

UNICEF & Penal Reform International 2006: Juvenile Justice Training Manual

MODULE ONE

**INTRODUCTION TO A JUVENILE
JUSTICE SYSTEM**

FACILITATOR'S GUIDE

OBJECTIVES

At the end of this module participants will:

- Identify and reflect on the key principles that guide juvenile justice work.
- Understand the role of different actors in juvenile justice and the need for a multidisciplinary approach.

TIME [2 Hours 15 minutes]

CONTENT

- 1.1 Fundamental Requirements
- 1.2 Overview of a Juvenile Justice System

MODULE OUTLINE

Sessions	Method	Resources	Time
1.1 Fundamental Requirements	Brainstorm	Handout 1, Fundamental Requirements of a Juvenile Justice System.	30 mins
	Group exercise	Handout 2, table showing minimum age of criminal responsibility. ¹	
	Optional presentation	Slides 1- 4, Fundamental Requirements.	
1.2 Overview of a Juvenile Justice System	Slide and pin board	Slides 5 – 7, Overview of Juvenile Justice System; Handout 3, Description of Juvenile Justice Process; Facilitators Note 1, Discretion is exercised throughout the juvenile justice system.	1hr 45 mins
	Exercise	Handout 4, Overview of Juvenile Justice Systems.	

¹ Additional handout providing more information on the age of criminal responsibility is available on the CD-ROM

SESSION 1.1 FUNDAMENTAL REQUIREMENTS

- Purpose** This session enables participants to describe the basic components of a juvenile justice system. Participants will also identify the minimum ages of criminal responsibility in different countries and explore what this means for their work.
- Preparation**
- a) Write objectives on flip chart, review and customize slides, photocopy handouts.
 - b) Take ten round cards and write the ages 7,8,9,10, 12,13,14,15,16,18 on each and post these on a pin board with the numbers facing the board. On ten oblong cards write the groups of countries as indicated in the table in Handout 2. Recreate the table on the pin board but mix up the order of the columns.
 - c) Write up the question for the group discussion on flip chart.
- Materials** Slides 1 – 4; Handout1, Fundamental Requirements of a Juvenile Justice System; Handout 2, table showing minimum age of criminal responsibility.
- Equipment** Laptop with PowerPoint, projector, pin board and cards, flip chart and markers pens.

Activities	Time Estimate (minutes)
<ul style="list-style-type: none"> • Introduce the module objective on flip chart. 	5
<ul style="list-style-type: none"> • Introduce the session purpose. 	
<ul style="list-style-type: none"> • Brainstorm the key characteristics of a Juvenile Justice System. 	10
<u>Steps:</u>	
1. To start off, write up the words ‘Juvenile Justice System’ on a flip chart. Ask participants to discuss with the other participants at their table ² the question ‘what are the characteristics of a Juvenile Justice System according to international standards?’ Example answers; should be in the best interest of the child, respect human dignity.	
2. Ask each table in turn to call out a couple of suggestions and quickly note their responses on a flipchart.	

This exercise is designed as a quick warm up to the topic but if participants are less familiar with juvenile justice systems you may

² Participants should be sitting of groups of 6 to 8 around tables. This seating arrangement encourages participants to get to know one another and is useful for forming groups for quick exercises.

want to spend more time discussing its characteristics. Ask someone to type the group output at the end of the session and distribute it to the participants. 5

3. If the group is new to the topic you may want to show slides 1 – 4, remembering to refer to the output from your brainstorming. Focus on those characteristics not mentioned by the plenary.

- Estimate the age of criminal responsibilities for different countries. 10

Steps:

1. Explain that while children can physically commit crimes, below a certain age they do not have the legal capacity to commit crimes. The Beijing Rules say that “the beginning of that age shall not be fixed at too low an age level, emotional, mental and intellectual maturity of children should be borne in mind when considering whether or not they have the capacity to commit a crime/understand the difference between right and wrong.” All children (under 18) who are above the age of criminal responsibility need to be treated differently from adults. The age of criminal responsibility varies from one country to another.
2. Show the pin board with a duplication of the table from Handout 2 (the cards with the ages on them must be hidden)
3. Point to the first set of countries and ask the group to guess the minimum ages of criminal responsibility. Take a couple of guesses and then turn over the round card showing the correct answer. Repeat for each column. Refer participants to Handout 2 in their participant’s manual.

Ask the plenary the question ‘do you think countries with a higher age are more progressive?’

