

**MODULE FOUR          ARREST**

**FACILITATOR'S GUIDE**

## OBJECTIVES

At the end of this module participants will:

- Know the rules governing police intervention and requirements for a lawful arrest.
- Have learnt about the screening process and looked at practical ways to apply such process at national level.
- Understand how a child can be diverted by police.

**TIME** [3 Hours 10 minutes]

## CONTENT

- 4.1 Arrest and Treatment of an Arrested Child
- 4.2 The Screening Process
- 4.3 Diversion by Police

## MODULE OUTLINE

Sessions	Method	Resources	Time
4.1 Arrest and Treatment of an Arrested Child	Group discussion	Handout 1, Summary of Police Intervention; Slide 1-2, Requirements for a lawful arrest.	1 hr 10
	Case study	Handout 2, Arrest and Treatment of an Arrested Child Exercise 1, case of DH.	
4.2 The Screening Process	Presentation	Slides 3-5; Handout 3, Screening Process: Example of Malawi; Handout 4, Screening form in Malawi; Handout 5, The Screening Process.	1 hr 15
	Group discussion		
4.3 Diversion by Police <sup>1</sup>	Brainstorming discussion	Handout 6, Possible Diversionary Options for Police.	45
	Presentation	Slides 7-11	
	Case study	Handout 7, Diversion by police; Exercise 1, Diversion by police – case of Ben and Nigel’s arrest.	

<sup>1</sup> Refer to Module 7 session 7.1 for additional training on the conditions of detention, which are of particular importance in training police officers.

**SESSION 4.1 ARREST AND TREATMENT OF AN ARRESTED CHILD**

**Purpose** Participants should understand the process of police intervention and the requirements for lawful arrest.

**Preparation** Write objectives on flip chart, review slides, photocopy handouts. Write each stage of the summary of Handout 1, Summary of Police Intervention, on a separate VIPP card.

**Materials** Handout 1, Summary of Police Intervention; Handout 2, Arrest and Treatment of an Arrested Child; slides 1 and 2; Exercise 1, case of DH.

**Equipment** Laptop with PowerPoint, projector, pin board, cards, pushpins and markers.

<b>Activities</b>	<b>Time Estimate (minutes)</b>
<ul style="list-style-type: none"> <li>• Introduce the module objectives on flip chart.</li> </ul>	5
<ul style="list-style-type: none"> <li>• Introduce the session purpose.</li> </ul>	
<ul style="list-style-type: none"> <li>• Explain the summary of Police Intervention using a pin board.</li> </ul> <p><u>Steps:</u></p> <ol style="list-style-type: none"> <li>1. Present each stage from Handout 1 on a separate card and explain the process as you put each stage up.</li> <li>2. Refer participants to Handout 1, Summary of Police Intervention, in the participant’s manual.</li> </ol>	5
<ul style="list-style-type: none"> <li>• Show slides 1 and 2 on requirements for a lawful arrest<sup>2</sup>.</li> </ul>	5
<ul style="list-style-type: none"> <li>• In groups, discuss the case study of the arrest of DH and analyze the points of deviation and compliance with a lawful arrest.</li> </ul> <p><u>Steps:</u></p> <ol style="list-style-type: none"> <li>1. Divide participants into four groups and refer to Exercise 1 in the participant’s manual. Ask the groups to spend 5 minutes reading the case study individually before answering the questions: “Do you agree with the Court’s ruling? Why?”</li> <li>2. Encourage participants to list the positive and negative aspects of the way the case was handled.</li> </ol>	15
<p>Ask one or two groups to share their observations in plenary. Invite others to comment.</p>	15

---

<sup>2</sup> When training police officers, refer to the debriefing points in Module 7, Session 7.1, ‘developing a checklist of the conditions of care in detention’ and Module 7 Handout 2, Detention in Police Custody.

- Refer participants to Handout 2, Arrest and Treatment of an arrested child, in the participant's manual. 1

**SESSION 4.2 SCREENING PROCESS**

- Purpose** To learn about the screening process and discuss how the screening process can be improved in participant’s own country of work.
- Preparation** Write objectives on flip chart, review slides, photocopy handouts.
- Materials** Handout 3, Screening Process: example of Malawi, Handout 4 Screening form in Malawi; Handout 5 The Screening Process, slide 3 - 5.
- Equipment** Laptop with PowerPoint, projector, 4 flip charts and marker pens.

<b>Activities</b>	<b>Time Estimate (minutes)</b>
<ul style="list-style-type: none"> <li>• Introduce the session purpose.</li> </ul>	
<ul style="list-style-type: none"> <li>• Presentation using slides 3-6 on assessment, refer participants to Handout 3, the Malawi flow chart in the participant’s manual.</li> </ul>	15
<ul style="list-style-type: none"> <li>• Group discussion of the screening process.</li> </ul>	
<p><u>Steps:</u></p>	30
<ol style="list-style-type: none"> <li>1. Refer participants to the box ‘child assessed’ in Handout 3, the screening process in Malawi, and give them the example questionnaire from Handout 4. Explain that this form is used by the Paralegal Advisory Service in Malawi to screen children in conflict with the law. It includes questions on the background of the child, treatment by police, home circumstances, and a space for recommendation by the screener.</li> </ol>	
<ol style="list-style-type: none"> <li>2. In the same groups ask participants to respond to the following questions:               <ol style="list-style-type: none"> <li>a) How would you customize the questionnaire for your country’s situation?</li> <li>b) What are some of the challenges for effective screening processes and what actions can you take to positively influence the introduction of such processes?</li> </ol> </li> </ol>	30
<ol style="list-style-type: none"> <li>3. Give each group a flip chart and ask them to prepare to present on the challenges and actions only.</li> </ol>	
<ol style="list-style-type: none"> <li>4. Invite one group to debrief in plenary and the other groups to add any points not yet mentioned.</li> </ol>	
<ul style="list-style-type: none"> <li>• Refer participants to Handout 5, The Screening Process and the South Africa example in the participant’s manual.</li> </ul>	

**SESSION 4.3 DIVERSION BY POLICE**

- Purpose** Understand how a child can be diverted by police and identify ways to divert children by using diversionary options.
- Preparation** Write objectives on flip chart, review slides, photocopy handouts.
- Materials** Handout 6, Possible Diversionary Options for Police; Handout 7, Diversion by Police; Exercise 1, Diversion by Police, case of Ben and Nigel’s arrest; Slides 7 -10.
- Equipment** Laptop with PowerPoint, projector, 4 flip charts and marker pens.

