Working with children in conflict with the law: A summary booklet for professionals in the child justice system in the Eastern Caribbean
ACKNOWLEDGEMENTS

This booklet is for professionals working in the area of juvenile justice in Barbados and the Eastern Caribbean summarizes the implications for good practice in line with international standards.

UNICEF hopes that the booklet will prove useful for all those dedicated to improving the situation for children who come into conflict with the law not only in countries of the Eastern Caribbean, but in other countries in the larger Caribbean region.

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Children Deprived of their Liberty
When Governments ratified the UN Convention on the Rights of the Child (CRC), they expressed their agreement to be bound by the articles and obligations under this Covenant. An important obligation is spelt out in art. 4 of the CRC:

“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation”

The important act of ratification provided UNICEF with a programmatic framework of cooperation. One of the earliest documents at UNICEF examining the progress of State Parties in the Caribbean is: The report of The Caribbean Conference on the Rights of the Child: Meeting the Post Ratification Challenge, Belize City, October 7 – 10, 1996. Serious deficiencies were identified such as: a need to harmonise laws in accordance with human rights conventions to which states were parties including the CRC; the need to strengthen judicial institutions and systems; and to implement alternatives to custodial punishment, diversion programmes from the judicial process and from the child justice system. One very important area singled out was the urgent need to:

“provide the police, judicial officers and other law enforcement agencies with the necessary level of personnel, training, public relations skills and sensitisation to child rights to enable them to relate appropriately to children……”(UNICEF, 1996: 64-65) This Booklet is an attempt to respond to this need.

Responding to the need for training of professionals who work in the child justice administration system is only one aspect of UNICEF’s response to child protection needs of countries in the Eastern Caribbean. For UNICEF, child protection is defined as “prevention of violence, abuse and exploitation of children”.

Together with Governments, UNICEF wants to ensure:

“New strategies of conflict resolution and rehabilitation of juvenile offenders…through a restorative justice approach and diversion strategies that lift young people out of the traditional criminal justice system. The aim is to minimise the use of custodial approaches to create space and resource for holistic programming for young people who run into trouble with the law…For children already within custodial care, heads of detention centres will be provided technical assistance and evidence to form an action-learning network to align their respective centres with prevailing international standards of practice” (Governments of the Eastern Caribbean/UNICEF Country Programme Action Plan: 19)

The findings of previous studies on the administration of juvenile justice in the subregion can be summarized as follows:

- There is an urgent need for legal reform to ensure compatibility of legislation with the CRC in areas such as definition of “child”, age of criminal responsibility; abolition of corporal punishment, life imprisonment without release or parole and of status offences
- Failure to implement preventive programmes in accordance with the UN Guidelines for the Prevention of Juvenile Delinquency
- Failure to implement social re-integrative programmes, to establish and manage facilities for children who have committed offences in
accordance with the UN Rules for the Protection of Juveniles Deprived of their Liberty

- Failure to adhere to general standards set out in the UN Standards for the Administration of Juvenile Justice
- A need for training of recruits and for in-service training for those working in the child justice system
- A severe lack of data, and lack of a system to constantly monitor and evaluate the way in which the child justice system is administered (UNICEF Review, 2008: 5)

Having established the need for this Booklet, one also has to acknowledge the steps that have been taken by governments in the region to reform legislation with technical assistance from UNICEF. At the regional level, model legislation on Child Justice has been prepared by the OECS Secretariat. When the OECS Child Justice Bill is adopted and enacted in the Eastern Caribbean countries, finally bringing legislation governing children into conformity with the CRC and other international norms and guidelines. In addition, some countries have already implemented programmes that divert children from the justice system and from court proceedings, while others are successfully implementing pre-trial options such as mediation, and alternatives to custody such as community service programmes.

Nevertheless, much remains to be done in the areas of:

- data collection and analysis;
- information sharing and networking among agencies and sectors;
- recruitment and professionalization of personnel;
- developing treatment plans for children who commit offences;
- and in the area of management of centres where children are detained.

These matters all have to be addressed in the context of international principles governing the child justice system.

This Booklet provides an overview of the international instruments governing child justice in Part I. Part II focuses on the area of prevention, Part III addresses adjudication, diversion and sentencing; while Part IV focuses on custody and the management of facilities where children are detained, and post-release sentencing.
PART I
Overview: International Precepts and Principles Governing Child Justice
This Booklet is based on the CRC (adopted by the UN General Assembly in 1989), which provides the most widely accepted framework for the promotion and protection of the rights of the child. This Convention, which has been ratified by all Eastern Caribbean countries and by Britain on behalf of its Caribbean Overseas Territories, is an umbrella for three UN international instruments in the child justice field—viz. The UN Guidelines for the Protection of Juvenile Delinquency (the Riyadh Guidelines, adopted in 1990); the UN Standard Minimum Rules for the Administration of Justice (the Beijing Rules, adopted in 1985); and the UN Standards for the Protection of Juveniles Deprived of their Liberty (the JDL or Havana Rules, adopted in 1990). These three instruments are non-binding but most of the principles are incorporated into the CRC.


Article 1: A child is under 18 years of age

Articles 1 to 4 of the CRC spell out the major obligations of States Parties. Article 1 defines “child” as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”. This definition varies in other instruments: The JDL Rules refer to children as “juveniles”, while the Beijing Rules, article 2(2)(a), defines “juvenile” as “a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult”. Some countries in the region have already begun a process of legal reform and have changed the definition of the child in accordance with the CRC. The Eastern Caribbean countries are in the process of reviewing the OECS model Child Justice Bill for adoption and enactment, which proposes that a “child” is a person under 18 years.

Article 2: The right not to be discriminated against

Article 2 deals with the State’s obligation to treat children equally and to protect them from discrimination. In addition, criminal codes in the region still contain provisions that criminalise certain acts by children—they can be penalized for committing a status offence or an act which is not considered an offence for adults (vagrancy, truancy, running away from home, etc.). Article 56 of the Riyadh Guidelines also calls for the abolition of status offences.
Article 3:
The best interest of the child is a primary consideration

According to the Committee on the Rights of the Child in its General Comment 10 (2007) on “Children’s Rights in Juvenile Justice”, “all decisions taken within the context of the administration of juvenile justice” must be taken in the best interest of the child, especially since children have different psychological, physical, emotional and educational needs. It is for this reason that the Committee felt that children must be treated differently in the criminal justice system: they should be considered as being less culpable and their treatment processes should be geared towards social reintegration, applying principles of restorative justice.

Article 4 emphasises the obligations of State Parties to implement the rights recognised in the CRC “to the maximum extent of their available resources”.

Articles 5 to 10 spells out various rights, duties and responsibilities that State Parties must respect of parents, extended family, the community and other legal guardians. Articles 13 to 17 highlight the rights of children to participation, privacy and to appropriate information. Articles 19, 20 and 21 address the right of children to protection from abuse and neglect; while Article 24 addresses the right of the child to health and health services, and Article 29 addresses education.

Article 37:
Children shall not be subjected to torture, or other cruel and inhuman or degrading treatment or punishment, or to be deprived of their liberty arbitrarily or unlawfully. They have a right to be treated with dignity and humanity while they are in detention

Article 37 emphasises that children: should not be subjected to torture and cruel and inhuman punishment –this includes corporal punishment, solitary confinement, capital punishment and life imprisonment without release or parole; should not be arbitrarily arrested and imprisoned –if children must be arrested or imprisoned, it must be done for the shortest possible time and as a measure of last resort; and they must have the right to legal counsel, and to be separated from adults while in detention.