The response should be ‘not necessarily so’. While the age of criminal responsibility is important the critical issue is the treatment of the child within the system. A high minimum age does not in itself automatically guarantee the rights of children. In fact, it may have the reverse effect. If a child is declared irresponsible up to as high an age as possible, he/she will probably be denied of due process and the presumption of innocence until proven guilty. Therefore, instead of protecting the child’s safeguards, protections and rights will be removed.³

4. Ask participants what they think this implies for their work?
Take a couple of comments then refer participants to Handout 1,

³ Additional information on the age of criminal responsibility is available on the CD-ROM

Fundamental Requirements of a Juvenile Justice System.
Explain that the example in the handout helps to illustrate the
mult-disciplinary approach.

SESSION 1.2 OVERVIEW OF THE JUVENILE JUSTICE SYSTEM

Purpose At the end of the session participants should be able to identify the different stages of the proceedings. They will share experiences around what happens at each stage, who is involved and at what level.

Preparation

- a) Write objectives on flip chart, review slides, photocopy handouts.
- b) Cover one pin board with brown paper to allow you to draw arrows on it later. Write different parts of the process and components of the juvenile justice system as indicated in Handout 3, Description of a Juvenile Justice Process, on separate cards. Post these cards on the pin board randomly.
- c) Write the words ‘Arrest’, ‘Awaiting Trial’, ‘Court Procedure & Sentencing’, ‘Non-Custodial Measures & Residential Placement’ on four separate cards. If more than 30 participants make two sets and give two groups the same issue to discuss.
- d) Possible pre-workshop assignment. Ask participants to provide one page of key points on the system of arrest/awaiting trial/court procedure and sentencing in their country.

Materials Slides 5-7; Handout 3, Description of a Juvenile Justice Process; Handout 4, Overview of Juvenile Justice Systems, Facilitators Note 1, ‘Discretion is exercised throughout the juvenile justice system.

Equipment Laptop with PowerPoint, projector, flip chart, flip chart pens, cards, pin board, push pins.

Activities	Time Estimate (minutes)
<ul style="list-style-type: none"> • Introduce the session purpose. 	
<ul style="list-style-type: none"> • Show slide 5 to illustrate the forms juvenile justice takes. Refer them to the example about the different systems in Europe in Handout 4, Overview of Juvenile Justice Systems, in the participant’s manual. 	5
<ul style="list-style-type: none"> • Explain that you are going to develop a flow chart describing the juvenile justice proceedings on a pin board with the participant’s help. 	30

Steps:

1. Take the first card in the system (the cards have been posted randomly on the board) and place it to mark the beginning of the chart.

Ask the plenary which card comes next and allow yourself to be guided by the plenary as to where to put each card in the sequence.

- 2. When all the cards are placed, draw in the connecting arrows.
 - 3. Go through each stage and ask the question “who is involved?” (refer to Facilitators Note 1, ‘Discretion is exercised throughout the juvenile justice system). Stress to participants that what is important is that all actors work together – and ALL actors have discretion.
 - 4. To conclude the exercise show slides 6 and 7 summarising the juvenile justice system and the key actors involved. Refer participants to Handout 3, Description of Juvenile Justice System, in the participant’s manual 5
 - Group discussion of the juvenile justice proceedings. 5
 - Steps:
 - 1. Divide the participants into four groups. Give each group a card with a separate issue to discuss on it (Arrest’, ‘Awaiting Trial’, ‘Court procedure & Sentencing’, ‘Non-Custodial Measures & Residential Placement’). Explain that the groups have 30 minutes to respond to the following: 30
 - a) Share your experiences of the prevailing system in your country⁴ with respect to the issue on your card.
 - b) Choose one country and summarize the key points of the system on flip chart. Ensure that you comment on the role of the actors.
 - 2. Encourage the participants to think in terms of challenges and common lessons learned in their discussion.

Ask each group to debrief the plenary in turn and check if participants have any questions of clarification between each presentation. 30

 - 3. In conclusion ask the plenary the question “how is the system in your country similar or different to the four systems presented by the groups”. Take a couple of comments.
- Stress the importance of the actors working together in a comprehensive and coordinated way. Ask the plenary; the question “In what ways could collaboration between actors be improved?” and quickly note their responses on flip chart.
- [Alternative: Prepare this task as a pre-workshop assignment. Ask participants to provide one page of key points on the system of arrest/awaiting trial/court procedure and sentencing in their

⁴ if participants are from the same country this exercise should take less time.

country. In each group one participant, identified ahead of time, presents his/her experience on flip chart. The group discusses the points of similarity and difference and debrief in plenary].

- Refer participants to Handout 4, Overview of Juvenile Justice Systems, in the participant's manual.