<b>Activities</b>	<b>Time Estimate (minutes)</b>
<ul style="list-style-type: none"> <li>• Introduce the session purpose.</li> </ul>	
<ul style="list-style-type: none"> <li>• Plenary brainstorm of possible diversionary options used by police  <u>Steps:</u> <ol style="list-style-type: none"> <li>1. At their tables ask participants to discuss the question: “what are the possible diversionary options that are used by the police?”</li> <li>2. Quickly note their responses on a flip chart.</li> <li>3. Refer participants to Handout 6, Possible Diversionary Options for Police, in the participant’s manual.</li> </ol> </li> </ul>	15
<ul style="list-style-type: none"> <li>• Presentation, show slides 7-10 on Diversion by Police.</li> </ul>	10
<ul style="list-style-type: none"> <li>• Discuss the case study, Ben and Nigel’s arrest, to explore the diversionary options available to police.  <u>Steps:</u> <ol style="list-style-type: none"> <li>1. Divide the plenary into four groups. Give two groups case study one; Ben, and the other two groups case study two; Nigel. Ask participants to read through the case study and respond to the following questions: “Recommend a plan that responds to the situation, listing:                             <ol style="list-style-type: none"> <li>a) What actions would you take to address the victim’s needs?</li> <li>b) What actions would you take to address the accused child’s needs?”</li> </ol> </li> </ol> </li> </ul>	20
<ol style="list-style-type: none"> <li>2. Give each group a flip chart and ask them to nominate a presenter. Ask one of the groups working on case study one to report on their discussion, then invite the other group working on case one to add any points not yet mentioned. Move to case study two.</li> </ol>	25
<ul style="list-style-type: none"> <li>• Distribute Handout 7, Diversion by Police.</li> </ul>	

## Power Point Slides 1 -10

The slides are available on the CD-ROM

Slide No	Speaking Points
<p><b>Requirements for a lawful arrest</b></p> <p>Every person, including a child who is arrested for allegedly committing an offence has the right:</p> <ul style="list-style-type: none"> <li>• To remain silent</li> <li>• To be informed promptly of the charges</li> <li>• Not to be compelled to make any confession or admission that could be used in evidence against him/her</li> <li>• To be brought before a court as soon as reasonably possible</li> <li>• To have the assistance of a lawyer</li> </ul>	<p>Ask the plenary if they know the requirements for a lawful arrest e.g. the right to remain silent.</p> <p>Collect as many responses as you can from the group. Show slide 1.</p>
<p><b>Requirements</b></p> <ul style="list-style-type: none"> <li>• The police officer should confirm the age of the child</li> <li>• Minimum force should be used in dealing with children</li> <li>• The police must, as soon as possible after arrest, explain the nature of the allegations in a manner the child can understand</li> <li>• Separation from adults during transportation or transportation with supervision</li> <li>• Once arrested or detained, a child is to be advised immediately his/her right to counsel</li> <li>• A parent or guardian should be notified immediately after the child is apprehended or, if this is impossible, "within the shortest possible time thereafter"</li> </ul>	<p>Click to bring on point 1, stressing that it is the responsibility of the police to check on the age of the child at the point of arrest. Mention that Article 7(1) of the United Nations Convention on the Rights of the Child states: "the child shall be registered immediately after birth". Explain that for various reasons, many children were not registered at birth or have had their registration documents destroyed. This presents a challenge for law enforcement officers who wish to confirm the identity or age of a child.</p>
<p><b>1</b></p> <p><b>2</b></p>	<p>Ask if they know the possible strategies the police can use to determine the age and identity of a child.</p> <p>Possible solutions include:</p> <p>Track down the child's area of origin and find people who know the child and /or his/her family. In this regard, parents, family members and other relatives should be a primary source of information in identifying the child and establishing a child's correct age. However, if a police officer is still concerned about the correct age of a child after obtaining information from this source, the police officer may have to seek other evidence regarding the child's age, for example:</p> <p>Finding the church (es) in the area where a child was born and establish contact with the priest/ pastor. Religious leaders can be helpful too.</p> <p>Finding the traditional or professional midwife, doctors, clinics or nursery to confirm basic information (like date and time of birth, name of the family, name of the baby, available address).</p> <p>Linking with community leaders and other role players involved in registration (NGOs, commissions, civil registry).</p> <p>Click to bring on the remaining points.</p>

**General introduction to assessment**

- Assessment (or screening) is a process of evaluation of the child, the child’s home or family circumstances, the nature and circumstances surrounding the alleged commission of the offence, and whether the child accepts responsibility for the offence
- The possibility of diversion to court inquiry is investigated and also diversion or other restorative justice options
- Assessment can take place soon after arrest and/or before the child’s appearance in court

3

Assessment/screening has to take place in the presence of the child’s parents/guardians. If the parents/guardians are not present, agents/volunteers must trace them.

If the child claims that he/she is innocent, legal representation may be advised and the case proceeds to court.

