pornographic images; (iii) sexual harassment; and (iv) penetrative and non-penetrative sexual intercourse (actual or attempted), all by either an adult or similarly aged peers. This definition was based on the legal framework on sexual offences as defined in South Africa's Criminal Law (Sexual Offences and Related Matters) Amendment Act 32

of 2007. Some key findings from the Optimus Study (Artz et al. 2016) follow:

- Of the young people interviewed in schools, 35,4% of young people (one in every three) had experienced some form of sexual abuse at some point in their lives. This is equivalent to filling up Johannesburg's Soccer City Stadium eight times over and the Cape Town Stadium 14 times over.
- The differences between males' and females' reported rates of abuse were not as stark as anticipated. Findings from the school survey found that boys (36,8%) were slightly more likely than girls (33,996) to report some form of sexual abuse. Boys and girls reported their first incident of sexual abuse to be, on average, at the age of 14 (girls) and 15 (boys), but the age Of first exposure to sexual abuse in this population was from the age Of one year.
- However, girls were more likely to experience forced and penetrative sexual abuse, and other forms that involve contact with the abuser (contact abuse), and boys were more likely to report forced exposure to sexual acts and material (non-contact) abuse.
- The lifetime prevalence data in this study found that the sexual abuse experienced by one in five young people was by a known adult, and had occurred more than once. One in 10 had experienced this abuse/sexual contact four or more times. Half of young people who experienced sexual abuse by another child or adolescent reported that this had occurred more than once. Onefifth of young people who had been sexually

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abused had experienced some form of sexual harassment four or more times.

- In four out of five cases involving adults, the incidents involved sexual penetration. Girls were more likely to have experienced use of force (57, 7%) than boys (11,5%), and weapons were used in 39% of cases involving girls.
- Other forms of lifetime victimisation reported by youth in this study include child neglect (122%); physical abuse (34,896); emotional abuse (16,196) and exposure to family violence (31,4%).

These data are nationally representative. They are also a stark reminder of the conditions in which children live, and a reminder of the factors which may precipitate offending and other high-risk behaviours. This also highlights the hazy margins of victimisation and offending — what some refer to as a cycle of violence. The Optimus Study (Artz et al. 2016) also reinforced the often unseen impact or ignored effects Of sexual abuse and maltreatment that may lead to physical, social and behavioural issues, including problems with schoolwork (20,4% in cases of abuse by an unknown adult); injuries (29,9% in cases of abuse by a known adult); high-risk sexual behaviour (37,4%, compared with 9,9% of children who had not been abused); and risky substance use (43,2%, compared with 17,8% of children who had not been abused). The findings also found key risk factors, including sleeping density (10% higher risk for sexual abuse); the hospitalisation of parents (I to 2,0 times higher risk than those who •had not experienced abuse); parents using drugs or alcohol (2,2 to 3,4 times higher risk); and young people with disabilities (1,5 to 2,1times higher risk).

While the prevalence rates of exposure are clearly high for both girls and boys, the distinction between the types Of abuse they are exposed to (contact vs non-contact abuse) is important to consider. This is why a "gendered perspective" is necessary. It acknowledges that manifestations of violence are inevitably gendered in terms of who commits acts of violence and who is victimised, what type of violence is perpetrated, under what conditions the violence occurs, and the degree of force that is used, as well as the underlying reasons for the violence (Jefthas & Artz 2007). Yet few studies have really interrogated how violence features in the everyday consciousness of young women or how it might be mobilised in their everyday lives (Burman, Batchelor & Brown 2001). For example, Jefthas and Artz (2007) maintain that girls exposed to abusive domestic environments are likely to develop "unique tactics of self-preservation", such as leaving home for other equally disruptive and dangerous contexts, making them further vulnerable to criminal exploitation. Herrera and McCloskey (2001) have taken this further, suggesting that young women's subsequent delinquent behaviours could be an actual product

of their attempts to resist or escape abusive households. Jefthas and Artz (2007:49) provide further context to the role and impacts of sexual violence on young women's lives:

> Sexual violence has become a particularly common feature of relationships among young people. Studies show that in certain communities the heterosexual relationships of young people are frequently characterised by the male partner controlling sexual activity and the female partner being physically forced or bullied into sex. This sexual violence is influenced by the societal attitudes toward women and girls. Such attitudes include the belief among young men that women are responSible for causing sexual violence, that they ask for it and that they in fact enjoy being raped. In one research study, nearly 50% of male youth interviewed believed that a girl meant "yes" when she in fact said "no" to sex. In Other research, nearly a third of both young men and young women said that they did not consider forcing sex on someone to constitute sexual violence. In many cases, young men consider aggression not only as a normal part of dating but also as a means of showing their love for their partner. •However, while many young women also interpret their partner's aggression as a way of showing their love, young women are more likely to feel that violence shows their partner does not love them.

9.4 RETHINKING YOUNG FEMALE OFFENDERS AND OFFENDING BEHAVIOUR

In the 1970s and 1980s, radical, critical and feminist criminologists began to challenge criminology's exclusion of women as subjects of research and theory, and forced a more thorough

analysis of crime and victimisation that saw women as more than "unfortunate victims" of male crime. However, as has been argued previously there is a paucity of research aimed at understanding the reasons why women engage in criminal offending and the historical factors that influence their offending behaviour. Artz (2013: 154—155) has previously argued that

> the shortage of any detailed theoretical (or deeply empirical) analyses about incarcerated women means that our understanding of the etiology of female crime is largely based on either theoretical frameworks developed for understanding men's offending or on an assortment of discipline-specific, pre-determined small scale studies on women's offending in varied contexts. Although we can piece together these disparate works to build theory on women's offending, criminology has yet to develop a cogent analysis about women and crime. And women do offend, only differently and for different reasons.

The literature on both young and adult female offenders is still relatively sparse and small in scale. It is also discipline specific. This means that the empirical, theoretical and policy-level advances in this field often remain within the domains of disciplines from which they derive (psychology, social work, criminology), seldom traversing these disciplines to inform a broader and more cogent body of work on the pathways that lead to female offending. Criminology itself — as an interconnected field of innumerable social science disciplines and practices — has yet to produce a meta-analysis on women and crime across similarly situated contexts. The advancement of "women and crime theory" is further hindered by the lack of common research questions and intentions, divergent methodological approaches, the use of different study populations and institutional spaces, as well as an overall absence of a more universal "project" to build theory and to allow comparative analysis.

Artz (2013) has argued that there are very few things that contemporary criminology agrees on in terms of women and crime other than: (i) criminology has historically developed theories about men's offending Clavin & Artz, 2014; Chernoff & Simon, 2000); (ii) both theoretical and empirical criminology struggle to escape the biological framework that defines gender by continuing to speak of and define men and women by their biological traits in binary terms, such as man/woman or boy/girl; (iii) men and women may commit similar crimes, but women are much less likely to commit sexual offences than men (Shechory, Perry & Addad 2011) and men are more likely to commit violent crime than women (CSVR 2008); (iv) the nature of men's and women's risk of victimisation is also different, with women being more likely to be victims of violent offences committed by an intimate/ domestic partner and men being more likely to be victims of a violent offence by someone they are acquainted with or who is unknown to them (Russell & Van de Ven 1990); (v) while the impact of childhood victimisation on adult offending is complex, there is evidence to suggest that men are more likely to respond to childhood victimisation by externalising these experiences (i.e. by hurting others), while women are more likely to respond in ways that internalise these experiences, like self-harm or behaviour that puts them at risk of further victimisation (Brewin, Andrews & Rose 2005; Broidy & Agnew 1997); (vi) while men generally suffer more victimisation overall during the course of a lifetime, women suffer more sexual assault victimisation (Finkelhor 2007); and (vii) men and women have very different experiences of imprisonment and are subject to different (highly "gendered") regimes Of imprisonment (Artz 2017: 151).

The literature on women and crime is beginning to recognise that women offend and victimise differently, that their pathways to crime are often explained by a different set of experiences (of early childhood sexual victimisation, for instance) and that the nature of their offences are simply different. Because women engage in and respond to crime in different ways, our efforts to reform, rehabilitate and incarcerate them must be based a different set of principles and assumptions than those produced to address male offenders. In South Africa, small, largely qualitative studies are beginning to develop a picture of women in prison,

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their pathways to imprisonment, and their experiences within and after prison (Africa 2015; Artz, Hoffman-Wanderer & Moult 2012; Luyt & Du Preez 2010; Haffejee et al. 2005).

Together these studies reveal the complex lives of women in prison. Luyt and Du Preez (2010) and Artz et al. (2012) found that the average South African female offender is in her mid-to-late thirties; is most likely to be single or divorced; has children (78% in Luyt and Du Preez; 75% in Artz et al.); is very unlikely to have completed secondary school (30% in Luyt and Du Preez, and 9% in Artz et al. matriculated); had their first child between the age of 16 and 19 years; and were incarcerated for the first time at the time these studies were undertaken (57% in Luyt & Du Preez; 74% in Artz et al.). South African women prisoners are also much less likely than men to be serial offenders or recidivists, and their age of first conviction is about 10 years older than that of men. Forty-seven per cent reported having had, or as having, a male member of the family in prison, of which male siblings constituted a third of these incarcerations (28%). Just over a quarter (27%) had a "few friends" with previous incarcerations (Artz in press).

While women are indeed incarcerated for serious violent offences — over one-third of South African women are incarcerated in South African prisons for offences such as murder — these offences are often a result of a long and brutal history of domestic and sexual violence; disrupted and violent families; absent or transient fathers: the death of a significant caregiver:• and having caregiving responsibilities at an early age (Artz et al. 2012). Many had experienced a major traumatic event such as the death of a family member, the loss Of a child, or sexual assault. Almost half of women in prison had lived with their parents at some point during their childhood, although many had been raised for large periods of time by extended family, which causes uncertainty and often leads to poor choices at an early age, including substance abuse. Relationships with mothers were characterised by emotional or physical unavailability, abandonment, what incarcerated women perceived were "selfish choices" by their mothers, or by other difficult circumstances such as poverty. Artz et al. (2012) further report that almost 30% of the women's fathers passed away in their childhood, another third of women reported having no relationship with their living fathers, and a final 20% described fathers and stepfathers that were in and out of their lives. Artz et al. (2012) also found it unsurprising — given the national prevalence data on child abuse— that 28% had experienced some form of sexual abuse over their lifetime, and 38% had experienced childhood physical abuse. The average age of victimisation by sexual assault and/or rape was seven years of age, with the earliest age of victimisation being three years of age. Many were sexually assaulted over a period of time during their childhood (62%), with several being sexually assaulted by different men over this time (31%). These factors, in one way or another, contributed to poor decision-making abilities and coping strategies, and participating in highrisk behaviours and activities.

9.5 FINAL REFLECTIONS ON YOUTH, GENDER AND RISK

The life histories of women in prison, their pathways to crime and their prison experiences are in some respects particularly "gendered", yet we are only starting to get to grips with what this means in terms of women's gender-based offending and victimisation. We know from research on male young offenders, as well as from other general "crime and violence" research, that there is a hazy margin between victimisation and offending: that those that offend have often been victims of physical or sexual abuse, or other forms of maltreatment. We are also aware that our knowledge about the cycle of victimisation/ criminalisation has yet to be fully interrogated. The analysis above, however, also illustrates that this cycle is often experienced and manifested differently for boys/men than it is for girls/women. Also, it appears that women "offend" differently. For instance, in their pathways study on women in prison, Artz et al. (2012) found that, in comparison to men, women are less likely to be "serial" or chronic offenders, that many women in prison are firsttime offenders, and that the age of first conviction for women is much higher than that of men: 33% between 18 and 29 years of age; 31% between 30 and 39 years of age; 23% between 40 and 49 years of age; and 13% over 50 years of age.

Many are first-time offenders (or at least first-time detainees). Though there is little empirical evidence to draw from, inferring from prison statistics young men's average age of first conviction appears to be between 16 and 18 years of age.

There is another distinguishing feature of women's offending that is worth exploring further. While young men tend to be "primary" offenders (acting alone) or "co-offenders" (acting with others), the findings from Artz et al. (2012) and Artz (in press) seem to indicate that women are less likely to be "primary" offenders and more likely to co-offend. However, based on the narratives of women in prison, this co-offending — which typically would involve engaging wilfully and directly in offending — could be further broken down into other forms of offending better reflected when a "gendered" analysis is applied. These include the following:

- Subordinate offending. This is where women are "compelled" to commit crime by another person, such as an intimate partner or family member, for instance participating in gang activity or in fraudulent financial activities under threat by an intimate partner or family member.
- Derivative offending. This occurs when those who do not engage directly in offending, but by association or extension enjoy the benefits of the offending behaviour Of a primary offender. In other words, they do not engage in any offences, but are complicit in someone else's offending activities through reward or compensation, for instance being the partner of someone who deals in drugs. The female knows this is an offence but she stays silent as she chooses to enjoy the income that the drug dealing generates.
- Passive offending/acting. This occurs When someone is complicit in an offence not by committing it but by doing nothing to prevent it, for instance when a mother suspects her child is being sexually abused by her new male partner but does not inquire, investigate or report it in an attempt to prevent him from leaving her.

The concepts proposed here — particularly the above "rethinking" of how women offend differently through subordinate, derivative and passive offending — are still being considered and interrogated in more depth. They are also based on evidence from emerging research on female offending in South Africa. Findings from research "evidences" new theories, and from these we can begin to test the veracity of these claims in different contexts. The above example of a new "offending framework" could be tested with young women at risk or adult women in prison. It is the emergence of these new models — which take into account all of the dimensions and contexts of offending set out here — that gives substance to the development of progressive, evidence-based, uniquely South African perspectives on young female offending.

CRITICAL QUESTIONS

1. What key socio-demographic factors should be considered when theorising about young offenders and offending?
2. What, in terms of personal and social contexts, might make female adolescents more vulnerable to criminal offending?
3. What differentiates female criminal offending from male criminal offending?

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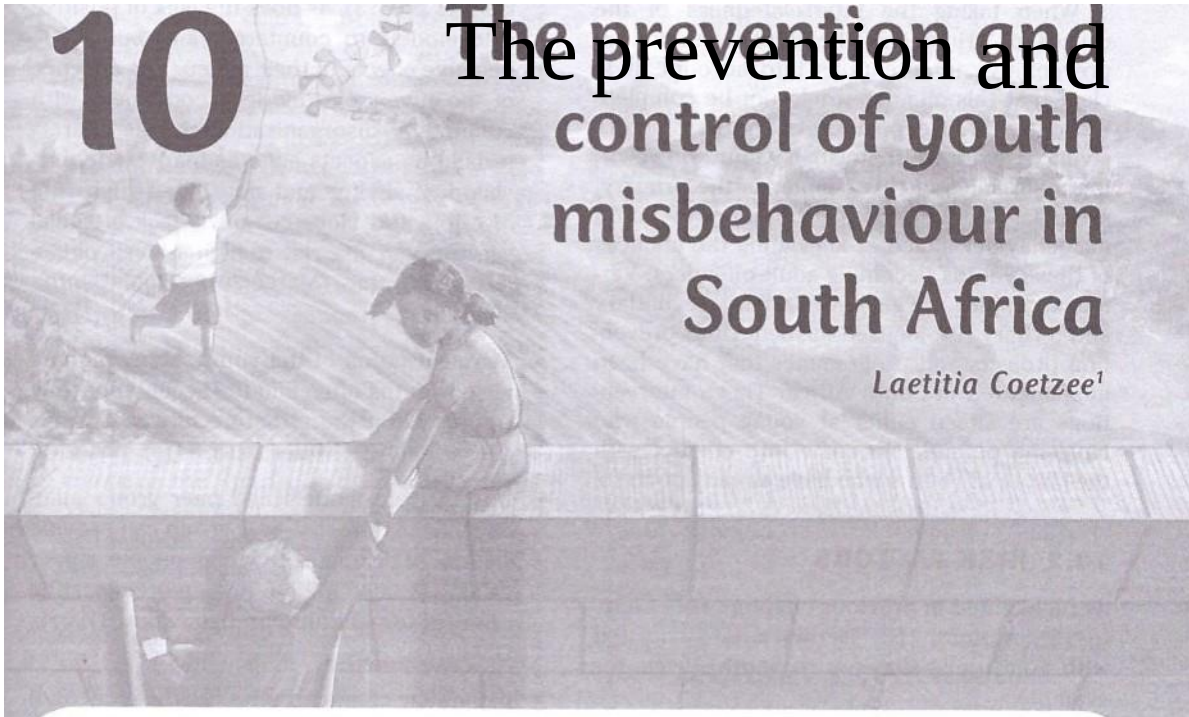
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SECTION B

Youth in contact with criminal justice



10 The prevention and control of youth misbehaviour in South Africa

Laetitia Coetzee[1]

OBJECTIVES

You should be able to

- distinguish between primary, secondary and tertiary prevention
- give an exposition of the role of the family in the prevention of youth misbehaviour
- critically appraise the role that mentors, the media, the police and the government can play in the prevention of youth misbehaviour
- critically discuss school programmes that are implemented in South Africa to address and prevent youth misbehaviour, crime and violence
- give an overview of tertiary prevention with youths who have already committed crime.

KEYWORDS

primary prevention
secondary prevention
tertiary prevention

10.1 INTRODUCTION

In all societies, the population grouping with the greatest investment in the future is the youth. Crime prevention therefore best begins with children and young people. The youth in South Africa, however, have grown up in a culture of violence and they often view the world as a hostile place (Bezuidenhout 2013: 5). In some instances, their normal development is hampered by multiple risk factors that often accumulate, reinforce and interact with one another to produce risk behaviour and misconduct, especially in the absence of protective factors such as positive role models and nurturing family life (Maree 2013: 69).

When taking the interrelatedness of the causes of crime and the implementation of preventative interventions into account, it is clear that this chapter would not be complete without a brief exposition of the risk factors giving rise to youth misbehaviour. However, the main focus of this

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chapter is the primary, secondary and tertiary prevention of youth misbehaviour aimed at alleviating the chances of these youths becoming adult offenders. Various examples are given of primary, secondary and tertiary risk-focused misbehaviour prevention projects and programmes that have been implemented in South Africa. These interventions are aimed either at young people who have the potential to come into conflict with the law, or at youths who have already done so.

10.2 RISK FACTORS

As highlighted in previous chapters (see Chapter 4), various risk factors are associated with youth misbehaviour in South Africa, for example:

- Emotional poverty or being deprived of the affection normally associated with being fed, clothed and cared for. A child deprived of having his or her emotional needs met through rejection, oppression, abandonment and/or abuse often experiences feel. ings of shame, fear, anger and hurt that can lead to aggressive and violent behaviour (Liese & Bezuidenhout 2013: 100)
- Incomplete families, family dysfunction, lack of parental supervision, erratic and harsh disciplinary methods, domestic violence, parental involvement in criminal behaviour, and an erosion of traditional values (Haines & case 2005: 69; Maree 2013: 76)
- The weakening of community support systems and the absence of or the decline in community interaction through cultural, sport and social activities (Roelofse 2011: 361)
- Socioeconomic factors such as poverty, overcrowded areas and a community where there is a lack of opportunities to develop acceptable pro-social behaviour. These all increase the risk of aggressive tendencies in youths (Maree 2013: 76; McClinton 2004: 27; De Wet 2003: 3), as does the lack of positive role models to counteract and buffer the negative effects of their milieu. The absence of positive role models combined with community disorganisation that is characterised by aspects such as inadequate provision of shelter and housing, a high rate of crime and violence, and a lack of social services can give rise to higher levels of violence and crime (Maree 2013: 72; McClinton 2004: 28)
- Marginalisation of the youth. Many marginalised youths often find the acceptance they desire within the structure of street gangs (Desai 2004: 21; Maree 2013: 84).
- Deviant role models and peer group influence. Even though a peer group can provide a sense of belonging to young people, a peer group can also initiate or reinforce existing criminal or disruptive behaviour (Harris 2009: 54)
- Individual characteristics, such as alcohol and drug abuse (Mulvey, Schubert & Chassin 2010: 6)
- Negative school experiences such as bullying (Booyens, Beukman & Bezuidenhout 2013: 48; Nairn 2013: 34; Roper 2002: 68)

Against this background, it is clear that South Africa faces formidable challenges in addressing youth misbehaviour, crime and violence. It is generally accepted that monothematic prevention programmes (treating only family or school risk factors, and ignoring the interrelated nature of all the above-mentioned ones) are an insufficient approach to the prevention and control of youth misbehaviour (Zinn 2011: 175). Thus a comprehensive approach that is aimed at building and/or improving the links between the family, the school and the community at a primary, secondary and tertiary level is necessary to address the problem of youth misbehaviour and violence in the country.

10.3 INTERNATIONAL BACKDROP

South Africa's ratification of international declarations and conventions places a responsibility on the state to fulfil the obligations placed on it by those instruments. Although all these instruments (such as the United Nations Conventions on the Rights of the Child) cannot be

discussed in detail in this chapter, several of the fundamental principles of the United Nations Guidelines for the Prevention of Juvenile Delinquency and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice have been incorporated in local youth crime prevention programmes. A brief summary of these guidelines is thus given for background purposes:

- The Draft United Nations Guidelines for the Prevention of Juvenile Delinquency (also known as the Riyadh Guidelines) is a set of 65 universally applicable principles intended to prevent youth misbehaviour at the pre-conflict stage (i.e. before young people come into contact with the law). The Riyadh Guidelines propose a social policy focusing on the identification and modification of social risk situations and their causes. These guidelines deal with the three main environments in the socialisation process (family, school and community), the mass media, social policy, legislation and juvenile justice administration. The guidelines emphasise that general measures for curbing youth misbehaviour have to consist of comprehensive prevention plans at every governmental level. The prevention plans should include mechanisms of coordination between governmental and non-governmental agencies, continuous monitoring and evaluation, community involvement through a wide range of services and programmes, interdisciplinary cooperation, and youth participation in the plans (United Nations Guidelines for the Prevention of Juvenile Delinquency — The Riyadh Guidelines 1990).
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also known as the Beijing Rules) is a set of minimum standards for handling juvenile offenders. It emphasises the rights of juveniles who are in conflict with the law, with diversion and institutionalisation being the last resort. It highlights the fair and humane treatment of juveniles in conflict with the law, as well as the fact that deprivation of liberty should be imposed only after careful consideration, for a minimum period, and only for serious offences. It also emphasises the continued specialised training of both personnel and police officers dealing with juvenile cases. While juveniles undergo institutional treatment, appropriate educational services and care should also be made available to assist them in their return to society. According to the Beijing Rules, release should be considered both on apprehension and at the earliest possible occasion thereafter. In the instances where a child must be detained due to the seriousness of his or her offence, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which was adopted in 1990, applies (Gallinetti 2009: 9).

10.4 PRIMARY, SECONDARY AND TERTIARY PREVENTION

Primary prevention focuses on altering the individual and the environment in a way that reduces the initial risk of offending. Secondary prevention focuses on the early identification of youths who are at risk of offending, and the intervention necessary to prevent this. Tertiary prevention deals with the treatment of youths who have already committed crimes, and is aimed at the prevention of recidivism (Frank 2006: 10).

10.4.1 Primary prevention

Primary prevention is proactive and relates to the steps that are taken to prevent youth misbehaviour and crime before they occur. One of the most important measures for achieving this is to provide opportunities to meet the basic needs of the young (e.g. housing, education and health services).

According to the South African Constitution of 1996, every child has the right to

- family and parental care, or alternative care if removed from this environment
- basic nutrition and shelter, and basic healthcare and social services • protection from maltreatment, neglect, abuse and/or degradation

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- protection from exploitative labour practic-
- not work or provide services that are inappropriate for the child's age or that place the child at risk.

In terms of primary prevention, it is of the utmost importance that the resourcefulness of young people should be promoted by providing opportunities for them to use and build their own capacity and to extend their support networks in order for them to act in line with their own choices and with a sense of responsibility.

10.4.1.1 The role of the family as primary socialising agent

Parents are the most important socialising agents in a child's life, thus implying that everything that happens in the family system has a considerable influence on the future of the child. Primary prevention remains the primary responsibility of parents (Maree 2013: 75).

The family unit is the most important institution for the education and socialisation of the child. The idea of "the family" conjures up an image of parents and children, as well as domestic warmth and happiness. The father is the head of the household and his duty is to provide for and protect the family, while the mother is the caregiver. This, however, is not always the case and the context of family life is rapidly changing in the Western world. Fractured families, single-parent families and child-headed families are very common in South Africa and stand in stark contrast to the ideal image of "the family".

High divorce and remarriage rates often result in female-headed single-parent families and/or step- or blended families. Because of economic and/or social factors, these families are often unable to function as adequate support systems (Maree 2013: 76). Primary socialisation is, therefore, to a large extent shared with other social institutions such as schools. Emotional poverty, or the lack of love and affection is often the end result (Liese & Bezuidenhout 2013: 100).

Adequate social support networks, which often instil a sense of belonging, enable children to accept responsibility and to act responsibly. However, when the family becomes dysfunctional and discordant, children often leave the home to spend more and more time on the streets, which gradually draws them into criminal associations.

As modern families often struggle to provide the nurture and support needed during childhood and adolescence, primary prevention projects aimed at improving the ability of families to rear and support children should be a priority. Where there are no or only negative support networks, positive ones need to be created. In cases where both parents work outside the home, adequate alternative supervision and care should be ensured, and parents should be encouraged to use infant and child day-care facilities or afterschool care, for example (Maree 2013: 77).

Empowering parents by instructing them on aspects such as basic care of infants, child development, the disciplinary needs of children and conflict resolution would therefore seem to be one of the most basic preventative measures that can be implemented to prevent youth misbehaviour. Any form of parent effectiveness training as well as family skills training can be beneficial in strengthening the family structure and bonding process. It is imperative that parents are educated on how to take charge of their life, to accept the responsibility of parenting and to be competent parents (Roelofse 2011: 361). This could be done by using brochures, educational sessions (such as workshops) and the media.

Furthermore, Roelofse (2011: 361) states that parent training should be aimed at instructing parents on the demands and responsibilities associated with raising children (i.e. how to set clear expectations for their behaviour, monitor behaviour, reinforce positive behaviour, provide consequences of or sanctions for inappropriate behaviour, develop and use effective communication skills, nurture children, and improve interaction to promote their bonding within the family context). In addition, emphasis should be placed on the importance of effective financial planning as well as aspects such as conflict resolution and how to treat juveniles who are in the puberty phase.

Children must also be taught moral, spiritual and civic values, as a decline in these can contribute to misbehaviour. In line with the South African government's Moral Regeneration Movement that is aimed at promoting human rights, ethical behaviour and the values enshrined in the Constitution of the country, any opportunity to teach children positive values must be used (Moral Regeneration Movement, n.d.).

According to Liese and Bezuidenhout (2013: 103), an effective proactive strategy for

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preventing youth crime would be to offer programmes aimed at reinforcing and internalising positive individual traits such as discipline, trustworthiness, self-respect, responsibility and good citizenship, as well as providing life skills training (i.e. training in the basic skills children need to become socially, ethically, emotionally, physically and cognitively competent, such as the ability to manage anger and stress, to maintain good interpersonal relationships and to respect human rights).

Youth-at-risk programmes, such as the life skills camps offered by Conquest for Life, are aimed at reinforcing and internalising positive individual traits. Conquest for Life is a self-sustaining youth organisation that works with more than 40 000 youths per month. It was established in 1995 in Westbury, a township 8 km west of Johannesburg, and has since expanded and established branches in Soweto, Ennerdale, Orange Farm, Platfontein in the Northern Cape and Mautse/RosendaI in the Free State. Some of their programmes include afterschool programmes, mentorship programmes, workshops for parents, a job-creation project, computer training, and programmes aimed at young mothers. They also host a youth enrichment holiday programme that focusses on life skills and is presented during school recesses. This programme aims to target youth in the community who are at risk of becoming involved in gangsterism and drug abuse. Some of the focuses of these camps are diversity, communication, goal setting, job preparation and conflict resolution (Conquest for Life 2017).

10.4.1.2 The role of mentors in the prevention of youth misbehaviour

The increase in the number of single-parent and child-headed households, as well as the increased demands of parents' careers (Maree 2013: 76) have led to many youths lacking positive role models, As peer group influences are also strongly related to misbehaviour (Harris 2009: 54), mentorship programmes that encourage friendships with more conventional peers can be viewed as a primary measure for preventing youth misbehaviour and crime. According to Liese and Bezuidenhout (2013: 103), a positive relationship with an adult, either within or outside the immediate family (e.g. a mentor), is often a major contributing factor in preventing the possibility of illegal behaviour of troubled children. Children need to acquire resilience factors and this can often be achieved by the assistance of a mentor who assists the child in dire situations, shows them that they are loved and wanted, and that they are trusted by the adult mentor. These factors as well as an academic motivation, an absence of substance use, religiosity and a belief that teachers and the school will treat them fairly often function as primary resilience factors and a buffer against engaging in undesirable behaviour (Bartol & Bartol 2017: 189).

Peer counselling and tutoring provided by the Big Brothers Big Sisters (BBBS) organisation serves as a good example of how negative peer group influences can be limited. The Big Brothers Big Sisters of America programme was established in 1904. Mentors (big brothers and sisters) are selected carefully. An intensive interview is usually conducted before these mentors undergo a strict training session on aspects such as how to develop a relationship with a child, communication, listening skills, self-esteem and sexuality. This in turn leads to an improvement in the children's self-esteem, feelings of self-worth, ability to trust and communication skills, as well as academic performance. In addition, the children's participation in risky activities, as well as the number of times they are involved in fights, tend to decrease (Big Brothers Big Sisters 2016).

10.4.1.3 The role of the school in the primary prevention of youth misbehaviour

School management, teachers and structural factors such as the size of the school play a significant role in the primary prevention of youth misbehaviour and crime. Owing to their contact with the youth, teachers can be seen as important socialising agents of young people. They are in an ideal position to identify problems (such as school absence, truancy, rejection of authority, disobedience, dishonesty, temper tantrums, rebelliousness and uncontrollability) and to make predictions with regard to the youth's future behaviour (Lab 2010: 250). The role of education and the school in the secondary prevention of youth misbehaviour and violence will be elaborated on in section 10.4.2.1.

10.4.1.4 The role of the media in education

A variety of studies has examined the impact of the media on crime. Most of these studies show that the mass media have a tendency to focus on crime-related issues (Jewkes 2015: 6). The media can, however, also be used to address crime, and specifically youth misbehaviour. They can become involved in crime prevention in various ways, for example by educating the community and children about crimes and the prevention thereof, as education is one of the best ways to prevent crime in the community at a primary level (Carli 2008: 10).

Over 100 South African artists are part of a movement campaigning against crime. In 2010 the SHOUT Trust — a campaign for a safer South Africa — was launched by the art ists Danny K and Kabelo Mabalane. SHOUT is a crime fighting non-profit organisation. This initiative was a reaction to the murder of the reggae singer Lucky Dube in 2007, as well as to the general crime surge in South Africa. Danny K felt that the musicians of South Africa should speak out on behalf of "an almost voiceless nation". Their first song was the 1984 Tears for Fears hit, "Shout". It became the biggest full track download in South African music history and as a result received a South African Music Award (SALMA) as recognition in 2010. Subsequently more than 100 artists as well as the Drakensberg Boys Choir sang together in a music video featuring the song "You're the voice" in 2012. Some of the lyrics of this song are as follows: "We have the chance to turn the pages over"; "How long can we look at each other down the barrel of a gun?". One of the themes of the video is a spark that turns into a flame, which symbolises a fire of positivity that should burn throughout South Africa.

This song also received a SAMA award, and the proceeds from downloads went towards the SHOUT Trust crime prevention campaign. In 2015, a new track was released entitled "Smile", also performed by some of South Africa's most prominent musicians and celebrities all collaborating for a safer South Africa. The proceeds of this song were channelled towards the building of libraries in primary schools throughout South Africa. The founder members of SHOUT are of the opinion that if one addresses illiteracy, children will be better equipped to live a crime-free life. This is a good example of how the media and artists in South Africa are campaigning for the fight against crime (SHOUT 2015).

Another prominent example of how the media can be used to discourage crime is the programme Soul City, an innovative and dynamic social change and multimedia health promotion project. Drama and entertainment have been used to reach more than 16 million South Africans. Soul City has also been broadcast in different countries in Africa, as well as in Latin America, the Caribbean and Southeast Asia. The programme is set in the fictional Soul City township and is directed at individuals, the community and the socio-political environment. Each series includes 13 half-hour prime-time television episodes, a daily radio drama comprising 45 15-minute episodes, as well as three full-colour booklets. The television series was broadcast on SABCI, and the radio episodes featured on all nine SABC regional radio stations (in nine of South Africa's Il official languages).

The radio episodes were also broadcast on many community radio stations. The booklets were inserted into newspapers throughout South Africa and also distributed at clinics, community-based organisations, businesses and educational facilities. At least three million booklets were distributed per series. The first season of this series was broadcast in 1994, and related only to health issues. Only in 1997 did the producers start to focus on crime issues and violence. The fourth season, aired in 1999, included episodes on the impact of violence against women and how this can be prevented. Season five was broadcast in 2001 and included episodes focusing on rape. Soul City's Phuza Wize campaign was launched in 2010, which focused on preventing alcoholinduced violence. The most recent series was season 12, which was broadcast in 2014 and included footage of Thuthuzela rape care centres and the services that they provide for survivors of sexual violence (Soul City 2016).

The media can also be used to address problems in a specific area through newsletters and the local press. Information regarding crime hotspots, the types of crime committed in a particular area, the types of victims that are at risk, and preventative measures can be provided. Community education programmes (such as awareness-raising and advocacy campaigns in the

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form of lectures in schools, preschools and community groups) and workshops on issues pertaining to young people and their needs could be advertised.

Crime-related information like that mentioned above can reduce people's fear of crime, enable members of the community and children to help themselves, educate them on how they may unconsciously be contributing to a problem in their area, and raise awareness among the youth about the seriousness of a specific problem such as substance abuse. In addition, the involvement of the youth in crime prevention can be improved, uncertainties with regard to legislation cleared up and support for a specific prevention project elicited (Carli 2008: 5). The media can also be used to encourage the youth to report crime through the marketing of information lines or toll-free numbers such as 08600 10111.

10•4.1.5 The role of the police in primary crime prevention

A good relationship between the police and the community is an integral part of primary crime prevention in general. However, community policing (i.e. a philosophy and strategy that are based on a partnership between the police and the community to find creative solutions for community problems and crime) and sector policing (a decentralised approach where a police station area is divided into smaller, more manageable geographical areas known as sectors) will never succeed if the youth do not trust the police and buy into the idea of "partnership policing" (Maroga 2003: 14; Wisler & Onwudiwe 2009: 38). Special care should thus be taken to bring the youth into positive contact with the police and to improve the relationship between them.

The SAPS coordinates a programme called Adopt-A-Cop. The schools that are included in this programme each receive the service of two police officers (a detective and an officer who is responsible for visible policing). Both of these police officers liaise with the school and visit schools with the aim of reviving school safety forums and encouraging children to report crime. In addition, they provide information sessions focusing on aspects such as safety precautions, bullying, gangsterism and drug abuse (Van Zyl 2016).

10.4.1.6 The role of the government and society in social upliftment

Community-wide social upliftment programmes focus on structural problems such as the lack of adequate housing, education and employment opportunities, which often underpin the formation of a deviant youth culture. These programmes are an important strategy for preventing youth misbehaviour and crime at a primary level. The National Crime Prevention Strategy (NCPS) drafted during 1996 recognised some of these complexities, and targeted the socioeconomic situation in South Africa as one of the main areas of concern. Even though certain complexities and social ills were identified in the NCPS (such as inadequate coordination, lack of knowledge on the role and responsibility of the various role players, and the inappropriate use of funding) and certain programmes for addressing these problems were envisaged, it has not been as successful as one would have hoped (Pelser & Louw 2002).

The government's Growth, Employment and Redistribution Strategy, better known as GEAR, is aimed at improving the socioeconomic situation in South Africa. The goals of GEAR are to facilitate a new economic system that ensures a competitive and fast-growing economy that will create enough jobs for those South Africans who are currently unemployed (creating approximately 400 000 jobs per year). It further aims at redistributing income and opportunities in favour of the poor, developing a society in which health, education and other needed services are available to all, and creating an environment in which homes are secure and places of work are productive (Department of Finance n.d.).

The National Youth Development Agency (NYDA), which is owned and funded by the government, is an example of a social upliftment initiative. The purpose of this agency is to empower the youth of South Africa on both a social and an economic level, aiming to reduce youth unemployment and promote social cohesion. The NYDA targets young people

between the ages of 14 and 35 years. From April 2012 to April 2013, the NYDA showcased the Limitless Youth Campaign. The rationale behind this campaign was to instil a positive mindset in young people. The campaign aims to emphasise that "I am limitless, no matter my circumstances". The message is that "you have no limits; no one can stop you if you really want something, this is your time and there are limitless opportunities which you have to grab With both hands". The aim of this message is to appeal to the youth on an emotional level and to assure them that they can be anything they want to be (National Youth Development Agency 2015).

10.4.2 Secondary prevention

Secondary prevention refers to intervention in the lives of youths or groups identified as being in circumstances that predispose them to misbehaviour (e.g. children who have been abancloned, neglected and/or abused, runaways and street children who often turn to crime for survival). In secondary prevention programmes, the focus is on the early identification of potential offenders and intervention before they turn to crime (Lab 2010: 29). The focus is on children who manifest risk behaviour such as academic failure, truancy, rejection of authority, disobedience, dishonesty, temper tantrums, rebelliousness and various status offences.

A good example of a centre that is involved in addressing vulnerable youth at a secondary level is "Ons P lek", a shelter for female street children in Cape Town. The reason for establishing this centre is to try to prevent runaway girls from becoming street children. Ons Plek is able to provide a safe haven from the street for new arrivals, while counsellors work on long-term solutions for their problems (Ons Plek Projects for the girl street child 2017).

Other programmes focusing on street children as a vulnerable group (it is estimated that more than 10 000 South African children are living on the street), such as Street-Wise in Pretoria and Durban, and The Homestead Projects for Street Children in Cape Town, are designed to address the many problems these children have to face and to help prevent them from becoming adult offenders. At Street-Wise, accommodation is offered for a maximum period of one year, as the aim of the organisation is to reconcile children with their families. Where reconciliation is not possible, such children will be referred to a youth care centre or other suitable accommodation. Some of the street children facilities at the Homestead include the Homestead drop-in centres in Khayelitsha, Manenberg, Woodstock and Valhalla Park. Services provided at these centres include aspects such as substance abuse counselling, school attendance support and family preservation programmes. During mornings these centres provide services to children living on the street and in the afternoons they provide after-school facilities for vulnerable community children to prevent them from engaging in gang activities. The Homestead intake, stabilisation and therapeutic centre accommodates boys between the ages of 6 and 17 years who are traumatised and have suffered neglect, abuse and/or exploitation, children who have been living, working and/or begging on the street, as well as substance abusers. They have an open-door policy and no child is forced to Stay if he or she does not want to. The transitional programme called "The Launch Pad" provides shelter for drug-free youths between the ages Of 15 and 21 years. Youths have to apply to be admitted. Their application must include a motivation letter written by themselves, a form completed by their school, drug test forms as well as character references. The focus of the centre is to empower and provide life skills to traumatised youth with aspects such as anger management issues and inappropriate sexual behaviour, as well as working to improve their relationships with their families or guardians, developing their talent in sport and recreational activities, and focusing on the development of their identity and planning for their futures with the help of educational psychologists (Street-Wise 2005; The Homestead Projects for Street Children 2013).

10.4.2.1 The role of the school in the secondary prevention of youth misbehaviour

As mentioned earlier, the school fulfils an important role as a socialising agent and thus also in the development of the child, therefore the prevention of violence in schools is of paramount importance. One of the most important Strategies

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aimed at alleviating violence in schools is the Safe Schools Project, which is a programme initiated by the government aimed at addressing safety in public schools. This programme entails the provision of school environments that are conducive to learning, and ensures safety and the absence of fear of victimisation. In addition, the project recognises the potential that schools have to reach youth through crime prevention initiatives, identify and assist those with learning difficulties or behavioural problems, and support those who come from broken homes or who live in poverty. In addition it must be noted that the prevention of violence in schools should be a combined effort between the school, the government and the community. Likewise, a programme referred to as the Child-friendly Schools Programme was initiated by the United Nations Children's Fund (UNICEF) and was piloted in 52 schools in KwaZulu-Natal and 75 schools in Limpopo (Mabasa 2013: 113; Roper 2002: 68).

The attainment of safety in schools is a complex phenomenon which includes various initiatives and procedures that should be in place to achieve this goal. First of all, implementable policies and procedures should be developed to address problems at schools. In addition, joint efforts between school law enforcement (e.g. rules and discipline) and state law enforcement (e.g. policing) should be in place. Learners should be aware of the school rules and understand the consequences if they break them. It is also of the utmost importance that the school rules are enforced fairly and consistently, and that due recognition is given for adherence to them. The importance of involving the community, parents and the youth in crime prevention programmes aimed at alleviating school violence cannot be overemphasised (Mabasa 2013: 113; Roper 2002: 73).

With specific reference to the role of the school in the secondary prevention of crime, it should be noted that teachers are in an ideal position to identify key indicators or risk factors, which if not addressed can give rise to violence or the occurrence of crime at the school. Behavioural changes in children should be addressed, and aspects such as gang involvement, alcohol abuse, and witnessing or being subjected to domestic violence are risk factors that will require remedial attention (Mabasa 2013: 111; Roper 2002: 74).

Examples of initiatives to address youth at risk include aspects such as holiday programmes and other structured leisure-time activities in areas where children spend a great deal of time on the streets or where learners are involved in gangs.

If more parents became involved, and schools were more open to the community and were perceived to be owned by it, the alienation between parents and teachers could change to mutual, interactive participation in the socialisation of children where values are shared. Cooperative arrangements between school administrators and teachers, participatory decision making, interactive teaching (e.g. informal education programmes in conjunction with the community), as well as parent and community education (e.g. workshops or information sessions on substance abuse) can only be to the benefit of every learner and specifically the youth at risk (Mabasa 2013: 112; Roper 2002: 79).

10.4.3 Tertiary prevention

Tertiary prevention deals with juveniles who have already committed crime. It is aimed at preventing a relapse into crime (recidivism) and thus focuses on youths already in conflict with the law. Punishment and rehabilitation fall within the realm of tertiary prevention (Lab 2010: 271).

There are two options when dealing with youth offenders, namely diversion from the court system or proceeding to the Child Justice Court (Gallinetti 2009: 13). A short overview focusing on diversion follows.

10.4.3.1 Diversion

It is stated in the Child Justice Act 75 of 2008 that diversion should always be the first option, as this prevents a child from acquiring a criminal record and in the process prevents the consequent stigmatisation and labelling associated with child offenders (Steyn 2013: 175). The Act stipulates that children accused of crimes should be diverted from the criminal justice system to community-based, non-custodial programmes as far as

possible. The Act originated to establish a criminal justice process for children accused of committing offences to protect their rights in accordance with the Constitution and international instruments (such as the Beijing Rules). Furthermore, the Act emphasises the involvement of parents, families, victims and communities in the child justice process in order to encourage the reintegration of children who are subject to its provisions.

A comprehensive discussion of diversion is given in Chapter 11.

10.4.3.2 Court procedures and imprisonment

Although the criminal justice system should be the very last resort in the case of juvenile offenders, children do commit offences serious enough to be dealt with in this way. It must be noted that the Child Justice Act 75 of 2008 stipulates that children younger than 10 may under no circumstances be arrested or prosecuted as they lack criminal liability. The police official must hand the child over to a parent, guardian or appropriate adult. A child younger than 10 years who has allegedly committed an offence must be referred to a probation officer who will decide what the appropriate action will be. Children younger than 10 years should be assessed within seven days after the probation officer was notified by a police official that an offence was allegedly committed (Gallinetti 2009: 34). These actions will either include referral to a children's court, counselling, therapy, referral to a treatment programme or the decision that no action will be taken (Gallinetti 2009: 20). If the alleged youth offender is older than 10 and is arrested by the police, it is imperative that a probation officer assess the child's situation and the circumstances of the offence (unless the assessment is dispensed with in terms of section 41(3) of the Act) within 48 hours of arrest. This assessment must be done before the preliminary inquiry takes place.

Court proceedings should be conducted in a manner that respects the dignity and rights of the young person in an atmosphere Of understanding, and should allow for effective participation by the young person. It must be noted that the Child Justice Court is not a separate court, but any court that deals with offences committed by children and that applies the Child Justice Act 75 of 2008 (Gallinetti 2009: 51). Furthermore, it is important that sentences adhere to the principle of the least restrictive, most empowering option for the young person.

As conditions in police cells and holding cells at the courts are not suitable for children, provision has been made to prevent detaining youth offenders as far as possible. Section 28(1)(g) of the South African Constitut tion of 1996 gives every child the right not to be detained, except as a measure of last resort. Children who cannot be released into the custody of a parent or guardian should be accommodated in a child and youth care centre (these centres replace and include the former places of safety, secure care facilities, schools of industry and reformatories) and only as a last resort may they be detained in prison if they are older than 14 (Gallinetti 2009: 15). In addition, children must be kept separately from detained persons over the age of 18, and] be treated in a manner and kept in conditions; that take into account their age (Gallinet 2009: 27).

Accountability, proportionality, an attempt to restore the harmony between the young person and society, as well as family preserv tion should be kept in mind during sentencing (Gallinetti 2009: 53). As many young people caught up in the justice system are simply troubled children who lack the fundamental skills and guidance to cope with issues beyond their level of maturity (Steyn 2013: 175), every chance to avoid imprisonment should be considered (Gallinetti 2009: 54). Imprisonment should be reserved only for young people who are involved in serious crimes of violence and who are a threat to society, as such treatmenp can have extremely serious consequence' (Gallinetti 2009: 55).

According to statistics from the Department of Correctional Services, there were 187 children (under the age of 18) serving prison sentences in the 2015/2016 financial year (see Table 10.1).

Table 10.1 Children's incarceration levels 2015/2016

Children's incarceration levels

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The damage inflicted on children by the punishment process in South Africa is portrayed by a poem written by Glen Leedenberg, a young Cape Town shelter worker (Pinnock, Skelton & Shapiro 1994).

> I have been sent to Sea Point Police Station, where I was beaten by civil servants, I have been to Pollsmoor prison, where I was sodomised and left bleeding on the damp floor. I have been to Places ofSafety and Reformatories where I was hardened by warders andfellow inmates, where I learned to hold on to what was mine and takefrom those who could notfight.
>
> I am now the perpetrator ofviolence and not the victim.
>
> On the street I am a law unto myself.

In another example, Neville Snyman, a 13-year-old-boy, was brutally murdered by his cellmates in a police cell in Robertson in the Western Cape in October 1992. He was assaulted, forced to drink toxins, penetrated anally and held under a hot shower until his skin peeled. He did not live to stand trial for the crime for which he was arrested. He and his friends had allegedly broken into a shop to steal sweets, cold drinks and cigarettes (Pinnock et al. 1994).

Although a range of non-custodial sentences is available to the courts for the sentencing of convicted children, the seriousness of some offences necessitates detainment as the only option. When sentencing a child to detainment in a child and youth care centre or a prison, the sentence cannot be imposed without a pre-sentence report. With regard to the minimum age of imprisonment, it is stated in the Child Justice Act 78 of 2008 that a sentence of imprisonment may not be imposed unless the child was older than 14 at the time of being sentenced (Gallinetti 2009: 54).

Total number of sentenced children	187
Males	184
Females	3

Source: Department of Correctional Services (2017)

10.4.3.3 Preventing recidivism

In terms of the prevention of recidivism, it is important to manage juveniles in accordance with current legislation (see Chapter 12) and international standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), to adhere to their rights as children, and to focus programmes on rehabilitation and reintegration.

As the recidivism rate after release for violent economically motivated criminals from a correctional facility in South Africa is estimated to be as high as 94% in the adult population, rehabilitation, positive change and empathy building are issues that are of elevated importance (Cilliers & Smit 2007: 86; Quan-Baffour & Zawada 2012: 73). The Department of Correctional Services aims to provide offenders with needs-based programmes and interventions to facilitate rehabilitation and enable reintegration into communities. Offender development is a priority and includes personal development and rehabilitation programmes addressing illiteracy; furthering education; teaching practical skills such as welding, plastering, bricklaying and agricultural skills; as well as the inclusion of recreational programmes (sport, arts and culture). In addition, correctional programmes target offending behaviour by teaching life skills and focusing on anger management. This department also sees to it that social work services (to identify and address the young offender's needs and problems, and to strengthen family ties), psychological services (to

address emotional problems) and religious care programmes are provided, Furthermore, the Department of Correctional Services facilitates restorative justice meetings in order to promote mediation and healing among offenders, victims, their families and the community in an effort to diminish the harm of crime (Department Of Correctional Services Annual Report 2009: 53—68; Department of Correctional Services Annual Report 2015/2016:59).

According to Liese (2002: 24), rehabilitation should, to a great extent, focus on thinking patterns and behavioural transformation in cases of embedded patterns of criminality. Strategies for altering criminal thinking patterns, like confronting thinking errors and fostering correct problem-solving behaviour (e.g. how the offender is going to handle a crisis outside prison) should be incorporated into rehabilitation programmes. Social reintegration programmes as implemented by the Department of Correctional Services (Annual Report; 2015/2016: 69) focus specifically on coping skills for handling challenges that the offender will be confronted with upon release from the correctional centre.