Power Point Slides Session 1-7

The slides are available on the CD-ROM

Slide No	Suggested Speaking Points
<p>The system must be rational and humane</p> <ol style="list-style-type: none"> 1. Effective in reaching its goals 2. Cost effective in doing so 3. Respect for human dignity 4. Refer to the United Nations treaties. 	<p>Explain to the participants that the vision behind all the UN human rights treaties is promoting respect for the dignity of each person. Ask the participants for some examples of what that means. Responses might include the right to life, education, freedom from torture....</p>
1 Optional	
<p>The child needs to be treated with humanity</p> <ul style="list-style-type: none"> - Prohibition of torture, capital punishment and life imprisonment without possibility of release for all persons below 18 years - 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 	<p>Before showing the slide ask participants for some examples of what it means to treat a child with humanity.</p> <p>The Convention on the Rights of the Child (CRC) clearly forbids torture, capital punishment and life imprisonment without the possibility of release for all persons below 18 years.</p>
2 Optional	
<p>The system shall be child-centered or child-oriented</p> <ul style="list-style-type: none"> - The child is subject to fundamental rights and freedoms - All actions concerning the child need to be guided by his/her best interests 	
3 Optional	
<p>Specialization and multidisciplinary approach</p> <ul style="list-style-type: none"> - A juvenile justice system shall aim to encourage specialization in child justice practice - A distinct system that treats children differently in a manner appropriate to their age and level of maturity - The approach has to involve all the actors 	
4 Optional	

Models of Law		
Penal Law	Juvenile justice law	Civil Law
Criminal Law		Protective Services
Crimes	Juvenile offences	Children in need of protection and care etc
Jails & Prisons, rehabilitation/protect public punishment	Never jail or prison only help for the child and family never punishment	

5

Explain that there are three systems for responding to wrongdoing. These systems are separate but there is also inter-play and overlap between them.

Juvenile justice takes many forms. It can be a judicial or extra-judicial system or a combination of both. It can be a vehicle for civil or criminal law or part of the social welfare system.

Juvenile justice systems can be limited to criminal matters or deal also with welfare and social problems of children who are in some of kind of danger. It can also take on family matters.

Discretion is exercised throughout the juvenile justice system

Discretion is defined as:

An authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgment and conscience according to the rules of equity and the nature of the circumstances.

6

The flow chart shows us that discretion is exercised throughout the juvenile justice system.

The slide is animated so that you can ask the participants if they know what we mean by discretion and then show the official definition.

Who exercises discretion?	These criminal justice officials... must often decide whether or not or how to
Police	Enforce specific laws Investigate specific crimes Search people, vehicles, and buildings Arrest or detain people
Prosecutors	File charges or petitions for adjudication Seek indictments Drop cases Reduce charges
Judges or magistrates	Set bail or conditions for release Accept pleas Determine delinquency Dismiss charges Impose sentence Revoke probation
Correctional officials	

