

**Justice for Children  
Diversion and Alternative Measures  
Workshop Report  
January 2009**



Photo: Fawad Sahil/UNICEF AFG/2008  
Photos used are for illustrative purpose only

**Prepared by  
Child Protection Section  
UNICEF Afghanistan**

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## **Background**

In June 2008 the Ministry of Interior, Office of the Attorney General, and Ministry of Labor and Social Affairs signed an agreement (LoA) called "Referrals and Cooperation between Social Workers, Police Officers, and Prosecutors" in juvenile justice. The LoA aims to strengthen the involvement of social service workers in the juvenile justice system and thereby enhance the capacity of the police and prosecutors to utilize community-based services as alternative to deprivation of liberty.

UNICEF supports the implementation of this initiative in eight pilot provinces (Kandahar, Nangahar, Herat, Gazni, Paktya, Bamyana, Baghlan, Kunduz). In those provinces, close cooperation between social workers, police and prosecutors has started. To date, 27 pilot districts appointed designated "Child Protection Liaison Police Officers" to support the implementation of this agreement.

The initiative was in response to the lack of a systematic support and multi-sectoral service for juvenile offenders, particularly to implement the provision of the juvenile code that **detention of juveniles (arrest stage, pretrial, under trial, sentence stage) should be always the last resort and only for the shortest period of time**. The initiative aims to enhance cooperation and coordination of all agencies in effective administration of juvenile justice wherever appropriate and desirable, with the goal of preventing detention and reducing the duration of detention as much as possible.

Six months after the signing of the LoA, MoLSA and UNICEF invited the provincial and district task forces – responsible for the implementation of the LoA to hear what problems they might have been facing and learn from best practice that happened.

## **Objectives of the workshop**

- 1. Strengthen the network between social workers, police, and prosecutors and get clearer understanding of the role of each agency in the Juvenile justice process - to motivate each agency to take an active part in bringing about positive changes in the lives of children in difficult circumstances.**
- 2. Understand the philosophy of diversion (alternative to imprisonment) and how it applies to juvenile justice. Police and prosecutors are aware of alternatives to detention in line with the juvenile code and take into consideration the recommendation of the social workers when deciding on an individual case.**
- 3. Develop points of good practice for implementing diversion (alternative to imprisonment) approaches and bridge the gap between theory and practice relevant to policing and child rights / child protection so that each actor is able to act in the best interests of children.**
- 4. Introducing the Social Inquiry Report.**

### **Summary of key learning points and comments from participants**

- The juvenile justice system is a mixture of many stakeholders, agencies, and professionals – it is important to know each other's role and to work together in the best interest of the child.
- The juvenile justice system is based on the notion that “Children are not adults – making mistake is a part of growing up”. Children need the support of adults to find their way in life. The juvenile justice system aims at helping children understand that they made a mistake and supporting them. When looking closely at an individual case, the underlying issues and possible root causes that might have let the child come into conflict with the law need to be addressed. → **Instead of punishing children juvenile justice aims at supporting rehabilitation.** (*ANNEX 1: Workshop presentation on diversion: workshop handout.*)

**Juvenile Justice System: “Children are not Adults – making mistakes is part of growing up”.**

Some children grow up in more difficult circumstances than others, with more challenges to face, but with less guidance and support from loving adults. All children make mistakes at least once. It is the duty of the justice system to give them the support and second chance so that they don't make the same mistakes again. A small minority of children do actually commit serious offences and they have to be dealt with seriously in order to protect the public. However, the vast majority – especially of street children – are either first time or petty offenders, or they are not in conflict with the law at all rather in need of care and protection.

