

RAOUL WALLENBERG INSTITUTE

OF HUMAN RIGHTS AND HUMANITARIAN LAW

THE ROLE OF SOCIAL WORK IN JUVENILE JUSTICE:

INTERNATIONAL EXPERIENCES



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Foreword

The objectives of the juvenile justice system, as stated in Article 40 of the Convention on the Rights of the Child, are promoting “the child’s sense of dignity and worth”, reinforcing “the child’s respect for the human rights and fundamental freedoms of others”, and “promoting the child’s reintegration and the child’s assuming a constructive role in society”. In order to achieve this, tailored support for each child should be provided throughout the juvenile justice process.

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) has been working on juvenile justice issues in mainland China since 2011, with the objective of improved implementation of gender sensitive juvenile justice mechanisms among justice sector stakeholders. The cooperation was started with Haidian District People’s Procuratorate of Beijing City (a local prosecution office in Haidian District, Beijing) in 2011, and expanded to include Beijing Chaoyue Adolescents Social Work Services Agency (a social work organization in Beijing) in 2014, as the justice sector actors in mainland China have more and more realized the distinctive characteristics of juvenile justice, and the need of support by professional social workers. The fast development of juvenile justice social work in mainland China in recent years has brought about both opportunities and challenges, and it is of value to learn about the experiences and explorations in other countries and regions.

Therefore, RWI decided in 2018 to draft this study, with the aim of introducing the role of social work in juvenile justice in ten jurisdictions in the world. But hopefully the impact of this publication will be beyond mainland China. It will provide useful insights for any country whose juvenile justice system, including juvenile justice social work is still developing or can be improved further.

I would like to sincerely thank all the authors that contributed to this publication by sharing the experiences of their countries and regions, they are: Robert G. Schwartz (US), Barry Goldson (UK), Lynn Bushell (Canada), Anja Dobri (Canada), Mary Birdsell (Canada), Jane Stewart (Canada), Jane McPherson (US), Stephanie Rap (Netherlands), Kerstin Nordlöf (Sweden), Julia Sloth-Nielsen (South Africa), Blessing Mushohwe (Zimbabwe), Koon-mei Lee (Hong Kong), Tzu-Hsing Chen (Taiwan) and Xiaohua Xi (mainland China). I would also like to thank Oma Lee for her work as copy and language editor, as well as my colleagues Yifang Chen (Programme Officer, RWI China Programme), Linnea Ekegren (Communications Officer, RWI) and Desirai Thompson (Communications Intern, RWI).

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Chapter I Introduction

Robert G. Schwartz*

Adolescents are not adults. Adolescents are risk-takers. They are influenced by peers. They are capable of great and rapid change. These differences are organic: teenagers are “wired” differently from adults.

Many adolescents misbehave at some point during their formative years. Some misbehavior gets the attention of police and courts. How do we hold youth accountable for misbehavior in developmentally appropriate ways? When is it appropriate to divert youth from the juvenile justice system? When we do invoke the coercive power of the justice system, how do we increase the probability that we do more good than harm?

The answer to these questions depends in part on the skills and training of the people making the decisions. A much-quoted adage says that if one’s only tool is a hammer, then every problem looks like a nail. This volume presents a different tool kit. It shows how our 21st century understanding of adolescence is giving social workers an increasingly important role in shaping the modern juvenile justice system. We present a snapshot of ten countries and regions that suggests ways in which changes to policy and practice, catalyzed by a social work presence, can unleash the potential of youth to develop into contributing members of society.

Since the late 19th century, jurisdictions have developed complementary aspects of a functioning juvenile justice system that treats youthful offenders differently from adults: 1) a service delivery system; and 2) a court system that processes youth from diversion to disposition (sentencing).

The probation function straddles these two parts. Probation is what juvenile court judges may impose as an alternative to out-of-home placements. Those court orders often come with conditions that youth must obey in order to end juvenile court supervision. Probation is also a profession with many functions, from making recommendations to the court about whether to divert a case; to recommending particular dispositions (which might include an order of probation); to connecting youth with services; to supervising youth and monitoring their probationary status or response to services.

This volume focuses on the probation profession — on what probation officers should do, and on ways that social work training can enhance what they do — to illuminate how youth can thrive while under juvenile court supervision.

The evolution of juvenile probation mirrors the cycles through which the juvenile court has gone since its inception. There are times when the juvenile court has emphasized rehabilitation; there are times when it has put a premium on punishment. Each time the court goes through cycles, juvenile probation must recalibrate its inherent balance — some say tension — between helping youth to succeed, and monitoring and punishing youth. When probation promotes success, it finds opportunities for youth, connects them with

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mentors, and realizes that occasional “non-compliance” is a normal adolescent stumble. On the other hand, the more probation acts as a monitor, the more difficulties it finds; this in turn leads to probation labeling many youth as failures, sending them unnecessarily deeper into the system.

Juvenile probation thus reflects each era’s efforts to align social welfare and social control. A country’s accommodation of those goals is in the end a policy decision that rests on contemporary views of childhood and adolescence. The juvenile court began because its founders — many of whom were social workers — saw youth as teens who were different than adults. Beginning in the 1960s, youth began to get adult-like procedural rights. With a rise in crime around the globe in the 1980s and early 1990s, youth were increasingly deemed to be as culpable as adults. In the United States, punitive legislators called for “adult time for adult crime.”

As a result of extensive research in behavioral science and neuroscience, policymakers, service providers and courts today view youth through a developmental framework. The law and its agents must acknowledge that youth are inherently different from adults, and that those differences unfold in biological, social, and psychological ways. Some youth may do great harm — although the vast majority do not — but as a group they are less blameworthy than adults and more malleable.

The science that has nurtured the modern juvenile justice paradigm — which recognizes that a ten-year-old differs from a 15-year-old who is different from a 20-year-old — is more nuanced than either the common law view of criminal responsibility or the social work view of youth at the end of the 19th century. The former had approximate age ranges that distinguished children who were under seven from those who were ages seven-to-14, who were themselves treated differently than those who were older than 14. The social work founders of a separate judicial system for children understood that teens were different. However, they lacked developmentally appropriate services, assessment tools, or appreciation of how court-involved youth could be active participants in shaping their own futures.

The modern, more sophisticated view of adolescence as a period of change reinforces the view that the probation function will benefit from a wise social work presence. This is a propitious time. A number of developments in the last 30 years have elevated the importance of social work training and skills to the juvenile justice system.

In 1989 the United Nations adopted the Convention on the Rights of the Child (CRC). Every country in the world — except the United States — has ratified the CRC, which emphasizes the ways that states must recognize the different dimensions of childhood and adolescence. These include youth participation rights, their rights to be treated fairly, their rights to proportionality of punishment, and their rights to have opportunities to grow into productive adulthood. (The United States has many parallel protections in its Constitution and laws.)

In the mid-1990s, the Chicago-based MacArthur Foundation launched a Research Network on Adolescent Development and Juvenile Justice. Led by Dr. Laurence Steinberg, an expert in adolescent development, and comprised of researchers and practitioners from varying disciplines, the Network over a 10-year period produced a body of research that

transformed juvenile justice in the United States. Reinforced by the increasingly robust field of neuroscience, the Network's findings were a catalyst for a new juvenile justice paradigm. This paradigm views teenage risk-taking, susceptibility to peer pressure, and capacity for change through a developmental lens. We knew that teens were different, but now we had proof. Significantly, Steinberg and a team of researchers, with a grant from the Swiss-based Jacobs Foundation, replicated the U.S. research in diverse jurisdictions around the world. They found that adolescents everywhere develop in essentially the same ways.

In addition to the CRC and a burgeoning body of research, views of the juvenile justice system have been shaped by a world-wide decline in crime since the early 1990s; by concern over costs; and by conservatives and liberals alike emphasizing the need to invest in crime control measures that "work."

We are thus in a phase of juvenile justice that I think of as the Developmental Phase, and which Professor Barry Goldson describes as the Pragmatic Era.

All of these factors have put a spotlight on social work, and how the profession and its many practitioners can continue the 21st Century's developmentally-based, fair, rational, and cost-effective transformation of juvenile justice.

The chapters that follow suggest both opportunities and challenges for jurisdictions that seek to have social workers more deeply involved in supervising youth and supporting their development.

Opportunities have arisen as countries seek to match the developmental view of young offenders with the skill set of those charged with helping them. It makes little sense today to hire probation officers whose major training is limited to monitoring and punishment. Social workers, on the other hand, are particularly well-trained to address issues of poverty, ameliorate difficulties within families, and connect youth to caring adults and appropriate services. Social workers are adept at helping youth build on their strengths, so that youth develop positive views of themselves and their roles among their peers, schools and communities. Social workers understand the challenges of adolescence, and how youth are finding themselves and creating their future selves.

Yet, for several reasons it is difficult to advance social work as a core component of the juvenile justice system.

It is not easy for jurisdictions to "re-tool" their workforce. How can a society best introduce social work principles to a system that for many decades has been largely punitive? Universities graduate more criminal justice majors than those who study social work, and their graduates have few job opportunities outside of the justice system. The large supply of criminal justice graduates, and their desire to work in the system, makes it easy to hire them.

In contrast, social work graduates can find employment in many fields outside of the justice system. They can work with the elderly, or in hospitals, or serve as therapists, or counsel students in schools. It is a challenge to ask social work graduates to work with difficult children, especially when pay is low and caseloads are high.

Once social workers enter the justice system, they may find themselves with divided loyalties, as they serve institutions other than the children themselves.

My experience suggests how effective social workers can be when their sole mission is helping a child succeed. When I was a lawyer representing children at Juvenile Law Center, our social workers had a single focus: helping me advocate for our clients. Our social workers helped me communicate with my clients, counsel them, understand their life histories, plan for them, connect them with services, review assessments and evaluations, and make cogent legal arguments about guilt or sentencing. On the other hand, most social workers in the juvenile justice system have multiple masters. While they may serve youth, they may also report to courts: in many instances they must choose between helping youth or reporting them to authorities. Some serve victims as well as offenders.

Within treatment providers, social workers may serve many youth, but have little time for — or lack the skill — to work with the most difficult. Some service providers even encourage their staff to get rid of the most challenging children so that they can focus on those who are easier to help. Thus, while youth — and the system — will benefit from a robust social work presence, building such a presence is complicated. The countries and regions represented in this volume confront many challenges. We begin with jurisdictions that have had the longest history with formal juvenile justice systems, and conclude with more recent efforts.

Examining social work and juvenile justice in England and Wales, Barry Goldson captures the early tension that the juvenile justice system faced when trying to advance children's welfare, protect their rights, hold them responsible for their behavior, and ensure that justice is done. Goldson describes phases in juvenile justice — from a welfare-oriented model to a punitive phase that has since been modified by a cost-effective pragmatism. This last phase has spawned “child first” principles that require social work and juvenile justice agencies “to prioritize the best interest of children, recognizing their needs, capacities, rights and potential.” These principles lead to diversion from court, to improved court practice, and to developmentally appropriate dispositions that are much less restrictive—and more cost-effective — than those used in earlier phases.

We learn from Lynn Bushell, Anja Dobri, Mary Birdsell, and Jane Stewart how Canada's system evolved from the late 19th century. The authors describe the origins of social work in Canada, and the early role that social workers accepted in caring for children and youth. Canada established one of the first schools of social work, and there are over 40 accredited university programs across the country. The evolution of social work in Canada has occurred as the justice system has gone through a century of reform, recently adopting the CRC in its most recent juvenile justice legislation. The new law calls for a developmentally based, multi-disciplinary approach to young people. The authors describe the many settings in which social workers advance the law's goals, noting that “there is a role and need for social work intervention at almost every stage of a young person's contact with the criminal justice system, from pre-charge to disposition.”

Jane McPherson, in a chapter to which I contributed, captures the evolution of social work in the United States from a nascent field in the late 19th century to a robust profession. McPherson notes, however, that strong social work involvement in juvenile court began to wane in the last decades of the 20th century. “The social work retreat from criminal justice

coincided with the era of punitive sentencing and mass incarcerations, as well as with social work's move towards mental health and private practice." In recent years, social work has regained importance as social workers have taken on major roles in diverting youth from the juvenile justice system, and in linking youth to evidence-based (well-researched) interventions. McPherson shows how, in a system in which the federal government has a small juvenile justice role, social work success varies at the state and local level. We learn, too — as we did in the chapter on Canada with discussion of the treatment of aboriginals and their communities — how the U.S. system struggles to overcome racial and ethnic disparities.

In the Netherlands, Stephanie Rap tells us, the justice system has a centuries-old welfare approach. The first social work school was established in 1899, but it was not until after World War II that the Dutch professionalized social work and increased its importance in the juvenile justice system. Today, the Child Protection Agency provides social reports. Social workers in the Netherlands are engaged today in every phase of the juvenile justice process. An emphasis on a youth's background and development remains strong, even as the system has become slightly more punitive. Social work is particularly important in organizations that provide care for youth, as those organizations must receive government certification. We learn that in the Netherlands, a 2014 law provides that youth up to age 23 can receive a juvenile sentence. This increases the chances that decision-making and services meet the needs of each individual.

Kerstin Nordlöf teaches us about the role of social work in juvenile justice in Sweden, where in 1921 the first social work education programs were established. Social work today is an evidence-based practice which has gained traction in universities. The Swedish juvenile justice system has evolved since the early 20th century. Social work interaction varies by age of offenders, and is regulated by several social service laws. Social workers, rather than police, have primary responsibility for children under age 12. Nordlöf points out that social workers are present in several Swedish police stations, both to support the child and to be present at interrogations. Social workers in Sweden collaborate with others involved in juvenile justice, both at the policy level, and in individual cases — this collaboration will become even more important when the CRC becomes law in 2020.

While social work in South Africa was recognized as a profession in the 1920s, Julia Sloth-Nielsen makes clear that the profession was designed for poor whites. It was not until the mid-1990s, after the ANC assumed power, that the Ministry of Welfare compelled the system to serve people of all races. That was also the time when South Africa introduced a separate juvenile justice system with a role for social workers. A consistent feature of the juvenile justice system — implemented through several pieces of legislation — is diversion. The Minister of Social Development maintains an accreditation system for diversion service providers. As in most countries around the world, South Africa has a challenge in providing diversion services in rural areas. Even so, South Africa has made significant reductions in its number of incarcerated children.

Blessing Mushohwe tells a similar story of social work and juvenile justice in Zimbabwe. Social work developed in the late 1930s, in what was then Rhodesia, to address the problems of white delinquency. The first black probation officer was not appointed until 1949. With increased demand for social welfare services, Zimbabwe's Department of Social Welfare

steadily grew; indeed, its growth preceded formal social work education programs, which began in the mid-1960s and are only now spreading throughout the country. Diversion has a prominent role in the juvenile justice system; diversion officers are social workers. They accompany youth at the police station, take them home, conduct a social inquiry, provide counseling and, where appropriate, facilitate victim-offender mediation. Significantly, probation officers in Zimbabwe are persons who are registered as social workers under the *Social Workers Act*. Their role is regulated by law.

Social work in Hong Kong, Koon Mei Lee reports, developed after World War II. It gained traction in universities in the 1960s and 1970s. In 1997, Hong Kong passed an ordinance requiring social workers — if they were to use the title — to register in the same way as physicians. A Social Work Registration Board monitors quality of social workers, including those who work with youth in the justice system. Significantly, all juvenile probation officers in Hong Kong are university social work graduates. Hong Kong's Social Welfare Department is involved in every stage of the juvenile justice pipeline, from diversion and community service to residential care and aftercare (post-release) services. Social workers also actively provide prevention services, including those that are school-based.

Taiwan, we learn from Tzu-Hsing Chen, has a layered system of social work. Different categories of social workers help youth in overlapping ways. A *Social Worker Act* guides social workers in general. There are public social workers, licensed social workers, engaged social workers, and other categories that fill positions as needed to help youth and their families. Although social workers in Taiwan are more engaged in child protection cases, or with victims, than they are with youthful offenders, they have increasingly taken on the latter. For the last 25 years or so, there has been augmented attention to juvenile justice social work. This growth was reinforced in 2014 when Taiwan — although not a member of the United Nations — officially began implanting the CRC.

Over the last three decades, Xiaohua Xi observes, social work education in mainland China has taken root in more than 300 colleges and institutions. Social work has, since the beginning of this century, taken an increasingly prominent role in juvenile justice. There has been a gradual expansion of juvenile justice social work, beginning in Shanghai, and moving to Beijing, and expanding to provinces across the country. Social workers have a role in all stages of the juvenile justice process, from crime prevention to prosecution and sentencing. Mainland China has ratified the CRC. The guiding principles of the *Beijing Rules*, and the Riyadh Guidelines are reflected in domestic law. These principles also promote non-custodial remediation in which social workers have a prominent role. Social workers seek to prevent crime, and to change the behavior of youth who commit crimes. Mainland China has established an ongoing system of ensuring that social workers are qualified, well trained, and evaluated. Among its many benefits, the introduction of social work to juvenile justice has helped standardize the field. Social workers have helped build a consensus on how the juvenile justice system should operate.

Social work, in the countries and regions discussed in this volume, is increasingly important to the juvenile justice world. As governments recognize that youth are different from adults, and as youth crime continues to decline across the globe, there is increased political will to promote the welfare of youth. That is quintessentially the work of social workers. When society invests in social workers, crime decreases, and more youth become productive adults, contributing to their communities.

Chapter II Juvenile Justice Social Work in England and Wales: Past, Present and Future?

Barry Goldson*

1. Introduction

Juvenile justice, and the role of social work within it, has a long and complex history in England and Wales. It is complex not least because it derives from a dualistic conception of childhood itself. Throughout history, children in conflict with the law have been, and continue to be, perceived *both as vulnerable victims* (in need of care and protection) and as *precocious threats* (who require control and correction)^{1,2}. Harris and Webb explain:

“... From the outset juvenile justice... is riddled with paradox, irony, even contradiction... (It) exists as a function of the child care and criminal justice systems on either side of it, a meeting place of two otherwise separate worlds.”³

It follows that policy responses to children in conflict with the law, together with the practical interventions of social work and other juvenile justice agencies (both past and present), attempt to reconcile these ‘two otherwise separate worlds’ by balancing the fractious relations between welfare, justice, rights and responsibilities.

2. Balancing Welfare, Justice, Rights and Responsibilities: Complexity and Hybridity

The balances that are struck between the caring/protective and the controlling/corrective dimensions of the juvenile justice system in England and Wales are also subject to dynamic social, economic and political contingencies. In other words, the juvenile justice system is not fixed; rather it comprises an ever-changing site within which welfare, justice, rights and responsibilities are continually in motion. Ultimately, it is a complex and hybrid formation.

2.1. Welfare

The principle that children should be protected from the full weight of the adult criminal justice system underpins the concept of welfare in juvenile justice and is long-established in law in England and Wales. Section 44 of the *Children and Young Persons Act 1933* provides that: “every court in dealing with a child or young person who is brought before it either as an offender or otherwise shall *have regard to the welfare* of the child or young person”, and a corpus of subsequent legislation contains similar provisions. Given the typically disadvantaged circumstances of most juvenile offenders (see later), *the welfare principle* is particularly salient.

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1 H. Hendrick, *Child Welfare: England 1872-1989*, (London: Routledge, 1994).

2 B. Goldson, ‘Victims or Threats? Children, Care and Control’, in J. Fink (ed.) *Care: Personal Lives and Social Policy*, (Bristol: The Policy Press in association with The Open University, 2004).

3 R. Harris, and D. Webb, *Welfare, Power and Juvenile Justice*, (London: Tailstock, 1984).

2.2. Justice

Central to the concept of justice (in respect of juvenile justice) is the principle that the intensity of formal intervention should be proportionate to the severity/gravity of the offence, rather than to the level of perceived need. This principle derives from a classical justice formula comprising due process and proportionality. The practical application of the justice principle has three primary implications. First, the legal rights of children must be secured and safeguarded through due legal process, by professional representation and the engagement of lawyers. Second, formal intervention is conceived in terms of 'restrictions of liberty' that must be limited to the minimum necessary, in accordance with principles of proportionality. Third, custodial sentencing should be strictly reserved for the most serious offences for which no other sentence is deemed to be appropriate.

2.3. Rights

In addition to the rights provided by domestic legislation in England and Wales (including the *Human Rights Act 1998*), there are a range of international conventions, standards, treaties and rules that inform juvenile justice policy and practice.⁴ Particularly notable in this respect are: the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the *Beijing Rules*, 1985); the *United Nations Guidelines for the Prevention of Juvenile Delinquency* (the *Riyadh Guidelines*, 1990); and the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (the *JDL Rules*, 1990). Perhaps most important of all is the *United Nations Convention on the Rights of the Child* (UNCRC, 1989), which sets out principles and detailed standards: for the rights of children; for the care of children; for laws, policies and practices which impact on children, and; for both formal and informal relationships with children. The UK government ratified the UNCRC in 1991 and many of its Articles have a direct bearing on juvenile justice.⁵

2.4. Responsibilities

The concept of responsibility is most clearly expressed in juvenile justice with regard to the age of criminal minority, otherwise known as the minimum age of criminal responsibility. This relates to the age at which a child is held to be fully accountable in criminal law: the point when a child's act of transgression can be formally processed as a 'crime'. There are significant differences around the world concerning the age at which children are deemed to be criminally responsible.

In England and Wales, the age of criminal responsibility was set at ten years by the *Children and Young Persons Act 1963* (see below), where it has remained ever since. Many commentators have argued that it is perverse to hold a child as young as ten years to be as legally responsible as an adult, and in this sense criminal law is clearly inconsistent with civil statute.⁶ Until 1998, statute in England and Wales provided a limited measure of protection for child offenders (aged ten-13 years inclusive) via the doctrine of *doli incapax* - the presumption that children of this age are not necessarily capable of discerning between

4 B. Goldson, and J. Muncie, 'Children's Human Rights and Youth Justice with Integrity', in B. Goldson, and J. Muncie (eds.) *Youth Crime and Justice*, 2nd edition (London: Sage, 2015).

5 For fuller discussion, see B. Goldson, and J. Muncie, 'Towards a Global 'Child Friendly' Juvenile Justice', *International Journal of Law, Crime and Justice*, 40(1) (2012) pp. 47-64. See also B. Goldson, and J. Muncie, *supra* note 4.

6 B. Goldson, "'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales", *Youth Justice: An International Journal* 13(2) (2013) pp. 111-130.

right and wrong. The same presumption – a feature of English law ‘for hundreds of years’⁷ – was only rebuttable if the prosecution could satisfy the court (‘beyond reasonable doubt’) that the child knew that what they had done was seriously wrong, not merely naughty or mischievous. The principle of *doli incapax*, therefore, served to qualify the imputation of complete responsibility with regard to the youngest children in juvenile justice proceedings. By abolishing the principle of *doli incapax* the *Crime and Disorder Act 1998* (see below) removed such protection, however, and in so doing it rendered England and Wales the jurisdiction with the lowest age of unmitigated criminal responsibility in Europe.⁸ The contested question of responsibility is further complicated by other provisions of the *Crime and Disorder Act 1998* that introduced Parenting Orders, thus having the effect of also holding parents formally responsible for their children’s behaviour.⁹

2.5. Complexity and Hybridity

It may be helpful to conceive of juvenile justice as a hybrid system within which welfare, justice, rights and responsibilities *co-exist*, however uneasily. Although such hybridity is ever-present, there are times when certain conceptual themes are more ascendant than others. In England and Wales it is possible to broadly distinguish four key phases in the development of modern juvenile justice: (i) the late 1950s through to the late 1970s when *welfare* priorities were emphasized; (ii) the 1980s and early 1990s when justice imperatives reached a level of primacy; (iii) the period 1993-2008 when juvenile justice took a sharply *punitive* turn, and; (iv) 2008-present when juvenile justice policy and practice has returned to a more *pragmatic*, stable and moderate state. Such shifts in the temporal patterning of juvenile justice law, policy and practice in England and Wales are also framed by changing social, economic and political conditions and they merit more detailed attention.

3. Four Key Phases in the Development of Modern Juvenile Justice in England and Wales

3.1. The Welfare Phase (circa late 1950s – late 1970s)

*“... the late 1960s... have been seen as the high-water mark of reform in the field of juvenile delinquency... the triumph of “welfare” as the dominant ideology.”*¹⁰

*“No defence can be offered... against the empirical reality that welfare-oriented disposals can be unduly harsh.”*¹¹

By the late-1950s the Home Office was being pressed both by social work experts (increasingly concerned with the relation between family breakdown and juvenile crime) and by the Magistrates Association (whose interests rested with the role of the courts in balancing welfare and justice) to reform juvenile justice. Two major Acts of Parliament followed.

The *Children and Young Persons Act 1963* contained two provisions that were especially important for juvenile justice and social work in England and Wales. First it raised the

7 S. Bandalli, ‘Children, Responsibility and the New Youth Justice’, in B. Goldson (ed), *The New Youth Justice*, (Lyme Regis: Russell House Publishing, 2000) p.83.

8 T. Crofts, ‘Catching Up with Europe: taking the Age of Criminal Responsibility Seriously in England’, *European Journal of Crime, Criminal Law and Criminal Justice*, 17(4) (2009) pp. 267-291. Also see B. Goldson, *supra* note 6.

9 B. Goldson, and J. Jamieson, ‘Youth Crime, the “Parenting Deficit” and State Intervention: A Contextual Critique’, *Youth Justice*, 2(2) (2002) pp. 82-99.

10 H. Blagg, and D. Smith, *Crime, Penal Policy and Social Work*, (Harlow: Longman, 1989) p.99.

11 R. Harris, ‘Institutionalized Ambivalence: Social Work and the Children and Young Persons Act 1969’, *British Journal of Social Work*, Vol. 12(1982) p. 258.

minimum age of criminal responsibility from eight years to ten years. Second, section 1 of the Act provided that:

"It shall be the duty of every local authority to make available such advice, guidance and assistance as may promote the welfare of children by diminishing the need to receive children into or keep them in care... or to bring children before a juvenile court."

In effect, the legislation imposed a statutory duty on local government to provide social work services to reduce the prospect of children appearing in juvenile courts. Indeed, the welfare orientation of the Act led to a substantial transfer of responsibilities for juvenile offenders from the Probation Service (a largely adult-centred criminal justice agency) to Social Services Departments (social work agencies with responsibility for the delivery of child welfare and child protection services). This policy resulted in Social Services Departments becoming the lead agency for juvenile justice (although this was later reformed by the *Crime and Disorder Act 1998* – see below).

The *Children and Young Persons Act 1969* is widely regarded as the most welfare-oriented legislation ever enacted with regard to the treatment of juvenile offenders in England and Wales.¹² As with many Acts of Parliament, however, it contained a provision stating that its various sections would only come into force when so ordered by the relevant Secretary of State and, for a variety of political reasons, some key elements of the Act were never implemented.¹³ The partial implementation of the legislation meant that far from supplanting the old more retributive system of juvenile justice, the new welfare-oriented system was, in reality, rather clumsily grafted on to it and this produced a net-widening effect:

*"If one compares the sections of the Act that were implemented and those that were not... a new system came in but the old one did not go out... the two systems came to some form of accommodation... the old system simply expanded in order to make room for the newcomer... the two systems have, in effect, become vertically integrated, and an additional population of customer-clients has been identified in order to ensure that they both have plenty of work to do."*¹⁴

In other words, the new welfare emphasis served, in practice, to extend the reach of the juvenile justice system. Well-meaning, but too often over-zealous social work intervention, engaged children in 'treatment programmes' in the belief that they would offset the likelihood of further delinquency. In instances when such approaches failed to prevent further offending – as was frequently the case – children were exposed to more traditional corrective disposals. The result produced a 'widening of the net', a 'blurring of boundaries' and a 'diversification of penalty'.¹⁵ The ultimate consequence was that throughout the 1970s there was a substantial increase of children removed from their families and communities and placed either in care homes and/or custodial detention.¹⁶ This led to calls for further reforms to limit excessive juvenile justice intervention and to re-model social work with children in conflict with the law.

12 A. Bottoms, 'Children and Young Persons Act 1969', in B. Goldson, (ed.), *Dictionary of Youth Justice*, (Cullompton: Willan, 2008).

13 A. E. Bottoms, et al., 'Children, Young Persons and the Courts – A Survey of the New Law', *Criminal Law Review* (1970) pp. 368-395.

14 D. H Thorpe, et al., *Out of Care* (London: George Allen and Unwin, 1980) pp.22-23.

15 R. Harris, and D. Webb, *supra* note 3, pp.161-166.

16 Thorpe et al., *supra* note 14.

3.2. The Justice Phase (circa 1980s – early 1990s)

“I think there is now a fairly wide consensus about what the response to juvenile offending should be... formal intervention should be kept to a minimum, consistent with the circumstances and seriousness of each case.”

- John Patten, Conservative Minister 1988¹⁷

“If anything, I have become firmer in my belief that penal custody remains a profoundly unsatisfactory outcome for children.”

- Virginia Bottomley, Conservative Minister 1988¹⁸

By the end of the 1970s the concepts of welfare and treatment in respect of juvenile justice had become almost synonymous with excessive intervention, and support developed for an approach informed by a classical justice model which emphasised that: the intensity of intervention/punishment should be proportionate to the seriousness of the child’s offence (as distinct from responding to their perceived needs); the same intervention/punishment should be determinate in accordance with sentences fixed by the court (as distinct from the relatively indeterminate nature of welfare interventions); administrative/professional social work discretion based upon the child’s perceived welfare needs should be curtailed; equality of treatment should prevail within the justice process and; children’s legal rights should be protected by proper representation and due process.

Such approaches consolidated around the principles of *diversion* and *demarcation* and were underpinned by two major Home Office Circulars that promoted police cautions and the use of informal warnings as diversionary strategies to reduce the numbers of children being processed in the courts.¹⁹ The Home Office Circulars provided that the principal purpose of a caution was to deal quickly and simply with less serious juvenile offenders and to divert them from courts. In some parts of England and Wales inter-agency diversion panels and bureau were established comprising police, social workers, educators and probation officers.^{20, 21} The Home Office Circulars were also accompanied by four key Acts of Parliament.

First, the *Criminal Justice Act 1982* contributed towards a trend – throughout the 1980s and into the early 1990s – of lowering the numbers of juvenile offenders who were detained in custody. Section 1(4) of the Act stated that a custodial sentence should *not* be imposed unless:

“(i) the young person has a history of failure to respond to non-custodial penalties and is unwilling or unable to respond to them; or (ii) only a custodial sentence would be adequate to protect the public from serious harm from him; or (iii) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.”

17 B. Goldson, ‘Children in Trouble: State Responses to Juvenile Crime’, in P. Scraton, (ed.), *‘Childhood’ in ‘Crisis?’* (London: UCL Press, 1997), p. 126.

18 *Ibid.*, p. 126.

19 Home Office, *The Cautioning of Offenders, Circular 14/1985*, (London: Home Office 1985); Home Office, *The Cautioning of Offenders, Circular 59/90*, (London: Home Office, 1990).

20 B. Goldson, ‘Wither Diversion? Interventionism and the New Youth Justice’, in B. Goldson (ed.) *The New Youth Justice*, (Dorset: Russell House Publishing, 2000) pp. 35-36.

21 R. Smith, *Diversion in Youth Justice: What Can We Learn from Historical and Contemporary Practices*, (London: Routledge 2017).

Additionally, the government provided local authorities with funding to establish 'alternative to custody' projects whereby social work professionals supported juvenile offenders through programmes of community-based support.

Second, the *Criminal Justice Act 1988* provided that the courts could only issue a custodial disposal as a last resort for the most serious juvenile offenders. Section 123(3) of the Act (which amended section 1(4) of the *Criminal Justice Act 1982*) stated that a custodial sentence could not be imposed unless:

“(i) the young person has a history of failure to respond to non-custodial penalties and is unwilling or unable to respond to them; or (ii) only a custodial sentence would be adequate to protect the public from serious harm from him; or (iii) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.”

Third, the *Children Act 1989* was introduced as a comprehensive new legal framework for regulating child and family issues. It aimed to limit state intervention and court involvement and emphasise parental duties and responsibilities. Although juvenile offenders were not afforded a specifically high profile within the provisions of the Act, Schedule 2(7)(a)(ii) imposed a specific duty on Local Authorities – including social work agencies – to 'take reasonable steps' to reduce the need to bring, *inter alia*, 'criminal proceedings against children'.

Fourth, the *Criminal Justice Act 1991* represented the epitome of the justice-based approach. The Act introduced a statutory model for sentencing based on the proportionality principle whereby the courts were under a duty to only impose sentences that were proportionate to, and commensurate with, the seriousness of the offence(s) before them. Furthermore, the *Criminal Justice Act 1991* reduced the maximum length of custodial sentences to 12 months (excluding sentences for 'grave crimes' that were covered by section 53 of the *Children and Young Persons Act 1933* and were subsequently covered by sections 90 and 91 of *Powers of the Criminal Courts (Sentencing) Act 2000*); raised the minimum age that a child could be sentenced to penal custody; expanded the range of community sentences available for children; and imposed a duty on local authority social work agencies to develop new community-based remand management services (including remand fostering) to limit the numbers of children being exposed to penal remands.

Taken together, the juvenile justice reforms that served to bolster diversion and demarcation produced tangible effects: by 1990, 70 per cent of boys and 86 per cent of girls aged between 14 years and 16 years who offended were cautioned by the police;²² the number of children proceeded against in the courts halved between 1984 and 1992;²³ the total number of custodial sentences for children (issued in a year) fell from 7,900 in 1981 to 1,700 in 1990 and reached a low of 1,304 in 1993.^{24, 25} Furthermore, the combined effect of the *Children Act 1989* and the *Criminal Justice Act 1991* provided for two separate courts, the *Family Proceedings Court* (with an exclusive focus on civil law) and the *Youth Court* (with an exclusive focus on criminal law). This represented the institutional separation of the 'welfare' and 'justice' jurisdictions and it was intended to reconcile the long-standing

22 Home Office, *Criminal Statistics in England and Wales*, London: Her Majesty's Stationery Office, 1991.

23 Home Office, *Criminal Statistics in England and Wales*, 1992, London: HMSO, 1993, p. 126.

24 Home Office, *supra* note 22.

25 B. Goldson, *supra* note 17, p. 128.

tensions between the ‘two otherwise separate worlds’ to which Harris and Webb referred.²⁶ Notwithstanding the success of the reforms, however, by 1993 juvenile justice law, policy and practice in England and Wales was about to take a punitive turn.

3.3. *The Punitive Phase (circa 1993-2008)*

“Crime is an emotional subject and visceral appeals by politicians to people’s fears and resentments are difficult to counter. It is easy to seize the low ground in political debates about crime policy. When one candidate campaigns with ... promises that newer, tougher policies will work, it is difficult for an opponent to explain that crime is a complicated problem, that real solutions must be long term, and that simplistic toughness does not reduce crime rates. This is why, as a result, candidates often compete to establish which is tougher in his (sic) views about crime.”²⁷

“It is a fact well known to students of social policy that reforms of the system often take place not so much because of careful routine analysis by ministers and civil servants in the relevant Department of State... but because one or more individual incident(s) occurs, drawing public attention to... policy in a dramatic way which seems to demand change.”²⁸

By the early part of the 1990s changing social, economic and political conditions, together with an extraordinary case, conjoined to produce a backlash to the ‘justice model’ that had developed in England and Wales throughout the previous decade and to cement a new punitive phase in juvenile justice policy.²⁹

In February 1993, an extraordinary case – the murder of a two-year-old child, James Bulger, and the subsequent conviction of two ten-year-old children – became international news and it was portrayed as the ultimate expression of juvenile lawlessness. Within days of the toddler’s death the Prime Minister, John Major, proclaimed that the time had arrived for ‘society to condemn a little more and understand a little less’. Three months later, Michael Howard, the Home Secretary, referred to ‘a self-centred arrogant group of young hoodlums... who are adult in everything except years’ and who ‘will no longer be able to use age as an excuse for immunity from effective punishment... they will find themselves behind bars’.³⁰ Meanwhile, Tony Blair – Opposition Home Secretary at the time – declared his intention to be ‘tough on crime, tough on the causes of crime’. The effect of such developments shaped the approaches to juvenile justice adopted by each of the main political parties which operated both at the symbolic level of ‘tough’ rhetoric and, more significantly, at the institutional level of punitive legislation and policy.

The Conservative government introduced two Acts of Parliament that served to reverse the policies of diversion and demarcation. The *Criminal Justice Act 1993* had particularly unfavourable implications for juvenile justice.³¹ Moreover, the specific sections of the *Criminal*

26 R. Harris, and D. Webb, *supra* note 3.

27 M. Tonry, ‘Racial Politics, Racial Disparities, and the War on Crime in Hudson’, B (ed.) *Race, Crime and Justice*, (Aldershot: Dartmouth, 1996) p. 179.

28 A. Bottoms, and S. Stevenson, ‘What Went Wrong? Criminal Justice Policy in England and Wales 1945-70’ in D. Downes, (ed.), *Unravelling Criminal Justice*, (London: Macmillan, 1992) pp. 23-24.

29 For a fuller discussion, see B. Goldson, ‘The Circular Motions of Penal Politics and the Pervasive Irrationalities of Child Imprisonment’, in B. Goldson, and J. Muncie, (eds) *Youth Crime and Justice*, 2nd edition., (London, Sage, 2015).

30 B. Goldson, *supra* note 17, p. 130.

31 A. Rutherford, ‘Signposting the Future of Juvenile Justice Policy in England and Wales’, in Howard League for Penal Reform (eds.), *Child Offenders UK and International Practice*, (London: Howard League for Penal Reform, 1995).

Justice and Public Order Act 1994 that related to juvenile justice included the introduction of new, privately managed, Secure Training Centres (children's jails) for the imprisonment of children aged 12-14-years (which reversed a trend in juvenile justice policy dating back to the *Children Act 1908*) and, for 15-17-year-olds, the doubling of the maximum sentence of detention in Young Offender Institutions.

Similarly, the Labour opposition published a wide range of juvenile justice policy documents within which a creeping punitivity was increasingly evident.^{32, 33} It was not until the election of the Labour Government in May 1997, however, that the full weight of its 'toughness' agenda was practically realised. Within months of coming to office, the newly elected government produced several major policy statements relating to juvenile justice^{34, 35, 36}, followed by a White Paper entitled *No More Excuses: A New Approach to Tackling Youth Crime in England and Wales*.³⁷ New legislation soon ensued.

The Crime and Disorder Bill commenced its passage through Parliament in December 1997 and the Youth Justice and Criminal Evidence Bill was introduced in the House of Lords on 3 December 1998. The first Bill received Royal Assent on 31 July 1998 and the second on 27 July 1999. The *Crime and Disorder Act 1998* was an extraordinarily wide-ranging piece of legislation that was substantially weighted towards juvenile justice. Additionally, Part 1 of the *Youth Justice and Criminal Evidence Act 1999* provided for programmes of early intervention targeted at children at first conviction and, although they were driven by quite different political priorities, such practices were reminiscent of the interventionist provisions that had earlier underpinned the *Children and Young Persons Act 1969* to such problematic effect.

It was the *Crime and Disorder Act 1998* that made the greatest impact on juvenile justice reform, however. As stated above, the Act not only abolished the principle of *doli incapax* and provided Parenting Orders, but it also introduced a range of new powers and sentencing disposals including: Anti-Social Behaviour Orders; Local child curfew schemes; Reprimands and Final Warnings; Reparation Orders; Action Plan Orders and Detention and Training Orders. The ultimate effect of the legislation was to intensify responsibility, extend correctional intervention and increase the prospect of child imprisonment. The *Crime and Disorder Act 1998* also served to fundamentally reconfigure the juvenile justice system and to radically reformulate the role of social work within it.

Ever since the *Children and Young Persons Act 1969* specialist teams of social workers from within Children's Services (or Children and Families) Divisions of local authority Social Services Departments, had stood as the lead juvenile justice agencies. These teams operated under the over-arching national aegis of the Department of Health. But the *Crime and Disorder Act 1998* served to restructure juvenile justice services by introducing new multi-agency Youth Offending Teams (YOTs) in which social work services were accompanied by representatives from probation, the police, health authorities and education agencies. The establishment of YOTs represented a fundamental shift away from social work services at both the local and

32 D. Jones, 'Questioning New Labour's Youth Justice Strategy: A Review Article', *Youth Justice*, 1(3) (2002), pp. 14-26.

33 B. Goldson, 'The Sleep of (Criminological) Reason: Knowledge-Policy Rupture and New Labour's Youth Justice Legacy', *Criminology and Criminal Justice*, 10(2) (2002) pp. 155-178.

34 Home Office, *Tackling Youth Crime: A Consultation Paper*, London: Home Office, 1997.

35 Home Office, *Tackling Delays in the Youth Justice System: A Consultation Paper*, London: Home Office, 1997.

36 Home Office, *New National and Local Focus on Youth Crime: A Consultation Paper*. London: Home Office, 1997.

37 Home Office, *No More Excuses - A New Approach to Tackling Youth Crime in England and Wales*, London: The Stationery Office, 1997.

the national levels. Locally, YOTs were normally subsumed under the umbrella of multi-agency steering groups where they feed into broader crime and disorder and community safety strategies. Nationally, YOTs were made accountable to the Youth Justice Board for England and Wales and through it, to the Home Office and Home Secretary. This comprised a radical organisational re-structuring of accountability, management and influence within which juvenile justice was distanced (locally and nationally) from mainstream child and family social work.

Taken together, during the period 1993-2008 both Conservative and successive Labour governments translated 'tough' political rhetoric into a stream of punitive juvenile justice legislation and policy that produced significant growth in child imprisonment.³⁸ Indeed, in the ten-year period 1992-2001 inclusive, the *total annual number* of custodial sentences imposed upon children rose from approximately 4,000 per annum to 7,600 per annum, a 90 per cent increase.^{39, 40} During the same decade the child remand population grew by 142 per cent.⁴¹ To put this another way, on June 30, 1992 there were 1,328 child prisoners in England and Wales and by 30 June 2001 that figure had risen to 2,805. Such patterns continued until 2008 when juvenile justice policy entered a more pragmatic phase.

3.4. *The Pragmatic Phase (circa 2008-present)*

Following the fifteen-year period 1993-2008 – during which the punitive thrust of juvenile justice policy was best illustrated by the upward trajectory of child imprisonment – it seemed that the direction of juvenile justice policy in England and Wales had been set. But since 2008, policy has moved in precisely the opposite direction. In the period 2000-08 the average number of child prisoners, on any given day, fluctuated between a low of 2,745 and a high of 3,029. By December 2008, however, the number stood at 2,715, the lowest it had been in almost a decade.⁴² Three years later, Allen reported that child imprisonment had fallen 'by a third... from about 3,000 in the first half of 2008 to around 2,000 in the first half of 2011'⁴³ and, in 2013, Her Majesty's Chief Inspector of Prisons observed that it 'fell by almost 30 per cent again from 1,873 to 1,320 in one year alone between February 2012 and February 2013'.⁴⁴ By April 2014, the number of child prisoners had dropped further still, to 1,177⁴⁵ and, by August 2018, it had plummeted to 875.⁴⁶ Decarceration is clearly back on the juvenile justice policy agenda, but why?

Just as Pratt argued that 'cost effectiveness' was a key driver of juvenile decarceration during the justice phase in the 1980s,⁴⁷ Faulkner detected that the 'crisis in public debt' – that emerged some 20 years later – also provided an 'opportunity for progress in penal practice'.⁴⁸ Indeed, the global financial crisis of 2008 triggered a discernible shift in political mood and a re-assessment of juvenile justice policy, not least because 'authoritarianism is

38 For a fuller discussion, see B. Goldson, *supra* note 33.

39 Nacro, *A Failure of Justice: Reducing Child Imprisonment*, London: Nacro, 2003.

40 Nacro, *A Better Alternative: Reducing Child Imprisonment*, London: Nacro, 2005.

41 B. Goldson, *Vulnerable Inside: Children in Secure and Penal Settings*, London: The Children's Society, 2002.

42 . Bateman, 'Who Pulled the Plug? Towards an Explanation of the Fall in Child Imprisonment in England and Wales', *Youth Justice*, 12(1) (2012) p. 37.