All possible attempts should be exhausted to ensure that pre-trial detained children are not sent back to pre-trial detention after first appearance in court.

Should the child be diverted the screener discusses the different diversion options with the child and obtains the child’s consent to participate.

**Purposes of assessment are to:**

- Determine the nature of the offence and circumstance leading to its commission
- Where children are in police/prison cell, ensure placement into parental custody
- Monitor the treatment of arrested children by the police/prison officials
- Make recommendations to the Prosecutor (or to court) regarding diversion/prosecution
- Collect information for the database of cases of arrested children

4

This is taken from the Training Manual for Juvenile Justice Workers, March 2001 in Malawi.

**Conditions**

- Assessment/screening has to take place in the presence of the child’s parents/guardians. If the parents/guardians are not present, agents/volunteers must trace them
- If the child claims that he/she is innocent, legal representation may be advised and the case proceeds to trial
- Should the child be diverted the screener discusses the different diversion options with the child and obtain the child’s consent to participate

5

**Advantages**

- Screening/assessment is the critical point of entry and an opportunity for diversion
- Assessment guides case planning and recommendations to the Prosecutor and/or to the court

6

An effective screening process identifies children who do not need to be detained in secure facilities because they do not represent a danger to public safety. It also identifies children who do not belong in the juvenile justice system at all because they have been abused, neglected or suffer from mental illness.



**Diversion by police**

The police officer decides if the offence committed by the child is:

- a minor offence, or
- a non-minor offence.

7

**Minor offence**

The police officer will decide immediately whether to:

- Arrange a police caution
- Send the child to diversionary options
- Send the child to Court

Depending on on:

- The seriousness of the offence
- Whether the child has offended before
- Whether the child admits the offence or denies it

If the offence is denied, the child will go straight to Court.

8

If a child commits a minor offence and is stopped by a police officer, or after being questioned by the police officer he/she admits his/her responsibility, the police officer will decide immediately whether to arrange a police caution, send the child to diversionary options or send the child to court.

The decision on how to deal with the offending behavior should depend on: The seriousness of the offence, whether the child has offended before, whether the child admits the offence or denies it.

If the offence is denied, the child will go straight to court. The child will also be dealt with in the court in respect of minor offences if he/she does not take any notice of the police caution.

**Non-minor offence**

Where a child commits a serious offence (i.e. offending behaviour is determined by the police not to be a minor offence) then the matter might proceed direct to court.

9

**Conditions of diversion by police**

- Diversionary options are used if the police officer has reasonable grounds to charge the child with an offence. If he has no grounds, the young person should be released immediately
- Most of diversionary options should not be used in cases in which taking no further action or an informal warning would be sufficient
- Child must consent to diversion
- The parent of the child must be notified if the child is dealt with by a diversionary option
- The victim of an offence is entitled, on request, to be informed of the identity of the child who has been dealt with by a diversionary option

10

**ADDITIONAL READING**

Training Manual of Child Rights. Protection and Juvenile Justice, UNICEF East Timor.

International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police <http://www.ohchr.org/english/about/publications/training.htm>

Police Training on Child Rights and Child Protection: Lessons learned and Manual, Consortium of Street Children at <http://www.streetchildren.org.uk/resources/details/?type=theme&theme=111>

**CHECKLIST FOR FACILITATORS**

<b>Key Message/ Reflective Questions</b>
Remember to involve the police - They are the first point of contact between children and the justice system and as such the key actors in diverting children away from that system at the earliest possible stage.
Be proactive about contacting police officers, they should be aware of the options for diversion.

**PARTICIPATORY SEATING ARRANGEMENTS**

Active participation can be promoted by paying attention to details such as using a seating arrangement which should encourage an exchange of experience among the participants. Try to find a room that allows the participants to sit together in groups around a table rather than in classroom-style rows. Six people to a group is an optimal number. The training tries to use a variety of groups to encourage participants to get to know one another. Where participants tend to remain in the same seats you can use energizers that are designed to encourage participants to move to a different table with different people each day (ref, UNICEF games and exercises for more information).

**TIPS ON TIMING**

Timing is one of the hardest things to get right in a workshop and can lead to squeezing the participation of the group. We are in an age of information overload and the temptation is to cover too much material and rush through presentations without allowing participants time to digest and practice what they have learned. Remember that the purpose of a workshop is to allow participants the time to discuss ideas and exchange experiences. A good rule of thumb is that no presentation should last for more than 20 minutes without involving the audience in discussion. Try to have plenary of questions to involve the participants as you go through. Plenary time starts to become less productive after 20 minutes so try to limit group feedback to quick presentations.

**MODULE FOUR**

**ARREST**

**PARTICIPANT'S MATERIALS**

### OBJECTIVES

At the end of this module participants will:

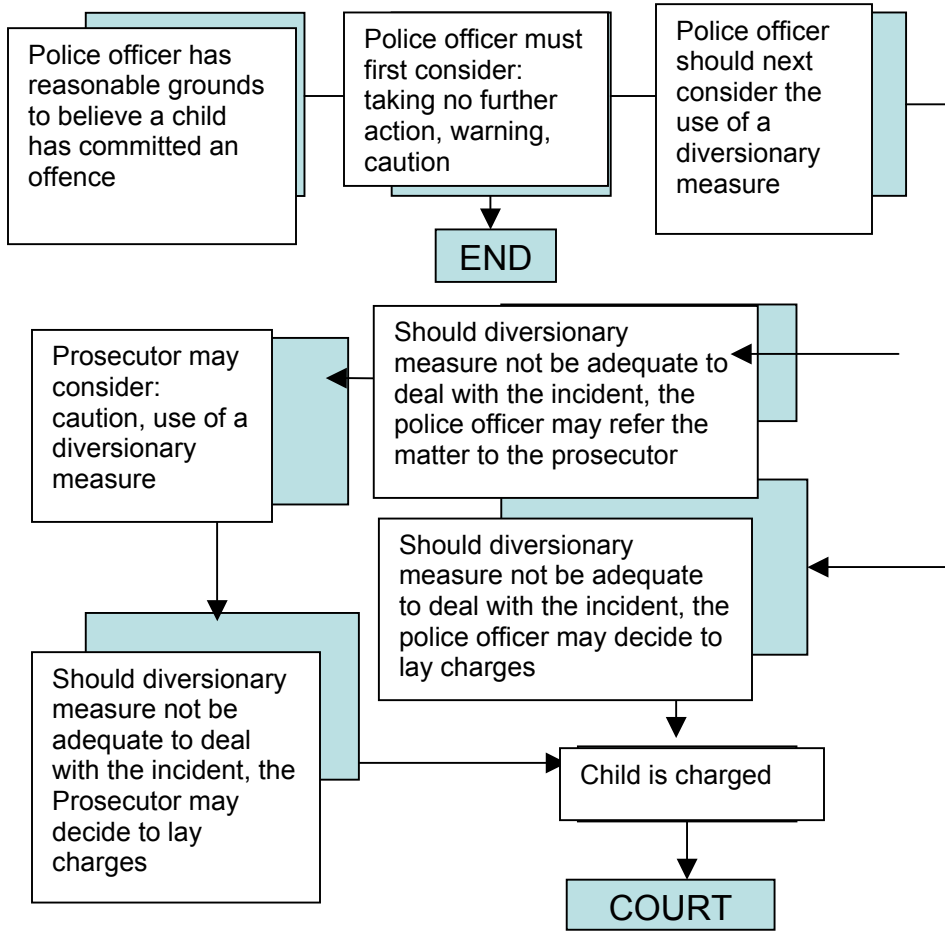
- Know the rules governing police intervention and requirements for a lawful arrest.
- Have learnt about the screening process and looked at practical ways to apply such a process at national level.
- Understand how a child can be diverted by police.

**TIME** [3 Hours 10 minutes]

### CONTENT

- 4.1 Arrest and Treatment of an Arrested Child
- 4.2 The Screening Process
- 4.3 Diversion by Police

### Summary of Police Intervention



## **Arrest and Treatment of an Arrested Child**

The first encounter a child has with the juvenile justice system is usually his/her apprehension or arrest by a law enforcement officer. The first contact with the police will have a lasting personal impact. Treating the child with fairness and respect reflects the importance of respecting the rights of others, which prepares the ground for the process of rehabilitation that may follow. Any treatment that leads to resentment and a sense of having been treated unfairly will make rehabilitation more difficult.

The police are key in the pre-trial diversion process: they are the first point of contact between children and the justice system and, as such, are the key actors in diverting children away from that system at the earliest possible stage.

Arrest is used most often to secure the attendance of children at court. Although alternatives to arrest exist, it appears that they are used infrequently by comparison to arrest.

### **Age-Determination**

The problem of age-determination has emerged as a key factor in delays in processing children's cases as well as providing an opportunity for abuse. A police officer should be the primary actor responsible for age determination at the time of the arrest if he is unsure of the age of the child.

It is not uncommon for children to be unaware of their ages and dates of birth. In some cases, even the parents of such children are unable to give particulars in this regard. Documentary proof of age is not always available for several reasons, one of which is that many children's births were never registered..

It has been argued for some time that the best way to solve the problem of proof of age (or lack thereof) would be to formulate a presumption that a child should be deemed to be the age he or she claims to be until the contrary is proved. However, given abuse by adults claiming to be children, this proposal may not be ideal. Monitoring of prisons has revealed the presence of older persons incarcerated with children, claiming to be children, as well as the converse: very young children, whose ages are reflected on the warrants of detention as being over the age of criminal responsibility.

A more accurate method is to have the child's wrist X-rayed. This method determines bone age. It is, however, an expensive option. Advocates suggest that the best available option would be to have the child examined by a District Surgeon to determine age unless a probation officer or social worker is able to determine it to the satisfaction of the court.

**Requirements for a Lawful Arrest**

Every person, including a child who is arrested for allegedly committing an offence has the right:

- To remain silent.
- To be informed promptly of the charges and of the right to remain silent and the consequences of not remaining silent.
- Not to be compelled to make any confession or admission that could be used in evidence against him/her.
- To be brought before a court as soon as reasonably possible.
- To have the assistance of a lawyer.

Arrest is a frightening situation for anyone, especially a child. The child faces an array of problems:

**Force**

According to international standards, only minimum force should be used in dealing with children. The manner of arrest may violate human rights standards, for example the use of force, unnecessary use of handcuffs or restraints, degrading treatment etc.

**Police Questioning**

A child who is questioned by the police has the same rights as an adult not to answer their questions. This means that the child must tell the police his or her name and address but does not have to answer such questions without legal advice. The police must, as soon as possible after arrest, explain the nature of the allegations, and inform the child of his or her rights to legal representation.

**Language**

The child's first need is information about charges and rights. In this regard, the police have a duty to inform the child of his/her rights in a manner the child can understand.

**Transportation**

Transporting the child to the police station can also put the child at risk. Many children spend hours in the back of a police van in frightening circumstances after their arrest. Although international standards provide for keeping juveniles separate from adults in detention, these are often ignored when it comes to transportation because it is not always realistic. One option is for a police officer to sit in the back to supervise the prisoners.



**Legal Representation and other Assistance**

The right of the child to legal assistance is enshrined in international instruments, especially in the Convention on the Rights of the Child. It creates obligations at various stages in the juvenile justice process to ensure that the child's right to counsel is protected.