In terms of tertiary prevention (the prevention of recidivism), care should be taken not to release children into exactly the same circumstances that led them to commit the crime in the first place. Children should be provided with the necessary programmes and support to enable their effective transition and reintegration from the correctional facility back into society. For instance, the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) offers a reintegration programme (the Tough Enough Programme), which begins six months prior to an offender's release, and continues for 6—12 months afterwards. This programme is based on the question of whether young prisoners are tough enough to undertake the challenge of leading a constructive life outside prison. The programme focuses on the complex problems and issues that offenders are confronted with upon re-entering and reintegrating into society, and addresses conflict handling, lifestyle choices, positive attitudes and advice on how to find employment. It must be noted that the Tough Enough Programme is one of many offered by NICRO, and that their programmes focus on primary, secondary and tertiary prevention (NICRO 2016).

An example of another organisation that works on all levels of the crime cycle is Khulisa. This organisation used to focus only on the rehabilitation and reintegration of offenders, but now aims to prevent crime, divert youth from the criminal justice system, provide alternatives to imprisonment, foster personal transformation for those who are in prison, and assist with the transition back to society.

With regard to secondary prevention initiatives, Khulisa has various initiatives such as the "Grab your dream/Daring to dream" programme that aims to help individuals escape from a life of poverty and crime. Furthermore, the "People Puppet" programme is specifically aimed at primary school children to assist them in voicing their emotions, to deal with violent pasts and to restore the values in their communities by means of the projective technique of puppet-making and performing. In addition, the "Silence the Violence" programme focuses on the culture of violence ingrained in communities and belief systems. Practical ways to minimise violent behaviour are taught in this programme. The "Global Give Back Circle" programme is aimed at vulnerable girls from Grade 9 onwards, and provides support throughout their secondary school years, in the form of aspects such as career guidance, mentorship and victim empowerment. Khulisa's tertiary prevention initiatives include programmes such as the following:

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- The "Facing Your Shadow" diversion programme. This programme is offered for offenders between the ages of 14 and 18 years who have committed a sexual offence and who have been referred to Khulisa by the criminal justice system. Another initiative is the "Restorative Justice in Schools" programme dealing with aspects such as bullying, truancy, student assaults and teacher/student disputes.

- An offender rehabilitation programme called "My Path". This programme is aimed at individuals in need of personal development and behavioural therapy. The programme promotes the discovery of oneself as a physiCal, psychological, emotional and social being, as well as the exploration of one's own creative abilities. The programme aims to help offenders to embark on a path of exploring who they are and helping to prepare them for re-entry into a positive, productive and meaningful lifestyle. The focus is on replacing inappropriate beliefs; goal setting; assertiveness skills; stress management; communication skills; problem solving; values and morality; improving relationships; and restorative justice, as well as preparation to return to the community. The last phase includes aspects such as recognising their own competencies, dealing with stigmatisation, compiling a curriculum vitae, managing finances and developing entrepreneurial skills. The programme is aimed at incarcerated offenders who have a minimum of two years of their sentence remaining at the time of registering for the "My Path" programme. The programme is offered in three-hour sessions once a week for approximately one year.

- The "I'm Coming Out" offender reintegration programme aims to prepare offenders for reintegration into their communities by evaluating their strengths and weaknesses, and focusing on possible challenges that they might face upon release (Khulisa 2016).

10.5 GENERAL RECOMMENDATIONS

Adults often act as a barrier to the autonomy, independence and empowerment of young people and they often make decisions about them based on generalised representations of children and young people, rather than consulting with them or judging each situation on its own merits. The youth should therefore be involved in the development and implementation of programmes for preventing youth misbehaviour and crime (Liese 2002: 7).

All programmes, irrespective of the level of intervention (primary, secondary or tertiary), should focus on children's capabilities rather than their limitations. The value of networking at a community level and utilising all available sources (government, NGOs and volunteers) as a strategy for preventing and dealing with juvenile offending should never be underestimated.

10.6 CONCLUSION

The task of tackling youth misbehaviour is an enormous one. A multidimensional (youthdirected), multimode (cognitive, affective, behavioural), long-term approach, which involves various role players and resources, is necessary to alter the difficult-to-change complex nature of youth misbehaviour. By reducing risk factors and by providing protective buffers against known risk factors, some headway may be made in the battle against youth violence and misbehaviour (Liese 2002: 5; Maree 2013: 89).

In conclusion, the prevention of youth misbehaviour and crime can be summarised in the words of Wolmarans and Jacobsz (1994: 21):

> Keep children out ofpoverty, offthe streets, out ofthe cells and out ofpolitics.

CRITICAL QUESTIONS

I . Outline the role of the family, the media, the police and the government in the primary prevention of youth misbehaviour and crime in South Africa.

2. Explain how the school as a secondary socialisation agent can have an impact on youth misbehaviour and crime.

3. Discuss current initiatives aimed at the tertiary prevention of youth offending in the South African context.

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Diversioni

Francois Steyn and Lufuno Sadiki

OBJECTIVES

You should be able to

- discuss the development of child justice and diversion in South Africa
- articulate the purpose of and criteria for a Child to be diverted from the criminal justice system
- describe the different diversion options and the schedule of offences as categorised by the Child Justice Act
- appraise different diversion strategies with specific reference to life skills training, mentoring, family group conferencing and outdoor programming.

KEYWORDS

age and criminal capacity
Child Justice Act
diversion
diversion options
family group conference
follow-up
life skills training
mentoring
minimum standards
outdoor intetNention referral

11.1 INTRODUCTION

Because children and adolescents mature toward adulthood, it is generally accepted that they have less responsibility than adults. Adolescence, in particular, is considered to be youths often present risky behaviour which includes antisocial and criminal acts (Kleinhans 2013: iii; Louw & Louw 2014: 304). It is therefore understandable that the literature

a stormy phase in the life stages chain since notes an increase in antisocial and problem

1 Parts Of this chapter stem from the first author's postgraduate research (cf. Steyn: 2010).

behaviour during adolescence, but that this should be seen against the natural process of maturation (Muncie 2004: 25—26). The daily life of children and adolescents is characterised by many rules at home, in school and in the community. Rules serve as guidelines for the nurturing of pro-social and problem-free behaviour. Learning does not only take place through formal education, but also through the mistakes children make. Sometimes these have a criminal element which can be less serious, but at times they also entail more serious criminal behaviour. Owing to their developmental age, it is only fair to give children and adolescents a second chance and to create an opportunity to change the mistake into a learning event.

When a minor has committed a crime, it is not always in his or her best interest to be subjected to the harsh realities of being arrested, appearing in court and receiving a sentence. Moreover, a sentence of imprisonment, regardless of how short a period of time, opens the door for the child to be labelled a criminal, which could propel him or her toward further and more serious criminal behaviour. Custodial sentences also promote the learning of further crime and criminal techniques, therefore the way in which the criminal behaviour Of children and adolescents is managed could have a profound effect on whether they will commit crime again. Bartol and Bartol (2017: 170) confirm in this regard that juvenile offenders usually benefit from intensive treatment in the community rather than in an institutional setting.

This chapter deals with diversion, which follows a child-centred, developmental approach to the criminal behaviour of children and adolescents. The chapter looks at the development of child justice and diversion in South Africa, and what diversion entails and its legal provisions. An overview is provided of a selection of diversion strategies in terms of their understanding of and responses to criminal behaviour.

11.2 DEVELOPMENT OF CHILD JUSTICE AND DIVERSION IN SOUTH AFRICA

(Note: This section should be read with section 13.1 in Chapter 13.)

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Before democracy was achieved in South Africa in 1994, legal responses to the criminal behaviour of children were inhumane. Many were subjected to harsh corporal punishment, in particular caning by designated police officers. Thousands of children awaited trial in abysmal conditions in prison and police cells, where they were often held for lengthy periods of time without their parents knowing their whereabouts (Juvenile Justice Drafting Consultancy 1994: 2). In the mid-1990s, the country's legal system commenced a process of transformation, away from a politically motivated repressive approach to a justice system based on the principles of human rights and dignity. Prior to this period, the legal system had no dedicated strategy to deal with children in conflict with the law, and those charged with crimes were tried as adults (Brink 2010: 29). Systems were fragmented and scattered among different ministries and departments, while emphasis was placed on the pathology of criminal behaviour instead of developmental strategies that acknowledge the strengths of communities, families and children in curbing problem behaviour. These stakeholders also had no opportunity to participate in legal decisions that affected them. In addition, statutory intervention received more attention than prevention or early intervention in the problem behaviour of children (Inter-ministerial Committee on Young People at Risk OMC) 1996: 13).

In the early 1990s, campaigns and initiatives, such as Justice for children: No child should be caged — initiated by the Community Law Centre, Lawyers for Human Rights and the National Institute for Crime Prevention and Reintegration of Offenders (NICRO) — placed increasing pressure on government to respond to the inhumane treatment of child offenders. It was only after a 13-year-old boy was murdered by his cellmates in a police cell in Robertson, Western Cape, in October 1992 that the National Working Committee on Children in Detention was formed. The need for a comprehensive and effective child justice system became imperative. Around that time, NICRO and state diversion programmes were implemented to prevent children from entering the criminal justice system unnecessarily OMC 1996: 13—14). Although numerous others followed, no legal framework existed to govern child justice in general and diversion in particular. Many programmes were developed and established in an informal, haphazard and disjointed fashion without any comprehensive policy framework to guide them (Badenhorst 2013: 315). Minimum norms and standards to steer service delivery were absent. Diversion providers were increasingly confronted and frustrated by inadequacies in the Criminal Procedure Act 51 of 1977, the Child Care Act 74 of 1983, and the Correctional Services Act 8 of 1959. In November 1994, the Juvenile Justice Drafting Consultancy published the first comprehensive tool for the management of child offenders in South Africa. The framework proposed procedures for arrest, reception and referral, and also commented on diversion and the sentencing of child offenders (Juvenile Justice Drafting Consultancy 1994: I). In May 1995, the IMC was established to manage the process of transforming the child and youth care system. Its interim policy recommendations broadened the work of the Juvenile Justice Drafting Consultancy by, among others, delineating the roles and responsibilities of service providers in the child justice sphere (IMC 1998: 8).

The National Crime Prevention Strategy (NCPS) of 1996 emphasised the absence of child sentencing policies. Moreover, it called specifically for the development of approaches to divert minor offenders from criminal justice procedures (NCPS 1996: 61). These sentiments were echoed in the White Papers and strategic plans of various government departments, including Correctional Services and Social Development. Shortly after the introduction of the NCPS, the South African Law Reform Commission issued two papers relevant to child justice. The first, Sentencing Restorative Justice (South African Law Reform Commission 1997a), dealt with the crime victim's position and role in the justice process. It made specific reference to restitution, compensation and mediation, which today form part of family, community and victim-involved diversion strategies. The restorative sentiments of the publication eventually became an important thrust in official directives in managing child offending. The second paper, Juvenile Justice (South African Law Reform

Commission 1997b), focused particularly on age and criminal capacity, police powers and duties, pre-trial detention, diversion and sentencing.

In 1997, the Juvenile Justice Project Committee of the South African Law Reform Commission commenced an investigation into youth justice, and in 1999 published a discussion paper and a draft bill on the matter. In the drafting process, the Committee consulted a wide range of role players in the criminal justice field, including children, and the final report was submitted to the Minister of Justice in August 2000. November 2001 saw its approval by cabinet for introduction into parljament, which took place in August 2002 as the Child Justice Bill 49 of 2002. Although the submission represented a milestone for child justice in South Africa, delays characterised the enactment of the Bill as it underwent several revisions by the Portfolio Committee for Justice and Constitutional Development. At last, the Child Justice Act (CJA) 75 of 2008 was approved and enacted in late 2008. However, it only took effect on I April 2010 to allow sufficjent time for the preparation of role players. The enactment of the CJA is seen as significant in ensuring that the rights of child offenders are protected (Badenhorst 2013: 315).

It is important to note that the CJA has been developed with the directives of various international and regional policy instruments in mind. The most noteworthy Of these instruments are the following:

- United Nations Convention on the Rights of the Child (1989), which emphasises that any action against children should have their best interest in mind, and that young offenders should be dealt with without resorting to formal judicial proceedings

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (1985), which provide guidelines for child justice systems and resources for non-custodial intervention such as the family, volunteers and the community

- United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (1990), which emphasises governments' role in enacting relevant legislation, as well as the pivotal role of the family in preventing offending and recidivism

- United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) (1990), which calls on public participation in the dispensation of cases so as to access

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local resources and ensure the public's involvement in crime management

- African Charter on Human and People's Rights (1982), which prohibits any form of inhumane and degrading treatment or punishment of young offenders, with emphasis being on the preservation of the family as the primary support structure of children

- African Charter on the Rights and Welfare of the Child (1990), which states that decisions about young offenders should promote reintegration and social rehabilitation, and that a minimum age is needed below which children are presumed not to have the capacity to break the law

Advocacy, programme development and research related to diversion received much attention up to the enactment of the CJA in 2010. Since then interest in diversion has waned With very little research forthcoming. For example, a 20-year review of publications in journal Acta Criminologica showed that articles (in terms of the proportion of all publications) dedicated to youth offending decreased from 7,6% (2002-2005) to (2010-2013) (Steyn & Klopper 2015: 13). Furthermore, there have been four amendments to the CJA since its enactment, although these do not change provisions related to diversion of child offenders.

11.2.1 Definition and aims of diversion

Section I of the CJA defines diversion as diverting "a matter involving a child away from the formal court procedures in a criminal matter" when there is sufficient evidence to

prosecute the child. Diversion aims to reduce and prevent future involvement in crime (Seroczynski, Evans, Jobst, Harvath & Carozza 2016: 663). Diversion entails that children in conflict with the law are kept away from the formal criminal justice system and ensures that they are successfully reintegrated into society (Terblanche 2012: 446; Van der Merwe & Dawes 2009: 572). By diverting child offenders, they are protected from the negative effects of the criminal justice system and prevented from unnecessary stigmatisation and having a criminal record (Badenhorst 2013: 315; Kleinhans 2013: 38; Leoschut & Mutongwizo 2012: 9; McGregor

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2010: 31; Woodward, Sloth-Nielsen & Mathithi 2007: 69). The objectives of diversion are based on the principles of restorative justice, with the aim of rehabilitating and reintegrating the offender (McGregor 2010: 34; Geldenhuys 2015: 11). The CJA enacts diversion and ensures the fair treatment of children in conflict with the law.

Diversion encompasses non-punitive measures in dealing with child offenders (Atilola 2013: 5). Diversion sets out to prevent crime and promote public safety through the use of alternative sentencing and restorative justice procedures (National Prosecuting Authority (NPA) 2011: 24).

Section 51 of the CJA the objectives of diversion as follows:

- Deal with a child outside the formal criminal justice system.
- Encourage the •child to be accountable for the harm caused by him or her.
- Meet the particular needs of the individual child.
- Promote the reintegration of the child into his or her family and community.
- Provide an opportunity to victims to express their views about the offence's impact on them.
- Encourage the rendering to the victim of some symbolic benefit or compensation for the harm.
- Promote reconciliation between the child and the person or community affected by the harm.
- Prevent stigmatising the child and prevent the adverse consequences flowing from contact with the criminal justice system.
- Reduce the potential for re-offending and prevent the child from having a criminal record.
- Promote the dignity and wellbeing of the child, and the development of his or her sense of self-worth and ability to contribute to society.

In terms of the CJA, diversion can occur in three ways:

- Through prosecutorial diversion when a child has committed a Schedule 1 offence (section 41)
- At the preliminary inquiry, through an order of the inquiry magistrate (section 51 (2))
- During the trial in the child justice court, through an order of the court (section 67

11.2.2 Principles guiding the decision to divert

The decision to divert a child who has committed an offence varies across contexts. In some countries, for example the US, the simple cautioning of the child — most often in the case of a very minor transgression — is the least invasive form of diversion. However, based on the seriousness of the offence and the profile of some child offenders, an element of intervention is sometimes needed (Wilson & Hoge 2013: 498). When considering diversion, decision makers often consider the personal and environmental factors of the child and, together with the nature of the offence, determine the child's risk of future problem and criminal behaviour. The risk principle implies that the intensity or level of intervention should match the criminogenic risk presented by the child (Wilson & Hoge 2013: 499). In other words, for a lesser crime, a lesser intervention is needed, while more intense programming is needed for children who exhibit higher levels of risk. As explained later in the chapter, diversion in South Africa is not only aimed at minor offences, but can be used to address more serious types of

offending behaviour as well. The levels of risk are as follows (Omar, Steenkamp & Errington 2012: 55):

- High-risk offenders have committed numerous offences, show little empathy for victims, have a general lack of remorse, fail to accept responsibility, abuse substances, have limited parental supervision and perform poorly at school. High-risk offenders are at great risk of re-offending in the near future and therefore require a higher level of intervention.
- Medium-risk offenders have engaged in more than one offence, do not always take responsibility for their actions, deny their actions at some level, display victim empathy and remorse, and are sometimes disruptive and aggressive in groups. Medium-risk offenders might be at risk of re-offending in the near future, and as such need lesser intervention compared to high-risk offenders.
- Low-risk offenders have committed one or two offences, display high levels of victim empathy and remorse, take full responsibility for their behaviour, enjoy healthy parental supervision and bond with their school. Low-risk offenders are at minimal risk of re-offending in the near future, and therefore require the least intervention of all three risk levels.

In addition to the risk principle, the need principle means that any intervention aimed at changing the criminal behaviour of children should be directed toward their unique criminogenic needs. If, for example, the child displays aggressive behaviour, then the diversion programme opted for must include training in anger management. Finally, the responsivity principle means that any intervention must accommodate the child's non-criminogenic needs, for example academic skills and emotional problems, as well as his or her positive traits (Wilson & Hoge 2013: 499).

I I .2.3 Age, criminal capacity and diversion

Section 4 of the CJA states that any person alleged to have committed an offence while under the age of 18 years — and in exceptional cases between the ages of 18 and 21 years — should be considered for diversion. Younger age groups, however, are guided by the principle of criminal capacity, which deals with whether a child can distinguish between right and wrong. Section 7 of the CJA states that a child under the age of 10 years does not have criminal capacity; however, this does not automatically mean that no action against the child is warranted. The steps that are followed in such cases resemble that of diversion, but with no involvement of a prosecutor or court. The police may not arrest a child under the age of 10 years, but must hand the child over to his or her parent or guardian. A probation officer must then arrange a meeting with the child's parent or guardian to assess the circumstances surrounding the offence. A written plan is drafted that specifies the Objectives and

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nature of the intervention, its duration, and the responsibilities of the child and his or her parent or guardian. If the child fails to comply with the plan, he or she is referred to a children's court for further action (CJA s 9).

A prosecutor must decide whether or not to prosecute a child who is between the ages of 10 and 14 years based on an evaluation of the child's ability to distinguish between right and wrong at the time of having committed the alleged offence. The decision is guided by the child's educational level, cognitive ability, domestic and environmental circumstance, age and maturity, the nature and seriousness of the offence and the impact of the crime on the victim (CJA s 10). If criminal capacity is proven, the child can be diverted. However, if criminal capacity cannot be established, the child is treated in the same manner as those under the age of 10 years (CJA s Il). (In Chapter 12 criminal capacity is discussed in detail.)

Il .2.4 Criteria for diversion

Section 52(1) of the CJA sets out the criteria for a child to be considered for diversion. A case may, after consideration of all the relevant information presented at a preliminary inquiry or during a trial, including whether the child has a record of previous diversion, be diverted if

- the child acknowledges responsibility for the offence
- the child has not been unduly influenced to acknowledge responsibility
- a prima facie case exists against the child (in other words, there is sufficient evidence to prosecute the child)
- the child and his or her parent or guardian consents to diversion
- the prosecutor or Director of Public Prosecutions indicates that the child may be diverted in accordance with relevant provisions of the CJA.

In addition, a prosecutor may consider the views of the victim or any person who has a direct interest in the affairs of the victim in the decision to divert the case. The prosecutor may also consult with the police official responsible for the investigation of the matter about the prospects of diversion. Wh dealing with more serious criminal cases, th Director of Public Prosecutions may decide divert a matter if exceptional circumstanc exist and after the victim, or a represent tive of the victim, states that the case may diverted. Exceptional circumstances includ the youthfulness and low development of th child, the presence of hardship or compelli and mitigating circumstances, undue influenc exerted on the child, the preference Of the vic tim for diversion, the fragility and/or unwil ingness of witnesses for the prosecution, an when to proceed would be potentially dama ing to a child witness/victim. The victim al has a say in the content of the diversion optio and conditions relating to compensation or th rendering of a specific benefit or service (CJ s 51).

11.2.5 Diversion options

Section 53 of the CJA stipulates variou options for diversion. Before describing thes the CJA provides the following definitions o the orders applicable to diversion:

- A compulsory school attendance order requires a child to attend school every day for a specified period of time, which musV be monitored by a specified person.
- A family time order requires a child to, spend a specified number of hours with his(or her family.
- A good behaviour order requires a child to abide by an agreement made between the child and his or her family to comply with certain standards of behaviour.
- A peer association order requires a child to associate with persons or peers who can contribute to the child's positive behaviour or to refrain from associating with certain persons or peers.

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- A reporting order requires a child to report to a specified person at a time or times specified in the order so as to enable that person to monitor the child's behaviour.

- A supervision and guidance order places a child under the charge of a mentor or peer in order to monitor and guide the child's behaviour.

The diversion options are set out in two levels. Level One applies to the offences referred to in Schedule 1 of the CJA, while Level Two includes all other offences indicated in sched'ales 2 and 3. Level One diversion options include the following (CJA s 53(3)):

- An oral or written apology to the persons affected by the offence.
- A formal caution, with or without conditions.
- Placement under an order, for example supervision, family time or good behaviour order, or an order prohibiting the child from visiting a specified place.
- Referral to counselling or therapy, or compulsory attendance of a vocational, educational or therapeutic intervention.
- Symbolic restitution to a specified person, community or welfare organisation.
- Returning or restoring a specified object to the victim or provision of some service to the victim.
- Community service under the supervision of an organisation or a specified person.
- Compensation to a victim, group of persons or welfare organisation where the child or his or her family is able to afford this.
- Where there is no identifiable victim to whom restitution or compensation can be made, provision of some service or payment Of compensation to a community or welfare organisation.

In terms of the duration of the diversion options that fall under Level One, an order may not exceed 12 months when the child is under the age of 14 years. For those older than 14, an order may not exceed 24 months in duration. Nevertheless, an order exceeding these time periods may be given, in which case the reasons for exceeding the time period must be entered into the case record (CJA s 53(5)).

Level Two diversion options include those of Level One with the addition that the child can be ordered to attend vocational, educational or therapeutic intervention, which may include a period or periods of temporary residence at a specified centre. The child can also be referred for intensive therapy to treat or manage problems that have been identified as a cause of the child coming into conflict with the law. This order may include a period of temporary residence. Lastly, the child can be placed under the supervision of a probation officer on conditions which may include the restriction of the child's movement to the magisterial district in which the child usually resides unless prior written approval to move elsewhere is obtained from the probation officer (CJA s 53(4)). In terms of the duration of the Level Two diversion options, an order may not exceed 24 months if the child is under the age of 14 years. For children older than 14, the order may not exceed 48 months in duration. As with Level One options, an order exceeding these time periods may be given, in which case the reasons for exceeding the time period must be entered into the record of the proceedings (CJA s 53(6)).

In addition to the diversion options described above, a magistrate may order a child to appear at a family group conference or a victim—offender mediation on a specified date and at a specified time and place, or order any other restorative justice option in appropriate cases in the place of any of the diversion options described above, or in combination with any of the diversion options (CJA s 53(7)). Any decision about the appropriateness of a diversion option must take into account the child's cultural, religious and linguistic background, as well as his or her education level, cognitive ability and domestic and environmental circumstances. The recommended option must be in proportion to the circumstances of the child, the nature of the offence and the interests of society. It is equally important to keep the child's age and developmental needs in mind when selecting a diversion option (CJA s 54(1)). Decisions about the most appropriate diversion option for each case should inform the development of

individual diversion plans, keeping in mind the objectives of diversion and its minimum standards.

The minimum standards for diversion state that

- may not exclude certain children due to a lack of resources, financial or otherwise, and also bearing in mind the circumstances of children in rural areas.
- must be sensitive to the circumstances of the victim, and must involve the child's parents or guardians.

interventions (CJA s 55)

- may not be exploitative, harmful or hazardous to the child's physical or mental health, and may not interfere with the child's schooling.
- must be appropriate to the age and maturity of the child.
- must, where reasonably possible, impart useful skills, include a restorative element, and promote the child's understanding of the impact of the offence.
- must be accessible to the child, structured in a way that is suitable to be used in a variety of circumstances and for a variety of

offences, and measurable in terms of effectiveness.

Schedules of offences as categorised by the Child Justice Act

The CA categorises offences in three schedules according to their seriousness. Schedule 1 includes less serious offences, Schedule 2 deals with more serious crimes and Schedule 3 sets out serious offences. In the case of a child being charged with more than one offence at the same time, the most serious offence guides the manner in which the child must be dealt with (CJA s 6).

Schedule I offences include the following:

- Theft or possession ofstolen property to the amount of R2 500

Fraud, extortion, forgery or vandalism to property to the amount of RI 500

Common assault, perjury, contempt of court, blasphemy, compounding (when someone agrees not to report a criminal incident or not to prosecute an offender in exchange for financial return), crimen injuria, defamation, trespassing or public indecency

Engaging the sexual services of persons 18 years or older, bestiality, consensual sexual penetration and consensual sexual violation

The illicit possession of drugs to the amount of R500

Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period of no longer than three months or a fine for that period

Schedule 2 offences include the following:

Theft or possession of stolen property to the amount of R2 500

Fraud, extortion or forgery where the amount exceeds RI 500

- Robbery other than robbery with aggravating circumstances
- Malicious damageto property (vandalism) where the amount involved exceeds RI 500
- Assault with the infliction of grievous bodily harm, public violence, culpable homicide or arson
- Housebreaking with the intent to commit an offence
- Administering poisonous or noxious substance
- Crimen expositionis infantis (abandoning a child with disregard for its survival)
- Abduction, sexual assault, compelled sexual assault or compelled self-sexual assault
- where grievous bodily harm has not been inflicted

Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation, or the exposure or display of child pornography or pornography

Incest and sexual acts with a corpse or violating a dead body or grave

The exposure or display óf genital organs, anus or female breasts to any person ("flashing")

Defeating or obstructing the course ofjustice, any offence referred to in the Intimidation Act, offences related to criminal gang activities, and any contravention of the Animal Protection Act

- The illicit possession of drugs with a value between R500 and R5 000

Any other statutory offence where the maximum penalty is imprisonment for a period exceeding three months but less than five years, or a fine for that period

Schedule 3 offences include the following:

Treason, sedition, murder, kidnapping or extortion with aggravating circumstances

Robbery where there are aggravating circumstances or which involve the taking.of a motor vehicle Rape or compelled rape, sexual assault, compelled sexual assault or compelled self-sexual assault involving grievous bodily harm

Sexual exploitation Of children, sexual grooming of children, and using children for child pornography or benefiting from it

Exposure or display of child pornography or pornography to children, if that exposure or display is intended to facilitate the sexual exploitation or sexual grooming of a child or the use of a child for purposes of child pornography or in order to benefit in any manner from child pornography Compelling or causing children to witness sexual offences, sexual acts or self-masturbation

Sexual exploitation, grooming, exposure or display of pornography to persons who are mentally disabled, or using persons who are mentally disabled for pornographic purposes Trafficking or involvement in trafficking of persons for sexual purposes

Any offence under the Protection of Constitutional Democracy against Terrorist and Related Activities Act, as well as crimes of genocide, crimes against humanity and war crimes Any offence relating to racketeering or the proceeds of unlawful activities

Any offence or possession of items described in laws relating to the dealing in or smuggling of ammunition, firearms, explosives or armament

Any offence referred to in the Drugs and Drug Trafficking Act or illicit possession of drugs where the value exceeds R5 000

Any offence of a serious nature if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise, acting in the execution or furtherance of a common purpose or conspiracy

Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding five years or a fine for that period

11.2.6 Compliance with and legal consequences of diversion

Once a diversion order has been made, the court must identify a probation officer or Other suitable person to monitor the child's compli-

ance with it. If the child has successfully complied with the order, the probation officer must submit a report to the relevant prosecutor. If the child does not honour the order, the probation officer must inform the court (CJA s 57), which will then issue a warrant for the arrest of

the child. Upon appearance before the court, it must be determined why the child failed to comply with the order, and whether this is due to the child's fault. If non-compliance is not the child's fault, the court may continue with the same diversion option (with or without altered conditions), add or apply any other diversion option, or make an appropriate order which will assist the child and his or her family to comply with the initial order. If non-compliance with the diversion order is the child's fault, the court may proceed with prosecuting the criminal case, or it can decide on a more stringent diversion option than the one originally decided on (CJA s 58).

Diversion has certain legal consequences for the case and the child involved. Firstly, successful completion of the diversion order results in the withdrawal of the criminal charge against the child. Secondly, the diversion order made in terms of the CJA does not constitute a previous conviction as referred to in the Criminal Procedure Act. Thirdly, a private prosecution may not be instituted against a child who has successfully completed diverSion intervention (CJA s 59). Despite these positive consequences, a record is maintained of all children who have been diverted. The record includes information on the personal details of each child, details about the offence for which the child was diverted, the diversion option used and particulars of the child's compliance therewith (CJA s 60). As mentioned earlier, a court may take previous diversion into account when a child commits further crimes (CJA s 52). Access to the register is limited to probation officers, police officials, prosecutors and magistrates.

11.2.7 Numbers and trends of diversion referrals

A total of 13 969 children were diverted in the period 2014/15, of which 602 (4,396) were children between the ages of 10 and 13 years and the remaining 13 367 (95, 7%) were between the ages Of 14 and 17 years of age (NPA 2015: 40). Diversion at the preliminary inquiry phase carries the bulk of all diverted cases, followed by section 41 and section 9 referrals. These have decreased significantly, while the overall number Of diversions decreased by 8%.

The decrease in the number of diverted cases in the recent past is given prominence when considering figures in South Africa since 2007/2008. In that period, 18 817 cases involving child offenders were diverted compared to 5 528 in 2015/16. The decrease amounts to 340% or two-thirds of the total number of diversions in 2007/08. This drastic drop in the use of diversion for youthful offenders is worrisome. The actual trend can be better fathomed when the differences are compared in bar diagrams (see Figure 11.1).

The substantial decrease in the number of diversions appears to coincide with the implementation of the CJA in 2010. In this regard, Badenhorst (2012: 7) noted that frontline police officers may not have been sufficiently trained on the CJA, resulting in police officers deciding not to arrest children suspected of criminal behaviour. The matter would not have been problematic if the decrease in arrest were matched by a decrease in written notices issued by police officers, but this does not seem to be the case. In addition, the decrease in diversion has an impact on the functioning

Table 11.1 Trends in the nature and number of child offender diversions, 2012/13-2015/16

	2012/13	2013/14	2014/15	2015/16	Progress
Section 9 referrals	541	394	335	Not recorded	
Section 41 diversions	2 066	1 796	1 539	1 386	490/0
Preliminary inquiry diversions	3 797	4 051	3 866	3 945	
Schedule 3 diversions	201	109	142	197	-2%
Total	6 005	6 352	5 882	5 528	

Source: NPA (2016: 35)

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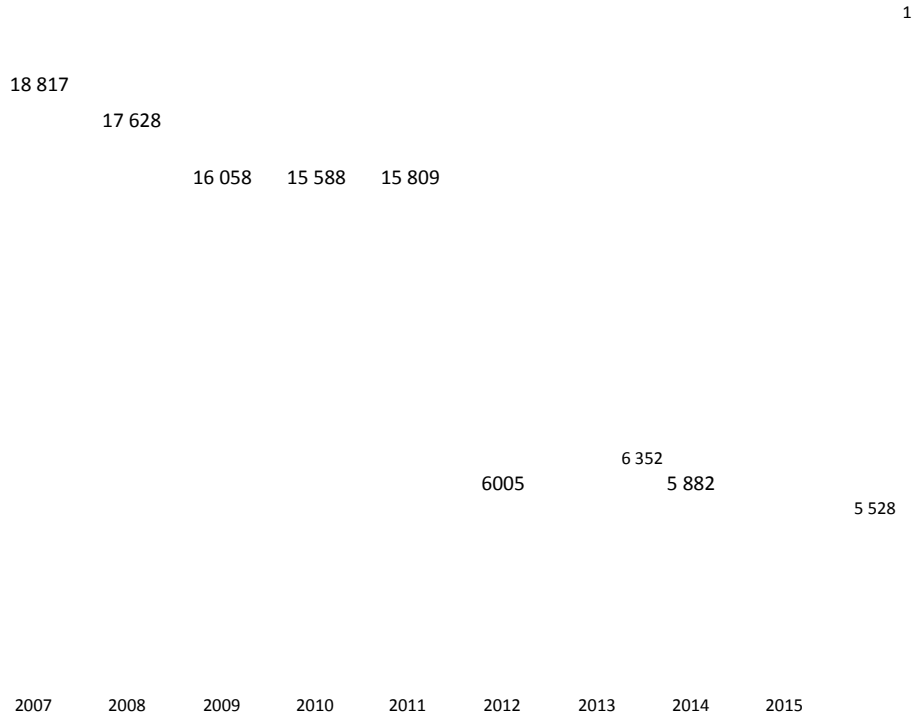


Figure 11.1 Trends in the number of child diversions, 2007/08—2015/16

Source: NPA (2009; 2011; 2016)

of diversion service providers. For example, NICRO, which is the largest provider of diversion services in South Africa, diverted 17 786 children in 2007/08 compared to 2 014 in 2014/15 and 4325 in 2015/16 (NICRO 2008: 7; 2016: 5).

11.3 TYPES OF DIVERSION PROGRAMME

11.3.1 Life skills training

Many South African children are subjected to an inferior education system. In addition, traditional value systems are being challenged, while troubled homes do not always equip children with much-needed life skills (Ebersöhn & Eloff 2003: 39). Alas, it is accepted that children commonly require teaching in cognitive, affective and behaviour skills as primary competencies for adulthood (Louw & Louw 2007: 281). Among others, life skills are required for successful independent living, the maintenance of friendships, success at school, and the prevention Of prolonged interpersonal problems (Algozzine, Serna & Patton 2001: 231).

Life skills are viewed as those acquired attributes that can enhance the quality of life and prevent problem behaviour (Chance 2003: 235). Life skills training focuses on the ability to function efficiently in society, reacting to life's stressors amicably, successfully dealing with provocative situations and conflict, and communicating meaningfully with others (Ebersöhn & Eloff 2003: 40; Muthukrishna 2002: 82). Life skills training promotes social, cognitive, emotional and behavioural competencies that are critical in reducing high-risk behaviours (Kibret 2016: 1). Life skills training as an intervention makes the following assumptions about the criminal behaviour of children (Steyn 2005: 283):

- Adolescence entails a shift in skills needed to understand the consequences of behaviour.

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- Crime results from an inadequate ability to react appropriately to particular situations.
- Specific skills are required to maintain direction and focus in life.
- The acquisition of relevant life skills strengthens responsibility and accountability.
- Collective interaction creates opportunities to learn from others.

Based on these assumptions, life skills training as a diversion mechanism makes use of social cognitive theory to bring about change in child offenders. Social cognitive theory explains human action in terms of the triadic reciprocity between the environment, behaviour and cognition, all of which function as interacting determinants of one another (Bandura 1986: 18—21). From a broad perspective, social cognitive theory prescribes the following capabilities for behaviour (Bandura 2001: 6—10):

- Symbolising capability. Past experiences and symbolising abilities allow an individual to test possible solutions symbolically and estimate the outcomes before taking action.
- Forethought capability. By using future time perspectives, the likely consequences of prospective behaviour can be anticipated.
- Vicarious capability. Through observing the behaviour of others and the consequences thereof, people can learn behaviour without engaging in those actions themselves.
- Self-regulatory capability. Personal standards dictate discrepancies between an action and the standards against which it is evaluated.
- Self-reflective capability. Reflective self-consciousness allows people to analyse experiences and reflect on their own thought processes.

In view of social cognitive theory dictating that human behaviour is largely learnt, it logically flows that learning principles are to be employed in the acquisition of life skills. In fact, the very nature of life skills training implies that they be acquired in a practical manner and, more specifically, through experiential learning. This mode of learning states that appropriate behaviour must be experienced in the context of an exercise, followed by reflection on reactions and observations, and a period to internalise the learnt principles (Ebersöhn & Eloff 2003: 41, 67). In essence, therefore, the practical usefulness of life skills has to be experienced in order to understand and use them effectively. This necessitates a facilitator and the active involvement of participants to practise, test, accept and apply newly learnt behaviour.

A broad framework for acquiring life skills entails a declarative phase during which details about a skill are provided, followed by a procedural phase in which knowledge is embodied in performing the skill. The latter consists of association, rehearsal and feedback, ultimately to promote insight into the value of the skill. The final stage amounts to generalisation where the new behaviour becomes spontaneous, and application of the skill takes place across different situations (Algozzine et al. 2001: 247). Structured activities promote group interaction and sharing, and vicarious self- and social reinforcement are common. Active participation, especially through role play and group discussion, facilitates insight into the behaviour generated during group sessions. At the same time, it serves as platform for experimenting, analysing and identifying effective behavioural responses. Participants also have an opportunity to learn from the mistakes of others (Bandura 1986: 271).

Specific methods employed in life skills training include role play; discussions guided by a facilitator; coaching where participants demonstrate and practise the skill; the use of print material and homework; and case studies or critical events where alternatives and outcomes for behaviour are identified and analysed (cf Ebersöhn & Eloff 2003). Methods to strengthen the learning of life skills include making use of peers throughout the process and having them monitor the use of skills; using skills in a variety of circumstances; and establishing self-monitoring procedures to regulate the use of skills (Algozzine et al. 2001: 251).

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In 1993, NICRO developed the life skillsbased programme "Mapping the Future", which was revised in 2000. The programme sets out to achieve the following (National Institute for Crime Prevention and Reintegration of Offenders 2000: 6—7):

- Transfer skills to children that will assist them to understand themselves, relate to others and take responsibility for their deeds.
- Provide a platform for children to share their views and feelings in a non-threatening way.
- Strengthen the ability of children to cope with the challenges in their environment.

- Facilitate communication between children and their parents.
- Promote self-respect and respect for others within a human rights framework.
- Encourage and advance parental responsibility.

The programme is interactive and reality based regarding the challenges facing children today. The manual provides numerous examples and exercises of real events to stimulate learning. It is up to programme implementers to decide which activities and themes to include (NICRO 2000: 8). The programme content, structured over eight sessions, is summarised below:

- Who am I? The first session sets out to develop a healthy self-concept and an understanding of how responsibility relates to choices and actions. Emphasis is placed on the impact of having a criminal record. The session also aims to promote parent— child interaction through role play.
- I am The session centres on self-belief and the inherent ability of people to change. Attention is given to stereotyping and how internalised negative labels affect behaviour. The session builds on the first with continuous focus on strengthening the self-concept of participants.
- I respect you and I can say my say The session aims to develop conflict resolution and assertiveness skills, as well as an understanding that conflict is normal and can be managed in appropriate ways. Passive, assertive and aggressive behaviour responses are explained, and participants practise effective communication.
- I have choices The session aims to enhance responsible decision making and instil an understanding of the relationship between choices and achieving personal goals. Central to this stands decisions and offending behaviour. Future planning focuses on longer-term personal and career aspirations, and group discussions appraise these in terms of achievability.
- I have rights and responsibilities The session sets out to inform participants about their rights and how these balance with certain responsibilities. Respecting the rights of others is addressed, the dishonouring of which means forfeiting some personal rights.
- I am part of The session deals with the need for laws and norms in society and why it is necessary to adhere to them. An understanding of the importance of legislation is promoted in addition to awareness about different sanctions for offending behaviour.
- I respect The session facilitates an understanding of socialisation, particularly in terms of gender and how self-perception and self-worth are influenced by stereotyping and the media. Participants are to challenge their own misconceptions, thereby creating awareness about the equality of all people.
- I commit In the final session, it is essential to place participants on a secure path for the future. They are requested to openly pledge achieving something concrete and specific in relation to the goals they have set. In promoting reconciliation and trust, participants ask their parents for forgiveness, and communicate about how they wish to relate to them in future.

11.3.2 Mentoring

Parents are generally viewed as the most important adults in the lives of children since they significantly impact on the beliefs, attitudes, behaviours and goals of their young (Beam, Chen & Greenberger 2002: 305). Several stressors have been indicated which distort or impede the ability of parents to meaningfully support and develop their children. These include unstable home environments situated in poor and marginalised communities, and those characterised by dysfunction, child neglect and deprivation, single and disrupted or inconsistent parenting, as well

as alcohol and drug abuse (Campbell 2005: 91; Gur & Miller 2004: 587; Hall 2007: 15; Larson 2006: 677; Steyn, Louw & Van Rensburg 2012: 124; Vanderven 2004: 95). Amid these challenging circumstances, children may not have at least one older, more experienced person who can provide guidance and stability. Section 530) (f) of the Act advocates for the use of mentoring as an intervention strategy. It states that a child may be placed "under the supervision and the guidance of a mentor or peer in order to monitor and guide the child's behaviour".

In current usage, mentoring implies a crossage, dyadic relationship between an experienced, caring adult and a disadvantaged or troubled younger person (Davies & Thurston 2005: 37; Steyn et al. 2012: 127). A troubled young person is paired with an adult with the aim of building a relationship that will nurture
the young person's development and wellbeing, and promote positive growth (DuBois, Portillo, Rhodes, Silverthorn & Valentine 2011: 58; Timpe & Lunkenhelmer 2015: 12). By conventional standards, the age difference between the mentor and mentee varies between eight and 15 years (Day 2006: 196). Mentoring relationships are based on acceptance and support in order for the mentor to provide attention, guidance and understanding. This serves to assist the young person in negotiating life's challenges and to foster his or her potential ((DuBois et al. 2011: 66; Abrams, Mizel, Nguyen & Shlonsky 2014: 406; Wesely, Dzoba, Miller & Rasche 2016: 200). Mentoring is considered an effective means of intervention for at-risk youth (DuBois et al. 2011: 80; Wesely et al. 2016: 211). Although mentoring relationships are generally not prescriptive, expert or overtly therapeutically driven (Dallos & Cornley-Ross 2007: 370), those involving at-risk populations are usually structured to organise, sustain and monitor matches (McPartland & Nettles 1991: 569).

In the context of child offending, mentoring as an intervention assumes the following (Steyn 2005:283-284):

- During their formative years, young people require guidance and support from older, more experienced persons.
- Adolescents who are at risk of criminal behaviour often grow up without a father figure or positive role model in their lives.
- The establishment of longer-term, trusting relationships can help at-risk adolescents to cope with challenges.
- Meaningful interaction between a mentor and an at-risk child stimulates a positive self-concept, which in turn promotes responsibility.

It is believed that mentoring relationships can build self-esteem and resilience, promote mental health, positively influence self-worth and beliefs about personal competence, and strengthen the ability to negotiate the challenges associated with adolescence (Abrams et al. 2014: 407). In addition, mentoring assumes that positive attributes created or strengthened by facilitated relationships can be generalised to other proximal bonds and life experiences (Dallos & Comley-Ross 2007: 381).

Mentoring as an intervention has its roots in developmental psychology (Phillip & Hendry 1996: 189). More specifically, it is founded on modelling, which believes that children learn behaviour by observing adults and peers. Skills and cognitive development thus take place by emulating the traits and abilities of the model perceived as important (Karcher 2005: 67). However, modelling does not entail mere behavioural mimicry, but conveys rules for generative and innovative behaviour (Bandura 1999: 25). It consists of four sub-functions (Bandura 1997: 89-90):

- Attention processes influence what is selectively Observed of the model and what information is taken from modelled events. These processes depend on the cognitive abilities, preconceptions and value preferences of the observer, while the prominence, attractiveness and functional value of modelled activities equally play a role.
- Cognitive representational processes, or retention, relate to transforming and restructuring information about modelled events for recollection in the form of rules and concepts. Retained behavioural concepts serve as generative guides for actions and variations thereof to fit different circumstances.
- In the behavioural production process, concepts are converted into adapted action. Behaviour is subsequently modified to correspond closely

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with retained concepts. In other words, the adequacy of behaviour is compared against the conceptual model with the aim of matching actions to that of retained concepts.

- Performance of observationally learnt action is maintained or strengthened through motivational processes in the form of direct rewarding incentives (as opposed to punitive effects), being motivated by the successes of others, and personal standards or worth of conduct.

The theoretical foundations of mentoring necessitate suitable structures and processes to facilitate and monitor effective modelling relationships. Agents involved in structured mentoring are adults, at-risk children, and the initiatives that establish and oversee matches (Wandersman, Clary, Forbush, Weinberger, Coyne et al. 2006: 782). Successful mentoring depends upon the interconnectedness of all three of these agents. Mentors require some form of training prior to their being matched with participating children. This is, in part, undertaken to identify opportunities for meaningful interaction, provide guidelines on how to optimise the mentoring experience and deal with conflict, and establish a knowledge base for mentoring a troubled child (Belshaw 2007: 2). Training may include themes on diversity, goal setting, problem solving, child abuse, alcohol and drug abuse, and domestic violence (Jucovy 2001: 11). Ongoing training and support feature to track progress and reinforce perseverance in the relationship. This could include forums where mentors share experiences and good practice in working with at-risk children (DuBois & Neville 1997: 233; Vanderven 2004: 97).

For structured mentoring to succeed, the likelihood of compatibility between the mentor and the child is imperative (DuBois et al. 2011: 62). Key variables considered in this matching process include demographic characteristics, the time volunteers have available, intervention needs, preferences, interests and personality (DuBois et al. 2011: 77). Mentoring relationships must be flexible yet tailored to the specific intervention needs of the child (Gray & Seddon 2005: 70; Karcher 2005: 66). Goals and objectives are generally structured around the purpose of the match and the anticipated developmental outcomes, for example school attendance, academic achievement, positive peer relationships or pro-social behaviour (Wandersman et al. 2006: 782).

Mentoring requires time to mature and unfold into caring relationships (Steyn 2005: 236), therefore the timespan of relationships, as well as the frequency and intensity of contacts, are important moderators of mentoring effects. Also, benefits are likely to emerge over longer periods of time (DuBois et al. 2011: 65). Programmes thus tend to indicate the duration of the relationship, as well as the number and length of mentoring contacts (Karcher, Kuperminc, Portwood, Sipe & Taylor 2006: 716). It is generally accepted that mentoring relationships with at-risk children should last for between six and 12 months (Open Society Foundation 2002: 18).

Activities with enjoyable and developmental characteristics are needed for mentors to establish themselves as significant adults in the lives of troubled children (DuBois et al. 2002b: 54). Although the type of activities matches engage in could be stipulated, mentors must be alert to opportunities that can stimulate the relationship and interests of the child (Gilligan 1999: 192). These include cultural, entertainment and sporting activities. Some mentoring organisations provide programme-sponsored events, such as culture evenings and attending sports matches (Vanderven 2004: 97). Regardless of the nature of activities, they must offer conditions for communication, motivation, learning and asset building (Larson 2006: 684—686). Continued support and supervision of relationships are essential (Thompson & Kelly-Vance 2001: 238).

As both potential contributors to and inhibitors of the offending behaviour of children, parents must, when available, be involved in the mentoring experience. On the one hand, concerns have to be clarified about the safety of their children and matters related to parental authority (Morley & Rossman 1997: 50). On the other hand, their buy-in and commitment are likely to reinforce the positive influence of mentors, as well as to counteract feelings of being supplanted by alternative adult support for their children (Rhodes, Grossman & Resch 2000: 1669). Some mentoring programmes also target other family members in addressing dysfunctional relationships and domestic challenges perceived to generate antisocial and criminal behaviour (Belshaw 2007: 5).

Although some matches terminate prematurely due to incompatibility or eventual opting out by either participant, most mentoring relationships come to an end at some time (Jucovy 2001: 14). If not carefully planned, such separation could cause severe distress on the part of the child and may

even negate the positive gains brought about by the inter-

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vention. Mechanisms to facilitate the termination process could include a farewell ceremony or, at least, arranging intermittent contact (Vanderven 2004: 102). Nevertheless, it is posSible that mentoring might be a worthwhile diversion strategy for some children, under specific circumstances and with particular needs, hence the need for proper assessment.

11.3.3 Family group conferencing

Section 61 of the CJA defines family group conferencing (FGC) as an informal procedure which brings together the alleged child offender, the victim, their families and other relevant persons in order to develop a plan on how the child will redress the effects of the offence. FGC has its roots in restorative justice. Restorative justice differs substantially from conventional (specifically retributive) views of justice where a case is roughly turned into a contest between prosecutors (on behalf of the state) and lawyers (on behalf of the accused). Whether an accused is found guilty or not implies that there is a winner and a loser (Pule 2002: 9). Furthermore, victims are largely ignored in retributive justice since their interests are represented by either the state or legal practitioners (Mousourakis 2004: 7; Shearar 2005: 9), yet crime of any kind can have an immense impact on victims. Not only does victimisation often imply financial costs, but it leaves the victim with many unanswered questions (Zehr 1990: 26). Also, victims generally have little direct say in the sentencing of offenders (Muntingh & Monaheng 1998: 14). Restorative programmes aim to actively involve the victim(s) Of the Offence to meaningfully participate in diversion procedures (Badenhorst 2013: 315; Hargovan 2013: 25).

When an adolescent is prosecuted for a criminal act, the power of the family to intervene is shifted to the state. Some parents want the state to take over this function through formal procedures, because the disciplinary measures they used were no longer effective. As such, mechanisms are needed for families to be re-empowered to play their rightful role in the upbringing of children (Morris 2002: 598). Furthermore, crimes are often committed against people with whom the child interacts regularly (Kuloane 2002: 7). In ubuntu philosophy, every child is a child of the nation, therefore problem behaviour ought to be handled in a kgotla (homely) fashion before the conflict can be considered irresolvable (Pule 2002: 9). In this framework, the broader community also has stake in the raising of children, which includes dealing with their problem behaviour (Badenhorst & Conradie 2004: 121; Mousourakis 2004: 13).