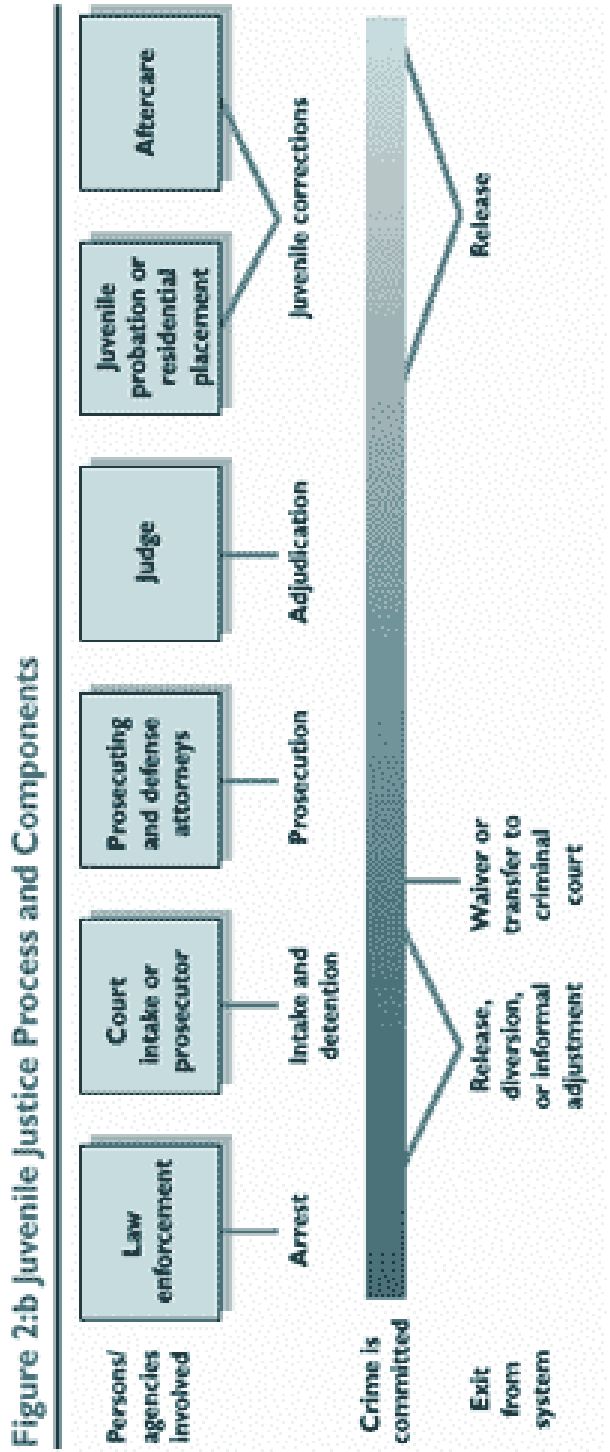
7

Who exercises discretion?

The slide is animated so that you can show each official and ask what it is that that a particular official does in exercising discretion.

After the participants have called up their suggestions you can fade in the response on the slide.

Facilitator’s Note 1 Use this example from the USA when discussing the flow chart showing juvenile justice proceedings. Point out that discretion is exercised throughout the juvenile justice system:



ADDITIONAL READING

Innocenti Digest 3, Juvenile Justice, www.unicef-icdc.it

More information is available in English at:

www.cjcj.org/pub/index.php (Publications of the American National Center on Juvenile and Criminal Justice)

<http://odjdp.ncjrs.org/publications/index.html> (Publications of the American Office of Juvenile Justice and delinquency prevention)

CHECKLIST FOR FACILITATORS

Key Message/ Reflective Questions
When you start to work on juvenile justice remember you must work with all the actors – there are multiple systems involving different actors who need to work together.
You need to show presence at different stages within these multiple systems.

BRAINSTORMING

Brainstorming can generate a great many ideas quickly. It allows the facilitator to access the skills and knowledge that exist in most groups and enhance the creativity and synergy that occurs when participants work together. It is not a discussion, but rather an opportunity for participants to think out loud.

The process usually involves posing a specific question and asking participants for their 'top-of-the-head' responses, limited to one or two words. As participants make their suggestions, the facilitator records them on a flip chart or whiteboard. No attempt is made, at this stage, to reorganize or explain the suggestions – the intention is to encourage creative or innovative thinking. Ask a negatively phrased question e.g. "What's wrong with our current juvenile justice system?" when you want the participants to analyze an issue whose causes have not yet been defined. Ask a positively phrased question to generate creative solutions e.g. "how can we increase our resources?"

It is important that the facilitator does not interfere in the process by interjecting suggestions or ideas that may come from other workshops, or from the objectives established for the session. Those can all be brought up later, during the discussion. For the brainstorming, the facilitator is merely responsible for posing the question in the first place, encouraging responses and recording those responses without judgment or comment.

Once the ideas are out in the open for everyone to see, there may be a discussion in small groups or in the plenary on how to put the ideas into practice.

Do not let the brainstorming go on too long, the participants' concentration will start to wane after approximately 10-15 minutes.

Tips for brainstorming include:

- Go around participants/groups one by one.
- Encourage all participants to contribute but don't force them, allow them to reflect on their contribution and come back to them.
- Encourage participants to reformulate and explain any unclear ideas.
- Record actual words.
- Let people talk.
- No idea is a bad idea.

MODULE ONE

**INTRODUCTION TO A JUVENILE
JUSTICE SYSTEM**

PARTICIPANT'S MATERIALS

INTRODUCTION TO A JUVENILE JUSTICE SYSTEM**OBJECTIVES**

At the end of this module participants will:

- Identify and reflect on various ideas about juvenile justice.
- Understand the role of different actors in juvenile justice and the need for a multidisciplinary approach.

TIME [2 Hours 15 minutes]

CONTENT

- 1.1 Fundamental Requirements
- 1.2 Overview of a Juvenile Justice System

Fundamental Requirements of a Juvenile Justice System

The System Must Be Rational and Humane

The vision behind all of the UN human rights treaties is promoting respect for the dignity of each person, for instance, the right to life, freedom of expression, freedom from torture, the right to education, and the right to an adequate standard of living.

Consequently, a humane system is one that a) respects human dignity and b) refers to the UN human rights treaties, to the various declarations and to the developmental needs of children.

A rational system is one that is effective in reaching its goals and is cost-effective in doing so.