Article 40 focuses on the administration of child justice and will be dealt with in detail in Parts III and IV of this Booklet.

Article 40: Children in conflict with the law have the right to treatment that promotes their dignity and worth. Children’s age must be taken into account and their treatment plan must promote their reintegration into society. Children are entitled to due process rights

Due process rights such as: the presumption of innocence; to be promptly informed of charges in the presence of parents or guardians; the right to legal counsel; the right for parents or guardians to be present in court; for their case to be fairly determined, without force and without delay by an impartial tribunal, to have witnesses and for a review of their offence; the right to an interpreter if necessary; and the right to privacy at every stage of the proceedings. Article 40 also addresses the need: for States to set a Minimum
Age of Criminal Responsibility (MACR); for diversion from judicial proceedings and from the courts; and for children to be dealt with in “a manner appropriate to their well-being and proportionate to the offence”.

THE UN GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY, 1990 (THE RIYADH GUIDELINES)

These Guidelines were adopted in 1990 --one year after the CRC was adopted, and they are considered to be supplementary to the CRC. The first phase in the child justice system is the area of prevention. Programmes must be put in place to prevent children from becoming entangled in the justice system. In addition, diversion programmes cannot be successful on their own, and must be coupled with prevention programmes in order to prevent high rates of recidivism.

Apart from prevention programmes for all children, the Guidelines emphasize the holistic nature of child justice by pointing to the important role that civil society can play in preventing all children from coming into contact with the law. The Guidelines stress the need for a multi-disciplinary approach and for proper recruitment and training of personnel who work with children.

The general prevention policies are based on the following principles:

- The institution of comprehensive prevention plans at every level of government
- In-depth analysis of the problem and preparing lists of programmes, services, facilities and resources available
- A definition of responsibilities for all role players
- The coordination of prevention efforts between government and civil society groups
- Continuous monitoring
- A reduction in the number of opportunities for committing offences
- The involvement of the community
- Inter-disciplinary collaboration
- The participation of children; and
- Trained personnel who specialise at all levels

The prevention measures are aimed at promoting human rights in general and children’s rights in particular. The general aim is to prevent juvenile delinquency. The Guidelines point to the need to make specialised programmes available for children who are: “at social risk” (article 24); “school drop-outs” (article 30), and for street children (article 38). Part IV of the Guidelines emphasise the importance of “the successful socialization and integration” of children through the family, school, vocational training, peer groups and community-based organisations.

Family, including the extended family, is viewed as the central unit responsible for the socialization of children. The society has a responsibility to assist the family with providing care and protection, including day-care facilities for young children. At the same time, families must be provided with opportunities to learn about parental roles and obligations, and to promote positive relationships between parents and children.

Measures must be taken by governments to “promote family cohesion and harmony and to discourage the separation of children from their parents”. In cases where a stable family relationship is lacking, and the extended family or community cannot provide care, then alternative placements that are “stable and settled” have to be considered. Article 46 points out that institutionalisation must always be a last resort and for the shortest possible time. Institutionalisation is limited to cases when the
child has suffered harm; has been sexually or physically abused; has been neglected, abandoned or exploited; or has been threatened by physical or moral danger by the parents/guardians.

A multi-disciplinary approach should be used for prevention programmes. This requires collaboration with schools, vocational training centres, faith-based and community based organisations, health centres, substance abuse programmes, and the media. It is important to note that participation in these programmes needs to be voluntary, and this is emphasised in Article 50 of the Guidelines.

Training of law enforcement officials to respond to the special needs of young people is absolutely essential, and they should also familiarise themselves with all of the diversion programmes available in various communities where they work, so as to be able to use them effectively.

Governments are also expected to enact and enforce specific legislation and procedures to ensure the promotion and protection of the rights and well-being of children.

Lastly, Part VII points to the need for the exchange of information, experience and expertise; for regional and international cooperation on issues of delinquency prevention and child justice, and technical and scientific co-operation on issues of policy and training.

THE UN STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE, 1985 (THE BEIJING RULES)

These Rules, which list standards for the administration of child justice in a comprehensive manner, were adopted by the United Nations in 1985 in Beijing, China. They detail the development of a separate and specialised child justice system. The Beijing Rules are not legally binding, but many of the principles have been incorporated into the Convention on the Rights of the Child, making it legally binding. These Rules are divided into six parts: fundamental principles; investigation and prosecution; adjudication and disposition; non-institutional treatment; institutional treatment; and research, planning, policy formulation and evaluation.

This set of Rules addresses fundamental principles such as:

- The fair and humane treatment of children who come into conflict with the law
- Conducting proceedings in the best interest of the child and ensuring their full participation in the proceedings
- The application of the principle of proportionality to the offender and the offence
- The application of community programmes for diversion from court procedures
- Detention as a measure of last resort and for the shortest possible time
- Deprivation of liberty only for serious offences
- The abolition of corporal and capital punishment
- Continuous and specialised training for law enforcement officers working with children
- The application of alternatives where possible
- The provision of educational and other social re-integrative services for those children who are institutionalised

These principles aim to promote the welfare of the child, minimise intervention by the child justice system, and to reduce any further harm that may be caused by such intervention.

The Beijing Rules are formulated so as to be applicable to different legal systems while at the same time, it sets
minimum standards for responding to offenders under any definition of “juvenile”. Rule 2 defines “juvenile” as “a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult”, while Rule 4 urges states not to fix the age of criminal responsibility “at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”.

According to the Beijing Rules, the major aims of the child justice system are: **proportionality and promotion of the well-being of the child.** Proportionality responds not only to the nature of the offence, but to the circumstances of the offender. This requires discretion on the part of personnel. The Rules also call for the child’s right to privacy and for due process rights to be respected.

**Part II** of the Rules deals with investigation and prosecution. It carefully details the process: from the time of the offender’s initial contact with the justice system – contact with the police; giving consideration to dealing with juvenile offenders without resorting to formal trial; the need for specialised training of the police; and the treatment of children who are in detention pending trial.

**Part III** addresses adjudication and disposition: trial by a competent authority; ensuring legal counsel and the presence of parents and/or guardians; the preparation of social enquiry reports; principles that should be followed in adjudication and disposition; types of disposition measures; the need to ensure the least possible use of institutionalisation; avoidance of unnecessary delay, and the need for professionalism and training.

**Part IV** focuses on non-institutional treatment, while **Part V** focuses on institutional treatment. These aspects will be dealt with in detail later on.

**Part V** is vital to the region since it concerns research, planning, policy formulation and evaluation. Keeping track of the trends and problems of delinquency is of critical importance for improving the child justice system. Without this data, it is impossible to keep informed of developing problems in the child justice system, and to establish interventions that are adequate and effective.

**THE UN RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY**

These Rules were adopted by the United Nations in 1990 and have come to be known as the JDL Rules or the Havana Rules since they were adopted in Havana, Cuba. It is important to note that these Rules are not only applicable to custodial settings, but to police stations where children are often held in custody. The major purpose of the Rules is to ensure that the rights of the detainee are respected at all times.

**Section III** applies to children under arrest or awaiting trial ‘who are presumed innocent and should be treated as such”. As a general rule, detention before trial should be avoided, and is limited only to exceptional circumstances. Rule 12 specifies that the “deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles”.