Once arrested or detained, a child is to be advised immediately by the arresting officer or the officers in charge of his or her right to counsel. The child should have a reasonable opportunity to exercise that right. As part of the information component, the police must inform the child of the existence and availability of the applicable systems of duty counsel, free preliminary legal advice and legal aid in the jurisdiction.

The police officer must also advise the child of his or her right to talk to a parent or other adult and must specify that this right is separate from the right to counsel. According to international standards, a parent or guardian should be notified immediately after the child is apprehended or, if this is impossible, "within the shortest possible time thereafter".

**Example: Paralegal or legal intervention at the police station in Malawi****Background:**

The Paralegal Advisory Service (PAS) is an innovative experiment offering paralegal aid in criminal matters in Malawi. Five NGOs work in partnership with the Malawi Prison and Police Services and the courts to offer legal education, advice and assistance in prisons, police stations and courts, in other words, on the front-line of criminal justice. The scheme has been operating since May 2000 and involves 37 trained paralegals who cover 84% of the prison population, five police stations and five court centres.

**Activities:**

In prison, the paralegals conduct daily 'paralegal aid clinics' using forum theatre techniques to maximize the participation of prisoners (as many as 200 attend a clinic). The paralegals assist those who wish to complete standard bail forms that have been agreed to by the judiciary, or assist them to complete forms covering appeals and then lodge them with the court. In courts, the paralegals assist witnesses, those accused on bail and members of the public. They follow up the bail forms from the prisons. They visit the prisoners in the holding cells.

In the police stations, the Paralegal Advisory Service works according to a Code of Conduct and under the authority of police officers. As part of an agreement with the police and the National Juvenile Justice forum, the paralegals interview the child suspects in the police stations using a screening form developed in consultation with the police and judiciary. The paralegal doing the screening then recommends a diversionary option if the child satisfies the criteria (first offender, minor offence, admits fault),

which is passed on to the prosecution who decide whether or not to divert the accused. Police are often handicapped in their investigation of juveniles because of the absence of the parent or guardian. Paralegals assist in tracing parents and getting them to the police station.

The role of the paralegals in Malawi could be assumed by social services and probation officers where they exist in sufficient numbers. Paralegals also attend police interviews to ensure the rights of the child are protected.

In 2004, following an evaluation jointly conducted with police in each region, the Malawi Police Service approved a PAS presence in all police stations at adult interview. In 2005, the PAS paralegals started training with police in interview procedures and skills. A pilot scheme linking up with community based paralegals to refer cases, initially to trace parents and communicate to potential sureties for bail. In time, it is expected that the referrals will include diversion programmes such as victim-offender mediation as well as preparing communities for the return of an ex-offender.

Results: In the past five years the Paralegal Advisory Service has:

- Enabled over 42,000 prisoners to represent themselves in court through paralegal aid clinics conducted in prison;
- Facilitated the release of over 2,000 prisoners.
- Assisted the judiciary, state prosecutors and legal aid department reduce the homicide backlog through taking early pleas to appropriately drawn charges at estimated saving to the judiciary of \$360,000.
- Conducted over 100 trial observations both of capital cases in the High Court and traditional justice fora to inform policy formulation.
- Assisted 1,195 accused at court and 395 witnesses since court work began in 2003.

These figures include children in conflict with the law.

At a cost of less than \$450 per paralegal per month, the PAS has:

- Reinvigorated communication, cooperation and coordination between police, courts and prisons in all four magisterial districts.

- Encouraged magistrates, court clerks and police prosecutors to screen case lists of persons who had been detained unlawfully or inappropriately.
- Caused judges and magistrates to remark on the 'sophisticated' understanding prisoners have of criminal law and procedure as well as on the better understanding of their rights.
- Substantially reduced the numbers of persons unlawfully remanded in prison (down from 50% to a constant below 30%).
- Set professional standards within the criminal justice system, which other actors are beginning to emulate.
- Encouraged diversion of children out of the criminal justice system at a very early stage (i.e. at the police station).

Necessary Conditions:

- Facilitated open and regular communication, cooperation and collaboration among all the actors involved in work with juveniles, especially the police.

**Requirements for Lawful Arrest**

**Case :** In the Interest of D.H., 2004 PA Super 452, (Pennsylvania Superior Court (USA), December 1, 2004).

D.H. was in the home of a friend, along with others, when a firearm owned by the friend's father disappeared. D.H. was questioned by a police officer several times over the course of three weeks. The officer then came to his home, informed his parents of a warrant for D.H.'s arrest, handcuffed him and transported him in the back of a police car to the Municipal Courts Building for processing. D.H.'s parents did not accompany him. At no time did the police officer inform D.H. of his rights. During the ride, the officer made the following statement:

« I told him that my interest is in returning this firearm, and if he would somehow, he can help himself if he would give this firearm back to me or know who has it, we'd go from there, and hopefully it would benefit him down the road, and I would stand up for him and let everybody know in the criminal justice system what a good deed he did by returning this firearm ».