43 R. Allen, *Last Resort? Exploring the Reduction in Child Imprisonment 2008-11*, London: Prison Reform Trust, 2011, p. 3.

44 N. Hardwick, 'Feltham: Time For a New Start', *Criminal Justice Matters*, 95(1) (2014) p. 22. Ministry of Justice, 2014.

45 Ministry of Justice, 2014.

46 Her Majesty's Prison and Probation Service, 2018.

47 J. Pratt, 'A Revisionist History of Intermediate Treatment', in *British Journal of Social Work*, Vol. 15 (1987) p. 429.

48 D. Faulkner, 'Criminal Justice Reform at a Time of Austerity: What Needs to be Done?', in A. Silvestri (ed) *Lessons for the Coalition: An end of term report on New Labour and criminal justice*, (London: Centre for Crime and Justice Studies, 2011) p. 80.

very costly'.⁴⁹ In this way, it is no coincidence that the substantial drop in child imprisonment in the post-2008 period has been, and remains, framed within a context of cuts in public expenditure and conditions of austerity.^{50, 51, 52} In the period between February 2008 and August 2010, for example, the Youth Justice Board 'decommissioned 710 places' from within the 'juvenile secure estate' producing 'estimated savings of GBP 30 million per year'.⁵³ Whatever other influences are at play, therefore, it seems likely that it is the pragmatic imperatives of cost reduction, as distinct from any intrinsic priorities of progressive reform, that ultimately provide the key to comprehending the substantial fall in child imprisonment in the post-2008 period.

Once the Conservative and Liberal Democratic Party coalition government was elected in May 2010, the Conservative Party's manifesto pledged to 'create strong financial discipline at all levels of government', soon translated into a sweeping 'austerity programmer'. On one hand, the impact of austerity has produced devastating consequences for the most disadvantaged children: 'since 2010 social security has been cut by around GBP 27 billion a year... and child poverty is projected to soar to more than five million by 2021/22 (from four million in 2018)'.⁵⁴ Equally, austerity policies have meant that social work services are facing massive challenges as 'demand for children's social services has increased, while local authorities' overall spending power has decreased'.⁵⁵ On the other hand, the same austerity programmer has paradoxically produced conditions within which juvenile justice has been steadily depoliticized and moderated and new opportunities have opened-up for social work with children in conflict with the law.

3.5. Contextualising Juvenile Justice in England and Wales

As can be seen from the four key phases that we considered above, there is no fixed model that can be said to characterise juvenile justice – and the role of social work within it – in England and Wales. Rather it is subject to the vagaries of social, economic and political contingencies. In this way, and as we have seen, the logics underpinning juvenile justice reform in England and Wales are rarely, if ever, exclusively driven by the nature of juvenile offending or the incidence of juvenile crime, by human rights considerations or by knowledge and evidence of the most effective responses – social work or otherwise – to children in conflict with the law. We have explored the key ways in which social, economic and political conditions have shaped the nature of juvenile justice reform. Before concluding we will address two further issues. First, the manner in which the social work role within contemporary juvenile justice in England and Wales is framed within a context of new 'National Standards' underpinned by a 'child first and offender second' principle.⁵⁶ And second, a consideration of how accumulated knowledge and evidence might be taken to signpost juvenile justice – and the role of social work within it – into the future.

49 A. Sanders, 'What was New Labour thinking? New Labour's Approach to Criminal Justice', in A. Silvestri (ed) *Lessons for the Coalition: An End of Term Report on New Labour and Criminal Justice*, (London: Centre for Crime and Justice Studies, 2011) p.15.

50 B. Goldson, 'The Circular Motions of Penal Politics and the Pervasive Irrationalities of Child Imprisonment', in Goldson, B. and Muncie, J. (eds) *Youth Crime and Justice*, 2nd edition, (London, Sage, 2015).

51 J. Muncie, *Youth and Crime*, Fourth Edition, (London: Sage, 2015).

52 J. Yates, 'What Prospects Youth Justice? Children in Trouble in the Age of Austerity', *Social Policy and Administration*, 46(4) (2012), pp. 432-447.

53 House of Commons Justice Committee, 2013, p. 38.

54 J. Tucker, 'The Austerity Generation: the Impact of Cuts to Universal Credit on Family Incomes and Child Poverty', *Poverty: Journal of the Child Poverty Action Group (2018)* p. 5.

55 All Party Parliamentary Group for Children, 2017, p. 3

56 Ministry of Justice and Youth Justice Board, *Standards for children in the youth justice system 2019*, London: Ministry of Justice and Youth Justice Board, 2019, p. 2.

4. Social Work and Contemporary Juvenile Justice in England and Wales

The pragmatic and moderate tone that has characterised juvenile justice policy in England and Wales in the post-2008 period, has most recently expressed itself in the form of published 'standards for children in the youth justice system'.⁵⁷ The 'standards' are intended to assist social work agencies – alongside other children's services and criminal justice agencies – to adhere to a 'child first' principle that requires them to:

“Prioritise the best interests of children, recognising their needs, capacities, rights and potential. Build on children’s individual strengths and capabilities as a means of developing a pro-social identity for sustainable desistance from crime... [ensure that intervention] is constructive and future-focused, built on supportive relationships that empower children to fulfil their potential and make positive contributions to society. Encourage children’s active participation, engagement and wider social inclusion... Promote a childhood removed from the justice system, using prevention, diversion and minimal intervention. [Ensure that] all work minimises criminogenic stigma from contact with the system.”⁵⁸

Five 'standards' are defined pertaining to: the provision of 'out of court disposals'; services for children 'at court'; services 'in the community' (for children subject to court disposals) services 'in secure settings' (for children deprived of liberty) and, finally, 'transition and resettlement' services for children discharged from secure settings.

First, with regard to diversionary 'out of court disposals' juvenile justice social workers are required to 'make sure that they work closely with the police... for the out-of-court disposal system to be effective', by building supportive relationships and delivering prompt, proportionate and effective interventions.⁵⁹

Second, in respect of social work – and related juvenile justice services – directed at children appearing in court, the standards specify that court intervention should be 'reserved for children who cannot be dealt with by less formal means' and, in such cases, social work and other relevant agencies should provide the court with 'high quality' reports that 'focus on children's best interests, constructively promote their potential and desistance from crime and are balanced and impartial'.⁶⁰

Third, for children subject to court disposals served in the community, the standards provide that 'local practice prioritises children's best interests, constructively promotes their potential and desistance, encourages their active engagement and minimises the potential damage that contact with the system can bring'.⁶¹ To effect such requirements, juvenile justice social workers must 'establish a meaningful trusting relationship with children whom they supervise, take diverse needs into account and promote equality in access and engagement, assist the child to build a pro-social identity to enable sustainable desistance [and to] explain the child's rights and responsibilities under the terms of the [community] order and check for understanding'.⁶²

Fourth, for children deprived of liberty in secure settings and, fifth, for children being released from court settings, juvenile justice social workers are required to ensure that 'the

57 *Ibid.*

58 *Ibid.*, p. 6.

59 *Ibid.*, p. 8.

60 *Ibid.*, p. 10.

61 *Ibid.*, p. 12.

62 *Ibid.*, p.12.

needs and risks of children in secure establishments are identified, addressed, coordinated, and managed to enable a suitable, effective and constructive resettlement with a focus on continuing desistance' once they return to the community.⁶³

In this way, the most recently published official standards – that define the role and function of social work in the contemporary juvenile justice system in England and Wales – are apparently aiming to privilege a 'child first' principle that is *both* attentive to welfare priorities (and meeting children's needs) *and* cognizant of the problematic nature of criminalization and over-zealous forms of juvenile justice intervention. In addition to obtaining compliance with such standards, it is also imperative that policy and practice is informed by the substantial body of evidence and knowledge that has accumulated over time. In other words, juvenile justice social workers (in England and Wales and elsewhere) should be alive to the ways in which the lessons of the past can inform the practices of the present and provide a compass to the future.

5. International Evidence and Knowledge: A Compass to the Future for Juvenile Justice Social Work

Tonry has observed that 'practitioners and academics working together will see more than will either group working alone'.⁶⁴ It follows, therefore, that by combining the lessons that can be drawn from *practice*-based evidence and *research*-based knowledge we might be able to provide a compass to the future. For current purposes, four key messages are especially salient.

5.1. Juvenile Offending is Relatively Normal and Juvenile Crime Trends are Relatively Stable

For well over seventy years, researchers from both the USA and the UK have been conducting self-report studies in order to elicit – otherwise 'unknown' – data relating to patterns of juvenile offending. Such studies reveal that such offending is significantly more widespread than many official data sources suggest, so much so, in actual fact, that it might even be regarded as 'normal'.

Porterfield provided the first published results from a self-report survey in the USA.^{65,66} He analysed the court records of 2,049 children in the Fort Worth area of Texas and identified 55 offences for which they had been adjudicated 'delinquent'. This was followed by a survey of 200 male and 137 female students – drawn from three colleges in Texas – in order to determine if, and how frequently, they had committed any of the 55 offences attributed to the 'delinquents'. Porterfield found that, without exception, each of his college-based respondents reported having committed at least one of the specified offences.

Following Porterfield, Wallerstein and Wylie sampled a group of 1,698 adult men and women and collected retrospective self-reports of their 'delinquent behaviour' as juveniles (before reaching the age of 16 years).⁶⁷ Almost the entire sample admitted at least one delinquent act, whereas 64 per cent of the men and 29 per cent of the women reported committing (when they were children) at least one of 14 offences specified by the researchers.

63 *Ibid.*, p. 14.

64 M. Tonry, (ed), 'Preface', in M. Tonry (ed) *Confronting Crime: Crime control policy under New Labour*, (Cullompton: Willan, 2003) p. 11.

65 A. Porterfield, 'Delinquency and Outcome in Court and College', *American Journal of Sociology*, 49 (1943) pp. 199–208.

66 A. Porterfield, *Youth in Trouble*, Fort Worth: Leo Potishman Foundation, 1946.

67 J. Wallerstein, and C. Wylie, 'Our Law-Abiding Law-Breakers', *Probation*, 25 (1947) pp. 107–112.

Thirty years later Belson, in a study of 1,400 London schoolboys, found that 70 per cent self-reported theft from a shop and 88 per cent theft from school.⁶⁸ Rutter and Giller made similar discoveries,⁶⁹ whereas Loeber *et al.* made one of the few attempts to gather self-report data from children younger than ten years.⁷⁰ By applying a 33-item 'behaviour scale', the researchers surveyed 849 seven-year-old and 868 11-year-old boys. They discovered that 26 per cent of seven-year-olds reported damaging property and theft, while 51 per cent of the 11-year-olds reported vandalism and 53 per cent admitted theft. An even higher percentage of both seven- and 11-year-olds reported a 'violent offence' – normally involving siblings and/or schoolmates – (66 per cent and 91 per cent respectively).

More recent still, Graham and Bowling found juvenile offending to be 'widespread'.⁷¹ Indeed, 55 per cent of males and 31 per cent of females 'admitted committing at least one of... 23 [specified] criminal offences at some time in their lives'.⁷² Similarly, in a survey comprising 14,500 11-17-year-olds and extending across England, Scotland and Wales, Beinart *et al.* reported that almost 50 per cent of the children had knowingly committed a criminal offence in the course of growing up,⁷³ whereas more recent UK-based studies revealed that approximately a quarter of children admit to having committed offences in the previous 12 months.⁷⁴

The results of self-report offending surveys certainly need to be interpreted and analysed carefully. Notwithstanding their imperfections,⁷⁵ however, they serve to remind us of the relative *normality* of juvenile crime. In fact, juvenile crime is almost certainly more 'normal' than such surveys reveal. Graham, for example, concludes that self-report surveys 'tend to underestimate [both] the prevalence [and] incidence... of offending by young people'⁷⁶ and Thornberry and Krohn, in a meticulous and scholarly assessment of such surveys, also detect a tendency towards 'considerable under-reporting'.⁷⁷

Turning from juvenile offending to juvenile crime trends, the task of identifying and analysing such trends over time is particularly difficult. Reiner, for example, reminds us that 'criminologists and statisticians have long been aware that official crime statistics suffer from many pitfalls which make their interpretation hazardous'.⁷⁸ For a multitude of reasons, the categories of 'reported', 'recorded' and 'actual' crime are rarely (if ever) coterminous and, as such, the validity and reliability of the available data – be it derived from police statistics, victimisation surveys or other sources – is questionable. It follows that comparing juvenile crime statistics over time, particularly if such data are taken at face value, can be misleading owing, for example, to: temporal and spatial fluctuations in the definition of 'offences'; the partial and/or incomplete nature of (police) recorded data; the problems associated with documenting

68 W. Belson, *Juvenile Theft: The Causal Factors*, (London: Harper and Row, 1975).

69 M. Rutter, and H. Giller, *Juvenile Delinquency: Trends and Perspectives*, (Harmondsworth: Penguin, 1983).

70 Loeber, et al., 'Development of a New Measure of Self-Reported Antisocial Behaviour for Young Children: Prevalence and Reliability', in M. Klein (ed), *Cross-national research in self-reported crime and delinquency*, (Los Angeles: Kluwer Academic Publishers 1989).

71 J. Graham, and B. Bowling, *Young People and Crime*, Research Study 145, London: Home Office, 1995, p. 10.

72 *Ibid*, pp. 11-12.

73 S. Beinart, et al., *Youth at Risk? A National Survey of Risk Factors, Protective Factors and Problem Behaviour among Young People in England, Scotland and Wales*, London: Communities that Care/Joseph Rowntree Foundation, 2002.

74 See for example, MORI, *Youth Survey 2008: Young People in Mainstream Education*, London: Youth Justice Board, 2009. S. Roe, and J. Ashe, *Young People and Crime: Findings from the 2006 Offending, Crime and Justice Survey*, London: Home Office 2008.

75 C. Coleman, and J. Moynihan, *Understanding Crime Data*, (Buckingham: Open University Press, 1996).

76 Graham, 'Self-Reported Offending', in B. Goldson (ed) *Dictionary of Youth Justice*, (Cullompton: Willan, 2008) p. 321.

77 T. Thornberry, and M. Krohn, 'The Self-Report Method for Measuring Delinquency and Crime', in D. Duffee, R. Crutchfield, S. Mastrofski, L. Mazerolle, D. McDowall, and B. Ostrom (eds), *CJ 2000: Innovations in Measurement and Analysis*, (Washington, DC: National Institute of Justice, 2000) p. 58.

78 R. Reiner, *Law and Order: An Honest Citizen's Guide to Crime and Control*, Cambridge: Polity, 2007, p. 45.

'victimless crimes'; the difficulties in attributing (and thus recording) responsibility in cases where no 'offender' is apprehended/known; and the tendency for statistical variability to reveal as much, if not more, about phenomena other than actual crime trends – for example, revised methods of recording, modified system behaviour and/or changes in legislation, policy and practice. In addition to such confounds, the processes of publicly reporting and/or applying crime statistics can be distorted by ulterior motives and political interests.⁷⁹ In short, it is extraordinarily difficult, if not impossible, to be absolutely certain about juvenile crime levels, rates or trends.

Notwithstanding this, by reading objectively across various sources of data – derived from different collection and collation methodologies – and by taking necessary account of the qualifying caveats and cautions, it is safe to conclude that juvenile crime trends over time are, at least, relatively stable.⁸⁰ Moreover, some commentators contend that patterns of juvenile offending signal a downward trend. On the basis of their rigorous analyses of self-report data, for example, Budd *et al.* conclude that the 'stability in the offending levels... might point, then, to a picture of *little change in offending by young people*',⁸¹ whereas Bateman claims:

*"It is difficult to track changes over time because of modifications in the way that data are recorded and aggregated. This qualification notwithstanding, the available evidence indicates that the fall in detected youth crime has been sustained over a considerable period."*⁸²

As noted, the validity, reliability, interpretation and application of statistical data pertaining to juvenile offending and juvenile crime trends raise complex challenges and the discussion here is necessarily schematic. That said, and whilst longitudinal data sets will almost certainly signify some peaks and troughs, the most cautiously considered reading of evidence suggests that juvenile offending is a relatively normal (and usually transient) part of growing-up and that temporal trends in juvenile crime are essentially flat-lining. To put it another way, despite discernible limited fluctuations, the evidence indicates that juvenile offending is neither becoming substantially more or less 'normal' with the passage of time.

5.2. *Diversion and Minimum Necessary Intervention are Vital Components of Effective Juvenile Justice Policy and Practice*

More than fifty years have passed since Howard Becker first discovered that formalised modes of juvenile justice intervention, 'labelling' as he famously termed it, regularly invoke negative 'social reactions' that, in turn, carry damaging consequences.⁸³ This led Becker, together with other colleagues from the University of Chicago, to argue that both the

79 See for example R. Booth, 'Home Office Accused of Releasing Selective Knife Crime Figures: Chief Statistician Did Not Want Details Published; Data Could Have Falsified Effect of Stop and Search', *The Guardian*, 13 December 2008; T. Hope, 'Pretend it Works: Evidence and Governance in the Evaluation of the Reducing Burglary Initiative', *Criminal Justice*, 4(3) (2004) pp.287-308; R. Walters, *Deviant Knowledge: Criminology, politics and policy*, (Cullompton: Willan, 2003); R. Walters, 'Government Manipulation of Criminological Knowledge and Policies of Deceit', in T. Hope, and R. Walters, *Critical Thinking About the Uses of Research*, (London: Centre for Crime and Justice Studies 2008).

80 Bateman, 'Trends in Detected Youth Crime and Contemporary State Responses', in B. Goldson, and J. Muncie, (eds) *Youth Crime and Justice*, 2nd edition, (London, Sage 2015).

81 T. Budd, C. Sharp, and P. Mayhew, *Offending in England and Wales: First Results from the 2003 Crime and Justice Survey*, Research Study 275, London: Home Office 2005, p. 69.

82 T. Bateman, *The State of Youth Justice 2017: An Overview of Trends and Developments*, London: National Association for Youth Justice 2017, p. 9.

83 H. Becker, *Outsiders*, New York: Free Press, 1963.

application of stigmatising labels and the activation of negative social reactions, are routine and inevitable consequences of formal contact with juvenile justice systems. Moreover, the researchers explained how conventional juvenile justice systems often produce self-perpetuating processes and spiraling motions. By creating 'outsiders', in other words, labelling invariably gives rise to repeat interventions of increasing intensity that, in turn, ultimately establish, consolidate and/or confirm offender 'identities'. Such 'identities' attract further intervention and/or negative reaction and so the process continues.

Indeed, Becker and his colleagues began to focus attention on the ways in which formal juvenile justice interventions might *produce* and/or *perpetuate* deviance. As Edwin Lemert and David Matza each put it:

*"[O]lder sociology... tended to rest heavily upon the idea that deviance leads to social control. I have come to believe that the reverse idea, i.e., that social control leads to deviance, is equally tenable."*⁸⁴

*"... the very effort to prevent, intervene, arrest and "cure" ... [can] precipitate or seriously aggravate the tendency society wishes to guard against."*⁸⁵

By illuminating the potentially iatrogenic and counter-productive tendencies of formal juvenile justice contact (and attendant labelling), therefore, the work of Becker, Lemert, Matza and others⁸⁶ – unsettles the logics of both pre-emptive ('preventive') and reactive ('correctional') modes of juvenile justice intervention. In fact, the knowledge/evidence that derives from the Chicago-based research is fundamental to the theory and practice of diversion and minimum necessary intervention.

The principles of diversion and minimum necessary intervention provide that, whenever possible, children in conflict with the law should be directed away (diverted) from the juvenile justice apparatus. In cases where absolute diversion is deemed inappropriate, the level of formal juvenile justice intervention (including social work) should be limited to the minimum that is judged to be absolutely necessary. McAra and McVie, for example, contend that 'the key to reducing offending lies in minimal intervention and maximum diversion'.⁸⁷ By drawing on their detailed longitudinal research on pathways into and out of offending for a cohort of 4,300 children, and informed more broadly by a growing body of international studies, they conclude:

"Doing less rather than more in individual cases may mitigate the potential for damage that system contact brings... targeted early intervention strategies... are likely to widen the net... Greater numbers of children will be identified as at risk and early involvement will result in constant recycling into the system... As we have shown,

84 E. Lemert, *Human Deviance, Social Problems and Social Control*, Englewood Cliffs New Jersey: Prentice Hall, 1967, p. 5.

85 D. Matza, *Becoming Deviant*, Englewood Cliffs New Jersey: Prentice Hall, 1969, p. 80.

86 See for example H. Blumer, *Symbolic interactionism*, Englewood Cliffs, New Jersey: Prentice-Hall, 1969; K. Erikson, *Wayward Puritans: A Study in the Sociology of Deviance*, (New York: Wiley, 1966); J. Kitsuse, 'Societal Reaction to Deviant Behaviour', *Social Problems*, 9 (1962), pp. 247-56; E. Schur, *Radical Non-intervention: Rethinking the Delinquency Problem*, (Englewood Cliffs, NJ: Prentice Hall, 1973).

87 L. McAra, and S. McVie, 'Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending', *European Journal of Criminology*, 4(3) (2007), pp. 315.

forms of diversion... without recourse to formal intervention ... are associated with desistance from serious offending. Such findings are supportive of a maximum diversion approach... Accepting that, in some cases, doing less is better than doing more requires both courage and vision on the part of policy makers... To the extent that systems appear to damage young people and inhibit their capacity to change, then they do not, and never will, deliver justice."⁸⁸

5.3. Universal Services, Holistic Approaches, and Decriminalising Social Work Responses Comprise the Most Effective and the Least Damaging Forms of Intervention

Although the evidence and knowledge bases reveal that juvenile offending is relatively 'normal', that juvenile crime trends are more-or-less stable, and that diversion and minimum necessary intervention strategies are vital components of effective juvenile justice social work, they provide absolutely no grounds for either complacency or inaction.

The children most heavily embroiled within juvenile justice systems are drawn invariably from the most distressed, damaged and disadvantaged families, neighbourhoods and communities. Indeed, irrespective of time and place, evidence accumulated from (social work) practice, and knowledge deriving from academic research, affirms consistently that juvenile justice systems typically process (and punish) the children of the poor. This is not to imply crude positivist aetiology – to suggest that *all* poor children commit crime or that *only* poor children 'offend' – but the corollaries linking chronic socio-economic disadvantage, juvenile crime, processes of (selective) criminalization and formal intervention are etched deep into the evidence/knowledge base. So, inaction is not a legitimate option, but neither is over-zealous criminalization, labelling and juvenile justice intervention.

Drawing upon comparative analysis and a wide range of both practice-based evidence and research-based knowledge, and informed by the provisions of international human rights standards, Goldson and Muncie contend:

"Normal social institutions - including families (however they are configured), communities, youth services, leisure and recreational services, health provision, schools, training and employment initiatives - need to be adequately resourced and supported... resources should be re-directed from harmful "criminogenic" juvenile justice interventions to generic "children first" services that are not only intrinsically preferable but are also known to be effective."⁸⁹

One of the most ambitious and comprehensive research analyses of juvenile crime prevention programmes in the world, for example, has demonstrated that – even for 'serious, violent and chronic juvenile offenders' – some of the most effective responses emanate from initiatives that are located *outside* of the formal juvenile justice system. Howell and Krisberg explain:

"It is an alternative to the currently popular response of state legislators and other policymakers that translates into punishment... and an increasing reliance on the criminal justice system... Neither offers much promise as a juvenile [crime] reduction strategy... This startling finding implies that community-based prevention holds the most prospects for reducing the bulk of juvenile crime... To be successful [policy and practice] ... must address the wide range of co-occurring problems in a comprehensive manner... over a long period of time."⁹⁰

⁸⁸ *Ibid.*, pp. 337 and 340.

⁸⁹ B. Goldson, and J. Muncie, *supra* note 4, pp. 250-251.

⁹⁰ J. C. Howell, and B. Krisberg, 'Conclusion', in J. C. Howell, B. Krisberg, J. D. Hawkins, and J. J. Wilson, (eds), *Serious, Violent and Chronic Juvenile Offenders: A Sourcebook*, (London: Sage 1995) pp. 275-276.

It is precisely here that social work with disadvantaged children might make its most vital contribution: by co-ordinating and mobilising ‘normal social institutions’; by pro-actively addressing the myriad issues that routinely lead to criminalization; by providing imaginative and individually tailored ‘decriminalising’ support for children and families; and by replacing the need for juvenile justice interventions that rarely serve the public good.

5.4. Custodial Sanctions Comprise the Least Effective and the Most Damaging Forms of Intervention

Deeply embedded and enduring practice experience, together with a voluminous research literature, confirms that custodial sanctions comprise the least effective (crime-reducing) disposal available to the courts. Custodial sanctions not only fail as a means of reducing juvenile crime and providing community safety, however, they also impose serious harms.⁹¹ Furthermore, custodial sanctions also place a substantial financial burden on the public purse. In May 2018, in response to a written Parliamentary question to the Secretary of State for Justice, the Ministry of Justice and the Youth Custody Service provided data showing that the average annual cost of detaining a *single child* in penal custody in England and Wales ranged from GBP 76,000 to GBP 210,000 (depending upon the type of institution).⁹³ Mendel (2011) summarises the international evidence in relation to the uses of custodial sanctions in juvenile justice systems by referring to their ‘dangerous’, ‘ineffective’, ‘unnecessary’, ‘wasteful’ and ‘inadequate’ nature:

“Dangerous: juvenile corrections institutions subject confined youth to intolerable levels of violence, abuse, and other forms of maltreatment.

Ineffective: the outcomes of correctional confinement are poor. Recidivism rates are uniformly high, and incarceration in juvenile facilities depresses youths’ future success in education and employment.

Unnecessary: a substantial percentage of youth confined in youth corrections facilities pose minimal risk to public safety.

Wasteful: most states are spending vast sums of taxpayer money and devoting the bulk of their juvenile justice budgets to correctional institutions and other facility placements when non-residential programming options deliver equal or better results for a fraction of the cost.

Inadequate: Despite their exorbitant daily costs, most juvenile correctional facilities are ill-prepared to address the needs of many confined youth. Often, they fail to provide even the minimum services appropriate for the care and rehabilitation of youth in confinement.”⁹⁴

91 P. S. Pinheiro, *World Report on Violence Against Children*, Geneva: United Nations, 2006.

92 B. Goldson, ‘The Circular Motions of Penal Politics and the Pervasive Irrationalities of Child Imprisonment’, in B. Goldson, and J. Muncie, (eds) *Youth Crime and Justice*, 2nd edition. (London, Sage, 2015).

93 P. Lee, ‘Response to Youth Custody: Costs: Written question – 144303’, <www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-05-15/144303/>, accessed 22 October, 2018.

94 R. Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, Baltimore: E. Annie Casey Foundation, 2011, pp. 5-25.

6. Conclusions

Since its inception, the juvenile justice system – and the role of social work with it – has ultimately comprised a mechanism for governing the poorest and most disadvantaged children in England and Wales. The dualistic conception of such children – whereby they are variously perceived both as *vulnerable victims* (in need of care and protection) and as *precocious threats* (who require control and correction) – renders juvenile justice a ‘meeting place of two otherwise separate worlds’. In this way, juvenile justice policy and practice is tasked with reconciling and balancing competing imperatives including welfare, justice, rights and responsibilities.

We have argued that it is possible to broadly distinguish four key phases in the development of modern juvenile justice in England and Wales. Furthermore, we have contended that juvenile justice reform is rarely, if ever, driven by the nature of juvenile offending or the incidence of juvenile crime, rather it is conventionally subject to social, economic and political contingencies that have tended to distort policy and disfigure social work practice. But, for the reasons discussed above, juvenile justice has recently entered a pragmatic and moderate phase in England and Wales. This has ushered-in opportunities to develop ‘child-first’ juvenile justice social work.

Moreover, if we combine the lessons that can be drawn from practice-based evidence and research-based knowledge we might readily understand that: juvenile offending is relatively ‘normal’ and juvenile crime trends are relatively stable; diversion and minimum necessary intervention are vital components of effective juvenile justice policy and practice; universal services, holistic approaches and decriminalising social work responses comprise the most effective and the least damaging forms of intervention; and, custodial sanctions comprise the least effective and the most damaging forms of intervention. If such lessons are put to best effect they can provide a compass to the future for juvenile justice social work in England and Wales and, just as readily, in other jurisdictions internationally.

Chapter III The Role of Social Work in the Youth Justice System: The Canadian Approach

*Lynn Bushell, Anja Dobri, Mary Birdsell and Jane Stewart**

1. General Introduction to Juvenile Justice Social Work in Canada

1.1. Social Work in Canada

The origin of social work in Canada followed a similar trajectory to the development of social work in England and the United States of America. Social work emerged in Canada due to local citizens responding to the needs of their neighbours.¹ Industrial capitalism in the mid-1800's introduced many interrelated social problems, including deplorable housing conditions, diseases, unemployment, and poverty. This social distress caught the attention of wealthy citizens (primarily women) who responded through charity work. These women were largely motivated by religious morality to help the poor. At the time the prevailing social view was that individuals and families were responsible for resolving their own social problems. This meant that those who were unable to find support from their families suffered or relied on the goodwill of their community. This viewpoint shifted and people began to believe that society had the responsibility to care for children and youth. Although the initial responses to social issues were religious based, this movement was secularized over time. Secular responses to poverty were organized mainly through the housing settlement movement and the charity organization movement. Both of these movements originated in England and then emerged in Canada, in the late 1890s and early 1900s. Workers in these movements contributed to the development of group work and community organizing as well as casework theory and practice, which remain an important part of social work today. However, those delivering relief often lacked adequate knowledge and skills.

The professionalism of social work was advanced through developing university programs, which taught standardized practice. Canada's first school of social work was established at the University of Toronto in 1914.² There are now 42 social work university programs across Canada that are accredited through the Canadian Association of Social Work Education (CASWE).³ Social work degrees are offered at an undergraduate level (Bachelor of Social Work; BSW), the master level (Master of Social Work; MSW), and the doctorate level (Doctor of Social Work; PhD). The Canadian Association of Social Workers (CASW) was formed in 1926.⁴ CASW now offers professional development opportunities, responds to national issues, publishes reports on issues relevant to the profession, provides advocacy to advance social justice, maintains a code of ethics and guidelines for ethical practice, assesses credentials of social workers trained abroad, and more. Social workers are required

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1 T. Jennissenn and C. Lundy, *One Hundred Years of Social Work: A History of the Profession in English Canada, 1900-2000* (Wilfred Laurier University Press, Waterloo, 2011) p. 1.

2 T. Jennissenn and C. Lundy, *supra* note 1, p. 2.

3 Canadian Association for Social Work Education, *Accredited Programs*, <caswe-acts.ca/commission-on-accreditation/list-of-accredited-programs/>, visited on 17 March 2019.

4 Canadian Association of Social Workers, *About CASW*, <www.casw-acts.ca/en/about-casw/abosc>, visited on 17 March 2019.

to be registered with their provincial/territorial body in order to work. They must adhere to Standards of Practice and a Code of Ethics to remain registered.

1.2. Juvenile Justice System in Canada

1.2.1. History/Development

Canada has a federalist structure and a common law system. There is one federal government, and 13 provincial and territorial governments. The criminal law is codified in the Criminal Code of Canada⁵ and applies to the whole country; the federal legislation regarding juvenile justice is the *Youth Criminal Justice Act* (YCJA).⁶ While the law is uniformly applicable, the administration of justice happens at the provincial level, so there may be some variation at the provincial/territorial level.

Historically, Canada imported the British common law but enacted its first Criminal Code in 1892.⁷ Canada has had a separate system/process for dealing with juvenile offenders from its beginnings, including special institutions. The first Criminal Code had age distinctions that recognized that the unique maturity levels of young people require unique and specialized attention in the context of criminal justice. In the first Criminal Code the age of criminal responsibility began at age seven, however seven to 13 year olds had to be shown to be competent to understand the consequences of their behavior. Legislation which created a separate process for juvenile justice was enacted in 1894 (two years after the first Criminal Code).⁸

1.2.2. Main Legislations

There have been three unique pieces of legislation governing juvenile justice in Canada's history. The *Juvenile Delinquents Act* (JDA 1908 – 1984)⁹; the *Young Offender's Act* (YOA 1984 – 2003)¹⁰; and the present-day *Youth Criminal Justice Act*, first enacted in 2003.¹¹ Each of these pieces of legislation were amended numerous times during their tenure, reflecting the ever-evolving philosophies and approaches to dealing with young people who contravene the criminal law. A conundrum that persists today is whether to view youthful offending as a manifestation of moral impropriety worthy of punishment, essentially the same as adult offending but by younger people, or whether youthful offending is more properly seen as behavior resulting from bad choices, or “not thinking” during a time of evolving development and maturity.

The JDA, which created a unique system for dealing with juvenile justice, was enacted in 1908 and remained in place until 1984. It established special mechanisms and systems for dealing with youthful offenders, but the definition of delinquency included behaviours that went beyond contravention of the Criminal Code. Truancy, immorality, and “incorrigible behaviour” were also a focus of the JDA, offences characterized as “status offences”,

5 *Criminal Code*, RSC 1985, c. C-46.

6 *Youth Criminal Justice Act*, SC 2002, c. 1.

7 *Criminal Code*, S.C. 1892, c. 29; *Criminal Code*, S.C. 1953-54, c. 51; *Criminal Law Amendment Act*, 1968-69, S.C. 1968-69, c. 38.

8 *An Act respecting Arrest, Trial and Imprisonment of Youthful Offenders*, S.C. 1894, c. 58.

9 *The Juvenile Delinquents Act*, 1908, S.C. 1908, c. 40.

10 *Young Offenders Act*, S.C. 1980-81-82-83, c. 110.

11 YCJA, *supra* note 6.

meaning that young persons faced criminal sanctions for conduct that would not be criminal if done by an adult. The government intervened with children who were neglected, abused, or were uncontrollable. Reform schools were created to help care for children under the JDA. The focus was on the state intervening to repair the misguided child, and acting as it saw fit in the “best interests” of the child. Social work figured prominently under this regime – the Courts were even presided over by social workers in some places. The law came to be widely criticized as highly discretionary and wildly variable, as people in positions of power and privilege – police, judges, social workers - did whatever they saw as in the child’s best interests. The system came to be seen as lacking in formality and respect for the legal rights of young people, and being very paternalistic.

The *Young Offenders Act* was enacted in 1982, and came into force in 1984. The enactment of the YOA coincided with the enactment of Canada’s Charter of Rights and Freedoms, and demonstrated a desire to move away from the discretionary, paternalistic and rights-neglecting JDA. The YOA substantially overhauled Canadian juvenile justice, and brought in an era of attention to the legal rights of children. The age of criminal liability was settled to begin at age 12, with the separate system for addressing juvenile justice or youth crime lasting through age 17. Many of the structures and systems established under the YOA continue to exist today. Attention to the legal rights of children created important changes – the right to counsel, presumption of innocence, guidelines for sentencing (including unique maximum sentences for “young offenders”). However a curious dichotomy emerged – there was a public perception that Canada was “soft” on youth crime, and that children were getting away with things, when in reality Canada had the highest incarceration rate among north-western nations, and young people were routinely getting harsher sentences than adults for the same crimes. Youth sentences were not required to be proportionate to the seriousness of the offence, and for instance many young people were incarcerated for “administration of justice offences” (breach of curfew, failure to attend a meeting with a probation officer). Though the law formally recognized the legal rights of children, perhaps a social management approach lingered and a very punitive approach developed, where we felt harsh punishment was required to address social needs. As well there was little attention paid to the re-integration of young people back into the community after having been incarcerated.

As juvenile justice was evolving under the YOA, a great deal of work was going on in the international community to develop and promote a more nuanced and sophisticated understanding of the rights of children. This work sought to address the unique features of the legal and human rights of children, as vulnerable members of our communities, who, while dependent on adults must also be treated as independent rights holders, worthy of equal dignity. The United Nations *Standard Minimum Rules on the Administration of Juvenile Justice* (the *Beijing Rules*) were adopted by the General Assembly in 1985; the *United Nations Convention on the Rights of the Child* (the UNCRC) was ratified by the UN General Assembly in 1989, came into force in 1990, and was ratified by Canada in 1991; the *UN Guidelines for the Prevention of Juvenile Delinquency* (the *Riyadh Guidelines*), and the *UN Rules for the Protection of Juveniles Deprived of their Liberty* (the *Havana Rules*) were both adopted by the General Assembly in 1990. As a very general comment the UNCRC as well as the Guidelines and Rules all sought to express an understanding that young people are vulnerable members of our communities, who have unique needs based on their developing maturity, are dependent on adults, have evolving capacities, and are deserving of special care, respect and protection for their legal and human rights.

Canada enacted the *Youth Criminal Justice Act* (YCJA) in 2003. The YCJA represented another sea change in juvenile justice in Canada. It incorporated the UNCRC directly into the legislation, which has profoundly impacted the way in which courts (especially the Supreme Court of Canada) have interpreted the law; and it incorporates virtually all of the *Beijing Rules*, sometimes quoting them almost verbatim. Since the enactment of the YCJA in Canada there has been a significant drop in the incarceration rate of young people, and a reduction in rates of youth crime including violent crime. Despite a dedicated attention to minimum international standards, rigorous attention to respect for rights, and focus on meaningful consequences and rehabilitation (discussed further below), concerns do persist. There is a significant over-representation of indigenous young people in the juvenile justice system in Canada, and an overrepresentation of racialized young people. There is also still evidence of unequal application, especially in sentencing, across jurisdictions; as well as a very wide range of available services and supports for young people, and a notable lack of services in rural and remote communities.

1.2.3. Core Objectives and General Characteristics

The core objectives of the YCJA are identified in the “Preamble” of the legislation, and in section 3 the “Declaration of Principle – Policy for Canada with respect to young persons”. The Preamble specifically notes our shared responsibility to address the developmental challenges and needs of young people and to provide guidance, as well as the shared social responsibility to use multi-disciplinary approaches to prevent crime by addressing underlying causes of crime, to respond to the needs, and to provide guidance and supports to young people at risk of committing crimes. This is a shift in focus right at the outset, as compared to earlier legislation, to a recognition of shared social responsibility, and attention on prevention as an important aspect of juvenile justice. The Act in fact invites the attention of social work skills and approaches. The Preamble continues in this approach as it goes on to require public education on juvenile justice, the implementation of special rights protections, and respect for society’s interests, and attention to the imposition of meaningful consequences, rehabilitation and reintegration, and specifically calls for a reduced reliance on incarceration, especially for non-violent offences.

Chart 1: YCJA Preamble¹²

Preamble

- WHEREAS members of society share a responsibility to address the developmental challenges and the needs of young persons and to guide them into adulthood;
- WHEREAS communities, families, parents and others concerned with the development of young persons should, through multi-disciplinary approaches, take reasonable steps to prevent youth crime by addressing its underlying causes, to respond to the needs of young persons, and to provide guidance and support to those at risk of committing crimes;
- WHEREAS information about youth justice, youth crime and the effectiveness of measures taken to address youth crime should be publicly available;
- WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, and have special guarantees of their rights and freedoms;
- AND WHEREAS Canadian society should have a youth criminal justice system that commands respect, takes into account the interests of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons

The Declaration of Principle then goes on to provide additional detail regarding the way juvenile justice is to be addressed in Canada, specifying that the protection of the public is to be safeguarded by accountability measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person, with a focus on rehabilitation and reintegration, support for prevention, addressing underlying causes of offending behavior, and focusing on community programs. Here we see specific attention to problems that arose under the previous legislation. There is specific recognition of the need to respect the rights and unique needs of young people in juvenile justice, with the requirement of a

¹² YCJA, *supra* note 6.

system separate and unique from the adult system. The YCJA establishes the principle of “diminished moral blameworthiness or culpability”, with a system that must emphasize rehabilitation and reintegration, and a number of other things all of which are consistent with a focus on the unique developmental needs of adolescents, and are consistent with the international instruments described above.

Chart 2: Declaration of Principle¹³ – Policy for Canada With Respect to Young Persons:

<p>3 (i) The following principles apply in this Act: (a) the youth criminal justice system is intended to protect the public by</p>	<ul style="list-style-type: none"> • (i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person, • (ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and • (iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour;
<p>(b) the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:</p>	<ul style="list-style-type: none"> • (i) rehabilitation and reintegration, • (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity, • (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected, • (iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and • (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons’ perception of time;
<p>(c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should:</p>	<ul style="list-style-type: none"> • (i) reinforce respect for societal values, • (ii) encourage the repair of harm done to victims and the community, • (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person’s rehabilitation and reintegration, and • (iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

¹³ YCJA, *supra* note 6.

(d) special considerations apply in respect of proceedings against young persons and, in particular,

- (i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,
- (ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,
- (iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and
- (iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

- (2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1)

1.2.4. Age of Criminal Responsibility

The juvenile justice system in Canada is applicable to those 12 through 17 years of age. The otherwise criminal behavior of those under 12, when serious, can be addressed through the child protection system. The upper age of 18 is consistent with the internationally recognized definition of child as being under 18 years old. It is also generally consistent with the age of majority in Canada, although in some provinces and territories the age of majority is 19. Given our current understanding that brain development, especially as regards executive functions, continues into the mid 20s, it is an area for future reform that special consideration be given regarding the criminal justice system's treatment of 18 to 25 years old.

1.2.5. Stages of Juvenile Justice

Police - A young person's first contact with the juvenile justice system will be with the police. Young people have identical legal rights as adults – the right to silence, to be free from unreasonable search and detention, the right to counsel, etc. Additionally, and consistent with the UNCRC and the *Beijing Rules*, the YCJA also provides extra protections regarding statements made to police. In order for a statement made to the police to be used in a criminal proceeding, the police must ensure that the young person understood their rights and any waiver of those rights in language and a manner appropriate to their individual developmental capacities and needs. Serious concerns are expressed in Canada, regarding policing in certain communities, especially racialized, and indigenous communities, and communities where people experience poverty.

EJM or Charges & Arrest - The YCJA has specific provisions that require the police to consider referring young people to community-based program instead of laying a criminal charge – Extra-Judicial Measures(EJM is discussed further below). This is something that is at the discretion of the police, although in some parts of the country the police may consult with Crown attorneys. If the police decide that the behavior in question is sufficiently serious they may lay a criminal charge. A young person may or may not be arrested when a charge is laid. A police officer can simply provide paper work that tells the young person when they must appear in court, without ever taking them to the police station. Of course the young person may also be arrested and taken into custody of the police when they are charged. A young person may also be arrested and taken into custody without being charged for up to 24 hours.

If a young person is arrested, there are additional legal rights that apply in an effort to account for the vulnerability of the young person. Young people are entitled to contact a lawyer, and to contact an adult that they trust (a parent or a supportive adult in the community). If the young person decides to make a statement they are entitled to have their lawyer and the trusted adult with them.

Bail - If a young person is held in custody by the police, they must be brought before a youth justice court within 24 hours. The YCJA has an entirely unique system for bail or “judicial interim release”. These provisions in the YCJA were amended in 2012 to try and ensure that even more young people are released into the community while their charges work their way through the system. Consistent with the *Beijing Rules*, pre-trial custody is to be used as a last resort, and only if no less restrictive means is appropriate. Also pre-trial detention must not be used as a substitute for child protection, mental health or other social measures. This can be challenging for the Court where adequate or appropriate community services are not available, but regardless it would be contrary to the law to hold a young persons in custody because for instance they had nowhere to live, or because they require psychological or medical assistance.