- Underlying principle of juvenile justice as stipulated in the Afghan Juvenile Code is: **Detention (arrest, pretrial, under trial, or after trial) shall be the last resort and if needed only for the shortest period of time.** There are many options for diversion (alternative measures) possible in the Afghan society. (*ANNEX 2: Guiding Principles of Juvenile Justice: Workshop Handout*)
- The term **Social Inquiry Report (SIR)** refers to the brief report prepared by a qualified social worker based on the assessment of the child's background and his/her family/social environment. Based on the SIR, the juvenile prosecutor or juvenile judge determines if an offender should be detained and treated in a juvenile facility, or diverted to a community program (i.e. 'alternative measures'). The aim of SIR is to enable the prosecutor or judge to take due account of the circumstances of the offender (following the 'principle of proportionality') on the basis of information on his/her background and that of the family.
- The existing structures/resources available at family, community, district, province and national level must be mobilized in order to enhance prevention and response mechanism for children who are at risk of being/are in conflict with the law. It is critical to strengthen coordination among the relevant parties (DoLSA, Police, Prosecutor, Judge, Legal Defense Lawyers, NGOs etc).
- Aside from disclosing or sharing information across systems for the purpose of better coordination of services at all levels, serious attention has to be paid to confidentiality. This means that facts related to the case and child shall only be discussed with relevant stakeholders. All persons involved in interviewing the child

for screening and assessment should understand that only relevant questions should be asked. Through their knowledge, the role they play, the skills that they have – social workers can have great influence over someone's life that can affect their future. Therefore, social workers must be aware of their professional ethics and personal values when contributing to decisions made for children and young people that affect their future and the quality of their life.

- The police are the first point of contact between children and the criminal justice system. They are the key actors in diverting children away from the criminal justice system at the earliest possible stage. Police should provide appropriate and non-humiliating treatment to children coming into contact with them as the first contact point. The police can divert minor cases; i.e. through "warning/cautioning" to the child.
- The prosecutor has a central role in diversion and he/she can divert the case away from the formal justice process (court) to alternative measures.
- Importance of "permanency planning" for individual children. Every child has different reasons why they came in conflict with the law and has different needs. Rehabilitation plan should address each child's needs and there should be regular follow-up. It should be recognized that children do progress during the course of rehabilitation - regular review of the child is necessary!
- Safety is paramount not just for the child but also for his/her caregiver(s) and significant others (i.e. siblings). Any assessment of a child or adolescent in the juvenile justice system must begin with an evaluation of the child's current environmental and contextual risk. If a child is still living in a dangerous environment, the social worker must work to ensure that the child is safe. This may require evaluating the extent of the risk, availability of supports in the home or nearby, and the ability of the child to seek help, if needed.

**Alternatives options to detention and use of different measures to hold the child accountable:**

**Warning:** This would involve the police officer telling the child that what he/she did was wrong and warning the child not to do it again. Or this would involve taking the child home and warning the child in the presence of their parents/ guardians.

**Apology to victim:** This would involve the offender apologizing to the victim. This could be done in many ways.

**Counseling session for the child and family** to address the root causes of the offending.

**Put Wrong Right/ Restitution:** Here the child would be asked to put the wrong right. For example if the child has kicked over a dustbin, the child may be asked to put the rubbish back in the bin. The child could also be asked to repay damages back to the victim for what was lost. Here consideration needs to be taken of the child's ability to pay for the damage.

**Community Service:** The child could be asked to perform a certain number of hours of community service or to complete a task for the community. Community service, which works best, is usually linked to the offence in some way and has a developmental and educational function.

**Involvement in a Life Skills Program:** Another possible could involve a child participating in a life skills program run by social services or by a NGO. The life skills program could be run specifically for children who offend or may be run for children in the community generally.

## **Way Forward in 2009**

### **1. CPAN to ensure implementation of LoA in provinces**

Introduction of indicators to measure the level of implementation of the LoA;

INDICATOR 1: Percentage of cases where social workers were contacted within 24h after the arrest.

CPAN to collect from social worker number of cases in which social workers were contacted by the police when a child had been arrested / number of children arrested in the province. This indicator measures the percentage of arrested children who had immediate (< 24 hours) contact with social worker.

INDICATOR 2: Percentage of cases with Social Inquiry Report (SIR) provided to prosecutors.