FGC entails creating a platform for child offenders and those affected by the criminal act to discuss the events surrounding the crime and its impact in order to develop a mutually beneficial strategy to remedy it (CJA 2008 s 1(1)(a); Department of Justice and Constitutional Development 2011: 9). The parties then come to an agreement on the Steps needed to remedy the offence (Hipple, Gruenewald & McGarrell 2014: 1132; steyn 2012:79). FGC provides for a range of potential outcomes, including an apology, community service, restitution, compensation or attendance Of rehabilitation programmes (Baffour 2006: 557; Morris 2002: 599). The approach has conventionally been used with first-time non-violent offenders, such as property crime and minor assault (Bradshaw, Roseborough & Umbreit 2006: 88; Hudson 2002: 621). However, it has also been employed to intervene in some cases of adult assault and domestic violence (Dissel 2000: 2; Hargovan 2009: 75). The basic assumptions of FGC are the following (Steyn 2005: 283—284):

- Crime does not only affect the victim, but also the family and the community.
- Crime is effectively managed with the active involvement of all stakeholders.
- Responsibility and accountability are achieved by making amends for the wrongdoing, either symbolically or directly to the victim and/or the community.
- The relationships that were damaged by the crime, as well as the resulting conflict, can only be harmonised through dialogue and negotiation.

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The underpinnings of FGC draw from belonging, systems and humanistic schools of thought. Attachment to others and a sense of belonging provides the structure through which personal relationships are carried out. Children are born into a group (i.e. the family), which is primarily tasked to care for, protect and socialise them (Toseland & Rivas 2009: 3;
Zastrow 2009: 244). In light of this important task, poor communication and problems within the family are considered important catalysts in the behavioural problems of children (Farley, Smith & Boyle 2003: 80). In addition to familial bonds, children and adOlescents constantly interact with multiple social systems such as peers, schools and the communities they grow up in (Gray 2010: 87). Groups do not exist in a vacuum but make up the parts of a broader system that legitimises and influences their purpose (Toseland & Rivas 2009: 12). With this in mind, the ecological perspective considers the meaningful structures within a person's life and how he or she functions within that environment (Bronfenbrenner 1977: 513; 1994: 37). It explains interrelationships within the system, which holds specific value for the assessment of problems and the level or subsystem which requires intervention (Gray 2010: 82, 86).

From a therapeutic framework, the strengths of and existing capabilities within the system play a pivotal role in promoting an individual's effective functioning. With this in mind, it is evident that theorising about FGC represents a shift from individual theories to those of collective existence. Gray (2010: 81) notes that this has important implications for contemporary South Africa given its diverse population and traditional notions of collectiveness. While it can be argued that many traditional norms have and are being eroded by Western influences, a focal point in presentday South Africa nevertheless revolves around mutual understanding and respect for fellow human beings, regardless of ethnic origin and personal preferences. From a humanistic approach, the values underlying the very nature of human existence, conflict and the search for healing include the following (Umbreit 1997: 204-205):

- Beliefs in the connectedness of a common humanity and the desire of most people to live peacefully and to grow through life experiences
- The capacity of all people to draw upon inner reserves to overcome adversity and to assist others in similar circumstances
- The inherent dignity and self-determination that arise from embracing conflict through dialogue and mutual aid

In light of the assumptions and theories underpinning FGC, it is clear that mechanisms are needed to establish meaningful dialogue among the parties affected by the offence. Group work as an intervention method meets this requirement. Group work' is defined as goal-directed activities with two or more people aimed at achieving socio-emotional goals and accomplishing tasks (Toseland & Rivas 2009: 12). Activities take place within a SYStem of service delivery, and set out to reduce or eliminate blockages to socially desirable behaviour. In group work, the individual remains the focus of concern with the group, serving as a vehicle for growth and change (Farley et al. 2003: 83, 85). Group work generally pursues the goals of improving social functioning, promotes feelings of belonging with others, stimulates positive personality traits, and assists in solving problems (Strydom & Strydom 2010: 126).

In structured, time-limited groups such as FGC, problem-solving approaches have the advantage of being specific, concrete and replicable. They have the potential of addressing immediate challenges while also strengthening the interpersonal abilities of participants (Rose 1998: 27—28). Closed-ended group work implies that members are identified prior to the commencement of the group (Zastrow 2009: Il). With FCC, stakeholders who attend the meeting include the offender and the victim, those who support the two parties (mostly family members), and community members. A police or probation officer could represent the interests of the community at the FGC. The FGC process has four distinct phases, which will be discussed next.

11.3.3.1 Referral and reception

If they meet the criteria for diversion, child offenders are referred to a provider of FGC services by the court. Service providers liaise with the relevant probation officer or social

worker regarding the assessment of the child, and to ensure that victims will voluntarily participate in the programme. The referral itself serves to start orienting the child about what can be expected of the conferencing process (Steyn 20102 110). Referral documentation is scrutinised as it provides background information about the crime and the child offender.

11.3.3.2 preparation

The careful preparation of participants is an essential component of effective group work (Strydom & Strydom 2010: 136). As a first step, the facilitator becomes acquainted with the members through a series of individual inter views. These meetings also serve to formulate individual expectations and the overall goal that the FGC needs to achieve (Farley et al. 2003: 90, 93). Initial meetings may expose underlying problems which contributed to the child's criminal behaviour, such as domestic or substance abuse. Preparation of the victim and his or her family entails assessing the impact that the crime had on them. When dealing with participants from diverse backgrounds, preliminary interactions also provide an opportunity to identify possible challenges to effective cooperation. Sociocultural practices, in particular how people communicate and show respect, can have a profound impact on group processes and outcomes if they are misunderstood (Branken 1997: 4243; Strydom & Strydom 2010: 127).

11.3.3.3 The meeting

The meeting phase represents the interaction among FGC participants. Following introductions, a composite list of the expectations and goals drafted during the preparation phase is presented to and refined by the group (Zastrow 2009: 93). A safe place is created within which participants can express their feelings openly. The facilitator, who remains neutral throughout the meeting, structures the conference and maintains order during the proceedings. The facilitator must ensure that all participants are treated with respect and that they experience the conference as fair and equitable (Hipple et al. 2014: 1136). All parties take a turn in relating their views and experiences, in particular listening to the impact the offence had on others. All parties have to verbalise their emotions. The facilitator must manage strong emotions as the child is some times exposed to severe scolding. The offender has time to apologise to the victim and the families, while the victim has time to forgive. Usually the presence of legal representation in the conferencing phase is not permitted (Steyn 2010: 111).

Once all parties have expressed their views, they engage in a brainstorming session about the actions needed to remedy the offence. FGC is by no means prescriptive about the agreement since cases are treated individually. Participants are guided toward the best solution for the matter at hand (Strydom & Strydom 2010: 132—133). Flexibility and innovation in the decision-making process is imperative (Shearar 2005: 6). Outcomes can include reparation in various forms, for example financial compensation, community service or a service performed to the satisfaction of the victim. Still, it is acknowledged that children are not necessarily in a position to pay for the damage, hence the importance of having their parents involved in the FGC. The child offender can also be requested to, as part of the agreement, attend further developmental programmes such as life skills training. Some activities are symbolic in nature, where the child performs a service to the victim in the form of domestic tasks. Care is taken to ensure that any type of restitution entails a positive experience in the child as opposed to feelings of being punished. The providers of FGC services often have linkages With welfare and treatment agencies to which participants can be referred, for example in cases of drug dependency or family dysfunction.

The length of the actual conference depends on the nature of the offence and the level Of victimisation, but seldom takes less than two and a half hours. The conference is held in the community so as to be accessible to participants. It also promotes a sense of the intervention being based in the community. Facilitators make use Of venues at schools and churches for this purpose. In addition to the facilitator, about six people attend the conference, and some accommodate up to 15 participants. Care is taken not to allow one party to bring too many supporters to the meetings so that the conference and the opinions do not become one-sided (Steyn 2010: 111).

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11.3.3.4 Follow-up and aftercare

The plans developed during an FGC must be followed up. Effective monitoring is an essential component of FGC since the court expects the agreement to be fulfilled. Different components Of the plan that need monitoring can be

delegated to different members of the group. The length and scope of follow-up largely depend on the needs of participants and the nature of the agreement. Individual cases are tracked until the agreement is fully honoured. Providers of FGC services submit a final report regarding the outcomes of the diversion to the referral court (Steyn 2010: II I).

11.3.4 Outdoor programmes

Entry-level diversion programmes, such as the predominantly classroom-based life skills training, are sometimes ineffective with adolescents who present chronic problem behaviour. The self-destructive paths of children guilty of more serious and persistent criminal behaviour often have their roots in prolonged exposure to adverse social conditions and negative life experiences. Among these are the risk factors associated with disrupted family life, deprivation, violence and personal trauma (Bruyere 2002: 210; steyn & Louw 2012: 423; Zygmont 2014: iii). A sense of imbalance or disequilibrium between the self and others is thereby created. This is accompanied by defence and coping strategies that Involve lower levels of impulse control and risk measurement, decreased empathy toward others and reality, and indifference to consequences (Peterson & Stumbo 2000: 32). The typical profile of participants in outdoor diversion are high-risk youth older than 16 years of age, serious misbehaviour (such as drug use and aggression), poor performance at school or unemployed school dropouts, identified past trauma, dysfunctional home environments, gang affiliation, and more serious and repeated offending in the form of housebreaking, theft and assault with the intent to inflict serious bodily harm (Steyn & Louw 2012: 428).

Outdoor diversion inherently means removing participants from their everyday distractions. This creates opportunity for participants to focus on their lives (Bosch & Oswald 2010: 68). The child is placed in an unfamiliar environment where the usual leisure of home and factors predisposing offending and problem behaviour are absent (Bartholomew 2002: 2; Garst, Scheider & Baker 2001: 48). The situation causes a level of vulnerability and dissonance since previous strategies to cope with reality no longer work as effectively (Steyn 2005: 181). In addition, strategies are needed to increase the personal growth, self-worth and sense of accomplishment of participants in order to foster positive direction in life (Bosch & Oswald 2010: 64). Outdoor diversion aims to strengthen the self-image of participants through activities that challenge them at a physical and emotional level. Participants perceive programme activities as insoluble, risky and even dangerous, when in fact they are safe. Successful completion of these activities facilitates altered perceptions of the self, others and the environment in advancing positive psychological and behavioural change (Steyn 2010: 75). As such, outdoor diversion makes the following assumptions about the criminal behaviour of children (Steyn 2005: 283):

- Disconnectedness between the self, others and the environment hampers effective functioning.
- Past experiences have to be understood before strategising for the future can be undertaken.
- Unfamiliar settings and active participation in physical and emotional challenges stimulate learning.
- Responsibility is promoted by instilling pro-social values through collective understanding and learning.

Based on these assumptions, outdoor diverSion has its foundations in the theory of selfefficacy, which relates to the strength of a person's belief that a task that tests his or her abilities can be achieved successfully. Selfefficacy theory states the following (Bandura 1977: 191-201):

- Perseverance in activities that are subjectively perceived as daunting enhances self-efficacy and reduces defensive behaviour. Experiences of mastery which arise from effective performance therefore positively alter cognitive processes.
- Self-efficacy entails generality where the sense of mastery can be transferred to different situations outside the treatment focus. The more varied the circumstances in which threats are mastered, the greater the potential for generality.
- Effort is needed to sustain notions of selfefficacy amid contradictory information,

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existing barriers and absence of experience. Success with easy tasks provides little directive for increased self-efficacy, while mastery of a

major challenge could surpass numerous small setbacks.

The vehicle through which outdoor programming pursues self-efficacy in child offenders is experiential learning. This entails specific events that change the way participants feel, think or behave, and primarily involves reflection, integration and continuation (Priest 2001:34). Outdoor diversion entails three broad phases, namely preparation, the adventure and follow-up (Steyn 2010: 83—84):

1 1.3.4.1 Preparation phase

Prior to the adventure component, the identified individual needs of participants are compiled into common needs of the group, which in turn inform the specific aims and design of the intervention. The preparation phase sets the stage for participants to get to know each Other and to become familiar with the process of the intervention. Details of the programme are not disclosed beforehand in order to achieve the desired outcomes. As part of the preparation, participants engage in group cohesion and various teambuilding activities. Group rules are formulated, and participants commit themselves to the programme by signing them. Meetings with parents are also undertaken to inform them about the purpose of the intervention, as well as to obtain consent and indemnity for their children's partic-

ipation.

11.3.4.2 Adventure phase

Depending on resources, the adventure phase can encompass various outdoor activities such as rope and problem-solving courses, hiking, mountaineering, abseiling, navigation, horse riding and canoeing. Some programmes entail keeping a daily journal and spending long periods of time alone (Bosch & Oswald 2010: 69). Each activity has specific goals, and includes a combination of the following (Moolman 2002: 3):

- Strengthening the ability Of participants to persevere

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- Facilitating communication skills (in particular leadership and listening)
- Promoting adaptability, self-discipline, cooperation and responsibility • Drawing out the particular strengths of individual participants

The outdoor activities serve to propel and extend the physical abilities Of participants parallel to their emotional capacities (Ryklief 2002:6). In addition, conflict within the group is welcomed as it provides an opportunity to implement and strengthen problem-solving skills. The task of programme facilitators is to guide the emotional experience of participants by using metaphors to connect physical and mental experiences.

The adventure activities are followed — either immediately or around the campfire at night — by a debriefing process where participants have an opportunity to express what they have experienced, and how this relates to their daily lives and pressures. As such, the therapeutic sessions provide a platform to deal with their past experiences, and plan immediate and longer-term goals for their future. Future plans are developed with the input of fellow participants. In this regard, Bosch and Oswald (2010:68) note that a "growing sense of trust in one another and in the instructors helped participants to share •their stories These trusting relationships created a platform of understanding and empathy where they could share their experiences with others and grow within themselves".

Equally important are the communication and problem-solving lessons they learnt during the adventure activities, and how to transfer these to the home, school and community environments. At all times, facilitators strive to ensure an environment that is safe and conducive to empathy and the sharing of intimate life experiences and trauma. Matters that may require follow-up intervention are identified and taken up during the next phase of the outdoor programme.

1 1.3.4.3 Follow-up and aftercare

Following completion of the adventure phase, parents are provided with feedback, and the child's future plan is discussed. A victory function is held where participants can share their experiences and commit themselves to changing their behaviour. Certificates are provided as a token Of appreciation for their bravery. Follow-up takes the form of regular group meetings to assess progress, and individual sessions with participants and their parents. The psychological and emotional changes brought about by outdoor diversion provide an important basis from which further prosocial behaviour can be developed (Steyn & Louw 2012: 431)

11.4 EVIDENCE ABOUT THE

IMPACT OF DIVERSION

In the 1990s and early 2000s, a limited number of research studies were conducted in South Africa to determine the extent to which diversion programmes prevent re-offending. Life skills training as a diversion strategy has received most research attention. Studies found recidivism rates of 17, 1% (Kivedo & Botha 1999: 82); (Kok 1994: 32);21,6%
(Steyn 2008: 233); and (Morata 2002: 4). This suggests that between one in four and one in five children re-offend following participation in life skills-based diversion, When combined with other intervention mechanisms — such as community service, victim— offender mediation, mentoring and outdoor programmes — recidivism decreases to 3% (Schmidt 2003: 7); and and (Muntingh 2001: 33). Research indicates re-offences to amount predominantly to property crimes (Kok 1994: 31; Muntingh 2001: 46). Studies found information on crime and the law, good behaviour, relationships, peer pressure and decision making to be mostly retained by participants (Muntingh 2001: 31; Steyn 2008: 231). Life skills training may well buffer children against future problem and criminal behaviour. A meta-analysis of 69 after-school programmes demonstrated that participation in life skills training significantly strengthen participants' personal, social and academic life, specifically in relation to behavioural adjustment, school performance, self-perceptions, bonding to school and pro-social behaviour (Durlak, Weissberg & Pachan 2010: 299, 302).

Locally, no decisive evidence exists about the impact of mentoring with child offenders. In addition, research from abroad shows contradicting results. A six-month intensive mento-
ring programme with 34 youths deemed at risk of offending and mental illness found significant improvement in problem behaviour, compared with a group of 34 youths who remained on the waiting list (Keating, Tomishima, Foster & Alessandri 2002: 717). However, no significant effects were found over a one-year period regarding the emotional or behavioural adjustment of 67 mentored children compared with a matched comparison group (DuBois et al. 2002b: 46). It is worthwhile to reflect on the key results of three meta-analyses that set out determine the effect of mentoring on children. Firstly, a meta-analysis of 55 mentoring evaluations showed a modest or small benefit for average youth participating in mentoring (DuBois et al. 2002a: 187). The authors noted that this result stands in stark contrast to the widespread and commonly unquestioned support for mentoring as intervention with the problem behaviour of children. Secondly, a meta-analysis of 73 evaluations of mentoring programmes found improved outcomes across behavioural, social, emotional and academic spheres, although these outcomes appear modest with a 9% difference compared to non-mentored youth (DuBois et al. 2011: 57). Thirdly, a meta-analysis of 46 interventions aimed at offending and high-risk youth found significant improvements regarding aggresSive behaviour, drug use and academic performance, although all three outcomes were modest in effect sizes (Tolan, Henry, Schoeny, Lovegrove & Nichols 2013: 197). The results of the three meta-analyses suggest that, although mentoring has a positive influence on children with problem behaviour, the effects of such programmes appear marginal.

While the benefits of restorative justice procedures for adult offenders in South Africa have been explored (cf. Hargovan 2009; Steyn & Lombard 2013), evidence is lacking about the effectiveness of FGCs with child offenders. Investigations from other countries, especially the US, Australia and New Zealand, provide indications of the influence of restorative practice on offending behaviour. The greater part of investigations, including three metaanalyses, suggests that about a third (28—34%) of offenders re-offend following participation in restorative programmes; in experimental studies, the majority of offenders were less likely to re-offend when compared to control

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groups (Bergseth & Bouffard 2007: 441; Bonta, Jesseman, Rugge & Cormier 2006: 117; Bonta,
Wallace-Capretta, Rooney & McAnoy 2002: 320; Bradshaw et al. 2006: 87; Latimer, Dowden & Muise 2005: 137; Rodriguez 2007:355). Research in South Australia found that, among 365 youths who committed sex offences, those who participated in restorative conferencing were less likely to have engaged in criminal behaviour compared to children who were sent to court (Daly, Bouhours, Broadhurst & Loh 2013:241). In the US, Hipple et al. (2014: 1132) found that, in a sample of 215 youths, less re-offending featured when FGCs follow the principles Of restorative justice and procedural fairness. A randomised study of 225 children with a history of

property and violent offences revealed that 28% were re-arrested within 18 months following participation in the programme (Baffour 2006: 571). In general, victims and offenders express high levels of satisfaction with the mediation process (Bonta et al. 2006: 114; Bradshaw et al. 2006: 89; McCold & Wachtel 2000: 16; Mutter & Dugmore 2008: 262; Umbreit & Fercello 1997: 8; Wemmers & Cyr 2005: 540). However, restorative intervention appears to have little impact on the recidivist behaviour of higher-risk Offenders (Bonta et al. 2006: 117).

Despite numerous investigations, mixed results characterise the impact of outdoor intervention with at-risk groups, including child Offenders. Authors generally agree that this intervention strategy lacks a well-organised, indisputable and • widespread knowledge base about effectiveness (Bruyere 2002: 207; Garst et al. 2001: 42; Larson 2007: 326; Neill 2003: 317; Sprouse & Kiitzing 2005: 17). Locally, many anecdotal reports — particularly in the media (cf. Robertson 2003; Mockenhaupt 2016) — feature the benefits of outdoor programmes, yet descriptions are almost exclusively based on their esoteric properties of bringing about healing and personal growth. Investigations have thus far yielded contradicting results across key outcome variables of outdoor programming. Although some support has been generated for the intervention's objective of bringing about a healthy self-concept, selfesteem and resilience among at-risk adolescents (Bloemhoff 2006: 148; Bosch & Oswald 2010: 72; Cross 2002: 253; Garst et al. 2001: 48), other studies recorded no such

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impacts (Gecevis 2004: 2087; Kaly & Heesacker 2003: 102; Larson 2007:326). Evidence on recidivism among child offenders shows a similar trend. A meta-analysis of 28 outdoor programmes found a moderate recidivism rate of 29% as opposed to 37% for comparison groups (Wilson & Lipsey 2000: 11). Another metaanalysis of 197 outdoor programmes found better outcomes for adult participants, possibly since adults voluntarily enrol for outdoor programmes while minors are more likely to be referred to such interventions (Bowen & Neill 2013:40). Similar to other types of interventions, this meta-analysis found significant shortterm and overall moderate treatment influence on the psychological and/or behavioural functioning of participants (Bowen & Neill 2013:41).

There are numerous studies from abroad commenting on the effectiveness of diversion programmes, regardless of the type of diversion intervention. For the purposes of this chapter, two meta-analyses are noteworthy regarding broader influences of diversion and diversion programming. In their meta-analysis of 39 programmes aimed at young offenders, De Vries, Hoeve, Assink, Stams and Asscher (2015: 108) found that effective interventions are multimodal in nature, behaviour oriented and involve the child's family. Greater effects are also achieved by less intensive programmes, which underscore labelling theories that state that excessive intervention may well propel a child to engage in further and more serious criminal behaviour. The second meta-analysis of the effectiveness of diversion programmes was conducted by Wilson and Hoge (2013). The study included evidence about the outcomes of 73 diversion programmes based on restorative justice, community service, restitution, education and treatment modalities. Key finding are the following (Wilson & Hoge 2013: 507, 509):

- Greater effectiveness is achieved with lowrisk youth who are diverted before formal charges are laid compared to programmes geared towards low-risk youth who had been formally charged.
- No differences prevailed in the effectiveness of diversion programmes regarding male and female offenders, or age.
- Diversion programmes with a strong treatment component were more effective in preventing recidivism with medium- to highrisk youth compared to programmes without any form of treatment.
- Programmes with a treatment component built on cognitive-behavioural therapy or those tailored to the learning style of offenders were more effective than those without such therapeutic components.

These meta-analyses demonstrate the value of targeting diversion interventions according to the needs, risk and responsivity principles. Youths who present as lower risk (and are potentially accused of minor crime) appear more amenable to non-formal diversion (e.g. cautioning), while interventions with more active intervention elements should be reserved for medium- and higher-risk offenders. Furthermore, it is clear from the review of evidence that the impact of diversion in South Africa needs further investigation. Research endeavours should not only determine whether outdoor intervention works, but should investigate under which circumstances and for which child offender profile the strategy works best.

11.5 CHALLENGES IN MEETING THE AIMS OF DIVERSION

Diversion has positive outcomes for children, society and the criminal justice system. As with any programme, however, various factors pose a threat to the effective implementation and rendering of diversion services. These factors include challenges associated with the characteristics of diverted children, their parents, victims, the community and the diversion system itself. The summary in the following sections highlights some of the main challenges facing diversion in South Africa.

11.5.1 Participants

Some diversion strategies require participants to have certain cognitive abilities. For example, some of the activities of life skills training involve reading and writing. It might, therefore, be unrealistic to expect younger participants to express their emotions and thoughts in writing since they may not yet have mastered the ability to think in an abstract way (Steyn 2012: 80). The same can be said about outdoor diversion as some children may struggle to extract and understand the metaphors associated with wilderness activities. Moreover, it might be difficult to translate those metaphors to real-life situations. Young participants also struggle to pay constant attention to lengthy and overly instructive and classroom-based activities. In addition, addressing negative peer influence could prove challenging when diversion participants are reluctant to end those relationships.

11.5.2 Parents

Parents play an important supporting role in achieving effective diversion outcomes since their absence in programming may lessen the potential impact of diversion messages. Some parents are contributors to the criminal behaviour of their children, and if interventions do not meaningfully include them, the child's problem behaviour may well persist (Steyn 2012: 80). Moreover, some parents proclaim their children's innocence despite the diversion order, which negatively influences the attitude of their children towards the diversion programme. In a similar vein, if parents are not actively involved in diversion, they may fail to provide the supportive environment in which the child can practise good behaviour. This is especially the case with outdoor diversion since parents are completely absent during the adventure phase and they may not necessarily appreciate or understand the way in which the programme functions. Some parents may also absolve their involvement in diversion since the child has been referred to a programme by a court and they therefore do not see the need to participate in the process.

11.5.3 Victims

As the CJA indicates, restorative justice is an important pillar of diversion hence it is expected that the victims of crime be actively involved in the diversion process. However, not all interventions create the necessary space for child offenders and their victims to meet and reconcile. For example, victims are virtually absent in the implementation of out

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door diversion, and participants in life skills training are often requested only to write a letter of apology to their victims, which may or may not be sent to the victim (Steyn 2012: 81). FGCs can be considered as the strongest diversion strategy that inculcates meaningful victim participation. On the other hand, not all victims want to become involved in diversion, especially when a minor offence has been committed against someone unknown to the child offender. Also, it is sometimes difficult to identify a direct victim, as is the case With shoplifting from a large chain store.

11.5.4 The community

In light of the high burden of crime in South Africa, communities are sometimes reluctant to embrace the reintegration of offenders, even more so when a serious offence was committed (Steyn 2012: 81). Life skills training and outdoor interventions often lack a dedicated component to involve community members actively. Furthermore, performing community service at public service points (e.g. police stations and clinics) as part of a diversion order exposes the child to the scrutiny of the community, which might compromise the diversion aim of avoiding stigmatising the participant (Steyn 2012: 83),

11.5.5 Diversion strategies

Diversion programmes differ in how they approach intervening in the problem behaviour of children. Some strategies focus on the individual child (e.g. mentoring and FGC) and others accommodate a group of child offenders at a time (e.g. life skills training and outdoor programmes). While grouporiented diversion provides a platform for participants to support and learn from each other, the individual needs of participants may not be met (Steyn 2012: 81). It is also possible that some diverted children might "fall through the cracks" if groups are too large. As such, diversion with a group of children may fail to meaningfully involve all participants. Also, reliance on group dynamics may undermine the ability of the individual participant to function on his or her own.

Diversion orders are linked to a timeframe during which the intervention must take place,

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and a recommendation is made to the court on whether to proceed with or withdraw the case. These timeframes might be too short to address the criminogenic needs of some diverted children meaningfully, in particular those who present higher-risk profiles and are in need of longer-term continuous support (Steyn 2012: 81). Furthermore, the way in which diversion strategies understand the criminal behaviour of children may not always match the criminogenic needs of participants. For example, if the child committed an economic crime such as theft due to abject poverty, broader social and economic support is needed Since a diversion programme will fail to address his or her living conditions. Service providers must therefore have the necessary training and skills to refer children in need to other appropriate interventions.

Follow-up and aftercare are important components Of diversion services since steps are needed to monitor the behaviour of diverted children and to measure the overall impact of interventions. In the case of FGC, for example, the agreement must be approved by the court before the case can be withdrawn (Steyn 2012: 82). It is therefore essential that monitoring takes place to ensure that all parties honour the agreement. In addition, inadequate sharing Of information (by means of a national database on diverted children) may cause repeat child offenders to abuse the diversion system by opting for referral to different types of programmes, especially in urban areas with different service providers.

11.6 CONCLUSION

Diversion holds various benefits for children, their families and victims of offences. An overarching benefit of diversion is that participants remain mostly in their domestic environments, thereby counteracting the deficits associated with institutionalisation. Diversion also provides opportunity for facilitators to engage with parents and assess intervention progress. In addition, programmes have referral potential. Service providers sometimes identify or are confronted with factors in a child's life that fall outside their scope of intervention. In this regard, programmes often have linkages with specialised intervention, in particular social workers. Furthermore, diversion strategies follow unique methods to promote an understanding of criminal pathways, whether through reconstructing crime lines, dialogue or reflecting on past experiences. Diversion programmes must be flexible in both their planning and implementation phases. Such flexibility prevents rigid, unfocused practices. Except perhaps for conferencing, most strategies entail enjoyable experiences — they are informal in nature with most encompassing recreational and creative activities (Steyn 2010: 150).

On the deficit side, the conceptualisation and design of diversion strategies bring to the fore limitations in their ability to impact on criminal behaviour. The role and involvement of parents in particular could have a profound effect on diversion outcomes. Group-oriented programmes tend to exclude parents in important programme phases. This ultimately undermines the ability of children to give effect to the good intentions brought about by programmes. Absent and disinterested parents could seriously compromise the potential of participants to implement what they have learnt in their domestic settings. It is therefore important that assessments pay specific attention to parents as both facilitators and inhibi-

CRITICAL QUESTIONS

Define the concept "diversion "

tors of child offending, and how interventions should factor in these variables. In addition, parental involvement should be made mandatory

by the court and should also form part of reporting back on outcomes (Steyn 2010: 150).

Poverty and adversity are realities for a large number of children in South Africa. Many households find it difficult to provide for daily needs, which could turn children to crime. In these conditions it is debatable whether exposure to a short-term programme has the ability to prevent economically motivated crimes. This has important implications for diversion as programmes must form part of other developmental initiatives if they wish to succeed. With this in mind, it is not clear whether diversion strategies always impact on the factors that primarily contribute to criminal behaviour. Very often, child offending shows multiple causes and also progression over time. Diversion strategies run the risk of focusing only on the crime for which a child has been arrested, therefore causal factors and risk profiles, and not only the secondary manifestations thereof, must inform diversion decisions (Steyn 2010: 151).

2. Describe the objectives of diversion as stipulated in the Child Justice Act.
3. What are the criteria for a child to be diverted?
4. What are the minimum standards for diversion?
5. Define life skills training as a diversion strategy and discuss its main assumptions about the criminal behaviour of children.
6. Define mentoring and discuss its main assumptions about the criminal behaviour of children.
7. Define family group conferencing and discuss its main assumptions about the criminal behaviour of children.
8. Define outdoor diversion and discuss its main assumptions about the criminal behaviour of children.

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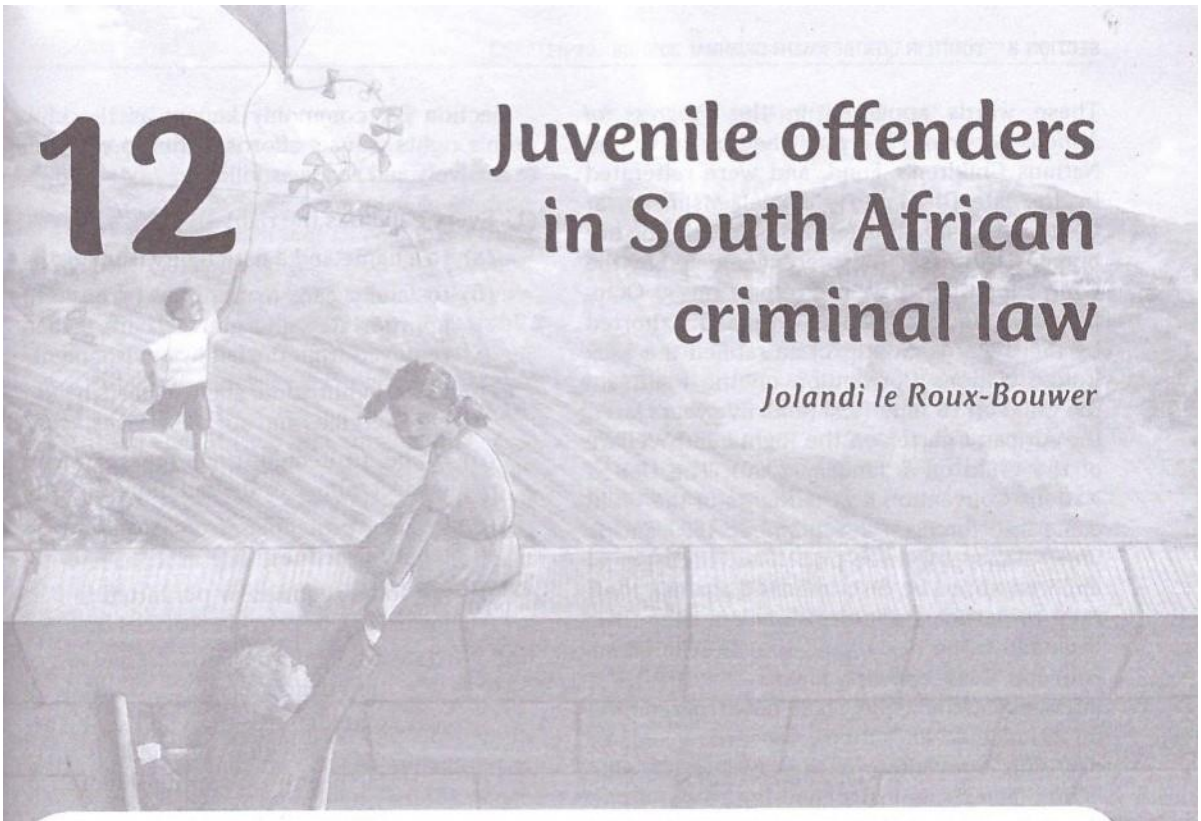
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12 Juvenile offenders in South African criminal law

Jolandi le Roux-Bouwer

OBJECTIVES

You should be able to

- understand the elementological approach to crime in South African criminal law
- explain the influence of youthfulness on criminal liability in South African common law
- explain the statutory provisions regarding the criminal capacity of juvenile offenders
- explain the influence of the Child Justice Act 75 of 2008 on the sentencing of juvenile offenders.

KEYWORDS

accessory after the fact
accomplice
actusreus
cognitive mental ability
common law
conative mental ability
crime
criminal capacity
criminal law
culpability
elementological
concept of a crime
fault
imperitiaculpaeadnumeratur
impubes
infans
legality
mens rea
negligence
obedience to orders
perpetrator
private defence
punishment
recidivism
sentencing
statutory law
theories of punishment
unlawfulness

12.1 INTRODUCTION

The day will come when nations will bejudged not by their military or economic strength, nor by the splendour oftheir capital cities and public buildings, but by the well-being oftheir peoples; . by the provision that is madefor those who are vulnerable and disadvantaged; and by the protection that is afforded to the growing minds and bodies oftheir children.

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These words appeared in the Progress of Nations Report of 1997, published by the United Nations Children's Fund, and were reiterated by the late Dr MantoTshabalala-Msimang, at the time Deputy Minister of Justice, during her opening address at a conference hosted by the Centre for Child Law in Pretoria on 30 October 1998. In compliance with and exhorted by these words, South Africa ratified the 1989 United Nations Convention on the Rights of the Child on 16 June 1995 (and, five years later, the African Charter on the Rights and Welfare of the Child on 7 January 2000). The United Nations Convention on the Rights of the Child came into force on 2 September 1990 and is underpinned by three principles: the right of children not to be discriminated against; their right to participate in decisions affecting their lives and to be heard; and the "best interest" concept. This concept means that the best interests Of the Child shall be of paramount importance in all actions concerning him or her. This Convention is the most widely ratified human rights instrument in the world and theoretically provides the minimum standard of respect states must guarantee to the child (Heaton & Kruger 2015: 296; Mahery 2009: 309; Currie & De Waal 2013: 601).

Section embodies one of the cardinal values of this Convention and reads as follows (United Nations 1989):

> State parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others.

Moreover, in recognising the injustices of our past, South Africa underwent a major constitutional change on 27 April 1994 with the commencement of the interim Constitution Act 200 of 1993. Thereafter, on 8 May 1996 the Constitutional Assembly adopted the current Constitution of the Republic of South Africa With effect from 4 February 1997. Apart from the rights granted to all citizens, the Bill of Rights in Chapter 2 of the Constitution affords additional rights to children and singles them out for special protection.

Section 28, commonly known as the children's rights clause, affords rights to children exclusively and reads as follows:

(1) Every child has the right —

(a) to a name and a nationality from birth;
(b) to family care or parental care, or to appropriate alternative care when removed from the family environment;

(c) to basic nutrition, shelter, basic health care services and social services;

(d) to be protected from maltreatment, neglect, abuse or degradation;

(e) to be protected from exploitative labour practices;

(f) not to be required or permitted to perform work or provide services that

(i) are inappropriate for a person Of that child's age; or

(ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;

(g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be

(i) kept separately from detained persons over the age of 18 years; and

(ii) treated in a manner, and kept in conditions, that take account of the child's age;

(h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and

(i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

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(2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section "child" means a person under the age of 18 years.

Section 28(2), often referred to as the paramountcy principle, confers a separate constitutional right on children. In 2009, the Constitutional Court in Centre for Child Law v Minister of Justice and Constitutional Development 2009 (6) SA 632 (CC) justified the special protection afforded to children on the basis of children's greater physical and psychological vulnerability. The Constitutional Court recently affirmed in J v National Director of Public Prosecutions (Childline South Africa and others as Amici Curiae) 2014 (7) BCLR (CC) that section 28(2) creates an independent right and stated in Teddy Bear Clinic for Abused Children v Minister of Justice and Constitutional Development 2014 (2) SA 168 (CC) that the best interest of the child should be the guiding principle in all matters affecting children.

This new constitutional dispensation places new emphasis on the criminal justice system in all matters affecting the children of South Africa. A much-anticipated judicial advance as far as the treatment of juvenile offenders by criminal law is concerned came with the enactment of the Child Justice Act 75 of 2008, which commenced on 1 April 2010. The Act affords juveniles in conflict with the law specific safeguards, and emphasises that statutory law in South Africa did not effectively and comprehensively address the plight of children in conflict with the law. While creating the possibility of diverting matters involving juvenile offenders from the formal criminal justice system, two of the main aims of the Act are to raise the minimum age of criminal capacity for children and to provide a wide range of appropriate sentencing options specifically suited to their needs. As will be discussed in this chapter, a child is defined as any person under the age of 18 years and, in certain circumstances, a person who is 18 years or older but under the age of 21 years.

In addressing the position of juvenile offenders in the South African criminal law, this chapter focuses on three main themes. Firstly, the influence of youthfulness on criminal liability according to the common law is discussed. The second part focuses on legislative changes brought about by the Child Justice Act (CJA) regarding the criminal capacity of children accused of perpetrating crimes. Thirdly, the sentencing of juvenile offenders according to the common law and the Act is addressed.

12.2 THE INFLUENCE OF YOUTHFULNESS ON THE CRIMINAL LIABILITY OF JUVENILE OFFENDERS

12.2. I General remarks on criminal liability

Before one can properly understand the influence of youthfulness on the criminal liability of juvenile offenders, it is crucial to understand what the concepts "criminal law", "crime" and "punishment" mean. It is also necessary to understand the difference between the fields of criminal law and criminology. Criminal law defines certain forms of human conduct as crimes, and provides for the punishment of those persons with criminal capacity who unlawfully and with a guilty mind commit a crime (Snyman 2014: 4; Burchell 2013: 3). Criminal law is thus a mechanism that is used to coerce all members of society to abstain from committing crimes, which is achieved through the threat of a criminal sanction or punishment (Burchell 2013: 33). The concept of a crime is defined by Snyman (2014: 4) as conduct that is legally forbidden and that may be prosecuted only by the state, and which always results in the imposition of punishment. Put differently, Snyman (2008: 34; 2014: 4) explains that a person commits a crime if he or she engages in conduct which accords with the definitional elements of the crime in question, which is unlawful and culpable.

After an individual has been convicted of a crime, he or she must be punished or sentenced. Punishment invariably infringes on a convicted criminal's basic human rights (such as the right to dignity, the right to privacy and the right to freedom of movement) and could be described as the pain inflicted by the state on a person after he or she has been convicted by a competent

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criminal court that had jurisdiction over the matter. The principle of proportionality requires that the degree of punishment should always be in proportion to the degree of harm caused by the committed crime.

While criminal law deals exclusively with the determination of criminal liability and the imposition of punishment, Burchell and Milton (2006: 18) explain that the science of criminology centres on the study of criminals and the incidence of different crimes in order to explain the phenomenon of crime. It also examines the factors contributing to the commission of crime and the working of the criminal justice system in dealing with criminals and the causes of their unlawful behaviour. Snyman (2014: 3) also correctly refers to the spheres of criminology and penology as "not pure legal sciences". This chapter, however, deals exclusively with criminal law.

The South African criminal law adheres to the so-called elementological concept of a crime (Burchell 2013: 47; Snyman 2002: 64; 2008: 3; 2014: 29-34; Visser & Vorster 1987: 3; De Wet & Swanepoel 1985: 17). In short, this means that a crime consists of three elements in a specific sequence, namely a deed, unlawfulness and fault. A deed, Often referred to merely as conduct, can in the legal sense of the word take one of three possible forms, namely an act (commissio) or failing to act in the existence Of a legal duty to act (omissio); the causing of a consequence (as in Lee v Minister of Correctional Services 2013 (2) SA 144 (CC) and S v Van Heerden 2010 (1) SACR 529 (ECP)); and a so-called state of affairs, such as possession of a prohibited substance or driving with excessive alcohol in the blood in contravention of the National Road Traffic Act 93 of 1996 (as in Price v Mutual & Federal Insurance Co Ltd 2007 (1) SACR 501 (SE) (Snyman 2014: 420; Burchell 2013: 788).

Unlawfulness is the second element of a crime, and means that the perpetrator's conduct is seen to be contra boni mores — that is, contrary to the good values or legal convictions of society. Conduct which is unlawful is referred to as wrongdoing or actus reus (the action) (Snyman 2014: 74; Burchell 2013: 113). Actus reus thus refers to the first two elements of a crime. Fault, also referred to as guilt, culpability, blameworthiness or mens rea (mental element or intention), is the third element of a crime, and can take one of two possible forms, namely intention (dolus, as in S v Humphreys 2013 (2) SACR 1 (SCA)), or negligence (culpa, as in S v Engelbrecht 2005 (2) SACR 41 (D (Snyman 2014: 146; Burchell 2013: 415).

Even though there are only three elements in a crime, five requirements have to be met before one can incur criminal liability because legality and criminal capacity are also requirements for incurring criminal liability, even though they are not elements of the crime. The principle Of legality basically protects the legal subject by proclaiming that convictions of and punishment for crimes may only be inflicted if such a designated crime was created by a law that was in force before such contravention for which the punishment is inflicted took place. The principle of legality is also entrenched in our Constitution in section 35(3)(1), which states that every accused person (including a juvenile offender) has the right not to be convicted for an act or omission that was not an offence under law at the time it was committed (Snyman 2014: 38). Interesting case law dealing with the principle of legality include S v Smit 2007 (2) SACR 335 GCA); Veldman v DPP W'LD 2007 (9) BCLR 929 GCA); Masiya v DPP 2007 (5) SA 30 (CC); S v Mashumpa 2008 (1) SACR 126 S v Agliotti 2011 (2) SACR 437 (GSJ); and S v Ndebele 2012 (1) SACR 245 (GSJ).

In the US, the principle of legality is often referred to as "the principle of fair warning" (Snyman 2008: 38; 2014: 37) as it ensures that the legal subject knows beforehand exactly what he or she may and may not do, and what the punishment will be if a crime is indeed committed. Criminal capacity, also referred to as criminal responsibility, refers to the perpetrator's mental ability at the time of the commission Of the crime to appreciate the nature of his or her deed, the unlawfulness of his or her deed (the so-called cognitive mental ability) and the ability to act in accordance with this appreciation (the so-called conative mental ability). (See DPP, Tul v Venter 2009 (1) SACR 165 (SCA).)

A juvenile offender can be involved in the commission of a crime as a perpetrator, an accomplice or an accessory after the fact. A person is a perpetrator in criminal law if his or her conduct, the circumstances in which the conduct takes place and the culpability or fault with which it is carried out are such that he or she satisfies all the requirements for criminal liability. These

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requirements are contained in the definition of a crime (as in S v Gedezi 2010 (2) SACR 363 NCC) and S v Mzwempi 2011 (2) SACR 237 (ECM)). A person will incur liability as an accomplice to a crime if, although he or she does not satisfy all the requirements for liability contained in the definition of the crime, he or she unlawfully and intentionally engages in conduct whereby he or she furthers the commission of a crime by somebody else (the perpetrator, as in S v Msomi 2010 (2) SACR 173 (MP)). The liability of an accomplice and an accessory after the fact is accessory or dependent by nature. This means that a person can only be held liable as an accomplice or accessory after the fact if somebody else is liable as a perpetrator (Snyman 2014: 266).

The accomplice facilitates, assists or encourages the commission of the crime by the perpetrator (as in S v Msomi 2010 (2) SACR 173 (KZP) and S v Pakane 2008 (1) SACR 518 (SCA)). An accessory after the fact is not a participant in the actual commission of the crime since he or she arrives on the crime scene only after the crime has been completed. The accessory after the fact then associates him- or herself with the committed crime by helping the perpetrator or accomplice to escape liability. For a clear explanation of different parties to a crime, see Burchell (2013: 465—512) as well as Snyman (2014: 252-274).

We further distinguish between four different types of perpetrators in criminal law, namely the direct perpetrator, the indirect or vicarious perpetrator, the co-perpetrator and the concurrent perpetrator. These are theoretical distinctions that have no bearing on the perpetrator's liability. A direct perpetrator commits the crime with his or her own body, and is also known as the principal offender or actual perpetrator (as in S v Marx 2009 (2) SACR 562 (ECP), for example).

The indirect perpetrator commits the crime through the instrumentality of another (see SA Metal and Machinery co (Pty) Ltd 2010 (2) SACR 413 (SCA)). This would be the case where a person (the indirect perpetrator) procures another person, who may be a young child or an insane person, or it may even be an animal, to commit the crime for him or her. The rule qui facit per alium facit per se (he who does an act through another does it himself) will then apply (as in S v Cupido 1975 (1) SA 537 (C)).Co-perpetrators work together consciously in the commission of a crime and incur equal liability, irrespective of the extent of each one's contribution. Concurrent perpetrators work together unconsciously in the commission of a crime. An example would be the following: X and Y, both snipers, hate Z. If X and Y, who are unaware of each other's existence, shoot and kill Z at exactly the same moment, they
are concurrent perpetrators and will both be guilty as perpetrators of the crime of murder.

The requirements for criminal liability in our common law on which youthfulness has a particular effect are unlawfulness, criminal capacity and fault. These requirements will now be discussed.

12.2.2 Common law

12.221 Unlawfulness

The factors or defences excluding unlawfulness are called grounds of justification (Midi TV t/'a E-TV v DPP Western cape 2007 (2) SACR 439 (SCA)). This makes sense if one keeps in mind that the terms "unjustified" and "without justification" are synonyms for "unlawfulness". Viewed as such, unlawfulness can be seen as the absence of a ground of justification which excludes unlawfulness (Burchell 2013: I l l; contra Snyman 2014: 97). There are not a limited number (numerus clauses) of grounds of justification in criminal law, but the recognised ones are private defence (see, for example, Ngubane v Chief Executive Director of Emergency Services, Ethekwini Metropolitan Services 2013 (l) SACR 48 (WD)); necessity; consent; official capacity (see Minister of Safety and Security v Mohofe 2007 (2) SACR 92 (SCA)•, April v Minister of Safety and Security 2009 (2) SACR I (SE)); obedience to orders (see S v Mostert 2006 (1) SACR 560 (N)); disciplinary chastisement; spontaneous agency; and the trifling nature of the act (as discussed in S v Visagie 2009 (2) SACR 70 (T)).

The two grounds of justification affected by the perpetrator's youthfulness are private defence and obedience to orders. A person who performs an otherwise unlawful act may justify that act by alleging that he or she was merely obeying the order of another person to whom he or she was subordinate (Burchell 2013: 186; Snyman 2008: 138;2014: 134-136). Van Oosten and Louw (1997: 119—160) describe this ground of justification as an unlawful order by a superior that the subordinate is obliged to obey.

A person acts (lawfully) in private defence if he or she uses force to ward off an unlawful human attack that has commenced upon or is imminently threatening his or her own or somebody else's legally protected interest

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(e.g. life, property or good name). The defensive act must be necessary to protect the interest threatened, must be directed at the attacker and may not be more harmful than necessary to ward Off the attack. The principle of proportionality is very important here, meaning that the harm caused by the defensive act must be justified by (be in proportion to) the severity of the initial unlawful attack. If more harm is caused by the defensive act than was reasonably necessary, the perpetrator will transgress the boundaries of private defence and will him- or herself act unlawfully. The Supreme Court of Appeal in S v Grigor [2012] ZASCA 95 thus held that there was an imbalance between the alleged attack and the appellant's defensive act of inflicting severe injuries on the complainant in an act of road rage (see also S v steyn 2010 (2) SASV 411 (HHA); Snyders v Louw 2009 (2) SASV 463(K)).

Where a child acts in private defence, the test whether the means of defence was necessary is not that of a reasonable adult, but that of a reasonable child in the same circumstances (Snyman 2014: 110). This is evident from the court's decision in S v T 1986 (2) SA 112 (O). In this case the accused was a 16-year-old schoolboy from Bloemfontein. He was of a sensitive nature, and younger and physically weaker than the deceased. The latter had a reputation as a bully and a fighter, and was in the habit of humiliating and intimidating the accused. One Friday afternoon a scuffle arose between the two, during which the accused fatally wounded the deceased with a firearm.

The accused was charged with culpable homicide, but was acquitted, since private defence excluded the unlawfulness of his conduct. (Culpable homicide is the unlawful and negligent causing of the death of another human being.) The court was of the opinion that the accused acted reasonably, objectively speaking, because a reasonable, physically weak 16-year-old schoolboy in the same position as the accused would have acted likewise.