**Section IV** addresses the management of juvenile facilities. Emphasis is placed on the need to encourage social reintegration of offenders by allowing children to continue their education and/or vocational training in the community as far as possible, since receiving education in a place of detention usually has a stigma attached to it. Recreational activities are also encouraged for the well-being of the child in custody.
Section V also addresses the need for cells to be in proper condition and for general hygiene to be maintained—clean bedding, adequate medical and health care to be provided. Importance is given to the need for the rights of the detained child to be respected and for them treated with dignity at all stages of the child justice system. As such, the application of physical force is restricted, and cruel and degrading treatment or punishment is prohibited. In an effort to monitor the treatment of children in custody, it is proposed that qualified, independent inspectors conduct inspections “unannounced”. Qualified medical officers who are “attached to the inspecting authority or the public health service” are also expected to participate in the inspections.

Section VI addresses the need to have qualified personnel, and a sufficient number of specialists working at the facilities where children are held in custody. It calls on personnel to: minimise differences “between life inside and outside the detention facility”; to respect the Rules and to report any violations to their superior officers or organs “vested with reviewing or remedial power”; to ensure the full protection of the physical and mental health of children; and for personnel to continuously improve their knowledge and professional capacity by attending in-service training courses.
RIGHTS OF THE CHILD
PART II
Prevention

International guidelines governing prevention are primarily embodied in the Riyadh Guidelines.
TO WHOM SHOULD THESE GUIDELINES APPLY?
They should apply to all young people. They are not only for offenders.

WHAT DOES PREVENTION MEAN?
This refers to measures taken by law enforcement personnel prior to the commission of a criminal or delinquent act. It is taken to guard against such acts. This is different to control, which is a measure that is taken after the crime has occurred.

WHY SHOULD THERE BE PREVENTIVE POLICIES AND PROGRAMMES FOR CHILDREN?
Preventive programmes in the child justice system are essential. Article 5(e) of the Riyadh Guidelines state that: “Youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood”

Prevention policies that avoid the criminalization and penalization of children for behaviour that does not cause serious harm to others or to the development of the child, should therefore be adopted. Labelling a child as a “delinquent” encourages undesirable behaviour, and usually results in the child being further alienated from society, and perhaps, more inclined to committing offences.

The OECS model Child Justice Bill, proposes to combat child crime through strategies centered on preventing offences by children.

WHO SHOULD BE INVOLVED IN IMPLEMENTING THESE PROGRAMMES?
Society has a responsibility to assist the family. Article 9(g) indicates that co-operation should be inter-disciplinary involving government, private sector representatives, leaders, child-care, health and education departments, law enforcement and judicial agencies. It is also recommended that peer groups and parents be involved in these programmes (article 10)

The participation of specialised personnel and other children in delinquency prevention policies and programmes is highly encouraged (Article (9)(h & i).

The involvement of these persons is encouraged in article 12 of the CRC
WHO SHOULD BE TARGETED FOR THESE PROGRAMMES?

◆ Families in need of assistance with resolving conditions of instability or conflict (article 13)
◆ “(F)amilies affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families” (article 15).
◆ Children at school
◆ Children at risk of offending, such as those who drop out of school, or those who are suspended from school

WHAT TYPES OF PROGRAMMES ARE RECOMMENDED?

◆ Programme that assist families with day-care (article 12)
◆ Programmes that provide training on parental roles and obligations with regard to child development and child care (article 16)
◆ Community-based services and programmes that respond to the special needs, problems and concerns of children (article 32)
◆ Education systems should devote attention to teaching “basic values and developing respect for the child’s own cultural identity and patterns for the social values of the country…Promotion and development of the personality, talent and mental and physical abilities of young people to their fullest potential;” (article 21 (a & b))...
◆ Education systems should also avoid harsh disciplinary measures such as corporal punishment, it should seek to work together with “parents, community organisations and agencies” that are concerned about children (article 22)...and should inform children and their families about the law, “their rights and responsibilities under the law” (article 23).
◆ Programmes that focus on the prevention of alcohol, drug and other substance abuse by young persons (article 25).

It is important to note that participation in these programmes should be voluntary and it is important for children to be involved in their “formulation, development and implementation” (article 50).

WHAT SPECIFIC ROLE SHOULD GOVERNMENTS PLAY?

◆ Make public education accessible to all children (article 20)
◆ Provide the opportunity for children to continue with full-time education, funded by the State, and to receive work experience in cases where parents or guardians are unable to give financial support (article 47).
◆ Take responsibility to provide “services for homeless or street children; information about local facilities, accommodation, employment …” (article 38).
◆ Take measures to promote family cohesion and harmony and to discourage the separation of children and their parents unless there are no other alternatives (article 17).
◆ Work in collaboration with “appropriate United Nations bodies, institutes, agencies and offices…..on various questions related to children…..and juvenile delinquency prevention” (article 64).
◆ Enact and enforce legislation and procedures “to promote and protect the rights and well-being of all children (article 52).
◆ Enact and enforce legislation that prevents “the victimisation, abuse, exploitation and the use for criminal activities of children” (article 53)
◆ Abolish status offences (article 56)
◆ Establish an office of Ombudsman or a similar organ to ensure that “the rights and interests of
young persons are upheld….Child advocacy services should also be established” (article 57).

**WHAT IS THE ROLE OF THE FAMILY?**
The family unit is responsible for the primary socialisation of children. It is responsible for providing care and protection and for ensuring the “physical and mental well-being of children” (article 12).

**WHAT IS THE ROLE OF THE LAW ENFORCEMENT AGENTS?**
Law enforcement agents “should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system”.

These agents should be made aware of and use programmes to divert children away from the justice system.

**WHEN SHOULD FORMAL INTERVENTION TAKE PLACE?**
“Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard has failed, and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered”. These placements should duplicate a stable and settled family environment as much as possible (article 14).

Article 46 stipulates that “institutionalisation of children should be “a measure of last resort and for the minimum necessary period”. Institutionalisation always has to be in the best interests of the child (article 46). Formal intervention should be limited to situations where:

- The child has suffered harm inflicted by parents or guardians
- The child has suffered sexual or physical abuse by parents or guardians
- The child has been neglected/abandoned or exploited by parents or guardians
- Where the child has been threatened by physical or moral danger due to the behaviour of he parents or guardians
- Where the child’s behaviour causes serious physical/psychological danger and neither parents/guardians/child, nor non-residential community services, can meet the danger other than by institutionalisation (article 46)
PART III
Administering Justice

The rules for administering the child justice system are largely found in the Beijing Rules – these provide for the development of specialised and separate systems of child justice. The Rules are non-binding, but the principles have been incorporated into the CRC.
ARREST OF CHILDREN

Why are children arrested?
If they are found committing an offence, they are arrested to ensure that they attend court to be charged and tried.

At what age can a child be arrested?
This depends on the age of criminal responsibility established by each country. In Eastern Caribbean countries, this age currently varies from 7 to 12 years.

Rule 4 of the Beijing Rules recommends that “the beginning of the minimum age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”.

Article 40(3) of the CRC requires States to seek to promote “the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law”, but no specific age is mentioned.

The Committee on the Rights of the Child in its General Comment No. 10, 2007, concluded that a minimum age of criminal responsibility set below the age of 12 is not “internationally acceptable “.

The OECS model Child Justice Bill, Clause 5 (1 & 2) states:
“(1) It be presumed that a child under the age of twelve years is not capable of or guilty of committing a criminal offence. (2) A person over the age of twelve years and under the age of fourteen years shall not be criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission, he or she had the capacity to know that he or she ought not to do the act or make the omission”.