CPAN to collect from juvenile prosecutor number of SIR filed from social workers to prosecutors / number of children prosecuted in the province. This indicator measures the percentage of children whose case was assisted by social worker to prepare SIR that was submitted to prosecutor for his/her consideration (ANNEX 5: TOR SIR implementation workflow)

### **2. Finalization of SIR and endorsement by MOLSA and AGO – February 2009**

### **3. Development clear criteria and guidelines on diversion and alternative measures for police and prosecutors**

The criteria for diversion and the accompanying authority should be very clear for ALL those involved especially Police and their immediate supervisors, as responses may vary from both. Therefore both should be included in relative training sessions so that the message and process is clear and consistent.

### **4. Development of guidelines for prosecutors on how to use SIR**

Community programme which might also provide info for children regarding their rights and alternative behaviors and a list of all support agencies in the community;  
Alternative Care Programme needs to be considered on a large scale for those children before, during and after the process - who cannot be returned to family care.  
Information about the idea of diversion needs also to be explained to the victim so that he/she understand the idea behind it and support it, again especially by police officers, who are more likely to just front up and demand the child gives an apology without explanation.

### **5. Development of standard training for social workers on SIR**

Intensive training and mentoring by social worker coaching agencies for social workers! (ANNEX 5: TOR SIR implementation workflow)

More small group sessions clarifying the definition and meaning of diversion and SIR, and much practical support on report writing, as it was evident that many were not clear about such a notion!

- ANNEX 1 : Presentation on Diversion (Workshop Handout)
- ANNEX 2 : Guiding Principles of Juvenile Justice (Workshop Handout)
- ANNEX 3 : Case study / Summary of Group Work
- ANNEX 4 : List of Focal Districts
- ANNEX 5 : TOR SIR implementation workflow
- ANNEX 6 : Social Inquiry Report Format
- ANNEX 7 : Juvenile Justice Process Flow Chart

## **ANNEX 1: Presentation on Diversion in the Juvenile Justice System**

### **The Current Situation**

- Currently there are up to 570 children in juvenile rehabilitation centers across the country
- Some of the children are in juvenile rehabilitation centers for very minor offences like theft.
- Some of them have been in pre trial detention for more than 6 months.
- Some are aged 16 years and are serving sentences of about 10 years.
- The children in juvenile rehabilitation centers have only one meal per day and do not have all the necessary requirements for proper child development.
- They do not attend school, they do not have recreation and they do not have anything to occupy them with.
- Children in detention are subjected to different abuses.

### **The Juvenile Code suggests that detention of children should only be the last resort and the shortest period of time.**

- Diversion can be defined as the channelling of young people from the criminal justice system into programmes that make them accountable for their actions. The programmes into which the young people are sent helps in the following:
- It takes place after arrest at either the prosecutor or the Police Station.
- It is way of dealing with children who are at risk of coming in conflict with the law as well as those who have already broken the law.
- It helps develop young people's potential
- Makes young people accountable for their actions
- Encourage them to heal the damage they have caused
- Make them commit their free time to learning a new way of life

## **DIVERSION CAN BE DEFINED AS THE CHANNELLING OF YOUNG PEOPLE FROM THE CRIMINAL JUSTICE SYSTEM INTO PROGRAMMES THAT MAKE THEM ACCOUNTABLE FOR THEIR ACTIONS**

### **Selection of diversion programme**

In selecting a specific diversion option for a particular child at a police station or prosecutors office, consideration shall be given to:

- The child's family background
- The child's educational level, cognitive ability, domestic and environmental circumstances
- The proportionality of the option recommended or selected to the offence
- The interests of the society
- The child's age and developmental needs
- Whether the child is a repeat offender
- Any other peculiar circumstances relating to the child

### **Advantages of diversion**

Diversion programmes aim to reach several objectives related to both the interest of the community and the offender.

- Rather than focusing on punishment, diversion programmes aim at rehabilitation of the offender and prevention of further offences by seeking to address the underlying factors that contribute to criminal behaviour.
- Diversion is advantageous in the case of young juvenile offenders in avoiding an early and often traumatic encounter with the criminal justice system.
- Encourages the child to take responsibility for his or her action.
- Provides a second chance before the offender is confronted with a generally punitive and adversarial criminal justice system. Once the programme is completed, the criminal



charge is will be withdrawn and no criminal record will be maintained, thus facilitating rehabilitation and reintegration.