Also, in S v K 1956 (3) SA 353 (A), the accused, a 13-year-old schoolboy, was given special consideration by the court of appeal. K had stabbed his mentally disordered mother to death with a pocketknife. A struggle had arisen between K and his mother after K had taken an apple to eat. K's mentally disordered mother was the aggressor and K could not flee from her (Snyman 2014: 104). The court acquitted K of murder (the unlawful, intentional causing of the death of another human being) as he had acted in private defence. The court stated the following:

> We must imagine ourselves in the position in which the appellant, a youth Of 13 years, was. He was confronted with a woman who was apparently in a state of frenzy and he could not free himself by his own efforts.

Obedience to orders can be raised as a ground of justification, and thus a defence, where a subordinate commits a crime in the execution of an unlawful order of a superior. Where the person executing the unlawful order is a child, the test to determine whether the child's conduct is lawful or unlawful differs from the test that is applied where the perpetrator is an adult. Where the perpetrator is an adult, the nature of the order determines the lawfulness or unlawfulness of his or her conduct. Obedience to a manifestly unlawful order remains unlawful, and obedience to orders would not succeed as a ground of justification in such circumstances. The appropriate defence in such circumstances would be the absence of intention, as the subordinate who obeyed the order would not have knowledge of unlawfulness, which is an integral part of intention (Burchell 2013: 190, 401—402). Where the perpetrator is a child, the lawfulness or unlawfulness of his or her conduct in obedience to an unlawful order is determined by the nature of the crime (Van Oosten & Louw 1997: 122).

The test is whether the crime the child committed in the execution of the unlawful order was so atrocious that it could be reasonably expected of the child to disobey his or her superior's (parent's) unlawful order. This test was applied in R v Albert 1895 (12) SC 272, where an Il-year-old boy was charged with theft and housebreaking with intent after he had assisted his father instealing two bags of oat-hay from a loft. The boy was ordered by his father to help him. On acquitting the accused of a charge of theft, the court said the following:

> It cannot be reasonably expected from a child under fourteen that he will disobey the illegal orders of the father unless the

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> offence he is ordered to commit is of an atrocious kind The offence of assisting his father in removing two bags of oat-hay was not so heinous as obviously to absolve the child from the duty of obedience.

The crime of theft consists of unlawfully and intentionally appropriating the movable, corporal property of another with the intention ofdepriving the owner permanently of his or her possession(s) (Snyman 2014: 302). Housebreaking with intent constitutes the unlawful and intentional breaking into and entering of a building or structure with the intention of committing a crime inside (Snyman 2014: 543).

Also relevant in our context is the rebuttable presumption in criminal law that a child who commits an unlawful act together with, in the presence or under the authority of an adult or another youth appreciably older than him or her whom he or she would be expected to obey, was ordered, coerced or influenced by the adult or older youth to commit such act. This may render the child's conduct lawful by reason of the order, coercion or influence involved (Snyman 2014: 162; S v Ngobese 2002 (1) SACR 562 In S v *Pietersen* 1983 (4) SA 904 (E), two nine-year-olds were charged, together with an 18-year-old, of housebreaking with the intent to steal. The court stated the following:

> Where a child aged between seven and 14 years is associated in the commission of a crime with an adult or even with a youth appreciably older than it is, the relationship between the two and the circumstances under which they both became involved in the crime must be investigated before the child can be pronounced dolicapax Prosecuting authorities should appreciate that, when they charge young children under 14 years together with adults or older youths, they accept the onus not only of proving that the children know that what they do is wrongful, but also of proving that they do that with which they are charged of their own volition, uninfluenced by their older companion's persuasion.

In S v SM 2010 (1) SACR 504 NCC), a 16-yearold was one of a number of people hired by a woman to murder the baby of her former boyfriend. The court cautioned that "when sentencing children and juveniles, especially where payment was offered to them to commit an offence, courts should see these children and juveniles not only as perpetrators but also as victims of a serious form of exploitation" .For similar reasoning, see S v Dyk 1969 (1) SA 601 S v M 1978 (3) SA 557 (TK); and S v Khubeka 1980 (4) SA 221 (0).

12.2.2.2 Criminal capacity

According to the Preamble of the CJA, before 1994 South Africa had not given children, especially black children, the opportunity to live and act like children. As a result of the circumstances in which many children found themselves, they have come into conflict with the law. Our Constitution now affords children in conflict with the law specific safeguards. In light of this, one of the main aims of the Act is to raise the minimum age of criminal capacity for children. This legislation has replaced the common law regarding the criminal capacity of children (see s 7(3) of the Act). The old common law position will, however, still be discussed here briefly as it gives the reader a good understanding of how the common law and statutory law differ, thus enabling the reader to make a comparison between the two.

The term "criminal capacity" is often confused with "criminal responsibility" or "criminal liability". Sloth-Nielsen (2000: 393) emphasises that criminal capacity should be distinguished from criminal responsibility, the latter depending on whether all the elements of the crime, as well as the requirements of legality and criminal capacity, are present. Proof of criminal capacity is thus a conditio sine qua non [an indispensable and essential action] or prerequisite for the proof of criminal responsibility, and criminal responsibility and criminal liability are synonyms. Criminal capacity is the second requirement for liability where youthfulness on the part of the perpetrator has a particular effect. Perpetrators have criminal capacity if they possess the mental ability to realise the nature of their conduct; to realise the unlawfulness of their conduct (the so-called cognitive mental function); and to act in accordance with this realisation of unlawfulness (the so-called conative mental

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function. Compare DPP, Tv/ v Venter 2009 (1) SACR 165 GCA); Burchell 2013: 247; and Snyman 2014: 155).

Previously, the criminal capacity of juveniles was governed by certain arbitrary age limits. Children could, for purposes of this discussion, be divided into three groups: those who have not yet completed their seventh year of life (infantes); children from the age of seven but who have not yet completed their 14th year of life (impubes); and children from the age of 14 years but not yet 21 years.

Children under the age of seven (infantes) were irrebuttably presumed to lack criminal capacity and could therefore never incur liability as perpetrators, accomplices or accessories after the fact. This was the position irrespective of the child's development and actual mental abilities. On a charge of an intentional crime, such a child was doliincapax (Schwikkard & Van der Merwe 2012: 35), which literally means "incapable of forming the intention required for the crime and thus incapable of incurring liability for an intentional crime". (The Latin word for intention is dolus, as mentioned earlier.)

On a charge of any crime requiring negligence, the child was culpaeincapax, which is literally "incapable of incurring liability for a crime of negligence". (The Latin word for negligence is culpa, as mentioned earlier.) An infans could, however, be used as an instrument by an older person in the commission of a crime. Where X, an adult male, broke open a small window of a house and sent Y, a five-year-old boy, through it to fetch items and bring them to him, it would be X who is committing the crimes of housebreaking with the intent to steal and theft, not Y, who was merely an innocent instrument in X's hands. Youthfulness was thus a complete defence to a perpetrator who was an infans.

A child from the age of seven but younger than 14 was rebuttably presumed to lack criminal capacity, but could incur liability if the state could prove beyond reasonable doubt that the child did have criminal capacity at the time of the commission of the crime (Schwikkard & Van der Merwe 2012: 35). The test to determine whether such a child had criminal capacity was the same as the general test for criminal capacity. In S v Tsuts01962 (2) SA 666 (SR) 668, the court stated 'X' had sufficient capacity to know that the act that he was doing was wrong" and "that the accused's mind was sufficiently mature to understand, and that he did understand the wrongful character of the conduct" [author's italics]. Also, in S v Ngobese 2002 (1) SACR 562 (W), the court particularly emphasised the importance of investigating the child's ability to resist temptation. This refers to the conative mental ability (Snyman 2014: 162).

Ins v Mbanda 1986 (2) PH H 108 (T), Mbanda was a 13-year-old street child who broke into a shop and stole food and sweets. The court, apart from confirming the test for criminal capacity, added the following criteria for the criminal liability Of children in this category (Van Oosten & Louw 1997: 125—126):

(i) Was the accused, at the time of the commission of the alleged crime, aware of the fact that he or she acted in contravention of the law, or was he or she aware of such possibility?

(ii) Could the child, at the time of the commission of the alleged crime, control his or her conduct?

(iii) Did the child intend the consequences of his or her conduct or did he or she foresee the consequences as a possibility but acted notwithstanding such foresight?

Since 1987, a boy under the age of 14 years could also incur liability for unlawful sexual intercourse with a female. This is due to the fact that section I of the Law of Evidence and the Criminal Procedure Amendment Act 103 of 1987 repealed the old irrebuttable presumption that boys under the age of 14 are incapable of sexual intercourse (Burchell 2013: 598; Schwikkard & Van der Merwe 2012: 35; S v A 1962 (4) SA 679(E)).

The younger the child, the more difficult it was for the prosecution to rebut the presumption of incapacity, and vice versa (Snyman 2014: 174). It was also more difficult for the prosecution to rebut the presumption of incapacity where the child was charged with a crime mala prohibita than it was where the child was charged with a crime malum in se. The same was true for statutory offences of a technical nature as opposed to common law offences. A crime mala prohibita embodies mere prohibitions or injunctions, and does not refer to conduct that is inherently evil or morally blameworthy. An example would be section 22 of the National Road Traffic Act 93 of 1996, which orders a holder of a motor

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vehicle licence to give notice of change of place of residence. Crimes malum in se (literally "bad in itself") embody immoral conduct or conduct that is inherently evil, such as rape or murder.

Academic writers often criticised the test applied by courts in the rebuttal inquiry (Sloth-Nielsen 2000: 393; Van Oosten & Louw 1997: 125; Snyman 2014: 174; De Wet & Swanepoel 1985: 111). According to Van Oosten & Louw (1997: 125),

> courts have more often than not paid mere lip service to the criminal capacity test by making the inquiry turn on the child's actual knowledge and appreciation of the wrongfulness of his or her conduct in the specific circumstances and at the time of his or her act, or on the presence or absence of malicious intention or evil motive.

See also S v Kenene 1946 EDL 18 as referred to by Burchell (2013: 257) and S v M 1978 (3) SA 557 (Tk) as referred to by Snyman (2014: 175).

This test applied by the courts is actually one of fault and not of criminal capacity, with the result that criminal capacity and fault have been confused with one another. Fault, in the form of intention, consists of the will to act as well as knowledge of unlawfulness. Intention thus refers to the child's actual knowledge at the time of the commission of the crime. Criminal capacity, on the other hand, does not refer to the child's actual knowledge but to his or her mental ability at the time of the commission of the crime.

Once a child had reached the age of 14 years, he or she was regarded in law to be no different from an adult. Such a child was, in other words, rebuttably presumed to have full criminal capacity. Youthfulness per se has, however, always served as a mitigating factor in the imposition of punishment, as is illustrated in the well-known case of S v Lehnberg 1975 (4) SA 553 (A), where the accused arranged for her lover's wife to be stabbed to death with a pair of scissors.

12.2.2.3 Fault

Fault, or mens rea or culpability as courts often refer to this element, means that, in the eyes of the law, there are grounds for blaming the accused personally for his or her unlawful conduct (Snyman 2014: 155). As explained earlier, fault can take one of two possible forms, namely intention or negligence. Negligence in itself can take the form of conscious (luxuria) or unconscious (culpa) negligence. (For a detailed explanation, see Snyrnan 2002: 179— 221; 2008: 219; 2014: 148; Burchell & Milton
2006: 459-498; 522-543; Burchell 2013: 337343). Youthfulness on the part of the perpetrator has a particular effect on the test for negligence. The test for criminal negligence (culpa) is that of reasonable foreseeability, or foreseeability by a reasonable person. The questions to be answered if one is testing for negligence on the accused's part are whether a reasonable person in the accused's position would have foreseen the reasonable possibility of the unlawful act or consequence resulting; whether such reasonable person would have taken steps to prevent the forbidden act or consequence from setting in; and whether the accused had failed to take the steps which he or she should reasonably have taken to guard against it (see S v Crossberg 2008 (2) SACR 317
(SCD.

If the answer to all three of these questions is in the affirmative, the accused would be negligent if he or she did not foresee and/or prevent the prohibited act or consequence. The term "negligence" thus indicates that the accused's conduct did not conform to a prescribed standard of carefulness (Snyman 2014: 150, 204; Burchell 2013: 409). In S v Ngubane 1985 (3) SA 677 (A), Judge of Appeal Jansen stated the following: "The view generally held by our courts is that culpåis constituted by conduct falling short of a particular standard, namely that of the reasonable man."

Where the accused is a child, the test for negligence is relegated to that of a reasonable child in the same position as the accused. The law thus recognises that the same degree of care and responsibility cannot be expected from a child as one would expect from an adult. In other words, conduct that is deemed negligent in terms of the reasonable adult test will not necessarily be deemed negligent in

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terms of the reasonable child test (Van Oosten & Louw 1997: 129; Snyman 2014: 213). This can be viewed as a qualification to the objective test for negligence insofar as a subjective attribute of the

perpetrator, in this case youthfulness, is taken into account.

In S t, T 1986 (2) SA 112 (0), a 16-year-old schoolboy was charged with culpable homicide after he had killed another boy who had frequently intimidated and humiliated him. The court acknowledged the fact that it would be wrong to apply the test of a reasonable adult in determining whether the accused had negligently exceeded the boundaries of private defence (for the test for and effect of exceeding the boundaries of defence, see S v Bruce-Lee Naidoo 2010 (1) ZASCA 40; S v steyn 2010 (1) SACR 411 (SCA); Govender v Minister of Safety and Security 2009 (2) SACR 87 GCA); and S t, Maimela 2011 (2) SACR 339 GCA)).

The accused's insight, judgement and self-control were, by reason of immaturity, obviously less developed than those of a reasonable adult.

The court must put itself in the same position and circumstances as the accused. One can therefore say that the test for negligence is fundamentally an objective one (with reference to the fictitious reasonable person), with subjective qualifications (with reference to the same position in which the accused found him- or herself) (Van Oosten & Louw 1997: 128; Burchell & Milton 2013: 414; Snyman 2014: 209; S v Muli 1975 (1) SA 429 (A)) where the court said the following: "In applying these formulations to flesh and blood facts, the Courts adopt a robust attitude, not seeking to measure with nice intellectual callipers the precise bounds of legitimate self-defence ...'D.

There are two instances where negligence on the part of a juvenile offender would not be determined by merely applying the reasonable child test. The first is the so-called situation of imperitia culpae adnumeratur ("ignorance amounts to negligence"). Where a child engages in an activity requiring particular skill, expertise or experience, well knowing that he or she lacks such skill, expertise or experience, negligence will be determined with a reasonable expert adult test and not with a reasonable child test.

The maxim is misleading as it is not the child's ignorance that amounts to negligence,

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but the fact that the child unreasonably engaged in conduct requiring special skill that he or she did not have. It is thus not the ignorance in itself which amounts to negligence. For example, if a child decides to perform an operation on a friend as a result of which the friend dies, the conduct of the accused would be measured against that of the reasonable surgeon and not that of the reasonable (ignorant) child.

The second qualification to the application of the reasonable child test in determining negligence is where the child indeed has a greater degree of knowledge or skill than the average child of his or her age. In such a case, the test for negligence will be that of the reasonable child who does possess such greater degree of knowledge or skill in the same circumstances as the accused. In this sense, the test for negligence is adjusted upwards and it is not lowered.

12.2.2.4 Sentencing ofjuvenile offenders

Although this part of the chapter deals with the sentencing of juvenile offenders under the common law, the aim is really to discuss and explain the common law position regarding sentencing before the Child Justice Act 75 of 2008 came into effect on I April 2010. Certain references to statutes are, however, mandatory in this part to discuss the position before I April 2010. The sentencing of juvenile offenders under statutory law (i.e. after the commencement of the CJA), will be discussed later in this chapter.

It is often said that a criminal trial consists of two separate stages. While the first stage encompasses the determination of the accused's criminal liability or innocence, the second deals with the determination of an appropriate sentence or punishment should the accused be found guilty of the charges against him. A criminal conviction is always followed by the imposition of a form of sentence or penalty (Burchell 2013: 3, 5; Snyman 2014: 4: S v Dodo 2001 (1) SACR 594 (CC)).

First and foremost, when it comes to sentencing, one has to take cognisance of section 35(3)(n) of the Constitution, which stipulates that every accused person has the right to the benefit of the least severe of the prescribed punishments. This is relevant if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing. Additionally to this right, section of the Constitution affords every child the right to be protected from maltreatment, neglect, abuse or degradation (Heaton & Kruger 2015: 291; Currie & De Waal 2013: 612; s v Myburgh 2007 (1) SACR 11 (W)). Section 28(l)(g) stipulates further that

every child has the right not to be detained except as a measure of last resort (compare Gallinetti 2009: 640; Currie & De Waal 2013: 615; Director of Public Prosecutions KwaZulu-Natal v P 2006 (1) SACR 243 (SCA) and S v BF 2012 (1)
SACR 298 (SCD. Section of the Constitution is modelled on article 37 of the Convention on the Rights of the Child.

The well-known "Trits in Zinn" principle (S v Zinn 1969 (2) SA 537 (A)) has always governed the sentencing of convicted criminals. According to this principle, the sentencing court ought to pay particular attention to three factors in order to arrive at an appropriate sentence (Snyman 2014: 19), which are the crime, the criminal and the interest of society. By "crime" is meant that the extent of harm or the seriousness of the crime committed should be considered. By "criminal" is meant that the personal circumstances of the convicted person should be considered, and by the "interest of society" is meant that society should be protected against the convicted person and that the sentence should be such as to give proper expression to the indignation of society and their demand that the criminal be punished. Snyman (2014: 13) cautions that there ought to be a healthy balance within this triad of considerations (see also S v Mngoma 2009 (1) SACR 435 (EC); S V Malgas 2001 (1) SACR
469 GCA); and S v De Kock 1997 (2) SACR 171 (T)). In recent times it was, however, emphasised that the interests of the victim(s) of the crime should equally be considered (Snyman 2014: 19; Burchell 2013: 4; S v Matyityi 2011 (1) SACR 40 (SCA); S v Tabethe 2009 (2) SACR 62 (T); S v Isaacs 2002 (1) SACR 176 In this sense one should refer to the "square" or four considerations in punishment rather than the triad in punishment.

The ultimate purpose of the entire criminal process is to punish the offender. A distinction can be drawn between four so-called theories of punishment, the aim of each being to
explain why we punish offenders in criminal law. In other words, these theories provide justification for the imposition of punishment:

- According to the retributive theory of punishment, punishment is an aim in itself. We thus punish a person because he or she deserves it, punishment being a "just desert". Punishment is a categorical imperative that follows automatically on the commission of a crime (Burchell & Milton 2006: 69—71; Snyman 2014: 11—15). The retributive theory of punishment is diagnostic or retrospective in character in the sense that it looks back at the crime committed and acknowledges that the degree of punishment must be in proportion to the degree of harm done to society. This theory accordingly relates punishment directly to the crime committed, thus encompassing the very important "principle of proportionality". In S v Botes 2011 (1) SACR 439 (GNP), for example, the court applied this theory of punishment by particularly emphasising the nature of the crime, which was a racially motivated one. In this case, a white youth was convicted of participating in the racially motivated murder of a black man. A full bench of the North Gauteng high court decided that racially motivated crimes offend against the ethos and aspirations of our democracy. Racist bigotry should not be tolerated, irrespective of the age of the offender. Since the youth are the future of our country, the courts should not hesitate in imposing long sentences of imprisonment to ensure that this evil is eradicated. The young offender received 15 years' imprisonment.

- According to the preventive theory of punishment, punishment is not an aim in itself but merely a means to a further aim, namely to prevent other possible perpetrators from committing crimes or to prevent the accused from repeating his or her criminal behaviour (Snyman 2014: 15; Burchell & Milton 2006: 73). This theory of punishment is therefore prognostic in nature as it sees punishment merely as a means to a further aim. Closely linked to the preventive theory is the theory of "incapacitation" according to which X is punished in order to prevent him or her from being capable of committing crime again (Snyman 2014: 15).

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- The theory of deterrence is also prognostic in nature and holds that the imposition of punishment on a person would deter him or her, as well as the community at large, from committing (further) crimes. The premise of this theory is, however, undermined by the shockingly high percentage of 90% of recidivism in South Africa (convicted criminals who continue to commit crime after being released from prison) (Snyman 2014: 15—16;

Burchell 2013:517). Some critics even place the recidivism rate among violent criminals at 94% (Jules-Macquet 2014). In line with this worrisome recidivism figure is the fact that South African correctional facilities are severely overpopulated, a fact which also casts a dark shadow on the success of this theory. In a recent article by outgoing American president Barack Obama, he reflects on the incarceration rate by country by listing the number of inmates per 100 000 residents. The US is at the top of the list with 300 out of every 100 000 residents incarcerated while South Africa is number 18 at 291 out of every 100 000. On the continent of Africa, South Africa has the most incarcerated persons with a total of 161 984 (Obama 2017: 811).

- According to the reformative theory of punishment, a perpetrator commits a crime due to a personality defect for which he or she must receive treatment. By enduring punishment, so the theory goes, the perpetrator is reformed or rehabilitated to become a law-abiding citizen again (Snyman 2014: 17—18). Snyman (2014: 18) cautions against granting this theory too much weight, especially in light of the alarming increase in crime in South Africa in recent times (Snyman 2014: 23). Every year approximately million serious crime cases are registered at the South African Police Service (SAPS). The murder rate in South Africa is of grave concern, as the country has been in the global top 10 for its high homicide rate for all but two years since 2000. The murder rate increased by 4,9% (18 673 people were murdered in South Africa from April 2015 toMarch 2016), which amounts to ±51murders per day, and is 5—8 times higher than the 2013 global average of six murders per 100 000. Robbery with aggravating

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circumstances also increased by 2, 7%, and hijacking by 14%, meaning that between April 2015 and March 2016 about 40 took place every day. In addition, during the same period 250 606 home burglaries and 20 820 house robberies were reported (Evans & Verster 2016; South Africa crime stats 2016: Everything you need to know 2016).

It is a firmly established principle in our common law that youthfulness on the part of the perpetrator may mitigate punishment (S v Senatsi 2006 (2) SACR 291 (SCA); S v Kolobe 2005 (1) SACR 203 S v Kwenamore 2004 (1) SACR 385 GCA); S v Thisa 2003 (1) SACR 174 (0); Sloth-Nielsen 2000: 448; van Oosten & Louw 1997: 130; Rabie & Strauss 1981: 226; Du Toit 1981:55). There are several reasons underlying this principle, one of which is that tender age affects the moral culpability of the accused juvenile. In S v F 1989 (l) SA 460 (Z), the court emphasised the propensity of young children to mimic the behaviour of others and, in particular, adults. The court opined that it is common knowledge that young children necessarily internalise the perceived behaviour of those around them and then proceed to mimic this behaviour while being unaware that they are acting criminally.

According to Judge of Appeal Botha in S v Jansen 1975 (1) SA 425 (A) 428, "the interest of society cannot be served by disregarding the interests of the juvenile, for a mistaken form of punishment might easily result in a person with a distorted personality being eventually returned to society". In S v Phulwane and Others 2003 (1) SACR 631 (D, it was also held that the reintegration of the young offender back into his or her family and the community should be a priority for every judicial officer who has to sentence such an offender. However, where young offenders have chosen a "life of crime" our courts will not shy away from imposing harsh sentences on them. In S v Brandt [2005] 2 All SA 1 (SCA), the Supreme Court of Appeal substituted a sentence of 18 years' imprisonment for a life sentence imposed on a 17-year-old for the murder of an elderly woman. Similarly, in S v N 2008 (2) SACR 135 (SCA) the Supreme Court of Appeal affirmed a sentence of five years' imprisonment of a 17-year-old schoolboy for rape.

Before punishment is imposed on a convicted juvenile offender, the court or the defence may call for a probation officer's pre-sentence report in order to assist the court in passing sentence. The probation officer's report should be based on a thorough assessment of important issues such as the juvenile's family circumstances, childhood development, behavioural patterns and maturity. The role of the probation officer is thus to provide all available information which will assist the court in determining an appropriate sentence (S v N 2005 (1) SACR 201 (CkH); S v Manka 2003 (2) SACR 515

(O)). The younger the accused, the more important this information becomes (see S v Cloete enVyf Ander Hersieningsake [Cloete and Five Other Revision Cases] 2003

(2) SACR 489(O)).

The report should also contain appropriate sentencing options for the court to consider. The importance of obtaining .a pre-sentencing report in the process of sentencing juvenile offenders was exhaustively dealt with in S v Madoda Kwalase 2000 (2) SACR 135(C).

According to section 12(1) of the Constitution of the Republic of South Africa, everyone has the right to freedom and security of the person, which includes the right not to be tortured in any way and not to be treated or punished in a cruel, inhuman or degrading manner. While section 294 of the Criminal Procedure Act 51 of 1977 previously provided for whipping as a form of punishment for juvenile offenders, corporal punishment has since been outlawed in South Africa (Burchell 2013: 15; Currie & De Waal 2013: 612). In S v Williams 1995 (2) SACR 251 (CC), the Constitutional Court, on account of whipping constituting cruel, inhuman or degrading punishment, declared corporal punishment unconstitutional, which led to the enactment by parliament of the Abolition of Corporal Punishment Act 33 of 1997.

It was held that juvenile whipping as a sentencing option violated the right to human dignity as entrenched by section 10 of the Constitution. Not only does juvenile whipping infringe this right, but also the right to freedom and security of the person, which includes the right not to be treated or punished in a cruel, inhuman and degrading way as entrenched in section of the Constitution. Additional to this, section 28(1)(d) Of the Constitution affords every child the right to be protected from maltreatment, neglect, abuse or degradation. Similarly, section 10 of the South African Schools Act 84 Of 1996 prohibits the use of corporal punishment Of learners in schools. In Christian Education South Africa v Minister Of Education 2000 (4) SA 757 (CC), a voluntary association representing certain independent private schools challenged the validity of section 10 of the South African Schools Act on the basis that this section infringed their right to religious freedom.

It was also argued that parents of learners in independent schools had consented to their children being subjected to corporal punishment. The Constitutional Court rejected the parents' claim, holding that section 10 of the Schools Act constituted a reasonable and justifiable limitation on the parents' religious rights. The current legal position is therefore that the ban on corporal punishment laid down by section 10 Of the Schools Act applies to all schools in South Africa (Snyman 2014: 137; Burchell 2013: 16; Currie & De Waal 2013: 613; Snyman 2008: 141).

Section 276 of the Criminal Procedure Act provides for the following forms of punishment to be imposed on a convicted criminal: a fine, imprisonment, declaration as a habitual criminal, periodic imprisonment, correctional supervision, committal to a rehabilitation centre, postponement and suspension, and caution and reprimand. There are also special sentencing provisions for juveniles in the above-mentioned Act. Section 290 provides that a court may instead of, or in addition to, imposing punishment on a juvenile offender, order that he or she be placed under the supervision of a probation officer or correctional official, and/or be placed in the custody of a suitable person, or be sent to a "reform school" in terms of section 1 of the then Child Care Act 74 Of 1983. Prior to the Children's Act 38 of 2005, residential facilities were divided into places of safety, children's homes, schools of industry and reform schools. In the Children's Act all these terms now resort under the umbrella term "child and youth care centres".

Ins v P 2001 (1) SACR 70 (C), for example, the probation officer recommended that the accused, a 16-year-old, be committed to a "reformatory", the term being used at the time.

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There are, however, disturbing indications that referral to a child and youth care centre as a sentencing option may be regarded, due to the difficulties in its implementation, as a dead letter (see S v Zand 23 similar cases 2004 (2) SACR 410 (E)). These residential facilities are often seen as "universities of crime" where rehabilitation is highly unlikely.

In S v Makwanyane 1995 (3) SA 391 (CC), the Constitutional Court declared the death penalty, as provided for by section 277(1)(a) of the Criminal Procedure Act, as unconstitutional and it was therefore abolished (Burchell 2013: 14). A consequence of this decision by the Constitutional Court is that the South African government is obliged to secure an undertaking

from a foreign state in which an accused has allegedly committed a crime that such an accused will not be executed if extradited to such foreign state (Minister of Home Affairs v Tsebe 2012 (5) SA 467 (CC)).

On I May 1998, the legislature implemented sections 51 to 53 of the Criminal Law Amendment Act 105 of 1997 in terms of which minimum sentences are prescribed for various crimes. The Act stipulates that a sentencing court may impose a lesser sentence only if it is satisfied that "substantial and compelling circumstances" exist which justify it (compare Burchell 2013: 23; S v Malgas 2001 (1) SACR 469 GCA); S v Dodo 2001 (1) SACR 594 (CC)). section of the Act, for example, provides that a high court shall sentence a person who has been convicted of a crime referred to in Part I Of Schedule 2 of the Act to imprisonment for life.

Part I of Schedule 2 lists the crimes of murder and rape committed under certain circumstances. In S v B 2006 (1) SACR 311 (SCA), a 17-year-old was convicted of murder and sentenced to life imprisonment. His appeal against this sentence brought into question the application of the provisions of the so-called minimum sentence legislation to offenders under the age of 18 years. The Supreme Court of Appeal held that section 51 distinguished between adult and juvenile offenders. Juvenile offenders were divided into two categories: children under the age of 16 years at the time of the commission of the crime, and children between the ages of 16 and 18 years at the time of the commission of the crime.

The court held that the Criminal Law

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Amendment Act 105 of 1997 did not apply at all to children under the age of 16 years. This is also stated in section 51(6) of the same Act (see S v BF 2012 (1) SACR 298 (SCA) where the trial court imposed a prison sentence of 25 years on an accused who was convicted of robbery with aggravating circumstances and rape. The accused was 14 years and 10 months old at the time he committed the crimes. The Supreme Court of Appeal held that the trial court overlooked section 51(6) of the Act, and replaced the sentence With one of 12 years' imprisonment.) (See also Terblanche (2007: 69);Centre for Child Law v Minister of Justice 2009 (11) BCLR 1105 (CC); and S v P 2002 (1) SACR 56(C).)

Owing to governmental concern over the increase in serious offences committed by 16- and 17-year-olds, the legislator made the prescribed minimum sentences applicable to these offenders in terms of the Criminal Law (Sentencing) Amendment Act 38 of 2007 which came into effect on 3 March 2008 (Burchell 2013: 24). In the well-known case of S v Mahlangu [2012] ZAGPJHC 144 (the Eugène Terre'Blanche killing) Judge Horn emphasised that

> there is no special magic in the Child Justice Act. It is not supposed to turn juvenile offenders into untouchables. Experience has shown that youthful offenders commit some of the worst crimes. They should not be permitted to hide behind their youthfulness when they make themselves guilty of violent crimes.

The discretion to impose the minimum prescribed sentence (i.e. life imprisonment) did thus indeed exist for children between the ages of 16 and 18 years. In Direkteur van Openbare Vervolgings, TVI v Makwetsja 2004 (2) SACR 1 (T), it was, however, held that the minimum prescribed sentence should be imposed upon children between the ages of 16 and 18 years only in extreme instances and only if the accused committed the crime as a principal offender and not as an accessory after the fact (see S v Mokasi 2002 (2) SACR 609 A few years later, in 2009, Justice Cameron (for the majority of the Constitutional Court) in Centre for Child Law v Minister for Justice and Constitutional Development 2009 (6) SA 632 (CC) was responsible for a significant judicial advance by holding that the 2007 Criminal Law (Sentencing) Amendment Act was unconstitutional insofar as making the prescribed minimum sentences applicable to offenders between 16 and 18 years of age. The Constitutional Court opined that, when sentencing a juvenile offender, a sentencing court should impose an individually appropriate sentence rather than a legislatively imposed one. Justice Cameron emphasised that there is a sharp distinction between children and adults, and this should be borne in mind when sentencing child offenders. The aim of the Criminal Law (Sentencing) Amendment Act is to obliterate this distinction and for this reason it was found that the amending legislation unjustifiably infringed the rights of children as enshrined by section 28 of the Constitution.

12.2.3 Statutory law: the Child Justice Act 75 of 2008

12.2.3.1 Criminal capacity

This part of the chapter will address the juvenile offender's criminal capacity as it is set out in Part 2 of Chapter 2, specifically sections 7—11 of the CJA. It therefore deals with the legal position regarding the criminal capacity of children where the alleged crime was committed on or after I April 2010 when the Act came into operation (stipulated as such in section 4(1) of the Act).

The main aim of the CJA was essentially to create a separate criminal justice system for children by addressing the plight of those who were in conflict with the law and who were sometimes treated unduly harshly in a formal criminal justice system designed by adults for adults. While providing for diversion of offenders under the age of 18 years from the formal criminal justice system, the legislation also envisaged the improvement of juvenile offenders' position by keeping them out of the formal criminal justice system altogether by raising the minimum age of criminal capacity for children. It was explained earlier that, under the common law, the minimum age of criminal capacity where a child could possibly incur criminal liability was seven years. Section 7(3) of the Act stipulated the amendment of the common law pertaining to the criminal capacity of children under the age of 14 years. This meant that the common law governing the criminal capacity of children who were under the age of 14 years at the time of the crime was no longer valid and enforceable.

New Age limits

While the common law distinguished between three age groups, namely 0—6 years (infantes), 7—13 years (impubes), and 14 years and older, the Child Justice Act 75 of 2008, in sections 7 and II, introduced new age limits which replaced the former common law provisions relating to the criminal capacity of young offenders (see s 7(3)). The three groups into which children are now divided are 0—9 years, 10—13 years, and 14—21 years.

Children who have not yet completed their ninth year of life (in other words have not yet celebrated their 10th birthday) are now irrefutably presumed to lack criminal capacity (see s 7(1) of the Act). Burchell (2013: 255) refers to evidence to support the view that the left and right halves of the brain join at approximately the age of 10 years and that children begin to evaluate and think in the abstract between the ages of seven and Il years. Interestingly enough, this evidence makes the choice of 10 years of age for the limit below which children will not incur criminal liability defensible. The fact that this presumption is irrefutable means that such a child can never incur any criminal liability and cannot even be prosecuted, irrespective of how mature or intelligent such a child may be or whether the child had the necessary mens rea (S v M 1978 (3) SA 557 (Tk)). Any evidence regarding such a child's cognitive and conative mental abilities at the time of the alleged crime is inadmissible.

Section 7(1) of the Act thus raised the minimum age of criminal capacity (and possible criminal liability) of children from seven to 10 years, with the result that a child under the age of 10 will never enter the formal criminal justice system. A police official who has reason to believe that such a child has committed a crime is not allowed to arrest the child but must immediately hand over the child to his or her parents or guardian (s 9(1)). The introduction of a new minimum age of criminal capacity constituted an important change in our material criminal law. Practically, though, this was not likely to bring much change as the state almost never charged a child under the age of 10 years before the commencement of the Act anyway (Snyman 2014: 174; Burchell 2013: 255).

Children in the second age group, namely those who are 10 years or older but under the age of 14 at the time of the alleged crime, are rebuttably presumed to lack criminal capacity unless the state proves that they had criminal capacity at the time of the alleged crime (s 7(2) of the Act). The test to determine whether children in this category had criminal capacity is set out in section 11(1) of the Act. The fact that this presumption is rebuttable means that the prosecution may adduce evidence to prove to the court that the child did possess the cognitive and conative mental abilities required for criminal capacity at the time of the alleged crime. Because the point of departure is that the child lacked criminal capacity, the onus is on the state or prosecution to prove beyond reasonable doubt that the child met all the requirements, including

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criminal capacity, for incurring criminal liability. Children who are 10 years or older but under the age of 14 years can thus incur criminal liability if the state manages to rebut the presumption of criminal incapacity beyond reasonable doubt. Schwikkard and Van der Merwe (2012: 500) describe a rebuttable presumption as a rule Of law (within the law of evidence) compelling the provisional assumption of a fact. This assumption (in this instance that the child possesses criminal capacity) will stand until the accused satisfies the court to the contrary. In S v F 1989 (1) SA 460 (Z), the state did not succeed in rebutting the presumption of criminal incapacity on the part of a 10-year-old boy who was charged with indecent assault (see also S v Mdukazi 1972 (4) SA 256 (NC); S v M 1979 (4) SA 564 (B)). one must also keep in mind that the investigation into criminal capacity precedes the inquiry into fault or mens rea and that, after criminal capacity on the part of the accused has been established, the prosecution still needs to prove mens rea in the form of either intention or negligence before criminal liability may ensue.

Children who have completed their 14th but not yet their 21st year of life are, like adults, rebuttably presumed to have had criminal capacity at the time of the alleged crime. Such a child will therefore be convicted of a crime

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unless the defence counsel can, on a balance Of probabilities, rebut the presumption of having had criminal capacity at the time of the alleged crime. The possibility of diversion Of the child's case from the formal criminal justice system in terms of section 4 of the CJA still exists.

If one can compare the old common law position regarding the criminal capacity of juvenile offenders with the new statutory position, it becomes clear that the only material change is in the first age group, namely children aged 0—9 years. The common law position for having criminal capacity was seven years Of age, and this has now been increased to nine. Put differently, previously a child had to be at least seven years old to be convicted of a crime, but according to the new statutory position, a child now has to be at least 10 years old for this to occur.

Proof of criminal capacity

Section 11(1) of the Act stipulates that the state must prove, beyond reasonable doubt, the capacity of a child 10 years or older but under the age of 14 "to appreciate the difference between right and wrong at the time of the commission of an alleged offence and to act in accordance with that appreciation" (Snyman 2014: 174). The first part of what the state must prove ("to appreciate the difference between right and wrong") is the cognitive mental ability, which refers to intellectual ability. The second part of section I l (I) ("to act in accordance with that appreciation") is the conative mental ability, which refers to the power of resistance or self-control to refrain from doing something wrong. Both the cognitive and conative ability have to be there before one can have criminal capacity. It is very important to understand that criminal capacity refers to a mental ability. Fault, in the form of intention specifically, consists of the will to act and knowledge of unlawfulness (Snyman 2014: 176). It is thus clear that criminal capacity deals with a mental ability while intention deals with knowledge, and that these two concepts are vastly different. Where the state takes a shortcut by merely asking the child whether he or she knows "the difference between right and wrong", criminal capacity will not be proven. Such a shortcut question

confuses criminal capacity (a mental ability) with intention (knowing that certain conduct is unlawful).

For the state to prove criminal capacity as stated in section 11(1) of the Act, it should prove beyond reasonable doubt that the child had the cognitive ability to realise, at the time of the crime, the wrongfulness of the specific conduct he or she is charged with in the specific circumstances it was committed (Snyman 2014: 175).

Equally important for the state to prove criminal capacity is not only to prove the child's cognitive ability as explained above, but also that the child had the required conative ability at the time of the crime. According to section 11(1), what must be proved is the child's ability "to act in accordance with that appreciation" (see also S v Goeda 1969 (l) PH H 85 (OD); and S v Pietersen 1983 (4) SA 904 (E)). This means that the state must prove beyond reasonable doubt that the child possessed sufficient maturity and power to resist temptation in the specific circumstances, taking into account the specific conduct the child is charged with.

Section 10(a)–(h) lists factors the prosecutor must take into consideration in deciding whether or not to prosecute a child; in other words, in deciding the likelihood of the child's criminal capacity being proved. These factors include the educational level, cognitive ability, domestic and environmental circumstances, age and maturity of the child, the nature of the alleged offence and the interests of the community.

12.2.3.2 Sentencing of juvenile offenders

Certainly, the main aim of the CJA is to create a new criminal justice system for children where matters involving children who have committed crimes can be diverted from the formal criminal justice system. The CJA provides for the diversion of all offenders between the ages of 10 and 18 years (and also over 18 years but younger than 21 if the alleged crime was committed when the offender was under 18 years of age at the time of the crime) and for all crimes. Crimes are divided into three schedules for purposes of diversion, ranging from less serious crimes (such as common assault) in Schedule I to the most serious crimes (such as murder, rape and robbery with aggravating circumstances) in Schedule 3. A diversion order does not amount to a conviction (s 590)), and diversion may be considered at any time during the trial and even after conviction (S v MK 2012 (2) SACR 533 (GSJ)). Emphasis is placed on the possibility of effectively rehabilitating and reintegrating juvenile offenders back into society.The effectiveness of diversion to fulfil one of the most important functions of punishment, namely the expression of society's indignation at the commission of the crime, has, however, been questioned. Muntingh (1997: 75—76) is, for example, sceptical about diversion and states that

> diversion of a case does not explicitly express society's disapproval of a particu lar act. Whereas conviction is a recorded action, diversion becomes a clandestine operation alongside the criminal justice system — a private agreement between the accused, the public prosecutor, and the organization responsible for administering the diversion programme.

Chapter 10 of the CJA governs the sentencing by a child justice court of child offenders who are not diverted. In S v BF 2012 (1) SACR 298 (SCA), the Supreme Court of Appeal reiterated that, where incarceration of a juvenile must occur, the sentence must be such as to prepare the juvenile offender for his or her return to society from the moment of entering the detention facility. Part 2 of Chapter 10 (ss 72—77) provides for six new sentencing options, which include community-based sentences; restorative justice sentences; a fine, or alternatives to a fine; sentences involving correctional supervision; a sentence of compulsory residence in a child and youth care centre; imprisonment; and, lastly, postponement or suspension of sentence. These sentencing options may also be used in combination (s 69(2)). Restorative justice as a non-punitive resolution of conflict is promoted through various sections of the CJA, such as family conferences, victim—offender mediation (s 61)

and community-based sentences (s 72) (S Maluleke 2008 (1) SACR 49 CD; S v Shilubane 2008 (1) SACR 295 .

As far as the sentence of compulsory residence in a child and youth care centre in terms

of section 76 of the CJA is concerned, the court in S v CS 2012 (1) SACR 595 (ECP) emphasised that section 85 of the CJA stipulates that such a sentence is subject to review by a judge of the high court in terms of section 304 of the Criminal Procedure Act 51 of 1977. This is so even if the child was represented by a legal practitioner. As far as imprisonment is concerned, section 77(1) of the CJA stipulates that a child justice court may not impose a sentence of imprisonment on a child who is under the age of 14 years at the time of being sentenced. When sentencing a child who is 14 years or older at the time Of being sentenced for the Offence, a court must only do so as a measure of last resort and for the shortest appropriate period of time.

The whole of chapter 10 (ss 68—79) of the Act governs the sentencing of children by making it compulsory for a child justice court that has convicted a child to impose a sentence. One of the main objectives of sentencing a juvenile offender, according to section 69(1) (b), is to promote an individualised response (sees v Scheepers 1977 (2) SA 154 (A), as well as S v BF 2012 (1) SACR 298 (SCAD to sentencing that strikes a balance between the circumstances of the child, the nature of the offence and the interests of society. This echoes the old "Trits in Zinn" principle when imposing a sentence and which was discussed earlier in this chapter under the common law. However, in the Preamble to the Act it is stated that the Act aims to "balance the interests of children and those of society, with due regard to the rights of victims". Also, according to section 69(4)(c) of the Act a child justice court must take, among other factors, the severity Of the impact of the crime on the victim into consideration when considering the imposition of a sentence involving imprisonment, and section 70 of the Act permits the use of victim impact statements in the sentencing process (Burchell 2013: 4). A victim impact statement is defined in broad terms in the Act as "a sworn statement by the victim or someone authorized by the victim to make a statement on behalf of the victim which reflects the physical, psychological, social, financial or any other consequence of the offence for the victim".

In the decision of S v BF 2012 (1) SACR 298 (SCA), the Supreme Court of Appeal stated that "the attention given to a child when considering sentence is not done in a vacuum. The seriousness of the offence, its impact on the victirns and the interests of the broader society must be taken into consideration". The emphasis on the rights of the victim, as mentioned above, indicates that the "Trits in Zinn" or triad of considerations in the sentencing process has, also in the CJA, become a "square" with four considerations to be taken into account when imposing a sentence. In a judgment delivered on 29 September 2011 in Fredericks v State (208/11) [2011] ZÀSCA 177, the Supreme Court of Appeal declared that the Appeal Court is at liberty to interfere with a sentence where the trial court has materially misdirected itself in imposing a sentence on a convicted juvenile. The CJA, in section 82, also provides for legal representation at state expense for all alleged juvenile offenders appearing before a child justice court.

12.3 CONCLUSION

South Africa, especially before 1994, has a dark history of apartheid and a total disregard for fundamental human rights. Part of this untenable situation was the plight of children who came into conflict with the law and who were taken up in a rigid criminal justice process with disastrous results, such as whipping as a form of punishment, detention without trial, and/or imprisonment for political beliefs under the infamous security legislation.

In the early 1990s, South Africa saw the birth of a new democratic country and with this a Constitution with a Bill of Rights designed to protect the basic human rights of every person in our society. Child rights activists also began to promote the creation of a separate criminal justice system for children, underpinned by separate legislation in accordance with constitutional values. Their tremendous efforts in child

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justice reform in South Africa must be applauded. The Child Justice Act 75 of 2008 was assented to on 7 May 2009 and commenced on 1 April 2010. The Act predominantly aimed to create a new criminal justice system for children with the possibility of diverting matters involving children who have committed crimes from the rigid criminal justice system. The age of criminal capacity was also raised from seven to 10 years of age, and provision was made for the establishment of child justice courts. The principles of restorative justice, reconciliation and rehabilitation in the criminal justice system were also statutorily entrenched. Almost seven years since its coming into operation, the CJA is operating in a milieu where more and more juvenile Offenders are committing serious and extremely violent crimes. It is this phenomenon, coupled with society's concern to see justice being done when sentencing a convicted criminal, that elicits sharp criticism against the new legislative framework for diversionary procedures laid down by the Act. There is no doubt that the prosecutorial discretion to divert should be subjected to proper and clear limits in order to honour society's legitimate interest in seeing a violent criminal pay for the harm he or she has done. The effectiveness of the diversionary options in alleviating the plight of children in conflict with the law will depend, to a large extent, on the resources allocated to the proper practical implementation of what the CJA offers on paper. Obtaining a perfect balance between justice to juvenile offenders and justice to society will remain a challenge.

CRITICAL QUESTIONS

1. Explain the term "elementological concept of a crime".
Explain the term "elementological concept of a crime".
2. Discuss critically the influence of youthfulness on criminal liability under the common law.
3. Discuss the statutory provisions regarding the criminal capacity ofjuvenile offenders.
4. Èxplain the "Trits in Zinn" principle when it comes to imposing a sentence.
5. Explain the influence of the Child Justice Act 75 of 2008 on the sentencing ofjuvenile offenders.

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The Child Justice Act: practice and procedure

Ann Skelton and Morgan Courtenay

OBJECTIVES

You should be able to understand the general principles and objectives of the child justice system as set out in the Child Justice Act describe Schedule I , 2 and 3 offences at the end of the Child Justice Act (and this chapter) that list the categories of offences understand to which age categories of children the Child Justice Act applies discuss arrest and alternatives understand the rules that aim to limit pre-trial detention discuss the pre-trial processes of assessment and diversion understand the rules of the child justice court understand the sentencing of child offenders within the constitutional context explain other relevant provisions of the Child Justice Act.

KEYWORDS

assessment
acknowledgment of responsibility
appropriate adult
child
child and youth care centre
child justice court
children 's court
criminal capacity
detention
diversion
inquiry magistrate
preliminary inquiry
probation officer
prosecutor
restorative justice
ubuntu

13.1 THE DEVELOPMENT OF A CHILDREN IN CONFLICT WITH THE RIGHTS-BASED APPROACH FOR LAW: 1992-2010

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The death of Neville Snyman in 1992 was a watershed moment for the child rights movement working towards the reform of South Africa's child justice system. Neville was only 13 years old when he and a group of friends broke into a local shop in Robertson and stole sweets and cold drinks. Neville was arrested and detained in police cells with other offenders under the age of 21 years. While detained, his cellmates bludgeoned him to death. Nongovernmental organisations (NGOs) had been raising the issue of children in the criminal justice system and calling for law reform for some time (Community Law Centre, National Institute for Crime Prevention and Rehabilitation of Offenders (NICRO) & Lawyers for Human Rights 1992), but until this happened, their calls had fallen on deaf ears. Neville's tragic death led to a public outcry, and the government took action by setting up a national working committee on children in detention.

In the meanwhile, NGOs redoubled their efforts. Lawyers for Human Rights ran a campaign called "Free a Child for Christmas", which resulted in the release of 260 children by Christmas 1992. The NGOs also decided that legislative reform was necessary, and in 1993 they set about drafting proposals for a new child justice system (Pinnock, Skelton & Shapiro 1994). Although the proposals did not have any official status, they did influence future developments, in particular the rightsbased approach — which would later form the bedrock of the Act — and the principles of restorative justice.

The establishment of the first democratic government in 1994 ushered in a renewed focus on the need to protect children in conflict with the law. In his State of the Nation Address in 1994, the then president Nelson Mandela promised that the government would, as a matter of urgency, attend to the tragic and complex question of children and juveniles in detention and prison. The basic principle from which we will proceed from now onwards is that we must rescue the children of the nation and ensure that the system of criminal justice is the very last resort in the case of juvenile offenders (http://www.anc.org.za/show.php?id=3661).

The ratification by the South African government of the United Nations Convention on the Rights of the Child (UNCRC) in 1995 set the scene for far-reaching policy and legislative change. The rights of children in conflict with the law — as espoused in the UNCRC — were given constitutional protection through the inclusion of such rights in the Constitution, which came into operation on 8 May 1996. Children were provided with the express constitutional guarantee that they would not be detained except as a measure of last resort, and, if they were detained, it would be for the shortest appropriate period of time; that they would be kept separate from adults; that they would be kept in conditions which took their age into account; and that their best interests would be of paramount importance. One of the earliest cases to come before the newly established Constitutional Court was S v Wiltiams 1995 (3) SA 632 (CC), which dealt with the sentence of corporal punishment (whipping), until then a sentence commonly used for the punishment of children by the courts. The court struck down corporal punishment on the grounds that it was cruel, inhuman and degrading.