Who arrests children in conflict with the law?
The police represent the first point of contact for children in conflict with the law. This initial contact is likely to strongly influence the child’s attitude towards the State and society in the future. If a police officer treats the child badly, it can destroy any possible relationship of trust. Rule 10(3) of the Beijing Rules and Article 37 of the CRC call for the police to behave in a manner appropriate to the legal status of the child, and in a manner that promotes the well-being of the child.

It is important to note that at this stage, the presumption of innocence still applies (see due process guarantees). Also, arrest must always be used as a last resort.
Should the police who arrest children be specially trained?

**Yes.** Rule 12(1) of the Beijing Rules calls for specialised training of law enforcement agents who work with children.

Can the police choose not to arrest a child?

**Yes.** If the child is “caught in the act” and the offence is a minor one, the police can issue a caution or warning and release the offender. This is done informally in most countries, while other countries do this formally by noting the warning in a caution register. Non-intervention is the best response where the offence is non-serious in nature. The police can also refer the child to a community-based programme.

**INVESTIGATION OF OFFENCES COMMITTED BY JUVENILES**

What procedures must be followed by the police when they arrest a child?

- **Humane treatment of the child**
  Rule 10(3) of the Beijing Rules states that the offender should be managed in such a way as to respect their legal status, to promote his or her well-being and to avoid harm to him or her.

- **Notify the child of the nature of allegation and of his or her rights**
  Article 40(2)(b)(ii) requires that the child be informed promptly and directly of the charges brought against him or her. The child must also be informed in a language that he or she understands.

- **Notify parents/guardians of the arrest**
  Rule 10(1) of the Beijing Rules requires the immediate notification of the child’s parent or guardian, and if this notification is not immediately possible, then they must be so notified within the shortest possible time. When the parents or guardians cannot be located, a social worker is contacted, otherwise the child can be held for 48 hours in custody without the knowledge of the parent or guardian.

  - **Notify a probation officer of the arrest**
    The officer should to assess the child in a place that is conducive to privacy before the child appears at the initial inquiry relating to him or her (Draft OECS model Child Justice Bill, Rev. III)

  - **Avoid unnecessary delay**
    When a juvenile enters the child justice system, avoiding delay, is of vital importance. This means that priority must be given to tracking the child’s parents/guardians or any other adult responsible for the child at the time of his or her arrest. Initiating the process of tracing witnesses at the time of arrest is also essential in order to avoid long postponements when the case reaches the court.

  - **Carry out an interview:**
    The police officer is required to interview the child following his or her arrest, but only in the presence of his or her parent(s)/guardian(s) or a social worker if the parent(s)/guardian(s) cannot be contacted. During this time, the child has a right to remain silent and to legal counsel.

  - **Release or detain the offender:**
    The police can release the offender into the care of a guardian or parent. The custodian is informed that he or she must take the responsibility of ensuring that the child attends court or they would then be guilty of an offence.
    The police can grant bail, take the child to a place of safety, or refer the child to a diversion programme. Rule 11(1) of the Beijing Rules states that “consideration shall be given, wherever appropriate, to dealing with juvenile
offenders without resorting to formal trial by the competent authority”. Granting bail is a decision that is made at the discretion of the police officer – i.e. the police officer has a choice in the matter, and should carefully consider the issue.

Should the police detain children at police stations?

No. When a child is arrested and cannot be brought immediately before an appropriate court, the police officer can release him or her on “recognisance” or on bail for a summary offence.

What is bail?:
This is an obligation to appear in court under penalty of a fine.

What is a summary offence?:
This type of offence is a petty or non-serious crime.
The child has to be taken to a place of safety if the offence is:
- an indictable or serious offence; the child has to be removed from association with a criminal or prostitute; or their release would defeat the ends of justice.

WHAT IS A PLACE OF SAFETY?
It is a place that is established for the child’s own protection or from the protection of others.

There are no such places established by Governments in most Eastern Caribbean countries, so children who are arrested for serious offences are often held at the police station, a Training School or a Government Industrial School, and in some cases, at prisons until their first court appearance. In some cases, magistrates remand or send children to homes for children in need of care and protection, until their trial date.

The OECS model Child Justice Bill, defines “place of safety” as “any place or institution, not being a police cell, lock-up or a prison, whereby the person in charge is willing temporarily to receive and take care of a child in conflict with the law”.

Detaining a child at a place of safety must always be a measure of last resort according to article 37 of the CRC.

IF CHILDREN ARE HELD AT POLICE STATIONS, UNDER WHAT CONDITIONS SHOULD THEY BE HELD?

Rule 13(1) of the Beijing Rules states that detention pending trial should be used only as a measure of last resort and for the shortest possible time.

Rule 13(5) of the Beijing Rules states that juveniles in detention pending trial “shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical — that they may require in view of their age, sex and personality”.

Part I, Clause 3 of the OECS model Child Justice Bill, states that: “A child who is in detention in police custody

(a) shall be:
- (i) detained separately from adults;
- (ii) detained with children of the same sex;
- (iii) detained in conditions which will reduce the risk of harm to that child, including the risk of harm caused by other children;

(b) shall have the right:
- (i) to adequate food and water;
- (ii) to medical treatment;
- (iii) to reasonable visits by a parent, guardian, an
attorney-at-law, registered social worker, probation officer, health worker and religious counsellor;
◆ (iv) of access to reading material;
◆ (v) to adequate exercise; and
◆ (vi) to adequate clothing.

At present in many Eastern Caribbean countries, there are not enough holding cells to specifically accommodate children. In these cases children are left to sit or lie on a bench in full view of the police officers on duty.

**WHAT IS THE MAXIMUM TIME CHILDREN CAN BE DETAINED AT POLICE STATIONS?**
When a parent or guardian cannot be contacted children can be detained for up to 48 hours. This does not mean that the child has to remain in detention for the full 48 hours. With assistance from his or her parent/guardian or legal counsel, he or she can apply for bail.

Only a court can authorise further detention after 48 hours have passed. In some Eastern Caribbean countries, children who are arrested on a Friday are held until Monday—often in excess of the 48 hours stipulated.

**DIVERSION: FROM JUDICIAL PROCEEDINGS**
Diversion at the outset without the involvement of the social services is the optimal response in the case of non-serious, first-time offences. These diversions require the consent of the juvenile or his or her parents or guardians.

**Why is consent by children to participate in diversion programmes important?**
Consent is required to avoid contradiction of the ILO Abolition Forced Labour Convention ratified by various countries. It is also very important that children do not feel coerced or intimidated at any level of the diversion process.

**ADJUDICATION**

**Who can be prosecuted under the child justice system?**
Any child who comes into conflict with the law, and who has attained the minimum age of criminal responsibility, can be prosecuted.

**How is criminal capacity established?**
According to the CRC which all Caribbean countries have ratified, “a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”. In the Eastern Caribbean, the age of majority is 18, but under penal law, there are still many countries in the region that limit the applicability of the child justice rules to children under the age of 16 years. These children are defined as “juveniles”. This means that 16 and 17 year olds are treated as adult criminals.

Legislation must therefore be changed to allow the full application of rules currently applicable only to “juvenile offenders”, to all persons under the age of 18 years. In some countries, the rules and regulations of the child justice system are also applicable up until the age of 21 years.