Right to counsel - Young people who have been charged have a right to counsel. Canada is fortunate to have a fairly comprehensive legal aid system, and the YCJA makes it possible for counsel to be appointed by the Court even if legal aid has been denied. As a matter of ethical and professional responsibility, defence counsel for a young person keeps all communication between the lawyer and the young person very strictly confidential. The lawyer may not share information with the young person’s parents, with Crown counsel, with social workers, probation officers, or anyone else without the consent of the young person. Defence counsel operate at arm’s length from any other aspect of the juvenile justice system, and owe a duty of loyalty only to the young person. The lawyer must advance all possible defenses on the young person’s instructions.

Charges in Court - Once the matter is before the court, there are a number of possible routes to conclusion. The Crown attorney may divert the charges away from the juvenile justice system, by a referral to a community program. This includes a very broad range of possible programs, which may range from personal therapeutic type interventions, restorative justice models, culturally specific / relevant programs, etc. This diversion away from the formal system to EJM is usually called “extra-judicial sanctions” (EJS) and requires that the young person acknowledges responsibility for criminal behavior, discussed further below.

If the Crown attorney is not willing to refer the young person to EJM, then the defence counsel will begin to negotiate with the Crown attorney – there may be negotiations about an appropriate sentence if the young person were to plead guilty, or negotiations about what issues will be addressed at trial. There are formal meetings and processes for defence counsel and Crown attorney negotiations, and sometimes these will include discussions with a youth court judge.

Finding of Guilt & Sentencing - If a young person pleads guilty or is found guilty after a trial, then the young person will get a sentence. The YCJA creates unique sentences for young people that range from a “reprimand” which results in no further consequence and the young person’s involvement with the juvenile justice system is complete, to a custodial sentence, or a specially supervised mental health facility sentence.

Specific discussion about the range of youth sentences is beyond the scope of this paper, but for a discussion of possible youth sentences: <http://jfcy.org/en/rights/sentences/>

Chart 3: Youth Sentences

Sanction	Maximum Penalty for Sentence
Reprimand	
Absolute Discharge	
Discharge with Conditions	Up to a maximum of two years
Fine	Not exceeding \$1,000
Compensation Order	
Restitution Order	
Community service order	Subject to a maximum of 240 hours over 12 months
Probation order	Subject to a maximum of two years
Requirement to participate in an Intensive Support and Supervision Program (ISSP)	
Order to attend a non-residential program approved by the director	Subject to a maximum of 240 hours over 12 months
Custody and supervision order	Subject to a maximum of two or three years, depending on the offence(s) before the court
Deferred custody and supervision order	Subject to a maximum of six months
Intensive rehabilitative custody and supervision order	Subject to a maximum of two years except of offence in first- or second-degree murder

As mentioned above, there is a focus on rehabilitation and reintegration of young people. In particular this requires that consequences be timely, be meaningful and individualized to the young person, and address the underlying causes of offending behavior. As is probably clear, there are many ways in which social work services will be a part of sentencing. Almost all sentencing will involve social work services in some capacity, and the more complex the needs of the young person, and the more serious the sentence the more inevitable this will be.

1.2.6. Key Stakeholders

There are a number of key stakeholders in the youth criminal justice system in Canada. Justices of the Peace, and Judges are the judicial officers in the system. Most judges in Canada are not specialists in youth justice, although in a few places especially bigger centers, with larger populations there may be designated judges who are familiar with the YCJA. Crown Attorneys are responsible for the prosecution of juvenile justice matters. Again they are not often specialized in youth justice, but there are a few places where there is some expertise. They are part of the government structure, and are exclusively responsible for making some discretionary decisions within juvenile justice, but generally have no direct communication with the young person; they may however have direct communication with many other people in the system, including social and social work service providers. Defence lawyers are key stakeholders, and because of the unique features that are central to the solicitor-client relationship the defence counsel should have extensive information about the young person. In some jurisdictions in Canada there are defence counsel who have extensive expertise, but this is not true everywhere.

Defence counsel often have direct communication with social work providers who are working with the young person. Probation officers are key stakeholders, and may perform a social work function by assessing a young person's needs and connecting them to relevant community services. They are generally funded by government, and again may or may not be specialized in juvenile justice. Young people often see probation officers as part of the punitive system, so probation officers have to work hard to break down barriers of communication and connection in order to foster meaningful relationships. Community based youth service providers are often key stakeholders. Some may be government funded, and some may not be. Some programs and services may be directly tied to juvenile justice, and some may deliver programs within and outside the juvenile justice system. In most jurisdictions in Canada there are not enough mental health service providers and the system is strained. These kinds of service providers are often required to support young people who are involved in juvenile justice, and are essential to rehabilitation and reintegration objectives. However, there is a risk to having a significant portion of children's mental health services funded through juvenile justice. Such an imbalance is problematic in a number of ways, including a failure to focus on prevention of crime and instead puts a focus on response to crime.

1.2.7. Statistics

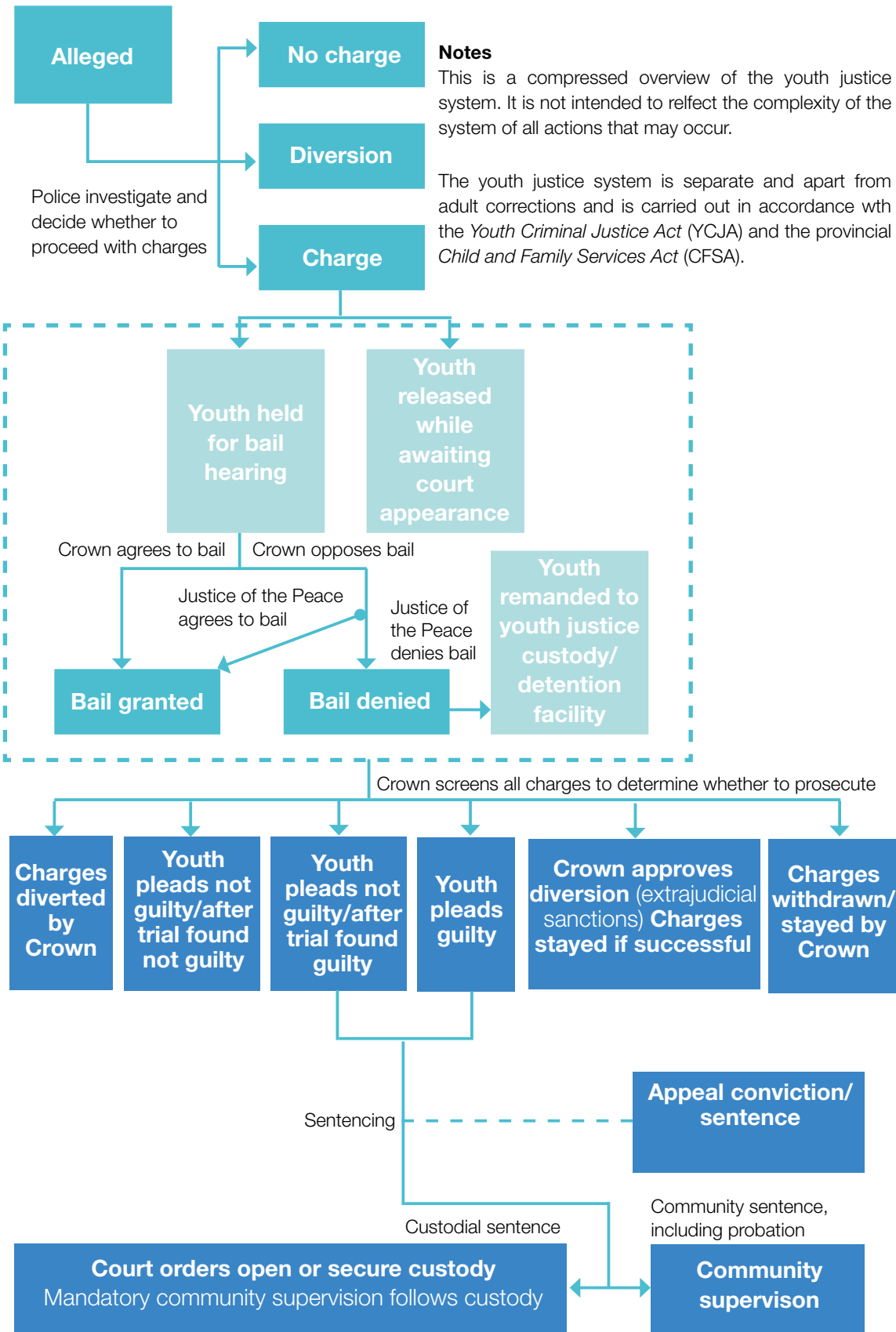
Juvenile justice makes up a relatively small proportion of criminal justice in Canada and from 1999 to 2014 youth crime in Canada fell by 38 per cent.¹⁴

1.2.8. Youth Justice Process in Canada

The following chart provides an outline of the different stages in the youth criminal justice system in Canada as outlined above.

¹⁴ Department of Justice Canada, Youth Criminal Justice in Canada: A Compendium of Statistics, 2016, <www.publications.gc.ca/collections/collection_2018/jus/J4-58-2016-eng.pdf>, visited in September 2018.

Chart 4: Stages in the Youth Criminal Justice System



1.3. *Juvenile Justice Social Work in Canada*

Most social work schools in Canada offer a generalist degree, which prepares students to work in a variety of settings. This means that students are required to participate in courses on a range of topics such as children and families, trauma, addictions, grief, public policy, statistics, and more. Some schools allow students to specialize in areas such as Child Welfare, Indigenous Social Work, and Social Service Leadership. Specializations in juvenile justice are not currently offered, although some schools offer courses on social work and the law or touch on juvenile justice issues within other courses. Youth Justice is an area in need of development in the field of social work in Canada.

The number of social workers involved within the juvenile justice system is not tracked in Canada and would be difficult to estimate. Social workers in the province of Ontario select from a list of primary functions when they register (e.g. Counselling, Law/Correction/Justice, Clinical Practice, Management, etc.). However, this does not accurately calculate the number of social workers involved in working with youth in the juvenile justice system because social workers in various settings work with youth involved with the law. For example, a social worker in a school may work with students who are involved in the juvenile justice system or a child welfare social worker may work with a youth who gets arrested.

2. The Role of Social Work in Juvenile Justice in Canada

2.1. *Legal Basis for Juvenile Justice Social Work*

The *Youth Criminal Justice Act* contemplates an extensive role for the support of various professionals, including social workers, at virtually every stage of criminal justice involvement for a young person. The Preamble to the YCJA, which guides the interpretation of the provisions of the Act, recognizes the shared responsibility for assisting young people and guiding them into adulthood, and the need for community engagement and multi-disciplinary approaches to prevent youth crime and respond to the needs of young people.¹⁵ Both the Preamble and the YCJA's Declaration of Principle emphasize meaningful consequences, proportionate accountability, and rehabilitation and reintegration as key objectives of juvenile justice and recognize the integral role of community agencies, services, and programs in preventing crime and addressing the circumstances underlying a young person's offending behavior.¹⁶ Indeed, the YCJA mandates an approach to juvenile justice that considers not only the seriousness of an offence, but the circumstances and needs of the offender, with the goal of preventing young people's entry into, and facilitating their exit from, the criminal justice system.

Accordingly, there is a role and need for social work intervention at almost every stage of a young person's contact with the criminal justice system, from pre-charge to disposition.

Extra-Judicial Measures - Consistent with the legislative goal of imposing meaningful – as opposed to punitive – consequences and the legislated emphasis on rehabilitation and reintegration, the YCJA provides for “extra-judicial measures” (EJM), defined as measures other than judicial proceedings used to deal with a young person alleged to have committed an offence.¹⁷ Section 4 of the Act refers to such measures as being “often the most

¹⁵ YCJA, *supra* note 6.

¹⁶ YCJA, s. 3(1)(ii) and (iii).

¹⁷ YCJA, s. 2(1).

appropriate and effective way to address youth crime” and providing for “effective and timely interventions focused on correcting offending behavior.”¹⁸ Accordingly, the Act provides both police and prosecutors with numerous alternatives for dealing with youthful offending, both pre- and post-charge.

Pre-charge, police officers are required to consider the use of EJM before initiating judicial proceedings.¹⁹ Police have the option to take no further action, to give the young person a warning, or to refer a young person to rehabilitative community programs as an alternative to laying a charge. These programs, typically administered by community organizations, can include counselling, education, or restorative justice. An officer’s ability to refer a young person to such programs is limited by their availability in the local community, presenting a challenge in smaller centers.

If EJMs are considered to be inappropriate and a formal charge is laid, Crown prosecutors maintain the discretion to offer post-charge diversion. Rather than proceeding with the charge, a prosecutor may issue a Crown caution or consider other means of disposing of a charge. Post-charge, extra-judicial measures are generally referred to as extra-judicial sanctions, or “EJS”, and typically involve a referral to an authorized, structured program offered by a community organization.²⁰ Again, these may include programs of counselling, education, or restorative justice. Participation in EJS requires the young person to accept responsibility for the conduct that brought them before the court, but does not result in a finding of guilt.²¹ Crown prosecutors also retain discretion to deal with charges against a young person by way of “informal diversion”, which may include agreement as to particular steps – such as enrollment in school or a treatment program – upon completion of which charges will be withdrawn.

Many courthouses have dedicated programs staffed by social workers and mental health professionals to assist with referrals and creating plans of care for young people seeking such services and can assist in creating programs tailored to a young person’s needs in a wide range of areas, from education and employment to counselling and psychiatric care. This approach to youth crime has been effective, resulting in reductions in the numbers of young people charged with offences and an overall reduction in youth crime and recidivism.²²

Conferences - The YCJA contemplates the participation of the community, family, and other supportive adults in the disposition of charges under the Act. The Act specifically provides for case conferences to be held in order to, for example, give advice as to appropriate diversion measures, bail plans, sentences, reviews of sentences, and plans for reintegrating the young person in the community.²³ These conferences may be called by a judge, a prosecutor, a probation officer, a youth worker, or a police officer and will often include court workers and community agencies who can provide insight into the young person’s circumstances and needs, the nature of the offence, the impact on the community and victim, and how the YCJA’s objectives of meaningful consequences and rehabilitation and reintegration may best be achieved in a particular case.

Assessments and Reports - The YCJA contemplates a role for social workers, and other professionals, in assessing a young person’s circumstances and needs in order to assist the

18 YCJA, s. 4(a) and (b).

19 YCJA, s. 6(1).

20 YCJA, s. 10.

21 *Ibid.*

22 B. Jones, et al. *Prosecuting and Defending Youth Criminal Justice Cases: A Practitioner’s Handbook*, (Toronto: Emond Professional, 2016) pp. 131-2.

23 YCJA, s. 19, 41.

court at numerous stages of criminal proceedings, such as in developing a plan of release (bail) or in the final disposition of charges.

Under section 34, at any stage of proceedings, the court may require a young person to undergo an assessment by a “qualified person”, who is required to report the results of the assessment to the court.²⁴ These reports are objective assessments of a young person’s mental health, functioning, decision-making, learning, and criminogenic factors affecting the young person and are intended to provide the court insight into a young person’s history, circumstances, characteristics, and needs. These assessments are typically completed by mental health professionals – often assisted by clinical social workers – in clinics or hospitals. The assessment may be completed with the consent of the young person and prosecutor, on the application of the young person or prosecutor, or on the court’s own motion. A medical/psychological report must be ordered when determining a young person’s fitness to stand trial or criminal responsibility as a result of a mental disorder. This examination must be carried out by a qualified medical practitioner. The quality and utility of these reports are variable. Where resources exist, these reports can provide significant insight into a young person’s family constellation, educational history, experience with trauma, mental illness and mental health, physical health, psycho-educational needs, and make recommendations for appropriate supports in the community, which are often operated by social workers and other professionals.

The YCJA also provides for pre-sentence reports (PSRs) to assist the court in coming to an appropriate sentence.²⁵ These reports must be considered before a custodial sentence can be imposed and may be ordered in any other case where the court deems it appropriate.²⁶ These reports are prepared for the youth justice court, not on behalf of either the Crown or the defence counsel, ensuring neutrality. Section 40(2) of the YCJA identifies the prescribed minimal content requirements for a PSR. These reports are prepared by youth court workers or probation officers on the basis of interviews with the young person, his or her parents, other family members, and other collateral contacts who work with the young person and must include information about the young person’s character, maturity, behaviour, attitude, and willingness to make amends; any plans the young person has to change or improve him- or herself; any prior youth court record or experience with EJS; the availability of community services and facilities and the young person’s willingness to engage in them; the young person’s relationship with their parents and other family members and the degree of their influence and control over the young person; and the young person’s school and employment history.²⁷ A PSR will also include the results of an interview with the victim, if any, and recommendations for an appropriate sentence.²⁸ The report may also include recommendations regarding an appropriate sentence, and must address the YCJA restrictions on custody in section 39 and explore all community-based alternatives to custody. Sources of information are to be clearly identified in the PSR. The report is submitted directly to the youth justice court which provides copies of the report to the young person, parent/legal guardian, Crown attorney and defence counsel.

Youth workers and other professionals may also provide updates to the court at various stages. Such progress reports are often provided informally, for example, to update the court as to the young person’s progress in completing diversion programs, or post-sentence for

²⁴ YCJA, s. 34.

²⁵ YCJA, s. 40.

²⁶ YCJA, s. 40(1).

²⁷ YCJA, s. 40(2).

²⁸ *Supra* note 25.

the purpose of reviewing a sentence.²⁹ The YCJA mandates that such reports be provided annually as part of a mandatory review of the young person's sentence where they are sentenced to custody. They may be provided on a review of a non-custodial sentence. These reports provide information about a young person's present circumstances – engagement in services, progress, plans, and goals for the future – to assist the court to determine whether the sentence continues to appropriately reflect the needs of the offender, consistent with the objectives of rehabilitation and reintegration.

Youth Justice Courts – like all Canadian courts – are also required to consider the particular circumstances of Aboriginal offenders,³⁰ including impact of the history of colonialism and displacement of aboriginal peoples, the impact of residential schools on the young person's family and community, personal victimization of the young person and risk of victimization of his or her community, health and mental health concerns, including substance use, experience of poverty, and experience with discrimination and prejudice, among other factors.

Aboriginal offenders accordingly often obtain *Gladue* reports – so called after the Supreme Court of Canada's seminal decision in *R v. Gladue*³¹ – prepared by Aboriginal court workers with particular experience and expertise in working with aboriginal individuals and communities.

Post-Sentence - The YCJA continues to contemplate a role for social workers after sentence has been imposed. For example, where a court imposes a term of probation or a discharge on conditions, the conditions of those sentences will often include contact with social workers and other professionals for rehabilitative purposes.³² The Act specifically provides that, where a young person is sentenced to custody, a youth worker must be assigned to them to develop a plan for their reintegration into the community – which might include plans for education and employment, counselling, and housing – and will continue to supervise them upon their release.³³

Privacy - While the YCJA encourages participation of and collaboration between numerous justice system actors – judges and justice of the peace, Crown prosecutors, defence counsel, social workers, mental health professionals, probation officers, parents, and young people – the Act mandates strict controls on the sharing of information about young people, consistent with the UNCRC and *Beijing Rules*.³⁴ The UNCRC mandates that a young person's privacy must be fully respected at all stages of proceedings. The right to privacy is similarly reflected in the YCJA's Declaration of Principle.³⁵ The *Beijing Rules* further provide that “the juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the processing of labelling”.³⁶ Privacy, in particular the avoidance of labelling and stigmatizing a young person as an offender, is recognized as having a critical relationship to their rehabilitation and reintegration and recognition of their dignity and autonomy.

29 YCJA, s. 59, 94.

30 YCJA, s. 38(2). See also *Criminal Code of Canada*, RSC 1985, c. C-46, s. 718.2(e).

31 *R v Gladue*, [1999] 1 SCR 688.

32 YCJA, s. 42.

33 YCJA, s. 90.

34 UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Art. 40.

35 YCJA, s. 3(b) (iii).

36 UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“*The Beijing Rules*”), 29 November 1985, Rule 8.

The YCJA sets out a comprehensive and detailed code for access to and disclosure and publication of information concerning young people dealt with under the Act. The YCJA provides for enhanced privacy protections in three ways: by limiting who can access information and records, by prohibiting the disclosure of records that may identify young persons, and by prohibiting publication of identifying information.³⁷ These privacy protections operate over and above the ethical and professional obligations of social workers regarding confidentiality.

The Act prohibits publication of a young person's name, or any other information related to a young person that would have the effect of identifying them as being dealt with under the YCJA. "Publication" has a broad meaning and has been interpreted to prohibit the disclosure of any identifying information to the community or any part thereof not authorized to receive it. In other words, information about a young person cannot be shared outside the youth criminal justice system except as authorized by the Act. The Act contemplates the sharing of information among various stakeholders, including social workers, for specific purposes. For example, information concerning the circumstances of an offence could be shared for the purpose of administering an EJM program or preparing a report such as a section 34 assessment.³⁸ The YCJA authorizes the disclosure of information to "any professional or other person engaged in the supervision or care of a young person" including a school, but only for limited purposes: to ensure compliance with a court order, to ensure safety of staff, students, or others, or to facilitate rehabilitation.³⁹ However, only as much information as is necessary for the purpose may be disclosed and it must be kept separately from other information relating to the young person and destroyed when it is no longer required for the purpose for which it was disclosed. Persons who receive information regarding a young person's youth justice involvement are prohibited from further disclosing that information.

Support to Child Victims of Crime - Support to children and young people who are victims of crime is available within the justice system. At the typical first point of contact – a complaint to police – police officers in many jurisdictions are able to refer young people to services in the community, which include counselling support as well as court support, to help the child understand the court process and liaise with other key stakeholders on his or her behalf, such as Crown attorneys and police. Victims of violent crime in some jurisdictions may also seek financial compensation from the government, which may include funding for counselling services as well as financial compensation for pain and suffering.

2.2. *The Role of Social Work in Juvenile Justice: Law and Practice*

In an effort to provide a more detailed and nuanced picture of the youth justice system in practice, we will focus on one Canadian province, Ontario, the province in which we have direct experience as social workers and lawyers. The province of Ontario's service delivery approach for youth justice services includes a range of evidenced-informed community and custodial programs and services for youth in, or at risk of, conflict with the law. Programs and services are provided directly by government employees or through community-based agencies and individuals (majority of which are funded by the government). The Youth Justice Services Division (YJSD) includes four branches: probation services, community-

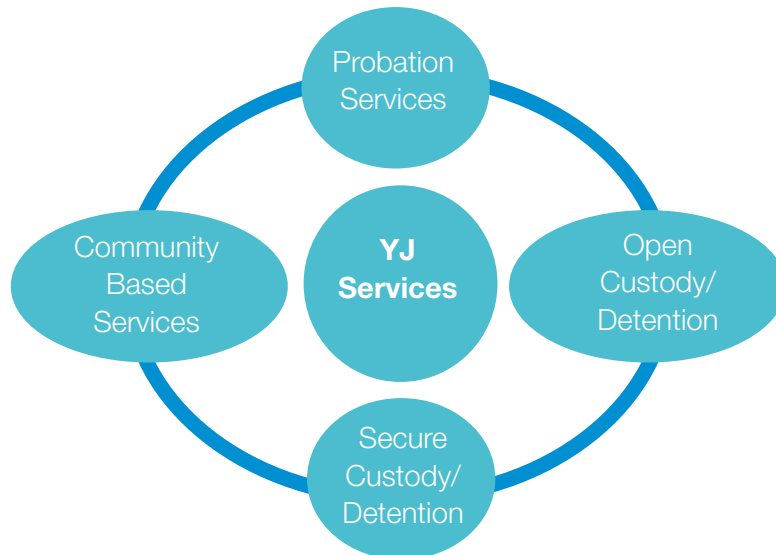
³⁷ YCJA, Part 6.

³⁸ YCJA, ss. 119(1)(j), 125(5).

³⁹ YCJA, s. 125(6).

based services, open custody/detention, and secure custody/detention as identified below. The primary service providers of youth justice specific services include: probation officers, child and youth workers, social workers, child and youth workers, nurses, psychologists, and psychiatrists.

Chart 5: Youth Justice Services



Beyond these youth justice funded resources, other large government and non-governmental systems and resources, which are supported by social workers, such as child welfare/ protection, mental health, health, education, housing and employment services, are regularly accessed to support the needs of young people involved in the justice system. For the purpose of this paper, the focus will solely be on justice specific roles and resources.

Although the roles of some professionals throughout the legal process are outlined in the YCJA, the Act does not include the terms social work or social worker. Many roles could be filled by a social worker, however they could also be filled by another professional with different educational training. For example, a probation officer may be trained in social work, criminology, psychology, or sociology. Furthermore, the counselling or programming required for diversion or a probation order could be provided by a social worker or another professional (e.g. child and youth worker, psychotherapist, psychologist, psychiatrist). As a result, the following roles and functions could be filled by social workers or other professionals involved in the juvenile justice system. This multidisciplinary approach in Canada has developed due to the academic contributions of multiple disciplines to the field of youth justice, the regulations and scope of practice for different professionals, and finally financial cost depending on the professional (e.g. it is less expensive to have social workers provide treatment than psychologists). This approach is a valued strength of the youth justice system in Canada.

Prevention - Social workers may be involved in supporting a youth who is considered to be at risk before they are involved in the juvenile justice system. For example, non-profit organizations across Canada provide after-school programming, anti-bullying, school-based, recreational and counselling services to youth and families. A commonly implemented evidenced-based cognitive behavioral model used in Ontario is Stop Now and

Plan (SNAP) that provides a framework for teaching children (age 6-12) and their parents effective emotional regulation, self-control and problem-solving skills.⁴⁰ All these prevention services are primarily provided by non-profit organizations, who receive funding from the government. A parent or a young person can make the referral to work with the community agency or may be referred by another professional (e.g. teacher, family doctor, etc.). In Ontario, agencies that work with youth and families must follow the *Child, Youth and Family Services Act 2017* (CYFSA), which came into force on April 30, 2018, and is the latest version of the child welfare legislation in Canada.

Extrajudicial Measures (EJM) - Police have the ability to refer youth for EJM rather than charging them for a crime. EJM were outlined in section 1.2 and 2.1 above. Probation officers (government employees) and/or community-based agencies (non-profit employees) coordinate EJM, that could involve attending a community program (e.g. participating in anti-shoplifting, employment, social skills workshops), participating in counselling, a substance use program and more. Social workers could be involved in running these programs and providing counselling. Most social workers employed in the area of EJM for youth are working for non-profit organizations that receive funding from the government.

Arrest/Charge by Police - Some youth are held in detention centres after they are arrested. Some detention centres have social workers employed by the centre or allow social workers from community agencies to meet with young people while they live at the detention centre. These social workers provide counselling and assist with re-integration planning, such as connecting a youth to housing, school, or employment opportunities when they leave detention and return to the community. Some detention centres are run directly by the provincial government, while other centres are run by non-profit organizations that are funded by the government. Therefore social workers working with youth at this stage may be employed by the government or by non-profits.

Court - The services available in youth courts vary by province. In Ontario, each youth court has a Youth Mental Health Court Worker (YMHCW) who can assist young people throughout their court involvement and connect them to further services in the community that can address their mental health or other service needs. Some youth courts in Ontario also include Aboriginal Court Workers (ACW) who can work with young people who identify as aboriginal. Both of these services are voluntary and these support workers may be social workers or other mental health professionals employed by community-based agencies.

Restorative justice programs run in some courts throughout Ontario and may be coordinated by social workers. A restorative justice type of conference (Section 19 of the YCJA) can be held to hold the young person accountable and to help repair the harm done to the victim and community. Restorative justice circles are designed to determine the underlying factors that led to the conflict, the extent of the young person's responsibility, and aid the young person in developing resolutions to make amends and move towards a more positive future. See Peacebuilders Canada for examples of such programs.⁴¹

Bail supervision programs are also available in some youth courts. These programs offer assistance to young people who do not have a surety (a person who makes a promise to

⁴⁰ Child Development Institute, *Stop Now and Plan*, <www.childdevelop.ca>, visited in September 2018.

⁴¹ Peacebuilders Canada, *Restorative Justice Programs*, <www.peacebuilders.ca>, visited on 30 March 2019.

the court to watch out for the young person while they are on bail). Young people have to agree to be supervised by the bail program and have to follow the conditions and rules of the program. Bail programs may be coordinated by social workers who will often take on a case management role in supporting the young person with their needs. For example, if the young person does not have any housing, the bail program could support them to find a bed at a shelter for youth.

Medical/Psychological Assessments - Social workers may be part of assessing youth who are involved in the justice system, and one such assessment is a medical or psychological assessment outlined in Section 34 of the YCJA. See section 2.1 regarding Section 34 assessments. These assessments are primarily completed by a psychiatrist or psychologist, although social workers may assist in gathering information and writing part of the report. Social workers who have been involved with the youth in the past may be consulted as part of the assessment in order to provide background information or feedback on the youth's needs. Copies of the report are submitted to the youth justice court which provides copies per section 34 (7) to the young person, a parent who is in attendance at the proceedings, the young person's counsel and the prosecutor. The government pays for these assessments, although the assessors are usually not government employees. Access to Section 34 reports is strictly controlled under the YCJA, however when released, can be very useful for resource and treatment planning.

Not Criminally Responsible - If a youth is deemed Not Criminally Responsible by reason of mental disorder, they may be required to attend a treatment centre. Various mental health professionals including psychiatrists, psychologists, and social workers work at these centres. In these settings, social workers provide mental health treatment as well as case management support. These social workers are usually working for a hospital or mental health agency and are not government employees.

Probation Services - In Ontario, a single case management model is followed for probation services, which means that probation officers oversee the overarching case management plan for the young person and family once formally involved with probation services (young person is completing an Extra Judicial Sanction (EJS) or has been found guilty and been sentenced). The probation officer fulfills the role of "Youth Worker" as described in the YCJA and is the case manager of the YCJA mandate as identified in Chart six. Probation officers as staff of the government, support the rehabilitation and reintegration of youth in conflict with the law and work to reduce each youth's risk to re-offend. Probation officers accomplish these goals by making recommendations that impact judicial decisions (pre-sentence reports, progress reports), supervise young persons, directly provide rehabilitative interventions, refer for rehabilitative/treatment-based services and respond to non-compliance of court orders to promote accountability and public safety. The single case management model principles in Chart 7 guide all day-to-day practices of probation officers.⁴²

42 Youth Justice Services Division, Ministry of Children and Youth Services, *Probation Services Framework*, May 2012.

Chart 6: Probation Services

Case Manager	In youth justice services, the probation officer is the case manager of the YCJA sentence. The case manager is identified as the responsible person for the provision and/or co-ordination of all services relevant to the YCJA mandate and for ensuring that all services provided are consistent with the case management plan.
Casework	As provided by probation officer, casework is direct assessment and counselling services to young persons individually or in groups. Accepted principals, interview techniques and intervention strategies are applied from the fields of social work, criminology, sociology, psychology, education and research regarding risk/need and effective interventions for young persons.
Case Management / Reintegration Plan	This is the probation officer's overall service plan for every young person who receives a non-residential or a custody and supervision order. It is a plan for the total sentence and it targets the indicators which reflect the young person's risk of offending.

Chart 7: Single Case Management Model

Single Case Management Model	Protection of the community is promoted by addressing the underlying circumstances of youth's offending behavior
	Interventions are assessment based and focused on the rehabilitative and reintegration needs of youth
	Interventions chosen have a logical and meaningful link to the assessment, take into account criminogenic and responsivity factors and reserve the most intensive intervention for youth assessed to be at the highest risk to re-offend
	Information about a young person is collected, maintained and disclosed according to the confidentiality provision of the YCJA
	Professional discretion is used by probation officers in case management activities and decision making

Custodial Sentence - If a youth is found guilty of a crime they may be sentenced to custody (secure or open) for a set length of time. Probation officers are assigned the responsibility of case management and work alongside the youth, family, teachers, and youth workers at the facility to carry out the case management plan. Many of these facilities either employ mental

health professions including social workers, to provide counselling, or allow professionals from external agencies to work with youth in custody facilities. Some of the youth custody facilities in Canada are operated directly by the government, while others are run by non-profit organizations that are paid by the government to provide the service.

Other Sentences - If a youth is found guilty of a crime they are often given a probation sentence for a period of time (generally no longer than two years). The youth is required to report to their probation officer who ensures that they follow through on the conditions of their probation. Youth probation orders could include that the youth must complete skill-based programs (e.g. complete an anger management program, employment program) or participate in counselling. Different mental health professionals, including social workers, provide these services. These social workers are primarily employed by non-profit organizations that receive funding from the government. The YCJA also includes other sentencing options that are available for youth through an Intensive Rehabilitative Custody and Supervision Order and the Intensive Support and Supervision Program (ISSP). Both programs provide more intensive monitoring and access to mental health treatment for youth who have been involved in serious crimes as an alternative to custody.

Privacy Considerations - The YCJA mandates strict controls on the sharing of information about young people, consistent with the UNCRC and *Beijing Rules*, see section 2.1. In practice, this means that a person, such as a social worker, engaged in providing rehabilitative services to a young person may not be allowed to, for example, share information about the offence, the contents of any report prepared under the Act, or the disposition of charges with the young person's teacher, even if the young person consents. Disclosure of information that is not otherwise authorized by the Act requires a court order. Unauthorized disclosure is a criminal offence.⁴³

The YCJA also provides that records become inaccessible after a period of time, depending on the disposition of their charges. For example, if charges were withdrawn following participation in EJS, the records will be sealed two years from the date the young person agreed to participate.⁴⁴ Once these records are sealed, they are inaccessible, except by court order.⁴⁵ Moreover, the Act provides that, once a sentence has been completed, a young person is deemed never to have been found guilty of the offence.⁴⁶ These provisions are technical and detailed, and are intended to ensure that young people have the opportunity to move forward from offending behaviour, facilitating their reintegration.

Legal Consequences - The legal consequence of a social worker not fulfilling their roles and functions under the law varies according to the circumstances and is outlined in multiple Acts in Ontario. Beyond the YCJA, the CYFSA is important legislation that impacts social worker practice. For example, if a social worker does not report child abuse which they were aware of in their professional work they could be found guilty of an offense and fined. If a social worker was accused of harming a child while performing their professional duties they could be charged and held legally responsible. In addition, the Ontario College of Social Workers and Social Service Workers (the licensing body for social workers in Ontario) can also discipline social workers according to the *Social Work and Social Service Act*

43 YCJA, s. 138(1).

44 YCJA, s. 119(2).

45 YCJA, s. 123.

46 YCJA, s. 82.

1998. The College's Discipline Committee hears and determines allegations of professional misconduct and incompetence. The Discipline Committee can suspend or revoke the social worker's license (they are then no longer able to work as a social worker) and impose fines, as disciplinary measures.

2.3. Cooperation Between Social Workers and Other Relevant Stakeholders in Canada

Cooperation and collaboration are key elements of the implementation of the YCJA and functioning of the youth justice system in Canada. Without all the different parties, legal and non-legal, the system would not be able to meet the requirements of the Act or the needs of young people, families, communities, and society. Due to the structure of the larger justice system in Canada (including the Ministry of the Attorney General, Ministry of Child, Community and Social Services, Ministry of Community Safety and Correctional Services), the four branches of the Ministry of Child, Community and Social Services (probation, secure custody and detention, open custody and detention, community-based services), the multidisciplinary approach to professional supports, and the importance of partnering with other Ministries (Education, Health, Social, Housing) significant challenges and divisions can arise that have a negative impact on the experience of justice involved young people and their families. Advocacy, creativity and determination are all required on the part of social workers and other parties to ensure that fragmentation does not get in the way of quality service. It is our view that the youth justice system independently cannot solve all the problems of youth crime or prevention and should not be expected to. Justice system policies and programs must be tied to other social policies and programs to ensure a holistic response be taken to address youth crime and prevention.

With respect to legal requirements regarding cooperation and coordination between social workers and other stakeholders, there are multiple regulations from different Act that outline the requirements. As an example in Ontario, the *Personal Health Information and Protection Act* (PHIPA), establishes a set of rules regarding individual's personal health information and gives young people rights regarding the collection, use, access, and disclosure of their information. The YCJA also has certain privacy provision as outlined in Section 2.1 and 2.2. The information sharing protections and restrictions in these two Acts can pose significant challenges for case planning and the implementation of services and treatment.

2.4. Qualification and Evaluation of Juvenile Justice Social Work in Canada

2.4.1. Qualifications

The roles and functions of professionals involved in the youth justice system may be filled by social workers or other professionals and generally include a wide range of disciplines as noted in Section 2.2. The qualifications of probation officers will be addressed along with other professionals who work with youth and families involved at different points in the justice system.

Probation officers - must "hold a degree, from an institution authorized by the province to grant degrees, in one of the following disciplines: social work, psychology, sociology, and criminology;...and experience, greater than five years in total, in a social services or correctional organization, in a role(s) that involves the formal assessment of human

behaviour and the application of structured interventions aimed at supporting the changing of human behaviour”.⁴⁷ Once hired, new probation officers must successfully complete a comprehensive basic training program that builds on the empirical research and principles of effective intervention and programming. They are given ongoing training in subjects that will help them perform their duties in a professional and effective manner. A detailed manual, the Ontario Youth Justice Service Manual, contains legislation, operational standards, policies and procedures that direct the provision of services to youth under supervision in the community, in custody and in detention settings. These standards provide the structure and basis by which the Ministry monitors performance and compliance. Core skills required for case management include: connecting and engaging with youth, assessment and observation, use of a strengths approach, communication, intervention techniques and strategies, professionalism, respect for culture and diversity, and collaboration.

Other Service Providers (Community-based, Secure facilities, Open facilities) - The qualifications set out for the other service providers to carry out their roles are defined by their employer and will differ depending on the program or service. However, all services funded by the YJSD, such as community-based programs, open custody/detention facilities, and secure custody/detention facilities are required to follow the Youth Justice Services Manual, as described above for probation officers. Beyond this manual, it is difficult to provide further information, as each service provider follows their own structure, standards, policies and procedures.

More generally in Ontario, social workers, social service workers, psychotherapists, nurses, psychologists and psychiatrists are required to be registered with their corresponding regulatory college as described in Section 1.1. Furthermore, in December 2017, the Ontario government proclaimed into force the provisions of the *Psychotherapy Act* which created the College of Registered Psychotherapists of Ontario (CPRO). As a result, performance of the controlled act of psychotherapy is restricted to members of specific regulatory colleges (including the Ontario College of Social Workers and Social Service Workers). As per the CPRO, “the scope of practice of psychotherapy includes the assessment and treatment of cognitive, emotional or behavioral disturbances by psychotherapeutic means, delivered through a therapeutic relationship based primarily on verbal or non-verbal communication”.⁴⁸ This new legislation is placing pressure on the youth justice system to ensure that all providers of psychotherapeutic services have the required training, supervision and designation.

2.4.2. Evaluation

Evaluation and research activities are completed by the YJSD, Academic institutions and community-based organizations. The YJSD has developed a youth outcomes framework and data strategy for Ontario. The objective of the data strategy is to develop outcomes and measures and advance reporting capabilities to show the impact of the YJSD’s programs and services on youth and families. This youth outcome framework is detailed on the next page and applies to all service and programs funded by YJSD.

⁴⁷ Careers in Corrections, Ontario Government, <www.mcscs.jus.gov.on.ca/english/corr_serv/careers_in_corr/careers_pp_officer/careers_pp_officer.html>, visited in April 2019.

⁴⁸ College of Registered Psychotherapists of Ontario (CPRO), *What is Psychotherapy?*, <www.cpro.ca>, visited in October 2018.

Chart 8: Youth Outcome Framework

Improved Functioning and Positive Social Behaviors	Increased Skills and Abilities	Increased Youth Engagement with Supports	Decreased Re-Offending
Increased recognition of impact of behaviors	Increased problem solving ability	Improved transitions (e.g. mental health supports)	Decreased recidivism
Improved social functioning and positive social behaviors	Increased skills and training	Increased youth engagement with community and family supports	Decreased frequency of offenses
Decreased risk behaviors	Increased life-skills	Increased youth engagement with structured supports	Decreased severity of offenses

The data strategy involves a multipronged approach:

1. Collecting feedback on experience from service users, including young people and parents, from the four branches of YJSD. The client experience surveys are submitted to YJSD for review and analysis.
2. Collecting data on level of risk and criminogenic needs. Probation Officers complete a standardized Risk Needs Assessment, which is based on the Youth Level of Service/Case Management Inventory⁴⁹ for all young people who receive a probation or custody sentence.
3. Collecting data on outcomes through the Outcome Data Collection Form (OCDF) which has been implemented across three YJSD branches, with secure custody/detention implementation still to come. This tool is informed by the Child and Adolescent Needs and Strengths (CANS)⁵⁰ tool and contains 14 questions which are completed at admission and departure from a program or service as outlined in Chart 9. De-identified OCDF data is entered into an online YJSD database management system.

Chart 9: Outcome Data Collection Form (OCDF)

OCDF Improved Functioning and Positive Social Behaviors

Recognition of impact of behaviors

Social functioning

Substance Abuse

Aggression toward objects

Peer Influences

49 Hoge, R. D., Andrews, D. A., *Youth Level of Service/Case Management Inventory 2.0 (YLS/CMI 2.0): User's Manual* (Toronto, Ontario, Canada: Multi-Health Systems, 2011).

50 The John Pread Foundation, CANS, <www.praedfoundation.org/tools/the-child-and-adolescent-needs-and-strengths-cans/canada/>, visited in October 2018.

Increased Skills and Abilities

Decision-Making Skills

Academic Achievement

Job Skills

Life Skills

Increased Youth Engagement with Supports

Adaptation to Change

Family

Community/Cultural Involvement

School Attendance

Occupation/Employment

4. Collecting data on Identity-based data (IDbD) started in March 2018 for secure and open custody/detention and EJS programs, and will be completed across the whole service continuum in the near future. IDbD provide an opportunity to identify gaps in services, proactively address equity issues, and measure progress in achieving equitable access to services and improved outcomes for youth.
5. Finally, the YJSD is currently moving towards collecting young people's de-identified mental health screening information from open custody/detention, secure custody/ detention facilities in Toronto, based on the admiration of the MAYSI-2 (Massachusetts Youth Screening Instrument Version 2)⁵¹, along with education and employment information.

Currently limited data regarding the outcome results are available to individual programs/ services for review, and as of yet the YJSD has not provided any official reports regarding outcome findings for the different branches in the youth justice system. This data outcome and evaluation initiative provides a starting place for the Province, with more needed growth and development to come.

In addition to the YJSD, there are some academic research projects being completed at the Department of Applied Psychology and Human Development and the Centre for Criminology and Socio legal Studies both at the University of Toronto, and at Ryerson University's Faculty of Child and Youth Work that is relevant to the practice of professionals in the youth justice system in Canada and beyond. Finally individual community-based agencies independently complete quality improvement and evaluation activities.

3. Experience, Main Challenges, and Reform Initiatives Regarding Juvenile Justice Social Work in Canada

3.1. Experience and Achievements

Prior to the YCJA, Canada's youth justice legislation lacked a clear and guiding set of values and principles and allowed for significant discretion on the part of police, lawyers and judges. In the late 1990s, Canada had one of the highest rates in the western world for the use of courts and custody for youthful offenders. Thankfully this has significantly changed

⁵¹ National Youth Screening & Assessment Partners, MAYSI-2, <www.nysap.us/MAYSI2.html>, visited in October 2018.

since the implementation of the YCJA, and speaks to the importance of legislation as a tool to shift large systems. Training for police, court personnel, service providers and the greater community was an important part of the success of the shift in philosophy and practice. The shift has resulted in reductions in the use of courts and custody for youth, more cases are being diverted from the courts and there has been more use of community sentencing options, without an increase in crime.