Children Need To Be Treated with Humanity

In view of this principle, the Convention on the Rights of the Child (CRC) clearly forbids torture, capital punishment and life imprisonment without the possibility of release for all persons below 18 years, while limiting the use of deprivation of liberty as a measure of last resort – when all other alternative solutions do not seem possible or adequate. In those cases when it is required, it should only be administered for the shortest period possible.

Deprivation of liberty can never be unlawful or arbitrary – thus it has to be in accordance with the law and follow legal conditions, including review through a judicial decision. In cases of deprivation of liberty, children should be treated with humanity and in a manner that takes into account their special needs including the right to enjoy appropriate assistance.

The System Shall Be Child-Centered (or Child-Oriented).

A child-centered system recognizes the child as subject to fundamental rights and freedoms and ensures that all actions concerning the child are to be guided by his/her best interests.

In the juvenile justice field, a child-centered system focuses not only on specific juvenile justice guidelines, but also a constant holistic re-evaluation of programmes based on the four guiding principles: the best interests of the child, non-discrimination, participation, and the right to life, survival and development. In combination, these principles add up to an approach that views each child as an individual human being, deserving of rights and capable of participating in the process of achieving them in a supportive and adequately resourced environment.

Specialization and Multidisciplinary Approach

A juvenile justice system shall aim to encourage specialization in child justice practice and the development of a distinct and unique system of criminal justice that treats children in a manner appropriate to their age and level of maturity and which develops institutions and systems designed to achieve that goal.

What this refers to is not a *single juvenile justice* system, but *multiple, inter-connected* systems. The police, the prosecutors, the courts, the lawyers, the social workers and probation officers, the jails and prisons, the juvenile officers, and the rehabilitation, prevention, and diversion programmes are each systems in their own right. Each one is a relatively autonomous bureaucratic unit within the government, with its own objectives, performance standards and command structure, and each system is in competition with all the others for its share of the national budget. Thus, the approach has to involve all the actors from the outset and lay special emphasis on cooperation and coordination between the relevant agencies.

Example: One-stop child justice centers in South Africa.

A South African example of the implementation of practices designed to improve the overall treatment of children in conflict with the law is found in 'one-stop child justice center'. The intention of the one-stop child justice centre is to bring together police, social workers (or probation workers) and a dedicated court to deal with juvenile cases under one roof. The benefits are improved access to diversion; shorter detention and awaiting trial periods for children; better quality services aimed at respecting the rights of children, and enhanced coordination between the various departmental officials who play a role in processing cases involving children.

The first one-stop child justice center in South Africa was established as a pilot project at Stepping Stones in Port Elizabeth. The center adopts a holistic approach: arrested children are charged, assessed and appear in court at the same locality in order to ensure a coordination of services. The police components include a dedicated charge office, dedicated staff and awaiting trial cells within the centre. This means that the first port of call for many children is a facility dedicated to children where they will have no contact with adult offenders.

The court has also entered into an arrangement with the Legal Aid Board, which has designated one particular attorney to deal with all the referrals that come from the center. The intention is to ensure that the children receive proper legal services and that they are represented by an experienced attorney who understands and is aware of all the existing programmes available for children, and can therefore provide the necessary and appropriate services to child offenders. This also provides consistency and promotes good working relationships and collaboration between the court personnel and the Legal Aid Board. Where the matter is to be diverted, no attorney is

appointed. However, where the child offender enters a plea of guilty and the matter is serious, or where the matter is to proceed to trial, the magistrate at Stepping Stones will ensure that it is referred to the Legal Aid Board for the appointment of the designated attorney.

Issue for Discussion: The Situation of Children Under The Age Limit

Children who commit an illegal act but are too young to be held responsible under the laws on juvenile offenders are, in most cases, dealt with under other legal procedures. Children under the age limit do not simply escape responsibility, they are dealt with under laws and procedures based on different principles and mostly within the welfare approach.

The issue is more complex than it seems. A high minimum age does not in itself automatically guarantee the rights of children. In fact, it may have the reverse effect. If a child is declared irresponsible he/she will be probably denied of due process and the presumption of innocence until proven guilty. Therefore, instead of protecting the child, safeguards and rights will be removed. Authorities are in this case not looking at the child as a responsible person with rights but as an irresponsible person who has to be protected by others.