The OECS model Child Justice Bill, Part II, Clause 4 (a) & (b) state: “a person who is alleged to have committed an offence and who, at the time of the alleged commission of the offence, was under the age of 18 years;” and “(b) a person referred to in paragraph (a) who attained the age of 18 years before proceedings that were instituted against him or her, pursuant to this Act, have been concluded”.

Part VIII, Clause 48 of the OECS model Child Justice Bill, further states that “the criminal responsibility of a child over the age of twelve years but under the age of fourteen years shall, be proved by the State beyond reasonable doubt”.

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Is the child tried separately if he or she commits an offence jointly with an adult?
Clause 49 states that if the child commits an offence jointly with an adult, they must be tried separately unless “it is in the interest of justice to join the trials”.

Who adjudicates?
If the case of the child has not been diverted, then he or she will be dealt with by the competent authority (the court, tribunal, board, or council) “according to the principles of a fair and just trial” (Rule 14(1) of the Beijing Rules). Part VII of the OECS model Child Justice Bill, makes allowance for an initial hearing before a Board to: determine whether the matter can be diverted before the child enters into a plea; find a suitable diversion option; provide the prosecution with information to assess whether to proceed to trial; and to encourage the participation of the child and his or her parent(s)/guardian(s). This initial hearing is followed by court proceedings.

Where should children be tried?
Proceedings should usually be conducted at a Juvenile, or a Family Court which convenes special sittings for cases involving children.

How should the proceedings be conducted?
This should be done in the best interest of the child and in a child-friendly manner. Rule 14(2) of the Beijing Rules states that “the proceedings...shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and express herself or himself freely”.

What are due process guarantees?
These are the guarantees for a fair trial. These guarantees are listed in article 40(2) of the CRC and are considered to be minimum standards—this means that States parties can and should try to observe them. In accordance with due process, a fair and just trial includes safeguards such as:

- **The right not to be punished retroactively**
  This means that if a child is accused of, or recognised as having infringed a law that did not constitute an offence either nationally or internationally at the time the act was committed (retroactively) then, the child should not be punished. Also, if the legislation is amended and a heavier penalty is applied, the child should not be subjected to this heavier penalty. However, if a lighter penalty is introduced, then the child should benefit from this amendment to the legislation.

- **The presumption of innocence**
  The child accused of having committed an offence, must be given the benefit of doubt, and is only guilty as charged when these charges are proven “beyond reasonable doubt”.

- **The right to be heard and the right to remain silent**
  The child alleged as, or accused of having committed an offence has the right to be heard either directly or through his or her representative. Some jurisdictions accept unsworn evidence in criminal proceedings from children who are between the ages of 12 to 14 years. Likewise, the child has a right to remain silent if he or she so chooses.

- **The right to participate in the proceedings**
  Children accused or alleged as having committed an offence must be able to understand the charges, the consequences of the punishment, and to be able to make decisions about the evidence he or she has to give. Rule 14 of the Beijing Rules also call for the proceedings to be carried out in an atmosphere that is child-friendly.
◆ **The right to decisions without delay**
Article 37(d) of the CRC calls for “every child deprived of his or her liberty to have the right to prompt access to legal and other appropriate assistance”. The time between the commission of the offence and the final response to this act should be as short as possible.

In many Eastern Caribbean countries, children remain on remand (awaiting trial or sentencing), usually at adult prisons. This is considered to be a grave injustice.

◆ **The right to the presence of guardians or parents**
Parents or guardians should be present at the proceedings to provide the necessary psychological and emotional support for the child. At times the judge or competent authority may think that it is not in the best interest of the child to have the parents or guardians present, and will instead opt to restrict their presence.

◆ **The presentation and examination of witnesses**
The lawyer or representative must inform the child of the possibility of examining witnesses, and allow them to participate when possible.

◆ **The right to appeal**
The child has a right to appeal to a higher and impartial tribunal against a guilty verdict.

◆ **The right to privacy**
The child has a right to have his or her privacy respected at every stage of the proceedings as spelt out in article 16 of the CRC – from the initial contact with law enforcement, up until the final decision is made by the court or competent body, or to the time when he or she completes their pre-trial supervision or custodial or community-based sentence.

WHAT HAPPENS IF THE PARENT(S)/GUARDIAN(S) CANNOT BE CONTACTED?
If it is impossible to locate the parents, this does not mean that the trial should be continuously postponed while the child remains in pre-trial detention. Instead, every effort should be made to contact a relative, or a community member/neighbour who is willing to take responsibility to appear in court with the child.

WHAT HAPPENS IF THE PARENT(S)/GUARDIAN(S) ARE CONTACTED AND THEY DO NOT COME TO COURT?
The Committee for the Rights of the Child recommended in its General Comment No. 10, 2007, that States parties make legal provision for “the maximum involvement of parents or legal guardians in the proceedings against the child”.

◆ **The right to legal assistance**
Every child alleged of or accused as having committed an offence has the right to legal assistance in preparing and presenting his or her defence. The Committee on the Rights of the Child recommends in its General Comment No. 10, that this assistance be free of charge. They further recommend that in the absence of legal assistance that a social worker, who has sufficient knowledge of the legal aspects of the juvenile justice process and who is trained to work with children in conflict with the law, be present.
Can the trial be open to the public, and can the proceedings be published?

No. The proceedings are geared towards ensuring that no harm is caused by publicity. No information leading to the identification of the child shall be published since this may have a negative impact in the future on his or her safety, access to education, or to work.

The Committee on the Rights of the Child proposes in its General Comment No. 10 that any journalist who violates this right, should be sanctioned.

The Committee further recommends that all proceedings involving children in conflict with the law be conducted behind closed doors or in camera to better protect the identity of the child involved. In cases involving immorality and indecency, some jurisdictions allow the child to give evidence via video-link.

Article 16 of the CRC requires all professionals involved in the implementation of measures taken by the court, to keep all information on the child’s identity confidential –only those persons involved in the investigation, adjudication and ruling on the case should have access to information.

Can the records of the child be used against him or her when being sentenced as an adult?

No. This must not be done according to Rules 21(1) & (2) of the Beijing Rules.

Diversion: from the formal child justice system
It is important to note that children who have committed an offence often benefit most through the application of the principle of minimum intervention --as little exposure as possible to the child justice system.

What is a pre-trial alternative?
Although the formal law procedure may have been initiated, this does not necessarily mean that the child must be formally sentenced by the court. The Prosecutor may decide that a pre-trial alternative such as mediation or reparation may be more beneficial to the child. These alternatives require the consent of the offender.

What is mediation?
Mediation is a non-adversarial approach in which a third party and neutral party assists with resolving conflict between two or more parties. In some cases, a child and the victim may be brought together and the child is asked to make a formal apology.

What is reparation?
This is a means of repairing the damage caused by the child. The child may be asked to compensate the victim through work. This could be combined with mediation.

Sentencing of juveniles
Certain principles must be followed when sentencing. Rule 17(1) of the Beijing Rules states that the disposition of the competent authority should be guided by: proportionality and consideration of the specific circumstances and needs of the juvenile; restriction of the personal liberty of the juvenile to the possible minimum (alternatives to custody must always be considered in the first instance); imposition of institutionalisation only when the juvenile has committed a violent offence, or is a persistent serious offender; and, consideration of the well –being of the juvenile. Rule 12(1) of the UN Standard Minimum Rules for Non-Custodial Measures, 1990 (The Tokyo Rules) emphasises the need for the competent authority to take account of “the needs
of society and the needs and rights of the offender and the victim when sentencing”.