- Diversion programmes address the specific needs of the individual child.
- Allows for reparation or restitution to the victim.
- Promotes reconciliation between the offender and the victim.
- Saves the child from being labelled as a result of being subjected to the justice system.
- The speed of the process of diversion allows to realize the relation between the breach of the law and or offending behaviour and society's reaction.
- The flexibility of diversion allows various sanctions to be combined to better address the individual situation of the offender.
- Promotes an individualised response to the harm caused.

**DIVERSION IS ADVANTAGEOUS IN THE CASE OF YOUNG JUVENILE OFFENDERS IN AVOIDING AN EARLY AND OFTEN TRAUMATIC ENCOUNTER WITH THE CRIMINAL JUSTICE SYSTEM.**



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## **ANNEX 2: Guiding Principles of Juvenile Justice**

### **The Juvenile Code's unique features include the following:**

- It defines a child as a person below the age of 18.
- It recognizes and places importance on the principle of the best interests of the child.
- It provides clear guidelines on the arrest of a child, ensuring that it is not a traumatic experience.
- It established a juvenile justice system that treats children differently in a manner appropriate to their age and level of maturity.
- Prohibition of torture, capital punishment and life imprisonment without possibility of release for all persons below 18 years.
- It introduces procedures following the arrest of a child. These include:
  - **Criminal responsibility:** establishes the age of a child to determine whether they can be held criminally responsible for their actions (the age of criminal responsibility in Afghanistan is 12 years).
  - **Legal representation:** a child in conflict with the law has the right to be protected within the criminal justice system through legal representation.
  - **Social representation:** social services institutions play an integral part to the administration of juvenile justice.
  - **Specialized prosecutors and courts:** children's cases are to be presided in private by specially trained legal and judicial officers.
  - **Children in custody: Use of deprivation of liberty as a measure of last resort and for the shortest period of time.** In case of deprivation of liberty, the child should be treated with humanity and in a manner that takes into account the special needs of persons of that age. A child can not be detained with adults.
- The Juvenile Code acknowledges that parents have primary responsibility for caring and protecting children.
- Discretion is exercised throughout the juvenile justice system and where ever possible diversion or alternatives to imprisonment should be introduced.

### **What is the impact of the Juvenile Code?**

- It is based on the rights of the child, recognizing the special needs of children and focuses on the best interests of the child.
- The Juvenile Code recognizes the vulnerability of the child, especially when that child comes into conflict with the law and treats that child as a 'child' not as a 'juvenile offender', a label that adds to the child's victimization.
- It recognizes that offence prevention is not just about protecting children who are about to fall into bad association but also includes providing the best possible care and socio-economic support as well as proper parenting to minimize children's chances of resorting to offence.
- The Juvenile Code makes the processing of children through the formal justice system a last resort, and only for extreme cases, for the shortest amount of time, while taking into account the effects of the offence on the victim and the community.
- Act in the best interests of the child. This includes:
  - Reprimand them;
  - Make sure they understand the harm they have caused;
  - Give them the chance to accept responsibility for their actions;
  - Discuss together agreeable solutions to repair the loss or harm caused to the victim;
  - Make sure they won't do it again (this is achieved through the child understanding and taking responsibility, not through corporal punishment).

### **ANNEX 3: Case Studies / Summary of Group Work**

**Case study scenario 1:** Javid is a 15-year-old boy. He was a school student until the age of 12 when he had to drop out due to lack of funds. His father has disappeared and his mother is disabled. He has six siblings who are younger than he is. Javid helps his mother to look after his younger brothers and sisters. He has been looking for a job but is finding it difficult due to his lack of education. There is not enough money to feed and clothe the household. One day, Javid is asked by his mother to walk to the store 'Shopy' and purchase food for the evening meal. He buys the food but he also steals a bar of chocolate on his way out. Javid is apprehended by the security guards and taken to the Police Station.