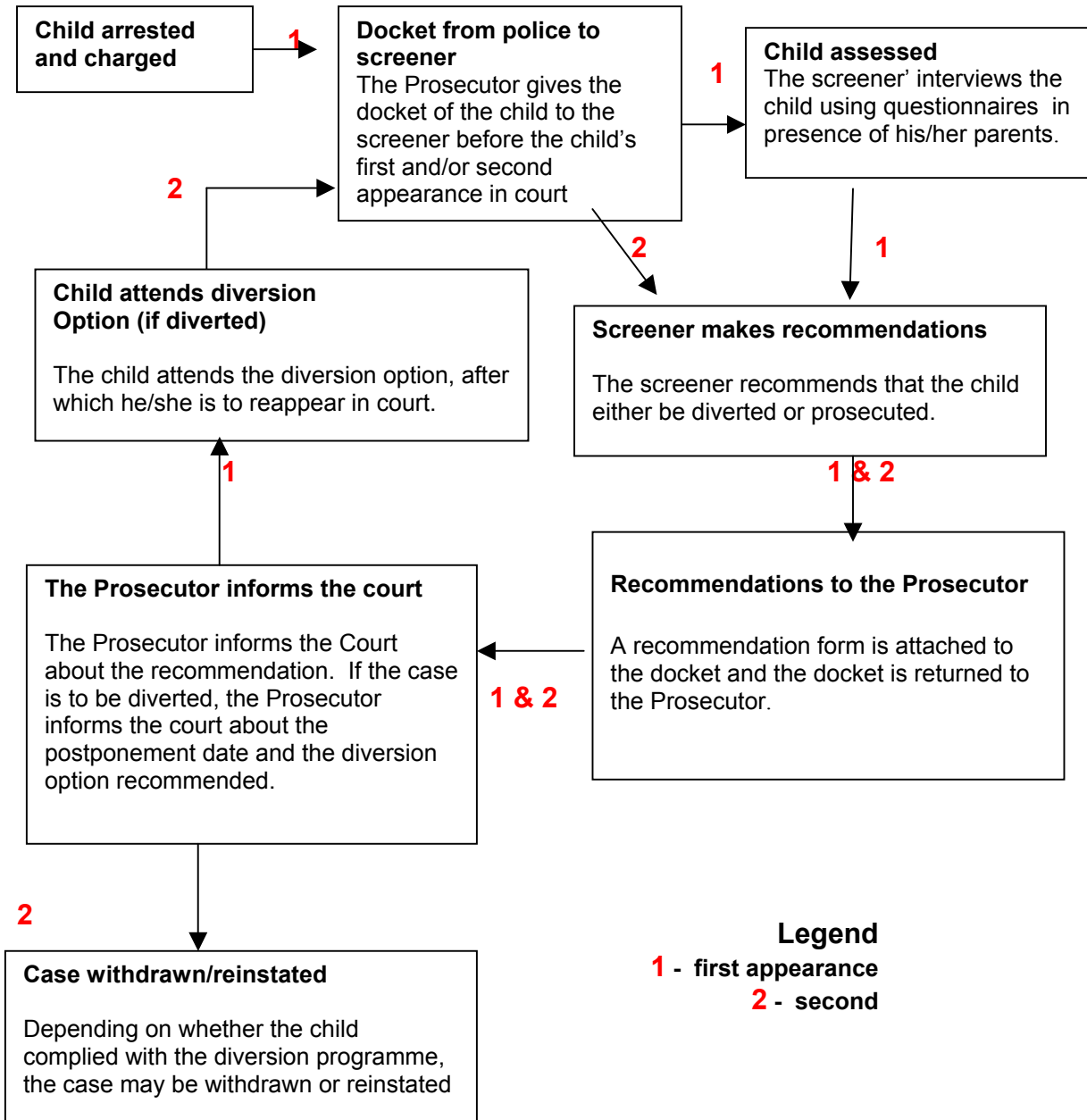
D.H. then told the officer that another person had assisted in the theft and he had tried to get the gun back, but it had been given to a third party. At the adjudicatory hearing, counsel voiced a motion to suppress, which was denied. D.H. was adjudicated and appealed the adjudication.

The Superior Court held that although the police officer did not specifically ask D.H. any questions, the officer's statement (quoted above) was the functional equivalent of an interrogation that was likely to elicit an incriminating response. The Court found that the situation represented a "custodial interrogation" and that D.H. was entitled to be informed of his rights. The Court vacated the adjudication order and remanded the case for a new hearing.

- i) Do you agree with the Court's ruling?
- ii) Why? In your response list out the positive and negative aspects of the way the case was handled.



### Screening Process: Example of Malawi



## Screening form in Malawi<sup>3</sup>

### SCREENING FORM 2: CHILD IN POLICE CUSTODY

As amended at a meeting of NJJF, Police and PAS on 11 July 2003

Date:

File number:

PD No.:

Police station:

Charge:

Name of investigating officer:

#### Details of child

1. Surname:

Other names:

2. Age:

3. Estimated age:

4. Sex:

5. Current residence:

6. Place of alleged offence:

7. Who first detained you:

8. Place you were first taken to:

9. Name of arresting officer:

10. Police station where taken to first:

11. Date of arrest:

12. Time of arrest:

13. Where were you taken after arrest:

14. Time spent at police cell:

15. Were parents informed of arrest:

16. If yes, when:

17. Do you understand the charge:

18. How were you treated on arrest:

19. By whom:

20. If you were abused, describe what happened:

---

<sup>3</sup> This form is used by the Paralegal Advisory Service in Malawi to screen children in conflict with the law.



21. What action did you take:

22. Were you mixed or transported with adult offenders:

23. Were you abused, assaulted or harassed by fellow detainees:

24. Do you have legal representation:

25. Do you feel that you have been treated fairly by,

- ◆ Police:
- ◆ The victim:
- ◆ People who arrested you:

26. Briefly, describe your experience:

27. Do you intend to admit or deny the police version of events:

28. Do you have anyone to be your surety if you are granted bail:

29. If so, what are their names, address and relationship:

**Home circumstances**

30. Do you have parents/guardians looking after you:

31. If not, who looks after you:

32. If parents/guardians are available, explain the home situation (in terms of food, finances, housing, alcohol and drug abuse, other)

33. Action recommended by screener: \_\_\_\_\_

- Diversion (caution, release to parents)
- Remand to approved school
- Bail not recommended

- Bail recommended
- Normal trial
- Normal trial with legal representation
- Further investigation

34. Police comments on the recommendations of the screener

**Parent/guardian information**

Parent/guardian present:

Name of parent/guardian:

Contact address:

Occupation:

**Personal information of screener**

Surname:

Other names

Profession:

Organisation:

Contact address:

Telephone(s):

---

## The Screening<sup>4</sup> Process

Projects and initiatives have shown that the key to effective release policy is the speedy location and involvement of parents and guardians, so that children may be released into their care. Early intervention, including the assessment and reception of child offenders are crucial in this regard.