Should children be subjected to capital punishment?

**No.** It is widely accepted that the death penalty cannot be imposed on persons who were under 18 years of age at the time of committing the offence. Rule 17(2) of the Beijing Rules prohibits the imposition of capital punishment for crimes committed by children. The Committee on the Rights of the Child recommended in General Comment No. 10, that “the few States parties that have not done so yet to abolish the death penalty for all offences committed by persons below the age of 18 years and to suspend the execution of all death sentences for those persons till the necessary legislative measures abolishing the death penalty for children have been fully enacted”.

Should children be subjected to life imprisonment without parole?

**No.** No child who is under the age of 18 at the time of committing an offence should be sentenced to life imprisonment without the possibility of parole. The possibility of release must be always taken into consideration and the sentence must be regularly reviewed as proposed in article 25 of the CRC.

Should children be subjected to corporal punishment?

**No.** This is a violation of the principles spelt out in article 40(1) of the CRC, which calls for children alleged as or accused of infringing the penal law, “to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth”. Rule 17(3) of the Beijing Rules prohibits corporal punishment.

Should any consideration given to the background and circumstances of the offender when sentencing?

**Yes.** This should be done through a pre-sentence or a social enquiry report for all children before the court. The competent body --the Judge or Magistrate—reviews the social enquiry report prior to issuing the sentence. These reports are usually carried out by a probation officer or social worker and they examine relevant facts about the child such as their family background and education.

Should children who have committed a status offence be sentenced to a correctional institution?

**No.** Status offences—an offence that can only be committed by a child such as: habitual running away; truancy or absconding from school; wandering or begging; displaying immoral behaviour, etc.; should be abolished in accordance with article 56 of the Riyadh Guidelines which states: “In order to prevent further stigmatisation, victimisation and criminalisation of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalised if committed by an adult is not considered an offence and not penalised if committed by a young person”. The OECS model Child Justice Bill also abolishes these offences.

DIVERSION FROM CUSTODY

Diverting children from custody and allowing them to benefit from community-based services, allows them to maintain links with their families, communities and school. These linkages increase their opportunities for social re-integration. The Tokyo Rules state in Rule 2(3): “In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and
background of the offender and with the protection of
society and to avoid unnecessary use of imprisonment, the
criminal justice system should provide a wide range of non-
custodial measures…”
It is important to note that the implementation of these
diversionary sentences will require specially trained
professionals to work with the children undertaking them.

What is considered a reasonable case-load for
professionals who supervise non-custodial
sentences?
The number of case-load of persons responsible for
supervising these sentences, is not specified. However,
Rule 13(5) of the Tokyo Rules points out that the case-load
management by these professionals should be “maintained
as far as practicable at a manageable level to ensure the
effective implementation of treatment programmes.”

What types of non-custodial sentencing options
are available to the courts?
Some of these non-custodial sentences require
supervision and control, while others do not. There is
yet another group of non-custodial sentences which is
classified as restorative justice sentences. It is important
to bear in mind that while the offender is spared from
custody, these sentences all carry a criminal record.

SENTENCES THAT DO NOT
REQUIRE SUPERVISION:

Family group conferencing:
Where a court makes a determination of guilt with regard
to a child, the court may refer the matter to a family group
conference. This sentence can only be made after the child
admits that he or she committed the offence.

Who can participate in these conferences?
At these conferences, the child, his or her parent(s)/
guardian(s), family and friends, the victim of the offence
and his or her supporters, and a police officer are brought
together by a coordinator to discuss the offence and to
decide how the offence will be dealt with. There must be
agreement between the child and the police officer
regarding the outcome.

What if no agreement is reached?
If there is no agreement, then the matter is referred to the
court to make a decision. If the child does not carry out
what was decided, the police officer can lay a charge before
the court for the original offence. The child can be asked
to make an apology, pay compensation for damage, or to
carry out community service (see below).

◆ Dismissing the case or an absolute discharge:
These sentences are usually applied when
technically, an offence has been committed, but the
court thinks that the offender is morally blameless.

◆ Conditional discharge:
A conditional discharge for a specified period is
allowed if no other offence is committed. If another
offence is committed during the period of condition,
then both offences are taken into account when
sentencing for the new offence.

◆ Penal warnings:
These are mainly used when the offence is not a
serious one, and takes the form of a reprimand/admonition (impressing upon the offender not to
repeat the offence, and warning that they may receive a heavier sentence if they do).

◆ Release on bail:
Following adjudication, the child can be released on
bail. The court will take into account the behaviour of the child during the period in deciding his or her sentence.

◆ **Suspended sentence:**
The child is found guilty of the offence but is given an opportunity of not serving the sentence for a specified period (not less than 12 months usually) and under specific conditions – the most common being, to “keep the peace” or making sure that they do not commit an additional offence during this probationary period.

◆ **Monetary payments:**
Fines may be appropriate for children who can afford them, but it creates inequalities since it discriminates against poor children who may be given a custodial sentence for their inability to pay.

**SENTENCES THAT REQUIRE SUPERVISION**

◆ **Supervision:**
A supervision order is usually made for children for a period of up to three years. The aim is for the supervisor (probation officer, social worker or adult friend or adviser) to provide an element of control in the child’s life. Sometimes, specific requirements are attached to the order such as; attending a specified place at a fixed time, or taking part in specific activities.

◆ **Curfew:**
The court can impose a curfew order on an offender over 16 years, requiring him or her to remain indoors during certain periods. The maximum order of 12 hours can be broken up into shorter periods as necessary.

◆ **Community service:**
This sentence is usually carried out over a 12-month period, and can generally be available for offenders who are 16 years of age and older. This non-custodial option must promote the well-being of the juvenile and be applied in a manner that is consistent with the human rights of children. As far as possible, this sentence should not interfere with the schooling of the child. Part IX, Clause 57(e) of the OECS model Child Justice Bill, describes community service as the: “performance of some service without remuneration for the benefit of the community under the supervision or control of a specified person or institution identified by the Court for a maximum period of two hundred and fifty hours and which shall be completed in one year...”

**CUSTODIAL SENTENCES**
The rules governing the deprivation of liberty are embodied in the JDL Rules. These rules are also applicable from the point of view of the police since children are often detained at police stations. Article 37(b) of the CRC states that deprivation of liberty must always be a last resort and must be used for the shortest possible time.

◆ **Referral to a secure residential facility:**
*What is a secure residential facility?*
This is a place where children are detained. In the Eastern Caribbean this type of facility is known as a Training School or a Government Industrial School.

Part IX, Clause 62 of the OECS model Child Justice Bill, states that:
“A sentence to a secure residential facility shall not exceed two years”......however, if the child is under the age of
14, “the sentence imposed can exceed two years”. Such a sentence “may be imposed for a period exceeding two years if the child is under the age of fourteen and he or she would have been sentenced to imprisonment due to the seriousness of the offence...On completion of a sentence, or on attainment of the age of eighteen, that child may request permission from the head of the secure residential facility to continue to reside at the secure residential facility for the purposes of completing his or her education”

**Referral to a prison:**
Part IX, Clause 63(1)(b) of the OECS model Bill states that a sentence of imprisonment shall not be imposed unless:
“(b) substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include conviction of an offence referred to in Schedule III or a previous failure to respond to alternative sentences, including sentences with a residential element.”
PART IV
Detention

Deprivation of liberty refers to any form of detention imprisonment or placement of a person in a custodial setting, from which the person is unable to leave voluntarily. The rules governing the management of facilities where children are detained are embodied in the JDL Rules. These rules are meant to counteract the detrimental effect of the deprivation of liberty, so they focus on ensuring respect for the rights of the detainee or prisoner.
WHAT IS CONSIDERED A PLACE OF DETENTION FOR CHILDREN IN EASTERN CARIBBEAN COUNTRIES?
Any facility where children are made to reside through an order from the court for a specified period, and are therefore unable to leave at will. These include: Government Industrial Schools, Boys or Girls Training Centres, Police cells and adult prisons. Rule 30 of the JDL Rules recommends that if children have to be detained, this should be done in “small-scale detention facilities” which are “integrated into the social, economic and cultural environment of the community”. Rule 30 also calls for these facilities to be “decentralised and of such size as to facilitate access and contact between the juveniles and their families”.