The government did act with urgency on the issue Of children in prison, as the president at the time, Nelson Mandela, had promised it would. In this regard, however, the country discovered that the practice of proceeding with too much haste could create problems Of its own. An amendment to.an existing law, which was intended to outlaw entirely the imprisonment of children during the awaiting-trial phase, led to chaos when it was suddenly promulgated. Inadequate consultation between the relevant government departments, as well as a lack of alternative residential facilities for children, caused the application of the new law to be fraught with practical problems. So serious were the consequences of this that within a year the government had to amend the law again, this time allowing children who had been charged with certain offences to be detained in prison awaiting trial.

The debacle also had some positive results, however. It led directly to the setting up of a structure called the Inter-ministerial Committee on Young People at Risk OMC) which

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became an important agency for policy making in the field of child and youth care, including the management of children who come into conflict with the law.

In 1997 the law-making process began when the Minister of Justice and Constitutional Development requested the South African Law Reform Commission (SALRC) to investigate and interrogate issues relevant to "juvenile justice". The Juvenile Justice Project Committee of the South African Law Commission (SALC) commenced its work almost immediately, releasing a discussion paper with a draft bill for comment in 1999. The project committee followed an extensive consultative process, holding workshops and receiving written submissions from a range of criminal justice role players. Children were also consulted on the bill while it was still being developed (Community Law Centre 2000). The final report of the Commission was completed and handed to the Minister of Justice in August 2000 (SALC 2000). The Child Justice Bill was approved by cabinet in 2001 for introduction to parliament, and was introduced to parliament in August 2002 as Bill B49 of 2002. Although fraught with significant delays, the bill was eventually assented to on 7 May 2009 and came into operation on 1 April 2010 (Skelton & Gallinetti 2008).

13.2 THE CHILD JUSTICE ACT

On 1 April 2010, a historic day in the protection of the rights of children in South Africa, the Child Justice Act 75 of 2008 ("Act") came into operation.

The Act aims to establish a criminal justice system that has as a central feature the possibility of diverting matters from the criminal justice system, and that expands and entrenches the principles of restorative justice, while ensuring that children are held responsible and accountable for offences they commit. It further recognises the need to be proactive in crime prevention by placing increased emphasis on the effective rehabilitation and reintegration of children in order to minimise the potential for re-offending, and balances the interests of children and those of society with due regard to the rights of victims (Preamble to the Act). In order to realise these aims, the Act provides for the following stated objectives, namely to

(a) protect the rights of children as provided for in the Constitution;

(b) promote the spirit of ubuntu in the child justice system through —

(i) fostering children's sense of dignity and worth; (ii) reinforcing children's respect for human rights and fundamental freedoms of others holding children accountable for their actions and safe guarding the interests of victims and the community;

(iii) supporting reconciliation by means of a restorative justice response; and

(iv) involving parents, families, victims and, where appropriate, others members of the community affected by crime in terms of this Act in order to encourage the reintegration of children;

(c) provide for the special treatment of children in a child justice system designed to break the cycle of crime, which will contribute to safer communities, and encourage these children to become law-abiding and productive adults;

(d) prevent children from being exposed to the adverse effects of the formal criminal justice system by using, where appropriate, processes, procedures, mechanisms, services or options more suitable to the needs of children and in accordance with the Constitution.

The Act furthermore provides a set of "guiding principles" which frame the paradigm in which a range of nuanced mechanisms, processes and procedures are to be applied (s 3).

The Act may thus be said to have introduced a comprehensive system of dealing with children in conflict with the law that represents a decisive break with the traditional criminal justice system (S v (XM 2013 (2) SACR 303 (GNP)). The traditional pillars of punishment, retribution and deterrence are replaced with continued emphasis on the need to gain an understanding of a child caught up in behaviour transgressing the law. This is feasible by

assessing his or her personality, determining whether the child is in need of care and correcting errant actions as far as possible by diversion, community-based programmes, the application of restorative justice processes and reintegration of the child into the community (S v CKM 2013 (2) SACR 303 (GNP)).

It is important to note that at the end of the Act, the law sets out several schedules. Schedules 1, 2 and 3 are lists of offences, and are set out at the end of this chapter for ease of reference. Schedule 1 lists the least serious offences, and Schedule 3 the most serious ones. They are referred to in many sections of the Act.

A thematic breakdown of the Act follows.

13.2. I Scope and application of the Child Justice Act (CJA)

The Act applies to any person under the age of 18 years who is alleged to have committed an offence. This seems simple at first but when one considers that children under the age of 10 years cannot be held criminally responsible for their actions and that the status of being a child is by its very definition transitional, it becomes quite complex (also see Chapter 12).

In order to provide some clarity, the Act prescribes that it applies to the following categories of children:

- Children below the age of 10 years at the time of the commission of the offence. The rationale for the Act applying to these children and not only to those between the ages of 10 and 18 years is that section 9 of the Act mandates a probation officer to undertake an assessment to establish the cause of the behaviour and undertake a measure of remedial action (s 4(1)(a) of the CJA). Any action taken pursuant to this section against the child, however, does not amount to a criminal prosecution.
- Children aged 10 years and older but younger than 18 years at the time that they were handed a written notice to appear in court, were served with a summons, or were arrested. The rationale for not having the "date Of the commission of the offence" as the determining factor is simple: it is to avoid the anomalous situation where a child commits an offence and is only brought into the criminal justice system much later, for example when he or she is middle-aged. The procedures in the Act are designed to pro-

  tect children who are actually in the criminal justice system (s 4(l)(b) of the CJA; Gallinetti 2009b: 15).

Once it is established that the Act finds operation in a given matter, it continues in its operation until the conclusion of the matter, irrespective of whether the child subsequently turns 18. (This approach was taken in two reported cases: S v Melapi 2014 (1) SACR 363 (GP) and S v Meta and Others 2016 (2) SACR 641 (WCC).)

The Act — recognising that people between the ages of 18 and 21 years may also benefit from certain procedures laid down in the Act — allows for the Director of Public Prosecutions to direct that such person be assessed and placed into a diversion programme (s 4(2) of the CJA).

13.2.2 Criminal capacity

Note: Please read this section with section 12.2 in Chapter 12.

In law, a person is responsible for criminal conduct only if the prosecutor proves, beyond reasonable doubt, that at the time the conduct was perpetrated he or she had criminal capacity (Burchell 2011: 255). Offenders are considered to be endowed with criminal capacity if they have the mental ability to appreciate the wrongfulness of their conduct ("cognitive faculty") and the ability to conduct themselves in accordance with such appreciation ("conative faculty") (Snyman 2008: 160; S v TVS [2015] 1 All SA 223 NCC)).

The youthfulness of an accused may serve to exclude criminal capacity in certain circumstances. In this vein, the Act distinguishes between three groups of children, which are described below.

13.2.2.1 Children who have not yet completed their 10th year

In these instances the child is irrebuttably presumed to lack criminal capacity and may therefore not be prosecuted (s 7(1) of the CJA; Burchell 2011: 264).

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Although children below the age of 10 years may not be arrested or prosecuted, the Act recognises that they.are at risk and that some action should be taken. The Act therefore makes it mandatory that a probation officer be notified to conduct an assessment. Once such children have been assessed, the probation officer may

- refer them to the children's court
- refer them for counselling or therapy • refer them to a programme designed to suit the needs of children under the age of 10 • arrange support services for them • set up a meeting with them and their parents or any other person in order to develop an appropriate written plan of action • decide to take no action (ss 9(3) and (4) of the CJA).

13.2.2.2 Children between the ages of 10 and 14 years

There is a presumption that a child between the ages of 10 and 14 years lacks criminal capacity. This presumption, however, is rebut-
table and it weakens as the child approaches the age of 14 (s 7(2) of the CJA; Burchell 2011: 264).

In order to rebut this presumption, the state is tasked with proving beyond reasonable doubt that the child had criminal capaciw (s 11(1) of the CJA; s v TVS [2015] 1 All SA 223 (WCC)). In deciding whether the child has criminal capacity or not, the inquiry magistrate or the child justice court must have regard to the probation officer's assessment report and may consider any Other information that is of relevance (ss 11(2) and (3) of the CJA). This may include calling on mental health experts to provide their opinion on the criminal capacity of the child.

Where a child is not found to have criminal capacity, he or she should, if it is in his or her best interest, be dealt with in the same manner as if he or she was below the age of 10 (s 116) of the CJA).

The Act requires parliament to consider raising the age of criminal capacity within five years of the Act coming into consideration. In September 2016 the Department of Justice reported to a joint meeting of the Parliamentary Portfolio Committee on Justice and the Select Committee on Security and Justice.

The Department proposes the raising of the age of criminal capacity to 12 years (South African government 2016). Questions remain about whether the presumption will stay or be scrapped. If it is to be removed, this would mean that children under 12 years cannot be prosecuted, but such an option would also mean that 12- and 13-year-olds would have less protection under the law. Consequently, some civil society groups have indicated that they will advocate for raising the minimum age to 14 years (Skelton 2013).

13.2.2.3 Children who are 14 years and older

On attaining the age of 14, a child is presumed to have criminal capacity and is regarded in law as being no different from an adult with regard to criminal capacity (s 7(3) of the CJA; Burchell 2011: 267), though youthfulness does affect culpability for purposes of sentencing.

13.2.3 Methods of securing a child's attendance at a preliminary inquiry

One of the main aims Of the Act is to prevent children from being exposed to the adverse effects of the formal criminal justice system (s 2(c) of the CJA). One of the ways in which this is achieved is by providing for various "non-traditional" ways Of ensuring that a child attends the preliminary inquiry. Thus where a child is suspected of committing an offence and is apprehended, his or her presence can be secured in various ways, namely by the following:

- A police official may hand the child a written notice warning him or her to appear before a preliminary inquiry. A written notice may only be handed to a child who has committed a Schedule 1 offence (s 18(1) of the CJA). The notice should be handed to the child in the presence of his or her parent, guardian or an appropriate adult. Where this is not possible, the police official

must hand the written notice to the child and a copy must, as soon as circumstances permit, be handed to the parent, guardian or an appropriate adult (s 17(l)(a) read with s 18 of the CJA). The police official must notify

the probation officer concerned, within 24 hours, that a written notice has been served on a particular child (s 18(4)(b) of the CJA).

- A police official may also serve a summons on a child. A summons is usually used when a period of time has elapsed since the offence was committed. This is usually the case when a charge was previously withdrawn and the prosecutor elects to reinstate it (Gallinetti 2009b: 24). A summons is also issued when the docket has been referred to a prosecutor to make a decision, and he or she has decided to prosecute. A summons may be used to secure the attendance of a child regardless of what schedule offence is alleged to have been committed. The summons must be served on the child in the presence of his or her parent, guardian or an appropriate adult. Where this is not possible, the police official must serve the summons on the child and a copy must, as soon as circumstances permit, be handed to the parent, guardian or an appropriate adult (s read with s 19 of the CJA). The police official must notify the probation officer concerned, within 24 hours, that a summons has been served on a particular child (s 19(3)(b) of the CJA).
- A police official may arrest a child. However, it is important to note that a child may not be arrested for an offence referred to in Schedule I unless compelling reasons exist that justify this. The police official must notify the parent, guardian or an appropriate adult of the arrest. If this is not possible, the police official must submit a written report to the inquiry magistrate explaining why he or she was unable to do so (s read with s 20 of the CJA). The police official must notify the probation officer concerned, within 24 hours of arrest, that the child has been arrested (s 20(4) of the CJA). Moreover, a police official must take any child who has been arrested and not released to the relevant magistrate's court within 48 hours of the arrest. In Raduvha v Minister of Safety and Security (CCT 151/15) [2016] ZACC 35, the Constitutional Court found that when contemplating the arrest of a child, the police officer must apply the principle of best interests as a paramount consideration.
  The court found the arrest of the 15-yearold girl in this case to have been unlawful because the officer failed to consider her best interests, and it was not necessary to arrest her. Although this case dealt with an incident that occurred in 2008 prior to the Act coming into operation, it underscores the application of the Constitutional principle of best interests to arrest.

13.2.4 Pre-trial detention

Deaths and injuries of children in custody in South Africa have occurred most often during pre-trial detention (Skelton & Courtenay 2015: 335). This illustrates not only the vulnerability of arrested and detained children, but also underscores the importance of adhering to the constitutional injunction contained with section of the Constitution, which provides children the right not to be detained except as a measure of last resort and for the shortest possible period of time. The Act proceeds from the understanding that section 28(1)(g) applies to pre-trial and pre-sentence detention as well to detention as a sentence. In Raduvha v Minister of Safety and Security (CCT 151/15) [2016] ZACC 35, the Constitutional Court confirmed this. Arrest and detention were seen as separate stages — arrest of children to be subject to the best interests Of children and pre-trial detention to be considered an aspect of detention as referred to in section 28(l)(g). In that case, the court found the detention in police cells of a 15-year-old girl on a minor charge of obstructing

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justice, whose father was present and willing to receive her, to be a flagrant breach of section 28(1)(g)

In order to cure the situation that existed in South Africa and to give effect to the constitutional imperative contained within section 28(1)(g), the Act comprehensively overhauled the processes and procedures for and conditions of pre-trial detention.

The Act sets its face firmly against the detention of children by stating unequivocally that "[w]hen considering the release or detention of a child who has been arrested, preference must be given to releasing the child" (s 21 (1) of the CJA). However, if detention is to be used, then the Act distinguishes between two situations of release and pre-trial detention:

- Release and detention before the first appearance at the preliminary inquiry
- Release and detention after the first appearance at the preliminary inquiry and at any subsequent appearance in court

13.2.4.1 Release and detention before the first appearance at the preliminary inquiry

A police official must, in respect of an offence referred to in Schedule 1, where appropriate, release a child on written notice into the care of a parent, an appropriate adult or a guardian (s of the CJA). It would not be appropriate to release such a child where either the child's parent, an appropriate adult or guardian cannot be located or is not available despite all reasonable efforts having been made to locate such person; or a substantial reason exists to believe that a child may be a danger to any other person or to him- or herself (s 22(1) of the CJA). Where a police official does not release a child, he or she must set out the reasons in a written report, which must be submitted to the inquiry magistrate (s 22(2) of the CJA).

In instances where the police official cannot release a child, a prosecutor may authorise the release of the child on bail. The prosecutor is entitled to do so in relation to both Schedule I and 2 offences (s 21(2)(b) of the CJA).

If a child is not released before his or her first appearance, a police official must, where appropriate and applicable, consider the placement of a child in a suitable child and youth care centre (CYCC) (s 26(2)(a) of the CJA). Whether it is appropriate or applicable to consider placement of a child, section 27 of the Act distinguishes between three categories of children:

- A child who is 10 years or older but under the age of 14 who is charged with any offence
- A child who is 14 years or older and charged with a Schedule 1 or 2 offence
- A child who is 14 years or older and charged with a Schedule 3 offence

With regard to the first two categories, a police official must give consideration to the detention of the child in an appropriate CYCC, where such centre is available within a reasonable distance from the court and where a vacancy exists.

Where no such facility is available, or there are no vacancies, or the child is 14 years and older and has committed a Schedule 3 offence, the child must be detained in a police cell or lock-up facility.

The Act does not provide for the possibility of a child being detained in a prison prior to the first appearance (Gallinetti 2009b: 27).

13.2.4.2 Release and detention after the first appearance at the preliminary inquiry

A child may be released at a preliminary inquiry or any subsequent appearance in one of three ways:

- The child may be released, in respect of any offence, into the care of a parent, an appropriate adult or guardian (s 21(3)(a) of the CJA).
- The child may be released, in respect of a Schedule 1 or 2 offence, on his or her own recognisance (s 21(3)(b) of the CJA).
- The child may be released on bail (s 21(3)(c) of the CJA).

A presiding officer must consider releasing a child on his or her own recognisance or into the care of a parent, an appropriate adult or a guardian unless doing so would not be in the interests of justice (s 24(1) and (2) of the CJA). In order to determine whether the release of the child is in the interests of justice or not, the presiding officer must have regard to the recommendations of the probation officer's

assessment report and all other relevant factors, including the best interests of the child; whether the child has a previous conviction; the interests and safety of the community in which the child resides; and the seriousness of the offence (s 24(3) of the CJA). In the event that the presiding officer elects to release the child, as aforesaid, he or she may impose one or more conditions to ensure the child does not abscond. These include reporting periodically to a specified person or at a specified place, attending a particular school, residing

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at a particular address, being placed under supervision, or not associating with any per- son or group of persons (s 24(4) of the CJA). Should the child fail to adhere to any such condition, a warrant of arrest or a summons may be issued.

In the event that none of the above manners of release is appropriate, a child may nevertheless be released on bail (s 25(1) of the CJA), an application for which must be considered in three stages.

First it must be determined whether the interests of justice permit the release of the child on bail. If they do, a separate inquiry must be held to determine what an appropriate amount of money would be to set as bail. If after such inquiry it is found that the child and his or her parent, appropriate adult or guardian is unable to pay any amount of money, the presiding officer must set appropriate conditions that do not include the payment of money. If they can pay an amount of money, the presiding officer must set conditions and an amount of money that is appropriate in the circumstances (s 25(2) of the CJA).

If a decision is made that a child is to remain in detention, the presiding officer may order that he or she be detained at either a CYCC or a prison (s 26(3) of the CJA). When making such a determination, the presiding officer must give preference to the least-restrictive option possible in the circumstances (s 26(1) of the CJA). In practice this would mean that a child should be detained at a CYCC rather than in a prison (Gallinetti 2009b: 29).

When a presiding officer is tasked with deciding whether a child should be detained at a CYCC, consideration must be given to the age and maturity of the child; the seriousness of the offence in question; the risk that the child may be a danger to him- or herself or others; the appropriateness of the level of security at the CYCC; and the availability of accommo-dation (s 29(2) of the CJA). When considering these factors, the presiding officer must consider the probation officer's assessment report (s 29(3) of the CJA).

In order to ensure that children are detained in a prison as a matter of last resort, the Act provides that a presiding officer may only order detention in a prison if an application for bail has been postponed or refused; the child is 14 years or older; the child is accused of committing a Schedule 3 offence; the detention is necessary in the interests of justice; and there is a likelihood that the child, if convicted, could be sentenced to prison (s 30(1) of the CJA). These requirements are further qualified in respect of children who are 14 years or older but under 16 in that, in addition to the above factors, the Director of Public Prosecutions must issue a certificate which confirms that there is sufficient evidence to institute a prosecution against the child for an offence referred to in Schedule 3 (s 30(2) of the CJA). Even where such circumstances are present, a presiding Officer must nevertheless consider the recommendations of the probation officer's assessment report as well as any other relevant evidence which has a bearing on the best interests of the child; the child's state of health; the risk of the child absconding from a CY CC; the probable period of detention until the conclusion of the matter; and the seriousness of the offence, to name a few (see s (3)(a–k)of the CJA).

Lastly, where a child has been ordered to remain in any form of pre-trial detention, the Act mandates that such detention must be re-evaluated at each and every subsequent appearance (s 32 of the CJA). In S v S unreported case [2015] ZAGPPHC 520 (11 June 2015), the reviewing judge took a dim view of the magistrate postponing a matter twice for a month each time while the child remained in detention.

13.2.5 Pre-trial procedures

A dramatic departure from the conventional South African criminal procedure was the introduction of two critical processes at the pre-trial stage of proceedings by the Act, namely assessment and the preliminary inquiry. Although they are distinct processes, assessment and the preliminary inquiry are closely linked in that they must both occur within 48 hours of a child's arrest (s 43(3)(b)(i) of the CJA; Gallinetti 2009a: 653). Moreover, one Of the objectives of the preliminary inquiry is to consider the recommendations of the probation officer's assessment report and make decisions based on it (s 43(2) of the CJA).

The interrelatedness of these two processes provides for a more central role for probation officers. In this way the Act promotes the principles Of restorative justice by tempering the cold and uncaring mainstream criminal justice system by placing professionals at the coalface who are knowledgeable about crime prevention, the treatment of offenders, and the care and

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treatment of victims, as well as working with families and communities of both offenders and victims.

13.2.5.1 Pre-trial assessment

The Act makes it compulsory for all children who are alleged to have committed an offence, including those under the age of 10 years, to be assessed by a probation officer before they appear before a preliminary inquiry (s 34 of the CJA). A child must be brought before a preliminary inquiry within 48 hours of being arrested if still in detention, or if not detained, within such period indicated in the written notice or summons (s 43(3)(b) of the CJA). While an assessment of a child is mandatory, the Act does, in limited circumstances, provide that it may be dispensed with where it is in the best interests of the child. This may either occur at the insistence of the prosecutor or the inquiry magistrate (ss 41(3) and 47(5), respectively, of the CJA).

The purpose of the assessment report in terms of section 35 of the Act is, among other things, to do the following:

- Establish whether the child is in need of care and protection.
- Estimate the age of the child if this is uncertain.
- Gather information relating to any previous convictions or diversion, or pending charges in respect of the child.
- Formulate recommendations regarding the release or detention and placement of the child.
- Establish whether the child is a suitable candidate for diversion.
- Determine whether any measures should be taken against a child who is 10 years Of age or younger.
- Express views on whether expert evidence is needed in relation to the criminal capacity of a child 10 years or older but under the age of 14.
- Consider whether the child was used by an adult to commit the offence.
- Provide any Other information regarding the child which the probation officer may regard to be in the best interests of the child or which may further any objective which this Act intends to achieve.

When conducting an assessment, the probation officer must ensure that the child is present (s 38(1) of the CJA). The probation officer - must explain the purpose of the assessment to the child; inform the child of his or her rights; and inquire from the child whether or not he or she intends acknowledging responsibility for the offence in question (s 39(1) of the CJA). The probation officer must further encourage the participation of the child during the assessment (s 39(6) of the CJA).

In addition to having the child present, a probation officer must ensure that the parent, an appropriate adult or guardian attends the assessment unless such person has been exempt or excluded from attending (s 38(2) Of the CJA). The probation officer may also permit a diversion service provider, a researcher or any other person whose presence is necessary or desirable (s 38(3) of the CJA).

Once the assessment of the child has been completed, the probation officer must provide a written report with recommendations to the court on, among other things, the following issues, where applicable:

- Whether the child should be referred to the children's court for care and protection proceedings to commence
- Whether the child may be diverted, including what type of programme he or she should attend and where
- The possible release of the child on his or her own recognisance or into the care of a parent, an appropriate adult or a guardian
- If there is a likelihood of the child not being released, a recommendation regarding whether the child should be placed in a CYCC or prison, which should include an assessment of the availability or Otherwise of such accommodation and the level Of security, amenities and features of the centre

- Determining what measures should be taken in relation to a child Who is 10 years or younger
- The possible criminal capacity of the child if the child is 10 years and older but younger than 14, as well as any measures that should be taken to prove the child had criminal capacity
- An estimation of the age Of the child if this is uncertain
- Whether a further and more detailed assessment of the child is required in order to consider whether the child may be a danger to others or him- or herself; whether the child has a specific propensity towards committing offences or absconding; whether the social welfare history of the child warrants a further assessment; and whether the child should be admitted to a sexual offenders', substance abuse or other intensive treatment programme (s 40(1) read with ss 40(2) and (3) of the CJA)

This report must be handed to the prosecutor before the commencement of the preliminary inquiry so that the role players have a general understanding of the makeup of the juvenile (sic) or child being dealt with, [and] ...can from the outset of the case agree on how to proceed with the matter" (S v S [2015] ZAGPPHC 520 (11 June 2015) at [13]).

13.2.5.2 Preliminary inquiry

Unlike the adversarial nature of a mainstream criminal trial, the preliminary inquiry envisages an inquisitorial pre-trial discussion, which is presided over by an inquiry magistrate, and involves the child; the parents, an appropriate adult or a guardian; the prosecutor; and the probation officer (Skelton & Potgieter 2002: 492; s 43(1) of the CJA). The objectives of a preliminary inquiry, among other things, are to

- consider the assessment report of the probation officer
- establish whether the child can be diverted before plea
- identify a suitable diversion option, where applicable

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- establish whether the matter should be referred to the children's court for care and protection proceedings to commence
- ensure that all the available information relevant to the child, his or her circumstances and the offence are considered in order to make a decision regarding diversion, release or detention
- ensure that the views of all present, including the child, are taken into consideration before a decision is made
- encourage the participation of the child and his or her parent/s, an appropriate adult or a guardian in decisions concerning the child . determine the release or placement of child where such child is detained (s 43(2) of the CJA).

Once the inquiry magistrate has considered all the information, he or she may make essentially one of two orders (Gallinetti 2009b: 41). The first is that the child be diverted. However, where the child is 10 years or older but under 14, the inquiry magistrate must first be satisfied that the child has criminal capacity, otherwise the child should be discharged (s 49(1) of the CJA). The second is that, if not diverted, the child must be referred to the child justice court for plea and trial. Where the child is unrepresented, the inquiry magistrate must explain the right to legal representation to the child, and refer the child to Legal Aid South Africa. Moreover, should the child be in detention, the inquiry magistrate must consider whether release is appropriate. The child must be informed of the charge against him or her, and the date, time and place of the next appearance (s 49(2) of the CJA).

The preliminary inquiry is aimed at truth telling in an effort to fully understand the child and his or her circumstances, as well as the nature of the offence, in order to decide on the best course of action. Section 45(2) contains a rule that no information furnished at a preliminary inquiry may be used against the child in any bail application, plea, trial or sentencing. In S v S [2015] ZAGPPHC 520 (11 June 2015), the court found several irregularities. The information that the accused was addicted to drugs was revealed at his first appearance and was later used to justify sentencing him to be detained in a centre for treatment. No proper preliminary inquiry was held, that the matter was postponed several times for long periods, contrary to section 40, which does allow postponements beyond the usual 48 hours for further assessment but within strict time frames.

13.2.6 Diversion

Diversion is the channelling of children away from the formal court system into re-integrative programmes. If a child acknowledges responsibility for a wrongdoing, in certain circumstances he or she can be diverted to such a programme, thereby avoiding the stigmatising and even brutalising effects of the mainstream criminal justice system. Diversion gives children a chance to avoid a criminal record, while at the same time teaching them accountability and responsibility for their actions (Badenhorst 2011: 5).

Prior to the enactment of the Act, the law did not specifically provide for diversion. Rather it was practised on an ad hoc basis, generally in urban areas that were well resourced. The introduction of the Act, however, made diversion a central feature in the child justice process. The Act further provides a framework for diversion, which reduces the risk of discriminatory applications and practices relating to diversion (Badenhorst 2011: 18).

The concept, objectives and options of diversion are discussed in detail in Chapter l l. However, it is important to bear in mind that a child may be diverted at any stage of the criminal justice process up until the close of the state's case (Badenhorst 2011: 18; ss 41, 52 and 67 of the CJA), and moreover may be diverted irrespective of whether he or she committed a Schedule l, 2 or 3 offence (ss 52(2) and (3) of the CJA). In S v 11K 2012 (2) SACR 533 (GSJ), the high court found that a court that had convicted a 16-year-old on two charges of rape (Schedule 3) had misdirected itself by failing to consider the possibility of diversion — and the court underscored the fact that diversion can take place during a trial. This judgment found that even the child justice court presiding officer (in this case a regional court magistrate), who did not preside over the preliminary inquiry in the matter, had a duty to consider

diversion.

The legal consequence of a diversion is that, where it is completed successfully, the child cannot be prosecuted on the same facts (s 59(1)(a) Of the CJA). Further, a diversion order does not constitute a previous conviction (s of the CJA). This rule was applied in S v EA 2014 (1) SACR 183 NICK, in which a 17-year-old was charged with several counts of assault (the offences occurred before the CJA came into operation) and a decision was made by the prosecutor to divert the matter. The matter was subsequently withdrawn after he had completed the diversion programme. After he turned 18 years of age, he was charged again with the same offences and convicted, but before sentence was imposed it was discovered that he had previously been diverted. On review, the high court found that the successful completion of diversion created an expectation that the accused would not be prosecuted again on the same facts, and the conviction was accordingly set aside.

In S v S [2015] ZAGPPHC 520 (11 June 2015), charges were laid after the CJA came into operation. The court found that a boy who had completed a diversion on a theft charge was wrongly convicted of that offence at a later stage. On review, the high court made specific reference to s which provides that a child who completes diversion may not be prosecuted again on the same facts, and found that it was in the interests of justice to set that conviction aside.

13.2.7 Child justice court

A child justice court is any court having jurisdiction that deals with the bail application, plea, trial or sentencing of a child (s I of the CJA). A child justice court may thus be a district court, a regional court or a high court. In some major urban areas, there are a sufficient number of children being charged with offences to warrant the establishment of a designated child justice court (Skelton & Potgieter 2002: 483). The Act further makes provision for the establishment of one-stop child justice centres, which are specialised institutions geared towards streamlining the whole child justice process within the confines Of a single building (s 89 of the CJA).

In instances where an adult and child are tried together, the court must apply the Act in respect of the child, and the Criminal Pro-

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cedure Act 51 of 1955 in respect of the adult (s 63(2) of the CJA).

In order not to impede on the fair-trial rights Of the child, specifically the ability to testify freely and to promote the future reintegration of the child into society, the Act bars from the proceedings any person whose presence is not necessary (s 63(5) of the CJA). In the case of Media 24 Limited v National Prosecuting Authority in re: S v Mhlangu (2011 (2) SACR 321), the court found that the media representatives could not sit in the courtroom as one of the accused was under the age of 18 years and this would affect his rights. However, due to the public interest in this case, which dealt with the murder of prominent right-wing leader Eugene Terre'Blanche, the judge did allow media representatives to sit in another room at the court and

view the proceedings via closed-circuit TV, provided that the face of the child accused was blurred.

The Act also prohibits the publication of any information that reveals or may reveal the identity of the child (s 63(6) of the CJA). This rule has generally been upheld while the child is under the age Of 18 years, though the press ombudsman has ruled on complaints (Nadine Hamman v Huisgenoot 2014). However, there have been several cases where, once the child turns 18 years, the media have published identifying details, and the Centre for Child Law at the University of Pretoria has launched a case challenging this practice (Skelton 2017).

Lastly, where a child appears before a child justice court, the Act provides that a parent, an appropriate adult or a guardian (s 65(1) of the CJA) must assist him or her. If none of these can be traced and any further delay would be prejudicial to the interests of the child or to the administration of justice, the child justice court may dispense with this obligation (s 65(2) of the CJA). If the child is not so assisted, then the presiding officer can, in exceptional circumstances, appoint an independent observer to do so (s 65(6) of the CJA).

13.2.8 Sentencing

When sentencing children, there are two important constitutional injunctions that must be taken heed of, namely that imprisonment should be a matter of last resort and for the shortest appropriate period of time; and that

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the child's best interests are Of paramount importance in every matter concerning the child (ss and 28(2) of the Constitution). In order to ensure that these constitutional imperatives are adhered to, the Act provides that a child justice court must impose a sentence in accordance with the provisions set out in the Act (s 68 of the CJA).

In determining an appropriate sentence for a child, the Act prescribes certain objectives that the child justice court must seek to achieve. These include, among Others, the following:

- Encouraging the child to understand the implications of and be accountable for the harm caused
- Promoting an individualised response which strikes a balance between the circumstances of the child, the nature of the offence and the interests of society • Promoting the reintegration of the child into the family and the community
- Ensuring that any necessary supervision, guidance, treatment or service which forms part of the sentence assists the child in the process of reintegration
- Using imprisonment only as a measure of last resort and only for the shortest appropriate period of time (s 69(1) of the CJA)

In order to promote sentences that realise these objectives and to encourage a restorative justice approach, sentences may be used in combination (s 69(2) of the CJA).

13.2.8.1 Pre-sentence reports

Within both an international as well as a local context, the importance of compiling pre-sentence reports, especially where a child is at risk of being detained, has long since been recognised. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) requires the following:

> In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated

> so as to facilitate judicious adjudication of the case by the competent authority.

In order to maintain the "child centricity" that resonates throughout the Act, sections 71(1) (a) and (b) provide that a pre-sentence report must be requested in every matter, and that this may only be dispensed with if the matter is a Schedule 1 offence, or the obtaining Of the report would cause a delay that would prejudice the child. However, no sentence involving compulsory residence or imprisonment may be imposed unless a pre-sentence report has been presented to, and considered by, the court. A pre-sentence report must be completed as soon as possible but not later than six weeks following the date on which it was requested (s 71(2) of the CJA).

In S vs [2015) ZAGPPHC 520 (11 June 2015), the court criticised the process in which a brief report that was apparently prepared by the probation officer for a preliminary inquiry (which was not held) was signed months later by the probation officer and presented to court as a pre-sentence report.

13.2.8.2 Community-based sentences

A community-based sentence is one that allows a child to remain in the community. This type of sentence may take on a variety of forms, for example the following:

- Postponement of a sentence
- Suspension of a sentence
- Sentencing a child to undergo one or more diversion options, detailed elsewhere in the Act, as a sentence that may be linked through the postponement or suspension Of the sentence (s 72(1) read with s 53 of the CJA)
- A restorative justice sentence, which may encompass a family group conference or victim—offender mediation (s 73 of the CJA)
- A fine or an alternative to a fine, such as symbolic restitution (s 74 of the CJA)
- A sentence involving correctional supervision (s 75 of the CJA)

The provision of such a wide variety of sentences by the Act focuses the minds of both presiding officers and probation officers, forcing them to opt for uniquely tailored sentences that aim to maximise the rehabilitation and reintegration of the specific child. Because probation officers are at the coalface of the criminal justice system, they play an important role in ensuring that their recommendations are uniquely designed to the specific needs of the child, and therefore they need to be thoroughly trained in this field.

It is important to note that these sentences, used in combination, are not limited to children who commit petty offences. Correctional supervision especially has been used in conjunction with other programmes in cases as serious as rape and murder. In the case of Director of Public Prosecutions, KwaZulu-Natal v P 2006 (1) SACR 243 GCA), the Supreme Court of Appeal reviewed the sentence of a girl who had murdered her grandmother when she was 12 years of age. The court gave her a wholly suspended sentence of imprisonment coupled with the performance of correctional supervision, which included house arrest. In the case of S v N 2008 (2) SACR 135 (SCA), the Supreme Court of Appeal was yet again tasked in dealing with a 17-year-old child who had committed a very serious offence, namely rape. The court found that while imprisonment was unavoidable in this instance, it was necessary to temper the length of the sentence, and accordingly held that a five-year term imposed under section $276(1)(i)$ of the Criminal Procedure Act was appropriate. This is a sentence of imprisonment in which, subject to the behaviour of the child, he or she is eligible for release under a community-based sentence after serving onetenth of the prison sentence. Imposing this sentence the court, per Cameron J held:

> Is this too soft? I cannot say no with any assurance. But I am less unsure that it may be too soft than I am sure that an undifferentiated sentence of direct imprisonment is too harsh. And if we are to risk erring at all, the Constitution requires us to err by recognising the possibility of promise that may still flower from his youth, rather than fixing on the destruction that was immanent in his crime (S L' N 2008 (2) SACR 135 (SCA) at [43]).

The cases above were decided before the CJA came into operation. In S v S [2015] ZAGPPHC

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520 (Il June 2015), the court found a sentence of detention in a treatment centre to be "against the tenets Of the CJA which recognizes that before a sentence of incarceration or detention can be imposed, due regard should be taken of section of the Constitution". Section provides that detention of a child must be a measure of last resort and for the shortest appropriate period of time.

13.2.8.3 Compulsory residence in a child and youth care centre

The Act provides that — as a sentencing option — a child may be sentenced to compulsory residence in a CYCC (s 76 of the CJA). The Act, in this regard, provides for two types of sentence. The first involves a sentence in a CYCC that provides for a secure care programme for a period not exceeding five years or for a period which may not exceed the date on which a child turns 21 years of age, whichever date is the earliest (s 76(2) of the CJA). The second involves a period of imprisonment that is to be served after completing a period of compulsory residence in a CYCC (s 76(3) of the CJA). This sentence may only be imposed where the child is convicted of a Schedule 3 offence that, if committed by an adult, would have justified a term of imprisonment exceeding 10 years, and which — in addition to the general factors to be considered, which are dealt with below — substantial and compelling reasons exist justifying such a sentence (s and (it) of the CJA).

When imposing a sentence of compulsory residence in a CYCC, and similarly when a probation officer recommends such a sentence, a court must take the following factors into consideration:

- Whether the offence is of such a serious nature that it indicates that the child has a tendency towards harmful activities
- Whether the harm caused by the offence indicates that a residential sentence is appropriate
- The extent to which the harm caused by the offence can be apportioned to the culpability of the child in causing or risking the harm
- Whether the child is in need of a particular service provided at a CYCC

The matter of S v CKM 2013 (2) SACR 303 (GNP) dealt with the circumstances in which such a sentence would be appropriate, as well as the duties of a probation officer. The facts, briefly, were that three boys (anonymised as CKM, IMM and VTM) appeared at different times before the same magistrate on various charges. CKM and IMM were both charged respectively with assault, and FTM with housebreaking with the intent to commit an unknown offence. On the strength of a probation officer's report, all three boys were sent to a CYCC. The court found, in respect of the imposition of such sentence, that

> ...referral to a reform school [child and youth care centre], which amounts to an involuntary, compulsory admission to a facility where the convicted child is obliged to participate in various programs, represents a serious invasion of the child's rights to freedom of movement and decision making. Such a sentence should therefore not be imposed lightly or without compelling reasons (S v CKM 2013 (2) SACR 303 (GNP)).

The court highlighted that a sentence of compulsory residence is not a "light" sentence that should easily be imposed but rather that any such sentence must — as in the case of imprisonment — only be used as a last resort and where appropriate for the shortest period of time. Acknowledging the considerable weight that both the Act and the courts place on the recommendations of probation officers in making a final determination of a just and equitable sentence, the sentiments of the court find equal application regarding recommendations of compulsory residence in a CYCC (Courtenay 2012: 8). These sentences should not be imposed in an attempt to simply restore structure, discipline or education to a "troubled or troublesome" child who has had the misfortune Of being the product Of a poor social upbringing or who lacks adequate parental control. Rather, such children should be dealt with either as children in need of care and protection or be diverted from the criminal justice system should they acknowledge that they have indeed committed the offence.

In CS v S 2013 (2) SACR 323 (ECG), the high court set aside a sentence of compulsory residence in a CYCC for a minimum period of two years. The court acknowledged that such a sentence is severe and should only be imposed after careful consideration and only on young offenders who have committed a serious crime or repeatedly committed relatively serious crimes. Furthermore, the court found that the sentence was incorrect in that it set a mmmum period but no maximum.

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In S v Melapi, the magistrate had wanted to sentence a boy to a CYCC. He was 17 years old at the time of the offence, but because he had subsequently turned 18, the CYCC would not accept him. On review the high court found that a person who has turned 18 years before the time of sentencing (but was below 18 years at the time of the offence) can still be sentenced to a CYCC.

13.2.8.4 Imprisonment

Long before the enactment of the Act, our Constitution recognised the principle that children should not be imprisoned unless as a measure of last resort and then only for the shortest appropriate period of time (s 28(l)(g) of the Constitution; see also S v B 2005 2 All SA I (SCA) and Centre for Child Law v Minister of Justice 2009 (2) SACR 77 (CC)). Similarly, and more profoundly, "[e]very day [that a child] spends in prison should be because there is no alternative" (S v N 2008 (2) SACR 135 (SCA) at par 39).

In order to ensure that these and other such principles are promoted and respected, the Act lays down certain fundamental requirements when imposing a sentence of imprisonment.

Firstly, an absolute ban exists on imposing a sentence of imprisonment on a child who is below the age of 14 years at the time of being sentenced (s 77(1)(a) of the CJA).

Secondly, in instances where children are 14 years or older at the time of being sentenced, they may only be sentenced to a term of imprisonment if they are convicted of an offence referred to in Schedule 3; Schedule 2 if substantial and compelling reasons exist for imposing such a sentence; or Schedule I if the child has a record of relevant previous convictions, and substantial and compelling reasons exist to justify such a sentence (s 77(3) of the CJA).

Thirdly, children may not be sentenced to a minimum sentence — that is, a sentence in which the law prescribes a minimum sentence that must be imposed where certain conditions are met (see the Criminal Law Amendment Act 105 of 1997).

In Centre for Child Law v Minister of Justice and Constitutional Development 2009 (2) SACR 477 (CC), the Constitutional Court held that the minimum sentencing legislation should not apply to children aged 16 and 17 years old. The majority of the Constitutional Court found that the minimum sentencing legislation limited the discretion of sentencing officers by directing them to hand down long sentences (including life imprisonment) as a first resort. Furthermore, the legislation discouraged the use of non-custodial options, it prevented courts from individualising sentences, and was likely to cause longer prison sentences. All of these features of the law amounted to an infringement of child offenders' rights in terms of section 28(l)(g). The court found that children should be treated differently from adults not for sentimental reasons, but because of their greater physical and psychological vulnerability, and the fact that they were more open to influence and pressure from others. The court found it to be vitally important that child offenders are generally more capable of rehabilitation than adults. These are the premises on which the Constitution requires the courts and parliament to differentiate child offenders from adults. The court went on to explain: We aistinguish them because we recognise that children's crimes may stem from immature judgment, from as yet unformed character, from youthful vulnerability to error, to impulse, and to influence. We recognise that exacting full moral accountability for a misdeed might be too harsh because they are not yet adults. Hence we afford children some leeway of hope and possibility (para 28).

Lastly, where a court nevertheless imposes a sentence of imprisonment, such sentence must be antedated by the number of days the child has been held in custody awaiting trial.

The Act, also mandates a court — and thus by implication a probation officer — to consider, in addition to those elsewhere in the Act, the following factors before imposing or recommending a sentence of imprisonment:

- The seriousness of the offence.
- The protection of the community.
- The severity of the impact of the offence on the victim.
- The previous failure of the child to respond to non-residential alternatives.
- The desirability of keeping the child out of prison.

13.2.9 Other provisions

13.2.9.1 Legal representation

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Every person who stands accused of committing an offence has the right to have a legal practitioner assigned to him or her by the state and at the state's expense if a substantial injustice would otherwise result (s 35(3)(g) of the Constitution). Such state-funded legal representation can be obtained through Legal Aid South Africa. Despite this right being a clearly articulated constitutional guarantee, it was estimated that prior to the enactment of the Act, fewer than half of all children appearing in court were legally represented (Intersectoral Committee on Child Justice 2002).

In order to give effect to a child's right to legal representation and to ensure that all children are Singled out for special protection, the Act — without qualification — makes it compulsory for all children to be legally represented during their trial before a child justice court (S v CS 2012 (1) SACR 595 (ECP) at par 10). This protection cannot per se be waived. Section 83 of the Act provides that even in instances where a child does not wish to have legal representation or refuses to provide his or her legal representative with instructions, the child justice court must appoint a legal representative to assist the child. The legal representative would have to cross-examine witnesses, address the court on the merits of the case, ensure procedural fairness, and note an appeal (if necessary) (Gallinetti 2009b: 59). Although the legal representative, in this instance, does not act on behalf of the child or take instructions from the child, the practical effect of such appointment would be the same as in the case of an own legal representative (S v Fortuin [2011] ZANCHC 28 at par 48).

13.2.9.2 Referral of children from the criminal justice system to the care and protection system

In order to realise one of its two main objectives — namely providing for the special treatment of children in a child justice system designed to break the cycle of crime, and the prevention of children being exposed to the adverse effects of the criminal justice system — the Act provides for the opportunity for criminal proceedings to be stopped and transferred to the children's court for care and protection proceedings to be initiated.

This process is not new, but the Act places more emphasis on it. The referral may occur if it appears that the child is in need of the care and protection referred to in s 150(1) or (2) of the Children's Act 38 Of 2005; or the child does not live in his or her family home or in appropriate alternative care; or the child is alleged to have committed a minor offence or offences aimed at meeting the child's basic need for food and warmth. It is important to emphasise that the grounds of referral to a children's court are not restricted to cases involving minor offences (CS v S 2013 (2) SACR 323 (ECG)). This referral to an alternative system may take place at one of the following four junctures:

- Where a child who is under the age of 10 years commits an offence, the probation officer may, after assessing the child, refer the child to the children's court (s 9(3)@(i) read with ss 9(1) & (2) of the CJA).
- Where a child who is 10 years or older but under the age of 14 commits an offence and is not referred to a preliminary inquiry, the prosecutor may request that the probation officer assess the child and, if needed, refer the child to the children's court (s of the CJA).
- Where a child who is 10 years and older commits an offence and is referred for a preliminary inquiry, the inquiry magistrate may stop the proceedings and order that the child be brought before the children's court (s 50 of the CJA).
- Where a child who is 10 years and older has been referred for trial in a child justice court, the presiding officer may nevertheless stop the proceedings and have the matter referred to the children's court if it appears that the child is in need of care and protection (s 64 of the CJA).

The purpose of this alternative system — which is not part of the criminal justice system — is to address the root causes of the social ills which may have led to the child coming into conflict with the law through the provision of a variety of intervention processes, such as the removal of a child for care and protection reasons from his or her home environment, and the provision of psychosocial and therapeutic services.

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1329.3 Appeal and review of sentences

The Act has special provisions regarding appeal (s 84 of the CJA), which allow for a child who was, at the time of the offence, (a) under the age of 16 years; or (b) 16 or older but under 18 years and sentenced to any form of imprisonment not wholly suspended, to note an appeal without having to apply for leave to appeal.

The provisions regarding review (s 85 of the CJA) have been controversial, giving rise to numerous high court judgments. The section follows the logic of s 84, dividing the children entitled to "automatic review" of their sentences into the categories of under 16 or over 16 years and sentenced to any form of imprisonment not wholly suspended or other custodial sentence. The courts have so far established that the Act's provisions regarding automatic review override the Criminal Procedure Act rules, and that all sentences in the named categories must go on appeal, regardless of the experience of the magistrate, and regardless of whether the matter was heard in the district or the regional court (S v Fortuin (38/2011) [2011] ZANCHC 28 (11 Nov 2011); S v FM 2013 (SACR 57 (GNP); S v LAI 2013 (1) SACR 188 NCC)).

13.3 INTERACTION WITH THE SEXUAL OFFENCES ACT

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (referred to hereafter as the Sexual Offences Act) defines sexual offences and provides for certain procedural rules regarding sex offenders. When a person below the age of 18 years is charged with an offence, he or she may be charged with an offence under the Sexual Offences Act. However, it is important to note that the young sex offender's case must be managed under the CJA, and the principles of that Act continue to apply.

In South Africa, a constitutional challenge has declared unconstitutional a section of the Sexual Offences Act that included a requirement that when children who are both between the ages of 12 and 16 years indulge in any consensual sexual act (penetrative or non-penetrative) and a decision is taken to prosecute, then both must be prosecuted. In the case of Teddy Bear Clinic and Another v Minister of Justice and Constitutional Development and Others (CCT 12/13) [2013] ZACC 35, the Constitutional Court handed down a unanimous judgment which found that the impugned provisions infringed adolescents' rights to dignity and privacy, and further violated the best interests of the child principle. The judgment underlined the dignity of children, describing the law as having placed youthful transgressors in a state Of disgrace for behaviour that was developmentally normative.

The Sexual Offences Act also introduced a sex offender register aimed at preventing persons convicted of sexual offences from being permitted to work with children. The law treated adult and child offenders in exactly the same manner — if they were convicted of sexual offences, then their names would automatically be placed on the register, and they would not be able to make any arguments to the contrary. In some instances, an offender's name stays on the register for life. In J v National Director of Public Prosecutions (CCT 114/130) [2014) ZACC 13), section 50(2) of the Sexual Offences Act was declared to be unconstitutional insofar as it applied to offenders below the age of 18 years. The court found that the law went against the spirit of the CJA, which aims to rehabilitate and reintegrate child offenders, and was contrary to the best interests of the child because it did not allow for an individualised approach. It stigmatised child offenders, and was not rational because child sex offenders do not gefierally grow up to be adult sex offenders. Finally, because it was automatic, it did not allow the child to participate in the decision being made.

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As result of these two cases, the Criminal Law (Sexual Offences and Related Matters) Amendment Act 5 of 2015 has changed the law to align with the Constitution. Adolescents between 12 and 16 years who engage in consensual sex will not be charged, and nor will a 16- or 17-year-old who has consensual sex with someone below 16 years who is no more than two years younger than him or her. With regard to the Register for Sex Offenders, child offenders are, as a general rule, not placed on the register. If the prosecutor decides to apply for this to be done, notice must be given and an assessment concluded, and the defence must be given an opportunity to argue against it.

13.4 CONCLUSION

The CJA represents a decisive break from the manner in which South Africa treated its children in conflict with the law in the past. It is a pre-eminent example of legislation that gives not only content to the rights of children espoused in the Constitution, but also provides a practical basis in which such rights may be realised. The case law discussed in this chapter shows that the operation of the CJA has had some teething problems in its first few years of operation, but the guiding principles in the Constitution and in the Act itself have ensured that the courts come to the aid of child offenders. In the past, child offenders have been treated in a manner that does not live up to the spirit of the law.

The success or failure of this truly remarkable piece of legislation rests squarely on those at the criminal justice coalface. It is hoped that this chapter will give those who elect to practise in the field of child justice a platform on which to ensure the ultimate success of the Act and the promotion of a safer South Africa.

CRITICAL QUESTIONS

1. What are the main aims of the CA?
2. Which children fall within the scope of the Act?
3. What are the procedures for arrest and alternatives? Differentiate these per scheduled offence.
4. What is considered during the process of assessment by a probation officer?
5. What is the purpose and process of a preliminary inquiry?
6. What is the legal status of diversion?
7. How is the child justice court different from any other court?
8. What are the key constitutional principles relating to detention?
9. What are the issues to be considered during sentencing?
10. How does the Sexual Offences law interact with the CJA?