After you have read through the scenario respond to the following:

1. How might this crime affect Javid and his family?
2. Who should play a role in this case?
3. What are the things important when working with Javid?
4. Different ideas/options for diversion, which are possible in individual case?
5. Who's responsibility is it to explain to Javid what will take place and when do you include Javid's opinion or feelings into this case?
6. Do you think the current process when working with children is too complicated?
7. Which professional would be the most important support for the child in this situation?

**Case study scenario 2:** Zabi and Jamal are friends. Zabi is 15 years old and Jamal is 13 years old. They spend most of their time washing cars and hanging out with others on the streets of Kabul. They usually sleep at the central bus station.

Zabi is more confident, aggressive and daring than Jamal.

He sometimes bullies other, younger children on the streets. He ran away from home at the age of 10 to escape severe beating and bullying by his father. He has not been in contact with his family since that time, although he did try – unsuccessfully – to contact his mother 2 years ago. He is distrustful and disrespectful of adults, especially those in authority. He has been arrested several times for theft and 6 months ago, when he was arrested for smoking hashish, he was beaten badly by the police. He used to dream of being a famous football player, but over the years he has stopped thinking about this.

Jamal is from the countryside. He came to the city 18 months ago to try and earn money to send home to his mother, younger brothers and sisters. At first he kept in regular contact with them, but over the last 6 months, he has started to lose contact with them. He is shy but has a very good sense of humour. He looks up to Zabi. He envies Zabi's confidence and the fact that Zabi always has lots of girlfriends. He doesn't like the fact that Zabi is often very aggressive with the girls, hitting them and shouting at them, but he doesn't say anything as he doesn't want to upset Zabi. He tends to do what Zabi tells him, and tries to impress him as much as possible.

One day, Zabi tells Jamal that they are going to steal some clothes from a market stall. When they steal the clothes, the market stall owner catches them. During the struggle, Zabi pulls out a knife and tries, unsuccessfully, to stab the market stall owner. The police are called. You arrive on the scene. Zabi does all the talking. Jamal is silent.

1. How might this crime affect Zabi and Jamal and his families?
2. Who should play a role in this case?
3. What are the things important when working with Zabi and Jamal?
4. Different ideas/options for diversion that are possible in individual case?
5. Who's responsibility is it to explain to Zabi and Jamal what will take place and when do you include Zabi's and Jamal's opinion or feelings into this case?
6. Do you think the current process when working with children is too complicated?
7. Which professional would be the most important support for the child in this situation?
8. What are the key child protection issues and legal issues in the case?

## Summary of group work:

### Background note:

The aim of this activity is to highlight that although the police and prosecutor are likely to be less sympathetic to Zabi, he is actually the one who has faced more problems / difficult choices in his life and who is in need of more support.

The groups should look again at the options they, as police, can use in dealing with this situation. To what extent are they helping to expand the choices available to these boys?  
Which group can come up with the most number of possible choices / options for action?  
Each group should imagine that they are Zabi (or Jamal, depending on which group they are in). How would Zabi (or Jamal) react to the choices the police make available to them? What support would Zabi (or Jamal) need to carry through those choices?

Make sure that the participants do not 'demonize' Zabi: they need to understand his background. There are still counseling / NGO referral options available to Zabi as well as to Jamal. Emphasize the likely negative effects of detention compared with other options.

### Questions for discussion:

Who do you feel more sympathetic towards? Why?  
Who has experienced fewer 'full choices' or more limited and non-choices?  
Who now has the fewest number of choices available to him in the current situation?  
Who do they think will find it harder to make and carry through those choices? Why?  
Who do you think will take the greatest responsibility for their actions?  
Who is more likely to re-offend / get into even more serious trouble?  
Who needs the greatest amount of support in order to not re-offend? Why?  
What would you do?  
Would you listen to their stories individually?  
Would you treat both boys the same?  
What are the options available to each of them?

### Case evaluation:

Differences between Zabi and Jamal: it is Jamal's first offence, but Zabi is a repeat offender; only Zabi had a weapon; Jamal has better family contact than Zabi.

Similarities between Zabi and Jamal: they are both living in the same environment; they both have something they are good at (Zabi is good at football, Jamal is good at making people laugh) – how can these strengths be brought into their options?