Specific to social work practice, the development of the Youth Mental Health Court Worker (YMHCW) program throughout Ontario has shown a significant commitment to measures that rehabilitate young persons, address the circumstances underlying their offending behaviour and are meaningful for the individual young person given his or her needs and level of development. Beyond the YMHCW program, some youth courts in Ontario have developed specialized Mental Health Courts and Aboriginal Courts. The principal of therapeutic jurisprudence is at the forefront in these courts, and they generally apply a problem-solving rather than an adversarial approach. These courts require significant collaboration and cooperation between all parties, including the YMHCW/ACW, Crown attorney, duty counsel/defense counsel, young person, parent (if involved) and the youth court judge. See Davis et al. for a process evaluation of the Community Youth Court in Toronto Ontario.⁵²

3.2. Main Challenges

Although there have been many successes with the YCJA and the youth justice system in Canada there is still work to be done. One area that could be further developed is the use of Extrajudicial Measures (EJM) for minor and first-time offences. In 2014, 94,100 youth were accused of an offence, of those 55 per cent were dealt with by EJM on a pre-charge basis and 45 percent were formally charged by police.⁵³ The number of young people who are formally charged, attend at court and then subsequently cautioned or diverted continues to be significant and could be decreased. Limiting contact with court ensures that the young person does not experience the stigma and shame of attending at court and being identified (whether true or not) as a youthful offender.

The over-representation of aboriginal and racialized young people continues to be a significant concern and problem in Canada, along with young people who are involved in the child protection and child welfare systems. Even though the number of formal criminal charges filed against young people continues to decline and the overall incarceration rate remains low, the number of aboriginal and racialized youth remains high in the youth and adult systems. In 2013-2014 Aboriginal youth accounted for 41 per cent of all admissions to youth corrections facilities, while representing about seven per cent of the youth population. In 2017 The Office of the Correctional Investigator of Canada and the Office of the Child's Advocate completed a joint investigation which examined the population of transitional aged youth (aged 18-24 years) in federal corrections facilities and also found an over-representation of certain populations. Adult Aboriginal offenders represent 38 per cent and adult black offenders represent 12 per cent of the penitentiary population.⁵⁴

52 K. Davis, et al., 'A Process Evaluation of Toronto's First Youth Mental Health Court', 57:2 *Canadian Journal of Criminology and Criminal Justice* (2015) pp. 159-188.

53 Statistics Canada, Crime and Justice Statistics, *police reported crime statistics*, <www.statcan.gc.ca/eng/subjects-start/crime_and_justice>, visited in October 2018.

54 The Correctional Investigator and Provincial Advocate for Child & Youth, *Missed Opportunities: The Experience of Young Adults Incarcerated in Federal Penitentiaries*, August 2017, <www.provincialadvocate.on.ca>, visited in September 2018.

Lack of community-based and facility-based resources that meet the needs of young people and families exist in many parts of Canada. Remote northern areas are significantly impacted in this regard. Where services do exist, coordination of services can be difficult within the system as young people often quickly move in and out of the system, including to different facilities depending on their behavior and legal status. Lack of rehabilitative and educational services for youth in custody, peer-to-peer abuse and gang recruitment, use of restraints and solitary confinement continue to be concerns. Adequate research and evaluation of interventions is also a challenge in the youth justice system, meaning that even within the resource rich urban areas, there is little data to confirm the services are evidence-based and effective.

3.3. Reform Initiatives

In 2008 an independent review was requested and completed for the government of Ontario regarding the roots of youth violence due to increased violence involving youth in the city of Toronto and the province. The Roots of Youth Violence report is the blueprint and foundation for action on youth violence in Ontario. The introduction to the report states:

“Ontario is at a Crossroads. While it is a safe place for most, our review identified deeply troubling trends in the nature of serious violent crime involving youth in Ontario and the impacts it is having on many communities. Those trends suggest that, unless the roots of this violence are identified and addressed in a coordinated, collaborative and sustained way, violence will get worse. Many people will be killed, communities will become increasingly isolated and disadvantaged, an ever-accelerating downward cycle will ensue for far too many, and our social fabric as a province could be seriously damaged.”⁵⁵

The authors went on to identify immediate risk factors that grounded the review, which they identified create a state of desperation and put youth in the immediate path of serious violence as identified below.

Chart 10: Risk Factors for Youth

Immediate risk factors	Have a deep sense of alienation and low self-esteem
	Have little empathy for others and suffer from impulsivity
	Believe that they are oppressed, held down, unfairly treated and neither belong to nor have a stake in the broader society
	Believe that they have no way to be heard through other channels
	Have no sense of hope

The authors outlined what we must also remember, that “... most youth who feel connected to and engaged with the broader society, and who feel valued and safe and see a positive future for themselves in it, will not experience these conditions and will not commit serious violence.”⁵⁶ Multiple efforts have been made over the past ten years to address the roots

⁵⁵ R. McMurtry, A. Curling, *The Review of the Roots of Violence*, (Toronto, Canada: Queens Printer for Ontario, 2008), www.children.gov.on.ca/htdocs/English/professionals/oyap/roots/index.aspx, visited in April 2019.

⁵⁶ R. McMurtry, A. Curling, *supra* note 53, p. 19.

of violence in a coordinated and collaborative manner, however, there is further work to be done. Two current efforts that are attempting to address the roots of violence are outlined below.

Cross-Over Youth - This term refers to youth who are involved in both the child protection/welfare system and the youth criminal justice system, sometimes referred to as “dually involved” or “dual status” youth. In Canada youth involved in the child welfare system are more likely to become involved in the criminal justice system and face unique vulnerabilities and multi-system disadvantages. A project based at Ryerson University in Toronto is examining the needs of cross-over youth and different policies, training, services that can be provided to better service this population.

Court Screening - In Toronto Ontario an initiative is in development which will attempt to screen all young people at their first appearance at court concerning their mental health and other needs to ensure quick access to needed services, irrespective of their legal matter. Participation will be voluntary and information gathered will only be shared based on the consent of the young person and family. Currently there is no systematic process for young people to be identified as in needs of mental health or other support services who come in contact with the youth court system. Such a program will provide a systematic and universal approach to identify young people who may require more in-depth assessment and mental health supports as well as possible selection into mental health diversion programs and mental health courts. By taking a universal approach we hope to increase equity and breakdown some of the systemic racism that exists within the court system and Canadian society, specifically anti-black racism. Direction and linkage to services available in the court along with redirection to services outside of the criminal justice system and connection back to their community and community-based services is the intended goal of the initiative.

Chapter IV The Role of Social Work in Juvenile Justice in the USA

*Jane McPherson and Robert G. Schwartz**

1. General Introduction to Juvenile Justice Social Work in the USA

1.1. *The Origins of Social Work in the USA*

Social work in the USA finds its roots in the Poor Laws of Elizabethan England, which established charity, correction, and government funding to care for the elderly, the disabled, and the orphaned in the 17th century. Under these English laws, adults were institutionalized and children found “in begging or in idleness” were put to work.¹ Ideas about the necessity of reforming the poor crossed the Atlantic along with the first settlers to the USA, but professionalization of U.S. social work did not begin until the late 19th century with the growth of Charity Organization Societies, another import from England. By 1900 there were 138 such groups operating in the USA, mostly in the northeast of the country. These societies focused on helping “the worthy poor”, maintained registries of relief applicants, and kept detailed records.² At that time, charity (now, ‘social work’) and corrections (now, ‘criminal justice’) were joined in a movement that believed in “the perfectibility of society”.³ Staffed by mostly upper-class women, they were interested in the application of science to charity and they believed that a benevolent upper class could bring moral uplift to people in poverty. Child welfare — “which included all those activities and services by individuals and public and private agencies for the benefit of dependent, neglected, or delinquent children” — was the first focus of social work and remains a central component of social work service provision.⁴

In order to educate these women reformers, the first social work class was held in New York City at what would become the Columbia University School of Social Work in the summer of 1898.⁵ The Council on Social Work Education (CSWE), which accredits social work education programs, was founded in 1952, and currently reports that there are 521 programs that offer a Bachelor’s degree in Social Work (BSW), 261 programs that offer a Master’s degree (MSW), 12 programs that offer a Doctor of Social Work degree (DSW) and 77 programs that offer a PhD in social work.⁶ Some two-year colleges provide an Associate’s degree (A.A.) in social work related studies, for example, a “social work assistant”, but these programs are unaccredited and unacknowledged by the CSWE.

1.2. *History & Development of the U.S. Juvenile Justice System*

The American juvenile justice system includes (a) the juvenile court and (b) the services that the court uses. Services came first, developing in the early 19th century, when religious societies and charities — like New York City’s Society for the Reformation of Juvenile Delinquents — were formed to provide services to wayward children.

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1 W.I. Trattner, *From Poor Law to Welfare State: A History of Social Welfare in America*, 4th ed., (Free Press, New York, 1989) p. 8.

2 Trattner, *supra* note 1, p. 87.

3 H. Specht & M. E. Courtney, *Unfaithful Angels*, (Free Press, New York, 1994) p. 71.

4 Trattner, *supra* note 1, p.103.

5 National Association of Social Workers, *Social Work History*, <www.socialworkers.org/News/Facts/Social-Work-History>, 59 visited 15 October 2018.

6 Council on Social Work Education, *2017 Statistics on Social Work Education in the United States: Summary of the CSWE Annual Survey of Social Work Programs*, (Council on Social Work Education, Washington, DC, 2018).

As is suggested above, it was common for judicial and social service delivery systems to be operated together in the late 19th century. For example, Jane Addams (the social work leader who won the Nobel Peace Prize and founded Hull House, a pioneering settlement house in Chicago, Illinois), also promoted the first U.S. juvenile court in Chicago in 1899. In the early years, juvenile courts adopted a *parens patriae* (“state as benevolent parent”) approach to working with youth. Proceedings were essentially civil in nature, and delinquent offenses were handled without concern for due process or even the constitutional rights afforded to adult offenders.⁷ The court and its service providers sought to investigate the character and social background of alleged offenders, and took a very individualized approach to punishment and reform. As early Colorado juvenile court judge Ben B. Lindsey wrote in 1904, “we should make it our business to study and know each particular case, because it will generally demand treatment in some little respect different from any other case.”⁸ Judges tried to ‘help’ children, even if they were not guilty of crimes, and social workers were very involved in the juvenile justice system. In the 1930s, in the belief that juvenile delinquency was on the rise, the Los Angeles Coordinating Councils began to employ social workers.⁹ During the 1950s, vigorous public policy discussions, which included social workers, centered on children’s legal rights and due process.¹⁰

The Second Wave of American juvenile court jurisprudence began in 1967 when the U.S. Supreme Court (*In re Gault*, 1967) rejected the opaque quality of the juvenile court, and held that children were ‘persons’.¹¹ The ruling decreed that placing children in children’s institutions was a deprivation of liberty; that children should receive protections of the 14th Amendment to the U.S. Constitution (“No person shall be ... deprived of liberty without due process of law”); and that children had a right to protections at trial, including the right to receive notice of the charges, to counsel, to confront witnesses, and to avoid self-incrimination. By the mid-1970s, children in U.S. juvenile courts had the same constitutional rights as adults, except for the right to a jury trial and the right to bail. These changes altered the structure of juvenile justice as juvenile probation officers (most of whom were untrained in social work) replaced social workers in the system.

In the 1980s, public fears about the crack cocaine epidemic and increasing gun violence led to calls for a harsher adult correctional system, which were echoed in the juvenile justice system. Criminologists predicted that there would be a deluge of child “super-predators” — amoral bad seeds — who should be tried and imprisoned as adults. Those calls were heeded in the 1990s, when a Third Wave resulted in almost all states changing their juvenile codes and service-delivery systems to be more punitive. Retribution generally replaced rehabilitation. At the same time, neoliberal forces were moving social work toward mental health by-the-hour service delivery and further away from correctional settings in general.¹² Before this Third Wave, children could generally not be tried as adults (there were some exceptions for murder) unless a judge found that the child was “not amenable to treatment” in the juvenile system. Now prosecutors

7 National Council of Juvenile and Family Court Judges (n.d.) <www.ncjfcj.org/sites/default/files/Fnl_AdoptedProbationPolicyResolution_7-2017_1.pdf>, visited 30 September 2018.

8 B. B. Lindsey, ‘The Boy and the Court: The Colorado Law and its Administration’, 13 *Charities: The Official Organ of the Charity Organization Society* (1904) pp. 350-357.

9 J. Appier, ‘We’re Blocking Youth’s Path to Crime: The Los Angeles Coordinating Council During the Great Depression’, 31 *Journal of Urban History* (2005) pp. 190-218.

10 A. Scheyett, et al., Social Work and Criminal Justice: Are we meeting in the field?, 32 *Journal of Teaching in Social Work* (2012) pp. 438-450.

11 National Council of Juvenile and Family Court Judges, ‘*In re Gault* (1967)’, 13 March 2012, <www.ncjfcj.org/1967-re-gault>, visited 30 September 2018.

12 Specht & Courtney, *supra* note 3.

could file cases directly in adult criminal court, and legislators included many felonies in the list of cases that would automatically begin in criminal court. By the late 1990s, there were about 200,000 children under 18 tried as adults each year.

The U.S. juvenile justice system is now in a Fourth Wave, grounded in research from developmental psychology and neuroscience. The MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice found, over ten years beginning in 1996, that children were developmentally less culpable than adults, less competent to participate in trials, and more likely to change over time.¹³ Those findings, among others, led the U.S. Supreme Court in 2005 to end the juvenile death penalty. Since then, developmental science and neuroscience have been helping to shape policy and practice in juvenile court, and in the services that delinquent youth receive. It has also reshaped sentencing of youth in the adult system.¹⁴

Although there is a small federal juvenile justice presence (when youth are charged with federal crimes), the U.S. 'system' is actually 50 state systems plus the District of Columbia. The federal government has no services of its own for delinquent children; it relies on state systems if a youth is sentenced in federal court. There is one important federal juvenile justice law — *the Juvenile Justice and Delinquency Prevention Act of 1974* — which gives small federal grants to states that keep status offenders (truants, ungovernable youth, runaways) out of detention centers and that keep children out of adult institutions.

While some states give juvenile courts jurisdiction over children as young as seven, most states start their systems at age ten or older. There is a movement to raise the lower age of jurisdiction to age 12. Currently, most states end juvenile court jurisdiction at the child's 18th birthday; in recent years, states that have had lower upper ages of 16 and 17 have been raising the age to 18. One state is considering raising the age for certain crimes to 21. Almost all states allow youth who are adjudged delinquent before age 18 to remain in care or under court supervision until age 21. Adult criminal courts are also changing the way they deal with young offenders, including those between the ages of 18 and 21. Developmental science is thus affecting services as well as sentencing options.

Every state system has similar decision points. It is useful to think of the juvenile justice system as a pipeline, along which are diversion valves — and potential opportunities (though no mandates) for social work intervention. At every stage, children can be diverted to other systems, or to non-custodial service settings. These decision points are arrest, detention, adjudication, transfer (to adult court, in some cases), disposition, disposition review, and re-entry. Judges generally retain control of non-custodial cases, and, in some states, they also review and control cases of youth who are placed in residential care; in most states, though, youth in residential care are managed by a central state authority that manages their institutional care and return to the community. Still, these diversion points along the pipeline are places where social workers — generally from outside the juvenile justice system — may be able to impact the trajectory of a juvenile experiencing juvenile justice control.

¹³ MacArthur Foundation, *Research Network on Adolescent Development & Juvenile Justice*, (2018), <www.macfound.org/networks/research-network-on-adolescent-development-juvenile/>, visited 30 September 2018.

¹⁴ MacArthur Foundation, *supra* note 13.

Services vary by state and locality. NGOs and community-based agencies provide a wide range of diversion services. Post-adjudication services are often more limited, although in a few states, like Pennsylvania, judges can order for a delinquent child any service that the court can order for an abused or neglected child (e.g. counseling). Most jurisdictions have a shortage of needed mental health and drug and alcohol treatment services.

There is an inchoate movement to change the way juvenile probation officers work with youth and their families. Most youth within the system are on probation. Too few probation officers, however, have social work backgrounds, as most come from criminal justice degree programs. The U.S.-based Annie E. Casey Foundation is leading the effort to reduce probation officers' role as monitors and convert them to counselors who assist youth in developmentally appropriate ways. The Foundation's effort aims to end incarceration of youth for violating "*conditions of probation*". Supporting this vision, the National Council of Juvenile and Family Court Judges adopted a policy calling for developmentally appropriate probation services in July 2017.

The U.S. has seen declining juvenile crime rates for the past 25 years. The result has been fewer youth in the system, more youth diverted to other service providers, and fewer youth in detention or post-disposition residential correctional programs. The latest data for state juvenile courts is from 2015.¹⁵

Highlights include:

- In 1995, the number of new cases peaked at almost two million; in 2015, the number of cases was under 900,000.
- The number of delinquency cases processed by juvenile courts decreased 47 per cent in the 11 years between 2005 and 2015. The number of cases decreased for all offense categories: property 51 per cent, public order 49 per cent, person 43 per cent, and drugs 39 per cent.
- More than 31 million youth were under juvenile court jurisdiction during the course of 2015. Of these youth, 79 per cent were between the ages of 10 and 15, 12 per cent were age 16, and 9 per cent were age 17. The small proportion of 16- and 17-year-olds among the juvenile court population is related to the upper age of juvenile court jurisdiction, which varied by state. In 2015—before "raise the age" movements changed these numbers—youth age 16 in two states were under the original jurisdiction of the criminal court, as were youth age 17 in an additional seven states.
- Of the 884,900 new delinquency cases processed in 2015, 52 per cent involved youth younger than 16, 28 per cent involved females, and only 43 per cent involved Caucasian youth (indicating an over-representation of minority youth).
- In 2000, a one-day census showed over 108,000 children confined in juvenile facilities (three quarters of which were public institutions); by 2016 the number had fallen to just over 45,000 (32,000 of the children were in public institutions).

Recent decisions by the U.S. Supreme Court have expanded the rights of juveniles in the justice system: *Roper v. Simmons* (2005) declared that it is unconstitutional to impose the death penalty for crimes committed while under the age of 18; *Graham v.*

15 S. Hockenberry, & C. Puzanchera, National Centre for Juvenile Justice, *Juvenile Court Statistics 2015*, <www.ncjj.org/Publication/Juvenile-Court-Statistics-2015.aspx>, visited 30 September, 2018.

Florida (2010) eliminated “life without parole” sentences for non-homicide cases; and *Miller v. Alabama* (2012) declared that a *mandatory* sentence of life without parole was unconstitutional even for juveniles convicted of homicide.

1.3. Juvenile Justice Social Work in the USA

There is a rich history of social work involvement in juvenile justice in the USA.¹⁶ In the 19th century, institutions of charity and corrections were established together as part of the same movement towards moral reform. In the intervening 100+ years, however, corrections (criminal justice) and charity (social work) have diverged educationally, professionally, and institutionally. In the early years, social work was a major voice for criminal justice reform. Social workers were involved in developing juvenile courts and were instrumental in advancing a rehabilitative approach to sentencing during the 1950s and 60s. In fact, in the first half of the 20th century, approximately half of all probation and parole officers were trained as social workers.¹⁷ In the 1970s, however, social work began a retreat from criminal justice work that has continued until the present day. The social work retreat from criminal justice coincided with the era of punitive sentencing and mass incarceration, as well as with social work’s move towards mental health and private practice.

Reflecting these changes, U.S. social work and social work education are not focused currently on juvenile justice. Some background on U.S. university education may clarify this point. One critical fact is that Criminal Justice is its own academic field that is generally very separate from Social Work in U.S. institutions. Though some universities allow dual degrees in the two fields, education in these areas is not usually integrated. In the U.S., social work education is provided at three levels: undergraduate (BSW), Master’s (MSW), and Doctoral (DSW and PhD). The BSW is a four-year college degree. At the BSW level, we train students to be generalist practitioners and to integrate micro-level (individual, group and family-focused) and macro-level (community and policy) skills. The MSW level is a two-year professional degree that hones these skills; at the MSW level, students generally choose between micro- and macro-level programs (though some schools, like the University of Georgia, have a combined degree). The overwhelming majority of MSW students choose the micro or clinical degree, which prepares them to become mental health professionals. Many programs offer certificates that allow students to specialize in an area of practice. In 2017, the most common MSW certificates were (1) aging; (2) school social work; (3) addictions; (4) non-profit management; and (5) child welfare.¹⁸ Only 22 per cent of MSW programs in the US have a course dedicated to criminal justice issues and a fraction of those—five per cent of programs—provide a concentration or specialization in criminal justice.¹⁹ Some programs do focus on justice-oriented social work. For example, the University of Utah and the University of Nevada Las Vegas offer MSW certificates in Forensic Social Work; Arizona State University offers a Criminal Sentencing and Sentencing Advocacy certificate (which specifically prepares social workers to become mitigation specialists); and Saginaw Valley State University offers a BSW certificate in Juvenile Delinquency.

Though it is uncommon for social workers to be specifically trained as ‘juvenile justice social workers’, social workers trained in school social work and child welfare often do

16 A. M. Platt, *The Child Savers (2nd ed.)*, (University of Chicago Press, Chicago, 1977).

17 Epperson et al., ‘To What Extent is Criminal Justice Content Specifically Addressed in MSW Programs?’, 49 *Journal of Social Work Education* (2013) pp. 96–107.

18 Council on Social Work Education, *supra* note 6.

19 Epperson et al., *supra* note 17.

intersect with the juvenile justice system. The National Organization of Forensic Social Work (NOFSW) is a professional organization of social workers who work with questions and issues relating to law and legal systems, including juvenile justice. NOFSW holds an annual conference and published the *Journal of Forensic Social Work* from 2011 until 2015, when funding cuts ended the publication. In spite of these trends, there is evidence that social work — as a profession — is re-engaging with criminal justice. For example, the American Academy of Social Work and Social Welfare (AASWSW) recently identified “promote smart decarceration” as one of their Grand Challenges for Social Work.²⁰

2. The Role of Social Work in Juvenile Justice in the USA

2.1. Legal Basis for Juvenile Justice Social Work

There is no ‘federal’ legal basis for the involvement of social workers in the U.S. system, because the national government has very little role. Every state has its own laws establishing a juvenile justice system (the system involves the juvenile court *and* the services that the court uses to respond to youth misbehavior.) Each state in turn has in its legislation a “purpose” clause that can support the role of social work. While many states in the mid-1990s made their juvenile codes more punitive, all states retained goals of treatment, rehabilitation, or supervision, all of which are linked to good social work practice. Many other states added restorative justice principles to their laws. Thus, in addition to promoting public safety, juvenile justice systems in those states must — in theory, at least — meet the needs of victims (an activity within the sphere of social work) and help youth in the system develop skills or competencies that are necessary to function in society. Social workers assist with those activities, too.

Every state also has methods of “diverting” youth from the system, especially if their behavior can be better managed by other systems, such as mental health or education. Social workers play a role in diversion, not only in assessing youths’ risks, needs and strengths, but also in connecting youth with community-based services that are responsive to those risks, needs and strengths. Finally, state laws provide for residential services in which youth are supposed to receive “treatment” that will manage the risk of reoffending and provide skills that will support youth when they return to their communities. These laws also provide a basis for social work interventions.

2.2. The Role of Social Work in Juvenile Justice

As has been written above, it is difficult to generalize about ‘the U.S. system’ of ‘juvenile justice social work’ since no unified system exists, neither of juvenile justice nor of social work intervention with youth; instead, each of our 50 states has its own set of systems, as do Washington, D.C., Puerto Rico, and the other U.S. territories. In general, U.S. social workers are most likely to intersect with the juvenile justice system when working in child abuse and neglect (Child Welfare) or in the school system (School Social Work). Examples from both pathways will be described here. Social workers also work directly with juvenile justice clients when providing wraparound services (discussed below), when working with multidisciplinary and legal teams, and in a variety of other ways.

Child welfare - Juvenile courts serve both (1) abused and neglected children and (2) juveniles charged with delinquency. In practice, the two areas of focus evolved

²⁰ American Academy of Social Work and Social Welfare, *Grand Challenges for Social Work*, (2018), <grandchallengesforsocialwork.org/>, visited 15 October 2018.

separately (separate judges, etc.) since child welfare clients were understood as *victims* of parental abuse or neglect, while juvenile delinquents were viewed as *perpetrators* of crimes.²¹ This distinction has become increasingly ambiguous as recent research has demonstrated how frequently child welfare clients transition into the juvenile justice system.²² One Illinois juvenile court documented that more than a third of maltreated children returned to the juvenile justice system as delinquents.²³

Studies confirm that youth involved sequentially or simultaneously in both systems — often called “*crossover youth*,” “*dually involved youth*,” or “*multisystem youth*” — tend to have more numerous and complex problems than those involved with just one system.²⁴ As in the Illinois example, most commonly children become involved with child welfare services first and then later come to the attention of the juvenile justice system.²⁵ Overall, previously maltreated youth are at a 47 per cent greater risk of becoming involved in delinquent behavior than youth from the general population.²⁶ Unfortunately, due to the agency and system boundaries that separate child welfare and juvenile justice services, these kids often do not get the coordinated care that they need.²⁷ Advocates argue that youth benefit from collaborative work between the two systems, and further, that “the high prevalence of early child welfare involvement of youth who later become delinquent suggests that there may be ways for social workers to engage in prevention services with this population.”²⁸

The Crossover Youth Practice Model (CYPM) directly addresses the importance of systems collaboration.²⁹ It is a widely-accepted conceptual model that has been implemented in 103 counties and in 21 U.S. states.³⁰ CYPM prescribes strengthened professional collaborations between child welfare and juvenile justice professionals, calls for increased youth and family engagement, and requires individually targeted interventions. These systems-level changes are intended to prevent or minimize the involvement of child-welfare-involved youth in the juvenile justice system.³¹ CYPM's four overarching goals are: (1) reduction in the number of youth crossing over and becoming dually-involved; (2) reduction in the number of youth placed in out-of-home care; (3) reduction in the use of congregate care (e.g., group homes); and (4) reduction in the disproportionate representation of youth of color, particularly in the crossover population.

CYPM intervention begins at the point of arrest. In Phase I, crossover youth must be identified, and then, if appropriate, diversion meetings can be convened with youth,

21 R. C. Sarri, 'Juvenile Justice: Overview', in *Encyclopaedia of Social Work* (National Association of Social Workers and Oxford University Press, Washington, D.C. and New York (2014).

22 M. Jonson-Reid, & R. Barth, 'From Treatment Report to Juvenile Incarceration, the Role of Child Welfare Services', 22 *Children and Youth Services Review*, 22(7), (2000) pp. 493–516; K. Kelly, 'Abuse/Neglect and Delinquency: Dually Involved Minors in the Juvenile Court', paper presented at the American Society of Criminology Annual Meeting, Chicago (2002); Ryan, et al., 'Kinship Foster Care and the Risk of Juvenile Delinquency', *Children and Youth Services Review* (2010) pp. 1823–1830.

23 Kelly, *supra* note 24.

24 H. Huang, et al., 'The Journey of Dually-Involved Youth: the Description and Prediction of Rerecording and Recidivism', 34 *Children and Youth Services Review* (2012) pp. 254-260.

25 H. Huang, et al., *supra* note 25.

26 J. P. Ryan, & M. F. Testa, 'Child Maltreatment and Juvenile Delinquency: Investigating the Role of Placement and Placement Instability', 27 *Children and Youth Services Review* (2005) pp. 227–249.

27 H. Huang, et al., *supra* note 25; D. Herz, et al. 'Challenges Facing Crossover Youth: an Examination of Juvenile-Justice Decision Making and Recidivism', 48 *Family Court Review* (2010) pp. 305-321.

28 Coulton et al., *supra* note 29, p. 8.

29 M. Stewart, et al., 'Crossover Youth Practice Model, Washington. D.C.', *Centre for Juvenile Justice Reform*, Georgetown University McCourt School of Public Policy (2010).

30 Centre for Juvenile Justice Reform, *The Crossover Youth Practice Model (CYPM): An Abbreviated Guide* (2018), <cjjr.georgetown.edu/our-work/crossover-youth-practice-model/>, visited 15 September 2018.

31 Stewart et al., *supra* note 32.

family members, juvenile justice and child welfare (social work) professionals. At this phase, information sharing protocols between the juvenile justice and child welfare systems must be developed and utilized. In Phase II, child welfare social workers and juvenile justice professionals work as a team: they handle delinquency and dependency hearings together, make joint referrals to community service providers, and make joint decisions about the need for out-of-home placement. In Phase III, child welfare social workers remain engaged in the CYPM partnership, provide ongoing case management, and plan for case closure. CYPM looks at the youth's situation broadly, and social workers assess any ongoing needs the young person may have for continuing employment, mental health, education, housing, or health services.³² Results from this approach are promising. Multiple studies have compared CYPM youth to their non-CYPM peers, and found fewer new arrests among the CYPM graduates.^{33, 34} Also, interviews with child welfare, legal and juvenile justice professionals revealed a commonly held belief that CYPM's structural changes had improved services to youth and families.³⁵

Multidimensional Treatment Foster Care (MTFC) is another empirically validated intervention for youth who are involved with both the child welfare and juvenile justice systems. MTFC uses intensive foster care as an alternative to treating delinquent youth in group homes or other congregate settings. MTFC is based on social learning theory and depends on the potentially positive socializing influence of the family.³⁶ MTFC youths are individually placed in foster homes, they attend public schools, and they receive intensive support and treatment (often provided by social workers). Foster parents and biological parents (or other aftercare resources) receive intensive parenting training (again, often by social workers).

In MTFC, social workers collaborate with other professionals to create opportunities for youth to live successfully in the community and to prepare youths' aftercare resources to provide effective parenting, thus increasing chances for the youths' successful reintegration into the community. MTFC has demonstrated efficacy in reducing recidivism and association with delinquent peers.³⁷ It has also been shown to increase girls' school attendance and homework completion both while in MTFC placement and for 12 months afterwards,³⁸ and also to reduce depressive symptoms in girls, especially for those with higher levels of initial symptoms.³⁹ A further benefit of MTFC and other forms of Treatment Foster Care is that they may be less expensive than congregate settings.

CYPM and MTFC are two of a handful of interventions with juvenile justice involved youth that are widely supported by research. Unfortunately, every year in the U.S., fewer than five per cent of eligible high-risk juvenile offenders are treated with an evidence-based treatment.⁴⁰

32 Centre for Juvenile Justice Reform, *supra* note 33.

33 Haight, et al., 'An Evaluation of the Crossover Youth Practice Model (CYPM): Recidivism Outcomes for Maltreated Youth Involved in the Juvenile Justice System', 65 *Children and Youth Services Review* (2016) pp. 78–85.

34 D. C Herz, & A. M. Fontaine, Georgetown University Centre for Juvenile Justice Reform, 'Final Data Report for the Crossover Youth Practice Model in King County, Washington', 2012, <<http://www.modelsforchange.net/publications/466>>, visited 16 October 2018.

35 W. L. Haight, et al., 'Implementing the Crossover Youth Practice Model in Diverse Contexts: Child Welfare and Juvenile Justice Professionals' Experiences of Multisystem Collaborations', 39 *Children and Youth Services Review* (2014) pp. 91–100.

36 P. Chamberlain, *Treating Chronic Juvenile Offenders: Advances Made Through the Oregon Multidimensional Treatment Foster Care Model* (American Psychological Association, Washington, DC, 2003).

37 M. Evans-Chase, & H. Zhou, 'A Systematic Review of the Juvenile Justice Intervention Literature: What it Can (and Cannot) Tell us about What Works with Delinquent Youth', 60 *Crime & Delinquency* (2014) pp. 451–470.

38 L. D. Leve, & P. Chamberlain, 'A Randomized Evaluation of Multidimensional Treatment Foster Care: Effects on School Attendance and Homework Completion in Juvenile Justice Girls', 17 *Research on Social Work Practice* (2007) pp. 657–663.

39 G.T. Harold, et al., 'Depressive Symptom Trajectories Among Girls in the Juvenile Justice System: 24-month Outcomes of an RCT of Multidimensional Treatment Foster Care', 14 *Prevention Science* (2013) pp. 437–446.

40 S. W. Henggeler, & S. K. Schoenwald, 'Evidence-Based Interventions for Juvenile Offenders and Juvenile Justice Policies that Support them', 25 *Sharing Child and Youth Development Knowledge* (2011) pp. 3–20.

School social work - School social workers have a major role to play in preventing youth involvement with juvenile justice, as they have a unique role to play in disrupting the School-To-Prison Pipeline (STPP).⁴¹ The STPP refers to a pathway from the U.S. school system to the juvenile justice or adult criminal justice system. Beginning in the 1990s, a more punitive approach to school discipline led to many young people being introduced directly from the school system to the juvenile justice system, with disproportionate impact on students of color, those with gender and/or sexual minority identities, and those with disabilities. Punishments at school — 97 per cent of which are for non-violent behaviors like defiance, disrespect, threats, insubordination, larceny, clothing, cell phone use, public displays of affection, and “talking back” — currently can and do lead to involvement with the juvenile justice system. Social workers in schools can intervene here by (1) advocating for and implementing “positive, appropriate, and graduated” school discipline, and (2) facilitating continued education and re-enrollment for students who return to school after an out-of-school placement in the juvenile justice system.⁴² School social workers’ skills and knowledge also make them particularly well suited to take the lead in the emerging movement to improve school climate and promote social-emotional learning,⁴³ and they also have the skills to help families, communities, and school personnel.

Restorative Justice is a strategy that has been used effectively in the juvenile justice arena, and has shown promise in reducing juveniles’ subsequent involvement with law enforcement and the court system.⁴⁴ Moreover, victims and juvenile offenders alike report being generally satisfied with their experiences with restorative justice.⁴⁵ Now, expanding into the school setting, restorative justice is a relative new and popular strategy for interrupting the STPP, where research shows it can help reduce suspensions, expulsions and disciplinary referrals.⁴⁶

Social workers get involved in restorative justice in multiple ways, usually as trainers, perhaps implementing school-wide approaches to building a welcoming climate and establishing trust. Social workers are also involved in developing targeted interventions to address specific problem behaviors that regularly disrupt classroom or school activities. Social workers learn the skills of restorative justice, model them, and teach them to the school. Achieving meaningful school discipline in a restorative way asks rule breakers to “take *responsibility* by understanding the impacts of their actions and then making amends to those harmed”, and social workers often facilitate those meetings between students.⁴⁷

41 S. A. McCarter, ‘The School-to-Prison Pipeline: A Primer for Social Workers’, 62 *Social Work* (2017) pp. 53-61

42 McCarter, *supra* note 45.

43 N. M. Finigan-Carr, & W. E. Shaia, ‘School Social Workers as Partners in the School Mission’, *Phi Delta Kappan*, (2018) pp. 26-30.

44 K.J. Bergseth, & J.A. Bouffard, ‘The Long-Term Impact of Restorative Justice Programming for Juvenile Offenders’, 35 *Journal of Criminal Justice* (2007) pp. 433-451; N. Rodriguez, ‘Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism’, 53 *Crime & Delinquency* (2007) pp. 355-379; J. Latimer, et al., ‘The Effectiveness of Restorative Justice Practices: A Meta-Analysis’, 85 *Prison Journal* (2005) pp. 127–144; E. McGarrell, *Restorative Justice Conferences as an Early Response to Young Offenders* (U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, DC, 2001).

45 Latimer et al., *supra* note 52.

46 International Institute for Restorative Practices, ‘Transforming School Culture’, <www.iirp.edu/news/transforming-school-culture>, visited on 30 September 2018; M. D. Sumner, et al. *School-Based Restorative Justice as an Alternative to Zero-Tolerance Policies: Lessons from West Oakland* (Thelton E. Henderson Centre for Social Justice, Berkeley, CA, 2010).

47 M. Schiff, ‘Can Restorative Justice Disrupt the ‘School-to-Prison Pipeline?’’, 21 *Contemporary Justice Review* (2018) p. 6.

The expansion of Restorative Justice as a school discipline strategy has been accelerated in unprecedented ways by new federal initiatives, such as the Department of Education's (DOE) *Rethinking Discipline* program, and private-public partnerships, like the School-Justice Partnership Initiative jointly funded by the DOE, the Department of Justice (DOJ) and private foundations, including the Open Society Foundation and Atlantic Philanthropies.⁴⁸

The federal government's 2014 support of Restorative Justice initiatives was groundbreaking:

"For the first time, the Federal government both acknowledged and reacted to the high rates of racial disciplinary disparity across the country, and recommended restorative—as well as other—strategies as best-practices to reduce overall suspension and disciplinary disparity."⁴⁹

Just Discipline is another ambitious project that works to interrupt the STPP.⁵⁰ Located in Pittsburgh, Pennsylvania, and jointly led by professors of education and social work, Just Discipline is a "school climate" program that strives to decrease racial disparities around school discipline, in part by developing student leaders and providing them with conflict resolution and peer-mediation skills. The program engages school social workers to build awareness and equip students with the skills to cope with hardships by communicating feelings more effectively. The unique student leadership component enlists and trains a rigorously selected cohort of students as partners in building a positive school climate. Selected students are taken on a field trip to the University of Pittsburgh for a leadership program, and the results are strongly positive. Evaluation of the program shows that — in addition to building skills in the selected student leaders — Just Discipline has enhanced the overall school climate, reducing student fights and school suspension rates.⁵¹ These gains make a powerful contribution to the learning, development and growth of all students.

Wraparound services - One promising approach that includes both school social work and child welfare, but also connects justice-affiliated youth to other needed services is called 'wraparound services'. Wraparound services facilitate youth engagement with multiple systems, usually legal, educational, child welfare, and others.⁵² Social workers providing wraparound services may be based in any of the collaborating agencies and provide youth referrals to mental health services, substance abuse treatment groups, and physical health services. Importantly, they also build rapport and relationships with the young people and their families, advocate for their clients at school, and help young people imagine a future beyond delinquency.⁵³ In one evaluation of this form of intervention, young people who received wraparound social work services after their first juvenile justice offense improved significantly on scales measuring withdrawal/depression, somatic complaints, thought problems, attention problems, rule-breaking behaviors, and aggressive behaviors as compared to their peers who did not receive these services.⁵⁴

48 Schiff, *supra* note 57.

49 Schiff, *supra* note 57, p. 9.

50 .P. Huguley, et al., *Just Discipline and the School-to-Prison Pipeline in Greater Pittsburgh: Local Challenges and Promising Solutions* (University of Pittsburgh School of Social Work, Pittsburgh, PA, 2018).

51 Huguley, *supra* note 58.

52 S. A. McCarter, 'Holistic representation: Providing Wraparound Services for First-Time Juvenile Offenders to Improve Functioning, Decrease Motions for Review, and Lower Recidivism', 54 *Family Court Review: An Interdisciplinary Journal* (2016) pp. 250–260.

53 *Ibid.*

54 McCarter, *supra* note 60.

2.3. Cooperation Between Social Workers and Other Relevant Stakeholders

As collaborators, social workers play multiple roles in juvenile justice, including but not limited to: working with families of accused juveniles and/or victims of crime in the community; working with schools on alternative disciplinary practices; testifying as expert witnesses in court; conducting mental health competency evaluations; and working with defense teams to develop life histories for mitigation during sentencing. Social workers frequently work as part of interdisciplinary teams, collaborating with health care professionals, educators, legal teams, and law enforcement, and child protective services. Social workers bring important skills and perspectives to these interdisciplinary teams, including clinical mental health knowledge and an ethical code⁵⁵ that requires them to side with the marginalized.⁵⁶

According to the National Juvenile Defender Center (NJDC), multi-disciplinary teams that include social work professionals “allow juvenile defense offices to employ more holistic, cost-effective strategies to ensure clients receive the treatment and services they need.”⁵⁷ In order to practice holistic representation, lawyers include social workers in their defense team to prepare them “to address the underlying causes that bring troubled children into the delinquency system, such as mental illness, drug and alcohol dependency, co-occurring disorders, developmental disability, homelessness, and abuse and trauma.”⁵⁸ Holistic representation is not a universal practice, but Colorado passed a law (HB 14-1023) in 2014 that requires the State Public Defender to hire social workers in juvenile justice cases and allows for social workers’ reports to be entered into evidence.⁵⁹

2.4. Qualification and Evaluation of Juvenile Justice Social Work

Social workers providing services to clients within the juvenile justice system may have a BSW or MSW from a CSWE-accredited school. However, in some states, they may also hold the job title of “social worker” without having earned a social work degree. In the recent past, MSW social workers engaged in juvenile justice work had the opportunity to be certified by the American Board of Forensic Social Workers, but this organization has ceased to exist.

Researchers in social work and beyond are focused on evaluating efforts to improve services for children in the juvenile justice system.⁶⁰ Additionally, states have evaluation measures in place for their publicly-funded services, but as with other U.S. systems, there is no national standard.

55 National Association of Social Workers, *Code of Ethics of the National Association of Social Workers* (National Association of Social Workers, Washington, D.C., 2017), <www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English>, visited on 15 October 2018.

56 A. Laurio, ‘Commitment to Justice: Social Work Roles are Many in Criminal Justice System’, *NASW News*, 2018, <www.socialworkers.org/News/NASW-News/ID/1657>, visited on 14 October 2018.

57 National Juvenile Defender Centre, ‘Social Work’, <njdc.info/social-work/>, visited on 14 October 2018.

58 National Juvenile Defender Centre, *supra* note 65.

59 *Concerning the provision of social workers to juveniles, and, in connection therewith, making and reducing appropriations*, (Colorado 2014), H.B. 14-1023, 2014, Second Regular Session, Sixty-ninth General Assembly.

60 Huguley, *supra* note 58; McCarter, *supra* note 60.

3. Achievements, Main Challenges, and Reform Initiatives

3.1. Experience and Achievements

In general, the role of social work in the U.S. juvenile justice system is consistent with international norms. However, those norms get implemented differently in different states, with elastic attention paid to international principles. For example, although the U.S. is the only member of the United Nations that has not ratified the *Convention on the Rights of the Child* (CRC), U.S. states generally implement Articles 37 and 40 in their approaches to juvenile justice. Many states, however, still allow for life imprisonment without the possibility of release; and states that permit the use of solitary confinement (isolation) are clearly not respecting “the inherent dignity of every person.”⁶¹ While every youth in the U.S. has a right to counsel, most states allow youth to “waive” (relinquish) that right.⁶²

Similarly, the *Beijing Rules* 3.1, 3.2 and 3.3 extend juvenile justice principles to status offenders, to children in the welfare and care (Child Welfare) system, and to young adults. These principles are implemented with greater or lesser fidelity, depending on the state (the most progressive advocacy movements in the U.S. would extend many juvenile justice protections to young adults, but progress in this area is slow). In a similar vein, the *Havana Rules* set forth principles for residential programs that house juveniles. There is tremendous variety among U.S. programs in their use of social workers to ensure adherence to those principles.

Some national organizations, including the Child Welfare League of America, have periodically linked social workers to juvenile justice reform. There is no requirement in the U.S., however, that social workers be involved in prevention, diversion or services to youth, including creation of alternatives to the juvenile justice system. Therefore progress in this vein tend to begin as local pilot programs, particularly in urban areas with many youth in the juvenile justice system.

3.2. Main Challenges

Again, one of the largest challenges in the field of juvenile justice in the U.S. is the diverse, patchwork nature of the juvenile justice “system”, which is actually more than 50 systems — similar yet somewhat different systems, one for each state and territory. As a result, national data is not always consistent, guiding principles and philosophies differ from state to state, and unified national reform is not an option.