WHAT TYPE OF PERSONNEL SHOULD WORK AT FACILITIES WHERE CHILDREN ARE DETAINED?
Rule 81 of the JDL Rules calls for personnel to be qualified and for a sufficient number of specialists to be employed such as: counsellors, psychiatrists, social workers, psychologists, vocational instructors and educators. Rule 87(d) of the JDL Rules requires all personnel “to ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation…”

WHAT IF GOVERNMENTS ARE UNABLE TO EMPLOY SPECIALISTS ON A FULL-TIME BASIS?
Rule 81 states that these persons can work on a part-time basis or they could be volunteer workers.

DO PERSONNEL REQUIRE SPECIAL TRAINING?
Yes. Rule 83 of the JDL Rules stresses the need for personnel to be well trained, especially in the areas of “child psychology, child welfare and international standards and norms of human rights and the rights of the child…” Personnel must be carefully selected and recruited at every grade, and should be adequately paid so as to attract qualified women and men. Rule 83 encourages personnel to provide children “with a positive role model and perspective”.

WHO CAN BE DETAINED AT SECURE RESIDENTIAL FACILITIES AND PRISONS?
In Eastern Caribbean countries children who are alleged of or accused of infringing the penal law, can be detained in these facilities. However, children over 16 are usually detained at adult prisons. Once countries enact the OECS model Child Justice Bill.
CAN CHILDREN BE DETAINED BEFORE THEY ARE TRIED?

Yes, but this is based on several specified conditions. For instance, Rule 13 of the Beijing Rules states that: whenever possible, “detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home”; it should be used for the shortest possible time and as a measure of last resort; that the child should be entitled to all rights and guarantees embodied in the UN Standard Minimum Rules for the Treatment of Prisoners (1955); and that children should be kept separate from adults or in a separate part of an adult institution.

CAN CHILDREN BE DETAINED WHILE AWAITING TRIAL?

Yes, but again, this is based on several specified conditions. Rule 17 of the JDL Rules specifies that children who are “untried” or awaiting trial are presumed to be innocent and should be treated as such; they have a right to legal counsel; they should be given opportunities for recreational activities, to pursue work and to be paid for it, to continue their education or training; and to receive and keep materials for their leisure.

ADMINISTRATION, REGISTRATION, MOVEMENT AND TRANSFER

How should these facilities be managed?

Admissions:

Rule 21 of the JDL Rules require the following information when a child is admitted to a detention facility:

- Information on the child’s identity; the reasons for his or her committal and under whose authority; the day and hour of admission, dates of transfer and release; details of notifications sent to parent(s)/guardian(s) on each admission, transfer or release of the child; and details of any known physical or mental health problems.

Rule 23 of the JDL Rules require that “as soon as possible after reception”, complete reports and any other relevant information of the child’s personal situation and circumstances should be prepared and submitted to the administration.

Should children in detention receive copies of the rules governing the detention facility?

Yes. According to Rule 24 of the JDL Rules, children should be given a copy of these rules, along with: a description of their rights and duties in a language they can understand; addresses of authorities with whom they could lodge complaints; and addresses of those agencies that can provide legal aid.

What if the child is unable to read?

Rule 24 of the JDL Rules calls for efforts to be made to convey all of the information in a manner that the child can understand.

Who is responsible for transporting children to court or to another facility?

The prison administration is responsible for transporting children to court and for transfers. Rule 26 of the JDL Rules points out that the transportation must be done in a dignified manner, and notes that children should not be arbitrarily transferred from one facility to another.
RECORD KEEPING:
Rule 20 of the JDL Rules states that: “no juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.”

Which records should accompany a child when he or she is admitted to a place of detention?
Rule 20 of the JDL Rules states: “All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorised persons and classified in such a way as to be easily understood.”

What if the records are not accurate?
Rule 20 of the JDL Rules further states: “Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her files so as to permit rectification of inaccurate, unfounded or unfair statements.”

How can the child exercise this right?
Rule 20 of the JDL Rules goes on to state: “In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request.”

What happens to these records when the child is released from the detention centre?
Once more, Rule 20 of the JDL Rules states: “Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged” or deleted.

CLASSIFICATION AND PLACEMENT:
When should the classification process begin?
According to Rule 27 of the JDL Rules, this process must begin “as soon as possible after the moment of admission.”

What should the classification process consist of?
Rule 27 of the JDL Rules requires: an interview; a psychological and social report regarding the level of care necessary; a medical report to determine the most appropriate placement for the child; an individualised treatment plan that must be prepared by trained personnel for those children who require special rehabilitative treatment. Detention of children must take account of all of their particular needs such as: their age, sex, personality, type of offence, physical and mental health and “ensure their protection from harmful influences and risk situations.”

Can children be mixed with adult offenders at detention centres?
No. Children should always be held separately from adults. However, Rule 29 of the JDL Rules suggests that children can be held with adults if they are “members of the same family” and in “controlled conditions” —i.e. if they are participating in a special programme with “selected adults.”

ACCOMMODATION AT DETENTION FACILITIES:
Rule 31 of the JDL Rules recommends that the physical environment should be in keeping with the “rehabilitative aim of residential treatment” and should therefore respect the child’s right to privacy, opportunities to associate with his or her peers, and his or her right to participate in sports.
and other activities. This rule also requires an effective alarm system in the event of fire.

What kind of physical environment and accommodation should the children have while in detention?

- Rule 33 of the JDL Rules suggests that children should be accommodated in individual bedrooms or small dormitories.
- Each child should be provided with “separate and sufficient bedding” which should be kept clean.
- Rule 34 of the JDL Rules calls for “sanitary installations to be of “a sufficient standard” and allow for privacy.
- Rule 36 of the JDL calls for children to be allowed to use their own clothing, while
- Rule 37 urges administrators of facilities where children are detained to ensure that meals are of good “quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements”.

**DISCIPLINARY MEASURES:**

Rule 66 of the JDL Rules states: Disciplinary measures should “uphold the dignity of the juvenile” and “uphold the fundamental objective of institutional care, namely instilling a sense of justice, and self-respect for the basic rights of every person”

What kind of disciplinary measures are allowed?

Administrators at facilities where children are detained should use a system of with holding rewards and of privileges

Which disciplinary measures are prohibited?

Article 37 of the CRC and Rule 67 of the JDL Rules prohibit “all disciplinary measures constituting cruel, inhuman or degrading treatment”. These include the following measures: “corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned”.

Rule 67 does not allow labour to be used as a disciplinary sanction --this must always be viewed “as an educational tool and a means of promoting the self respect of the juvenile in preparing him or her for return to the community”.