### Recommendations:

In order to gain the best result both Zabi and Jamal need to be offered the greatest range of choices.

Guiding Principles to be taken into account:

1. Act in the best interests of the child: treat each child as if they are your own and based on their individual needs and circumstances;
2. Treat them differently to adults;
3. Do not discriminate.

### **Comments of workshop participants on Zabi:**

Importance of confidentiality: Reputation of the child and his family will suffer, if offence will be known; social workers should listen to the opinion and feelings of Zabi at the beginning and throughout the case.

Legal issues:

- Attempted robbery, repeated offender.

Child protection issues:

- Violence and child abuse in family
- Potential gender violence towards women
- Psychosocial effect of separation on Zabi and his family
- Education
- Homelessness – lack of protective environment
- Use of drugs
- Child labor
- Health issues
- Lack of proper food
- No recreational activities
- Lack of participation and awareness

Response:

- Possible reintegration to family and community, if violence in family can be resolved – counseling for family (or possibility of living with extended family?)
- Treatment against drug addiction
- Education
- Apology to victim

**Comments of workshop participants on Jamal:**

Jamal is the bread winner for the family. If Jamal goes to JRC he might be negatively influenced by other children in detention. People who play important role are the police, the social worker, defense lawyer; (i.e. conduct assessment, always include the child's perspective and opinions into the assessment, and follow up). If those stakeholders work together Jamal's problems might get resolved. They should analyze the case, assess the background of the child and work on the root causes. It might be possible to work with the mother of the child and support her in finding an income generating activity (idea to contact red crescent society); help Jamal to understand that he did something wrong.

Legal issues:

- Attempted theft; use of knife by Zabi is excessive to original planned theft. Jamal did not know about the knife.
- First time offender.

Child protection issues Jamal:

- Poverty – vulnerability of family and child
- Psychosocial effect of separation on Jamal and his family
- Lack of education
- Lack of protective environment / homelessness

Possible response:

- Provide him with vocational training opportunity
- Apology to victim
- Possible reintegration to family
- Income generating activities for parents
- Education

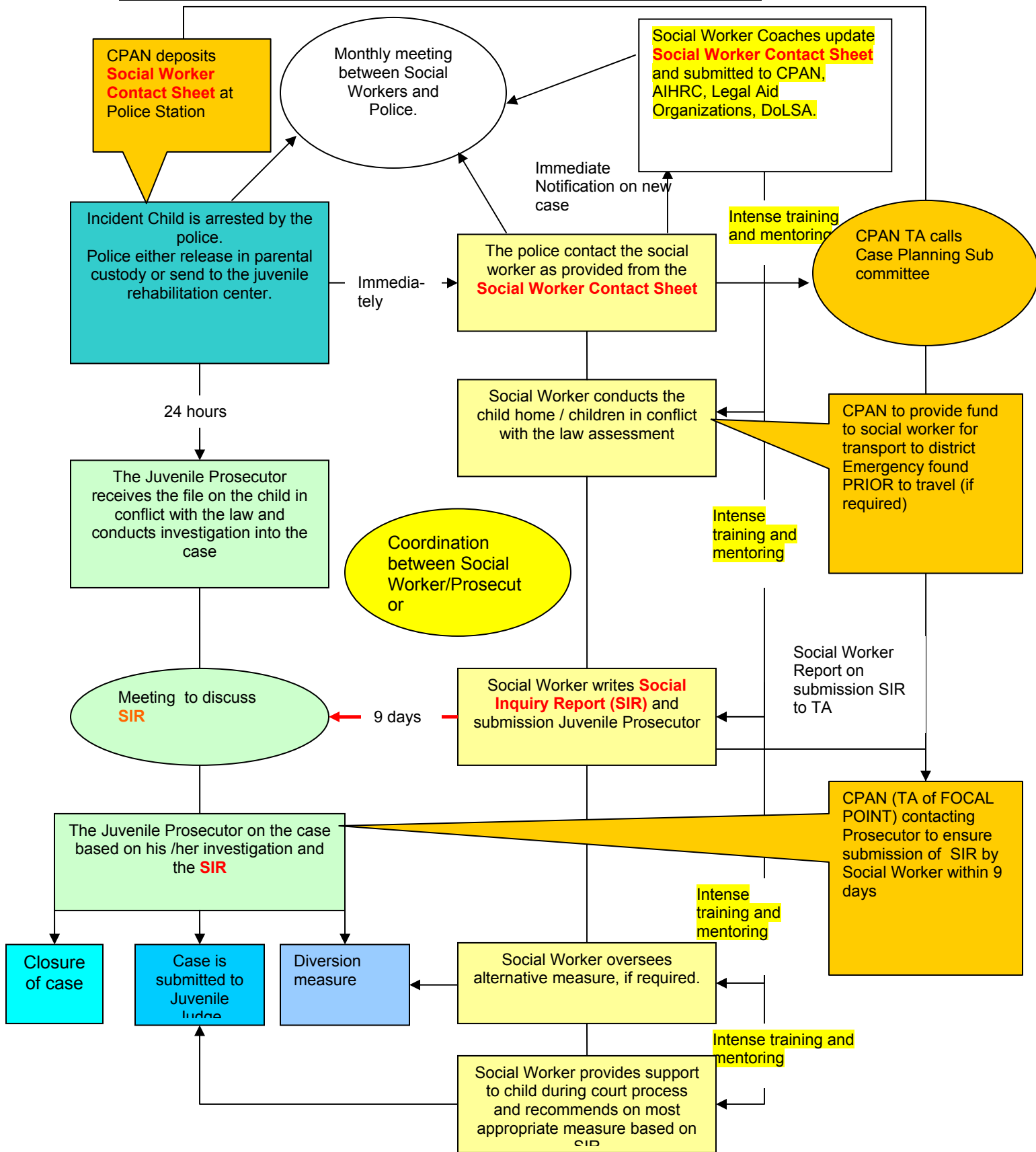
**Key learning point:** Understand and expand children's choices and empower / support them to make those choices. This will help to turn a negative situation into a positive situation as much as possible.