Another challenge is the siloed, separate nature of the juvenile justice and child welfare systems — and the resulting lack of unified, coordinated efforts. As we have seen already and will hear more about below, many of the most promising reform initiatives involve efforts to “unsilo” these (and other) systems so that social workers can be part of an integrated approach to solutions. Other challenges to social workers wishing to reform juvenile justice are even more broadly structural or societal in scope and nature. Disparities are the prime example.

⁶¹ *Convention on the Rights of the Child*, Art. 37(b)(c).

⁶² *Convention on the Rights of the Child*, Art. 40(2)(b)(ii).

Racial disparities - Perhaps the greatest challenge facing the juvenile justice system is racial inequality, an issue that mirrors, in microcosm (sometimes in even sharper contrast), the adult criminal justice system. U.S. prisons, jails, juvenile detention facilities, and other correctional and detention facilities currently house nearly 2.3 million people. The U.S. has the world's highest incarceration rate: 698 prisoners per 100,000 people – a rate that is more than four times that of China (164 prisoners per 100,000 people, counting sentenced prisoners and people held in detention centers), five times that of the United Kingdom, six times that of Canada, and eighteen times that of Iceland.⁶³

Nearly one million of these prisoners are African American. Although African Americans make up just 13 per cent of the U.S. population, they account for 40 per cent of the prison population.⁶⁴ In juvenile detention facilities, the disproportionate percentage of African Americans is even higher. Compared to Caucasian youths, African-American youths are five times as likely to be incarcerated.⁶⁵ Other racial inequities that can exacerbate juvenile justice challenges include economic disparities and educational disparities between Caucasians and people of color.

Race-based economic & educational disparities - On average, lower-income African American families have less than one-fourth as much wealth as their Caucasian counterparts, and poor young people are over-represented in the juvenile justice system.⁶⁶ Families in poverty also have less access to expensive legal representation than do youth from affluent families. Similarly, educational opportunities are markedly lower for children of color than for Caucasian children. Multiple factors contribute to these disparities as parental education levels are lower, and, on average, minority children are far more likely to attend schools where teacher salaries, experience, and certification levels are lower and where course offerings are more limited.⁶⁷

Gender and sexual minorities - The experience of sexual abuse is one of the primary predictors of girls' entry into the juvenile justice system, and once inside, girls encounter a system that often ignores their experiences of trauma, and may, in fact, subject them to new incidents of sexual victimization.⁶⁸ Even though girls pose far less risk of violence than boys, when they are sent to detention centers, they are generally subjected to conditions as harsh as those applied to their male peers.⁶⁹ As a result, girls may be badly traumatized during detention – often more seriously than boys.⁷⁰ Youth who identify as LGBTQ are also disproportionately impacted by the juvenile justice system. They are far more likely to be suspended from school,⁷¹ more likely to be removed from their homes and placed in foster care or group homes,⁷² and are also overrepresented in juvenile detention centers—where they are at high risk of sexual violence and abuse.

63 P. Wagner, & W. Sawyer, 'States of Incarceration: The Global Context 2018', *Prison Policy Initiative: World Prison Brief*, June 2018, <www.prisonpolicy.org/global/2018.html>, visited on 18 October 2018.

64 P. Wagner, & W. Sawyer, 'Mass Incarceration: The Whole Pie 2018.', *Prison Policy Initiative: World Prison Brief*, 14 March 2018, <www.prisonpolicy.org/reports/pie2018.html>, visited on 18 October 2018.

65 The Sentencing Project, 'Black Disparities in Youth Incarceration', 12 September 2017, <www.sentencingproject.org/publications/black-disparities-youth-incarceration/> visited on 18 October 2018.

66 R. Kochhar, & A. Cilluffo, 'How Wealth Inequality has Changed in the U.S. Since the Great Recession, by Race, Ethnicity and Income', *Pew Research Centre*, 1 November 2017, <www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/>, visited on 12 October 2018.

67 L. Cook, 'U.S. Education: Still Separate and Unequal', *U.S. News & World Report*, 28 January 2015, <www.usnews.com/news/blogs/data-mine/2015/01/28/us-education-still-separate-and-unequal>, visited on 12 October 2018.

68 Saar, et al., *The Sexual Abuse to Prison Pipeline: The Girls' Story* (Georgetown Law Centre On Poverty and Inequality, Washington, DC, 2015), <<https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2019/02/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls%E2%80%99-Story.pdf>>, visited on 10 October 2018.

69 M. Zahn, et al., 'Girls Study Group: Understanding and Responding to Girls' Delinquency', *U.S. Department of Justice*, <www.ncjrs.gov/pdffiles1/ojdp/218905.pdf>, visited on 10 October 2018.

70 Saar et al., *supra* note 75.

71 GLSEN, 'LGBTQ Students Face Unfair School Discipline, Pushing Many Out of School', *GLSEN*, 29 June 2016, <www.glsen.org/article/lgbtq-students-face-unfair-school-discipline-pushing-many-out-school>, visited on 11 October 2018.

72 Human Rights Campaign, 'LGBTQ Youth in the Foster Care System', 2015, <www.hrc.org/resources/lgbt-youth-in-the-foster-care-system>, visited on 10 October 2018.

In one analysis of 1,400 youth at seven U.S. juvenile detention centers, 20 per cent of incarcerated youth identified as LGBTQ, a rate three to five times higher than in the general population.⁷³

Cumulatively, these factors – racial inequities that create lower wealth, lower educational opportunities; the cascading effects of trauma and how it affects young people’s abilities to function in schools and society; a juvenile justice system that disproportionately incarcerates African American and LGBTQ youth – combine to funnel vulnerable young people, especially young people of color, into what juvenile justice scholars often call the “School-to-Prison Pipeline” with tragic efficiency.

School-to-Prison Pipeline (STPP) - The STPP, mentioned above, describes the process through which school discipline policies systematically funnel youth to become involved with the juvenile and criminal justice systems. U.S. schools suspend 3.3 million children and youth each year, and suspension rates have doubled since the 1970s. Rates are highest for African American children, with 15 per cent of all African American students being suspended at least once. Suspension rates are also disproportionately high for students with disabilities, and for students who identify as LGBTQ. What is more, students who are part of more than one of these groups – for example, students of color who also have disabilities or identify as LGBTQ – are even more likely to face suspension, expulsion or school-related arrest, because “the negatives compound.”⁷⁴ Research shows that an over-reliance on disciplinary practices that exclude children from the school environment (e.g. out-of-school suspension and expulsion) is detrimental not only to the penalized student but also to the communities where schools overuse those practices, because increased dropout rates lower consumer and tax revenues, and increase social costs.⁷⁵

Incarcerating juveniles in adult prisons - About 25 per cent of juvenile offenders – about a quarter of a million children each year – are prosecuted as adults. Fourteen states have no minimum age for trying children as adults; in some cases, children as young as eight have been prosecuted as adults. On any given day, roughly 10,000 children are being held in adult jails and prisons, under conditions that are often toxic and traumatizing, and without access to services that address children’s need for safety and trauma-specific interventions. Not surprisingly, these policies disproportionately affect children of color: only 17 per cent of the youth population in the U.S. is African American, but 62 per cent of the youth transferred to adult prisons and jails are African American. In addition, African American children are nine times more likely than Caucasian children to receive an adult sentence.

Re-entry challenges - Facilitating school re-entry for juvenile justice system youth is both a major challenge and a promising opportunity for social workers to make a difference with kids who have been adjudicated delinquent.⁷⁶ Youth face a multitude of education-related concerns when they are released including: the correctional system does not follow the school calendar, therefore youth who are released from custody mid-semester encounter barriers to school participation;⁷⁷ schools may not be eager to

73 A. Irvine, & A. Canfield, ‘The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population’, 2 *Journal of Gender, Social Policy & the Law* (2016) pp. 242-254.

74 S.E. Redfield, & J.P. Nance, *The American Bar Association Joint Task Force on Reversing the School-to-Prison Pipeline Preliminary Report* (American Bar Association, Chicago, IL, 2016) p. 12.

75 Huguley, *supra* note 60.

76 L. Goldkind, ‘A Leadership Opportunity for School Social Workers: Bridging the Gaps in School Re-entry for Juvenile Justice System Youths’, 33 *Children and Schools* (2011) pp. 229-239.

77 D. R. Giles, ‘School Related Problems Confronting New Jersey Youth Returning To Local Communities And Schools From Juvenile Detention Facilities and Juvenile Justice Commission Programs’, Paper presented at the New Jersey Institute for Social Justice and the New Jersey Public Policy research Institute’s Re-Entry Roundtable Juvenile Re-Entry Session

accept students who had behavior problems before they were incarcerated; probation may require that students return to school; and the youth's family may not provide a safe and nurturing home. Unless these challenges can be overcome, the risk of recidivism — of cycling swiftly back into the system — are significant.

3.3. *Reform Initiatives*

Individually, the challenges facing juvenile justice — and social work's contributions to reforming it — are large. Collectively, they are immense and complex. Even a brief look at the research underscores the complex difficulties and daunting challenges we face. This is a time of rising social and economic inequality. Marginalized and poor people are disproportionately involved with the juvenile justice system. School social work, child welfare and juvenile justice — systems that are crucial in helping young people at risk — were not built to work in concert.

However, there is reason for hope, and even for optimism. At this historic moment, social work is reengaging with juvenile systems with creativity, commitment and purpose. The Smart Decarceration Initiative, launched in 2016 by the American Academy of Social Work & Social Welfare, marks a watershed shift. Guided by social work's commitment to social justice — and to working with vulnerable populations — the Smart Decarceration Initiative calls on social work scholars and practitioners to be leaders in efforts to reform the criminal justice system — and to develop effective, socially just alternatives to incarceration.⁷⁸ And as the following examples show, visionary social workers and their allies are finding other powerful new ways to partner in order to reform — and transform — juvenile justice in the United States.

Juvenile Justice Mobility Team (JJMT) - Many law-enforcement jurisdictions across the nation have followed the lead of Florida in creating Juvenile Assessment Centers (JACs), which provide initial screenings and evaluations of newly arrested juveniles.⁷⁹ The goal of JACs is to identify risks and needs, and make referrals for needed services. One weakness of the JACs is that they deal with juveniles only after arrest, rather than offering insights and services that might help prevent juvenile arrests. An innovative program in Albany, New York, seeks to remedy this shortcoming by creating a Juvenile Justice Mobility Team (JJMT), partnering social workers and other community-agency professionals with the police. In the JJMT model, the team makes a rapid, 'front-end' (pre-arrest) assessment and recommendation. In about 26 per cent of cases, the team's recommendation leads to diversion and referral for needed services, rather than arrest. In addition to lessening the number of juvenile arrests, the JJMT initiative has strengthened the relationships between police, social workers, and community agencies.⁸⁰

The Bronx Defenders - Founded in 1997, The Bronx Defenders is a legal-aid agency that serves both adults and adolescents who cannot afford an attorney. The organization's staff is truly interdisciplinary: it includes lawyers, social workers, parental advocates, benefits specialists, investigators, and community organizers. The Bronx Defenders' Adolescent Defense Project focuses on 14-16-year-olds who are being prosecuted as adults. In addition to providing legal defense, the Adolescent Defense Project has a

(2003), Trenton.

78 American Academy of Social Work and Social Welfare, *supra* note 21.

79 R. Dembo, et al., 'Predictors of Recidivism to a Juvenile Assessment Centre: A Three Year Study'. 7 *Journal of Child & Adolescent Substance Abuse* (1998) pp. 57–77; J. E. Rivers, et al., 'The Hillsborough County, Florida, Juvenile Assessment Centre: A Prototype', 78 *The Prison Journal* (1998) pp. 439–450.

80 S. Ehrhard-Dietzel, et al., 'Implementation and Outcomes of an Innovative Front End Juvenile Justice Reform Initiative', 73 *Child and Adolescent Social Work Journal* (2016) pp. 223–234.

strong social work/social services component, connecting these teens with needed services and helping put them on a path toward a future that is more positive than a life of incarceration. In addition to helping individual clients, Bronx Defenders reaches thousands more people through community intake and outreach programs. And it launches innovative initiatives — including pro bono trainings, community organizing, and litigation — designed to bring about real and lasting change for the communities it serves.⁸¹

Trauma-informed schools - Trauma-informed discipline is based on the premise that misbehavior results from insecurities and fears, not choice, and it recognizes that traumatized children are physiologically incapable of learning without appropriate support and intervention. With their training in mental health and knowledge of community resources, social workers have a pivotal role to play in creating positive, trauma-informed schools.

“School social workers ... act as facilitators for assessing the school culture; evaluating school discipline policies; identifying an evidence-based social and emotional learning curriculum; collaborating with outside agencies; and educating students, staff, and families on the prevalence and impact of trauma.”⁸²

At one U.S. high school, the results of implementing trauma-informed discipline were remarkably positive: during the first year, out-of-school suspensions dropped by 85 per cent, and expulsions dropped by 40 per cent.⁸³

3.4. Conclusion

The U.S. juvenile justice “system” — its dozens of systems — are as sprawling and diverse as the nation itself, with millions of children and adolescents scattered throughout its various components. Some of these young people are convicted murderers; others are guilty of nothing more than school truancy or insubordination. Despite the vast differences among them, they all share one thing in common: better, earlier interventions could have kept many of them — possibly even most of them — from entering the system in the first place. And better services once they were engaged with the system could have done more to get them out of it, and back on the path to positive, productive lives.

Today, U.S. social workers have two great challenges. The first is to engage with community partners to develop thoughtful, creative interventions to support youth. The second is to redouble our efforts toward outcome research on intervention with these youths, so that more at-risk and justice-involved youth can experience the highest quality intervention. Despite the complexities and challenges we face, we also have many opportunities to make profound improvements. If we rededicate ourselves to supporting young people, through creative collaborations, community partnerships and meaningful, results-oriented research, we can break down silos and catalyze innovations that make profound and lasting differences for millions of young people, today and in the years ahead.

81 Bronx Defenders, Adolescent Defence Project, (2018), <www.bronxdefenders.org/programs/adolescent-defense-project/>, visited on 10 November 2018

82 J.L. Plumb, et al., *School Social Work Journal*, 40, 49, (2016).

83 J.E. Stevens, ‘Lincoln High School in Walla Walla, WA., Tries New Approach to School Discipline — Suspensions Drop 85 Per Cent’, *ACEs Too High News*, <acestoohigh.com/2012/04/23/lincoln-high-school-in-walla-walla-wa-tries-new-approach-to-school-discipline-expulsions-drop-85/>, visited on 15 November 2018.

Chapter V The Role of Social Work Services in Juvenile Justice in the Netherlands

Stephanie Rap*

1. General Introduction to Social Work in Juvenile Justice in the Netherlands

Juvenile justice in the Netherlands has undergone marked changes in the past century. However, the ‘pedagogical approach’, geared towards re-education and prevention of re-offending, employed by juvenile justice organisations and actors has largely been preserved. In this chapter the development and waves of change the juvenile justice system has undergone will be described, focussing on the involvement of social work services. Although the approach towards children in conflict with the law has become more punitive, social work services have maintained a central role in the juvenile justice process. The general aims of the juvenile justice system – behavioural change and prevention of re-offending – require the involvement of social workers, probation officers and psychologists, to work towards these goals together with juveniles and parents.

This chapter will start with a general introduction of social work, juvenile justice and child protection from an historical perspective (section. 1). Consequently, the specific role of social work services in the Dutch juvenile justice system in law and in practice will be described (section. 2). This chapter will conclude with an analysis of recent achievements, challenges and reforms to the system (section. 3) and some concluding remarks (section. 4).

1.1. *Social Work*

In the Netherlands, the modern discipline of social work stems from private initiatives to relief the poor, which can be traced back to the Middle Ages. Hospices date back to 1122, and food distribution at churches and public spaces took place since the 13th century. In 1492, the first children’s orphanage was opened in the Netherlands. All of these initiatives stemmed from Christian charity.¹ In the 19th century, views on what caused poverty and crime changed. Poverty was seen as a consequence of people’s laziness and irresponsibility and the lower classes were subjected to “civilizing campaigns”. This was the first step in professionalising social work and the first School for Social Work was established in 1899.² However, for decades social work and child protection concerning poor families, children in trouble, foster care and adoption were dealt with by laypersons. Also, the staff of institutions and borstals was poorly educated and was paid low wages for long hours in poor working conditions. Only after World War II, a long and slow process of professionalisation of institution staff started.³ Around

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1 M. van der Linden, *Korte geschiedenis van het social werk in Nederland*, retrieved from <<https://www.bodyofknowledgesociaalwerk.nl/pagina/korte-geschiedenis-van-het-sociaal-werk-nederland>>.

2 J. Junger-Tas, ‘Youth justice in the Netherlands’, in M. Tonry and A.N. Doob (eds.), *Youth crime and youth justice. Comparative and cross-national perspectives* (The University of Chicago Press, Chicago, 2004) pp. 300-301.

3 I. Weijers, ‘Geschiedenis van het jeugdstrafrecht’, in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 19-38.

1960, only half of the care workers in institutions had a qualification and in 1968 almost half of the family guardians were still unqualified.⁴ Fortunately, this situation changed in the 1980s.⁵ More and more educational programmes began to focus on the discipline of social work, and currently there are multiple universities (of applied sciences) that teach the discipline.

1.2. *Juvenile Justice*

“The separate juvenile justice system was based on humanitarian concerns.”⁶

1.2.1. Brief History and Development

From the 16th century onwards, the Dutch child care and juvenile justice system can be characterised by a welfare approach towards children. In the 18th and 19th century the conception of childhood and adolescence changed: children had to be prepared for adulthood. Opposition to corporal punishment started to grow; it was increasingly seen as barbaric and ineffective and behavioural change should take place through psychosocial interventions.⁷ Junger-Tas explains:

“The new rationalism looked for interventions that would have greater effect on children and be more humane. It was based on two notions. The first is that deviance and delinquency are not so much caused by the innate wickedness of a child as by the environment in which the child is raised. Poverty, neglect, and abandonment would lead to vagrancy, deviance, and delinquency. The second is the optimistic illusion that antisocial behavior can be eliminated if correct measures are taken”.⁸

In the 19th century, many institutions for abused, neglected and delinquent children were established. The common idea was to isolate these children from their corrupt and criminal ‘lower class’ environment.⁹ Two types of institutions were established: private institutions for abandoned and neglected children and state institutions for delinquent children.¹⁰

In 1901 three child protection laws were enacted in the Netherlands: the *Civil Child Act*, the *Penal Child Act* and the *Child (Framework) Act*. The last one contained provisions on the implementation and enforcement of the measures and sanctions – laid down in the other two laws – by institutions, borstals and orphanages, guardianship organisations and courts. The three laws entered into force in 1905. The main principles enshrined in these laws were that parental authority could be restricted and that delinquent children were to be re-educated and not punished. The child’s future was the guiding principle in the court’s decision and not the offence. At the same time the minimum age of criminal

4 I. Weijers, *De creatie van het mondige kind. Geschiedenis van pedagogiek en jeugdzorg* (Uitgeverij SWP, Amsterdam, 2001).

5 Weijers, *supra* note 4; I. Weijers and T. Liefwaard, ‘Youngsters’, in M. Boone and M. Moerings (eds.), *Dutch Prisons* (Boom Juridische uitgevers, Den Haag, 2007) pp. 127-166.

6 Junger-Tas, *supra* note 2, p. 316.

7 Junger-Tas, *supra* note 2.

8 Junger-Tas, *supra* note 2, pp. 302-303.

9 E. Dumortier, ‘Under Pressure? The Foundations of Children’s Courts in Europe’ in B. Goldson (ed.), *Juvenile Justice in Europe. Past, Present and Future* (Routledge, London / New York, 2018), pp. 3-23.

10 Junger-Tas, *supra* note 2.

responsibility (MACR) of 10 years (enacted by the penal code of 1886) was abolished and the act applied to children up to 18 years.¹¹ The choice of the judge for a sentence or measure was guided by the individual assessment of the child's needs and not by his/her guilt or responsibility. To this end a preliminary enquiry into the child and his/her family was made by the guardianship organisation. In addition, children were given certain procedural rights such as that hearings should take place behind closed doors, the child was required to appear in court, his/her parents were invited and a lawyer was always appointed.¹² The juvenile judge was awarded extensive discretionary powers and children usually appeared before a single judge (*unus iudex*). Specialised juvenile courts and judges were introduced in the law in 1921, which entered into force in 1922.¹³ The welfare approach can be characterised by several principles:

- the notion of *parens patriae* was dominant: all parties involved acted in the best interests of the child;
- the proportionality principle was rejected: the interests of the individual child were dominant in the decision-making;
- treatment was favoured over punishment: this led to development of diversionary measures;
- proceedings were informal and children were given less procedural safeguards compared to adult suspects.¹⁴

In the 1960s, new juvenile criminal legislation was enacted in several Western European countries. In the Netherlands, the MACR was re-installed at 12 years. Also, social professionals such as social workers, psychologists and educators became much more involved in the juvenile justice system.¹⁵ At the same time, from the mid-sixties onwards, the welfare approach slowly began to crumble, influenced by the landmark decisions made by the US Supreme Court in the *Kent* (1966) and *Gault* (1967) cases (see the chapter on the role of social work in juvenile justice in the United States in this volume). Besides the increased attention for due process rights for children, the Dutch system started to collapse because of the failure to provide non-custodial alternatives to detention which were evidence-based and able to reach the most difficult and seriously delinquent children.¹⁶ From the 1980s onwards the typical Dutch policy of minimal intervention disappeared, which can be illustrated by the net-widening of all sorts of judicial responses to juvenile delinquency, and by the rapidly increased capacity of the youth custodial institutions and the enormous number of young people being deprived of their liberty.¹⁷ As will be shown below, diversion has led to an enormous growth of interventions –such as community service– and nowhere else has detention on remand been (and still is) applied on such a large scale as in the Netherlands.¹⁸

In 1995, the revised juvenile criminal law entered into force, which reflected an increased punitiveness and emphasis on the responsibility of juveniles. For example, the maximum detention sentences were increased and the requirements for transfer to the adult

11 Junger-Tas, *supra* note 2; Weijers and Liefwaard, *supra* note 5.

12 Junger-Tas, *supra* note 2; Weijers and Liefwaard, *supra* note 5.

13 Weijers and Liefwaard, *supra* note 5.

14 Junger-Tas, *supra* note 2, pp. 315-316; see also Dumortier, *supra* note 9.

15 Weijers and Liefwaard, *supra* note 5.

16 Junger-Tas, *supra* note 2.

17 Weijers and Liefwaard, *supra* note 5.

18 P.H. van der Laan, 'Just Desert and Welfare: Juvenile Justice in the Netherlands', in J. Junger-Tas and S.H. Decker (eds.), *International Handbook of Juvenile Justice* (Springer Dordrecht, 2006) pp. 145-172; S.E. Rap and I. Weijers, *The Effective Juvenile court. Juvenile Justice procedures in Europe* (Eleven International Publishing, The Hague, 2014).

criminal justice system of 16- and 17-year-olds were liberalised.¹⁹ Moreover, the system was simplified and made more similar to the adult criminal justice system, for example regarding the due process rights granted to juveniles.²⁰ As a result of these legislative changes the dominant position of the juvenile judge largely disappeared. Before, the juvenile court judge managed the juvenile court cases by himself, supported by the Dutch Child Protection Agency (*Raad voor de Kinderbescherming*). For decades, the juvenile court judge was the one and only institution for any decision concerning young offenders (and family law cases concerning adoption, divorce and child protection).²¹ The prosecutor had to consult the judge before taking any decision in a case and the judge oversaw the execution of sanctions. Since 1995 this central function has been taken away from the judge and is assigned to the Child Protection Agency, in order to guarantee an independent position and less paternalistic role for the judge.²² Another explanation for the corrosion of the unique position of the juvenile court judge as the 'central patriarch of the child protection'²³ can be found in the popularity and dispersive use of diversionary measures in the 1980s and 1990s. In the Netherlands, both the police and the public prosecution service gained large-scale discretionary powers in disposing cases.²⁴

Nowadays, the Child Protection Agency has taken over the directive function the judge had in the past and has the responsibility to manage juvenile justice cases together with the public prosecution service. The knowledge of the judge regarding the personal background and circumstances of the young person largely depends on the content of the social work report produced by the Child Protection Agency or the juvenile probation service (see further below).²⁵

1.2.2. Age Limits

In the Netherlands, children can be prosecuted in the juvenile court when at the time of the offence the child is 12 years or older (art. 77 (a) Criminal Code [Cc]). Below the age of 12 children are not deemed to be criminally responsible, but when the child experiences certain problems (s)he can be offered supervision and care through the civil child protection system. For children between the age of 12 and 18 separate provisions are laid down in the Criminal Code and the Criminal Procedure Code. However, when a 16- or 17-year-old juvenile is suspected of having committed a serious offence (s)he can be transferred to the adult criminal justice system. This is possible on the basis of either the seriousness of the offence, the personality of the defendant or the circumstances under which the offence has been committed (art. 77 (b) (1) Cc). However, even if this provision is applied, the case remains in the juvenile justice system; a juvenile court judge is part of the bench of three judges who handle the case and juvenile court procedures are followed during the trial. When the young person is found guilty, the bench can

19 Weijers and Liefwaard, *supra* note 5.

20 Junger-Tas, *supra* note 2.

21 I. Weijers, et al. 'Juvenile Justice and Juvenile Crime: Tradition and Topicality of an Interdisciplinary Approach', in F. de Jong (ed.), *Overarching views of delinquency and deviancy. Rethinking the legacy of the Utrecht School* (Eleven International Publishing, Den Haag, 2015) pp. 367-384.

22 Junger-Tas, *supra* note 2.

23 J.C.Hudig, 'De macht van de jeugdrechter' in C. Kelk, M. Moerings, N. Jörg and P. Moedikdo (eds.), *Recht, macht en manipulatie* (Aula, Utrecht, 1976) pp. 294-310.

24 Weijers, et al. *supra* note 21; P. Vlaardingerbroek, 'De samenhang tussen het jeugdstrafrecht en het civiele jeugdrecht', in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 61-82.

25 S. Verberkand K. Fuhler, *De positionering van de jeugdrechter* (Raad voor de Rechtspraak, Den Haag, 2006).

order an adult criminal court sentence. Research in the Netherlands shows, however, that adult custodial sanctions imposed on minors hardly ever exceed the maximum of two years of youth detention, which is allowed for 16- and 17-year-olds.²⁶ Moreover, the number of juvenile defendants that is transferred to the adult criminal justice system is very low.²⁷

In April 2014, the *Dutch Act on Adolescent Criminal Law* entered into force. With this law, the upper age limit in article 77c of the Criminal Code, which allowed for the application of juvenile criminal law to young adults of 18 to 21 years, was stretched from 21 to 23 years. Under this provision, young adults can be sentenced to a juvenile sentence when this is deemed necessary based on the personality of the young adult or the circumstances of the case. In these cases, the general (adult) criminal procedural provisions apply. In practice, this provision is increasingly being applied, however still to a limited extent. Among other reasons, this has to do with confusion about the target group that qualifies for the adolescent criminal law.²⁸

1.2.3. The Dutch Juvenile Justice System in Numbers

As is the case in other Western European countries the juvenile delinquency rates in the Netherlands have steeply declined over the past ten years.²⁹ Police statistics show a drop of around 65 per cent in the number of juvenile suspects since 2007. This drop can be seen across all types of crimes, among both boys and girls and among juveniles with different ethnic backgrounds.³⁰ Table 1 shows that the number of juveniles interrogated by the police has declined by 12 per cent in one year and the number of juveniles in police custody has declined by four per cent. Approximately 80 per cent of the juvenile suspects are males. In total, 47 per cent of juvenile suspects are from an ethnic minority background (ten per cent of those are female).³¹

In absolute numbers, the number of juveniles deprived of their liberty has dropped from 3.500 in 2007 to a little over 1.000 in 2016. As a consequence, half of the youth custodial institutions in the Netherlands has been closed over the past years, with seven facilities remaining open.³² It is interesting to note that around 75 per cent of the population of these institutions consists of juveniles who are on remand and have not been found guilty and sentenced (yet). This results in the conclusion that most juveniles who have allegedly committed an (serious) offence serve their unconditional youth detention sentence during the pre-trial phase of the process. When found guilty it is standard practice to deduct the time spent in pre-trial detention from the sentence, which mostly results in releasing the young person from detention under conditions.³³

26 I. Weijers, *Jeugdige dader, volwassen straf?* (Kluwer, Deventer, 2006).

27 In 2014, 67 juveniles were transferred to be sentenced according to the adult criminal law, which accounts for around two-and-a-half per cent of all juvenile cases, A.M. van der Laan, et al., *Adolescentenstrafrecht. Beleidstheorie en eerste empirische bevindingen* (WODC/Boom Criminologie, Den Haag, 2016).

28 T. Liefwaard and S.E. Rap, 'Het adolescentenstrafrecht in Nederland: de stand van zaken bijna 4 jaar na invoering van de Wet Adolescentenstrafrecht', 60:3 *Tijdschrift voor Criminologie* (2018) pp. 364-375.

29 See also L. McAra and S. McVie, 'Transformations in youth crime and justice', in B. Goldson (ed.), *Juvenile Justice in Europe. Past, Present and Future* (Routledge, London / New York, 2018) pp. 74-103.

30 P.R. Smit and R.J. Kessels, 'Misdrijven', in S.N. Kaldien (ed.), *Criminaliteit en Rechtshandhaving 2017. Ontwikkelingen en samenhangen* (WODC/CBS/Raad voor de rechtspraak, Den Haag, 2018); B. Berghuis and J. de Waard, 'Declining Juvenile Crime – Explanations for the International Downturn', originally published in Dutch under the title 'Verdampende jeugdcriminaliteit: Verklaringen van de internationale daling', 43:1 *Justitiële Verkenningen* (2017) pp. 10-27.

31 S.N. Kaldien (ed.), *Criminaliteit en Rechtshandhaving 2016. Ontwikkelingen en samenhangen* (WODC/CBS/Raad voor de rechtspraak, Den Haag, 2017).

32 UNICEF Nederland/Defence for Children, *Jaarbericht Kinderrechten* (UNICEF/DCI, Den Haag/Leiden, 2017).

33 Y.N. van den Brink, *Voorlopige hechtenis in het Nederlandse jeugdstrafrecht: wet en praktijk in het licht van internationale en Europese kinder- en mensenrechten* (Wolters Kluwer, the Meijers Research Institute and Graduate School of the Leiden

The number of young adults that is sentenced according to the juvenile criminal law remains rather low; it has increased from one to five per cent in 2016 after the entry into force of the Adolescent Criminal Law.³⁴

Table 1: Juvenile Delinquency Rates³⁵

	2015	2016	Difference
Juveniles* in police interrogation	37.592	33.082	-12%
Juveniles in police custody**	7.450	7.116	-4%
Juveniles in youth detention	1.029	1.054	+2%

* This concerns juveniles between the age of 12-18 years. In 2016, 2.2 million children and young adults between the ages of 12-23 lived in the Netherlands, 54 per cent of whom were between 12-18 years old. A.M. van der Laan and M.G.C.J. Beerthuis, *Monitor Jeugdcriminaliteit 2017. Ontwikkelingen in de geregistreerde jeugdcriminaliteit in de jaren 2000 tot 2017* (WODC/CBS, Den Haag, 2018).

** This concerns the number of unique instances and not persons, which means that juveniles who have come in contact with the police more than once are counted more than once. In 2016, around 20.000 juveniles have been registered by the police as juvenile suspects.

1.2.4. Stages in the Juvenile Justice Process

In the Netherlands, a preliminary investigation led by an investigating judge can take place (art. 170 Criminal Procedure Code [Cpc]), but usually this phase in the process is omitted and the young person is not taken into pre-trial detention when it concerns a less complicated or less serious case. The prosecutor in charge of the preliminary investigations can order pre-trial detention (art. 57; art. 63; art. 65 Cpc) or conditional suspension of pre-trial detention and (s)he can ask for a forensic psychiatric investigation (art. 227 Cpc). Within 90 hours (i.e. three days and 18 hours) the juvenile suspect is brought before an investigating judge, who examines the lawfulness of the arrest and police custody (art. 57 Cpc). According to the law, the pre-trial judge should be a specialised juvenile court judge (art. 492 Cpc). In practice, however, this is not in every court the case, because adult criminal law judges can be appointed as substitute juvenile court judges in order to fulfil the task of a pre-trial judge. In case the prosecutor requests conditional suspension of pre-trial detention the judge should determine which conditions are attached to the suspension, after having sought advice from the Child Protection Agency (art. 493(6) Cpc). As a consequence, the judge needs information concerning the current situation of the young person with regard to how things are at home, his/her school record, his/her leisure time, etc. In general, the judge receives a (preliminary) social report, but because of the short time span the report is mainly based on a short interview with the young person and a phone call with the parents. The probation service is also asked to provide advice on the conditions for suspension and the feasibility of certain interventions.³⁶ On the basis of the social report and the information the young person and his/her parents provide at the hearing, the judge decides what type of conditions should be attached to the suspended pre-trial detention.³⁷ The judge involved in the pre-trial phase is not allowed to hear the case in court as a trial judge (art. 268(2) Cpc).

Law School of Leiden University nr. MI 296, Deventer, 2018) (Dissertation Leiden University).

³⁴ C.S. Barendregt, et al., *De toepassing van het jeugdstrafrecht bij jongvolwassenen in de praktijk. Een procesevaluatie van het adolescentenstrafrecht* (WODC, Den Haag, 2018); Van der Laan et al., *supra* note 27.

³⁵ UNICEF Nederland/Defence for Children, *supra* note 32.

³⁶ Van den Brink, *supra* note 33.

³⁷ S.E. Rap, *The participation of juvenile defendants in the juvenile court: A comparative study juvenile justice procedures in Europe* (Pallas Publications, Amsterdam, 2013) (dissertation Utrecht University).

Until 2011, a lawyer was not appointed free of charge when a juvenile was arrested and interrogated by the police. Only when the young person was held in pre-trial detention a lawyer was appointed to represent him/her (art. 40 Cpc). Following the judgments of the European Court on Human Rights in the cases of *Salduz v. Turkey and Panovitz v. Cyprus*,³⁸ the Dutch Supreme Court ruled that juvenile suspects have the right to consult a lawyer before and be assisted by a lawyer during the first police interrogation and every interrogation thereafter.³⁹ In 2017 the Criminal Procedural Code was amended, giving suspects who are arrested by the police the right to consult and have a lawyer present during the police interrogation (art. 28(c)(d) Cpc).⁴⁰ Moreover, juveniles cannot waive the right to consult a lawyer before the interrogation (art. 489 Cpc). When a minor is held at a police station in order to be interrogated, a family member or a member of his/her household should be warned by the police as soon as possible.⁴¹ When a juvenile is remanded in custody a duty lawyer is always appointed free of charge (art. 40 Cpc). This is also the case when the young person needs to appear in court (art. 489(1)(c) Cpc) or when the prosecutor wishes to settle the case with a community service order of more than 20 hours or a fine of more than EUR 115 (art. 489 (1)(a-b) Cpc). If the juvenile is sanctioned by the police or a more lenient sentence is given by the prosecutor, as a diversionary measure, a lawyer is not appointed free of charge.

The police have official powers to dispose of cases. On the level of the police as well as the prosecution service 'a great diversity of diversion mechanisms exists'.⁴² Basically, the police have broad discretion in handling cases and they determine which cases are referred to the prosecutor.⁴³ The police can dismiss a case and send the young person to voluntary social support (provided by the local youth care organisation) or they can send the case to the Child Protection Agency, to investigate whether the young person is in need of support.⁴⁴ The police can also issue an oral warning and notify the parents.⁴⁵ Or the police can refer a juvenile who has committed a minor offence (such as vandalism, defacing property with graffiti or shoplifting) to a community service project called Halt.⁴⁶ Halt is an organisation that carries out restorative and educational projects of up to 20 hours for juvenile first-time offenders (art. 77(e) Cc). Finally, the police can decide to send the charge to the public prosecutor for further handling.⁴⁷

The public prosecutor in the Netherlands has the legal power to initiate court proceedings against a suspect or to decide that it is not expedient to prosecute a case (on the basis of the principle of opportunity).⁴⁸ However, the prosecutor can also conditionally discharge cases which involve a misdemeanour or an offence punishable by a maximum of six years' imprisonment (art. 74; art. 77a Cc). Since 1983, the prosecutor has the

38 ECtHR, 27 November 2008, appl. no. 36391/02; ECtHR, 11 December 2008, appl. no. 4268/04.

39 HR 30 June 2009, LJN: BH3079, NJ 2009, 349.

40 Interestingly this is not the case for suspects who report voluntarily to the police, the so-called summoned suspects.

41 Policy Instruction for the Police, art. 27(1) [Ambtsinstructie voor de politie].

42 C. Brants and S. Field, 'Discretion and Accountability in Prosecution: A Comparative Perspective on Keeping Crime Out of Court', in P. Fennell, C. Harding, N. Jörg and B. Swart (eds.), *Criminal justice in Europe. A comparative study* (Clarendon Press, Oxford, 1995) pp. 127-148.

43 L. Gelsthorpe, et al., 'Diversion in English and Dutch Juvenile Justice', in P. Fennell, C. Harding, N. Jörg and B. Swart (eds.), *Criminal justice in Europe. A comparative study* (Clarendon Press, Oxford, 1995) pp. 199-226.

44 When a child below the age of 12 comes into contact with the police, the police will report to the local municipality, which serves as the gatekeeper to local youth care services.

45 Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines. Halt [Richtlijnen kader voor strafvoeding jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

46 In Dutch 'Halt' is an abbreviation for 'the alternative' (Het Alternatief).

47 Van der Laan, *supra* note 18.

48 This is a principle in Dutch law that means that the prosecutor has the discretion to decide whether it is opportune to prosecute a case. As a consequence, (s) he can also refrain from prosecuting and dismiss the case (art. 12-13 Cpc).

possibility to settle cases with defendants. In 1995, this form of diversion was laid down in the Criminal Code (art. 77(f) Cc). In 2011, the prosecutor was given even more power, because since then (s)he can declare the defendant guilty and order a sanction by means of a settlement (*strafbeschikking*) (art. 77(f) Cc). The defendant has the right to appeal against the decision of the prosecutor when (s)he does not agree with it (art. 257(e)Cpc). The prosecutor can impose 60 hours of community service, a fine or six months' probation on a juvenile defendant (art. 77(f) Cc).⁴⁹ The prosecutor is obliged to invite the young person and his/her parents for a hearing, during which the offence and the personal circumstances are discussed (art. 257c lid 1 Cpc).⁵⁰ It can be concluded that the prosecutor has a central role in juvenile cases and plays an important role in determining which cases are sent to the juvenile court.⁵¹ Prosecution offices in the Netherlands have designated juvenile court prosecutors and public prosecutor's clerks who exclusively deal with juvenile cases.⁵²

In court, juvenile defendants can be heard by one judge (art. 495(1) Cpc) or in more serious cases by a panel of three judges, one of whom should be a juvenile court judge (art. 495(3) Cpc). The changes to the juvenile criminal law enacted in 1995, modified the role of the juvenile court judge. Juvenile court judges before 1995 liaised with the public prosecutor and the Child Protection Agency on a regular basis.⁵³ Nowadays, the juvenile court judge is excluded from these meetings, whilst among others the police are included.⁵⁴ Courts in the Netherlands have different approaches to dealing with juvenile cases: in some courts judges deal with all child related cases, while in other courts juvenile justice cases are dealt by juvenile court judges who are not involved with child protection and family law for example.⁵⁵ The public prosecution service is formally responsible for the execution of sentences (art. 553 Cpc). While other organisations, such as the Child Protection Agency and the juvenile probation service, are responsible for the actual execution of sentences, the prosecutor comes into play in case the convicted young person does not carry out the sentence or comply with conditions attached to a sentence. In principle, the judge is no longer involved with the young person after the final judgment is rendered in a case.

During the trial the judge occupies a central role; (s)he leads the dialogue with the young person to find out the truth about the alleged offence. The juvenile defendant is in the position to answer the questions posed by the judge by himself/herself, without intervention from the lawyer or his/her parents.⁵⁶ A dossier is prepared in the preliminary phase by the prosecutor, while the Child Protection Agency has conducted a social investigation (art. 494 Cpc). Witnesses can be subpoenaed, but in uncomplicated cases this rarely happens. The defendant has the explicit right to call witnesses (art. 287(3) (a) Cpc) and until the young person is 16 years of age the lawyer has the independent power to call witnesses as well.⁵⁷

49 J. uit Beijerse and L. Dubbelman, 'De politie en het Openbaar Ministerie in jeugdstrafzaken', in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 239-272.

50 Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines. Halt [Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

51 Uit Beijerse and Dubbelman, *supra* note 49; Verberk and Fuhler, *supra* note 25; Vlaardingerbroek, *supra* note 2.

52 C. Dronkers and J.M. ten Voorde, 'OM-gaan met gestoorde ontwikkeling bij jong-volwassenen' in T.A.H. Dorelijers, J.M. ten Voorde and M. Moerings (eds.), *Strafrecht en forensische psychiatrie voor 16- tot 23-jarigen* (Boom Juridische Uitgevers, Den Haag, 2010) pp. 39-50.

53 G. de Jonge and A.P. van der Linden, *Jeugd & Strafrecht* (Kluwer, Deventer, 2007).

54 Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines. Halt [Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

55 I. Weijers, *supra* note 3.

56 De Jonge and Van der Linden, *supra* note 53.

57 G.P.M.F. Mols, *Getuigen in strafzaken* (Kluwer, Deventer, 2003).

Since 2011, it is obligatory for parents to attend the juvenile court hearing of their child (art. 496(1) Cpc). When parents are not present at the hearing, but the juvenile defendant and his/her lawyer are, the law prescribes that the case should be adjourned and that the parents should be notified of the new court date (art. 496(a)(1)-(2) Cpc). The case can only continue in the absence of parents when it is in the best interests of the child, when parents do not have a fixed home or address or when the case was already suspended once (art. 496(a)(3) Cpc).⁵⁸ At the juvenile court hearing, parents are generally given the opportunity to say something to the judge. They can comment on everything they have heard during the hearing and according to the law they can raise anything that contributes to the defence of their child (art. 496(2) Cpc).

1.2.5. Dispositions

As has been explained above, the police and the prosecution service have large discretionary powers in handling juvenile cases. As a consequence, a large number of juvenile suspects receive a diversionary measure from either the police or the prosecutor. The diversionary programme Halt received 17,000 juveniles in 2016. Also in 2016, the public prosecution service ordered a disposition (in case of a settlement) against 8,700 juveniles and summoned 7,700 juveniles to court. Of the latter group 5,600 juveniles were sentenced by the judge.⁵⁹

In general, it can be stated that community service is the most widely used disposition in the Dutch juvenile justice system. Since the 1980s a development has taken place whereby the phrase ‘community service, unless...’ was the dominant way of thinking, meaning that community service orders were in principle given first before resorting to harsher sentences.⁶⁰ The police diversion programme Halt is considered to be the lowest tier of community service orders. Halt consists of educational and restorative elements and has a maximum duration of 20 hours. At the prosecutor level, mainly community service orders are imposed as well and they have a maximum duration of 60 hours. Diversion at the level of the police and prosecutor cannot imply any restriction of movement or deprivation of liberty. At the court level, a distinction is made between sentences and measures. A sentence can only be imposed when the culpability of the defendant is proven. For a measure to be imposed guilt or intention on the part of the defendant do not have to be proven. Measures aim at protecting society against new crimes committed by the convicted person and compensating for the damage inflicted upon victims.⁶¹

The applicable juvenile sentences are a monetary fine (max. 4,100 EUR), community service (max. 240 hours) and youth detention (max. one year for 12- to 15-year-olds and max. two years for 16- and 17-year-olds). The most common measures are treatment in a youth custodial institution (max. six years and one year of aftercare), a behavioural treatment measure (six-12 months), restriction of liberty orders (e.g. a contact or location ban) and financial compensation. Juvenile probation can be ordered as a condition to a conditional sentence. Of the sentences imposed by the juvenile judge 54 per cent are community service orders. In 2016, 5,00 juveniles have started supervision at the

⁵⁸ The reason for laying down by law the presence of parents is to strengthen the position of victims who would like to claim civil damages. However, parents in the Netherlands only have civil liability for their children up until 14 years of age (art. 6:169 (1) CCiv). When the child is between 14 and 16 years of age parents can only be held liable in case they did not exercise sufficient supervision over their child and could have prevented the child from acting harmfully (art. 6:169 (2) CCiv).