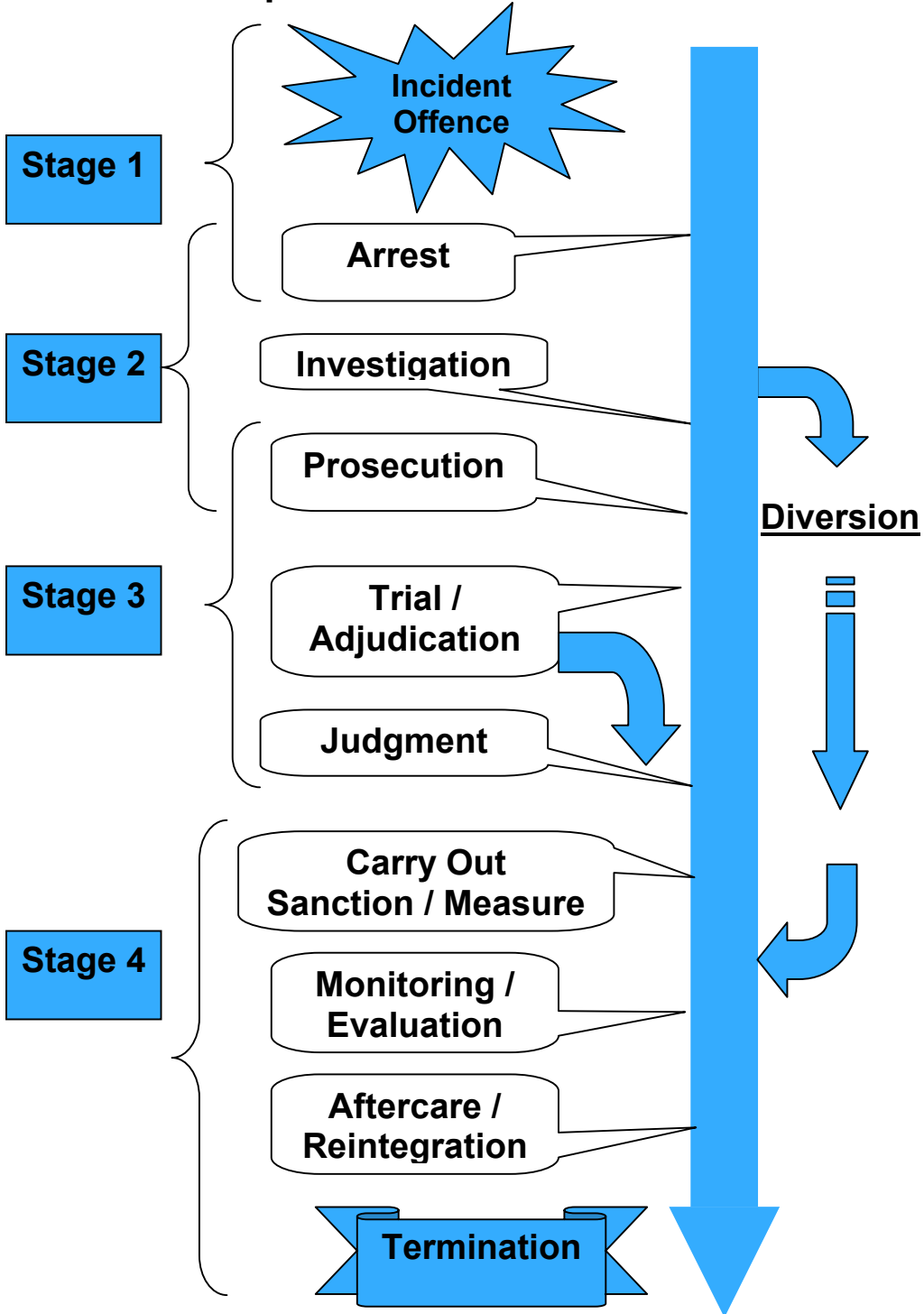
The aim of a minimum age of criminal responsibility is to protect children from having to enter the penal system, presumably because of the negative effects the system could have on them. However, an administrative body is not bound by the same rules as the judicial system, and the child has no recourse if the body acts in an arbitrary manner. The child can be placed in an institution on welfare grounds without trial and has no possibility of judicial review or appeal.

At the other extreme, the response to minor offences by a child may be to dismiss him or her with a police caution, which takes no account of the child's situation and need for assistance. Because the child is under the minimum age of criminal responsibility, it is widely felt that society therefore has no grounds for reacting: offending is not looked on as an indication of a child's possible problems that need to be investigated and, if necessary, addressed.

The following table gives an indication of the minimum age of criminal responsibility in a number of countries.