Child offenders should be 'screened' - or assessed - on arrest to enquire whether they could be dealt with in a way other than through criminal prosecution. The assessment or screening is aimed at obtaining information about the child, which will assist in the probation officer or social worker's decision or recommendation to divert the case, whether the child can go home to parents or guardians, and what an appropriate temporary placement would be.

The police bear the primary responsibility for tracing and notifying parents, guardians or other persons. They may have the additional responsibility of also notifying the probation or social services. Where assessment, reception or referral centres are functioning, the police should have a duty to take the child as soon as possible to this centre.

### General Introduction to the Assessment Concept

Assessment (or screening) is a process of evaluation of the child, the child's home or family circumstances, the nature and circumstances surrounding the alleged commission of the offence, and whether the child accepts responsibility for this. In addition, the possibility of conversion to court inquiry is investigated, as well as diversion or other restorative justice options. Assessment can take place soon after arrest and/or before children's appearance in court.

Although a central office is in most instances used for the assessment process, it is not necessary for a specified location to be identified and assessment could conceivably take place in an informal setting, such as the local school, or even in the child's home. In other words, the absence of a designated building or office for assessment is not a bar to implementation of assessment practices in rural areas.

In the models that have been developed so far in different countries, two options have in practice been identified: one model has used offices in the police station for assessment, the other an office adjacent to the juvenile court. The advantages of the former are that, as long as children are brought to the police station, they will be assessed immediately, and problems caused by waiting for the police to bring children are not experienced. The disadvantage is the fact that police stations are not very child friendly environments, and the child may not be certain that questioning by a probation officer or social worker is different from interrogation by a police officer. This in turn can affect the confidence the child is prepared to place in the probation officer or social worker, the child's willingness to divulge details about his or her family and home address, and acceptance of responsibility for the purposes of diversion. With the second model, the

---

<sup>4</sup> In this manual, the terms 'screening' and 'assessment' are used indifferently.

main difficulty has already been highlighted, namely the fact that the police do not always bring children to court for assessment as promptly as they should, and that children then fall through the cracks and appear in court without assessment having taken place.

**Purposes of assessment are:<sup>5</sup>**

- To determine the nature of the offence and circumstances leading to its commission.
- Where children are in police/prison cell to ensure placement into parental custody.
- To monitor the treatment of arrested children by the police/prison officials.
- To make recommendations to the Prosecutor (or to court) regarding diversion/prosecution.
- To collect information for the database on cases of arrested children.

**Conditions:**

- Assessment/screening has to take place in the presence of the child's parents/guardians. If the parents/guardians are not present, agents/volunteers must trace them.
- If the parents/guardians cannot be traced the child may be detained in police/prison cells for juveniles. The case is postponed and screening may be withheld until the parents/guardians are traced.
- If the child claims that he/she is innocent, legal representation may be advised and the case proceeds to trial.
- All possible attempts should be exhausted to ensure that pre-trial detained children are not sent back to pre-trial detention after first appearance in court.
- Should the child be diverted the screener discusses the different diversion options with the child and obtains the child's consent to participate.
- In all recommendations related to pre-trial diversion, the Prosecutor makes the final decision to either accept or reject the recommendation. When a victim offender mediation process is held, the final recommendation to the Prosecutor will depend on the victim-offender mediation.
- If the recommendation regarding diversion is made the case is postponed for the period of time during which the diversion programme will be completed. This postponement is conditional – the case is postponed to give the child time to comply with the stipulated conditions of diversion.

---

<sup>5</sup> Juvenile Justice in Malawi, Training Manual for Juvenile Justice Workers, March 2001.

- If the child does not comply with the conditions of diversion, on the day of reappearance after conditional postponement the case may be reinstated.

**Advantages**

- Screening/assessment is the critical point of entry and an opportunity for diversion.
- An effective screening process identifies children who do not need to be detained in secure facilities because they do not represent a danger to public safety.
- Assessment identifies children who do not belong in the juvenile justice system at all because they have been abused, neglected or suffer from mental illness.
- Assessment guides case planning and recommendations to the Prosecutor and/or to the court.

**Example: Screening**

In South Africa (Western Cape), since 1994, use has been made of community based 'family finders', who can track down a person who is able to take responsibility for a child in conflict with the law. According to Probation Services, the assessment centers could not function without the family finders. Similarly, the Durban Assessment Centre also incorporated a family finding element and the Project has also required the appointment of such persons for the purposes of placement of children out of residential care facilities back in the care of parents or guardians. However, the pilot projects and practice have also revealed that not only family finders, but probation services themselves can and do fulfill a role in locating parents and guardians where they have been drawn into children's cases. It has been asserted that the role of probation officers supplements the police in this regard. The location of families and other support persons is not always sufficient though: many probation officers report that parents, when contacted, are reluctant to take responsibility for their children, for a variety of reasons: poverty, the feeling that they do not have sufficient control over the child, and often, feelings of inadequacy or embarrassment because their child has come into conflict with the law.