⁵⁹ Kalidien, *supra* note 31.

⁶⁰ F. Imkamp, ‘Taakstraffen in het jeugdstrafrecht’, in I. Weijers (ed.), *Justitiële Interventies. Voor jeugdige daders en risicjongeren* (Boom Juridische Uitgevers, Den Haag, 2008) pp. 31-44.

⁶¹ G. de Jonge, ‘Straffen en maatregelen voor jongeren’, in I. Weijers (ed.), *Justitiële Interventies. Voor jeugdige daders en risicjongeren* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 151-186.

juvenile probation service.⁶² The probation service is part of the certified youth care organisations that operate in local municipalities and which are also responsible for the implementation of voluntary youth care and court ordered child protection measures.

Apart from the legally defined sentences and measures, tailored behavioural interventions are implemented within the framework of the court orders. Examples of these interventions are family interventions such as multi-systemic therapy and functional family therapy, but also individual interventions relating to aggression regulation and substance abuse. The probation officer can decide to contact a specialised youth care provider to carry out such an intervention.⁶³

1.3. *Juvenile Justice and Child Protection*

The historical development of the Dutch juvenile justice system as described above shows that the approach can be characterised as being offender-centred, aiming at resocialisation, re-education and reintegration into society. From the 1980s onwards the approach became more legal in nature, emphasising legal safeguards for juvenile defendants and penal responses to delinquent behaviour (i.e. community service orders).⁶⁴ Until the legislative changes that took place in 1995, the juvenile court judge managed all the juvenile court cases by himself/herself, supported by the Child Protection Agency. The juvenile court judge handled both civil and criminal juvenile court cases and supervised all cases dealing with one child or family. Nowadays, it depends on the organisation of the court whether juvenile court judges are attached to the criminal law section or the family law section of the court. Only in the latter case judges are involved in both juvenile criminal and civil child protection cases. However, criminal and civil cases involving one child are dealt with separately and not necessarily by the same judge, so judges are not always aware of the different legal procedures and measures imposed. It is the responsibility of the social work professionals to inform the judge regarding a child protection measure that has been ordered already or a criminal case that is pending.⁶⁵ In theory, the prosecutor in juvenile justice cases can ask the judge to order a supervision measure (art. 1:254(4) Civil Code [CCiv]) or to place the young person in care during a juvenile court trial (art. 1:261(1) CCiv), but prosecutors hardly ever do so.⁶⁶ In practice, the Child Protection Agency is usually the authority that requests the judge to place the young person under supervision (as a result of delinquent behaviour) and a separate civil procedure is commenced in that case (art. 1:254(4) CCiv).

Regarding the protection of child victims and the prevention of juvenile delinquency, provision of youth care is the main avenue for intervention. In the Netherlands, local municipalities are responsible for access to and provision of voluntary and compulsory youth care since 1 January 2015.⁶⁷ An important principle of the *Dutch Youth Act* is that the provision of care and support to children must be based on families' and children's own capacities, engagement and problem-solving abilities and of their own network (Explanatory Memorandum to the *Youth Act*). Municipalities have far-reaching obligations

62 Kalidien, *supra* note 31.

63 I. Weijers, et al., *Jeugdige Veelplegers* (Uitgeverij SWP, Amsterdam, 2010).

64 Vlaardingerbroek, *supra* note 24.

65 *Ibid.*

66 *Ibid.*

67 Before 2015, the regional provinces had the legal responsibility to provide youth care.

regarding the organisation and provision of youth care services. When parents and children need support, they can contact a local care team from their municipality. When this local team decides that support is necessary, because of insufficient or inadequate family and network support, youth care services will be offered by youth care providers.⁶⁸

When voluntary youth care is not or no longer sufficient for children in need of care or protection, the Child Protection Agency starts an investigation and may request the juvenile court to impose a child protection order (arts. 1:255 and 1:266 CCiv). A child protection order involves family supervision. The family is obliged to accept this assistance by a social worker of a certified youth care organisation. Similar to the voluntary framework, support will be carried out by local youth care providers.⁶⁹

2. The Role of Social Work Services in Juvenile Justice in the Netherlands

2.1. Legal Basis for Juvenile Justice Social Work

From the international children's rights instruments, it can be derived that juvenile justice systems should not focus on repression and retribution, but rather on resocialisation and reintegration of children who are in conflict with the law (art. 40 UN Convention on the Rights of the Child [CRC]; General Comment No. 10, paras. 23; 29). The manner in which juveniles are treated in the justice system should promote their sense of dignity and worth and their reintegration into society (art. 40(1) CRC). The 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules*) have more specifically formulated that "[I]n all cases (...) the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated" (Rule 16(1)). In addition, these rules have stipulated that the well-being of the child should be the guiding factor in the course of adjudication and sentencing (Rule 17(1) (d)). These rules require that adequate social services are available to deliver information to the juvenile court. More recently, the Council of Europe (2010) has recommended in its Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice that professionals in the juvenile justice system should cooperate to obtain "a comprehensive understanding of the child as well as an assessment of his/her legal, psychological, social, emotional, physical and cognitive situation" (para. IV(A)(16)). The importance of assessing the background situation of the young person is stressed in these guidelines. Also, a multidisciplinary approach is specifically advocated (paras. IV(A)(70-72)).

On the regional level, the EU Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings⁷⁰ gives juveniles the right to an individual assessment by qualified personnel⁷¹ (art. 7). The aim of an individual assessment should be to safeguard the needs of the child (also during the criminal proceedings) and to inform decision-making (art. 7(1)-(3)). The individual assessment of the child should take into account the child's personality and maturity, the child's

68 S.E. Rap, et al., 'Children's Participation in Dutch Youth Care Practice: An Exploratory Study into the Opportunities for Child Participation in Youth Care from Professionals' Perspective', 25:1 *Child Care in Practice* (2018) pp. 1-14.

69 *Ibid*; see also Netherlands Youth Initiative, *Dutch Youth Care System*, < www.youthpolicy.nl/en/Introduction-to-Dutch-youth-policy/Dutch-youth-care-system>.

70 EU Directive on Procedural Safeguards for Children Suspected or Accused in Criminal Proceedings, 2016/800, 11 May 2016.

71 The term 'qualified personnel' is not further defined.

economic, social and family background, including living environment, and any specific vulnerabilities of the child, such as learning disabilities and communication difficulties (art. 7(2) and Recital 36). Moreover, the seriousness of the alleged offence and the measures that could be taken if the child is found guilty of such an offence should be taken into account in the assessment (Recital 37). The individual assessment should take place at the earliest appropriate stage of the proceedings and in any event before the court hearings (art. 7(5-6)).

In the Netherlands, social workers are involved in different parts of the juvenile justice process and a division is made between the advisory role of social workers and the implementation of measures and interventions (see further below). The Child Protection Agency is responsible for the provision of social reports to the juvenile court judge; that is providing an individual assessment of the young person and advice on the best appropriate disposition. When the prosecutor has the intention to try the young person in court, (s) he is legally obliged to ask the Child Protection Agency for a social report (art. 494(1) Cpc). This organisation can also inform the prosecutor on its own accord (art. 494(3) Cpc). The Child Protection Agency undertakes a systematic social investigation with regard to almost every juvenile defendant who has to appear before the prosecutor or judge. The report contains social background information concerning the young person and his/her family and an advice concerning the most appropriate sanction and/or measure. The actual implementation of measures, such as probation, is executed by the certified youth care organisations that operate in local municipalities and that provide for juvenile probation services (art. 77 (aa) (2) Cc).

2.2. *The Advisory Role of Social Work Services in Juvenile Justice*

As has been noted above, after the revision of the juvenile criminal law in 1995, the juvenile judge lost his/her central position in the juvenile justice process. However, new forms of case consultations developed between the police, the prosecution service and the Child Protection Agency.⁷² Most recently, a fast track system has been developed at the police level, whereby cases are assessed within nine hours after arrest (the so-called ASAP [ZSM] meeting). The police, prosecutor and Child Protection Agency decide together how the case can be dealt with and whether a form of diversion is appropriate.⁷³ This fast track system was pre-dated by case consultations taking place between the police, prosecutor and Child Protection Agency at a later moment after arrest. These consultations have been expanded to include other organisations such as the local municipality, schools and the youth care service and take place in the so-called regional Safety homes (*Veiligheidshuizen*). Usually, more serious or complex cases, which have not led to a decision within seven days after arrest through the fast track procedure, are discussed during these meetings. The Safety homes are cooperation initiatives between authorities within the justice and welfare system and other local organisations to improve cooperation between authorities, in order to solve complex cases involving juveniles at risk, repeat offenders, domestic violence and the reintegration of ex-detainees. The aim of these consultations is to exchange information and to decide together what would be the most appropriate disposition in a specific case, which will then be proposed to the court.⁷⁴

⁷² Junger-Tas, *supra* note 24.

⁷³ Uit Beijerse and Dubbelman, *supra* note 51; I. Mijnaerends and E. Rensen, 'De rechtspositie van de jeugdige verdachte op ZSM' in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 259-272, see also Openbaar Ministerie, *Landelijke invoering van de ZSM werkwijze*, <www.om.nl/@24445/factsheet-zsm/>.

⁷⁴ Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines; Halt [Richtlijn

In the Netherlands, when a young person is arrested by the police, the police immediately involve the Child Protection Agency, through the ASAP-meeting.⁷⁵ If the young person is remanded in custody the prosecutor has to inform the Child Protection Agency (art. 491(1) Cpc). A social worker conducts a first assessment of the well-being of the juvenile defendant in pre-trial detention, also when the young person is arrested during the weekend. The social worker prepares a report for the prosecutor and pre-trial judge, including advice on releasing the young person on supervision or on prolonging the period on remand and whether further investigations into the personality of the young person are necessary.⁷⁶ The prosecutor must consider this advice before ordering a continuation of the pre-trial detention (art. 491(2) Cpc).⁷⁷ In general, the Child Protection Agency will advise to suspend pre-trial detention, unless it is strictly necessary to keep the juvenile detained.⁷⁸ In the case of suspension of pre-trial detention, special conditions can be attached hereto, such as supervision carried out by the juvenile probation service (art. 80 Cpc). Moreover, this may mean that the young person is subjected to measures such as intensive supervision, a training programme, a contact ban, a location ban, a curfew, ban on drugs and/or alcohol, mandatory blood- or urine-testing or other interventions relating to the behaviour of the young person.⁷⁹ Electronic monitoring can be attached to these special conditions.⁸⁰ When the prosecutor decides to try the young person in court, (s)he is legally obliged to ask the Child Protection Agency to prepare a social report as well, in which the social background of the juvenile is described in more detail and an advice is given on the most appropriate sentence and/or measure (art. 494(1) Cpc).

When the young person is not taken into custody after his/her arrest, (s) he will be invited to come to the office of the Child Protection Agency, where a standardised assessment is carried out by a social worker. In 2012, a standardised risk assessment instrument was introduced in the juvenile justice process (*Landelijk Instrumentarium Jeugdstrafrechtssketen*). Information is gathered through dossier analysis, a structured interview with the young person and with his/her parents and telephone contact with relevant others such as a school teacher. The aim of the instrument is to find an intervention that will reduce the risk of re-offending. The Child Protection Agency bases its reports on this instrument.⁸¹ At this stage, voluntary supervision can also be proposed to the young person. In basically every juvenile criminal case the Child Protection Agency prepares a report for the prosecutor (also in case of a conditional dismissal), the pre-trial judge or the juvenile court judge and gives advice on the most appropriate disposition. In case further forensic psychiatric investigation is needed, this will be carried out by the Netherlands Institute for Forensic Psychiatry and Psychology (NIFP), which will seek a qualified and independent psychologist or/and psychiatrist to conduct the assessment and advise the court.⁸²

en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

⁷⁵ *Ibid.*

⁷⁶ Uit Beijerse and Dubbelman, *supra* note 49.

⁷⁷ On the other hand, the pre-trial judge can also ask the Child Care and Protection Board to inform him/her concerning the situation of the young person, for example after the pre-trial detention has been continued for an additional period of time (art. 494 (4) Cpc).

⁷⁸ Van den Brink, *supra* note 33.

⁷⁹ Art. 27(1) Decree on the enforcement of juvenile criminal law [Besluit tenuitvoerlegging jeugdstrafrecht]

⁸⁰ Art. 27(3) Decree on the enforcement of juvenile criminal law [Besluit tenuitvoerlegging jeugdstrafrecht]

⁸¹ H. Spanjaard and C. van der Put, 'Landelijk Instrumentarium Jeugdstrafrechtssketen', 91:5 *Proces* (2012) pp. 355-370.

⁸² G. Cardol, 'Raad voor de Kinderbescherming, NIFP en jeugdreclassering', in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 273-290.

When a young adult between 18- and 23-years-old is suspected of an offence, the prosecutor can order to impose a juvenile sentence. The prosecutor is advised on this matter by the adult probation service and the Child Protection Agency. These organisations use the national guidelines on the application of adolescent criminal law. Criteria that need to be met in order to ask for a juvenile sentence is that the young adult is still living at home, is going to school, needs support because of mild intellectual disabilities and is open to educational support.⁸³

Regarding child victims of crime, the police have specialised officers who conduct the interviews with victims below the age of 12. These interviews are carried out in child-friendly interview rooms, which are available in several cities in the Netherlands. The child is informed and prepared by the officer during a home visit, before the day of the interview. The interview is audio and visually recorded, and another officer (in rare cases accompanied by the judge and prosecutor) is present in the control room to observe the interview.⁸⁴ For child victims of 12 to 18 years, the law does not provide for these special arrangements (i.e. a child-friendly interview room and specialised professionals).⁸⁵

At the court hearing, a representative of the Child Protection Agency can be present. This depends, however, on the practice of the specific court and is generally more common in complicated cases and when the young person is being held in pre-trial detention.⁸⁶ The actual implementation of measures, such as probation, is executed by local social services (art. 77 (aa) (2) Cc) and not by the Child Protection Agency. However, the Child Protection Agency is responsible for the coordination of community service orders. The coordinators have intakes with juveniles who have been sentenced to a community service order and assign them to educational programmes and community service projects. When the order has been completed successfully, the coordinator reports this to the prosecutor. In case the young person is not cooperating, this will also be reported back to the prosecutor, who can officially warn the young person and ultimately report back to the judge.⁸⁷

2.3. *The Implementation of Social Work Services*

With the entry into force of the *Youth Care Act* in 2015, the juvenile probation service also became part of the responsibility of the local municipalities. Certified youth care organisations are legally assigned to provide youth care, protection and probation services. The probation service – as part of the certified organisations – is responsible for providing juvenile probation measures, electronic monitoring and aftercare programmes for juveniles coming out of detention.⁸⁸

The general compulsory probation supervision can be ordered by the prosecutor as part of diversion, by the investigating judge as part of suspended pre-trial detention, by the

83 Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines Halt [Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

84 Aanwijzing auditief en audiovisueel registreren van verhoren van aangevers getuigen en verdachten, Stcrt. 2012, nr. 26900.

85 Y.M. Hokwerda, et al., *Minderjarige slachtoffers van seksueel misbruik in het strafproces. Een toetsing aan het internationale kinderrechtenskader* (Defence for Children, Leiden, 2015).

86 S.E. Rap, 'The participation of social services in youth justice systems in Europe', 18:5 *European Journal of Social Work* (2015) pp. 675–689.

87 Cardol, *supra* note 82.

88 *Ibid*; see also art. 77(aa) (2) Cc.

judge as part of a conditional sentence and as aftercare following detention. Probation supervision can also be accepted voluntarily, before the trial. When the young person does not comply with a compulsory order, the probation officer will report back to the prosecutor, who will decide on how to proceed further (e.g. officially warn the young person or order the judge to execute the conditional part of the (detention) sentence). The juvenile probation service also implements intensive supervision trajectories of three to six months, in which the young person has to comply with a strict daily routine, sometimes combined with electronic monitoring. The probation officer closely cooperates with the police, the parents, school and/or workplace of the young person. The juvenile probation service can also refer the young person to specialised forensic treatment or behavioural interventions, implemented by specialised forensic care providers. Specialised treatment can also be imposed by the judge as special condition attached to a sentence.

The juvenile probation service is also responsible for supervision during leave out of detention and aftercare (art. 147, 494 Cc). A specific programme aimed at reintegration concerns the education- and training programme, which entails that the young person goes to school, work, leisure activities and/or other trainings and therapies outside the youth custodial institution for a maximum of three months, with the aim to reintegrate into society.⁸⁹ The programme needs to contain at least 26 hours of weekly activities, which are tailored to the needs of the young person. Both the juvenile probation service and the Child Protection Agency have to provide an advice on whether or not to start this programme. The youth custodial institution is responsible for design of the programme and the juvenile probation service is responsible for the actual implementation. This means that the probation officer needs to report changes in the programme and updates on the progress of the young person to the director of the institution.⁹⁰

The youth probation service is also responsible for the provision of aftercare when a young person is released from detention. When a young person is placed in detention, a supervision plan is made, together with the young person, his/her supervisor, a child psychologist, the Child Protection Agency and the juvenile probation service. Agreements concerning the provision of aftercare can also be part of this plan.⁹¹ In the Netherlands, a few organisations provide specialised aftercare and resocialisation programmes for young people leaving detention, such as Young in Prison and the Foundation 180 (see further below).⁹²

In general, it can be stated that the juvenile probation service has a considerable amount of freedom in implementing juvenile probation services and supervision. In practice, no close contact is maintained between judges and social workers.⁹³ When a young person does not comply with the directives of the probation officer, the latter can warn the young person himself/herself first, before reporting to the prosecutor. Also, regarding the content of the supervision, the probation officer has rather large room for discretion.⁹⁴ The aim of probation services is to control juveniles' behaviour in order to prevent re-offending, while at the same time trying to influence the behaviour

89 *Ibid*; art. 3 Youth Custodial Institutions (Framework) Act; art. 4(2) Youth Custodial Institutions Regulation.

90 T. Liefwaard and M. Bruning, 'De justitiële jeugdinstelling', in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 393-416.

91 *Ibid*; Weijers, *supra* note 63.

92 See <<https://180.nl/>> and Young In Prison, (YIP) <www.younginprison.org/en/about-yip>.

93 Rap, *supra* note 86.

94 H.L. Kaal and B.J. de Jong, 'Het signaleren en registreren van LVB in het justitiële domein: stof tot nadenken', 43:6 *Justitiële verkenningen* (2017) pp. 63-73.

of the young person and giving support to help organise his/her life.⁹⁵ Probation officers indicate that not the offence, but the young person is central in the support they provide and the approach is geared towards helping the young person and his/her parents in education and upbringing and positive development of the young person.⁹⁶ Research among juveniles shows that they perceive the interaction with probation officer as rather controlling and corrective.⁹⁷

2.4. Qualification and Evaluation of Juvenile Justice Social Work

Since 1995, the juvenile probation service has undergone significant changes and it has professionalised considerably. Before, there was no national rollout of probation services and no uniformity in work methods. Nowadays, the *Handbook method juvenile probation* is used and this has led to a more uniform national working method among the juvenile probation providers. Moreover, since 2015 youth care organisations must be certified to provide youth care and probation services. This certificate is periodically reviewed by the government.⁹⁸

Another quality assurance method is the existence of the Database Effective Juvenile Interventions. Youth care providers can have their interventions reviewed by a committee of experts who will decide whether the intervention can be qualified as well-grounded in theory and effective in practice. A separate committee for the evaluation of juvenile justice interventions exists.⁹⁹

3. Recent Achievements, Challenges and Reform Initiatives Regarding Juvenile Justice Social Work in the Netherlands

3.1. Achievements

Historically, the Dutch juvenile justice system is rooted in a welfare model, whereby the underlying problems of delinquent behaviour form an important object for intervention, in order to prevent re-offending and foster re-education and protection of the child. Classical criminal justice notions, such as guilt, proportionality and retribution hardly played any role in the juvenile justice system. This changed in the 1960s, influenced by developments in the United States.¹⁰⁰ However, as becomes clear in this chapter the Dutch juvenile justice practice still has a clear pedagogical focus and social work plays an important role in this respect.

Throughout every phase of the juvenile justice process social work services are engaged, either to advise the judge and prosecutor or to supervise the young person and his/her parents. The latter task is completely assigned to the juvenile probation services, which can be involved in every phase of the process, from arrest until release from detention. The advisory work is primarily the responsibility of the Child Protection Agency, which operates independently from the courts (and also advises the court in family law, child protection and adoption cases). However, other organisations can also advise the court, such as the juvenile probation service and specialist psychologists and psychiatrists. Despite the fact that the Dutch juvenile justice system has become more punitive, with

95 C. van Nijnatten and G. Stevens, 'Juvenile Participation in Conversations with Probation Officers', 56:3 *International Journal of Offender Therapy and Comparative Criminology* (2012) pp. 483-499; C. van Nijnatten and E. van Elk, 'Communicating Care and Coercion in Juvenile Probation', 45 *British Journal of Social Work* (2015) pp. 825-841; Van den Brink, *supra* note 33.

96 Van den Brink, *supra* note 33.

97 Van Nijnatten and Stevens, *supra* note 95.

98 Cardol, *supra* note 82.

99 See Netherlands Youth Initiative, *supra* note 69.

100 I. Weijers, *supra* note 3; Van der Laan, *supra* note 18.

more emphasis on guilt, retribution and possibilities for imposing a wider variety of dispositions and longer detention sentences, the focus on the social background and development of juveniles remains. Every disposition should have a re-educative aim and should lead to resocialisation of the young person. However, this has also led to increased emphasis on risk assessment and the prevention of re-offending. It should be born in mind that most of the juveniles that come into contact with the law are one time-offenders and that the risk of re-offending is rather low.¹⁰¹ Moreover, this has led to an extensive diversion scheme in the Netherlands, whereby juveniles can be imposed dispositions in every phase of the process (i.e. at the police, prosecutor and court level). Some have concluded that this has led to increased net-widening.¹⁰² Several recent studies show that prevention programmes can be effective in preventing persistent juvenile delinquency, but these should be behavioural-oriented, delivered in a family or multimodal format and the intensity of the programme should match the risk level of the juvenile.¹⁰³ The latter aspect may clash with criminal justice principles (e.g. principle of proportionality) and legal safeguards of the juvenile defendant. This issue and the topic of after care and reintegration of juveniles will be discussed in the next sections.

3.2. Challenges

3.2.1. Fair Trial Versus Early Intervention

As has been explained above pre-trial detention of juveniles can be conditionally suspended and this happens on a regular basis.¹⁰⁴ Behavioural intervention is the core aim of the special conditions attached to suspension, meaning that during the pre-trial period, and anticipating a possible court conviction, behavioural interventions that have a legal basis can be implemented. Van den Brink explains that early intervention is geared towards a pedagogical and educational approach of the Dutch juvenile justice system, aimed at preventing re-offending. It is acknowledged in the law that interventions should not be aimed at punishment or anticipate a court conviction. Interviews conducted with, among others, judges by Van den Brink shows that judges value the 'pedagogical effectiveness' of their decisions. They strive for tailor-made decisions, incorporating the pedagogical interests and needs of the young person. However, they also acknowledge that this approach sometimes clashes with the applicable legal framework and the legal safeguards of juvenile defendants.¹⁰⁵ Procedural safeguards for a fair trial require that authorities exercise restraint with regards to intervening in the life of a defendant before the trial and final judgment have taken place. From a defendants' rights perspective, the early involvement of social services in criminal cases can be scrutinised. A basic fair trial requirement is the fact that a defendant is presumed to be innocent until proven guilty (see art. 6 European Convention on Human Rights; art. 40 (2) (b) (i) CRC). When implementing preliminary measures, it can be argued that this basic right is violated, because the guilt of the young person has yet to be proven in court. Also, tailored decision-making is on strained terms with the equality principle, requiring similar sentences in similar cases.

101 See for example McAra and McVie, *supra* note 29.

102 Weijers, et al., *supra* note 21; Imkamp, *supra* note 60; Weijers and Liefwaard, *supra* note 5.

103 L.A. de Vries, et al., 'Practitioner Review: Effective Ingredients of Prevention Programs for Youth at Risk of Persistent Juvenile Delinquency – Recommendations for Clinical Practice', 56:2, *The Journal of Child Psychology and Psychiatry* (2015) pp. 108-121.

104 See Van den Brink, et al., *Voorlopige hechtenis van jeugdigen in uitvoering. Een exploratief kwantitatief onderzoek naar rechterlijke beslissingen en populatiekenmerken* (Meijers-reeks nr. 298, Nijmegen: Wolf Legal Publishers, 2017); Van den Brink, *supra* note 33.

105 Van den Brink, *supra* note 33.

Early intervention and preventive activities have always been the primary reason for the early involvement of social work in the welfare model in the juvenile justice systems in continental Western Europe, including the Netherlands. Implementing early interventions can be seen as a structural difference between a welfare and a justice approach in juvenile justice.¹⁰⁶ Intervening early means that the young person can be provided with help and supported in an earlier stage of the process, instead of waiting for a decision from the judge. In favour of the practices employed in the welfare model, it can be argued that early involvement of social services in the juvenile justice system is justified when the young person clearly suffers from problems; at home, at school and/or personally. When the offence is a sign that much more difficulties are present in the life of the young person, early interventions and supervision can be beneficial. The early social work involvement, employed in the welfare model, has the advantage for the judge that (s)he can be provided with information with regards to how the young person is developing under the care that is already given to him/her. The judge can in this case decide to adapt the sentence to the individual development and progress of the young person.

3.2.2. After Care and Reintegration

In the past few years, after care in juvenile justice has received increased attention in the Netherlands. This has resulted in the introduction of mandatory after care when deprivation of liberty in the form of a sentence or measure is ended. This can be in the form of a (partly) conditional detention sentence with probation supervision, the education- and training programme and conditional release in case of a treatment measure in a youth custodial institution.¹⁰⁷ After care should contribute to successful reintegration in society and reduce the high re-offending rates after deprivation of liberty. It is incorporated into the *Youth Custodial Institutions Regulation* and the *Decree on the enforcement of juvenile criminal law*.¹⁰⁸ The juvenile probation service is in principle responsible for the implementation of after care, but for 16- to 18-year-old, the adult probation services can be engaged, when the development and circumstances of the young person require so.¹⁰⁹ Voluntary after care provided by a youth care organisation is also possible, when the young person does not qualify for mandatory after care services (e.g. because of the limited duration of a sentence) (art. 77hh (2) Cc).¹¹⁰ Furthermore, for every young person who is admitted to a youth custodial institution a plan is developed in which the judicial trajectory and reintegration is planned.¹¹¹ The Child Protection Agency is responsible for developing these plans and initiating regular meetings with the young person, a representative of the institution and the juvenile probation service.¹¹²

It can be concluded that after care has been given a legal basis in the Dutch juvenile justice system, also for young people who have reached the age of 18 while in detention. However, in practice not every juvenile is reached through this system of after care. For example, only around 20 per cent of the juveniles leaving detention have participated in an education- and training programme. Experience in practice shows that it is important to start early with planning the reintegration of the young person and that collaboration is needed between the organisations working in the juvenile justice system and those working in the adult criminal justice system.¹¹³

106 Rap, *supra* note 86.

107 M.R. Bruning, et al., *Verplichte (na)zorg voor kwetsbare jongvolwassenen? Onderzoek naar de juridische mogelijkheden voor (verplichte) hulp aan kwetsbare jongvolwassenen na kinderbescherming* (WODC, Den Haag, 2016).

108 *Ibid.*

109 Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines Halt [Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

110 Regulation Voluntary Support Juvenile Probation Service [Regeling vrijwillige begeleiding jeugdreclassering, 12.01.2005, no. 5328243/04/DJJ].

111 Art. 28, Decree on the Enforcement of Juvenile Criminal Law [Besluit tenuitvoerlegging jeugdstrafrecht]

112 *Ibid.*

113 Bruning et al. *supra* note 107.

3.3. Reforms

3.3.1. Small Scale Reception

With the decrease in juveniles admitted to youth custodial institutions, which resulted in the closing of institutions across the country, the Ministry of Justice has started an exploration into reforming deprivation of liberty of juveniles. Because institutions have closed, local or regional placement, which was the point of departure when depriving juvenile of their liberty, is no longer possible. Also, the cooperation between institutions and local organisations that provide after care is more difficult to realise.¹¹⁴ Therefore, the pilot project of designing small-scale reception centres (*kleinschaligevoorziening*) has been developed and implemented since 2016. In these low security centres, males between the ages of 14 to 23 can be placed on remand. The goal is to continue care and education in their own environment, instead of being placed in an institution that is further away from their home. During the day juveniles go to their own school and at night (from 22h-7h) they are locked up in their room, without access to a mobile phone or other mobile devices.¹¹⁵ At the time of writing this practice is being evaluated and no results of its implementation and effectiveness are available yet.

3.3.2. Adolescent Criminal Law

As has been explained above, in 2014, the *Dutch Act on Adolescent Criminal Law* entered into force. As a result, young adults until 23 years of age can be sentenced to a juvenile sentence when this is deemed necessary based on the personality of the young adult or the circumstances of the case (art. 77(c)Cc). The aim of this law is to tailor the decision-making and sentencing to the individual needs of the young person. This legislative change is largely influenced by the increased knowledge of and attention for the neurological and brain development of adolescents and the fact that this development has significant influence on adolescent delinquent behaviour and is not completed at the age of 18.¹¹⁶ The insight emerged that the development of adolescents does not fit well with applying fixed age limits between minority and majority. This legislative change makes it possible to tailor the judicial intervention to the individual needs of young people until 23 years of age.¹¹⁷ The point of departure is still to apply adult criminal sentences, but the individual personality of the defendant and his/her circumstances can lead to application of a juvenile justice sentence. The prosecutor can order the application of this provision, already when (s)he asks to place the young person in remand. When the pre-trial judge agrees to apply juvenile criminal sentencing, this means that the young person can be placed in a youth custodial institution, instead of a remand prison and that conditional release should be considered, on the basis of a social work report.¹¹⁸ A recent evaluation of this legislative change shows that in practice no clear definition exists of the target group of young adults.¹¹⁹ It appears that the offence should not be of

114 J. van Alphen, et al., *Verkenning Invulling Vrijheidsbeneming Justitiële Jeugd. Mogelijke richting: lokaal maatwerk voor de jongere* (Significant, Barneveld, 2015).

115 Factsheet KV, *Kleinschalige Voorziening vrijheidsbeneming justitiële jeugd* (Spirit Jeugd & Opvoedhulp, Gemeente Amsterdam, Ministerie van Veiligheid en Justitie).

116 See R. Loeber, et al., 'Overview, Conclusions, and Policy and Research Recommendations', in *Persisters and Desisters in Crime from Adolescence into Adulthood: Explanation, Prevention and Punishment* (Ashgate/Farnham/Burlington, 2012) pp. 335-412.

117 E. Schmidt, et al., 'Young adults in the justice system: The interplay between scientific insights, legal reform and implementation in practice In the Netherlands', *Youth Justice* (forthcoming).

118 M.A.H. van Kempen, 'Het adolescentenstrafrecht; een flexibel sanctiestelsel voor jongvolwassenen', *5 Tijdschrift voor Familie-en Jeugdrecht* (2014) pp. 1-9; Liefwaardand Rap, *supra* note 28.

119 L.J.C. Prop, et al., *Adolescentenstrafrecht. Kenmerken van de doelgroep, de strafzaak en de tenuitvoerlegging* (WODC, Den Haag, 2018).

a too serious nature, but also not be too light, which bears the question, which category of offences qualifies for the application of this law.¹²⁰ Positive is the finding that since the application of this law, more social work reports are prepared for the courts. Also, the probation service makes more often use of risk assessment instruments in the case of young adults.¹²¹

4. Concluding

Since its creation, the Dutch juvenile justice system can be characterised by a welfare approach, in which re-integration and re-education of children who have come into conflict with the law are at the forefront. Naturally, social work services play a substantive role in this system, being involved in every phase of the process. The main tasks of the social services are to advise the legal actors in the process to come to a tailored decision and to supervise and guide the young person to prevent him/her from re-offending. As a consequence, the social work service works within a strictly legal context and has to navigate between pedagogical goals expectations and legal rules and regulations. Important developments such as the increased importance attached to risk assessment, prevention of re-offending and behavioural change have to be balanced with the application of legal safeguards and minimum intervention. In this context challenges remain for the social work services, regarding the moment at and intensity with which they should intervene and provide their services to children involved in the juvenile justice system.

¹²⁰ Liefwaard and Rap, *supra* note 28.

¹²¹ Van der Laan et al., *supra* note 27; Prop et al., *supra* note 119.

Annex 1: Relevant Laws and Regulations

Dutch title	English translation
Burgerlijk Wetboek, 01.10.1838	Civil Code
Wetboek van Strafrecht, 03.03.1881	Criminal Code
Wetboek van Strafvordering, 15.01.1921	Criminal Procedure Code
Wet Adolescentenstrafrecht, 01.04.2014	Act on Adolescent Criminal Law
Beginselenwet Justitiële Jeugdinrichtingen, 01.09.2001	Youth Custodial Institutions (Framework) Act
Reglement justitiële jeugdinrichtingen, 01.09.2001	Youth Custodial Institutions Regulation
Besluit tenuitvoerlegging jeugdstrafrecht, 10.07.1995	Decree on the enforcement of juvenile criminal law
Jeugdwet, 01.01.2015	Youth Care Act
Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007), 01.01.2015	Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines Halt
Ambtsinstructie voor de politie, 01.04.1994	Policy instruction for the police

Chapter VI The Role of Social Work in Juvenile Justice in Sweden

Kerstin Nordlöf*

1. General Introduction to Juvenile Justice Social Work in Sweden

1.1. Social Work

Before the 17th century, child care was integrated with the care of the poor and sick.¹ During the 16th century, regulations were adopted stating that cities had to establish houses where abandoned children begging on the streets could be housed. However, children who needed care and children who had committed crimes were often placed in private institutions together with grownups. The purpose of those institutions was to save children from a life in poverty and criminality, and to raise them to be a responsible and participating member of society. The length and grounds for which a child could be kept in those institutions were unclear. The deprivation of freedom of those children could continue for years. As the availability of private institutions for children was already considered a privilege, the lack of procedural rights for the protection of the individual integrity was not considered important enough to object. The decisions to place a child in those institutions could be taken by the police, the school, those responsible for the care of poor, the church, organizations, and private persons. Treatment consisted of hard work, religious teachings, and bodily punishment. Children who had been found guilty of committing a crime were also placed by a court in those institutions.²

In 1902, the *Law on Malnourished and Morally Neglected Children* was adopted. It was based on rights and duties. The family had a duty to look after their children. However, if the family failed to fulfil such a duty, the public also had a duty to make sure that the child was taken care of and that the child obeyed the law. The child was consequently recognized as having a right to be cared for. However, a right to fundamental procedural rights was considered not necessary. Nevertheless, during the 1920s, a decision of compulsory care could be considered by a court.³

Between 1870-1920, the care of the poor and children was considered a public responsibility. The first education program for social workers was established in 1921 by the Central Association for Social Work (established in 1903). They established the Institute for Social Policy and Municipal Education and Research (Institutet för socialpolitik och kommunalutbildning och forskning) in Stockholm. Several of their educational programs were established by individuals, but the State became responsible for the administration later on. The focus of social work moved from being based on the *Compassionate Samaritan* to preventive work and conducting of different levels of services.⁴ Today, social work is conducted according to an 'evidence-based practice', or in other words, "a practice which is based on a compilation of the user's experience, the professional's expertise, as well as

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1 L. Holgersson, *Socialvården: en fråga om människosyn*, (Tiden, Stockholm, 1978), p. 21.

2 E. Falbeck, *Förvaltningsrättsliga studier I*, (Stockholm, 1938), p. 92-93; G. Bramstång, *Förutsättningarna för barnavårdsnämnds ingripande mot asocial ungdom*, (Lund, 1964, p. 12, 14, 15-17, 21-23, 52-54, 62-63, 64, 75, 77-79)

3 Bramstång, *supra* note 2, p. 56-57.

4 A. Meeuwisse, et al., *Socialt arbete*, (Natur och Kultur, 2016) p. 29-31.

the best available scientific knowledge".⁵ During the 1970s, social work became a subject for examination and research in universities. The core of social work academic study starts with analysing social problems. The focus and scope of social work education is decided individually by the universities, which also are examiners for social work qualifications. Today, there are 16 educational programs in social work, and it is possible to have a PhD in social work.⁶

1.2. Juvenile Justice System

Until the mid 19th century, young or elderly persons who had been found guilty by a court of having committed a crime were treated equally. The effect was that young persons in prison learned more about criminality through the elderly, and they were themselves the target of more assaults.⁷ However, in 1825, a Board for Prisoners and Workhouse Institutions was established. One of their missions was to try to avoid putting children in prisons, and to consider education-orientated approaches to treatment.⁸ Young persons who were guilty of a crime were instead placed in private institutions for abandoned and disabled children. This improvement was introduced because of the difficulties the children had in prisons, and from which they suffered more than the grownups did.⁹

In 1864, the *Penal Code* was adopted. An age of 15 for criminal responsibility was introduced (although in fact it had more or less already existed), but with one exception. For severe criminality, the age for criminal responsibility was 14. This meant that children below this age were excluded from the penal system in principle. Still, it did not mean that measures were not taken when a child below the age of 15, or even 14, were under suspicion of having committed a crime. Most of those children were placed in private institutions for abandoned and disabled children.¹⁰ However, in 1902, in accordance with the *Law on Malnourished and Morally Neglected Children*, the age of criminal responsibility became 15 and there were no longer any exceptions for severe criminality.

The general characteristics of the juvenile justice system before the 20th century were more or less based on private initiatives, and lacked procedural rights for the child. The care of children included children with disabilities, abandoned children and children who had committed crimes, and they were often placed together with grownups in institutions. The criminal justice system involving the police, prosecutors, preliminary investigation, and trials were less adapted to young criminals. In 1902, a firm age of criminal responsibility, 15 years, was established. During the 20th century, there was a recognition of procedural rights for the child. From 1902, there was a development of criminal procedure regulations. In 1942, for example, the *Code of Procedure (1942:740)* was adopted. An attempt to separate young criminals from grownups was further developed. It meant that if a child or a young person under the age of 18, and under special circumstances, between 18 and 21, is suspected of having committed a crime and is in need of voluntary or compulsory care, such care should be employed. If the young person is not in need of care, there would be other kinds of punishments. The prosecutor also had more alternative avenues to avoid bringing charges. The criminal procedure regulations in Sweden is written in the *Code of Procedure (1942:740)*, and particularly in chapters 23 and 24. The *Preliminary Investigation Proclamation (1947:948)* contains detailed provisions concerning preliminary investigation where there is a suspicion

5 SOU 2008:18, Evidensbaserad praktik inom socialtjänsten – till nytta för brukaren, (Stockholm, 2008) p. 22.

6 Meeuwisse, *supra* note 4, p. 50-52.

7 P. Wallen, *Svensk straffrättshistoria*, (AWE/Gebbers, Stockholm, 1973), p. 8.

8 Bramstång, *supra* note, p. 7.

9 G. Hafström, *De svenska rättskällornas historia*, (Juridiska föreningen, Lund, 1974), p. 193, 202.

10 *Ibid.*

that a crime has been committed. Special provisions stipulated in the *Law (1964:167) with Special Provisions for Young Offenders* are provided for young criminal suspects. *The Criminal Code (1964:700)* and particularly chapter one concerning criminal responsibility, and chapters 29–32 concerning punishment are of interest. The juvenile justice system addresses children under the age of 15, children between 15-18, and lastly those between 18-21 differently.

According to the *Code of Procedure (1942:740)* and the *Law (1964:167) with Special Provisions for Young Offenders*, there are several different means of compulsion that can be employed such as seizure, arrest and remand in custody when a person is under suspicion of having committed a crime. A child under the age of 15 cannot be arrested. Still, she/he can be seized by the police due to being suspected of having committed a crime. After a child under the age of 15 has been seized, she/he will then be taken to the police station for interrogation.¹¹ Like anyone else, a person seized by the police has a right to be informed of what crime she/he is being suspected of having committed, and the reasons why she/he is being seized.¹² She/he can also be seized by anyone if the penalty for the crime is imprisonment, and the child is caught while committing the crime. Such situations are rare, but if it happens, the child has to be promptly handed over to the nearest police station.¹³

A child under the age of 15 can also be held at the police station if she/he was at the scene of a crime, and the police finds reasons to interrogate her/him. The child might also be asked to come to the police station for an interrogation.¹⁴

At the police station, the police or the prosecutor has to immediately decide whether the child should be released or interrogated. Under no circumstances is she/he to be placed in a cell or similar confinement.¹⁵ The child cannot stay longer at the police station for more than three hours. If it is of particular importance to the investigation, the child may be asked to stay for another three hours at the police station.¹⁶

The child is free to leave when the interrogation is over, but can be kept at the station. However, the child should not be kept longer than three hours after she/he is released, or after the interrogation is finished. The additional time spent at the police station is to enable parents, other relatives of the child, or a social worker to come and pick up the child.¹⁷ If the police suspect that a child has committed a crime, they can carry out a crime investigation. Previously, as a child under 15 cannot be charged, the police could only start an investigation if the Social Service asked the police to carry out such an investigation. This changed in 2010. In situations where the child is under suspicion of having committed a crime for which the sentence is at least one-year imprisonment, the police can start an investigation without initiation by the Social Service.¹⁸ As a child under the age of 15 cannot be held criminally responsible, the purpose of the investigation is to find out if the child is in need of care in accordance with the *Social Services Act (2001:453)* or the *Law (1990:52) with Provisions for Care of Young People*.¹⁹

11 The Code of Procedure (1942:740) chapter 24 section 7.

12 The Code of Procedure (1942:740) chapter 24 section 9.

13 The Law (1964:167) with Special Provisions for Young Offenders section 35.

14 The Code of Procedure (1942:740) chapter 23 section 7-8.

15 The Law (1964:167) with Special Provisions for Young Offenders section 35.

16 The Code of Procedure (1942:740) chapter 23 section 9.

17 The Law (1964:167) with Special Provisions for Young Offenders section 14 and 35.

18 The Law (1964:167) with Special Provisions for Young Offenders section 32.

19 K. Nordlöf, *Unga lagöverträdare i social-, straff- och processrätt*, (Studentlitteratur, Malmö, 2012), p. 261-263.

Similarly, if the Social Service is of the opinion that such an investigation is important in order to determine if the child is in need of social services, it can also ask the police to carry out an investigation. Investigation reasons might include assessment of the harm caused to the health or development of the child due to the crime, or that the child has committed crimes multiple times.²⁰ An investigation may also be conducted to clarify if someone 15 or older has been involved in the crime, to find goods that are missing due to a crime, or other reasons that are of special importance due to public or individual interest.²¹

If the child is under the age of 12, an investigation by the police can only take place if there are special reasons. If a child has been suspected of having committed a crime, the child should be interrogated by a police specially trained in interrogation methods for children. If a prosecutor is involved, she/he must also be specially trained in dealing with issues concerning juvenile delinquency. The parents must be informed promptly that the child is being suspected of having committed a crime, and be informed of the time of interrogation of the child. This does not mean that the parents have a right to be present at the interrogation. The parents cannot be present at the interrogation if their presence is considered to harm the investigation, or there is suspicion that the parents will assault the child. If the parents are not able to be present, another person has to be informed with the purpose of providing comfort to the child.²² The goal is to have adults present to care for the child. The Social Service must always be informed when a child is under suspicion of having committed a crime. A social worker must also be present at the interrogation of the child.²³

An investigation by the police, where the suspect is a child under the age of 15, must be carried out with special urgency and be concluded as soon as possible. There is a three-month time limit. This time limit can be exceeded due to the nature of the investigation or other special circumstances if necessary.²⁴

A legal counsel for the child can be appointed by the court after a request is made by the prosecutor or the parents. If the police initiates an investigation and it is not evident that the child needs a legal counsel, the court cannot appoint a legal counsel. If the Social Service requests the police to conduct an investigation, there must be special reason for appointing a legal counsel.²⁵

A child under the age of 15 and under suspicion on having committed a crime can be exposed to means of compulsion. However, there should be special reasons for such an act. Means of compulsion refers to the seizure of goods, search in physical spaces, body search, as well as taking photos and fingerprints of the child. If the child is suspected on reasonable grounds for having committed a crime, and the punishment for the suspected crime is at least one year imprisonment, then she/he can be exposed to body examination. However, it also requires that the use of such a mean of compulsion is only exercised when it is of particular importance in clarifying the circumstances concerning the crime. A body examination can only be enforced by medical staff. If other persons are present they must be of the same sex as the child, unless it is the taking of a blood sample, an alcohol test,

20 The Law (1964:167) with Special Provisions for Young Offenders, section 32.

21 The Law (1964:167) with Special Provisions for Young Offenders, section 32.

22 The Law (1964:167) with Special Provisions for Young Offenders, sections 32-33; The Code of Procedure (1942:740), chapter 23 section 10; Nordlöf, *supra* note 19, p. 277 f., 280-282.