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APPENDIX: THE SCHEDULES TO THE CHILD JUSTICE ACT

Schedule I

1. Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen or theft by false pretences, where the amount involved does not exceed R2 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), where the amount involved does not exceed RI 500.
3. Malicious injury to property, where the amount involved does not exceed RI 500.
4. Common assault where grievous bodily harm has not been inflicted.
5. Perjury.
6. Contempt of court.
7. Blasphemy.
8. Compounding.
9. Crimen injuria.
10. Defamation.
11. Trespass.
12. Public indecency.
13. Engaging sexual services of persons 18 years or older, referred to in section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007).
14. Bestiality, referred to in section 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
15. Acts of consensual sexual penetration with certain children (statutory rape) and acts of consensual sexual violation with certain children (statutory sexual assault), referred to in and subject to sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
16. Any offence under any law relating to the illicit possession of dependence-producing drugs, other than any offence referred to in Item 17 of this Schedule, where the quantity involved does not exceed R500 in value.
17. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period of no longer than three months or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act 101 of 1991).
18. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Schedule 2

1. Theft, Whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, or theft by false pretences, where the amount involved exceeds R2 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating Of Corrupt Activities Act, 2004 (Act 12 of 2004), where the amount involved exceeds RI 500.
3. Robbery, other than robbery with aggravating circumstances.
4. Malicious injury to property, where the amount involved exceeds RI 500.
5. Assault, involving the infliction of grievous bodily harm.
6. Public violence.
7. Culpable homicide.
8. Arson.
9. Housebreaking, whether under the common law or a statutory provision, with the intent to commit an offence.
10. Administering poisonous or noxious substance.

l l. Crimen expositionis infantis.

12. Abduction.

13. Sexual assault, compelled sexual assault or compelled self-sexual assault referred to in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), respectively, where grievous bodily harm has not been inflicted.

14. Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation, referred to in section 8 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

15. Exposure or display of or causing exposure or display of child pornography or pornography as referred to in sections 10 or 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

16. Incest and sexual acts with a corpse, referred to in sections 12 and 14 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respective-

17. Exposure or display of or causing exposure or display of genital organs, anus or female breasts to any person ("flashing"), referred to in sections 9 or 22 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

18. Violating a dead body or grave.

19. Defeating or obstructing the course of justice.

20. Any offence referred to in section 1 or IA of the Intimidation Act, 1982 (Act 72 of 1982).

21. Any offence relating to criminal gang activities referred to in Chapter 4 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998).

22. Any contravention Of section 2 of the Animals Protection Act, 1962 (Act 71 of 1962).

23. Any offence under any law relating to the illicit possession of dependence-producing drugs, other than any offence referred to in Item 24 of this Schedule, where the quantity involved exceeds R500 but does not exceed R5 000 in value.

24. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding three months but less than five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act 101 of 1991).

25. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Schedule 3

1. Treason. 2.

Sedition.

3. Murder.

4. Extortion, where there are aggravating circumstances present.

5. Kidnapping.

6. Robbery —

   (a) where there are aggravating circumstances; or

   (b) involving the taking of a motor vehicle.

7. Rape or compelled rape referred to in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), respectively.

8. Sexual assault, compelled sexual assault or compelled self-sexual assault referred to in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, involving the infliction of grievous bodily harm.

9. Sexual exploitation of children, sexual grooming of children and using children for or benefiting from child pornography, referred to in sections 17, 18 and 20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

10. Exposure or display of or causing exposure or display of child pornography or pornography to children referred to in section 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, if that exposure or display is intended to facilitate or promote —

    (a) the sexual exploitation or sexual grooming of a child referred to in section 17 or 18 of the Criminal Law (Sexual Offences and

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Related Matters) Amendment Act, 2007, respectively; or (b) the use of a child for

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purposes of child pornography or in order to benefit in

any manner from child pornography, as provided for in section 20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

11. Compelling or causing children to witness sexual offences, sexual acts or self-masturbation referred to in section 21 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

12. Sexual exploitation of persons who are mentally disabled, sexual grooming of persons who are mentally disabled, exposure or display of or causing exposure or display of child pornography or pornography to persons who are mentally disabled or using persons who are mentally disabled for pornographic purposes or benefiting therefrom, referred to in sections 23, 24, 25, and 26 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

13. Trafficking in persons for sexual purposes referred to in section 71(1) and involvement in trafficking in persons for sexual purposes referred to in section 71(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

14. Any offence referred to in Parts 1, 2 and 3 of Chapter 2 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004).

15. Any offence relating to —

(a) racketeering activities referred to in Chapter 2; or

(b) the proceeds of unlawful activities referred to in Chapter 3 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998).

16. The crimes of genocide, crimes against humanity and war crimes referred to in the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act 27 of 2002).

17. Any offence under any law relating to — (a) the dealing in or smuggling of ammunition, firearms, explosives or armament;

(b) the possession of firearms, explosives or armament.

18. Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992).

19. Any offence of a serious nature if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise, acting in the execution or furtherance of a common purpose or conspiracy.

20. Any offence under any law relating to the illicit possession of dependence producing drugs, other than an offence referred to in Item 21 of this Schedule, where the quantity involved exceeds R5 000 in value.

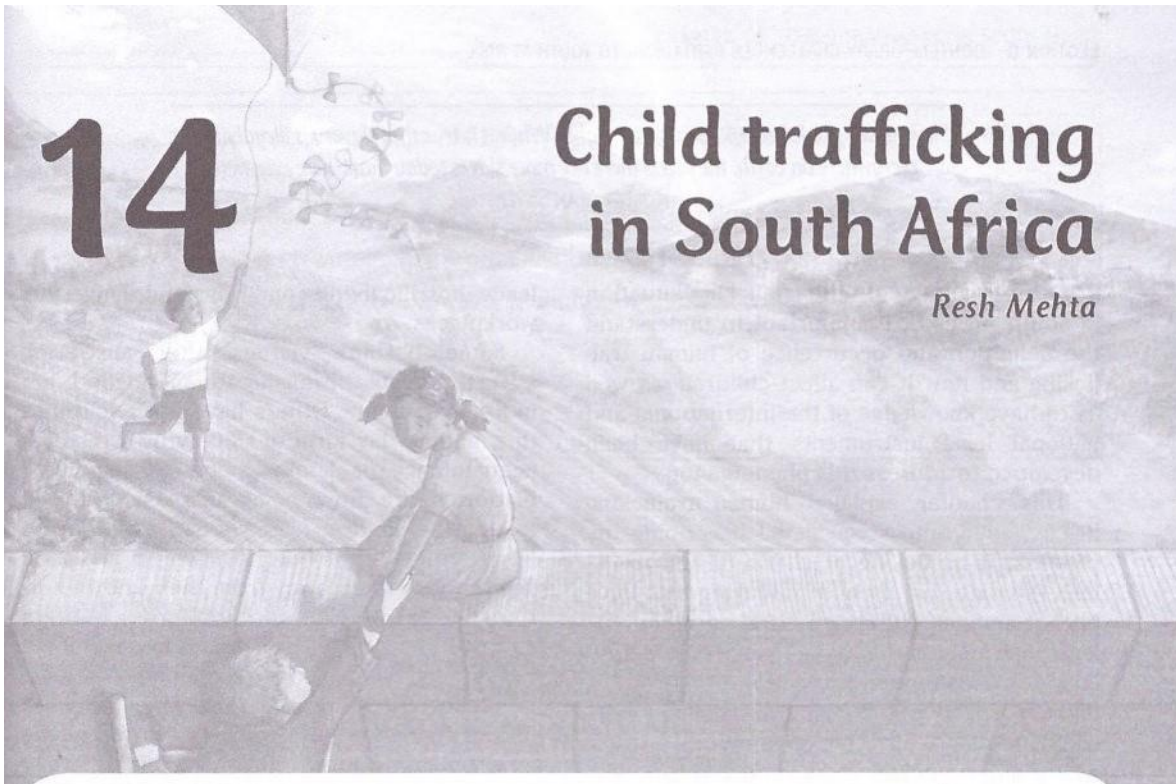
21. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act 101 of 1991).

22. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

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SECTION C

Contemporary challenges pertaining to youth at risk



14 Child trafficking in South Africa

Resh Mehta

OBJECTIVES

You should be able to

- understand what human trafficking is
- understand the three main elements that make up human trafficking
- understand the root causes of trafficking
- understand the different elements of the trafficking process as they relate to child victims
- highlight the crimes that are committed against child victims of trafficking
- discuss the consequences to child victims of trafficking in terms of their physical, psychological and social wellbeing
- develop a general understanding of the trafficking phenomenon in South Africa.

KEYWORDS

child trafficking-
human rights
human trafficking

14.1 INTRODUCTION

Human trafficking is the buying and selling of human beings for the purpose of making a financial profit, or for obtaining some kind of free service. It is a business, and it thrives on the principle of demand and supply — where there is a demand for cheap labour, organs, body parts or sex services, there will always be criminals striving to service that demand with the required supply. Anyone can be trafficked — men, women, boys, girls, babies, the disabled and the elderly too.

It ought to concern every person, because it is a debasement ofour common humanity. It ought to concern evety community, because it tears at our socialfabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I'm talking about the injustice, the outrage, ofhurnan trafficking, which must be called by its true name— modern slavery.

BARACK OBAMA

Slavery was abolished 150years ago, right? While it is true that slavery is illegal almost evetywhere on earth, thefact is there are more slaves today than there ever were.

ROBERT ALAN SILVERSTEIN

In order to appreciate the trafficking situation in South Africa, it is important to understand the definition and occurrence of human trafficking and how it can affect children, as well as to have knowledge of the international and national legal instruments that have been developed to address this phenomenon.

This chapter explains human trafficking briefly, going into some detail describing the process of trafficking in children, and examines the patterns of child trafficking that have been identified. It reviews the international legal instruments that have been developed to ensure the continued protection of all victims of trafficking, especially children. It also touches on the law reform process in South Africa, where anti-trafficking legislation that protects victims of trafficking, aids in the prosecution Of traffickers, assists victims of trafficking and advocates preventative activities has recently been passed and implemented.

14.2 UNDERSTANDING HUMAN TRAFFICKING

Human trafficking, or "trafficking in persons" as it is legally termed, is the buying and selling of human beings for the purpose of making a profit, or sometimes for obtaining a free service. It is a business that caters to the supply side of the demand for cheap and dispensable human beings, either for a variety of sexual purposes or for labour exploitation in various fields/industries. Victims are forced to toil in sweatshops, on construction Sites, in brothels and in fields. Deprived of the enjoyment of their human rights, many victims are subjected to threats against their person and family, violence, horrific living conditions and dangerous workplaces.

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Some become victims after answering advertisements promising them a good job in a new country. Others have been sold into this modern-day form of slavery by a relative, acquaintance or family friend. Social media platforms are now being increasingly used to deceive children and youth into believing false promises and stories, which are then used to lure them away from their known surroundings. Trafficking occurs across borders and within countries. It is found in developed, developing and underdeveloped nations, in countries where the government abuses human rights and also in countries where the government's human rights record is generally excellent (US Department of State 2001). Trafficking is but a modern-day version of slavery, which has now been dressed up, camouflaged and modernised.

Trafficking is not a single criminal act done at a specific time or at any specific place, but a criminal process. It is a series of criminal activities carried out by a range of people (such as the recruiters, transporters, harbourers, receivers and finally the exploiters) that takes place over time and spans geography. This crime is committed by big-time criminal syndicates as well as by small-time individual criminals, both locally and across international borders.

For criminal syndicates, the business of trafficking in persons is the third biggest money generator, the first being drugs, followed by arms and ammunition (US Department of State 2004). Modern slavery around the world claims 21 million victims at any time, according to the International Labour Organization (ILO 2014), which gives us the following statistics:

Facts and figures

Almost 21 million people are victims of forced labour— Il lion men and boys.

million women and girls and 9,6 mil-

Figure 14.1 Graphic Depiction of some TiP Stats
Source: ILO Human Trafficking Centre (2012)

Domestic servitude

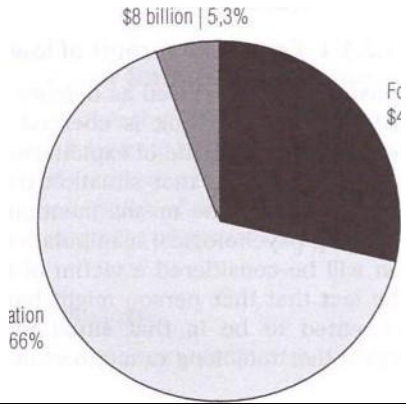


Figure 14.2 Breakdown of different kinds of exploitation |Source: ILO Human Trafficking Centre (2012)

14.2. I crime works, as only then Will we be able to identify it.

There are three main elements or

Almost 19 million victims are exploited by private individuals or enterprises, and over 2 million by the state or rebel groups.

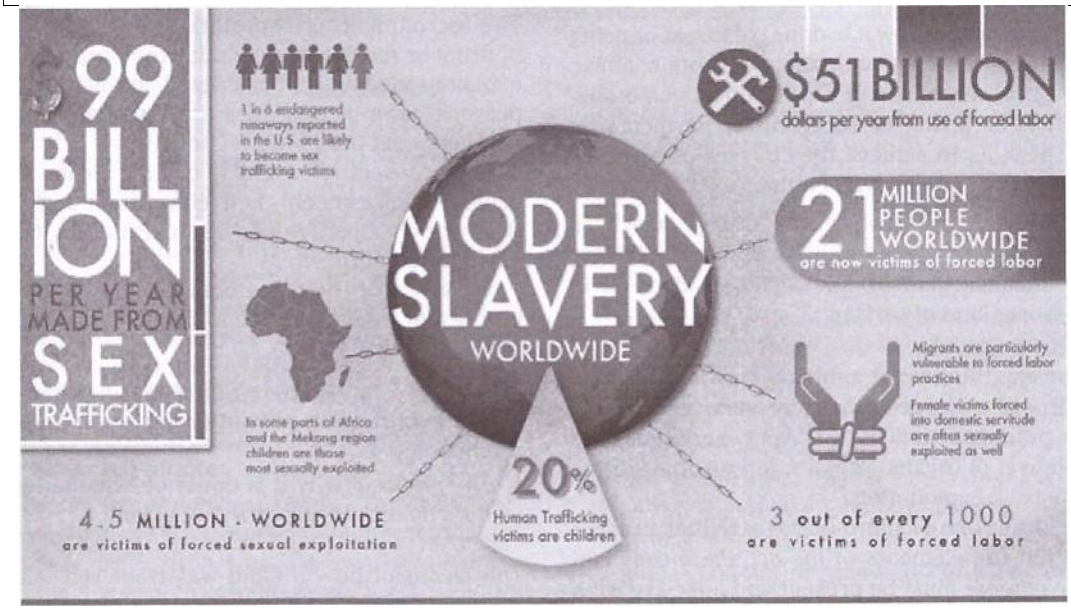
Of those exploited by individuals or enterprises, 4,5 million are victims of forced sexual exploitation.

Forced labour in the private economy generates USS 150 billion in illegal profits per year.

Domestic work, agriculture, construction, manufacturing and entertainment are among the sectors most concerned.

Migrant workers and indigenous people are particularly vulnerable to forced labour.

Source: ILO (2014)



The modus operandi of trafficking

It is important to understand the modus operandi of trafficking in order to understand how this components that have to be present, connected and linked in a case, for it to be classed as human trafficking (UNODC 2017):

- The act (what is done) of recruiting, transporting, transferring, receiving or harbouring of a person.
- The means (how it is done) of threat or using force, coercion, abduction, deception, abuse of power, abuse of a position of vulnerability, or giving or receiving of payments or benefits to achieve the consent of a person having control over another person.
- The purpose (why it is done), which is always for exploitation, and may be for financial gain or for a gain in kind, as in some kind of service.

The exploitation, at a minimum, will be for the purpose of forced labour or services, slavery or practices similar to slavery, servitude, the removal of organs, prostitution or other forms of sexual exploitation.

Either one or more of the activities present within the elements of the act, the means and the purpose must be present and linked to each other for a case to be defined as human trafficking. Every activity within the elements does not have to be fulfilled. Even if one activity is present from the act, one from the means and one for the purpose of the prescribed exploitation, it will be a case of human trafficking.

If a victim has been recruited, transported and received by means of deception or coercion for the purpose of sexual exploitation or forced labour, but this exploitation has not yet taken place, the case may still be treated as human trafficking, but the onus will be on the police and the prosecution to prove this.

Human trafficking can include but does not require transportation or movement. People may be considered trafficked victims regardless of whether they were born into a state of servitude, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked. At the heart of this phenomenon is the traffickers' goal of exploiting and enslaving their victims and the myriad coercive and deceptive practices they use to do so (ILO 2012).

14.2.2 Understanding child trafficking: the definition of child trafficking

When it comes to children, a "child" shall mean any person younger than 18 years of age. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set out in the section above.

The consent of a child, or the means to achieve such consent, is irrelevant as long as the overall objective of the operation is the exploitation of the child.

Only two of the three components have to be present in a case of child trafficking, which are as follows:

- The act (what is done) of recruiting, transporting, transfer, receipt or harbouring of a child.
- The purpose (why it is done) of exploitation for a financial gain, or a gain in kind.

The means of how a child was trafficked falls away as long as it can be proved that the act was committed with the intent of exploiting the child.

14.2.3 Some facts about human trafficking

14.2.3.1 Consent in a court of law

Consent cannot be used as defence in a court of law. When an adult is coerced, forced or deceived into any kind of exploitative situation and maintained in that situation through any one or more of the means mentioned above, including psychological manipulation, the person will be considered a victim of trafficking. The fact that that person might have initially consented to be in that situation does not negate the trafficking crime, because the consent was obtained by some falsehood and/or deceit.

14.2.3.2 Complete violation of human rights

Trafficking in persons is a serious crime and a gross violation of human rights. Every basic human right that each one of us takes for granted,

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such as the right to dignity, freedom of self-determination, freedom of speech, freedom of movement, etc., is taken away from the victim, who then becomes a mere puppet in the hands Of the trafficker, and is exposed to complete and ruthless exploitation.

14.2.3.3 Trans-national and national

Human trafficking is not an isolated problem, but is found all over the world. It may be a transnational organised crime, meaning that victims may be recruited from, for example, a European country and transported to, say, an African country, where they will be ruthlessly exploited. It may also be a national organised crime, wherein victims are trafficked within their own country.

A country or a place could be the following:

- A country or a place of origin from which victims are recruited
- A country or a place of transit through which victims are transported before reaching the final destination, which is very often where the abuse of the victim starts
- A country or a place of destination where the victims are sold into various forms of exploitation

South Africa is a country of origin, transit and destination for victims of trafficking.

14.2.4 Causes of human trafficking

The conditions whereby innocent people fall victim to the perpetrators of this crime can be summarised into two categories: the push factors in the countries of origin, and the pull factors of the countries of destination.

14.2.4.1 Push factors

Trafficking cannot operate without the supply of victims to satisfy the demand in the destination countries. Other than in the case of those victims who are forcibly abducted and trafficked, there continues to be a ready supply of large numbers of victims who are willing to leave their homes in anticipation of a better life. This is despite the impact of victimfocused information campaigns that have been conducted in many countries to alert potential victims of the risks they run in agreeing to the propositions put to them by traffickers. It is therefore important to the understanding of this phenomenon to consider the range of underlying push and pull factors that continue to create the supply (IOM 2008).

Following is a list of possible push factors:

- Poverty, and the feminisation of poverty (UNIFEM describes this as "the burden of poverty borne by women, especially in developing countries")
- Lack of education opportunities
- Unemployment: a lack of availability of jobs and good employment opportunities
- Gender discrimination, where men and women with the same qualifications do not have the same opportunities because women are considered of less value in some cultures
- Domestic violence, resulting in dysfunctional families, which might cause children to look for any chance to leave home
- Political conflict or transition in a country that makes people flee, seeking refuge in surrounding countries
- Natural disasters like floods and earthquakes that leave people homeless and desperate
- Lack of opportunity for legal migration, which make people look to unscrupulous agents to help them get into another country illegally, through fraudulent visas and passports
- Lack of opportunity or alternatives for a better, more prosperous life

Characteristically, the background of the majority of victims is one of poverty that is often inescapable. The chances such people have of improving their position are severely limited by a combination of a lack of appropri-

ate education and a lack of employment opportunities, especially within depressed economies where levels of unemployment are consistently high. However, it is also important to

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note that in certain countries, such as Eastern Europe for example, the most at-risk victims may be highly educated young women who are vulnerable to the bogus opportunities offered by the traffickers because the economic and labour conditions that prevail in their country fail to offer any viable possibility of pursuing a profitable career that is commensurate with their level of education and qualifications.

14.2.4.2 Pull factors

Pull factors exist in both the countries of origin and destination, and reflect the supply-anddemand economic reality of the crime. In the origin countries, the combination of push factors that creates the supply of victims is reinforced by the number of pull factors that attract vulnerable victims into the process. These pull factors can be summarised as follows:

- Better jobs — anticipation of employment and financial gain
- Better life — anticipation of material improvement and a better lifestyle
- Attraction of glamour: potential access to the perceived glamour of the life in the industrialised countries as portrayed by the media — the proverbial "land of milk and honey" scenario
- Hope in life — belief that this offers the only available alternative to continued poverty despite the well-publicised risks

In the destination countries or regions (where the exploitation takes place), the pull factors are characterised by the demand of the destination markets (IOM 2008):

- There is an increasing demand for the services Of trafficked victims for a range of exploitative activities, such as exploitation within labour and sex markets, as domestic slaves, drug mules, criminal agents or for organ donation.
- Within the sex industry, client demand for a broader range of ethnic appearance among sex workers leads to the globalisation of trafficking based on satisfying customer needs.
- Increased marketability and profitability is derived from the exploitation of trafficked victims because the element of coercive exploitation that is inherent in human trafficking means that the victims are cornpelled to endure conditions that the indigenous population would not accept, such as providing more dangerous, but profitable, services and working for little or no wages.

To express it in the simplest terms, irrespective of the exploitative purpose, the services of trafficked victims continue to be in demand because they satisfy the needs of the clients who exploit them, and they are easier to control, cheaper to maintain and make more money for the traffickers.

14.2.5 How traffickers control their victims

The threat of violence is the most commonly used form to maintain control over victims of trafficking. Violence towards the victims themselves and the threat of violence towards their families and loved ones if orders are not followed keep the victims bound to their abusers. Over and above this, traffickers also often make use of psychological and financial control mechanisms to manipulate and control their victims.

Some of the methods that create invisible shackles and bind the victims to their traffickers are described below (IOM 2008).

14.2.5.1 Debt bondage

Debt bondage means making a person believe that they owe an exorbitant sum of money to the trafficker, for an expense undertaken by the trafficker.

Traffickers often exploit the reality that the majority of trafficked victims do not have the money to fund the purchase of documents and travel tickets by agreeing to loan them the funds in advance on the basis that the victims will repay

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the debt from the money that will be earned in the destination country/town. This creates the "debt bond" that the traffickers then use as a coercive measure to ensure that victims engage in the activity that they have planned for them. For example, if a particular victim refuses or is reluctant to become a sex worker, the trafficker will coerce her by telling her that she has no choice, as she has to clear her debt.

14.2.5.2 Isolation

Victims are often kept in isolation, under lock and key, with no contact with the outside world except for the people they are forced to cater to. Even if they sometimes see police officers being welcomed into their place of captivity and hosted by their traffickers, they may be unwilling to approach the police for help for fear that they may all be corrupt.

Victims are often kept in situations where they cannot communicate in their mother tongue and are kept away from anyone with a similar background. They are not allowed to befriend each other, and are often prevented from making phone calls, sending letters or receiving any kind of communication.

14.253 Confiscation of documentation and money

Travel and ID documents are often taken away by the traffickers, which robs the victims of their official identity and makes it difficult for them to seek help. Victims have no freedom of movement without proper documentation, and without money they are trapped.

14.2.5.4 Blackmail

Traffickers often smuggle their victims into a country, as a result of which there is no legal documentation Of entry for them. The illegal status of the victims is then used as a threat (of exposure to authorities) and the victims' fear of police and their fear of being deported is exploited and used as a means of control.

Another form of blackmail would be threating to send suggestive photographs to the victim's family, showing the victim in a compromising position.

Violence (psychological and physical) and fear are also used as a means of control. Traffickers also threaten to and use reprisal against the victims' families if the victims do not follow their orders and do as they are told. 1425.5 Substance abuse

Drugs and alcohol are commonly used to control victims. Initially they may be force-fed the drugs that are free flowing, but once they are addicted, the flow of the drugs gets controlled, and they have to do what is asked of them to get their next "fix".

14.2.5.6 Voodoo/juju/muti/black magic-

Voodoo, juju, muti and black magic are different terms for similar activities, wherein rituals are performed by a priest/sangoma, that promises the fulfilment of an outcome much wished for by a person. This wish fulfilment ritual, later becomes a tool used by the traffickers to control their victims.

Often, before the journey starts, the victim is taken to a "priest", having being told that this is to seek a blessing for the new life ahead. The priest, who is part of the trafficker's syndicate, is coached on his role. In accordance he does some rituals and often keeps a lock of hair or a piece of the person's nail, or any other object that belongs to the victim, saying that this is for protection purposes. This is then later used as a threat against the victim, saying that if the victim refuses to comply with the trafficker's demands, the priest will use the belongings or body fragments to cause utter and complete destruction to the victim and his or her family. The fear of what the voodoo/juju/muti/black magic/might do to them and their families keeps the victims shackled to their traffickers until they have served their duty.

14.2.5.7 Other forms of control

Victims that have been trafficked are likely to be

- alone in another region or a foreign country
- unable to communicate in the local language
- denied contact with their families
- disoriented by constant movement and relocation

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- forced to perform difficult and dangerous work on a daily basis for very long hours
- made to face threats against themselves and their family members.

14.3 UNITED NATIONS CONVENTION ON TRANSNATIONAL ORGANISED CRIME

Realising the immensity of this problem, the United Nations decided to address the issue by bringing forth a convention that targeted the problems of organised crime. The United Nations Convention against Transnational Organized Crime was adopted in 2000, and came into force on 29 September 2003. With the signing of this convention in Palermo, Italy, in December 2000, the international community demonstrated the political will to answer a global challenge with a global response. If crime crosses borders, so must law enforcement. If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means (UNODC 2017).

This convention is the main international instrument in the fight against transnational organised crime and is supplemented by three protocols, (also known as the Palermo Protocols), that target specific areas and the manifestations Of organised crime:

- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
- The Protocol against the Smuggling of Migrants by Land, Sea and Air
- The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition

Countries must become party to the Convention itself before they can become party to any of the protocols.

Very few international legal instruments have been as rapidly and globally endorsed as the UN Trafficking in Persons Protocol. The Protocol was enacted in December 2003 only three years after its adoption by the General Assembly in 2000. By October 2016, 170 countries had ratified the Protocol (UNODC 2017).

The Trafficking Protocol advances international law by providing, for the first time, a working definition of trafficking in persons and requires ratifying states to criminalise such practices. (For more detail, see http://www.unodc.org/unodc/en/human-trafficking/faqs.html.) This is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to establish uniformity in domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases.

The purpose of the Trafficking Protocol is the following:

- To prevent and combat trafficking in persons.
- To protect and assist victims of trafficking.
- To promote cooperation among states parties to meet these objectives.

On an international level, a number of conventions relating to the abolition of slavery as well as forced and child labour exist. However, it was the Palermo Protocol that strove to provide an internationally recognised definition of trafficking in human beings. The convention requires that every country that has ratified the convention and moves to domesticating it has to base its definition on the UN definition in order to establish uniformity and harmonise the understanding of this transnational organised crime. This is also because the UN definition makes it possible for every person who has played any part in the trafficking of another to be arrested, prosecuted and convicted. So while prosecuting cases of trafficking, every link in the trafficking chain — be it the recruiter, transporter, harbourer, receiver exploiter or end user — may be held responsible and prosecuted if it can be proved that he or she was aware that the victim was indeed a victim of trafficking.

14.4 GENERAL TRENDS

14.4.1 Scale of child trafficking

There are no concrete statistics on the scale of trafficking as estimates vary widely. Victims

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(including children) are increasingly being trafficked for forced labour, begging, peddling and delinquency, as well as sexual exploitation. Statistics remain elusive due to the clandestine nature of trafficking in human beings and the lack of comparable data.

There is a variety of reasons for this lack of comparable statistics. Notable with data relating to children is that age is difficult to determine and data is recorded based on the age of the victim upon identification rather than upon recruitment. Victims could be adults when identified, but could have been recruited when they were still children, thus the actual number Of trafficked children is likely to be higher than statistics reveal. Also, trafficking is a silent crime as most victims, when they are rescued or if they do manage to escape, keep very quiet about their experience, because they are ashamed of what has happened to them and blame themselves for it, and/or because they fear their traffickers to such an extent that they think it better to keep quiet and fade into oblivion. Child trafficking victims, whether for labour, sex or organ trafficking, come from all backgrounds, and involve both boys and girls. They span a wide age range from 1—18 years old. On average, sex trafficking victims up to roughly 25 years old most Often started sex work as young as the age of 14 years. Children are trafficked from all regions of the world and represent a variety of different races, ethnic groups and religions.

Trafficked children can be lured through the promise of school or work, and are usually promised the opportunity to send money back to their families. Children are also vulnerable to kidnappers, pimps and professional brokers. Some children are even sold to traffickers by their families, who may or may not have an understanding of what will happen to the child.

The ILO estimates that million children are trafficked each year (ILO 2008). The trafficking of children has been internationally recognised as a major human rights violation, one that exists in every region of the world, yet it is only within the past decade that the prevalence and ramifications of this practice have risen to international prominence due to a dramatic increase in research and public action.

Definition

As per the United Nations convention on transnational organised crime, the trafficking protocol defines trafficking in the following way:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution Of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a Victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

The protocol recognises a range of exploitative purposes and is gender neutral. The protocol therefore does not specifically define prostitution or "other forms of sexual exploitation", which could include pornography and other related fields, such as working as a striptease dancer or performing lap dancing. The protocol addresses all types of exploitation and as there is no requirement for a victim to cross a border, the terms of the protocol can be equally applied to local internal and international trafficking.

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On 1 June 2012, the ILO released its second global estimate of forced labour, which represents what the US government considers to be covered by the umbrella term "trafficking in persons". Relying on an improved methodology and greater sources of data, this report estimates that modern slavery around the world claims 20,9 million victims at any time. This means that a shocking 20,9 million women, men and children are trapped in jobs into which they were coerced or deceived, and which they cannot leave. The ILO estimate captures the full realm of forced labour and human trafficking for labour and sexual exploitation, or what some call modern-day slavery. The figure means that, at any given point in time, around three out of every 1 000 persons worldwide are in forced labour. The figures do not include trafficking for the removal of organs or for forced marriage/ adoption unless the latter practices lead to a situation of forced labour or service.

The ILO's first estimate of forced labour and sex trafficking in 2005 was 12,3 million victims. The main differences between the 2005 and 2012 reports are:

- Unlike the 2005 estimate, this new finding does not disaggregate human trafficking victims as a subset of the global forced labour estimate. This recognises that human trafficking is defined by exploitation and not by movement.
- The ILO estimates that 55% of forced labour victims are women and girls, as are 98% of sex trafficking victims.
- The ILO identified a higher percentage of sex trafficking victims than in the 2005 report.
- By region, the Asia and the Pacific region (which includes South Asia) remains largest in terms of number of victims, though the estimate of trafficking victims in Africa has grown since the 2005 estimate (ILO 2012; US Department of State 2012).

14.4.2 Forms of trafficking

The forms of trafficking explicitly included in the UN Palermo Protocol include the following:

- Prostitution and other fórms of sexual exploitation
- Forced labour or services
- Slavery or practices similar to slavery
- Servitude
- Removal of organs

The most widely recognised form of trafficking is prostitution. Other forms of sexual exploitation include the commercial production of child pornography, forced marriage or sexual servitude.

The forms of labour exploitation, servitude and slavery-like practices include the following, amongst others:

- Illicit activities and petty offences, street begging and peddling, pick-pocketing, burglary, drug smuggling as a "mule child" . Labour exploitation such as catering labour in the form of kitchen hands and waitresses; agricultural or plantation labour; mine labour; fishing fleet labour; sweatshop labour
- Sport, such as camel jockeys where babies or young children (mostly boys) are strapped to camels and forced to do camel running
- Child soldiers
- Illegal adoption

While distinct forms of trafficking are recognised in international law and most national law, in practice child victims of trafficking are often subject to a variety of exploitation. Girls trafficked for begging might also be sexually exploited, and boys trafficked for forced labour may be made to perform a variety of illegal activities along with begging. There is emerging evidence to suggest that the exploitation of trafficked children is often progressive — once they are caught up in the trafficking situation, they are vulnerable to repeated and various kinds of exploitation.

14.4.3 Particular vulnerability of children, and profiles of child victims of trafficking

As with the trafficking of adults, the wider socioeconomic situation of child victims can also make them more vulnerable to traffickers.

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Children are particularly vulnerable due to their lack of experience; their dependence on and trust of adults, relatives and people in positions of authority; and their fewer possibilities Of escaping exploitative situations.

Often-cited profiles of victims of trafficking include families suffering from economic restructuring, social dislocation, conflict, poverty, dysfunction, a low level of education, discrimination, a culture of migration, lack of opportunity and desperation for a better life.

Ethnic minorities seem to be particularly vulnerable to traffickers, as social discrimination and marginalisation hinder their access to education, healthcare and employment. Cul-

tural factors such as the acceptance of child labour, under-aged forced marriages and a nomadic lifestyle seem to contribute to child vulnerability.

Exploitation through parents or relatives (for begging, petty crime and prostitution) makes detection and intervention more difficult.

In addition, children within dysfunctional families whose parents may be abusive toward them and unable to provide appropriate care seem disproportionately at risk. The lack of or insufficient child protection systems in many countries of origin result in a large number of children landing up in orphanages or on the streets. Institutionalised and street children are particularly vulnerable, and are often targeted by traffickers.

Other factors that are often cited as increasing the vulnerability of children to trafficking include the following:

- Inequality of the status of women and girls
- Lack of enrolment in school
- Lack of birth registration, which makes it very easy for such children to go missing as there is no record of them
- Humanitarian disasters and armed conflicts

14.4.4 Child-specific recruitment and border crossing

Aside from the general recruitment methods, many of which are also used to recruit children, several methods specifically target children:

- Parents in countries of origin may readily accept — often due to socioeconomic problems, for example debt bondage — or even encourage the emigration of their children to financially support the family. While a certain percentage of parents are likely to be aware of the impending exploitation, many are not. In some cases, there is evidence of families selling their children, or being otherwise involved with the trafficking networks.
- The "lover boy" system is where girls fall in love with trained recruiters who pose as potential boyfriends but then exploit them in prostitution. A lover boy starts a relationship with a girl with the intention of forcing her into prostitution. He will buy her nice presents at first, and protect her and try to keep her away from her family. Lover boys know that they can earn money very quickly by forcing girls into prostitution, and are aware of the almost invisible character and low risk of arrest for trafficking.
- Traffickers continue to target vulnerable children, such as those on the street or in institutions, recruiting them by abduction or with promises of a better life. Victims, over time, often become sympathetic to their captors (a situation known as Stockholm syndrome).[1]
- The established "mail-order bride" system has been further exploited as women with children are recruited to marry foreign men, and the children are later sexually exploited by their new "fathers" and/or others. Some men adopt the children to increase the level of control.
- Children may be recruited through illegal adoption or prior to birth, where expectant mothers are offered payment for their unborn child. In the case of the latter, after birth some women are told that their baby has died, thus they receive no payment. These children are born as victims.

[1] This describes the behaviour of kidnapped victims who, over time, become sympathetic to their captors. The name derives from a 1973 hostage incident in Stockholm (Sweden) at the end of which several kidnapped victims resisted rescue attempts and refused to testify against their captors. One of the female hostages actually married one of her abductors. On occasion the hostage will side with the

captor in working out demands. Although this may simply reflect a wish to end the terrifying ordeal as quickly as possible, it may also signify some attraction to the abductor. When hostages act this way, experts sometimes maintain that they have been brainwashed. An alternate explanation is that they have become attracted to their captors and have temporarily identified with their values and goals. Stockholm syndrome is a rare occurrence, usually occurring when the following three features are present: first, the hostage taker and victim must be together for a significant length of time; second, the hostage must be in direct social contact during the incident (e.g. physical separation of the hostages, from the hostage taker, such as complete isolation in a separate room, is likely to prevent development of the effect): and third, the hostage taker must treat the hostages kindly (Bartol & Bartol 2017: 479).

- Traffickers exploit educational opportunities, using actual or fake letters of confirmation to attend school exchanges or trips. Zambian police have reported cases of Zambian boys and girls brought to South Africa having been issued visas based on "confirmed" school placing. Some children never turn up and are feared to have been trafficked.
- Aware or not of the trafficker's intentions, some parents provide letters of authorisation permitting their children to travel with another adult, thus legalising the border crossing.
- Given the recent attention to the issue of accompanied and unaccompanied minors, traffickers falsify travel documents, stating the age of their victims as over 18 to reduce suspicion.

Currently, one of the most worrisome aspects of trafficking is the lack of identification of child victims of trafficking.

14.4.5 Reporting on child trafficking

While there remains a focus on trafficking for sexual exploitation, more attention and recognition are gradually being given to other forms Of child trafficking, such as begging, forced labour and criminal activities. Under-reporting •is still evident, as children are often not identified as trafficked or exploited (but seen as delinquents), and a distinction between adult and child victims is still rare. Child victims Of trafficking are recruited, transported, transferred, harboured or received for the purpose of exploitation. They may be forced to work in sweatshops, on construction sites or in houses as domestic servants; on the streets as child beggars; in wars as child soldiers; on farms; in travelling sales crews; or in restaurants and hotels. Some are forced to work in brothels and strip clubs, or to perform escort and massage services.

The IOM and other agencies have noted a trend Of children being trafficked with their parents or mother, often for exploitation in street begging. This may be a strategy to foil authorities, an attempt to authenticate asylum claims, or simply a method of exerting greater control over the child.

14.5 CONSEQUENCES OF TRAFFICKING FOR CHILD VICTIMS

Trafficking is a violation of every child's right to a safe and healthy childhood, and a productive, rewarding and dignified life. Child trafficking victims are subjugated and physically abused by the perpetrators — traffickers, employers, pimps, madams and "customers". Trafficked children are often beaten and abused, with violence occurring at all stages of the trafficking cycle.

Other negative experiences suffered by trafficked children include the following:

- Deprivation of opportunities for education • Deprivation of critical childhood play and experiences
- Being forced to change names and identity • Being forced to lie, steal or commit other illegal acts
- Inadequate nutrition, nurturing and medical care (World Federation for Mental Health 2017)

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14.5.1 Trauma

Trauma experienced by trafficked children is manifold, and includes the following (World Federation for Mental Health 2017):

- Separation from loved ones, and family and friends' support systems
- Physical abuse or threats of abuse
- Threats against loved ones for non-compliance
- Sexual exploitation
- Psychological humiliation
- Being restrained and confined to a locked place
- Being transported without knowledge of the destination
- Witnessing violence and sexual activity

Intense traumatic experiences can have the following consequences:

- Narrowing of attention. The most common effect is an intense focus on the most central parts of the traumatic experience, for example a gun or a hitting hand. Narrowing attention improves recollection of core details, with little distortion or loss of important information, but peripheral details are either not encoded at all or only weakly, so when the child tells his or her story, it will have a lot of gaps, which may make it difficult to believe.
- Dissociation. The child becomes totally overwhelmed and cannot process any information. Dissociation means a lack of normal integration of perception, thoughts and feelings. What remains is sensory memory, which is vulnerable to distortion (false memory creation). Adults and older children with traumatic histories show large gaps in their autobiographical memories for both trauma and non-trauma, and are more vulnerable to suggestibility.
- Repression. This is the unconscious exclusion of painful impulses, desires or fears from the conscious mind. While children can originally encode the traumatic episode into their memory in a narrative form, the information is repressed and "forgotten". When repression occurs, the memory of the event can be recovered later on in a therapeutic environment.
- Post-traumatic stress disorder (PTSD). This condition occurs when a victim lives through an experience or series of experiences that are so extreme that he or she is unable to comprehend the nature of them or accept that this has happened to him or her.

PTSD is known to affect memory in different ways. Individuals suffering from PTSD are characterised by re-experiencing traumatic experiences involving intrusive images, visual or sensory hallucinations, and vivid flashbacks. Children might have nightmares and hear voices. They suffer from hyper-arousal and are extremely sensitive. Children may avoid stimuli associated with the traumatic event. They may be unwilling to and, in fact, unable to produce a description of what happened.

PTSD also leads to an irreversible decrease of hippocampal volume (the frontal part of the brain) ancno memory impairment, especially short-term memory.

Stress among children also leads to hyperactivity and learning difficulties. Lack of cooperation, overt hostility, an impaired ability to recall events in detail, errors in accounts or fabrications concerning specific events are all likely to occur as a consequence of trauma, and should be accepted as such. While physical injuries are evident, psychological ones are less obvious and often ignored.

14.5.2 Other possible consequences of trafficking on children

The following are other possible consequences of trafficking on children (World Federation for Mental Health):

- Negative perception of self-worth (shame, guilt and stigmatisation)
- Sense of vulnerability and helplessness

- Distorted value system/involvement in illegal activities
- Physical illnesses — among others, sexually exploited children are susceptible to contracting sexually transmitted diseases, including HIV/AIDS
- Structural brain changes
- Low educational achievement
- Sexual promiscuity
- Difficulty in establishing or maintaining healthy relationships
- Loss of ability to trust
- Negative expectations about the future
- Hyper-vigilance, heightened anxiety
- Difficulty in concentrating
- Difficulty in regulating emotions
- Sleep and eating disorders
- Profound sadness and depression
- Irritability
- Self-destructive behaviour
- Inappropriate attachment behaviours • Developmental delays or regressions

Many victims of trafficking experience trauma during and after the event. If they manage to escape from their traffickers, they are often rejected by society and are sometimes blamed for the situation that they found themselves in. The secondary trauma can cause severe depression and can lead to suicide. It is therefore key that society assists victims of trafficking to gradually work through the painful trauma of trafficking.

14.5.3 International and national legal instruments addressing child trafficking and human rights

Many international, regional and national instruments have been implemented that relate to and affect the practice of child trafficking. These tools have been used to define what legally constitutes trafficking of children, such that appropriate legal action can be taken against those who engage in and promote this practice. These legal instruments are called by a variety of terms, including conventions, protocols, memorandums, joint actions, recommendations and declarations. Some significant tools are listed in the following sections (ILO, UNICEF & UNGIF-r 2009).

14.5.3.1 International human rights instruments

These legal instruments were developed by the United Nations in an effort to outline the international human rights of human beings and, more specifically, children.

UN Universal Declaration Of Human Rights, 1948 (UDHR) [2]

Article 3 of UDHR states that everyone has the right to life, liberty and security. These basic rights that every human being is entitled are taken away from the victim, who is forced to perform acts against his or her will while in the clutches of the trafficker. This is then further intensified when the victim is apprehended by the state and treated as a criminal and an illegal migrant.

UN Convention on the Rights of the Child, 1989 (CRO

The CRC stipulates the legal obligations of governments to children (UNICEF 2006: l) and specifically mentions trafficking, and obligates state parties to take all "appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or the traffic in children for any purpose or in any form". It urges state parties to protect children from "economic exploitation and performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development". It refers to the child's

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right to be protected from all forms of sexual exploitation and sexual abuse. This places an obligation on states to protect children from trafficking for the purposes of sexual and labour exploitation.

The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery

This convention calls for the complete abolishment of debt bondage, serfdom (the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his or her status), forced marriage and the exploitation of a child.

The UN Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)

This is an international bill of rights for women that ensures elimination of all acts of discrimination against women by persons, organisations or enterprises.

The trafficking of children often involves both labour and migration. As such, the following international labour and migration treaties clarify instances in which these practices are illegal.

ILO Minimum Age Convention, 1973

This ensures the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

2 The Universal Declaration of Human Rights (UDHR) is a declaration that was adopted by the United Nations General Assembly on 10 December 1948. The Declaration arose directly from the experience of World War II, and represents the first global expression of rights to which all human beings are inherently entitled.

ILO Worst Forms of Child Labour Convention no. 182, 1999

This identifies trafficking for sexual and labour exploitation as one of the worst forms of child labour.

ILO Convention 29, Forced Labor Convention, 1930

For the purposes of this Convention, the term forced or compulsory labour will mean all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered him- or herself voluntarily.

ILO Convention no. 105, Abolition of Forced Labor Convention, 1957

This provides that all necessary measures shall be taken to prevent compulsory or forced labour from developing into conditions analogous to slavery and provides for the complete abolition of debt bondage and serfdom. Furthermore it provides that wages shall be paid regularly and prohibits methods of payment that deprive the worker of a genuine possibility of terminating his or her employment.

The following are trafficking-specific instruments:

- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000, which is part of the United Nations convention against Trans National Organised Crime
- The Office of The High Commissioner for Human Rights: Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), which has been developed in order to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking. Their purpose is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions.

14.5.3.2 Regional instruments

The African Charter on the Rights and Welfare of the Child

This instrument has two specific provisions that aim to protect the rights of child victims of trafficking. It deals explicitly with the "abduction, sale or traffic in children for any purpose or in any form", urging state parties to "take all appropriate measures" to address these activities, and states that children should not be used in any form of begging.

The charter refers to a system of adoption that ensures that the best interests of the child are paramount. It also refers to inter-country adoption and to the need for "appropriate measures" to avoid placement that would result in trafficking or financial irregularities.

The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children

This was adopted on 23 November 2006 by the European Union (EL) and African states. It is a reaffirmation of the international instruments on trafficking in persons, and provides specific measures and recommendations to tackle trafficking in human beings in general and African women and children in particular.

The South African government is party to all these human rights instruments, and thus is obliged to assimilate the provisions contained in them into domestic legislation.

14.5.3.3 National instruments

Act 7 of2013: Prevention and Combating of Trafficking in Persons (PCTP)

To fulfil its international obligation, which came with the signing and ratification of the UN Convention on Transnational Organised Crime in 2004, South Africa passed a comprehensive legislation called Act 7 of 2013: Prevention and Combating of trafficking in Persons, which though passed in 2013, was implemented in August 2015.

Prior to this legislation, prosecution and conviction of the perpetrators of this crime was

covered mainly by Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007. This act convicted trafficking of persons only for sexual exploitation, which if proved could sentence a perpetrator to life. Other legislations used did not criminalise the crime of human trafficking per se, but were used to prosecute the perpetrators for the crimes they committed in the process, like kidnapping, rape, violence, racketeering, blackmail, pornography etc. Legislations used included both statutory offences (including under the Intimidation Act of 1982 and the Prevention of Organized Crime Act of 1998) and common law offences (such as kidnapping, assault, slavery). Children were protected under the Children's Act of 2005, which included a chapter on the crime of trafficking of children. These laws used were fragmented and limited in scope, which did not allow for every actor in the trafficking ring to be prosecuted. Perpetrators who were convicted got away with minimum inadequate sentences, which allowed traffickers to function with near impunity.

The Trafficking in Persons Act 7 of 2013 legislation, is a comprehensive legislation that addresses the crime of trafficking in its entirety, criminalising offences such as possession and destruction of another's travel documents, debt bondage, forced marriage, and also using the services of a victim of trafficking. The legislation also includes provisions of support services to victims, including children.

Definition oftrafficking under the new South African legislation

The definition of The Prevention and Combating of Trafficking in Persons Act 7 of 2013 (PCTP Act) is in keeping with the UNCTOC definition. It consists of the three elements of the crime, being:

- The Act; Any person who delivers, recruits, transports, transfers, harbours, Sells, exchanges, leases or receives another person within or across the borders of the Republic

- The Means; by means of— (a) a threat of harm;
  (b) the threat or use of force or other forms of coercion;
  (c) the abuse of vulnerability;
  (d) fraud; (e) deception; (f) abduction;
  (g) kidnapping;
  (h) the abuse of power;
  (i) the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or
  (j) the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons

- The Purpose: Exploitation, which includes, but is not limited to—
  (a) all forms of slavery or practices similar to slavery;
  (b) sexual exploitation;
  (c) servitude;
  (d) forced labour;
  (e) child labour as defined in section 1 of the Children's Act;
  (f) the removal of body parts; or
  (g) the impregnation of a female person against her will for the purpose of selling her child at birth;

The definition also includes that:

(2) Any person who—

(a) adopts a child, facilitated or secured through legal or illegal means; or

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(b) concludes a forced marriage with another person, within or across the borders of the Republic, for the purpose of the exploitation of that child or other person in any form or manner, is guilty of an offence of trafficking

Liability of carriers: A carrier who transports a person within or across the borders of the Republic, who knows or ought reasonably to have known that the person is a victim of trafficking and fails to report it to the police, is also guilty of an offence of trafficking

- Involvement in Offences under this Act: Any person who—
  - (a) attempts to commit or performs any act aimed at participating in the commission of;
  - (b) incites, instigates, commands, directs, aids, promotes, advises, recruits,encourages or procures any other person to commit; or
  - (c) conspires with any other person to commit, an offence under this Chapter is guilty of an offence of trafficking

Consent: Consent of a victim, or of person having control or authority over a victim, cannot be used as defence by the perpetrator, in a court of law.