**ANNEX 4: UNICEF Supported Provinces and Districts**

Referrals and Cooperation between Social Workers, Police Officers, and Prosecutors, Letter of Agreement

S. No	Regions	Province	Name of District Selected
1	East	Nangarhar	Surkhroad
2			Behsood
3			Kuz Kunar
4			Mohmand Dara
<b>Sub Total in Eastern Region</b>			
5		Kunduz	Qala-e-Zal
6			Imam Saheb
7			Chardara
8		Baghaln	Dahana-e-Ghori
9			Doshi
<b>Sub Total in Northern Region</b>			
10	Central	Bamyan	Yakawlang
11			Punjab
12			Waras
13			Kahmard
14		Ghazni	Gazni Center
15			Jeghatu
16			Khowa Ja Omari
17			Dehyak
18		Paktia	Gardez
19			Ahmad Aba
20			Sayed Karam
21			Jaji
22	Chamkani		
<b>Sub Total in Centrel Region</b>			
23	West	Herat	Enjil
24			Guzahra
25			Karokh
26			Zindajan
<b>Sub Total in Western Region</b>			
27	South	Kandahar	Dand

**ANNEX 5: TOR Social Inquiry Report Implementation Workflow**



**ANNEX 6: Social Inquiry Report**



MoLSAMD

Office of the Attorney General

Ministry of Interior

**Social Worker Report**

**CONFIDENTIAL**

Case No:	Name of Social Worker:	Phone #:	Date of Submission of Report:
Child's Name	Father's Name:	Contact/Address of parent:	Current Place of the Child
Name of Prosecutor		Provincial Juvenile Prosecuiton Office	
Name of Police		Provincial Police Office	

**CASE FACT**

Time and date of Incident:		Place of incident:	
Child's Perception of the incident	Criminal record	Charged allegation	

Summary of Social worker on child-home study:
Summary of Social worker comments of children in conflict with the law:
Evaluation of case:
Conclusion of Social worker /final Recommendation:
Action taken by SW:

Signature of Submitting Social Worker:

Note: Please attache additional pages & indicate section