23 The Law (1964:167) with Special Provisions for Young Offenders section 34; Nordlöf, *supra* note 19, p. 277-278, 282-284.

24 The Law (1964:167) with Special Provisions for Young Offenders, section 32.

25 The Law (1964:167) with Special Provisions for Young Offenders, section 32; Nordlöf, *supra* note 19, p. 277-278, 355-356.

or an saliva sample for DNA analysis.²⁶ Those means of compulsion should be enforced restrictively. The possibility to use body examination was introduced in 2010, which might be considered in contradiction with the protections provided in the *Convention on the Rights of the Child*. Children under the age of 15 require special consideration concerning their personal integrity due to their vulnerability being in a sensitive period of her/his development.²⁷

As mentioned previously, a child under the age of 15 cannot be charged. However, there is still a possibility to let a court try the evidence of the crime. It requires that the evidence is of public interest, for example, that the case has been exposed in media. The initiation to try the evidence must come from the Social Service, the National Board of Health and Welfare, or the parents of the child who is under suspicion of having committed a crime. After such a request, the prosecutor will ask the court to consider the evidence. This measure has only been employed in a few cases.²⁸

Compared with children and young persons between the ages of 15-18, persons who are between 18-21 are treated differently. Still, their young age also calls for special procedural rules for a preliminary investigation, and in the case where there is a trial, special consideration for the kind of punishment that can be enforced. We have to bear in mind that in Sweden the age 18 is the legal age.

Like children under suspicion of having committed a crime, it is also important for the police carrying out the interrogation, as well as the prosecutor, to be well-trained in dealing with a young person between 15-18. The Social Service should be informed immediately. The parents or other suitable persons should also be informed of the preliminary investigation, and be present at the interrogation if it will not be of harm to the preliminary investigation.²⁹

For this group of young persons, it is of importance that the preliminary investigation is carried out speedily and closed as soon as possible. There is a time limit of six weeks, calculated from when the young person was informed by the police or the prosecutor that she/he is, on reasonable grounds, suspected of having committed a certain crime. This time limit can be exceeded if the young person participates in mediation with the victim, or due to other circumstances related to the preliminary investigation.³⁰

Mediation between the offender and the victim is stated in the *Law (2002:445) on Mediation on the Grounds of Crime*. Mediation can take place during the preliminary investigation, before or after the trial. In most of the mediations, the offender is under the age of 15.³¹

A person 15 years or older being interrogated at the police station may be kept there for six hours. This time limit can be extended for another six hours if she/he is under suspicion of having committed a crime. She/he may also be placed in a cell if it is necessary with regard to the purpose of intervention, order, or security.³²

A young person 15 years of age can be held criminally responsible, and means of compulsion such as arrest and remand in custody can be employed. A person who is under suspicion of having committed a crime for which the punishment is one year or more, and where there

26 The Law (1964:167) with Special Provisions for Young Offenders, section 36-36a-b.

27 Nordlöf, *supra* note 19, p. 277 f., 299-300.

28 The Law (1964:167) with Special Provisions for Young Offenders, section 38; Nordlöf, *supra* note 19, pp. 277-278, 333-335.

29 The Law (1964:167) with Special Provisions for Young Offenders, sections 2 and 5.

30 The Law (1964:167) with Special Provisions for Young Offenders, section 4.

31 Nordlöf, *supra* note 19, p. 277-278, 327-329.

32 The Code of Procedure (1942:740), chapter 23 section 9.

is a risk that the person will escape, destroy evidence, or continue to commit crimes, can be arrested and remanded in custody.³³ However, a young person, and particularly if she/he is under the age of 18, can only be remanded in custody if it is evident that adequate supervision cannot be arranged.³⁴ This is further emphasized in the *Law (1964:167) with Special Provisions for Young Offenders*. It states, “those who are not 18 years old can be detained only if there are special reasons”³⁵. The restriction to remand in custody is due to the young person’s vulnerability. The isolation may be very harmful, especially for a young person. In Sweden, there are no time limits concerning for how long a person can be remanded in custody. The only time limit is between when a person is being seized and thereby deprived of her/his freedom, and until she/he is brought in front of a judge (which is as soon as possible but not later than four days). During the period a person is being seized, arrested, and remanded in custody, she/he will be isolated. It means that she/he is placed in a cell by her-/himself, and is only allowed to leave the room for one hour to stay outside, usually on the roof of the building.³⁶

For a young person suspected of having committed a crime, the prosecutor should, instead of remanding her/him in custody during the preliminary investigation, contact the Social Service with a request to take care of the young person in accordance with the *Law (1990:52) with Special Provisions for Care of Young People*.

When the suspect is under 18 years old and the punishment for the crime is imprisonment, the preliminary investigation has to be carried out with special urgency. It means that the preliminary investigation should be closed and a decision taken on whether the young person should be prosecuted as soon as possible (and no later than six weeks after the young person has been informed of the suspicion of having committed a crime). The time limit can be extended if the suspect is participating in mediation, or due to the nature of the preliminary investigation, or other special circumstances.³⁷

Before the prosecutor decides whether to prosecute the young person or not, the prosecutor shall ask the Board of Social Services in the municipality, which takes responsibility for the young person, for a written statement. What the statement should include is specified in the *Law (1964:167) with Special Provisions for Young Offenders*.

Like children under 15 years of age, the police has the right to keep a young person under 18 years up to three hours at the station (even in an arrest, due to order and security). The young person, just like a child under the age of 15, is free to leave as soon as a grown-up – parents, another close or related person, or a social worker – comes and picks up the young person.³⁸ It is paramount to make sure that she/he is taken cared of by a grown up who is responsible for the child.³⁹

Instead of prosecution, the prosecutor can decide to give a young person between 15-18 a so-called penalty warning. This possibility to enforce a penalty warning instead of prosecuting the suspect person exists also for suspects older than 18, but can be used more extensively for young persons under the age of 18. It requires that there is no doubt that the young person is guilty of the crime.⁴⁰

33 The Code of Procedure (1942:740), chapter 24 sections 1 and 6.

34 The Code of Procedure (1942:740), chapter 24 section 4.

35 The Law (1964:167) with Special Provisions for Young Offenders, section 23.

36 Nordlöf, *supra* note 19, p. 339-341.

37 The Law (1964:167) with Special Provisions for Young Offenders, section 4.

38 The Law (1964:167) with Special Provisions for Young Offenders, section 14.

39 Nordlöf, *supra* note 19, p. 277-278, 131.

40 The Law (1964:167) with Special Provisions for Young Offenders, section 16.

A penalty warning can be given if it is obvious that the crime was carried out due to mischief or in haste, when the person is very young and has not developed full understanding of what consequences a certain act can result in. The crime should not be of a severe kind, and the penalty warning should be considered enough to prevent the young person from committing crimes again. The prosecutor can also decide on a penalty warning if the Social Service and the young person has agreed on certain measures in order to prevent her/him from committing crimes again. The prosecutor can also decide on penalty warnings if other measures of support and help are taken. Parents and others can also suggest such measures. When the prosecutor is deciding whether or not to give the young person a penalty warning, the prosecutor should pay attention particularly to what the young person can do to compensate the victim for the damage due to the crime, to remedy or limit the damages, or in another way compensate or participate in mediation with the victim. Penalty warnings cannot be imposed if any significant public or private interest is undermined. In relation to significant public interest, it should be considered whether the young person has committed crimes before.⁴¹

The prosecutor at a meeting within two weeks after the decision was taken should communicate the penalty warning to the young person. The parents should also be present at this meeting. Another person who is involved in the care and upbringing of the young person can attend instead of the parents, unless special circumstances dictate that they should not. A representative of the Social Service should also be invited to attend the meeting. If it is evident that the meeting cannot take place within two weeks after the decision, it can take place at another time. If a meeting cannot be arranged, then the young person should be informed in writing. The purpose of a personal meeting is to underline the severe and unacceptable nature of the criminal behaviour, and that if repeated or if the young person misbehaves, the decision can be replaced by other measures such as a trial and a punishment.⁴²

A public defender for a young person under the age of 18 being under suspicion of having committed a crime shall be appointed by the court after a request by the prosecutor. A public defender is necessary unless she/he does not need a defender.⁴³

If the young person is charged, the court will call her/him to attend the trial. Parents or another person who is involved in the care and the upbringing of the young person shall also be called to the trial, unless there are special reasons not to. If the penalty for the crime is imprisonment, the parents should be called to attend and be heard at the trial unless there is a special reason not to. In a trial in Sweden there is no jury. Instead there is a judge who is legally trained. Then there are three laymen serving as judges at the trial (with no legal training). Where the accused is a young person, the judges, including the laymen, should be specially appointed. It means that they are specially trained or have experience in juvenile delinquency. This refers to trials where the offender is under 18 years of age, and also cases where the offender is under the age of 21. If the penalty is fines, other judges and laymen can serve at the trial. If the Social Service has given a statement or will give a statement at the trial, they shall also be called to the trial.⁴⁴

In order to protect the young person from being exposed to the public, and where the penalty for the crime is imprisonment, the court is obligated to deal with the case in such a way that she/he is not exposed to the public. If a public trial is of obvious inconvenience for

41 The Law (1964:167) with Special Provisions for Young Offenders section 17; Nordlöf, *supra* note 19, p. 277-278, 308-310.

42 The Law (1964:167) with Special Provisions for Young Offenders, sections 18, 19 and 22.

43 The Law (1964:167) with Special Provisions for Young Offenders, section 24.

44 The Law (1964:167) with Special Provisions for Young Offenders, sections 25 and 26.

the young person, the trial can take place behind closed-doors. If this is the case, relatives and other persons can get permission to attend the trial.⁴⁵

A trial where the accused is under the age of 21 should be dealt promptly by the court. It means that in cases where the accused is not yet 18 years old and the penalty for the crime is imprisonment for more than six months, the court is under an obligation to start the trial as soon as possible, and no later than two weeks after the charge of the accused has reached the court. If the court requires a statement from the Board of Social Services, it shall be delivered within the time limits mentioned above. The statement by the Board of Social Services can be delivered later in accordance with the nature of the case.⁴⁶

In cases where the accused has not reached the age of 21, the verdict should be delivered orally at the trial. If there are particular obstacles for this, then the verdict shall be presented in writing.⁴⁷

When it comes to the penalty for a young person under the age of 18 or between 18-21, there are certain special rules. This is explained by the fact that young persons are more sensitive to punishment. Their behaviour can to a certain extent be explained by biological reasons as their brains are not fully developed. They cannot understand the consequences of a certain behaviour. As they are young, they are sensitive to punishment. However with the right punishment/care, and particularly through education, they can be influenced in a way so she/he does not commit crimes again.⁴⁸

When deciding upon the penalty for a young person and particularly those under 18, the court can decide on a less severe punishment than what is stated for a certain crime. The defendant's lack of development, experience or judgment can be taken into account.⁴⁹ The court can also, under special circumstances, assign no punishment.⁵⁰ However, this is nearly never used.

When the judge is sentencing a person under the age of 21, her/his young age should be considered especially in the penalty assessment. The judge is allowed to sentence the young person to a more lenient penalty than what is stated for the crime. If the crime has been committed before the person has reached the age of 21, the imposed imprisonment cannot exceed ten years. However, if the stated penalty for a person over 21 is more than ten years or life imprisonment, the young person can be sentenced to 14 years imprisonment but not more.⁵¹ Consequently, life imprisonment cannot be imposed on a person who was under the age of 21 when she/he committed a crime.

When the court has to decide what kind of punishment should be enforced, there are restrictions concerning when imprisonment can be imposed. If the convicted is under the age of 18, imprisonment can only be enforced if there are special reasons. The young person should instead be sentenced to closed youth care. The length of the time the convicted young person has to stay in such an institution can vary between 14 days and four years.⁵² The Swedish National Board for Institutional Care oversees these institutions.⁵³

45 The Law (1964:167) with Special Provisions for Young Offenders, section 27.

46 The Law (1964:167) with Special Provisions for Young Offenders, section 29; The Code of Procedure (1942:167), chapter 45 section 14.

47 The Law (1964:167) with Special Provisions for Young Offenders, section 30.

48 SOU 2018:85 Slopnad straffrabatt för unga myndiga, (Public investigation 2018:85 Abolition of penalty reduction for young persons 18-21 of age) (Stockholm, 2018), p. 177-200.

49 The Criminal Code (1962:700), chapter 29 section 3 para. 3.

50 The Criminal Code (1962:700), chapter 29 section 6.

51 The Criminal Code (1962:700), chapter 29 section 7.

52 The Criminal Code (1962:700), chapter 30 section 5 and chapter 32 section 5.

53 The Law (1998:603) on Enforcement of Closed Youth Care, sections 1 and 3.

If the convicted person is older than 17 but under 21, she/he can be sentenced to imprisonment if one of two conditions is fulfilled. Either that the penalty value of the crime indicates that the convicted person should be sentenced to imprisonment, or that there are special reasons to impose imprisonment. The court can only sentence a person who has not reached the age of 21 to imprisonment for more than three months, provided that the social service has delivered a statement concerning the young person.⁵⁴

However, there are also possibilities for the court to enforce sentences, which only can be employed for juvenile delinquency: youth care and youth service. Youth care is specified in a *youth plan* or in a *youth contract*. Youth plans are used when the care is compulsory. Both sentences involve social workers.⁵⁵

The court may also in the judgement ask the offender to, in order to help her/him integrate into society, indemnify the victim by working towards helping to reduce the damages she/he caused to the victim, on the basis that the victim agrees.⁵⁶ This option is rarely used.

If the young person is sentenced by a general court to compulsory youth care, it requires another trial, and this time in an administrative court. Only an administrative court is authorized to hear the case if the conditions for compulsory youth care are fulfilled. This is referring to the requirements in the *Law (1990:52) with Special Provisions for the Care of Young People*.⁵⁷

The court may sentence the young person to youth care and youth service, or youth care and fines. The reasons for combining those two penalties are to collectively speak to the penal value of the crime, the nature of the crime, or the young person's earlier committed crimes (if any). However, fines should be avoided as much as possible. The reason is that usually a young person does not have money (or very little) of her/his own. Instead of the young person paying, the parents or another person will pay the fines, which excuses the young person from the penal effect.⁵⁸

If the young person does not fulfil her/his obligations stated in a youth contract or in a youth care plan, the prosecutor can ask the court to warn the young person, or to decide on another sentence.⁵⁹

Children and young people generally commit more crimes as they are very active. But most of them stop committing crimes on their own accord later, without any interference by the social service or the police. It is only a small group of young persons who, after the age of 18, continue to commit crimes. The number of young persons who commit crimes in Sweden has remained the same for many years, with no increase.

1.3. *Juvenile Justice Social Work*

The responsibilities of the Social Service in each municipality are stated in the *Social Service Act (2001:453)*. The social worker interacts with other authorities, such as the police, the prosecutor, and the court throughout the whole process: from a young person being under suspicion of having committed a crime, during the investigation or the preliminary investigation, throughout the trial (if it takes place), and when/if punishment is implemented.

54 The Criminal Code (1962:700), chapter 30 section 5; The Law (1964:167) with Special Provisions for Young Offenders, section 28.

55 The Criminal Code (1962:700), chapter 32 sections 1-3.

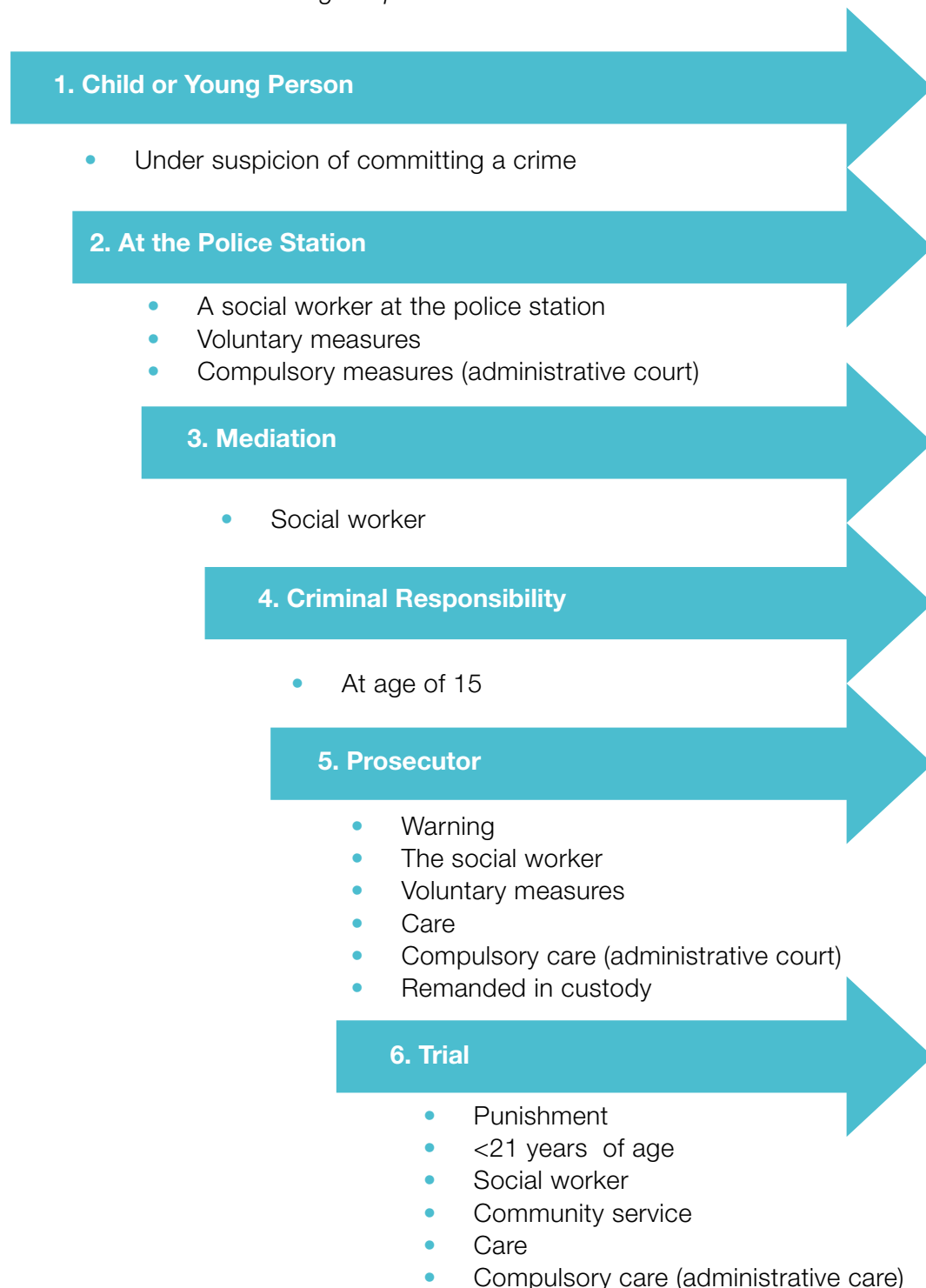
56 The Criminal Code (1962:700), chapter 32 section 1.

57 The Law (1964:167) with Special Provisions for Young Offenders, sections 1, 3-4 and 21.

58 The Criminal Code (1962:700), chapter 32 section 3.

59 The Criminal Code (1962:700), chapter 32 sections 4.

The role of the social worker is fundamentally to take care of young persons, and particularly those who are at risk in harming their own health and lean towards criminality. The social worker has to act in accordance with the best interests of the child and to make sure that the young person's opinion is paid attention to. Any interaction between the social worker and the young person, and her/his parents (if she/he is under the age of 18), should be based on mutual agreement.⁶⁰ An action by the Social Service against the will of the young person above the age of 16, and that includes care in locked institutions, must within certain time limits be examined by a court in accordance with the *Law (1990:52) with Special Provisions for the Care of Young People*.



⁶⁰ Social Service Act (2001:453), chapter 1 section 2.

2. The Role of Social Work in Juvenile Justice in Sweden

2.1. Legal Basis for Juvenile Justice Social Work

- *The Preliminary Investigation Proclamation (1947:948)* (Förundersökningskungörelsen (1947:948))
- *The Law (1964:167) with Special Provisions for Young Offenders* (Lag (1964:167) med särskilda bestämmelser för unga lagöverträdare)
- *The Criminal Code (1964:700)* (Brottsbalken (1964:700))
- *The Social Service Act (2001:453)* (Socialtjänstlagen (2001:453))
- *The Law (1990:52) with Special Provisions for the Care of Young Persons* (Lag (1990:52) med särskilda bestämmelser för vård av unga)
- *The Law (1998:603) on Enforcement of Closed Youth* (Lag (1998:603) om verkställighet av sluten ungdomsvård)
- *The Law (2002:445) on Mediation on the Grounds of Crime* (Lag (2002:445) om medling med anledning av brott)

2.2. The Role of Social Work in Juvenile Justice: Law and Practice

When a child under the age of 15, or a young person under the age of 18, has been interrogated at the police station, she/he can be kept at the police station for another three hours. The purpose is to enable parents, another relative of the child, or a social worker to come and pick up the child in order to make sure that the child is cared for.⁶¹

A child under the age of 15 cannot be held criminally responsible. The purpose of the investigation, which is carried out by the police, is to assist the social worker to find out if the child is in need of care in accordance with the *Social Services Act (2001:453)* or the *Law (1990:52) with Provisions for Care of Young People*.⁶²

The police should always inform the Social Service when a child under the age of 15 is under suspicion of having committed a crime. A social worker should also be present during the interrogation of the child. At several police stations in Sweden, a social worker has an office at the police station in order to be able to support a child and to be present at the interrogation.⁶³

Although a child under the age of 15 cannot be charged, if the case has been exposed in the media, the Social Service can ask the prosecutor to take the case to court in order to try the evidence. This option has only been used in a few cases, and was introduced in the 1940s, stemming from a case where a young boy under the age of 15 was believed to have killed his best friend (a young girl). He was put in an institution for several years and later found not have been guilty. To ensure that the evidence could be tried by a court, which had not been involved in the investigation of the crime, this option was introduced.⁶⁴

Similarly as for children, the Social Service must be informed immediately when a young person between the ages of 15 and 18 is under suspicion of having committed a crime.⁶⁵

61 The Law (1964:167) with Special Provisions for Young Offenders, sections 14 and 35.

62 Nordlöf, K., *supra* note 19, p. 261-263.

63 The Law (1964:167) with Special Provisions for Young Offenders, section 34; Nordlöf, *supra* note 19, p. 277 f., 282-285.

64 The Law (1964:167) with Special Provisions for Young Offenders, section 38; Nordlöf, *supra* note 19, p. 277 f., 333-335.

65 The Law (1964:167) with Special Provisions for Young Offenders, sections 2 and 5.

The Social Service in each municipality is, since 2002, responsible to offer mediation between the offender (if she/he is under the age of 21) and the victim in accordance with the *Law (2002:445) on Mediation on the Grounds of Crime*. There are no limits concerning the age of the offender except that if she/he is under 12 years of age, then there must be special reasons for mediation.⁶⁶ A social worker or another person is responsible for carrying out the mediation. Mediation after a crime is based on the idea of restorative justice, where mediation will bring settlement to those involved. If the victim and the offender agree to participate in mediation, the mediator, who can be a social worker, will meet both of them separately to prepare them for the meeting. There should be no doubt of the offender's guilt at this stage.

An example of how the mediation might proceed is as follows. At the mediation, the victim will tell the offender what effect the crime has had on her/his life. The victim may have questions to the offender as to her/his motive and targets. The offender would then explain her/his behaviour and apologize. The victim may also ask for compensation that can be agreed upon in an agreement. They may also come to an agreement on how they should act if they meet each other in school. If the mediation is successful, the victim can recover more easily. The offender can better understand what damages the crime caused. The mediation may also prevent the offender from committing crimes again.⁶⁷

Instead of a young person under the age of 18 being remanded in custody, the Board of the Social Service, after a request by the prosecutor, can decide that she/he should be deprived of her/his freedom immediately by placing her/him in a locked institution. This is in accordance with the *Law (1990:52) with Special Provisions for Care of Young Persons*. To take such a decision, the young person needs to be cared for in accordance with the requirements of this legislation. One of those requirements is that the young offender exposes her/his health or development to a significant risk of injury. The decision of immediately deprivation of freedom has to be tried by an administrative court as soon as possible, but no later than two weeks after the young person is taken into care (with some exceptions).⁶⁸

If such a decision is taken by the Board of the Social Service, the young person will be placed in an institution which has locked facilities.⁶⁹ The National Board of Institutional Care is responsible for those institutions. In Sweden, there are a total of six such institutions. Not all young persons who are under suspicion of having committed a crime are placed in those institutions. One reason is that those institutions cannot isolate the young person in the same way as a remand centre (which is usually in the office of the police or prosecutor), and may allow the suspect possibilities to interfere with the preliminary investigation by contacting witnesses etc. The institution may also be far away from where the preliminary investigation takes place, and may hinder the leader of the investigation to contact the suspect for interrogation when needed.⁷⁰

Where the young person is taken care of after a decision by the Board of Social Service, and which later is agreed on by an administrative court, the Social Service is under obligation within four weeks to apply for care at the administrative court.⁷¹

66 The Social Service Act (2001:453), chapter 5 section 1c.

67 The Law (2002:445) on Mediation on the Grounds of Crime, sections 5-10.

68 The Law (1990:52) with Special Provisions for Care of Young People, sections 3, 6 and 7.

69 The Law (1990:52) with Special Provisions for Care of Young People, sections 10-20c.

70 Nordlöf, *supra* note 19, p. 340.

71 The Law (1990:52) with Special Provisions for Care of Young People, section 8.

Before the prosecutor decides whether to prosecute the young person or not, the prosecutor should ask the Board of Social Service in the municipality (which is responsible for the young person) for a written statement. What the statement should include is specified in the *Law (1964:167) with Special Provisions for Young Offenders*. It should contain if and what measure the Board of Social Service has taken previously concerning the young person. The statement should also contain an assessment of whether the young person has a specific need for preventative measures taken towards her/him to avoid further harm. Furthermore, the Board of Social Service should state what measures the Board plans to take concerning the young person. If the measures for the young person is to be implemented on a voluntary basis according to the *Social Service Act (2001:453)*, it has to be specified in a so-called 'youth contract'. If the measures have to be enforced on a compulsory basis according to the *Law (1990:52) with Special Provisions for Care of Young People*, the Board of Social Service has to describe them in a 'plan for care'. The measures, both in the 'youth contract' and the 'plan for care', must be specified as to what kind, the extent, and the duration of the measures.

Where the leader of the preliminary investigation or the prosecutor see fit (or if the Board of Social Service finds it necessary), the statement can also contain an account of the young person's personal development and living conditions in general. The statement shall also include an assessment of whether youth service is an appropriate penalty for the young person, and other circumstances. The Board of Social Service shall also assist the person in charge of the preliminary investigation with obtaining information concerning the young person if needed. It shall be made clear when the statement is delivered to the leader of the preliminary investigation. A delay has to be communicated between those involved. It is also possible for the Board of Social Service to deliver the statement orally in certain situations (the prosecutor will not prosecute, but deliver a warning to the young person) due to the requirement to close a preliminary investigation as soon as possible.⁷² This part of the regulation has been amended several times to avoid misunderstandings between the prosecutor, the leader of the preliminary investigation, and the social worker. The detailed requirements in this part of the regulation also aims to facilitate the decisions of the prosecutor (whether to prosecute or not). If the prosecutor decides to prosecute, the regulations can facilitate determining the judgement of the trial, and particularly if the young person is found guilty, the enforcement of a penalty.⁷³ If there is a trial, the social worker should participate to answer questions from the judges concerning the oral or written statements of the Social Service.⁷⁴

The prosecutor can decide to give the young person a penalty warning. The reason for such a decision can be that the Social Service will take certain measures concerning the young person. In those situations, the Social Service has identified that the young person has a need of care. If the young person is in need of care but she/he and the parents do not agree with the measures the Social Service has suggested, the Social Service can apply to an administrative court to request that the young person be taken into compulsory care. The conditions are that her/his criminality exposes her/his to health or development risks. If the young person is in need of urgent care, she/he can, after a decision by the Board of Social Service, be placed in an institution with locked facilities.⁷⁵ The young person should be informed of the decision of the penalty warning at a meeting with the prosecutor, and where a representative from the Social Service should be present.⁷⁶

72 The Law (1964:167) with Special Provisions for Young Offenders, sections 11 and 12.

73 Nordlöf, *supra* note 19, p. 277-278, 322-224.

74 The Law (1964:167) with Special Provisions for Young Offenders, sections 25 and 26.

75 The Law (1964:167) with Special Provisions for Young Offenders, section 17; Nordlöf, *supra* note 19, p. 277-278, 308-310.

76 The Law (1964:167) with Special Provisions for Young Offenders, sections 18,19 and 22.

Generally, persons under the age of 18 should, instead of imprisonment, be sentenced to care in a locked institution. The duration she/he will stay at this institution depends on how severe the crime was. It can vary between 14 days and four years. When the young person arrives at the institution, which would be under the administration of the Swedish National Board for Institutional Care, a social worker from the Social Service will make a plan for her/his stay at the institution and post-institution. The social worker would also arrange for the young person to complete her/his education.⁷⁷

A young person under the age of 21 can be sentenced to 'youth care' if she/he has a special need for care or other measures, in accordance with the *Social Service Act (2001:43)* or the *Law (1990:52) with Special Provisions for Care of Young People*. The first mentioned legislation can be employed when the young person gives her/his consent to certain care or/and measures. The latter legislation is employed when the young person who has reached the age of 16 does not give her/his consent, or if the young person is under 18 and the parents of the child do not give their consent. The purpose of those measures is to prevent the young person from being exposed to further developmental harm.⁷⁸

The young person can be sentenced to 'youth care' only if the court finds that the measures planned by the Social Service, imposed in association with youth service or fines, are sufficiently equivalent to the estimated penal value of the crime (taking into account factors such as the nature of the crime and the young person's earlier criminality). What kind of care and measures the Social Service plans to implement is documented and handed over to the court before the trial, otherwise the young person cannot be sentenced to 'youth care'. It also has to be specified in a 'youth contract'. If the court sentences the young person to 'youth care' it should be stated in the verdict that she/he is under obligation to follow what is agreed upon in the 'youth contract'. The contract must be added to the written judgement. The judgement would make clear what the punishment is and how it has to be implemented. If the sentence is compulsory care, then the plan for care (determined by the by the Board of Social Service), should be added to the written judgement.⁷⁹

If the young person is sentenced to compulsory youth care, the Board of Social Service would apply to the administrative court confirming that the requirements for compulsory care are fulfilled. If the court finds that the conditions are fulfilled, the young person would be taken into care and kept until there is no need for compulsory care (providing she/he does not exceed the age of 21).⁸⁰

In a criminal case where the young person is sentenced to compulsory care, it does not always mean that social service will apply after the verdict by the general court is issued. If the young person during the preliminary investigation is in need of care but does not give her/his consent, and the parents refuse to give their consent (if the young person is under the age of 18), the Board of Social Service can apply to the administrative court for compulsory care. The Social Board can also apply for compulsory care before the young person has committed a crime. The reason for compulsory care can be due to drug use or domestic violence.

77 The Law (1998:603) on Enforcement of Closed Youth Care, sections 1 and 3.

78 The Criminal Code (1962:700), chapter 32 section 1.

79 The Criminal Code (1962:700). chapter 32 section 1; The Law (1964:167) with Special Provisions for Young Offenders, section 28.

80 The Law (1964:167) with Special Provisions for Young Offenders, sections 1, 3-4 and 21.

A young person who is found guilty by the court and is under 21 can also be sentenced to youth service. This kind of sentence is mostly applied to young persons under the age of 18. If the person is older, there should be special reasons to sentence her/him to youth service. The aim of youth service is to deliver a sentence that suits the young person with regard to her/his personality and other circumstances. The judges must also be convinced that youth service can be regarded as a sufficient intervention for the crime committed, balancing various factors such as the crimes severity, previous criminality and no need of care. The judgment is based on the statement by the Social Service. Youth service means that the young person should carry out unpaid work and participate in other activities for 20-150 hours. The Social Service is responsible for arranging youth service. The Social Service shall specify what kind of work the young person should carry out and also what meetings she/he has to attend in writing. The Social Service shall also appoint a supervisor for the young person. For example, the youth service can mean that she/he has to work in an organization that has a focus on sport or other activities. The purpose of the youth service is to support the young person by helping her/him to meet new people and productively occupy their time. In compulsory meetings arranged by the Social Service, different topics in relation to criminality are discussed. The sentence shall be executed as soon as possible, but no later than two months after the judgment is released, unless there are special reasons otherwise.⁸¹

The Social Service is also responsible for children being victims of assault either directly from domestic violence or indirectly through other exposure to violence. They have a duty to provide support to those children as they are recognized as victims of crime.⁸²

In Sweden there are Children Houses that are often run by the Social Service. Here, a police officer, specially trained in interrogating children, will interrogate the assaulted child. The prosecutor, the social worker, and a specially appointed legal advisor can observe the interrogation in a room next door. The purpose is to improve the preliminary investigation, allowing it to be more child-friendly, to get more information from the child, and to facilitate prosecution. Medical examinations can also take place in Children Houses.⁸³

2.3. Cooperation Between Social Workers and Other Relevant Stakeholders

The Social Service in each municipality has to participate in community planning and, in cooperation with other social bodies, organizations, associations, and individuals, to foster a good environment in the municipality.⁸⁴ The duty of the Social Service to cooperate also includes collaboration with other social bodies, organizations, and other associations concerning information of social service in general but also for individuals.⁸⁵ Concerning collaboration on an individual level, the *Social Service Act* states that efforts by the Social Service “for the individual shall be designed and implemented together with him or her, if necessary, in collaboration with other social bodies and with organizations and other associations”.⁸⁶

Each municipality and the authorities dealing with cases of juvenile offenders such as the Social Service, the police, the prosecutors, and the courts, should collaborate regularly regarding general issues concerning young offenders.⁸⁷

81 The Criminal Code (1962:700), chapter 32 section 2; The Social Service Act (2001:453), chapter 5 section 1b.

82 The Social Service Act (2001:453), chapter 5 section 11.

83 Myndigheten för skolutveckling, Rikspolisstyrelsen, Socialstyrelsen, Strategi för samverkan – kring barn och unga som far illa eller riskerar att fara illa, (Stockholm, 2007).

84 The Social Service Act (2001:453), chapter 3 section 1.

85 The Social Service Act (2001:453), chapter 3 section 4.

86 The Social Service Act (2001:453), chapter 3 section 5.

87 The Law (1964:167) with Special Provisions for Young Offenders, section 39.

The duty of collaboration is also to be found in the legislations for the police, the school and the healthcare system.⁸⁸

It is of fundamental importance for a successful collaboration that such activities be given financial support, mandates for collaboration, as well as be followed-up and evaluated. Collaboration can, as mentioned above, be carried out on a general level and also on an individual level. If the collaboration takes place on an individual level, it should be based on the individual child's best interests. In order to handle such situations there must be a local strategy for structured work. A successful collaboration demands an interest in collaboration and furthermore, respect for and knowledge about the other parties. A collaboration also has to have clear aims, common working methods, and an ethical approach. If there are issues of privacy, the details of an individual must be discussed in general terms where the identity of the person is not revealed.⁸⁹

2.4. Qualifications and Evaluation of Juvenile Justice Social Work

The National Board of Health and Welfare (Socialstyrelsen) is a government agency in Sweden under the Ministry of Health and Social Affairs. The National Board of Health and Welfare provides the Social Service in each municipality with regulations and guidelines based on legislation, the best knowledge available, and with follow-ups and statistics.

One regulation concerning how to deal with cases involving young offenders is SOSFS 2008:30 Handläggning av ärenden som gäller unga lagöverträdare (the handling of cases involving young offenders). In 2008, The National Board of Health and Welfare published a systematic overview summary on the effects of recidivism in crime, addressing the effects of recidivism by young offenders.⁹⁰

3. Experience, Main Challenges, and Reform Initiatives Regarding Juvenile Justice Social Work in Sweden

3.1. Experiences and Achievements

In 2008, the National Board of Health and Welfare carried out a national survey of methods the Social Service employ to conduct early intervention in children and young people at risk of developing mental illness. The Board concluded that those early interventions need national follow-ups of methods. Concerning cooperation between different parties – legal, financial and professional - the Board found that it needs national guidelines and clarifications for what applies to such cooperation.⁹¹

An example of a follow-up measure concerns mediation after a young offender commits a crime. The National Board of Health and Welfare has carried out follow-up survey/evaluation

⁸⁸ The Act of Police (1984:387), section 3, the Act of School (2010:800), chapter 29 section 13 and the Act of Health and Health Care (2017:30), chapter 16 sections 3-4.

⁸⁹ Prop. 2002/03:53, Stärkt skydd för barn i utsatta situationer m.m. (Government bill 2002/03:53, Strengthened protection for children in vulnerable situations) (Stockholm 2003), p. 58-62. Issues of collaboration are also discussed in SOU 2010:95 Se, tolka och agera – om rätten till en likvärdig utbildning, (See, interpret and act – about the right to an equivalent education) (Stockholm, 2010) p. 173-175 and in SOU 2018:65 Informationsutbyte vid samverkan mot terrorism, (Information exchange in cooperation against terrorism) (Stockholm, 2018) p. 83-84.

⁹⁰ Socialstyrelsen, Insatser för unga lagöverträdare, En systematisk sammanställning av översikter om effekter på återfall i kriminalitet (The National Board of Health and Welfare, Interventions for young offenders, A systematic compilation of overviews on the effects of recidivism in crime) (Stockholm, 2008).

⁹¹ Socialstyrelsen, Socialtjänstens öppna verksamheter för barn och unga – en nationell inventering av metoder The National Board of Health and Welfare, Social services open activities for children and young people – a national survey of methods) (Stockholm, 2009).

after municipalities allow the Social Service to carry out mediation amongst young offenders. The follow-up measures reveal that the system has deficiencies, for example, not all young perpetrators are asked to participate in mediation.⁹²

A part of the National Board of Health and Welfare's national guidelines consists of FFT (Functional Family Therapy). FFT is a manual-based effort for families with young persons who have behavioural problems (such as demonstrating extroversion behaviour, committing crimes, or drugs or alcohol abuse). The method was developed during the 1970s by the psychologist James Alexander (USA), and has been used in Sweden since 1991.⁹³

In 2013, the National Board of Health and Welfare published an overview of how the municipalities and the Social Service work with specifically-qualified contact persons (mentors). This method aims to deal with children and adolescents who have an increased risk of developing abuse or criminal behaviour. Mentoring often mean bringing together a youth at risk with an adult person who is well established in society and who can serve as role model and support. A specifically-qualified contact person needs to have an education and/or experience in psychosocial work with young people. The assignment often involves relatively close contact with the young person over a long period, for example 10 hours per week for 6-12 months.⁹⁴

In 2014, the National Board of Health and Welfare analysed the Scared Straight programs. The programs, also referred to as a juvenile awareness programs, are deterrence-oriented programs. The main goal is to deter youth from future criminal behaviour. It is based on deterrence theory or in other words, that if punishment is swift, severe, and certain, it will deter criminal behaviour. In practice it means to visit prisons and it might even include spending some time in a prison. Meta-analyses found that participation in such programs increase the odds that youth will commit crimes in the future. The Board concluded that it is better to do nothing than to expose young people to Scared Straight programs.⁹⁵

3.2. Main Challenges

Social work plays an important role in the juvenile justice system. There are several challenges for the Social Service. The mixture of convicted young persons and young persons in need of care in the locked institutions is a challenge, and in contradiction with international agreements not to mix the two groups. In those institutions, children under the age of 18 are also mixed with grownups between 18-22. The violation of personal integrity, as a result of the police's exercise of certain means of compulsion, calls for further improvements to be made by the Social Service to protect the interests of the child. These improvements will be particularly critical when the *Convention on the Rights of the Child* is incorporated into legislation on 1 January 2020 in Sweden.

Each municipality is responsible to have and implement social services for those who live in the municipality. The social services are financed by tax paid by members of the

92 Socialstyrelsen, Medling vid brott avseende unga lagöverträdare Uppföljning av hur kommunerna arbetar med medling samt analys av behov av åtgärder för att stödja medlingsverksamheten (The National Board of Health and Welfare, Mediation in criminal cases concerning young offenders. Follow-up of the municipalities involved in mediation and analysis of the need for measures to support the mediation efforts (Stockholm, 2012).

93 Socialstyrelsen, FFT (Funktionell familjeterapi) (The National Board of Health and Welfare, FFT (Functional family therapy) (Stockholm, 2012).

94 Socialstyrelsen, Särskilt kvalificerad kontaktperson (Mentorskap) (The National Board of Health and Welfare, Particularly qualified contact person (Mentoring)) (Stockholm, 2013).

95 Socialstyrelsen, Socialstyrelsens sammanfattning av Petrosinis kunskapsöversikt om Scared straight-program, Socialstyrelsen sammanfattar systematiska översikter – effekter av metoder i socialt arbete, (The National Board of Health and Welfare' summary of Petrosinis knowledge on the Scared straight-program, The National Board of Health and Welfare summarizes systematic reviews – effects of the methods of social work (Stockholm, 2014).

municipality and certain grants from the government. The lack of funds might result in certain municipalities experiencing difficulties in carrying out all obligations mandated by the Social Service. Therefore, issues concerning juveniles might not be a priority for those municipalities.

The social worker needs more education concerning the rights of a child being under suspicion for having committed a crime, especially for those under the age of criminal responsibility (15). To find a person guilty demands that the person has understood what she/he was doing, and that the act is a criminal act. A person who has not understood that she/he has done something wrong cannot be punished. Although the brain and people's capacity to understand their actions is not fully developed until the age of 25, the age where a young person is considered to be criminal responsible for what she/he did is 15, as laid down in Sweden in 1902.