Penalties: The PCTP Act imposes harsh penalties for perpetrators of this crime. The following are among the offences enumerated in the

legislation:

- Trafficking in persons: punishable by a fine not exceeding South African Rand 100 million and/or a custodial sentence of up to life in prison.
- Intentionally engaging in conduct that causes another person to enter nto debt bondage: punishable by up to fifteen years in prison and/or a fine.
- Using the services of victims of trafficking: punishable by up to fifteen years in prison and/or a fine.
- Facilitation of trafficking in persons, including through the leasing of rooms or publishing of advertisements: punishable by up to ten years in prison and/or fine.
- Attempt of any of the above-listed offenses: punishable by the same penalty imposed for the commission of the actual offence.

Factors considered when sentencing under the PCTP Act are:

(a) The significance of the role of the convicted person in the trafficking process;

(b) previous convictions relating to the offence of trafficking in persons or related offences;

(c) cause of substance abuse and dependence for victim;

(d) the conditions in which the victim was kept;

(e) whether the victim was held captive for any period;

(f) whether the victim suffered abuse and the extent thereof;

(g) the physical and psychological effects the abuse had on the victim;

(h) whether the offence formed part of organised crime;

(i) whether the victim was a child;

(j) the nature of the relationship between the victim and the convicted person;

Victim Assistance under the PCTP Act:

Compensations for victims of trafficking by the perpetrators for for damage to or loss of property, physical or mental suffering, causing the contraction of a life-threatening disease or diseases, or loss of income or support. If the payment awarded by the court is insufficient, the victim reserves the right to institute a civil action against the perpetrator.

Extraterritorial jurisdiction: The PCTP Act accords South African courts extraterritorial jurisdiction in certain circumstances. South African courts may assume jurisdiction over certain cases involving acts committed outside of South Africa if such acts constitute an offence under the relevant provisions of the PCTP Act and one of the following factors is present:

- The victim or the alleged perpetrator is a resident or citizen of South Africa.
- The alleged perpetrator is present in South African territory (including on a vessel or an off-shore installation registered or required to be registered in South Africa).
- The perpetrator is a juridical person registered under South African law.

Whether the act in question constitutes an offence in the jurisdiction where it was committed is immaterial.

The PCTP Act seeks to encourage witness cooperation with law enforcement. It requires that anyone (except legal practitioners in certain circumstance) who knows or suspects the commission of a trafficking offence to report it to the police. The Act accords confidentiality and immunity to individuals who report suspected trafficking offences in good faith, from any civil or disciplinary actions, "unless the interests of justice require otherwise".

Criminal prosecution of victims of trafficking: A victim cannot be prosecuted for a criminal offence, if it was committed as a direct result of the person's position as a victim of trafficking,

Unauthorised access to and disclosure of information: Any person disclosing any information that leads to access to a victim or to his/her family, will be guilty of an offence (http://www. justice. gov.za/legislation/acts/2013-007 .pdf).

The Constitution of the Republic ofSouth Africa Act 108 of 1996

This is the supreme law of the country, and all other law and actions are subject to the Constitution. Chapter 2 is a bill of rights that enumerates the civil, political, economic, social and cultural human rights of the people of South Africa. Most of these rights apply to anyone in the country. Some of the sections that speak to the crime of trafficking are the following:

- Section 10 states that "everyone has inherent dignity and the right to have their dignity respected and protected".
- Section 12 includes the right to be free of all forms of violence and not to be treated or punished in a cruel, inhuman or degrading way.
- Section 13 covers freedom from slavery, servitude or forced labour.
- Section 28 provides for the special protection of children.

1453.4 Global and local context

The following section covers some of the general global patterns of child trafficking as reported by. UNICEF:

- West and Central Africa play host to children trafficked as a result of traditional or cultural practices, where children are "given" to other families and forced to perform duties in the home of the receiving family. The "given" children are exploited for cheap labour. Children are also trafficked into other forced labour practices outside the home, such as mines and plantations, and are used as child soldiers in countries at war.
- In East Asia and the Pacific, children are trafficked for commercial sexual exploitation as child prostitutes, and also for cheap labour in agriculture and other industries.

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- In South Asia, the trafficking Of children and child labour are intricately linked. Children are often sold to pay back a family debt. Girl children are often trafficked for sexual exploitation. Other forms of trafficking in the region include forced labour in construction and factories.

- Children are trafficked from Eastern to Western Europe, feeding the demand for cheap labour and child prostitution in the richer countries. Organised crime groups play a role by exploiting the open borders of the European Union to facilitate the process.

- Child trafficking in North and South America and the Caribbean is linked to tourism, and feeds on the demand for the sexual exploitation of children and their use as cheap exploitable labour.

14.5.4 South Africa's position as per the United States Trafficking in Persons Report (JTiP)

Every year the US Department of Justice publishes a report called the JTiP Report (previously called GTiP Report) that ranks countries that have ratified the Palermo Protocol into one of four tiers:

- Tier 1. Fully compliant with minimum standards of the Palermo Protocol

- Tier 2. Not fully compliant, but making significant efforts to be so

- Tier 2 Watch List. Same as Tier 2, but the number of victims is significant; or no prosecutions and convictions have taken place; or there is no evidence of increasing efforts; or the country has promised but has not yet enacted new steps to combat this crime

- Tier 3. Not fully compliant and not making any significant effort to be so (which can affect US government assistance to a country)

In its 2017 Trafficking in Persons (TIP) Report, the US Department of State gave South Africa a Tier 2 designation, the number of victims identified and referred to care has increased, as has convitions of the perpertrators, with stringent sentences of up to life improsonment being handed down. South Africa has had this rating since the Department of State started issuing the annual TIP reports. South Africa has been put into the Tier 2 group because reasonable improvement has been seen in awareness raising and the prosecution of perpetrators of this crime.

South Africa is a source, transit and destination country for men, women and children subjected to forced labour and sex trafficking. South Africans constitute the largest number of victims within the country. South African children are recruited from poor rural areas to urban centres, such as Johannesburg, Cape Town, Durban and Bloemfontein, where girls are subjected to sex trafficking and domestic servitude, and boys are forced to work in street vending, food service, begging, criminal activities and agriculture. Many children, including those with disabilities, are exploited (e.g. in forced begging on the streets). Non-consensual and illegal marriages are also on the increase. In South Africa, ukuthwala is the practice of abducting young girls and forcing them into marriage, often with the consent of their parents. This occurs mainly in rural parts of South Africa, in particular the Eastern Cape and KwaZulu-Natal. With the ukuthwala practice, girls as young as 12 years are forced into marriage with adult men. These girls are not only forced into the marriage, but also forced into labour and sex slavery. In addition, local criminal rings organise child sex trafficking, which is globally growing in popularity. RusSian and Bulgarian crime syndicates are also known to operate in the Cape Town sex trade, and Chinese nationals organise the sex trafficking of Asian men and women in South Africa. Nigerian syndicates dominate the commercial sex trade in most provinces in South Africa. To a lesser extent, syndicates recruit South Afri-

can women to Europe and Asia, where some are forced into prostitution, domestic service or drug smuggling.

Law enforcement officers report that traffickers employ forced drug use to coerce trafficked victims into the sex trade. Thai women remained the largest identified foreign victim group, but reports to the IOM show an increasing number of Chinese victims in the trade. Women and girls from Brazil, Eastern Europe, Asia and neigh bouring African countries are recruited for legitimate work in South Africa, where some are subjected to sex trafficking, domestic servitude or forced labour in the service sector, or taken to Europe for similar purposes. Non-government organisations (NGOs) in the Western Cape have reported an increased number of Nigerian sex trafficking victims, many coerced through voodoo rituals. IOM has also seen an increase in Nigerian girls in domestic servitude. NGOs reported a new trend of Central African women being forced into labour duties in hair salons. Foreign and South African LGBTI persons are also increasingly subjected to sex trafficking. (LGBTI communities/populations collectively refer to people who are lesbian, gay, bisexual, trans, and/or intersex.)

From time to time, foreign male forced labour victims are also discovered aboard fishing vessels in South Africa's territorial waters. NGOs estimate that 10—15 victims of labour trafficking disembark from sea vessels in Cape Town each month. Young men and boys from neighbouring countries migrate to South Africa for farm work; some are subjected to forced labour and are subsequently arrested and deported as illegal immigrants. Forced labour is reportedly used on fruit and vegetable farms across South Africa and in vineyards in the Western Cape. Government and NGOs report an increase in Pakistan and Bangladesh nationals who are subjected to bonded labour by fellow nationals who own businesses in South Africa. Official complicity by government officials — including police officers — in trafficking crimes remains a serious concern. Some wellknown brothels in some provinces previously identified as locations of sex trafficking continue to operate with officials' tacit acknowledgment (US Department of State 2016)

14.6 CONCLUSION

Human trafficking, which includes the cruel and inhumane trafficking of children, is a glaring reality in South Africa, which more often than not gets overlooked and remains undetected, or if detected, unresolved. Lack of proper data collection, lack of research, insignificant crime classification and recording by the police leaves the extent of the problem unknown. Trafficked children toil behind the walls of private homes, hotel rooms and sweatshops — obscure places from which most never come forward for fear of their perpetrators or of prosecution. In addition, many fear deportation if they were taken across borders.

There seems to be some hope, though, as specific legislation to address trafficking has been promulgated. One challenge is still the availability of official statistics as there is no clear indication of the number of children trafficked each year to, through and from South Africa. The government has put in place legislation and provincial task teams to address this issue, but clear evidence and answers are still lacking. Trafficking in persons is not just a government's problem, as each one of us has a duty and a responsibility to take ownership of our communities and our neighbourhoods. Collective actions by vigilant citizens against trafficking attempts will also ensure that traffickers do not exploit humans for financial gain. Trafficking is real and many citizens are oblivious of it.

CRITICAL QUESTIONS

1. Explain the concept of human trafficking?
2. What are the three main elements that have to be present in a case for it to be deemed human trafficking?
3. Can a case still be deemed as trafficking if only one or two of the elements are present?
4. What does child trafficking entail? How is it different from the trafficking of adults?

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5, What are the main causes of human trafficking?

6. Highlight the exploitative situations into which children are trafficked.
7. Indicate the possible consequences oftrafficking for children.
8. What is the title of the TiP Legislation in South Africa?
9. When was it passed and implemented?
10. What is the definition ofTiP under the South African Legislation?
11. Should a victim of trafficking be prosecuted for any crimes committed during the time he or she was trafficked? (Highlight your answer with specific reasons.)
12. In your opinion, would regional cooperation within the Southern African Development Community be beneficial in addressing child trafficking? Explain.
13. Give an overview of the trafficking situation in South Africa.

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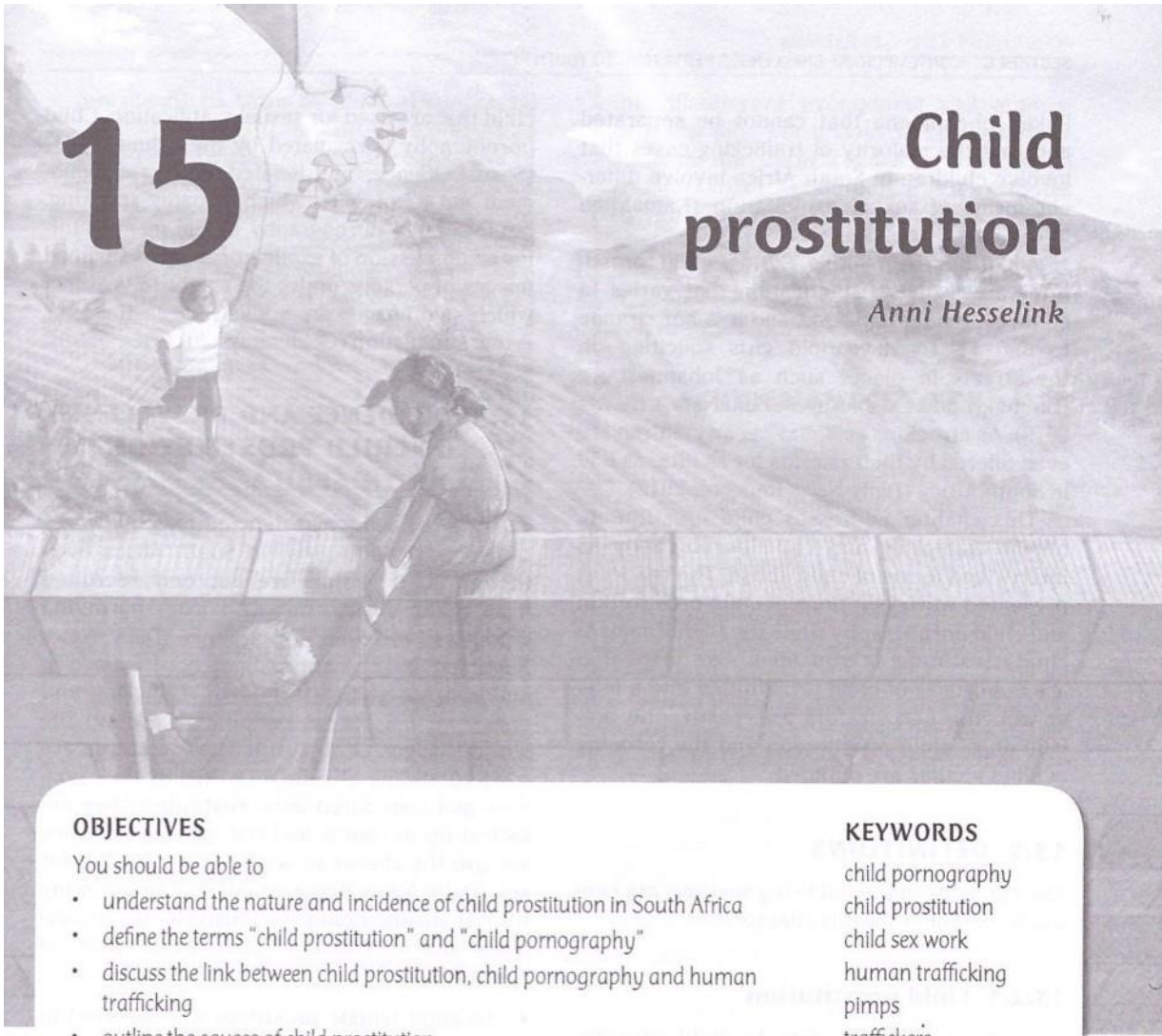
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15 Child prostitution

Anni Hesselink

OBJECTIVES

You should be able to

- understand the nature and incidence of child prostitution in South Africa
- define the terms "child prostitution" and "child pornography"
- discuss the link between child prostitution, child pornography and human trafficking
- outline the causes of child prostitution
- know the perpetrators of child prostitution
- understand the consequences and risks for children that are involved in sex work
- discuss the prevention and rescuing of child sex workers.

KEYWORDS

child pornography
child prostitution
child sex work
human trafficking
pimps
traffickers
victims

15.1 INTRODUCTION

Prostitution is one of the world's oldest professjons (Siegel 2016). During the 19th century, it was practice in England for poor young girls to trade sex in exchange for financial or other types (food) of compensation (Siegel 2016). On a global scale, it is estimated that millions of children are forced into the multibillion-dollar child prostitution trade (Geldenhuys 2014a).

Worldwide, half the money made from the sex trade comes from industrialised nations such as Austria, America and China, while more and more children are entering the sex industry on an international level and in South Africa (Geldenhuys 2014a; Lewis 2015; SAPA 2009). Furthermore, Geldenhuys (2014a) and Siegel (2016) add that human trafficking, child pornography and child prostitution are inter-

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linked phenomena that cannot be separated and that the majority of trafficking cases that involve children in South Africa involve

different forms of sexual exploitation (Kamaldien 2016).

According to Whiting (2014), child prostitutes are a diverse population that varies in cultures, gender and ages, and it is not strange to find ll- to 12-year-old girls soliciting on the streets in places such as Johannesburg (Gauteng) and Durban (KwaZulu-Natal) (Lewis 2015). As atrocious as it may seem, children are even offered by their parents for as little as R50 in South Africa (Daily News Reporter 2012).

This chapter addresses child prostitution, human trafficking and child pornography as intertwined forms of child abuse. The reader is presented with definitions of child prostitution and child pornography while the recruitment of child prostitutes is explained. Also presented are the causes of child prostitution and a look at who the perpetrators are. Lastly, the prevention of child prostitution and the rescuing of child victims are outlined.

15.2 •DEFINITIONS

The concepts in the following sections are central to the theme of this chapter.

15.2.1 Child prostitution

Geldenhuys (2014a) refers to child prostitution as the commercial sexual exploitation of a child by an adult, an organisation, a group, or by another child through the abuse of power (and trust), influence or forced actions. The child victim is lured or recruited into the sex industry and has to take part in sex or sexual activities (pornography) in exchange for favours (e.g. drugs, shelter, food) or money (Geldenhuys 2014a).

15.2.2 Child pornography

The term "child pornography" is a challenging one to define (Geldenhuys 2014a). This phenomenon is seen as a consequence of sexual exploitation or the abuse of a child for sexual purposes (Geldenhuys, 2014a). The main focus of this definition falls on the actual images (i.e. photographs, video clips) of the abuse of a child that are used for sexual gratification. Child pornography is regulated by the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which, broadly speaking, outlines child pornography as the manufacturing or possession of explicit or sexually inclined images of persons under the age of 18 years, of which said images are applied for aesthetic or erotic stimulation (Geldenhuys 2014a).

15.3 INCIDENCE AND PREVALENCE OF CHILD PROSTITUTION IN SOUTH AFRICA

There is a heightened demand for child prostitutes (boys and girls) in South Africa even though child victims are not only recruited from South Africa, but also from bordering countries, such as Mozambique (Daily News Reporter 2012). Approximately million children are victim to human trafficking and consequential sexual exploitation around the world (Songca et al. 2016). These children are often runaways who are forgotten by their families, and once lured into prostitution they are locked up in rooms and the only people they see are the clients to whom they are sold for sex (Daily News Reporter 2012). The following topical media examples illustrate the prevalence and incidence of child prostitution in South Africa:

- An adult female prostitute was arrested in Durban With an under-aged female child whom she was selling to men for up to R3 000 per hour. It is alleged that the girl had run away from home and ended up drifting along the beach when the adult prostitute recruited her into the sex industry. The girl was severely drugged when found and rescued by police (Daily News Reporter 2012).
- Eight girls under the age of 16 years (of which the youngest was 12) were rescued from a prostitution ring — two of these girls were pregnant. Among the adults responsible for these girls' fate was a medical doctor and his wife (Daily News Reporter 2012).
- Most girls are trafficked from neighbouring countries (e.g. Zimbabwe, Botswana, Namibia, Mozambique) and the two countries within South Africa (namely Lesotho and

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Swaziland) to work as child sex workers. In addition, girls from European and Asian countries are also sought after because of the so-called exotic factor (they look different) and the demand for them. Since 2009, there have been 10 successful convictions in trafficking cases that involved the sexual exploitation of children (Heavy sentences for human trafficking 2015).

- Girls as young as 12 years are alleged to be working as prostitutes in Durban (SAPA 2014).
- The South African Police Service and the metro police raided a brothel in Kempton Park (Ekurhuleni) and found teenagers, some of them 15 years old, who were working as prostitutes (Smillie 2017). The girls were lured to the premises with undertakings of employment and prospects to study further (Smillie 2017).
- During March 2017, a 33-year-old male was sentenced in the Port Elizabeth Magistrate's Court for being involved in an international child pornography ring known to have shared sexually explicit material among one another. The perpetrator and his wife distributed images of rape, torture and the murder of babies (including newborns) in the pornography ring (Smillie 2017).
- A Pimp who posed as a sports coach for underprivileged and under-aged boys at an informal settlement in Fochville (in western Gauteng) convinced poverty-stricken minors to join a sports outing to Johannesburg on the pretext of getting them involved in sports (Panyane 2017). The man drugged the children the night before they left for Johannesburg. Some of the boys were taken to a hotel where drugs were used, while others were left on their own in the veld. The man's intention was to traffic the boys, but some of them managed to escape and went to a police station to report their ordeal (Panyane 2017).
- In some rural areas in KwaZulu-Natal, chiefs and headmen intercept in child sexual abuse cases and impose fines to be paid in livestock (cattle) to the family of the victim to remediate the offence rather than informing the authorities of the sexual abuse (Ndaliso 2016). Paying with livestock clears the offender of wrongdoing and appeases the family, but it does not recognise or address the harm caused to the victim (Ndaliso 2016). In addition, this contributes to the dark figure (i.e. unreported cases) relating to child pornography, and we will therefore never be able to determine the true prevalence and extent of this phenomenon in South Africa.

15.4 RECRUITMENT INTO CHILD PROSTITUTION

Research (Daily News Reporter 2012; Siegel 2016; Songca et al. 2016) proves that adult prostitutes, traffickers and pimps constitute the majority of adults who recruit vulnerable children into child prostitution. These children are often runaways who are characterised by dysfunctional families, poverty and backgrounds with severe financial constraints. Recruitment into the sex industry becomes a means to survive (for food, shelter, clothing, drugs, etc.) for them and the quickest way to make money is to sell their bodies. The demand is always there, and as soon as the supply meets the demand the business flourishes.

When children are recruited for the sex industry, they are most often also introduced to drugs and alcohol (Daily News Reporter 2012). Once addicted, they are controlled and subdued by pimps with drugs and alcohol, and they become trapped in a vicious cycle of selling their bodies to sustain their drug and alcohol addiction (Daily News Reporter 2012; Songca et al. 2016). Prominent media stories of recruitment practices into child prostitution are listed below:

- A 62-year-old Mpumalanga businessman was sentenced to eight life sentences for holding captive five Mozambican underaged girls as sex slaves at his home (Heavy sentences for human trafficking 2015). The girls were aged between 10 and 16 years, and were held captive for a period of three years. All of them were smuggled by a Mozambican adult female who claimed to have been smuggled herself to South Africa when she was 12 years old. She

too had been raped by the 62-year-old businessman (Heavy sentences for human trafficking 2015).

- SAPA (2014) reports of a 14-year-old Durban girl who was lured into prostitution with free clothes, alcohol and drugs. The girl was given drugs for a period of two months and once she was addicted she had to "work on the streets" (sell her body for sex) in order to secure and maintain her drug addiction (SAPA 2014). This girl, like many others, was recruited into child prostitution by a doctor, his wife and three other adult men. She sold her body for RIOO to her first client. On another occasion, the girl and two others, both under-aged, were picked up by a group of men who "paid" them with high volumes of alcohol. They eventually passed out and when they woke up the next day, they found themselves in Pretoria. Adult prostitutes there gave them money for bus tickets to get back to Durban (SAPA 2014).
- Community members and the police in Kuils River (Western Cape) report that there is a human trafficking syndicate operating in the area that lures and abducts under-aged girls for prostitution (Francke 2017). The clandestineness of this type of business makes detection very difficult.
- Social media platforms play an important role in the recruitment of children into the sex industry (Kamaldien 2016). Many internet websites advertise potential job opportunities, dancing careers and modelling opportunities that are pitched at very young children, enticing them into the cities (Kamaldien 2016). Once they show interest, the pimps even go as far as flying them to the big cities where their real fate (in being a sex slave) awaits them (Kamaldien 2016). Parents are conned into providing the necessary documentation or, in some cases, selling their children to ruthless recruiters. Once the victims arrive in the cities, they find themselves indebted to the pimps or traffickers for the money spent for their flights and accommodation, and their identification documents are confiscated. They are introduced to drugs, and once addicted, they commence with prostitution to feed their drug habit and to repay the pimps (Kamaldien 2016). (Also see Chapter 14 in this regard.)
- A small-town mother who became worried about her teenage daughter contacted an unknown adult man with whom her underaged daughter was liaising on the internet. The man sent her daughter a plane ticket to Cape Town, where she was promised a good job. The distraught mother tracked the man down and interrogated him about her daughter's fate. Eventually he confirmed that the website and the modus operandi were used to recruit sex workers (Kamaldien 2016).

The prominence of social media and online advertisements offering employment and accommodation for homeless and runaway youth in exchange for sex has been a cause for concern. Currently in England social media platforms are reported to be causing serious challenges in this regard (Hayden 2017). Ruthless pimps prey on and vet vulnerable and desperate youths by advertising escort work or "friends with benefits" arrangements along with accommodation. Even online dating apps and websites are used to lure vulnerable and desperate youths into sex work. Another method of recruitment is by approaching these youths in clubs or bars, and asking if they need food and accommodation (Hayden 2017).

Often children that have been subjected to poverty, physical and sexual violence, and neglect are seeking ways out of their dire home circumstances (Siegel 2016; Songca et al. 2016). Such children are easily deceived by promises of better living circumstances, freedom and the assurance of a job opportunity, yet once recruited by traffickers, they are held captive and used in the sex industry to accumulate money for the traffickers and pimps (Songca et al. 2016; Trafficking for sexual exploitation 2017).

Although children are trafficked to work on construction sites and plantations as camel jockeys, child soldiers, forced labour (e.g. domestic and/or farm work) and for begging, the majority are trafficked for prostitution (Geldenhuys 2014a; Songca et al. 2016; Trafficking of Children 2017). Because children are more vulnerable, they are cheaper to hire,

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and less likely to demand better working conditions or higher wages, and this leaves them at the mercy of the traffickers. The children's vulnerability increases when they are trafficked to a different country with no contacts or family (Trafficking of Children 2017). Another way in which children become ensnared is when they are abducted from the streets and sold into the sex industry or forced into under-aged marriage by relatives (Trafficking of Children 2017). In South Africa it is also not uncommon for young girls to become involved in "relationships" with older men where there is an exchange of money or some reward for sex, sometimes with the knowledge of their parents, who are complicit (Daily News Reporter 2012). Such older men are sometimes referred to as sugar daddies or "blessers".

In the UN Trafficking of Children (2017) report it is stated that at least one million children are recruited into sex slavery annually on a global scale and the demand for younger children is on the rise.

15.5 HUMAN TRAFFICKING AND CHILD PROSTITUTION

The phenomenon of child sex work and human trafficking is linked and interdependent, and words such as "indignity", "degradation" and "disgrace" are used to describe the suffering of the children (and women) who meet this fate (Wilkinson & Chiumia 2013). Human trafficking is the third most lucrative illegal trade after weapons and drugs, with an estimated value Of US$32 billion a year (SAPA 2009). Although child trafficking is broadly discussed in Chapter 14, it is necessary to explain the link between trafficking and child prostitution in this chapter.

According to Wilkinson and Chiumia (2013), a precise understanding of the requirements of human trafficking is important as activities such as voluntary sex work and illegal migration are excluded in the act of trafficking. These authors posit that human trafficking occurs when the following occurs (Wilkinson & Chiumia, 2013):

- A person is transferred, transported, delivered, recruited, sheltered, sold, exchanged or leased within or across the borders of South Africa;
- Coercion, use of force, threats, abduction, fraud, deception, abuse of power or weakness, or payments or advantages to a person in control of the victim were made; and
- The victim was trafficked for the purpose of sexual abuse, slavery, forced labour, child labour or for the removal of body parts.

Human trafficking is rife in South Africa, and children are at particularly high risk (Wilkinson & Chiumia 2013). This claim is also supported by available popular media reports (Wilkinson & Chiumia 2013). On a YouTube documentary video called Child prostitution — South Africa's young street walkers (2016), it is claimed that human trafficking and the demand and supply for prostitution and child prostitution expanded in South Africa with the 2010 Soccer World Cup, but this is not supported by any empirical research. According to Wilkinson and Chiumia (2013), international sporting events often increase human trafficking.

Between 2003 and 2007, the fraction of children in human trafficking cases increased from 15—22%, and on an annual basis over million children are sexually exploited over the world (SAPA 2009). This corroborates the UN figures that were mentioned earlier. Since hosting the National Human Trafficking Awareness Week in 2016, it was estimated that approximately 20 000 children in South Africa fall prey to human trafficking every year (Child prostitution — South Africa's young streetwalkers 2016). Still, clear evidence and accurate figures. in South Africa and globally are clearly not available about this phenomenon, which is shrouded in secrecy.

In America, many motels and hotels facilitate sex trafficking by assisting traffickers to remain anonymous because they benefit from their business, so hotel owners and staff often ignore this form of child abuse (Schmidt 2017). During March 2017, a 14-year-old girl from Philadelphia in the US brought a lawsuit against a motel known to facilitate human trafficking and the sexual exploitation of children by renting rooms to men who forced teenage girls to have sex with

them (Schmidt 2017). Apparently the victim "was held for weeks and months at a time, barred from leaving, and was forced to have sex with as many as 1 000 men over the course of two years" (Schmidt 2017: np). This occurred while the motel's owners and staff rented rooms to the victim's traffickers, benefiting financially from it and doing nothing to stop the abuse (Schmidt 2017).

In South Africa, similar atrocities take place. In one such case an under-aged girl ran away from home and, anxious to avoid homelessness, met traffickers and ended up being sold into sex slavery. She was "forced to perform

sexual acts on men more than twice or three times her age and if she tried to leave there was someone at the bottom of the staircase that prevented her from doing so". (Schmidt 2017: np). In most cases, children who end up as trafficked sex slaves have no assistance in escaping their ordeal. In the highly unlikely event that they do break free, law enforcers may only discover their victimisation by accident. It is usually only when the traffickers and pimps release them that their ordeal ends. However, this might be the end of the physical ordeal but many victims suffer long-term emotional effects of the sexual exploitation. Most children who are used in the sex trade are seriously hampered in their physical, psychological, social and emotional development (Bartol & Bartol 2017: 421). In addition, many suffer lifelong symptoms of post-traumatic stress disorder (PTSD), anxiety and depression,

15.6 CHILD PORNOGRAPHY AND CHILD PROSTITUTION

According to Geldenhuys (2014a: 25), child pornography can be traced to "the time when man discovered the ability to write or draw". Drawings of children engaging in sexual intercourse with adults date at least as far back as ancient Greece, and a graphic written description of child sexual abuse was found in 17th century France. Child pornography is a prime and interconnected form of child abuse and the sexual exploitation of children, and it is also associated with sex tourism, child prostitution and trafficking of children (Geldenhuys 2014a), thus there is a direct link between child pornography and the demand for and supply of child prostitutes (Daily News Reporter 2012; Siegel 2016). On an annual basis, more than a million children are used in pornography and child prostitution, many of whom are runaways who are being exploited by adults (Siegel 2016). The following story serves as an example of the link between child pornography and child prostitution.

From the age of 11 years, a Vredenburg (Western Cape) girl was forced by her mother to pose in sexual positions and perform sexual acts with adult males, which she (the mother) photographed and forwarded to an adult male in America (Smillie 2017). Both the victim's parents are presently facing charges of rape, sexual assault and the manufacturing of child pornography (Smillie 2017). This case became known after American police officers contacted the South African Police Service after the recipient of the child pornography was arrested and his phone confiscated. The police in the US found explicit photos of the victim on it, payments for which were traced to South Africa. The recipient of the child pornography used social media (Facebook and WhatsApp) to communicate with the girl and her family (Smillie 2017). Apparently, he befriended the victim on a social media platform. Eventually her mother became involved and demanded payment for allowing her child to pose for the requested sexual positions (Smillie 2017). With the development of technology, children are now, more than ever, vulnerable to ruthless exploiters. It has become an easy avenue to download child pornography or to solicit potential child victims on the internet.

15.7 CAUSES OF CHILD PROSTITUTION

Many children who end up as sex slaves were once desperate for employment and accommodation, and ran away from home to escape abuse and neglect. By following this path, and because they are so desperate and naïve, they are at risk for sexual exploitation and lured into child prostitution (Hayden 2017; Songca et al. 2016). Adding to this, Wilkinson and Chiumia (2013) state that many children are forced into prostitution by circumstances such as dysfunctional families and poverty.

15.7.1 The role of the family

Most child and juvenile misbehaviour and truancy (i.e. runaway behaviour and substance abuse) can be traced to the family of origin or, stated otherwise, the lack of a stable, caring, non-abusive and loving family (Songca et al. 2016; Siegel 2016). Recent research as outlined by Songca et al. (2016) demonstrates a strong correlation between a number of factors and the child's involvement in misbehaviour (i.e. running away). These factors include child abuse

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(physical, sexual and emotional, and neglect), parental roles and characteristics (involvement with children, discipline styles and supervision), the family setting (overcrowding, a broken family or an absent parent), the school setting (academic achievement, commitment to school, dropping out of school), as well as the child's immediate environment (poverty stricken, high-crime neighbourhood) (Siegel 2016; Songca et al. 2016).

Exposure to poor parental involvement, lack of supervision, absent parents, a broken or dysfunctional family environment, parental criminality, domestic violence, family overcrowding, poverty, parental unemployment, parental and child substance abuse, abandonment, and lack of significant others (involved, non-abusive, caring and non-criminal extended family members or role models) may push a child to seek a better life and circumstances elsewhere (Siegel 2016; Songa et al. 2016). Children exposed to such conditions may develop behavioural problems, run away from home to escape their dire family and home circumstances, end up on the street, befriend undesirable or delinquent friends, and ultimately become vulnerable targets for traffickers and subsequent recruitment into the sex industry (Songca et al. 2016).

15.7.2 Exposure to abuse

Siegel (2016) believes that many parents are involved in child abuse. Circumstances conducive to child abuse (and neglect) at home include exposure to family violence (domestic violence and the physical abuse of children) and blended families (abuse by a parent's partner, by step-parents or by extended family members). Sexual abuse within the family home is also common (Siegel 2016). Accordingly, Chothia (2016) discloses that even though boys and girls are equally vulnerable to sexual abuse, girls are more likely to experience contact sexual abuse (i.e. rape) than boys, who described higher levels of noncontact sexual abuse (verbal advances and exposure to pornography by adults). Siegel (2016) maintains that children, irrespective of culture, gender and race who experience any form of abuse (sexual, physical or emotional abuse, or neglect) are more prone to suffering from suicidal ideation and attempts, problem behaviour, depression, substance abuse and self-harming behaviour.

15.7.3 Poverty and unemployment

Poverty is one of the preconditions that allows traffickers to operate (Trafficking of Children 2017). Many children see prostitution as a means to earn an income. In addition, child prostitution is aggravated by the high poverty index, and many poverty-stricken parents see their children as an opportunity to generate an income for the family (Daily News Reporter 2012). Poverty is compounded by unemployment, and the dire levels of poverty push young girls into prostitution as a means of surVival (SAPA 2009; Lewis 2015). According to the YouTube clip Child prostitution — South Africa's young street walkers (2016), child prostitution is endemic to South Africa, and for many children from informal settlements (squatter camps), prostitution is practised as a means of survival.

Children are easily tricked into prostitution with promises of employment, fancy clothes and hairstyles, modelling and dancing careers, and prospects to study further (Smillie 2017; Teke 2016). Once lured into these networks, they are kept sedated, locked up and sexually exploited (Kamaldien 2016; Kimberley 2017; Siegel 2016; Songca et al. 2016). Following are two examples which demonstrate the link between unemployment, poverty and child prostitution:

- An under-aged female girl was prostituted by her parents for three years (between the ages of Il and 13 years) because they were unemployed and needed money to buy food. The victim was deceived into believing that she would eventually marry the man who the parents allowed to exploit her sexually (Smillie 2017).

- A YouTube video that was recorded in 2007 depicts a 16-year-old female prostitute who is also a drug addict and who admits that she has been selling her body for sex in exchange for money for years (Bastian 2015; Child prostitution — South Africa's

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young street walkers 2016). From this one can deduce that unemployment, sex work and drugs are interweaved in most scenarios.

15.8 WHO ARE THE PERPETRATORS?

Geldenhuys (2014b) postulates that adults are the main consumers of child prostitution and the largest viewers of child pornography. These perpetrators come from all strata of life and many of them have respected occupations such as medical doctors (Daily News Reporter 2012) that bring them into regular contact with children (Geldenhuys 2014b). Adults and even children have lured other children into child prostitution. Male and female traffickers, pimps, parents, adult prostitutes, corrupt law enforcement officials (at border posts), hotel and club owners, community leaders, transport workers, paedophiles, clients, sex tourists and passport counterfeiters are the perpetrators of child prostitution (SAPA 2009; Kimberley 2017; Ndaliso 2016; SAPA 2009; Schmidt 2017; Siegel 2016; Smillie 2017). Most of the offenders have legitimate access to children. Unfortunately no typical profile exists of the child sex or pornography offender (Bartol & Bartol 2017: 419).

About child pornography, Geldenhuys (2014b) posits that child pornographers use pornography for personal sexual arousal and gratification purposes. They also use it to groom and seduce children; lower their inhibitions; for extortion to guarantee their victims' silence; and to gain trust with other p•aedophiles and sex rings. In addition, they feed the demand for child prostitution; ensure access to markets that exchange pornographic material of children; profit from it; and use it endorse their cognitive deficits pertaining to child abuse and child pornography, and to justify the notion that sex with a child is normal.

15.9 CONSEQUENCES AND RISKS ASSOCIATED WITH CHILD SEX WORK

Children who are forced into prostitution suffer severe violations of their human rights, such the right to dignity, liberty, freedom, security of person, health and the right to be free from violence (Geldenhuys 2014a; Trafficking for sexual exploitation 2017).

Siegel (2016) states that involvement in child prostitution leaves permanent damage on a spiritual level (feelings of guilt and shame), on an emotional level (low self-esteem and low self-worth), a sexual level (sexual dysfunction), and on the children's health (due to the consequences of violence and substance abuse). Children that have been exposed to sexual abuse may display problem behaviour (violence and aggression), sexualised behaviour (behaviour inappropriate to their age), poor self-esteem, depression, self-harm and suicidal behaviours, and even mental illness (Siegel 2016; Songca et al. 2016). Sexually exploited children, like child prostitutes, are traumatised and often ill (caused by depression, anxiety and stress, or dealing with sexually transmitted diseases) (Whiting 2014). In this regard, Whiting (2014) mentions the case of a 13-yearold female sex slave who entered the sex trade through child trafficking. After being rescued, this child lives in constant fear of being sold to traffickers again and is severely traumatised by the abuse she endured during her sex slave days (PTSD) (Whiting 2014). According to SAPA (2014), a 14-year child prostitute who was lured into the sex industry with false promises reflected that she now blocks out all the abuse and trauma because it is better just to forget it.

Worldwide, the use and abuse of alcohol and drugs are common coping mechanisms in the sex trade — for adult and minor sex workers (Trafficking for sexual exploitation 2017). Addiction to substances occurs either voluntarily or it is forced on children in order to entrap them into a web of addiction and sexual exploitation, which in turn leads to health consequences (i.e. poor nutrition and poor mental, physical and emotional wellbeing) (Teke 2016; Trafficking for sexual exploitation 2017).

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Child prostitutes also experience a lack of safety. It is alleged that some police officials harass and verbally abuse adult and child prostitutes and that they (the officials) sometimes expect sexual favours from them (Teke 2016). Regularly, child sex workers are assaulted and raped either by customers or by law enforcement officials (Teke 2016). Many child prostitutes also suffer from health issues such as HIV and AIDS and sexually transmitted diseases (Teke 2016).

Many times when children are forcibly kept in brothels or rooms, they are not allowed to seek healthcare and this may lead to undiagnosed and untreated infections (i.e. pelvic inflammatory disease) and poor health conditions (Trafficking for sexual exploitation 2017). Owing to lack of medical attention, poor nutrition and exposure to sexual exploitation, violence, abuse (physical and emotional) and neglect, basic mental, physical and social wellbeing for child sex workers may be impossible (Trafficking for sexual exploitation 2017). This can result in depression, suicidal ideation, physical injuries, mouth and teeth injuries, broken bones, stab wounds, head wounds, and even death (Trafficking for sexual exploitation 2017). Female child prostitutes may furthermore experience serious reproductive health issues, HIV/AIDS, sexually transmitted diseases, unwanted pregnancies and unsafe abortions — and this is made worse by lack of access to healthcare (Teke 2016; Trafficking for sexual exploitation 2017). Even if there is access to healthcare, many female child prostitutes fear being stigmatised, or detected and deported for being illegally in a country and without identity documentation, which exacerbates their situation (Teke 2016; Trafficking for sexual exploitation 2017; Whiting 2014).

To underline the ruthless nature of the exploiters, Kimberley (2017) reports of a mentally disabled child who had to terminate her pregnancy after she was rescued from a human trafficking ring that operated in Port Elizabeth (Eastern Cape). Apparently, several children were rescued in July 2012 after the police raided a house in an informal settlement where many under-aged girls were held as sex slaves and kept in dire conditions. A 50-yearold female was arrested for housing the children and allowing their exploitation.

Child prostitutes are often labelled, discriminated against and further abused (emotionally abused due to their involvement in prostitution) by community and health workers (Whiting 2014). This exacerbates the trauma and leads to increased levels of stress, neglect, abuse (emotional, sexual and physical), memory loss, an inability to concentrate and persistent nightmares (Whiting 2014). Such children are mostly scared during night time when they are alone, when they have to cope with their emotions and their memories of the atrocious experiences they have to endure as sex slaves (Whiting 2014).

Rescued child prostitutes need therapy, debriefing and constant support to help them cope and make sense of their abuse and experiences (Whiting 2014). One of the positive attributes of children is often their resilience. This entails the ability to pull themselves together and to carry on with life despite the cruel, inhumane and terrible things that they have endured (Whiting 2014). Many rescued child prostitutes, with determined and strong personalities and the assistance of long-term adequate and meaningful support, have taken control of their lives, completed school, found good jobs, studied at a tertiary institution and married (Whiting 2014). However, under the surface there will always be scars from their involvement in prostitution (Whiting 2014). An adult female who was rescued years ago from child prostitution (having been sold as a sex slave in London) reflected on her experience by stating that "I feel like they've taken my smile and I can never have it back" (Whiting 2014).

With regard to crime, many child sex workers also commit offences for various reasons, such as robbery (i.e. of clients' money and/ or wallet), assault (according to them only to "protect" themselves from abuse/clients), hijacking, fraud, intimidation and even murder (Hesselink-Louw 2001).

The hidden ins and outs of the sex trade

The following IOL article that originally appeared in the Sunday Tribune illustrates the reality of child prostitution in South Africa as a case in point (Harper 2012: 1):

> For 12 years Ruby* lived a life ofabuse, drugs, homelessness and prostitution. But two months ago she joined the luckyfew to escape the horrors ofprostitution. She started out in the business when she was
>
> 14, while living at a homeless shelter in Durban's Point district. An attractive dark-haired, brown-eyed 26-year-old, her arms are covered with scars and burn marks. There are more scars around her mouth. All are testimony to violent assaults by her pimps. Hers is a horrific story of abuse and neglect, first at home and later on the streets. Speaking to the Tribune at the Umgeni Community Empowerment Centre in the Durban CBD this week, Ruby recalled how her suffering began with abusefrom the people meant to protect her.
>
> When she wasfiveyears old, Ruby's mother abandoned her and her siblings. She cannot remember a time when herfather was around. She had to live with her grandmother, who often left her in the care ofan uncle. "My uncle started playing games with me. Then he began to touch me. It eventually became full-blown molestation. This carried on for a while, until I told someone at school. They took me to a hospita/ andfound out I was telling the truth. He was eventually locked up, but that was when my problems started. Members ofmyfamily, especially my aunt, blamed mefor the allegations, " said Ruby, her eyes welling up with tears.
>
> After being bounced from onefamily's house to the next, Ruby decided to run away. She moved in with a friend in Effingham and was able to get ajob on North Beach. She was 13 at the time and so desperate for money that she lied about her age to get thejob. After a year, she decided to return home. "I was working every day Life was going great, but I decided to go home. I missed my grandmother because she was all I knew. Everything wasfnefor a few weeks. But then things started going wrong. I could feel I wasn't wanted and decided to leave again. This time I had no home orjob. I had to live on the street. Several men offered to payfor her to live in a shelter. She didn't know it then, but these men would later become her pimps. A woman she met in the shelter made her an offer she couldn't refuse. "This woman told me that I could earn a living hustling on thestreet. I was only 15 and I had no idea what that meant. She told me what it meant. I didn't want to do it, but I had no money orjob, so I had to. I was dressed up and told tojust walk and ifanybody stopped me tell them it was R 750 a time. After a few months, I went to live with my stepsister, taking care ofher daughter during the day and working at night. But Ifell out with her and went to live on the street again, " she said
>
> This continuedforfveyears and when she was 20 shefell pregnant with herfirst child. Her then boyfriend was a male prostitute who had leftforJo 'burg. She decided after the birth to give up her son for adoption. "That was the hardest decision ofmy life, " she said. She soon took refuge in drugs and alcohol. "At that point, I didn't care. I was drinking andjust going with thefiow. Then Ifell in with other prostitutes who were being run by a group ofpimps. They had us hooked on rock [crack cocaine] and they would beat us ifwe tried to run away. They would beat us until we were bloody and threatened to kill us. That is what many people don't know about prostitution — the way the pimps treat the girls. " Every night she walked the streets shefeared she would not survive. "I never knew howfar]ohns [clients] would go — whether one would go over the edge and kill me. " And there was the constant spectre ofAIDS. Finally a fearful Ruby managed to get away andfind help at the Umgeni Community Empowerment Centre. Ruby seemed to have turned her life around. She was offdrugs and alcohol, had a stablejob, and did volunteer work as a hairdresser and masseur. She was in a

relationship and lookingfonvard to the birth ofher second baby, Leticia. But thejoy would not last. "I gave up myjob in October lastyear because I thought I could get something better. That was a big mistake. I had everything goingfor me and I threw it all away.

"I couldn 'tfind a job and had to send Leticia to live with my brother. She eventually went to live With herfather's mother. I fell back into my old life, " said Ruby. In January thisyear she was staying with three other women when they were approached by two Nigerian men who wanted to take them to Jo'burg, and offeredfood, liquor, clothes and money. "We stopped in Hillbrow and in Midrand. They said they wanted to go to Rustenburg before we left. When we got to Rustenburg, we were therefor a day when I asked one of the guys when we were going home. He said to me, 'Don'tyou know I stole you?' They made us smoke rock, and I refused because was six months pregnant. But theyforced me to, " she said. Ruby was then forced to have sex with a man who had "bought" herfor R500. Another deal was struck and she "changed hands" and wasforced to work as a prostitute to pay back the money that was used to buy her.

When she gave birth to her third child, Jordan, two months prematurely, she knew she needed to escape. She contacted the centre again and its staffgot her back to Durban at the end of February. Since then, she has been attending Alcoholics Anonymous meetings, and working at a massage therapy establishment in Umh/anga. She sees both her children regularly. She admits she has made mistakes and is fighting to turn her life around. "On the street I heard about human trafficking, but I always blamed the girls. I always thought the girls wanted to go with the pimps. Now I know it could happen to anyone. Ifl have learnt anything, it is that I never want this lifefor my children, " she said. Joy Conradie, project managerat the centre, said though Ruby's tale was terrifying, ft was not unusual. 'Once theyfall into that life, it's very hard for them to keep out ofit. Thefact that she got out is amazing. Hundreds don't— which is

the more terrifying thing, " she said.

15.10 THE PREVENTION OF CHILD PROSTITUTION AND THE RESCUING OF CHILDREN

In 2013 the Prevention and Combating of Trafficking in Persons Bill, which explicitly focuses on the prevention of human trafficking, came into effect (Wilkinson & Chiumia 2013). Sanctions for human trafficking include a life sentence (25 years), a fine and/or forfeiture of assets (Heavy sentences for human trafficking 2015). Prior to 2015, human traffickers were prosecuted under substitute laws such as the Sexual Offences Act or the Children's Act, especially if the victims were minors and forced into prostitution (Heavy sentences for human trafficking 2015).

Modern technology allows for perpetrators of child pornography to be tracked, identified and arrested (Geldenhuys 2014c). In this regard, Interpol (an international policing agency) plays a pivotal role in the detection, identification and tracking of child pornographers and images of child sexual abuse material. The International Child Sexual Exploitation image database OCSE DB), is an intelligence and investigation-driven instrument that uses refined image comparison software to establish links between victims and places, and allows investigators to share data with their counterparts across the world (Geldenhuys 20140.

In the modern era, everyone is pressured for time. Parents and guardians often give children freedom to use electronic devices without realising the possible dangers they could encounter on the internet. Parents must monitor their children. They must report suspicious-looking people in their area, dodgy internet messages and missing children to the police (Daily News Reporter 2012). Good parenting (i.e. the involvement of parents, parental supervision and monitoring practices) can be a valuable factor in shielding children from sexual abuse and involvement in prostitution (Chothia 2016). Parents should know who their children's friends are, what they are doing on the internet, who they

communicate with on social media platforms, and with whom they associate, and they should be alert about unfamiliar vehicles and people in the neighbourhood and at schools (Chotia 2016; Francke 2017).

Children should be assisted in being committed to school and church activities. Schools and communities should increase organised and supervised recreational activities for children (especially in poor communities), and parents, family members and community leaders should advocate a child-protection

approach and policy by being involved (through adequate supervision) in children's lives (Chothia 2016). The best interests of children must be taken into consideration in order to prevent effectively sexual exploitation and the prostitution of them. The roles of schools concerning safety and life skills syllabuses that directly target sex, gender and violence can be strengthened and updated to curb the sexual exploitation of children (Chothia 2016). The life skills syllabuses should also address substance and sexual abuse issues in society, and programmes should be set up for adults as well to make them aware of the link between substance abuse and the sexual exploitation of children (Chothia 2016).