Rule 67 also prohibits “the reduction of diet and the restriction or denial of contact with family members”. Collective sanctions are not allowed.

A child must not be punished twice for the same infraction.

Can physical restraints or force be used against children in detention?

No. The use of instruments of restraint and any force is generally prohibited by Rule 63, but is allowed in exceptional cases to prevent children from “inflicting self-injury, injuries to others or serious destruction of property”. When these cases arise, the director of the facility must immediately consult medical and other relevant personnel and “report to the higher administrative authority”.

Should punishment be regulated?

Yes. Rule 68 of the JDL Rules encourages the adoption of legislation or regulations concerning: what kind of behaviour constitutes a disciplinary offence; the length of time for which punishment can be inflicted; who should impose the punishment; and who considers appeals against any punishment inflicted.

Rule 69 of the JDL Rules states that children should only be disciplinarily sanctioned in accordance with “the law and regulations in force”.
INSPECTION & COMPLAINTS PROCEDURE:
Rule 72 of the JD Rules calls for independent inspectors to be empowered to conduct unannounced inspections on a periodic basis. These inspectors must have full access to children’s records, unrestricted access to all employees at the facility, and to all children who are deprived of their liberty.
Rule 73, encourages the participation of medical officers in the inspection to evaluate the facility’s compliance with the rules concerning “the physical environment, hygiene, accommodation, food, exercise, etc.”

Should the inspector submit a report on his or her findings?
Yes. This is required by Rule 74 of the JDL Rules, and should include “an evaluation of the compliance” of the facility with relevant laws and rules. If the inspector discovers any violation of the rights of children detained, he or she should communicate this to the “competent authorities for investigation and prosecution.”

Can children being held in detention make complaints?
Yes. According to Rules 75 and 76 of the JDL Rules, they can. This must be allowed without censorship regarding “substance, to the central administration, the judicial authority or other proper authorities…..” and the complainant(s) must “be informed of the response without delay”.

SOCIAL REINTEGRATION
Education, vocational training and work:
Rule 38 of the JDL Rules points out that every child “of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society.”

Can children from detention facilities attend schools in the community?
Yes. Rule 38 of the JDL Rule states “education should be provided outside the detention facility in community schools wherever possible…”

If children obtain an educational certificate while in detention, should it indicate where it was obtained?
No. Rule 40 of the JDL rules states that educational certificates awarded should not indicate that the child was ‘institutionalised’.

Can children who are above compulsory school age continue their education?
Yes. According to Rule 39 of the JDL Rules, they can. They also have a right to receive vocational training for future employment –Rule 42 of the JDL Rules. In this regard, children are also allowed to work within the local community and receive payment. This type of work should be geared towards providing the child with training for future employment.

Rule 45 of the JDL Rules emphasises that “the organisation and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for conditions of normal occupational life.”

What should be done with the earnings that children receive for their work?
Rule 46 of the JDL Rules states that their earnings should not be used for the purpose of “making a profit for the detention facility or a third party”. The primary purpose of
performing work is for learning or improving a particular skill. In addition, part of the earnings should be “set aside to constitute a savings fund” which is to be given over to the child when they are released from the facility. The child can also use part of his or her earnings to “purchase articles for his or her own use”, to send to family members or other persons outside of the facility, or “to indemnify the victim injured by his or her offence”.

**MEDICAL CARE:**

Medical care should be provided by health facilities in the community where the detention facility is located. Rule 49 states that every child “shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products…” Being examined by a physician at the time of admission is a right according to Rule 50 of the JDL Rules. Attempts must also be made to detect and treat any physical or mental illness, or substance abuse problem. Arrangements must be made to ensure that children with these problems continue to receive treatment after they leave the facility.

**Should children who abuse drugs benefit from treatment programmes?**

**Yes.** Rule 54 of the JDL Rules states that detention facilities where children are held should “adopt specialised drug abuse prevention and rehabilitation programmes administered by qualified personnel.”

**How should medicines be administered?**

These must only be administered “for necessary treatment and on medical grounds” and with the consent of the child. According to Rule 55 of the JDL Rules, it must not be used for “eliciting information or a confession, or as a punishment or a means of restraint”, neither should children be used as “testers in the experimental use of drugs”.

**Who should administer medicines?**

This must only be done by qualified medical personnel according to Rule 55 of the JDL Rules.

**RECREATION:**

**How often should children in detention be allowed to exercise?**

Every child should have “the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits”.

**Should children in detention also be allowed leisure time?**

**Yes.** Rule 47 of the JDL Rules points out that children in detention also need to have time for “daily leisure activities” such as arts and crafts, and should be able to participate in physical exercise programmes.

**RELIGION:**

According to Rule 48 of the JDL Rules, every child should be allowed “to satisfy the needs of his or her religious and spiritual life”.

**Can religious services be held at detention centres?**

**Yes.** If several children are members of the same religion, “one or more qualified representatives of that religion should be appointed…and allowed to hold regular services…”
Can children in detention receive visits from representatives of their religion?
Yes. They can receive visits from “a qualified representative of any religion of his or her choice according to Rule 48 of the JDL Rules. They also have the right not to participate in religious services.

CONTACT WITH FAMILY & FRIENDS

Article 37 of the CRC states that “…every child deprived of liberty…shall have the right to maintain contact with his or her family through correspondence and visits…” Contact with family is a very important aspect of social re-integration. Rule 67 of the JDL Rules stresses that “the restriction or denial of contact with family members should be prohibited…”

COMMUNITY INVOLVEMENT:

Rule 79 of the JDL Rules points out that, children in detention need to benefit from programmes that can assist them with re-integration into society, and improve their chances of gainful employment upon release. Civil society can play a very important role by working with children while they are in detention, so that they can maintain a link with them when they are released. This contact could be helpful with reducing the probability of the child re-offending.

PRE-RELEASE PROGRAMMES:

Rule 80 states that the administration should provide services that should ensure “to the extent possible, that the juvenile is provided with suitable residence, employment, clothing and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration”.

POST-RELEASE PROGRAMMES:

The Riyadh Guidelines state in Rule 79 that: “All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education, or employment after release. Procedures, including early release, and special courses should be devised to this end”. Post-release programmes such as the granting of licence, allows the child to reside with a guardian or parent who is willing to take responsibility for him or her.

Rule 29(1) of the Beijing Rules supports the initiative of allowing children to benefit from semi-institutional arrangements. It states that: “efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society”

What happens if the licence is breached?
It is revoked, and the child goes back to the detention facility to serve the remaining time.

DELETION OF RECORD OF OFFENCE

Should the child’s criminal record be expunged?
The Committee on the Rights of the Child in its General Comment No.10 recommends the “automatic removal from the criminal records of the name of the child who committed an offence upon reaching the age of 18, or for certain limited, serious offences where removal is possible at the request of the child, if necessary under certain conditions (e.g. not having committed an offence within two years after the last conviction).

Rule 19 of the JDL Rules recommends that: “upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.”
REFERENCES


General Comment No. 10: Children’s rights in juvenile justice, Committee on the Rights of the Child, CRC/C/GC/10, 2007

The UN Convention on the Rights of the Child

The UN Guidelines for the Protection of Juvenile Delinquency (the Riyadh Guidelines);

The UN Standard Minimum Rules for the Administration of Justice (the Beijing Rules); and the

The UN Standard Minimum Rules for the Treatment of Prisoners

The UN Standards for the Protection of Juveniles Deprived of their Liberty (the JDL or Havana Rules)