MINIMUM AGES OF CRIMINAL RESPONSIBILITY	
7	Bangladesh India Jordan Lebanon Mauritania Namibia Nigeria Pakistan Sudan Tanzania Thailand Zimbabwe
8	Australia (ACT) Kenya Iran - (girls) Scotland Sri Lanka
9	Ethiopia Philippines
10	Australia (Most states) Cameroon Nepal Nicaragua Sierra Leone Switzerland UK (Except Scotland)
12	Canada Ghana Jamaica Korea Morocco Spain Uganda Yemen
13	Algeria Benin Burkina Faso Chad France Gabon Guinea Liberia Madagascar Mali Niger Sao Tome Senegal Tunisia Uzbekistan
14	Belarus Bolivia China Croatia Germany Italy Japan Korea Paraguay Romania Russian Fed Rwanda Ukraine Vietnam Yugoslavia
15	Denmark Egypt Finland Iceland Iran - (boys) Norway Peru Sudan Sweden
16	Argentina Belarus Belgium Bolivia Chile El Salvador Guinea Bissau Indonesia Poland Portugal Spain
18	Brazil Columbia Costa Rica Peru

Description of a Juvenile Justice Process



Overview of Juvenile Justice Systems

In theory, a 'juvenile justice system' is made up of the legislation, processes, institutions and personnel involved in the treatment of children accused of committing a criminal offence. Due to the specific needs and circumstances of children, this needs to be distinct from the workings of the regular adult criminal justice system. However, in reality there are problems with the term 'juvenile justice system'.

There is no one single system but a complex mixture and overlap between many different systems: children pass through processes, institutions and personnel from a variety of different government departments, agencies and organizations such as the police, social welfare and probation departments, the judiciary, lawyers, detention centers and prisons. Although these systems are supposed to be interrelated, coordinated and interdependent, in reality each sector has its own mandate, budget authority, regulations, governing body and political agenda.

In some countries, even if a separate 'system' for the treatment of children (as opposed to adults) exists in theory, in practice children are often still processed through the adult criminal justice system. The term 'juvenile justice system' may therefore be misleading in this regard.

Models

Generally, countries have three systems for responding to wrongdoing. These three systems allow state officials to forcibly intervene in people's lives, and the judicial branch of the government plays an important role in regulating the way the law is applied.

Two of these, the criminal and the juvenile systems, are parts of penal law, while the third, child protective services, is a civil law system.

These three systems are *separate*, but there is also *interplay* between them, as well as *overlap*. In order to understand what a juvenile justice system is, it is necessary to compare and contrast it to the other two systems.

Juvenile justice takes many forms. It can be a judicial or extra-judicial system or a combination of both. It can be a vehicle for civil or criminal law or part of the social welfare system. In practice, some countries assign ordinary criminal courts to deal with children; in others, there are separate juvenile courts or even extra-judiciary systems.

Some countries limit juvenile justice to criminal matters; others use the system to deal also with welfare and social problems involving children who are in some kind of danger.

Still others also take on civil matters and act as a family court, handling adoption and the consequences of a divorce on children.

However, many countries have special systems to deal with children who commit offences. All special systems are inspired by a welfare approach: punishments are excluded, or are to be adapted to the special needs of children.

Two main factors play a role in arguing for such systems. Firstly, the age of minority is used as a diminishment of guilt, as children are considered less capable of understanding and willing. Secondly, it is believed that child offenders can, more than adults, be influenced positively. Punishments or measures should therefore be pedagogic. In juvenile justice, the retributive character has faded away and the rehabilitative approach has become predominant.

Despite the common basic assumptions, there are major differences in the way countries elaborate their own systems. The struggle with the very difficult combination of a welfare approach and a punitive response surfaces in some judicial structures. Systems everywhere have undergone a great deal of doctoring. It seems that the satisfactory solution has not been found anywhere.

Description of a Juvenile Justice System

The process starts with identifying children at risk of committing crime and consequently run crime prevention programmes for school-going and out-of-school children.

When a crime is witnessed or reported, law enforcement personnel investigate, apprehend and may arrest the child offender. Depending on the crime, some may exit the juvenile justice system after apprehension and/or arrest. However, children who are arrested will go through screening and an 'intake process' in some systems. They may be held in detention prior to their initial hearing or released to their parents or guardians. Some children remain in detention until their cases are prosecuted and adjudicated, whereas others are released until they return to court. Some may exit the system after a first hearing.

A case that proceeds for formal processing by a juvenile court usually involves a prosecuting attorney, if applicable, or a prosecutor and a judge or a court. A lawyer is also available to the children. In some cases, juries may be used in children's cases. After adjudication, if the court finds the child guilty it makes a disposition. This might involve placing the child on informal supervision or formal community supervision or in residential facilities, including jails. Children under formal community supervision are placed on probation and supervised by a probation officer or appropriate service under a judge or service's responsibility. The probation officer is responsible for making assessments, case plans, referrals, supervising the child's progress, enforcing the court's conditions and returning the child to court if necessary. After completing probation, a child may be released.

For those who are placed in residential facilities, residential programmes are responsible for the child's total care, treatment and well-being. Following a residential placement, children receive aftercare services through which professionals supervise, monitor and assist them with reintegration into their families and the community.