Important aspects when rescuing child sex workers include the provision of the following services (Daily News Reporter 2012; Hesselink-Louw 2001):

- Alcohol and drug rehabilitation
- Food, shelter and clothing
- Protection against Pimps and clients
- Legitimate work/employment
- Counselling (i.e. to address PTSD/symptoms and abuse)
- Important skills such as life skills, communications skills, conflict-resolution skills, anger management and decision-making skills
- Education, as a considerable period (sometimes years) has often passed since their last school attendance
- Medical assistance for, among other things, exposure to abortions, sexually transmitted diseases and HIV/AIDS
- Aftercare for their children, as research (Hesselink-Louw 2001) indicates that child sex workers often have children of their own (mostly those of pimps and clients) to care for and support

In order for children to exit prostitution, mechanisms such as places of safety, and/or organisations working/rescuing child sex workers need to be established. These facilities need to be sensitive towards the needs of children and the risks they face. These children were often subjected to physical, emotional and sexual exploitation. Organisations need to address

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the child's involvement in and exposure to sexual activities; substance abuse; lack of skills; health risks (i.e. sexually transmitted diseases, HIV/AIDS); and mental and psychological wellbeing; and need to take care not to judge them further (Hesselink-Louw 2001; Neethling 2007). Preventative measures need to be instituted on primary, secondary as well as tertiary level. The government cannot expect NGOs to do this preventative and rehabilitative task on their own.

15.1 1 CONCLUSION

The reasons why children become involved in prostitution are abundant. Society is often not aware of how these children end up prostituting themselves — that is, being sold, lured, recruited, captured and trafficked into the sex industry. This chapter highlighted the reality of child prostitution in South Africa by addressing

the incidence, occurrence, causes and consequences attached to child prostitution. The chapter is supplemented with reallife examples to illustrate the reality of this phenomenon. Lastly, the prevention of child prostitution and factors that play a role in the rescue Of child sex workers was discussed.

The exploitation of children for sexual purposes remains a growing industry, and this phenomenon is often viewed as a moral issue rather than a societal phenomenon. Measures to combat child prostitution include the fight against HIV/AIDS, attempts to increase public awareness of the vulnerability of children to prostitution, and reducing the "demand vs supply" aspect of sex with minors. The most important and far-reaching measure would be a reduction in poverty levels, which would have a significant impact on the existence of child prostitution (Hesselink-Louw 2001; Prostitution — South Africa's young street walkers 2016; Siegel 2016).

The community responds to child prostitution in a generally negative way, often rejecting such children, which leads to their further isolation. It is also important to promote awareness to allow families to understand the dangers of children becoming involved in prostitution, and to establish more organisations and places of safety to "rescue" and rehabilitate child victims (Chothia 2016; Hesselink-Louw 2001).

CRITICAL QUESTIONS

1. What is the current incidence of child prostitution in South Africa?
2. Define child prostitution and child pornography.
3. Explain the link between child prostitution, child pornography and human trafficking.
4. Discuss the causes of child prostitution.
5. Who are the perpetrators of child prostitution?
6. What are the consequences of child sex work?
7. How can child prostitution be prevented?

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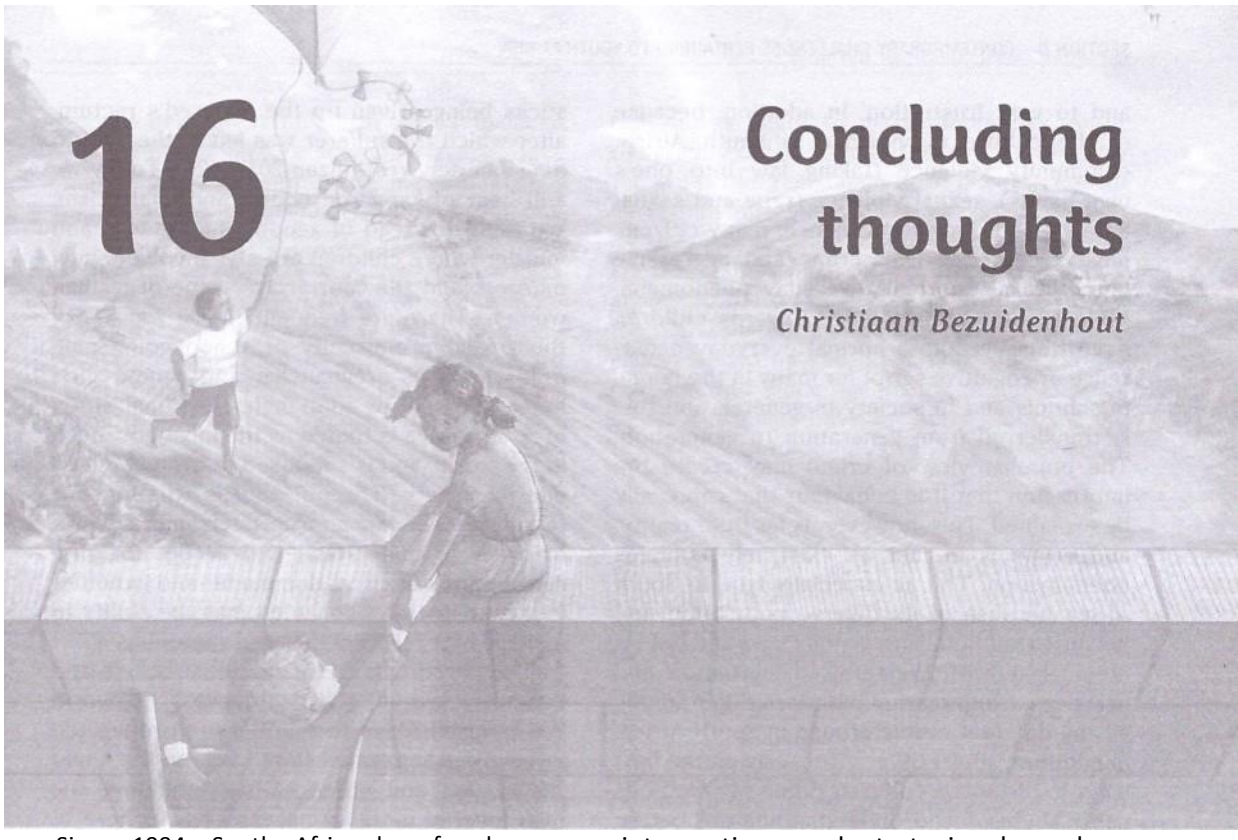
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16 Concluding thoughts

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Since 1994, South Africa has faced many challenges as a young democracy, and violent crimes as well as the high prevalence of children involved in criminal activities are two of them. Every year approximately million serious crime cases are registered at the South African Police Service (SAPS). The murder rate in South Africa is of grave concern, as the country has been in the global top 10 for Its high homicide rate for all but two years since 2000. The murder rate increased by 1,896 (19 016 people were murdered in South Africa between April 2016 and March 2017), which translates to ± 52 murders per day. In 2013, South Africa's murder rate was 5—8 times higher than the 2013 global average of six murders per 100 000 people (EWIN 2017; Evans & Verster 2016; South Africa crime stats 2016: Everything you need to know 2016).

The new constitutional dispensation puts fresh emphasis on the criminal justice system in all matters affecting the children of South Africa. Many changes have taken place since 1994, and different bills, interventions and strategies have been developed with specific relevance to children. In fact, crimes against and by children are dealt with in a very specific manner in South Africa. On paper, children in South Africa are treated in a sort of exclusive way — they are the "future leaders", the author is often told. This exclusivity is being questioned by many scholars and practitioners as it appears that more and more children are becoming incorrigible, landing up in the justice system. The use of violence by the young people of South Africa to "communicate" with the authorities is worrisome. For example, the defacing of monuments as well as the violence at schools and tertiary institutions regularly feature in the media. This begs the question as to whether more than 20 years of democracy has actually increased the problems South African youths faced before democratisation.

The desperation of many youths and the seriousness of their misbehaviour are affirmed by the media in their daily news reports and stories of crime. The constant barrage of the

level of youth misbehaviour in South Africa has led to the apparent "normalisation" of using violence as an instrument of communication

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and to vent frustration. In addition, because of the culture of violence in South Africa, community violence (taking law into one's own hands), sexual violence (rape and sexual assault) and domestic violence, many citizens have accepted violent crime and aggressive outcomes as "normal" everyday phenomena. Violent crime and violence towards children have thus become a normal everyday occurrence or cognitive script for many in the home, in schools and in society in general, and this is transferred from generation to generation. The populist view of crime may create the impression that it is behaviour that can easily be explained. This, however, is far from reality, and crime is in fact an extremely complex phenomenon. This is especially true in South Africa because of its diverse population and because traditional indigenous laws and beliefs often clash with Westernised legislation and practices. Child-rearing practices differ among all the different ethnic groups in South Africa. In addition, adults differ vigorously on the best ways to discipline children. Some say methods using kindness and understanding are better, while others advocate corporal punishment as the most effective technique. Different parenting styles contribute to different outcomes with regard to the behaviour of children.

Standards of behaviour have always been prescribed to people in society. In an attempt to maintain these standards, people who violated the expected norms were penalised, therefore punishment has always been part of society (Van der Westhuizen 2011: 125). In biblical times, for example, offenders were stoned or crucified. During the Middle Ages, political and social organisations within Europe were intertwined with religion, and even the criminal justice system was based on religious beliefs and customs. Crime was considered a private matter, and victims took personal revenge and meted out punishment to perpetrators themselves. However, this sort of justice often led to blood feuds, which gradually resulted in the annihilation of entire families, therefore alternatives to dealing with crimerelated issues were eventually introduced. Children never had a "special" place in earlier justice systems. Pre-colonial society in South Africa was violent at times — for example, the brutal punishment imposed on a tribesman found guilty of witchcraft involved sharpened

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sticks being driven up the accused's rectum, after which the sufferer was left in the veld to die (Van der Westhuizen 2011: 125). Today we still hear of kangaroo courts and vigilantism. We regularly read of xenophobic attacks and murder where children are also involved, muti murders and the "corrective" rape of lesbian women. There are frequent media reports of the sexual promiscuity of school-going children, teenage pregnancies and young girls being "blessed" by adult men. The Constitution of South Africa is touted as the most advanced in the world, and is supposed to protect everyone in society. The question is whether our populace is in an appropriately moral place in order to understand and accept the prescription of such a document and whether everyone, children included, has the ability to achieve high-level socio-moral reasoning.

The paradox is that traditional beliefs and customs clash directly with the First World Westernised ideas that are being propagated in newly promulgated laws such as the Child Justice Act and others. Can we achieve the high level of morality necessary to adhere to these laws according to the principles of ubuntu, or are these laws purely an effort to clear the conscience of our society so that we can at least state that we have tried to give our children a special place and a voice in the justice system? We are trying to keep children out of the criminal justice system; we do not use corporal punishment as part of a disciplining agenda; and every child has the right to basic nutrition, shelter, education, healthcare and social services; the right to be protected from maltreatment, neglect, abuse or degradation;

and the right to be protected from exploitative labour practices. Should children transgress, our aim in South Africa is to divert them from the system and not to detain them, except as a last resort, in which case in addition to the rights they enjoy, they may be detained only for the shortest appropriate period of time and must be kept separate from detained persons over the age of 18. Is this enough to safeguard our troubled youth? Are we fighting a losing battle or are we winning by ensuring that all our youth grow up in a safe and secure environment where they are given the opportunity to develop healthy cognitive scripts of society and their fellow citizens?

The truth is that many youths derail and

become delinquent in South Africa because of a variety of factors such as poverty, lack of opportunities, poor discipline and absent guardians. In addition, many youths sound militant and are still voicing the same sentiments as they did prior to 1994. Many news reports voice the sentiments of the African National Congress Youth League (ANCYL). Struggle language is still being used, and the youth are being "mobilised". In 2012 the then ANCYL deputy president Ronald Lamola alleged during a public lecture pertaining to youth unemployment that this issue could only be addressed as soon as land was expropriated. He stated the following:

> The land question will not be won through romantic acts. We need an act as forceful as a war to bring back the land to the majority of South Africans We must never suffer under the illusion that now it's democracy, we will be able to reclaim the land through peaceful means, through peaceful acts (SABC2 2012).

During the struggle, people fought for a new social order, which was attained. Now instead of enjoying the spoils of the new dispensation, it seems that our youth are still dwelling in the previous era of struggle and revolutionary ideas. Will the majority of youth reach high-level moral thinking if the current repetitive negative genre is followed and vehemently supported? Or are the youth spoiled and trapped in reverse gear which inadvertently focuses on low-level moral thinking and personal interests?

Another question that beckons: is this in some way a forerunner of a "South African Spring" similar to the "Arab Spring"? The militant stance of many youths and young people in South Africa can be compared to the unstructured civil action in the Middle East and North Africa. Citizens from Tunisia, Egypt, Libya, Bahrain, Yemen, Iraq, Jordan, Saudi Arabia and Syria question current governments in a very militaristic style. These governments are caught up in a wave of activism, demonstrations, resistance and calls for social change. Citizens demand social justice, freedom of expression, accountability by governments, employment opportunities and better service delivery. Some citizens have even set themselves alight to make statements about the gravity of the situation. These martyrs and the collective resistance have become known as a unifying endeavour and are referred to as the "Arab Spring". This radical collective stance against different governments is very similar to the service protests in South Africa, the Marikana mine massacre and radical messages echoed by youth leaders. What will the outcome be? Since the writing of this chapter in 2012, protests have escalated, with the figure estimated to be just over Il protests a day (De Wet 2016).

Aside from all the controversies, insecurities and haziness of the current moral level of the youth, this book will stay positive in an effort to seek answers, and is concerned with the youth of our country and the factors related to their misbehaviour. The youth, however, form part of society and are therefore also subject to all the occurrences and conditions that affect it. It has been stated that political change, prejudice and moral views influence behaviour and cloud the ability of people to think and act objectively. It may thus be that in facing the current crime wave the perhaps overzealous but relatively inexperienced authorities sometimes neglect important youth issues, such as moral and cognitive development, and fail to advocate ubuntu principles. The government and society are both guilty of neglecting youth matters.

Historically, the youth have been denied a specific place in society and in criminal justice, and the laws and procedures pertaining to children have been implemented without their input, whether law abiding or derailed. This has led to youth governance in South Africa being in a state of disarray, as past processes have not helped to curb crime among the country's youth. After the advent of democracy, many problems manifested in the governing of the youth in South Africa, and the face of youth governance has changed dramatically in the past 20 years. These drastic changes include the way in which youths are processed and handled in the justice system. Crucially, the age of majority has been lowered from 21 to 18 years, but whether children can be deemed "adults" at this lower age remains an open question. Significant numbers of young people still live in

extreme poverty with limited or no schooling and very few opportunities of changing their situation. It remains to be seen whether the government's liberal legislation, for example with regard to the age of majority, in any way influences the social obstacles that the youth in South Africa face. Also, provision has been made for cases involving youths to be handled separately from those of adults. The diversion of youthful offenders is currently the preferred way of dealing with children, and the restorative justice process has become a popular tool for dealing with those in conflict with the law, but current indications are that these approaches are failing. "Repair instead of punish" is the favoured approach when dealing With youths.

By implementing this approach, it is hoped that derailed youths will eventually become hardworking citizens who contribute to the economy of the country. Whether such errant youths are morally able to have insight into the destructiveness of their behaviour and the clarity of mind and willingness to repair their situation is a moot point. Unfortunately, some youths become calloused and hardened repeat offenders at a young age, and it seems as if therapeutic intervention has no effect on them. They often manifest with psychopathic traits such as lack of remorse, empathy or regret. They do not learn from previous punitive measures, and show no respect for authority. The criminal justice system usually has no answer for such hardened young criminals. Bartol and Bartol (2017: 2018) state in this regard that "recent studies continually find support for the existence and validity of psychopathy in the young, and it seems to remain stable from age 7 to at least age 24". Perhaps the so-called underlying factor in some youth plays a role in this continued incorrigible behaviour.

In addition, moral freedom with traits such as a lack of remorse could impact on several levels of that type of child's life. Status offences and incorrigibility will become the norm and not the rule. Moreover, certain legal decisions could indirectly stimulate status offences. For example, the recent ruling by Judge Pierre Rabie in the North Gauteng High Court in Pretoria against certain sections of the Sexual Offences Amendment Act could have an adverse impact on our youth. Judge Rabie ruled that sections 15 and 16 of the Act, which criminalise "consensual penetration" between children younger than 16 and older than 12, as well as section 56 of the Act, were unconstitutional.

Objectors feel that this ruling could have far-reaching implications in the escalating rate of underage sexual activities and sexual violence among children under the age of 16 years, as seen in many cases dealt with by law enforcement and our courts.

The judge found that consensual sexual activities between youths were Of a wide range of acts that would commonly be performed by children engaging in ordinary sexual exploration such as "French" kissing. He held that criminalisation would constitute an unjustified intrusion of control into the intimate and private sphere of children's personal relationships, in a manner that would cause severe harm to them.

Supporters of the ruling applauded this as recognition of children's right to dignity and privacy, and their right to participate in decisions about sexuality. They feel that professionals and parents are now able to provide children with the necessary support and guidance about sexuality, and to make informed decisions without fear of incriminating the child or themselves. Also, the judgment promoted the best interests of children and protected them from being violated by the very system supposed to protect them (SAPA 2013).

This ruling will cause dilemmas in court in future. A good example of this is a case that recently made headlines. In August 2017 a 19-year-old student was charged with statutory rape after allegedly having sex with a 12-yearold girl in Sunnyside, Pretoria (Mabena 2017). The dilemma is that the ruling by Judge Rabie deemed punishing "consensual penetration" between children younger than 16 and older than 12 unconstitutional and therefore not a crime. This college student was 19 years at the time of writing which implies that adults 18 years and above will be held criminally liable for engaging in sexual activities with minors below

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the age of 16 years. This leaves one with the question: what about the same scenario, but with the perpetrator being 17 years of age and not an adult?

The ruling does not affect or deal with any acts of sexual violence perpetrated by children. It deals exclusively with consensual sexual acts between children, and any nonconsensual violent sexual offences committed by children would still be dealt with in the criminal justice system. However, the Department of Justice is adamant that the judgment had far-reaching implications in the escalating rate of sexual violence among children under the age of 16 years. Aside from the new "sexual freedom" after the ruling, the young people of our society do face a number of other serious challenges. Although reliable statistics regarding sexual violence among children are not available, we need to accept that a high rate of sexual violence against girls in the 12- to 17-year age group is a reality in South Africa. Girls within this age group are in adolescence and are developmentally in a critical period of their lives. Unfortunately for the girls, many boys learn about sex in the peer groups they frequent (Petersen, Bhana & McKay 2005: 1234). These peer groups often host antagonistic attitudes and behaviours about sex and gender, which could contribute to the existing sexual aggression problem that exists in South African society.

Moreover, children are increasingly subjected to pull factors in society, for example peer group drug and alcohol use, high-risk leisure-time activities such as train surfing, and promiscuous sexual activities, as well as exploitation by adults who pay children for sexual favours ("blessers") or traffic them with the promise of, for example, a job opportunity. They are also becoming progressively more involved in serious offences such as murder, rape, robbery and hijacking.

The endemic use of drugs (e.g. dagga and tik) and alcohol among the youth in South Africa is a further cause for concern. Newer drugs such as nyaope and whoonga are growing in popularity, and slowly impacting on our youth at different levels, for example in their psychological and emotional development. It goes without saying that these drugs are also impacting on their general health and behaviour.

Children and young people who grow up in informal settlements and other underresourced living areas where crime flourishes are exposed to violence and criminality daily.

There have been extreme changes in personal relations and values between children and their parents or guardians. According to Marx (1992), "the traditional authority of the parents and teachers no longer has the legitimacy that it once had and this leaves a huge gap in the lives of youths that desperately needs to be filled". Children find themselves in a materialistic, unconcerned society that craves material possessions and spurns the poor and marginalised, treating beggars, street children and the like as outcasts.

Personal success is determined by what a person drives and earns, and where he or she lives. These materialistic standards also apply to our youth: being able to wear designer clothing, own a cellphone and be financially independent are ideals that put a huge burden on youths who are often not able to compete on that level. Those who can (usually middleand upper-class youths) often become bored, and pursue alternative leisure activities such as alcohol and drug abuse. Material obsession has caused many ills in South Africa.

The craze, which is currently escalating within townships in South Africa, is the ruining of expensive goods. This is an act performed by a group of youths and is called ukukhothana, which loosely translated means "to lick". The partakers in this event are called izikhothane ("lickers"). The youths will converge at a corner within their area to brag to each other about their branded clothes or other expensive articles.

They also brag to each other about who has a better and more lavish lifestyle and who has more money. The bragging is probably not the problem, but the youths are usually from impoverished backgrounds. The izikhothane arrange a gathering to compete in order to ascertain who the better izikhothane group or individual is. In these gatherings, the youths will

burn expensive jewellery, clothing and actual banknotes. They will buy and destroy the goods by stepping on them, setting them alight or throwing them around. They will even buy food and crush it with their feet. Those who take part who can afford it will probably not go out and steal luxury items to take to a gathering since they have the monetary means to buy them. However, poor youths who would like to take part must either borrow money from their poverty-stricken parents or innovate by stealing expensive shoes or clothes from stores that stock certain branded names. More often than not, parents are not aware of this expensive game their children are competing in. The izikhothane usually do not work

and therefore depend on their parents to feed this pastime. Some of the parents are domestic workers or pensioners, and some are unemployed. Some youths pressure their parents or guardians for money and will even assault them to get the necessary funds to be able to compete in the "event" (Skhokho-MhIongo 2011). (Also see Chapter 3.)

Moreover, a brutal society and huge industries has commercialised girls' bodies, which causes insecurity in food consumption and other choices girls have to make (Orbach 2013: 111). In addition, many girls develop eating disorders and a distorted perception of beauty, sexuality and body form. Some youths willingly engage in pornography, even selling nude pictures of themselves via their cellphones to fellow learners or adults. In short, many young people are confused, face many challenges and do not have the emotional intelligence to cope with the demands of modernity. This is exacerbated by the absence of appropriate parenting.

Some youths even become addicted to abnormal games or practices such as "the choking game". This game, also known as autoeroticism, refers to self-gratification of sexual desire without a partner (Bartol & Bartol 2005: 327). In slang terms it is also known as "the pass-out game", "dreaming", "space monkey", "space cowboy" and "suffocation roulette" (Engelbrecht 2007: 1). There are four versions of the game, namely autoerotic hanging (e.g. with a string noose), aqua eroticism (e.g. near drowning in a bathtub), chemical eroticism (e.g. the use of freon gas) and self-suffocation (e.g. holding breath in).

The main aim is oxygen starvation during masturbation to a point of almost losing consciousness as it is believed that starving the brain of oxygen produces a more intense orgasm (Bartol & Bartol 2005: 327). While some youths have caused their own death through these practices, new games of a similar type develop because young people are bored and lack opportunities for self-development and facilities for leisure activities. Many youths do not have positive role models and are not involved in healthy programmes such as school sports or religious activities (e.g. a church camp).

Technological advances such as computers and the internet (chat rooms) as well as tablets and cellphones (Facebook, MXit, Snapchat and WhatsApp) pose serious challenges to children and to their parents and caregivers. The WhatsApp Messenger service, for example, is a cross-platform mobile messaging application which allows the exchange of text messages without having to pay for them. Free Wi-Fi net. works compound the challenge. In addition, even television and the many different channels available to the public should be seen as a risk factor. Using cellphones and the internet can have a negative impact on the grammar and language ability of the youth, as abbreviations, emoticons and incorrectly spelt words are key aspects of this slang language. Furthermore, children are not necessarily safe while they are surfing the Web, as sexual predators use the internet to gain access to children who have unwittingly shared their personal details with others through chat rooms (Campher & Bezuidenhout 2007). This impact negatively on family time as children will fiddle with electronic gadgets during family meals or gatherings. Youths tell me they cannot "survive" without being connected all the time. If this is true family bonding and attachment will definitely suffer.

Children who have access to television, PlayStation and other electronic games spend many hours using such devices, and thus become housebound and physically inactive, which can eventually lead to obesity. This inactivity also impacts on their hand—eye coordination and general health. The rapid growth of the fastfood industry, hours spent watching television or playing electronic games, and the decreasing time devoted to participating in traditional past times outdoors are most probably impacting on rising obesity levels among children from all races in South

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Africa. As television viewing time increases, the time spent on physical activity decreases and the prevalence of obesity rises (Crespo & Smith 2003: 9), thus there is a correlation between the hours spent watching television and an increase in the viewer's weight. The American Association of Pediatrics recommends that the time spent by children watching television and playing computer games be limited to a maximum of two hours a day and in total not longer than eight hours a week. This is not the case in South Africa, where children watch television on an average of four hours a day (Coertze 2013:35). Furthermore, the more time children and adults spend watching television, the more exposure they will have to advertisements that promote food. Lobstein (2013: 49) highlights the fact that "the food industry encourages over-consumption of junk food", and many children fall victim to junk food marketing strategies (e.g. the supply of toys with every meal for children). Allowing children to play video games compulsively should be seen as a form of neglect. Video gaming is one of the most popular modern pastime activities that the youth engage in for recreational purposes. Dr Timothy Sim (Guest lecture on pathological gaming, Department of Social Work and Criminology, University of Pretoria, 07 August 2017) emphasises that youth engagement in video gaming is in the vast majority of cases not problematic and that it fact has been proved to improve, amongst others, hand—eye coordination, cognitive skills as well as social and communication abilities amongst youthful gamers. However, video game "addiction" or problematic/pathological video game engagement occurs globally and evidence exists that a small minority of youth appear to develop a number of problems as a result of excessive gaming. Engagement in video gaming becomes pathological or problematic when such engagement leads to the functional impairment of an individual in terms of it having a direct impact on their daily functioning in various spheres of their life, for example school, social, family, occupational and psychological. Pathological gamers spend approximately 40 hours per week playing video games compared to 19 hours per week for gamers who are not considered to be pathological gamers (Sim, 2107). Outcomes of pathological play identified are depression, suicidal ideation, anxiety, social phobias, sleep disturbances, irritability, exhaustion and poor school performance (Wittek, Finserås, Pallesen, Mentzoni, Hanss, Griffiths & Molde, 2015). It should be noted that although pathological video gaming has as yet not been officially identified as a form of addiction, it is estimated that in countries like Singapore approximately 9% of all video gamers meet the standards of the American Psychiatric Association for diagnosing gambling addiction (Sim, 2017). Young males seem to be more at risk of pathological video gaming than young females.

There are, however, also other factors in our society which contribute to the current social challenges many youths face. Since it has become more socially acceptable for women to pursue a career rather than stay home to take care of their children, youth crime has escalated. Although this is often economically necessary and not by choice, long times away from infants and children can have an effect on their development and socialisation. Garland (2001: 160) also attributes this to, for one thing, the entering of middle-class women into the economic sector for a better household income. A family with a dual income can acquire more luxury goods, but if both the husband and wife are away at work, their home becomes more attractive and vulnerable to crime. When both parents are at work, there is usually no proper guardian to guide the children through the difficult and challenging process of growing up on a daily basis.

This means, therefore, that while the financial or material needs of most middle- and upper-class households can be met, the emotional needs are usually neglected in these families. Middle- and upper-class children spend most of their childhood in day-care facilities or with a nanny. This implies that secondary role players raise the children, with the parents as primary onlookers. While many parents question the methods these secondary role players use and often complain about the negative influences their children are subjected to in day-care facilities or at pre-primary, primary or secondary schools, they rarely become involved or try to change the state of

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affairs. Their obsession with either survival (low class) or materialistic gluttony (upper class) causes many parents to neglect their children completely.

Children are also the secondary victims of domestic violence between spouses, be they the parents, guardians or caregivers. Such children are vulnerable and in a very awkward position as sometimes they have to defend one parent or choose sides in such situations. Children may be hurt or belittled during domestic violence, and the emotional scarring they incur in these encounters usually affects their functioning in other areas of their life. Because of their powerlessness in these situations, youths often act out their frustration by running away or showing destructive or withdrawal behaviour. Childhood is seen as a very sensitive time in human neuropsychological development, and any form Of abuse can have acute influences on the moral development of a child (Knapp van Bougaert 2012: 17).

Many children in South Africa have to run households in the absence of parents. In some cases, older siblings have no choice because their parents have passed away (e.g. from HIV/ AIDS). However, in some cases parents leave their younger children in the hands of the older children, as they have no choice but to work away from home to ensure an income. This places a burden on children for which they are not prepared, and they often have to develop survival strategies such as begging and committing crime to ensure their own survival. Emotionally and psychologically, they are challenged with issues which even some adults find difficult to handle (Louw 2008: 219).

Even schools have been affected. A phenomenon that has raised its head in South African schools is bullying and fighting. School fights take place regularly, and these and other acts of violence often spiral out of control, as evidenced by media coverage. Stabbings and shootings take place between learners within a specific school or from rival schools. During 2012, a Grade Il learner, using the official firearm Of his mother, a metro police officer, shot and killed a fellow learner he accused of bullying him (SAPA 2012). It is true that some teachers bully scholars in different ways. Some bully emotionally while others still use corporal punishment to bully. Corporal punishment has been declared unconstitutional in South Africa but is still being used frequently in schools. Moreover, teachers also fall prey to bullying by scholars, usually by means of insults, name-calling, refusal to cooperate, sexual harassment, assault or damage to their belongings or vehicle. In this regard, Kauppi and Pörhölä (2013: 1 18) state that "when a student bullies his or her teacher, there exists a situation where a party holding an inferior status position within the institution bullies a party holding a superior status position". This is probably also true when young people disrupt academic programmes at universities, attack and insult academic personnel, deface monuments or damage property on campus, such as the firebombing of buildings.

Another challenge in South Africa is when learners gate-crash parties or other social events of neighbouring schools, which may lead to fights, often with fatal consequences. Safety in schools is of grave concern to parents and other role players, as schools should be safe havens for academic discourse, and for acquiring life skills and moral growth. However, many schools have become war zones where gangs and drugs are part of everyday life, and, sadly, so is crime. This is a current challenge in the Western Cape where gangs are locked in drug wars, turf wars and the provision of nightclub security. To scare or remove the competition, drive-by shootings

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and assassinations occur regularly. Turf wars even manifest in schools, and scholars are often killed, either because of retaliation or during the crossfire between rival gangs. In some instances, one youth gang member will kill another youth because of competition for or the inability to socialise with a specific girl. Jealousy and territoriality play a significant role in these attacks in schools.

Suicide among the youth is also on the increase. According to the Health24 website (http://www.health24.com), "adolescents have to deal with physical, social and academic changes and may thus easily feel overwhelmed". The pressure to fit in, pressures at home and the inability to adapt to change can cause feelings of loneliness, and may cause children to become alienated from their peers and guardians. Suicide might sometimes be seen as the only alternative in this desperate situation.

A significant number of South African youths are in dire situations and can fall victim to desperate thoughts and behaviour. Young people may struggle to develop positive self-esteem and this often contributes to a negative self-image and poor school performance. Unfortunately, a Significant number of these desperate youths often think that suicide is the only way of addressing their situation.

Furthermore, many young people find it very difficult to obtain employment and earn an income in South Africa. Throughout the world, young people who are not yet employed often depend on an allowance or pocket money from their parents; however, poor parents or guardians who can hardly fend for themselves do not have the financial means to give such benefits to their children. In addition, job opportunities are scarce for the marginalised and for certain race groups in South Africa. Many children are left with guardians (e.g. a grandmother) or older siblings in rural areas while their parents (or single parent — mostly the mother) look for work in the towns or cities.

The absence of proper guardians and adequate care is often the reason why children become aberrant during childhood. Their acting-out behaviour usually meets with social disapproval and they are then subjected to the inadequate judicial system in South Africa. We should be asking whether their behaviour should be investigated, and should try to determine whether the youth of today are the victims of the current system. It seems that social disorganisation, coupled with absent or poorly skilled parents, sets the youth of South Africa up for failure.

Converse to the unemployment situation is that a Significant number of youths are being used for cheap labour. Companies and private individuals alike are guilty as they turn a blind eye to the dire situation of such children so that they can exploit them. In Chapter 5 youth offenders actually stated that a low-paying, mundane job was often an additional reason why they committed crime.

While people are aware Of many of the above problems, it is the way in which society judges behaviour that determines to a certain extent whether an action is considered criminal and, if so, what punitive measure is regarded as appropriate. Even if there is consensus that certain actions have to be regarded as criminal, it is accepted that all offences are not equally serious. Worldwide the view is held that violent crimes (e.g. rape) have to be regarded more seriously than misbehaviour by children (e.g. rebelliousness).

However, criminal and/or serious misbehaviour by children is intriguing as it arouses interest, and yet saddens, repels and frightens us. Violent crime by children is especially frightening and difficult to believe. We all would like to know what causes children to indulge in serious criminal behaviour, how it can be prevented and how we should manage those who commit serious crimes. The questions that behavioural sciences scholars try to answer are the following: what causes misbehaviour by youths? How can their misbehaviour be curbed? What should be done with these non-conformists?

Psychology has shown that one of the greatest needs of a child is the security a father can offer. In many cases in South Africa this need is never fulfilled, and this causes confusion, anger and emotional problems in children. Sigmund Freud believed that "by the age of five, all of the essential ingredients of a child's adult personality are determined" (Bartollas 1997: 110). This implies that children who are confused, angry and in need of nurturing and

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security will go through their different life stages with these unfulfilled feelings. According to Freud, such persons can be expected to misbehave because of the neurotic development of their personalities. Children Start to suppress all their negative emotional feelings of rejection, abuse, neglect and insecurity, and to use violent actions to get some form of control in their own lives.

The solutions that the current judicial system offers are usually simplistic. The truth is that the phenomenon of crime and misbehaviour by children is an extremely complex one that is not fully understood. We do not find conclusive answers in psychology, sociology, psychiatry, anthropology, social work, criminology or any other discipline alone. Although the government claims that South Africa has a separate juvenile justice system with specific reference to a separate youth court, this is not entirely true. Matters pertaining to children are still processed in adult courts by adults who work with adult criminals.

Youth offenders need a completely separate building with different personnel who work with children exclusively. At present children are not getting their own justice and it is key that everyone who is governed by one system should have a voice in that system. The youth of South Africa should be encouraged to stand up and champion for themselves. If our youth had more opportunities and if they grew up in safe homes that addressed their many needs during their formative years, the current concept of the so-called lost generation would not be relevant.

The good news is that the Child Justice Act has the potential to make dramatic changes in the handling of derailed children. Moreover, it makes provision for the establishment of onestop child justice centres, which are specialised institutions geared towards streamlining the whole child justice process within the confines of a single building.

These concluding thoughts aim to highlight the difficult situation in which South African children find themselves. Although some children derail and come into contact with the mechanisms of criminal justice, many youths miraculously make it through the many chållenges they face en route to adulthood. According to Bartol and Bartol (2017: 1 70), only a small percentage of the youth population engages in serious delinquent behaviour. It is the contributing factors (e.g. absent parents, pull factors in society, poverty and low self-esteem) that should become the main focus of society and the government. Parents should rethink their roles as providers and caregivers, and children should grow up in a safe and healthy atmosphere. Children should never have to face the atrocities that current society sometimes hurls at them.

The authors hope that the fourth edition of this book will bring new insights into the difficult challenges facing our youth. Some new problems that were raised in the final chapter of the third edition were addressed in this fourth edition. We hope that the insights in this book will assist in understanding the many factors that are devouring the healthy development of our youth and depriving them of their innocence and what should be trouble-free young lives.

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Glossary

accessory after the fact—a person who, after the commission of a crime, unlawfully and intentionally enables the perpetrator or accomplice to evade liability for it accomplice — a person who unlawfully and intentionally furthers a crime committed by the perpetrator affective empathy — an emotional response that manifests in feelings of concern for another individual and the desire to assist that person in alleviating his or her distress arrest— the lawful limitation of a suspect's freedom of movement assessment— an evaluation of a child and his or her circumstances, in this context with a view to advising criminal justice professionals about whether the child is a candidate for diversion, and if not, whether the child can await trial at home in the care of his or her family assistance — helping or enabling somebody to perform certain actions attachment — consistent affection and care that develops an emotional bond between a child and his or her parents or primary caregivers. This is a fundamental part of normal behavioural and social development in all children awareness — is a fundamental aspect of human's mental experiences with which they have the subjective sense of knowing or being. It can be a subjective felt sense, a knowing and a known biochemical factors — factors that are genetically predetermined, as well as those that are acquired through diet and environmental contaminants, and which have been linked to criminality biosocial factors — physical and mental traits, the social environment and behaviour causes — a set of facts, information, circumstances or conditions thåt would predispose a person to criminal behaviour child abuse — any form of harm or ill treatment deliberately inflicted on a child, including physical violence or inflicting any other form of deliberate injury to a child; sexually abusing a child or allowing a child to be sexually abused by someone else; bullying by another child; subjecting a child to labour (work) that is not age appropriate, or is too difficult; or subjecting a child to behaviour that may harm the child psychologically or emotionally

Child Justice Act — an Act which aims to establish a criminal justice system that has as a central feature the possibility of diverting matters from the criminal justice system, and that expands and entrenches the principles of restorative justice, while ensuring that children are held responsible and accountable for offences they have committed. It further recognises the need to be proactive in crime prevention by placing increased emphasis on the effective rehabilitation and reintegration of children in order to minimise the potential for re-offending, and balances the interests of children and those of society

With due regard for the rights ofvictims child justice system — the set of procedures and intersectoral services designed to manage children who are accused of crimes through the various stages of apprehension, pre-trial and trial, pre-sentence and sentence, appeal and monitoring child prostitution — the involvement of any child' under the age of 1 8 in providing sexual services of any nature for compensation — financial or other-Wise

child sex work— a term which is interrelated and synonymous with the term "child prostitution" and includes any child under the age of 18 who is involved in providing sexual services of any nature for compensation — financial or othenvise children's court — a creation of the Child Care Act 74 of 1983. which operates in the sphere of private law chivalry hypothesis — the notion that decision makers in the criminal justice system treat women differently and are less likely to process them formally chronic juvenile offenders — a small number of youth offenders who commit a significant percentage of all senous crimes classical schooll /lclassicism — an approach to the study of crime and criminal behaviour, which is underpinned by the notion of rational action and free will. Alongside the concept of individual choice as a core assumption is the idea that punishment should be proportionate to the criminal act, and viewed as a deterrent. This school ofthought developed in the late 1 8th and early 19th century by reformers who aimed to create a clear and legitimate criminal justice system based on equality cognitive empathy — the ability to understand another person's frame of reference without being blinded by one's own point of view cognitive script— a thought process that determines how a child has learnt to behave in response to environmental stimuli and what the outcome of that behaviour is. Once a cognitive script has been „programmed" into the memory, it eventually becomes very resistant to change community youth development—a philosophical, sociological and educational movement to harness the power young people bring to effect community change and, similarly, to engage

communities in embracing their role in the development of children control/ social control — a sociological approach to understanding the causes of conformity, focusing on the ability of society and its institutions such as family, peers and schools to restrain individuals from deviance. The basic premise is that conformity results when societal ties are strong, thus social institutions have the ability to influence human behaviour, and thejustice system is the primary agency of formal social control corporal punishment— the infliction of punishment in the form of whipping or caning as imposed by a court of law crime — conduct that is prohibited by law and punishable by the state crime involvement— taking part in criminal or antisocial behaviour criminal capacity — the mental ability to realise the nature of one's conduct and to appreciate its wrongfulness, and to act in accordance with this appreciation derivative offending — enjoying the benefits ofthe offending behaviour of a primary offender by association or extension (i.e. Without engaging directly detention — the lawful limitation of a person's freedom of movement in a recognised institution development— the physical, mental (cognitive) , emotional (affective) and moral changes that occur in a person's life from birth to death disorganisation — a lack of consensus, norms and values, social support and community integration, and the inability to adjust to social change diversion — the channeling of children away from the formal court system into reintegrative programmes. This is a way of getting children to take responsibility for what they have done without taking them through courts and prisons. If a child acknowledges responsibility for the wrongdoing, he or she can be set specific tasks, be required to attend a programme or in some way be made to put right what he or she has done wrong doli capax — with criminal capacity doli incapax — without criminal capacity drug use and abuse— the taking of substances and the psychological and behavioural effects that can result in impaired judgement and paranoid thinking that markedly impair coping mechanisms which may otherwise protect against aggressive episodes early onset — in misbehaviour terms, the commencement of a criminal career under the age of 1 0 economic deprivation — the discrepancy between current economic welfare and economic expectation egalitarian family —a family in which the husband and wife share equal rights emotional poverty — the deprivation of emotional resources that normally come from healthy nurturing and supportive human interaction fault— the grounds for blaming the perpetrator personally for his or her unlawful conduct feminism — the representation of both a worldview and a social movement that focus on certain assumptions and beliefs about the origins and consequences of a gendered society. It is a movement for the social, cultural, political and economic equality of women and men. It is a campaign against gender inequality and it strives for equal rights for women. It is not, as is popularly believed, about taking rights away from men, but about extending rights and freedoms to women so that they may have all the same opportunities as men, and be free from harm gang formation — the processes involved by which individuals become members of a gang gender — an identity that is learnt, that changes over time, and that changes from one place, culture or society to another. Hence gender is both a social construct (something made up) and personal identity. In social terms gender refers to the socially created roles, personality traits, attitudes, behaviours and values attributed and acceptable for men and women, as well as the relative power and influence of each. That means that gender is relational (occurs in relation to something else) and refers not simply to women or men but to the relationship between them high-level socio-moral reasoning —a decisionmaking process motivated by support for social order, rights and responsibilities as wetl as ubuntu (i.e. recognising that a person is a person because of other people) hostile attribution bias — the likely interpretation of ambiguous actions as hostile and threatening. Children With this bias are as likely as their non-hostile counterparts to see or interpret innocent behaviour from a peer as a hostile action human trafficking — the buying and selling of human beings for the purpose of making a profit or obtaining a free service. catering to the supply side ofthe demand for cheap and dispensable human beings, either for a variety of sexual purposes or in labour exploitation industrial schools — institutions for children or youths displaying problem behaviour that are used as an alternative to imprisonment integrated theories — the act of linking different theoretical arguments or combining two or more sets of logically interrelated propositions into one larger one in order to provide a more comprehensive explanation for crime and criminal behaviour. Different theories are combined through integration as a way of reducing the number of theories in criminology interpreting statistics — analysing and contextualising statistics to understand their meaning

juvenile court— a criminal court where persons under the age of 18 are tried. Currently in South Africa there are no special juvenile courts — adult courts Simply become juvenile courts and the hearings are held in camera learning (theories) —a theoretical perspective based on the assumption

that all social behaviour, including criminality, comes about through a process of learning, primarily by observing and listening to people around us. It posits that misbehavjour is learnt through human interaction legislation — laws made by the legislative body or the state to which all citizens are subject in order to ensure a law-abiding country and population low-level socio-moral reasoning — a decisionmaking process motivated by fear of consequences, personal interests and interpersonal relationships moral development— a lifelong process, influenced by social institutions such as the church and family as well as personal experiences, during which a person learns to acquire forms of pro-social behaviour such as being sympathetic, cooperative, helpful and comforting negligence — a form of fault where a reasonable person in the perpetrator's position would have foreseen the possibility of a negative outcome and would have taken steps to prevent it neoclassical (criminology) —a contemporary version of classical criminology that places more emphasis on deterrence and retribution than on rehabilitation, supporting the basic (classical) doctrine of human nature, namely that people are guided by reason and have free will, and are therefore responsible for their acts and can be controlled through fear of punishment neopositivism — an approach that continues the positivist tradition and encompasses the more contemporary developments within this sphere, representing individualised explanations for criminality neuroplasticity — entails the ability of the brain to change its structure in response to experiences obedience to orders —a ground ofjustification excluding unlawfulness where the perpetrator, in committing the crime, was merely a subordinate who executed an order given to him or her by a supertor

passive offending/acting — a situation where someone is complicit in an offence without actually committing it and does nothing to prevent it pathway — an evolving developmental growthrelated direction that a person acquires during their lifecycle patriarchal family — a pattern of family relationships in which the father is seen as the undisputed head of the household peer associations — children's friends who give them emotional support and in whom they can confide intimate feelings without fear of betrayal. Later, in adolescence, peer approval has a major impact on socialisation, and there is persistent pressure to conform to group values personality — patterns of behaviour, including thoughts and emotions, which distinguish one person from another pimp — any person responsible for the facilitating of buying, selling, luring or providing children (and any others) for sexual services in return for compensation, financial or otherwise positivism — a theoretical approach that emerged in the early 19th century that argues that social relations and events (including crime) can be studied scientifically using methods derived from the social sciences. In criminology, positivism straddles biological, psychological and sociological disciplines in an attempt to identify key causes of crime that are thought to lie largely beyond the control of the individual pre-trial detention — the lawful limitation of a person's freedom of movement before such a person is tried for his or her alleged crime preventative factors — factors that insulate children from a problem, either reducing the impact of risk factors or changing the way in which they respond to

risks primary prevention — the identification and alteration of conditions or situations in the physical and/or social environment that provide opportunities for or precipitate criminal acts private defence— a ground ofjustification, excluding unlawfulness, where the person who committed the crime was merely warding off an unlawful human attack on his, her or somebody else's interests, which attack was imminent but not yet completed probation officer— a social worker who works With families and communities in the fields of crime prevention, treatment of offenders, and the care and treatment of victims of crime recidivism — a relapse into crime reformatory — a penal institution for the reform of young offenders resilience — an active rather than a passive orientation to problems, persistence in problem solution, flexible strategies to respond to problems, and the ability to elicit assistance from family and other adults restorative justice — holding offenders accountable through getting them to acknowledge what they have done wrong, often through facilitated processes that bring them face to face with Victims, and sometimes involving restitution or compensation to the victim risk factors — several individual and social variables that are known to be associated with an increased potential for later criminal behaviour secondary prevention — focus on the early identification of potential perpetrators and dangerous situations or circumstances that may lead to crime if not addressed sentencing — the stage during a criminal trial where punishment is meted out to the convicted criminal sexual abuse and maltreatment— includes (i) coerced (unwanted or by force) and consensual sexual touching; (ii) exposure to intimate body parts or pornographic images; (iii) sexual harassment; and (iv) penetrative and non-penetrative sexual intercourse (actual or attempted), all by either an adult, or similarly aged peers social context — the physical, structural, environmental, cultural and social factors in which people live and which influence the way they engage in the world. Specific "socio-demographic" factors may be used to define social contexts and might include living conditions and poverty, education levels, employment rates, crime rates, or the risk of morbidity within a specific geographical context status offences — behaviours that are considered misbehaviours only when committed by children and youths due to their status in society strain (theory) —a theoretical perspective based on the assumption that lack of opportunity such

as being locked out ofthe cultural and economic mainstream, coupled With the desire for conventional success, produces strain and frustration. Strain theories describe the types of strain that contribute to crime and the factors that may influence a person to respond to strain With crime street children —children With disrupted or no family ties who are forced to survive on the streets in urban areas subordinate offending — when someone is compelled to commit crime by another person, such as an intimate partner or family member supervision —the responsibility of parents or adults to watch and direct young persons to behave

correctly tertiary prevention — prevention aimed at avoiding a relapse into crime (recidivism) and thus focusing on individuals already in conflict With the law thinking errors — a faulty thinking process whereby a person alters his or her perception of reality in an effort to avoid taking responsibility
ubuntu — an Nguni term not easily translated into English, except by way of drawing together strands of concepts such as "a person is a person through other people" and "the very essence of being human" unlawfulness — the second element ofa crime, which entails that there is no justification for a person •s conduct victim — anyone who is subjected to any form of physical, sexual, emotional (including neglect) and financial abuse women's liberation — increased economic and social liberation from inequalities gained by women in society youth sexual offence — any sexual act perpetrated by a person under the age of 18 with a person of any age against that person's will, without consent or in an aggressive, exploitative or threatening manner

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South Africa has a broad and complex history that has greatly influenced the unique, diverse and democratic country that we know today. One of the many challenges South Africa faces is crime, with those crimes committed by youthful offenders being the most distressing - it is sadly not unusual to hear of youths who have been involved in murder, rape or robbery. In addition, sexual offences among children are occurring more frequently, and the number of child victims of abuse and domestic violence is also on the rise. An added and escalating danger for children is falling prey to ruthless traffickers and being used as sex workers or slaves. Despite specific laws having been promulgated to protect them, many children are still growing up in unforgiving environments that never allow them the opportunity to develop morally according to the prescriptions of a democratic society.

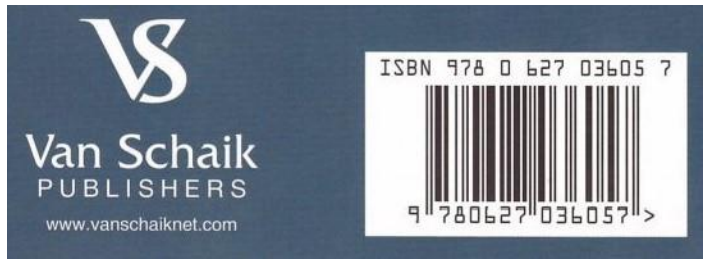
Child and youth misbehaviour in South Africa addresses the complex and poorly understood phenomenon of youth misbehaviour. It discusses and analyses various theories on the nature and causes of deviant behaviour, and assesses them critically with regard to their applicability to South Africa. The book presents the relevant legal processes pertaining to young people, and reinforces theoretical explanations with research and real-world examples. The female youth offender is also discussed in depth in this edition.

Contents include the following:

- The difficulty in demarcating the position of children in South Africa
- The complex diversity in the various ethnic and racial groupings in South Africa The local risk factors and international influences associated with youth misbehaviour
- The effective processing and treatment of youthful offenders by the South African criminal justice system
- Preventive measures based on constitutional guidelines

Child and youth misbehaviour in South Africa is aimed at enabling both practitioners and students to address the plight of the South African youth in a constructive way so they can become part of creating a safer South Africa for all its people.

Professor Christiaan Bezuidenhout holds a BA (Criminology), BA Honours (Criminology), MA (Criminology), DPhil (Criminology), as well as an MSc (Criminology and Criminal Justice) from the University of Oxford. He is currently attached to the Department of Social Work and Criminology, University of Pretoria, where he teaches psychocriminology, criminal justice and contemporary criminology at undergraduate and postgraduate levels.


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