**Possible Diversionary Options for Police**

Non-Intervention	In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.
Informal Caution	If the offence is admitted, the police officer can decide to proceed with a formal or an informal caution. An informal caution will be a warning by the police officer against committing crime and against further offending. Informal cautions will only be given for very minor offences and where there has been no previous offending. No official record is kept of an informal caution.
Formal Caution	If a formal caution is given, the police officer will report the child and the child will be required to sign an admission of responsibility for the offence. When a formal caution is given, the child's guardians attend the cautioning meeting, where the offending behavior is discussed, the child formally cautioned and if necessary a range of sanctions imposed. If the police officer so decides, other people including teachers from the child's school and the person who was the victim of the offence may be involved. An official record will be kept of the formal caution.
Apology	This would involve the offender apologizing to the victim. This could be done in many ways. For example, the child could be encouraged to write a letter of apology or the child could be asked to simply go and apologize to the victim.
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. 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. For example, if a child has vandalized a wall or a community venue, the child could be asked to clean up what he has done, or repaint the wall.
Involvement in a Life Skills Program	Another possible diversion programme could involve a child participating in a life skills programme run by social services or by a NGO. The life skills programme could be run specifically for children who offend or may be run for children in the community generally.
A Individual Plan written by the Police Officer, Child and Family	This involves the child, family and police officer sitting down and talking about what needs to be done to: 1) put the wrong right to the victim; 2) put the wrong to right for the community; 3) strengthen family relationships and support systems around the child and family; 4) prevent re-offending.
Family Group Conference	A Family Group Conference is a meeting in which all parties affected by an offence come together to decide what needs to be done to repair the harm and to prevent it happening again. This has been dealt with in detail before.
Referrals to Community Program	Police officers may, instead of charging a child, refer the child to a community programme or agency that may help him or her not to commit offences. The consent of the child is required. The referral may be to a wide range of community resources, including recreation programmes, counselling agencies, child welfare agencies and mental health programmes.

## **Diversion by Police**

The initial decision by the police to detain or release a child is obviously very significant because of its immediate impact on the child's liberty. This initial police decision also sets in motion further justice system processing and the involvement of other decision-makers in the juvenile justice system. The Prosecutor must determine whether to consent to release of the child or to seek continued detention. At the initial hearing, the court or the judge must determine whether the child will be released without conditions, released with conditions, or be detained.

### **Pathways through the System**

The police officer decides if the offence committed by the child is a minor offence or a non-minor offence.

#### **Minor Offence**

If a child commits a minor offence and is stopped by a police officer, or after being questioned by the police officer he/she admits his/her responsibility, the police officer will decide immediately whether to:

- Arrange a police caution.
- Send the child to diversionary options.
- Send the child to Court.

The decision on how to deal with the offending behavior should depend on:

- The seriousness of the offence.
- Whether the child has offended before.
- Whether the child admits the offence or denies it.

If the offence is denied, the child will go straight to court.

#### **Non-minor Offence**

Where a child commits a serious offence (i.e. offending behavior is determined by the police not to be a minor offence) then the matter might proceed direct to the court.

The child will also be dealt with in the court in respect of minor offences if he/she does not take any notice of the police caution, ignores the agreements/sanctions reached, for example, at a family conference for example, refuses to undertake community work or does not admit that he/she has committed the minor offence.

**Conditions of Diversion by Police****Evidence**

Diversionary options (called also extrajudicial measures) may only be used if the police officer has reasonable grounds to charge the child with an offence. If not, the child should be released immediately.

In addition, most diversionary options should not be used in cases in which taking no further action or an informal warning would be sufficient.

Such referral is to be made only where the police officer believes, on reasonable grounds, that the child has committed an offence.

**Child's Consent**

It is important to recognize that a child may feel intimidated when dealing with a police officer and may feel coerced into agreeing to a referral to a community programme or agency. The requirement that the referral can be made only with the consent of the child means that the consent must be informed and voluntary. The child should be advised of the right to counsel and be given a reasonable opportunity to consult with counsel.

**Notice to Parents**

The parent of the child must be notified if the child is dealt with by an extrajudicial measure. The person administering the programme is responsible for notifying the parent. The requirement to notify a parent reflects the principle that parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

**Victims' Information**

The victim of an offence is entitled, on request, to be informed of the identity of the child who has been dealt with by an extrajudicial measure as well as how the offence has been dealt with.

**Options<sup>6</sup>**

The following diversionary options (also known as extrajudicial measures) may be used by the police:

---

<sup>6</sup> Adapted from East Timor Manual. Unicef



- Take no further action.
- Give the child an informal warning.
- Give the child a formal police caution.
- Refer the child to a community program or agency to assist the child in not committing offences.

There are many different programmes that can be used by police to divert children. The police may use one or many of the options with a child.

## **Diversion by Police**

### **Case one**

Ben is 15 years of age and lives at home with his parents. His school work has slipped as he has been taking the odd day off school but his teachers describe him as being very bright with a good future if he works hard and stays at school.

Ben likes to do his own thing so some nights he gets out of his bedroom window and meets up with his older friends. He and his friends hang around the streets, smoke cigarettes and sometimes drinks alcohol and yell abuse at other people.

One night when Ben was yelling abuse at a 17-year-old child, the boy challenged him to a fight and Ben agreed. In the fight, the older boy was getting the better of Ben so Ben pulled a knife and stabbed him in the ribs.

The Police arrived and Ben was still present and holding the knife.

The victim was rushed to hospital where it was found that he has a punctured lung.

### **Case two**

Nigel is an 11-year-old boy. He was seen by the police coming out of a house that he has broken into. You suspect he has stolen a mobile phone from inside the house. When he saw the police, he ran away with the phone.

Once you catch up with him you find out that he has been living on the streets for 18 months and has been suspected of taking food from houses. He has not been going to school for a long time. You find out that his father is no longer alive.