Discretion Is Exercised Throughout the Juvenile Justice System:

The juvenile justice system allows vast amounts of discretion for the various participants in the system.

Discretion is "an authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgment and conscience according to the rules of equity and the nature of circumstances". It is a part of decision-making in all government systems from mental health to education, as well as criminal justice. The limits of discretion vary from jurisdiction to jurisdiction.

Therefore, persons charged with the day-to-day response to crime are expected to exercise their own judgment within limits set by law. Basically, they must decide:

- Whether to take action
- Where the situation fits in the scheme of law, rules, and precedent
- Which official response is appropriate.

To ensure that discretion is exercised responsibly, government authority is often delegated to professionals.

Professionalism requires a minimum level of training and orientation, which guide officials in making decisions. Discretion should always be exercised after consultation with a child and his/her parents (or substituting parents) in manner that does not result in a breach of a child's rights.

Who Exercises Discretion?

These criminal justice officials must often decide whether or not or how to:

Police

Enforce specific laws
Investigate specific crimes
Search people, vicinities, and buildings
Arrest or detain people

Prosecutors

File charges or petitions for adjudication
Seek indictments
Drop cases
Reduce charges

Judges or Magistrates Set bail or conditions for release
Accept pleas
Determine delinquency
Dismiss charges
Impose sentence
Revoke probation

Correctional Officials Assign to type of correctional facility
Award privileges
Punish for disciplinary infractions

Examples of Systems in Europe

In all Western European countries, various organisations are active in dealing with child offenders and their families. With the exception of Denmark and Scotland, specialised courts for children exist, but their organisation and authority differ. Ireland is a somewhat special case, as the only full-time Children's Court exists in Dublin, while child offenders are treated elsewhere by the District Court in a special summary jurisdiction, separately from adults.

In Belgium, France, Italy, and the Netherlands the juvenile courts are also authorised with regard to so-called civil or protective matters i.e. imposing measures for the protection of the educational circumstances of children. This shows the explicit welfare or educative orientation of these courts and the juvenile penal law that directs their interventions. In Belgium, penal law for children does not exist and child offenders are approached by judicial juvenile protection.

In Germany and in England and Wales jurisdiction over child offenders is strictly separated from welfare intervention. In Germany, coercive welfare interventions are ordered by a local Guardianship Court ('Vormundschaftsgericht'), while sanctions against child offenders are imposed by the Juvenile Court ('Jugendgericht'). In England and Wales, the 'Family proceedings' panel of the Magistrates' Court is authorised for the former, and the Youth Court for the latter.

In most countries, a professional judge has his seat in the Juvenile Court (or the 'Children's Court' or 'Youth Court', according to the different terminologies), but sometimes, as in Italy, he is assisted by two non-professional observers. In France and Germany the juvenile penal jurisdiction provides three steps: the professional judge presides alone in less serious cases; the more serious cases are heard by an intermediate court composed of the judge and 'assesseurs'; for the most serious

category of offences, the child is referred to the '*Cour d'Assises des mineurs*' or to the '*Jugendkammer*'.

In England and Wales, the Youth Court consists of three lay magistrates, advised by a legally qualified clerk. The pedagogic motivation remains very important for the sentence, but more attention seems to be paid to individualisation, persistence, and the seriousness of the delinquency and on representing the community in a sensible common sense way. In practice, the justice-orientation seems to be stronger than the welfare-orientation.

In Scotland and Denmark, no special court exists for children.

In Denmark the Local Welfare Authorities, who also deal with all kinds of social aid (the disabled, elderly people,...), are fully authorised until the age of 15. They primarily offer help. If coercive measures are taken, the parents and the children have the aid of a lawyer. From the age of 15, all offenders appear, in principle, before the regular judge, but up to the age of 18 special procedure rules are followed, so that the Welfare Authorities can exercise a strong influence on the jurisdiction. In addition, for the implementation of punishment special rules and systems apply to children.

In Scotland, the Children's Hearing is the most important institution in relation to child offenders up to the age of 16. With the exception of offenders committing very serious offences (who, from the age of 8, appear in the regular courts), all child offenders are referred to the Reporter who can decide to refer the case to the Children's Hearing. In addition, cases of children who are in need of care and protection can be referred to. A Hearing consists of three non-professionals who are given a kind of training when they are appointed and are regularly counselled. This institution can only decide whether the child is in need of compulsory measures of care and the contents of these measures. Cooperation with the Social Work Departments, which are also in charge of general welfare work, is very intense. From the age of 16, child offenders appear before the regular criminal judge, unless they had previously been under the supervision of the Children's Hearing. In that case, they can remain under this authority up to the age of 18 years.