A young person who has been found guilty of a crime can, due to her/his age, have a different penalty compared to a grownup. According to the Swedish *Criminal Code*, a young person can be treated differently up to the age of 21. This is because young people are more sensitive to punishment and furthermore, they can also respond more positively to treatment (such as education). Furthermore, the brain of a person is in general not fully developed until the age of 25. This means that society must be more understanding when a young person commits a crime because she/he did not actually understand the full effect of the criminal act. In a recently published preparatory work for legislation, this was a hot debate as to whether a prison sentence is the most appropriate. To put a young person in prison will be more expensive and the young person might be further influenced by other inmates and continue to commit crimes.⁹⁶

3.3. Reform Initiatives

In January 2012, the *Convention on the Rights of the Child* was written into legislation in Sweden. Legislation relating to social service and juvenile justice was improved, taking into account the best interests and personal choices of the child. Still, more improvements in legislation and in methods, as well as in educating social workers, police, prosecutors, judges, public defenders, teachers and medical staff are needed.

The care of children, on both voluntary and compulsory basis, has to be further developed in order to protect the integrity of the child, and to nurture respectful children.

⁹⁶ SOU 2018:85 Slopåd straffrabatt för unga myndiga, (Public investigation 2018:85 Abolition of penalty reduction for young persons 18-21 of age), (Stockholm, 2018).

Chapter VII The Role of Social Work in Juvenile Justice Development in South Africa

Julia Sloth-Nielsen*

1. General Introduction to Juvenile Justice Social Work in South Africa

1.1. Introduction to Social Work in South Africa

“The task of examining the origins and development of social work in South Africa and internationally is fraught with competing histories and narratives, as well as lacunae and discontinuities.”¹

The history of social work in South Africa is entwined with the history of imperialism and colonization. Colonialism damaged and diminished conventional manifestations of social relations, and the practice of social work that developed from this background was identified by paternalism and biased welfare policies that benefitted the white population, who were regarded as the welfare elite. “The development of social work as a profession and the nature of its professional activity in South Africa were driven by concern for white poverty, and a wish to address this issue through the training of practitioners in an approach which had emerged from the values and ideologies of the USA.”²

In South Africa, as is similar to most of the Western world, social work developed in reaction to political processes which validated it as the primary source of social welfare services. Prior to the 1920s, social work in South Africa was not recognised as a separate professional body.³ Social welfare issues were dealt with at a local level by the community and family.⁴ These initiatives concentrated on social assistance within the white community, in the absence of coordination among or within communities, and were short-term. However an increased worry in respect of poverty among the white community led to an investigation of the “poor white problem”. In these times, the poverty of the white and black populations were addressed in distinctly different manners in South Africa. The poverty of the white population, the state’s chief focus, was “poor whites” who were perceived as degenerate. Following the Carnegie Commission of Inquiry’s recommendations into “White poverty” in 1937, the Department of Social Welfare was created in 1937, marking a deliberate state decision to increase involvement in white welfare programmes.⁵ Social work activities/endeavours focused largely on requirements/ necessities of whites and were characteristically therapeutic.⁶

The supply of welfare services to peoples characterised as African were significantly overlooked and social welfare services during the apartheid era were connected to the

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1 L. Smith, ‘Historiography of South African Social Work: challenging dominant discourses’, 50(3) *Social Work* (2014) p. 305.

2 Smith, *supra* note 1, p.309.

3 S. J. Drower, ‘Conceptualising social work in a changed South Africa’, 45(1), *International Social Work* (2002) 8.

4 Drower, *supra* note 3, p.8.

5 M. Gray and B. Simpson, ‘Developmental Social Work Education: A South African Example’, 41(2), *International Journal of Social Work*, p. 227.

6 M. Gray and B. Simpson, *supra* note 5, p. 227.

economic and political aims at the time, concentrating on social control of populations other than those classified “white” and entrenching their adjustment to an unfair social system.

The South African Statutory Council for Social and Associated Workers began operation in 1980.⁷ The Council, among other functions, was authorised to set the minimum principles of social work education, to exert authority over social work students’ professional conduct and to specify the qualifications an individual should have to enter the profession.⁸ This body is now the South African Council for the Social Services Professions.⁹

After the first democratic elections in 1996, Government pushed through key policy changes: social workers were obliged to radically deviate from the styles of intervention and supply of services in the apartheid period; and the Ministry of Welfare¹⁰ actively dismantled the power divisions permeating the profession and compelled changes on a historically white and Afrikaans majority social work profession.¹¹

1.2. Antecedents of Juvenile Justice Reform in South Africa

Prior to the first democratic elections in South Africa, the justice system in general was a repressive tool of the apartheid government, and, as has been well documented, juvenile justice was no exception. There was no separate system of justice for children. Children in conflict were generally treated harshly, with whipping being the most commonly imposed sentence for youthful offenders. Whipping as a sentence was ruled unconstitutional in 1995 shortly after the coming into operation of the post-apartheid interim constitution in *S v Williams*.¹²

In 1996, the *Correctional Services Amendment Act 14* of 1996 infamously prohibited that children younger than eighteen be incarcerated whilst awaiting trial in prisons, heeding Nelson Mandela’s call at his inauguration that “no child should be in prison”.¹³ The implementation of this law was not a success, due to the lack of available alternatives for the confinement of children during the pre-trial phase, which led to a public outcry when children charged with serious offences were released from courts. To deal with the crisis, an Inter- Ministerial Committee on Youth at Risk (IMC) was appointed, with the task to develop interim policy recommendations aimed at introducing reforms in both the youth justice and child care and protection systems.¹⁴ In the same year, the Minister of Justice designated a project

7 *Ibid.*

8 Drower, *supra* note 4, p.9.

9 The Professional Board for Social Work is one of two professional boards under the aforementioned council. The Council, together with the Professional Boards, manages and guides the child and youth care worker and social work professions in facets relating to education and training; registration; professional conduct and ethics; encouraging conformity with professional standards; and securing continuous professional development. Child and youth care workers are generally persons working directly with children and /or young people in their life space, either in an institution, in the community or in any other setting where child and youth care workers are employed. See, for instance, the discussion of child and youth care workers who work in secure care facilities with awaiting trial and sentenced children in 4.6.2 below. The Board permits registration of a speciality in probation work: see the Regulations relating to the Registration of a Speciality in Probation Services promulgated in terms of the Social Service Professions Act 110 of 1998, R.116 in Government Gazette 36159 of 15 February 2013. See The South African Council for Social Service Professions, <www.sacssp.co.za>.

10 Since renamed the Ministry of Social Development. The Department of Social Development is hereafter called DSD.

11 M. Gray and F. Mazibuko, ‘Social Work in South Africa at the dawn of the new Millennium’, 11(1) *International Social Work* (2002), p.192.

12 [1995] ZACC 6.

13 J. Sloth-Nielsen, ‘A Short History of Time: Charting the Contribution of Social Development Service Delivery to Enhance Child Justice 1996-2006’, 34(4) *Social Work* (2007), p.317.

14 *Ibid.*

committee of the South African Law Reform Commission (SALRC) to begin an examination of the merits and intended content of distinct child justice legislation in South Africa.¹⁵

The notion of social work involvement to furnish a basic social background report to the judicial system's officials determining custody or release, and to a limited degree examining the prospect of diversion, was developed in tandem with IMC processes.¹⁶ It built on the *Probation Services Act 116* of 1991, which describes the functions and duties of a probation officer (who is a social worker by training). "The professionalisation of probation services and confirmation of their centrality in child justice processes was a significant consequence of the IMC process."¹⁷

'Assessment', as it is now known, has become crucial to furthering the goals of the juvenile justice system. In 2006 I wrote: "It is by now well established that the concept of a social work intervention to provide a limited social background report to functionaries in the judicial system deciding on release or custody, and to a more limited extent, the possibility of diversion, was pioneered provincially in the Western Cape mainly via the provincial Departments of Social Development. This occurred shortly before the formation of the IMC, in 1994, and the desirability of pre-trial assessment at police stations, before court appearance or otherwise, was first advocated at the international conference on juvenile justice reform held in 1993. As initial positive reviews of assessment interventions were compiled, the initiative was expanded in the province. More importantly, though, given the occasional view that the Western Cape [where assessment projects were initiated] was isolated from national developments, and moreover better resourced insofar as social service delivery was concerned, assessment was taken up via the IMC policy formation process at a national level as a desirable best practice.¹⁸ One of the eight IMC projects analysed the implementation of assessment services in the Durban Magistrate's court¹⁹ An early IMC workshop held in Cape Town in late 1996 concluded that the efficacy of assessment should be recognised and promoted."

The assessment of a child may take place in any suitable place identified by the probation officer, which may include a room at a police station, a magistrate's court, the offices of the DSD or a One-Stop Child Justice Centre,²⁰ provided it is conducive to privacy. The information obtained is also confidential and may not be adduced at any subsequent criminal proceedings.

The IMC also actively furthered nascent diversion projects, undertaking pilot projects and experimenting with different programmes. Diversion was centred on the 'early intervention' model espoused by the IMC (rather than the former concentration on reactive services only). Diversion is dealt with in more detail below at 2.4.

After the IMC came to an end with a change of Minister following a general election, provinces²¹ nevertheless began to designate or appoint staff as probation officers to manage the pre-

¹⁵ *Ibid.*

¹⁶ *Ibid.* p. 318.

¹⁷ *Ibid.* p. 325.

¹⁸ J.Sloth-Nielsen 'Annual juvenile justice review', 8 *South African Journal on Criminal Justice* (1995), p. 331

¹⁹ J.Sloth-Nielsen, 'Review of the Durban Assessment Centre' (1997) (unpublished, copy on file with the author); IMC 'Report on the Pilot Projects' (1998) Government of the Republic of South Africa.

²⁰ One Stop Child Justice Centres, of which there are only three in the country, cluster the services of the police, probation services, prosecution and courts in one centre to enable more seamless intersectoral service delivery.

²¹ Social welfare is a concurrent National and Provincial competency under the Constitution, with policy-making and legislative formulation being accorded the National sphere of government, and service delivery (and most expenditure) taking place at provincial levels.

trial enquiries needed for the assessment stage of the criminal process, to achieve more rapid and improved outcomes for children in conflict with the law.²² Although the benefit of assessment mainly corresponded to better informed decisions regarding pre-trial detention or release, solutions for accessing diversion were also promoted by social workers' early involvement in the case, before the child appeared in court.²³

According to the *Regulations on Probation Work* gazetted in 2013, probation services means: the rendering of advocacy and education programmes to individuals, families, groups and communities; the provision of expert assessment regarding the needs, risks and resilience of offenders and victims to assist courts on individualized interventions and sentencing options; acting as an expert witness in court regarding the appropriate sentencing of children and adults; the reintegration of children who have been discharged from reform schools and secure care facilities; the provision of home-based supervision of children who have been placed under an appropriate adult; the challenging of offending behavior and the helping of offenders to realize the impact of their behavior on themselves, their families, the community and their victims; the compiling of reports on the compliance and non-compliance of persons placed under the supervision of probation officers; the facilitation of diversion and restorative justice processes; the care, support, referral to and provision of mediation in respect of victims of crime; and any service under the *Probation Services Act 1991*.²⁴

There are twenty six universities in South Africa.²⁵ More than half of the public universities offer studies in Social Work. There is no known specialisation in (juvenile) justice social work, and only one university offers a specialised (post graduate) programme in probation work.

1.3. *The Juvenile Justice System – A Snapshot*²⁶

The South African Law Reform Commission process alluded to above resulted, after many years, in the *Child Justice Act 75* of 2008 (hereafter CJA), which came into operation on 1 April 2010. One reason for the lengthy process of law making was the concern that there were insufficient social workers available to perform the assessment tasks that had now become entrenched in juvenile justice practice. Since 'assessment' featured as a mandatory step in the child justice process, there was some concern that government might be liable to be sued if the required service was not available due to lack of staff. The declaration of social work as a 'scarce skill' around 2006,²⁷ and the provision of numerous bursaries for students to pursue social work as a study avenue, contributed to increasing the pool of qualified recruits, and this to an extent alleviated the concern about potential liability accruing to the State.

The principal legislation is accompanied by a set of Regulations (as subsidiary legislation) and Forms which are prescribed for use by the practitioners. Additionally the National Director of Public Prosecutions has issued national directives for the guidance of prosecutors in decision making and carrying out their tasks; the National Police Commissioner has issued a

²² Sloth-Nielsen, *supra* note 13, p.319.

²³ *Ibid.*

²⁴ Regulations relating to the registration of a speciality in probation series (*supra* note 12 above), definitions section.

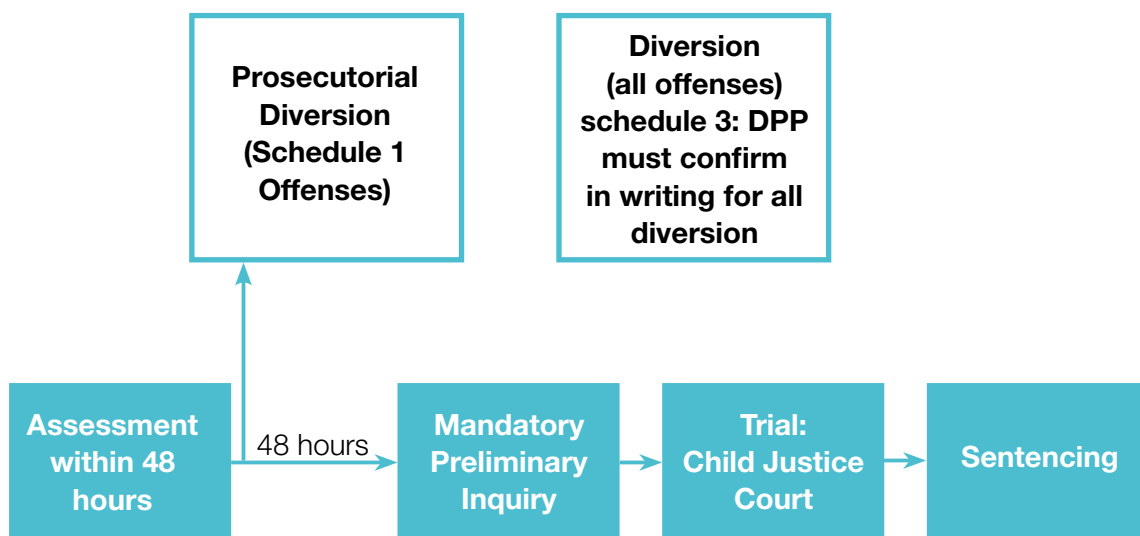
²⁵ See Universities South Africa, <www.usaf.ac.za>, and National Department of Basic Education, <www.education.gov.za>.

²⁶ In South Africa, a decision was taken already by the South African Law Reform Commission to avoid the term 'juvenile' as labelling, and therefore the word 'child' is used in referring to the legislation and the system in practice.

²⁷ This was occasioned by a costing of the Children's Act 38 of 2005 (the child protection statute), which indicated a severe shortage of social workers: see J. Sloth-Nielsen, 'Child Justice' in C.J. Boezaart, *Child Justice in South Africa* (Juta and Co, Cape Town) 2017, p. 684.

National Instruction for the guidance of police officers on the implementation of the CJA; and the relevant departments have jointly and severally developed a National Policy Framework for the implementation of the CJA (originally in 2010 when the CJA was promulgated, but recently updated in 2018). All three have official status, having been gazetted in the government gazettes. The last mentioned document sets the priority tasks for departmental implementation (where they are going to focus their efforts).

The entire system is geared towards maximising diversion. Apart from the introduction of the new legal parameters setting out the role of the social worker/ probation officer in the early assessment of the child’s background and the circumstances leading up to the commission of the offence, the preliminary inquiry procedure (chaired by a judicial officer) is intended to play a ‘gate- keeping’ role, ensuring that the child does not proceed further into the criminal justice system if diversion is possible.



2. The Legal Basis for Juvenile Justice Social Work in South Africa

2.1. The Wider Legal Basis for Juvenile Justice Social Work

Drawing from the above, the wider legal basis for social work in juvenile justice in South Africa is derived from at least five statutory enactments. Principle amongst these is the CJA, but not to be left out are the *Probation Services Act 116 of 1991* (as amended), the *Social Service Professions Act 118 of 1978*, the *Children’s Act 38 of 2005*, and the *Criminal Procedure Act 51 of 1977*. The relevance of the CJA will be detailed first, whereafter a brief overview of the remaining enactments will be provided.

2.2. Criminal Capacity

The CJA carves out a distinct role for social workers in a variety of capacities and roles. First amongst these is in relation to establishing the criminal capacity of children aged between 10 and 14 years. For this group of children, the *Roman law* presumption of incapacity was retained in s 7 of the Act. It operates automatically by virtue of the age of the child at the time of the commission of the offence, although it can be rebutted (overturned) upon the

adducement of evidence beyond reasonable doubt that establishes that the child had at the time of commission of the offence the capacity to appreciate the difference between right and wrong, and to act in accordance with that appreciation. An inquiry magistrate or court making a ruling on whether or not the child in fact had the requisite criminal capacity is enjoined to take into account all relevant evidence, including specifically the assessment report of a probation officer. Therefore, it is indicated that probation officers must in the instance of children aged over ten and under 14 years make an initial estimation of the child's capacity and record this in an assessment report.

It is worthy of note that the provisions of the CJA relating to criminal capacity have been the subject of extensive discussion amongst service providers, government officials and non-governmental organisations, and that s 8 of the Act required that the provisions be reviewed within five years of the CJA having come into operation. This review has indeed taken place, and spurred also by the Concluding Observations of the Committee on the Rights of the Child in response to the South Africa Country report in September 2016, a Bill to amend the CJA has recently been accepted by Cabinet and adopted by Parliament (Bill 32B of 2018).²⁸ The provisions seek to raise the minimum age of criminal capacity from ten to twelve, but will retain the rebuttable presumption of incapacity for children charged with an offence committed whilst they were 12 or 13 years of age. The rebuttable presumption does create problems in practice, as highlighted in the case of *T v. S*²⁹ as well as in the report of the expert meeting on the review of the minimum age of criminal capacity produced by the Department of Justice in 2016.³⁰ However, the report concluded that because of the cloak of protection offered by the presumption, one can relatively safely retain a comparatively low minimum age of criminal capacity, knowing full well that only the most developed and mature children will, following the screening process, be found to have criminal capacity. Amendments to remove the requirement of establishing the criminal capacity of children who are 12 years or older but under 14 years for purposes of diversion will ensure that these children are no longer referred for criminal capacity evaluations and this will also ease the burden of the number of criminal capacity evaluations that are being proposed. Removal of the rebuttable presumption entirely and raising the minimum age to 12 was thought to be possibly unconstitutional, in that it would remove existing protections benefiting 12 and 13 year old children. And raising the minimum age to 14, another option that was considered, was regarded as being 'too big of a leap [from 10-14] without tangible evidence of the effectiveness, availability and adequacy of the support and programmes offered currently to the under ten year olds in conflict with the law in terms of section nine of the Act.'³¹

This leads to the next role for probation officers identified in the Act, namely the provision of services to children below the minimum age of criminal capacity who are alleged to have committed an offence. Such children being irrebuttably presumed to lack criminal capacity (meaning that criminal measures may not be instituted at all), but they are nevertheless subject to the CJA. The CJA provides that such a child may not be arrested but must be handed over to a parent or guardian, and that the police must notify a probation officer within 24 hours. The probation officer must within seven days after receipt of this notification assess the child (assessment is discussed hereafter), and take any one of the steps referred to in s 9(3), namely refer the child to the children's court; refer the child for counselling or

28 At the time of writing, it awaits presidential signature and promulgation.

29 Discussed in Sloth-Nielsen, *supra* note 13 .

30 Department of Justice and Constitutional Development, 'Report on the Minimum Age of Criminal Capacity' 2017.

31 Report *supra* note 34e, at p. 53.

therapy; refer the child to an accredited programme designed specifically to suit the needs of children under the age of 10 years; arrange support services for the child; arrange a meeting, which must be attended by the child, his or her parent or an appropriate adult or a guardian, and which may be attended by any other person likely to provide information for the purposes of the meeting; or, the probation officer may decide to take no action.

From this it is apparent that service provision (including potentially providing accredited programmes (akin to diversion programmes) for this category of children falls within the scope of duties of probation officers. By way of conclusion to this section, the DSD has developed programmes for this group of children as well as those aged 10- 12 years (who are seldom found to possess criminal capacity in practice), and has trained 119 master trainers in all provinces, and commenced delivery of programmes. The 2015 -2016 Report by the DSD on the Implementation of the *Child Justice Act* records that for that year, 206 assessments were performed in respect of children aged below the age of ten years (and it is noted that this is a decrease of 11 children compared to the previous year).

The provisions concerning actions that may be taken concerning children aged below the minimum age of criminal capacity are one point at which the child justice system and the child protection system may intersect, as the CJA provides for the potential referral of the child to the children's court established by the *Children's Act 38* of 2005. This intersection, and other points at which the child protection system may be invoked, are discussed at 2.7.1 below.

2.3. Assessment

Assessment is a novel feature of the CJA, which provides now for a legislative basis for this step. S 34(1) provides that every child who is alleged to have committed an offence must be assessed by a probation officer. The purposes of assessment are defined as “to (a) establish whether a child may be in need of care and protection in order to refer the child to a children's court; (b) estimate the age of the child if the age is uncertain; (c) gather information relating to any previous conviction, previous diversion or pending charge in respect of the child; (d) formulate recommendations regarding the release or detention and placement of the child; (e) where appropriate, establish the prospects for diversion of the matter; (f) in the case of a child under the age of ten years, establish what measures need to be taken in terms of section 9; (g) in the case of a child who is ten years or older but under the age of 14 years, express a view on whether expert evidence referred to in section 11(3) would be required; (h) determine whether the child has been used by an adult to commit the crime in question; and (i) provide any other relevant information regarding the child which the probation officer may regard to be in the best interests of the child or which may further any objective which this Act intends to achieve.”³²

The probation officer must complete an assessment report in the prescribed manner with recommendations on the following issues, where applicable:

1. a. The possible referral of the matter to a children's court in terms of section 50 or 64;
- b. The appropriateness of diversion, including a particular diversion service provider, or a particular diversion option or options, as provided for in section 53;

32 S 35 CJA.

- c. The possible release of the child into the care of a parent, an appropriate adult or guardian or on his or her own recognisance, in terms of section 24;
 - d. If it is likely that the child could be detained after the first appearance at the preliminary inquiry, the placement of the child in a specified child and youth care centre or prison in terms of section 29 or 30;
 - e. In the case of a child under the age of ten years, establish what measures need to be taken in terms of section nine;
 - f. The possible criminal capacity of the child if the child is ten years or older but under the age of 14 years, as provided for in section ten, as well as measures to be taken in order to prove criminal capacity;
 - g. Whether a further and more detailed assessment of the child is required in order to consider the circumstances referred to in subsection (3); and
 - h. An estimation of the age of the child if this is uncertain, as provided for in section 13.
2. A recommendation referred to in subsection (1)(d) relating to the placement of the child in a child and youth care centre must be supported by current and reliable information in a prescribed form, obtained by the probation officer from the functionary responsible for the management of the centre regarding -
 - a. The availability or otherwise of accommodation for the child in question; and
 - b. The level of security, amenities and features of the centre.
 3. A recommendation referred to in subsection (1)(g) may be made in one or more of the following circumstances:
 - a. The possibility that the child may be a danger to others or to himself or herself;
 - b. The fact that the child has a history of repeatedly committing offences or absconding;
 - c. Where the social welfare history of the child warrants a further assessment;
 - d. The possibility that the child may be admitted to a sexual offenders' programme, substance abuse programme or other intensive treatment programme.
 4. The probation officer must indicate in the assessment report whether or not the child intends to acknowledge responsibility for the alleged offence.

The assessment report must be submitted to the prosecutor before the commencement of a preliminary inquiry (see below). *Regulation 14* to the CJA provides that this must be done on a form which corresponds substantially to Form three of the annexure to the Regulations. The obligation to undertake assessment rests in respect of every child alleged to have committed an offence, unless assessment has been dispensed with. Assessment can be dispensed with where a prosecutor diverts a child charged with a Schedule one offence prior to appearance before a preliminary inquiry, provided that dispensing with the yet to be conducted assessment is in the best interests of the child.

The impact of assessment as a distinct step in the criminal process is undeniable. The 2015/6 Report of the Department of Social Development on the implementation of the *Child Justice Act* indicates that for that year 23,787 children aged over ten were assessed. The data appears nevertheless to indicate a dropping number of children entering the child justice system overall, as 5,040 fewer assessments were performed than the previous year. The 2018 Amended National Policy Framework identifies ensuring the provision of assessment services as one of the key objectives.

2.4. Diversion

2.4.1. Access to Diversion

Since diversion was intended to be the centrepiece of the child justice system, and the preferred response to juvenile offending where possible, the CJA has dealt with diversion extensively. The objectives of diversion – to deal with the child outside the formal criminal justice system, to avoid the child getting a criminal record, to prevent stigmatisation and to promote the reintegration of the child into his or her family and community - are spelt out in detail in section 51 of the CJA. So, too, the CJA lays down the general conditions for diversion to be considered, namely that the child acknowledges responsibility for the offence, that there is a prima facie case against the child, that the child and the parent (or appropriate adult or guardian) consent to diversion, and that the prosecutor agrees that the matter be diverted.³³ A key goal of child rights advocates was to ensure that all children, no matter their age or the offence with which they were charged, would be eligible for diversion - in compliance with article 40(3)(b) of the CRC. This position has been enshrined in the CJA, albeit that with respect to serious offences, children may be diverted only with the express written consent of the Director of Public Prosecutions (DPP) and in exceptional circumstances.

In the same vein, child rights advocates motivated that a child should not be excluded from diversion on the grounds that he or she had already previously been diverted. They argued that a more intense or onerous diversion option should be possible, so as to avoid the negative aspects of a criminal trial. This, too, has been the ultimate position adopted in the CJA.

The SALRC was motivated to ensure the widest possible access to diversion, including for persons who may previously have been diverted, for offenders charged with more serious offences, and for those living in more remote areas where traditional programme service providers did not operate. Two consequences of this were (first) the division of diversion options into two levels³⁴ to indicate that more serious offences could be considered for more onerous diversion conditions, and (second) the development of 'tailor made' options which did not depend on a programme provider but could nevertheless be applied on a case by case basis, and monitored by DSD or some other appointee.

The options at level one are intended for schedule one offences (minor offences), and include an apology, a formal caution with or without conditions, placement under one of a list of orders, referral to counselling or therapy, attendance at an educational or vocational programme, restitution, community service, and payment of compensation. The full array of options is detailed in section 53(3) of the CJA. The duration of a level one diversion is a maximum of 12 months where the child is aged below 14 years, and 24 months where the child is 14 years or older.

At level two, which can be used for schedule two and three offences (more serious and very serious offences), some of the options at level one are included (but not all); further, the option of compulsory attendance at a specified place for education or vocational purposes which may include a period of residence is listed; as well as referral for intensive therapy

³³ Section 52(1).

³⁴ The SALRC had proposed three levels, but this was considered to be too complicated when the Parliamentary debates took place.

which may include periods of residence and placement under the supervision of a probation officer coupled with restrictions on movement outside of the magisterial district in which the child resides without prior written approval of the probation officer are provided for³⁵

The maximum time periods allocated for level two diversion orders too indicate that they are intended to be more intensive than level one diversion orders, and of longer duration. Section 54(6) provides for 24 months for a child aged below 14 years for a level two diversion order, and up to 48 months for a child aged over 14 years.

Restorative justice options include referral to a family group conference or to victim offender mediation (or any other restorative justice option). These may replace or be used in combination with any other diversion option (they do not fall under either level one or level two, but are provided for separately).

When making a diversion order, a probation officer or other suitable person must be appointed to monitor the child's compliance with the order.³⁶ Failure to comply must be reported to the magistrate or child justice court (as the case may be).³⁷ The child can then be re-arrested or otherwise brought back to the system to enquire as to the reasons for his or her failure to comply.³⁸

Referral to a programme offered by a diversion service provider (discussed in 2.4.2 below) is therefore an option that may be used (also in combination with other orders). But equally, some diversion options do not entail attendance at a programme.³⁹ There is much scope for individualising the diversion response, although it is not known the extent to which the non-programme options are indeed being utilised.

The National DSD is mandated by s 60 CJA to maintain a record of children in respect of whom a diversion order has been made in terms of the CJA with identifying details of the child, the offence, the diversion option, and particulars of the child's compliance with the diversion order. This does not constitute the record of a criminal offence though; the records of diversion fall away automatically when the child reaches the age of 21 years unless the child has been convicted of another offence or failed to comply with the diversion order.⁴⁰

The preliminary inquiry has been described as the "centrepiece" of the new child justice system. The purposes of this new procedure were to introduce a compulsory pre-trial procedure at which diversion must be considered, before the matter proceeds to trial in a formal court. The preliminary inquiry has also been characterised as performing a gatekeeping role – ensuring that only cases where children who do not admit responsibility for the offence, or those which cannot be diverted, proceed beyond this "barrier" to plea and trial in a court. It was designed against the backdrop of uneven access to diversion during the period before the implementation of the CJA, when it was predicated only on prosecutorial goodwill. It is a compulsory procedure, except if the matter has already been diverted by a prosecutor, or the matter has been withdrawn. It is regarded as the first appearance in court, and must therefore be convened within 48 hours of the arrest of a child (if arrested). It is a

35 Section 53(4). See C Badenhorst, 'Diversion provisions in terms of the Child Justice Act 75 of 2007' vol. 26(3) *South African Journal of Criminal Justice* (2013), p. 302.

36 Section 57(1) of the CJA.

37 Section 57(2) of the CJA.

38 Section 58(1) of the CJA.

39 Some examples include: a reporting order, a family time order, a compulsory school attendance order, a good behaviour order, an apology, payment of compensation or symbolic compensation – for the full list see s 53(1).

40 Section 87(6) of the CJA.

confidential pre-trial, informal “round table” meeting chaired by a magistrate, and attended by a range of role players including a probation officer, the prosecutor, the child and the child’s parents or guardians. According to the Department of Justice Annual Report on the Implementation of the *Child Justice Act 2015-2016*,⁴¹ preliminary inquiries are one of ten key priority areas for the implementation of the CJA. The most recent data shows that 18,575 preliminary inquiries were held in that reporting year (down from 25,517 in 2012-2013). This is probably due to the overall drop in children entering the child justice system (discussed below). Preliminary data suggest that the procedure does serve its intended purpose of increasing access to diversion, as more than 55 per cent of the recorded outcomes of preliminary inquiries in this reporting period were referred for diversion.

2.4.2. Diversion Service Providers

Diversion of children away from formal court procedures was initially introduced by welfare services organisations (non-profit) providing services to victims and offenders. The IMC, as previously noted, expanded the range and geographical reach of diversion programmes, also using the model of service delivery by non-profit organisations which received a subsidy from the State to develop and implement programmes. Programmes focused on life skills, anger management, gender and diversity sensitivity, building resilience and resisting peer pressure, amongst others.

Implementation of the CJA heralded a new era of regulation of diversion service providers and programmes. The law makers were concerned that proper oversight over the quality of diversion services be maintained, in order to enhance public confidence in the efficacy of diversion. Also, since non-state actors were involved, child protection concerns also reared their head. A comprehensive scheme for accreditation of service providers, and their monitoring and evaluation, was therefore devised.

S 56(2) of the CJA places the responsibility of establishing and maintaining an accreditation system for diversion services providers and programmes upon the Minister of Social Development, and the CJA imposes a (new) obligation that a child may only be referred to a diversion service provider or programme that is accredited in terms of the CJA. The CJA further requires the DSD to ensure the availability of resources to implement diversion programmes, which entails an ongoing commitment to expand access and reach to ensure that all children who require these services can be accommodated.

Service providers may include governmental agencies or officials, non-governmental organisations and educational bodies. Accreditation is intended to ensure that service providers meet minimum standards, and that diversion programmes achieve meaningful outcomes. In addition to accreditation, the CJA also provides for quality assurance and the monitoring and evaluation of programmes and service providers.

Consequently, the National DSD developed a National Policy Framework and System for the Accreditation of Diversion Service Providers and Programmes in South Africa. This Policy addresses not only quality improvement but also the content of diversion programmes and alternative sentences. Seven years into implementation of accreditation, it can be noted that

⁴¹ Department of Justice and Constitutional Development, *Child Justice*, <www.justice.gov.za/vg/childjustice.html>, visited on 6 January 2016.

during the 2015-2016 year a total of 49 diversion service providers received full accreditation, whilst 13 were awarded candidacy status. A total of 121 programmes received approval, with 28 being awarded candidacy status. This number is steadily increasing, which is ascribed to an increase in entrants to the child justice family.

Finally, the National DSD's 2015-2016 Report records that 8,830 children were referred to diversion programmes according to DSD data (2,383 fewer than the previous year); and 3,497 were placed under home based supervision (the number in 2014-2015 was 5,529). The extent of other diversion options being utilised is not known.

2.5. Pre-Sentence Reports

The CJA makes the composition of pre-sentence reports by a probation officer mandatory (except where it is dispensed with because of undue delay which would prejudice the child, but then no sentence involving deprivation of liberty may be imposed by the Court).⁴² The time period for preparation of the pre-sentence report is no later than six weeks after it has been requested.⁴³

The court may deviate from the sentence recommended by the probation officer, but must then note the reasons for imposing a different sentence to that recommend on the record of the proceedings.⁴⁴

2.6. Monitoring of the Serving of Sentences

In part two of the sentencing chapter of the CJA, the specific sentences are detailed. First, community based sentences, involving the harnessing of the options spelt out under the diversion chapter, are made available as sentencing options. The fulfilment of the relevant order must be monitored by a probation officer,⁴⁵ and failure of the child to comply with conditions set may result in the child being brought back to court for an inquiry into the reasons for this.⁴⁶

Restorative justice sentences are contemplated, either family group conferences, victim offender mediation or any other restorative process which is in accordance with the definition of restorative justice. The 2015-2016 Annual Report of the Department of Justice and Correctional Services indicates that after an initial upswing in restorative justice sentences (508 in 2012-2013), numbers have declined – 179 in 2014-2015, and only one in 2016 (though this may be due to incorrect data capturing).

2.7. Relationship to the Children's Act 38 of 2005

Children's Court The *Children's Act 38* of 2005 is South Africa's omnibus child protection law. It covers a very diverse array of topics, from a set of children's rights, to parental responsibilities and rights, to the Hague Conventions on the Civil Aspects of International Child Abduction (1980) and the one on Intercountry adoption. The child protection system

42 Section 71(1)(a) and (b).

43 Section 71(2).

44 See in general, S. Terblanche, 'The Child Justice Act: Procedural Sentencing Issues', 16 *Potchefstroom Electronic Law Journal* (2013) p. 321.

45 Section 72(2)(a).

46 The court may then confirm, amend or substitute the original sentence; s 79 of the CJA.

is comprehensively detailed.⁴⁷ Although the *Children's Act* was developed by a separate project committee of the SALRC, there were members in common to that committee and the one drafting the CJA and this ensured that synergy and harmony between the two laws was maintained.

The Act (re) established Children's Courts at magisterial district to deal with child protection matters – they are neither truly civil nor criminal courts, but have a special character as a hybrid. Mostly they are not staffed by specialised personnel, other than in large urban areas where sufficient numbers of cases are brought to justify a dedicated judicial officer. Children in conflict with the law who are not diverted are tried in child justice courts; however, these are criminal courts.

Articulation between the two is possible, however: based either on the assessment report of a probation officer, or a transfer is effected at a preliminary inquiry or during a trial, if a child's protection needs appear to form the basis for his or her offending. The prosecutor can have the criminal charges withdrawn, or they can fall away (even after conviction) in order for a referral to the children's court to take place.

2.7.1. Secure Care

The concept of "secure care" was an explicit outcome of the saga concerning the deprivation of children's liberty in prisons in the second half of the 1990s (referred to in 1.2 above). Intended to serve as a therapeutic environment that is at the same time secure, there are at the time of writing 17,557 secure care facility beds available nationally. The responsibility for managing secure care facilities falls to the provincial and national DSDs.

Where a child cannot be released from police custody prior to appearance at the preliminary inquiry into the care of parents or guardians or on bail, placement in secure care must be considered by the police, depending on the age of the child and the alleged offence committed by the child.⁴⁸ Where a child is aged between ten and 14 years, or is over the age of 14 and charged with a schedule one or two offence, placement in an appropriate child and youth care centre must be considered in lieu of detention in police custody.

In 2015 to 2016 there were 5,148 admissions of children to these facilities, and 4,713 releases over the same period.⁴⁹ Secure care facilities are a "subcategory" of child and youth care centres established in terms of Chapter 14 of the *Children's Act* 38 of 2005, ones which are registered to provide a programme suitable for awaiting trial (and sentenced) youth. Detention in a secure care facility remains deprivation of liberty; one of the gaps at present is the absence of an independent monitoring mechanism to oversee the functioning of secure care facilities, and to provide for an independent complaints mechanisms for children detained in these facilities.

At this point it must be mentioned that although social workers are employed to provide social work services in secure care facilities, the bulk of the care work is undertaken by child and youth care workers. This category of employees are not trained in social work but can

47 J. Sloth-Nielsen, 'The South Africa Child Protection System', *Routledge Handbook of Child Protection Systems* (M. Skivenes ed, 2019, forthcoming).

48 Section 26(2)(a) and s 27(a).

49 2015-2016 Report of the Department of Social Development on the Implementation of the Child Justice Act at 15. Note that this figure shows a decline in admissions and releases from the 2014 -2015 year, probably due to fewer children overall entering the child justice system. See *supra* note 41.

acquire vocational training in a diploma course. Recognition by the South African Council for Social Work is possible, as noted earlier.

There has been some litigation involving secure care facilities, notably in the Eastern and Western Cape. In *S v. Goliath*⁵⁰ a magistrate had paid a facility an impromptu visit to a secure care facility upon reading certain newspaper reports. He discovered that children were roaming around freely, listening to music and not doing any schoolwork. His investigations revealed that the security guards were so afraid of the children that they would lock themselves into a room at night. He discovered further that many of the children absconded nightly from the facility and that the use of drugs was rampant. The buildings were being vandalised and he found broken windows, broken doors, damaged light fittings, vandalised swimming pool pumps, damaged and destroyed furniture and television sets, and broken security cameras. The main computer centre had been destroyed and attempts had been made to set the building alight. In short, the facility was wholly dysfunctional. The Judge described the founding affidavit as reluctantly bringing to mind scenes from William Golding's *Lord of the Flies*. The facility was temporary closed and the children were transferred elsewhere, including to prisons. As far as can be ascertained the matter has not at the time of writing been fully resolved.

2.8. *Criminal Procedure Act 51 of 1977*

This law is the omnibus legislative provision for the conduct of criminal proceedings. It deals with search, seizure, arrest and other methods of securing the attendance of accused persons at court, plea and trials and evidentiary matters. To the extent possible, the CJA does not repeat or replace the ordinary course of criminal proceedings. It merely supplements the *Criminal Procedure Act* to create dedicated provisions for children (e.g. concerning the preliminary inquiry and parental assistance at court, as well as diversion and different sentencing provisions). A child justice court seized with a trial of a person aged below 18 will therefore apply both the CJA and the Criminal Procedures Act.

2.9. *Correctional Service Act 111 of 1998*

The CJA determines which facilities may be used for the deprivation of liberty of children pending trial, and as a sentence. The sentence of imprisonment is extremely restricted (on the basis of both age and the offence category for which a child may be sentenced to imprisonment); since the coming into operation of the CJA the numbers of children in correctional facilities have declined by 73 per cent (from 717 sentenced children in 2010 when the Act came into operation, to 187 children on 31 March 2016 (the latest data available)).⁵¹

The *Correctional Service Act* determines how sentences of imprisonment are to be served (e.g. the rights of prisoners, the classification system, physical facilities and so forth), in the same way that the *Children's Act 38* of 2005 prescribes how secure care facilities and other DSD-Managed facilities are supposed to be run.

⁵⁰ Review case no: 2012000247, CA&R no: CA&R36/2014.

⁵¹ Sloth-Nielsen, *supra* note 27, p. 721.

3. Experiences, Main Challenges, and Reform Initiatives Regarding Juvenile Justice Social Work in South Africa

3.1. Cooperation Between Social Workers and Other Relevant Stakeholders

Cooperation between the various stakeholders, despite being a core objective of the CJA, remains difficult to achieve in practice. An early casualty was the intended joint reporting system envisaged in the original CJA. This requirement was changed through legislative amendment to again allow for separate reporting by the various departments and institutions.⁵² Allegedly a key factor was the inability of the various departments to get the numbers to tie up- for instance, because the police data counts the number of charges brought against persons aged below 18, rather than the number of children brought into the system through arrest, the figures could not be reconciled with, e.g. the number of diverted children, the number of assessments and the number of preliminary inquiries held. Late reporting poses challenges too – at the time of writing the latest reports available are for 2015-2016.

Intergovernmental relations are specifically identified as a problem in relation to the fact that the DSD is a concurrent provincial and national competency. Different social development policies exist in dealing with children in conflict with the law with the result that children are treated differently in the different provinces. These differences also impact on the allocation of resources to NGOs (a provincial function) and the management of Child and Youth Care centres, which include secure care facilities (seemingly as regards their maintenance).⁵³

3.2. Quality of Services

The 2018 National Policy Framework identifies that the poor quality of assessment reports by some probation officers has been of concern as it impacts negatively on the effort to effectively deal with children in conflict with the law.⁵⁴

The availability of diversion programmes in rural areas also poses challenges in ensuring equal access to services as well as the coverage of different programmes.⁵⁵ Maintaining quality control, and ensuring continued access will be an ongoing endeavour in improving the implementation of the CJA.

3.3. Dropping Numbers

The central issue that has emerged since the coming into operation of the CJA in 2010 is the dramatic drop in the numbers of children being processed through the system. The total number of charges fell from 80,106 in the 2010/2011 reporting year, to 47,644 in the 2015/2016 reporting year.⁵⁶ The causes for this drop are speculative, but seem to emanate from the fact that fewer children are being arrested. Speculation has it that the police found

⁵² South Africa Police Service (SAPS), National Prosecuting Authority, Department of Justice, Department of Correctional Services and Department of Social Development (at the national level).

⁵³ Department of Social Development Report on the implementation of the Child Justice Act 2015-6, p. 9.

⁵⁴ *Ibid.* p. 8.

⁵⁵ *Ibid.* p. 9.

⁵⁶ SAPS Annual Report on the Implementation of the Child Justice Act, 1 April 2015 – 31 March 2016 at p. 5, note that due to the fact that one child may face multiple charges, this is not necessarily a head count of the numbers of children entering the system. See *supra* note 41.

the CJA burdensome to implement with a number of reports being required for various actions (such as placing a child in detention in police custody rather than taking a child to a welfare institution pending assessment and the preliminary inquiry). Rather than deal with the reports, the choice is made not to arrest the child in the first place, rumour has it.⁵⁷ The declining numbers permeate all aspects of the child justice system: there are fewer children in diversion programmes, fewer assessments and preliminary inquiries, and fewer children's trials being held. This impacts the resourcing of the system as a whole, as at times there are insufficient numbers of children in conflict to warrant expenditure.

3.4. Drastic Limitations on Deprivation of Liberty of Children in Prisons

The diminishing numbers of children incarcerated in prisons (both as awaiting trial remandees or as sentenced prisoners) is commendable. Whilst the development of the alternative of secure care facilities is partially accountable for the drop in numbers since the turn of the millennium, there can be no doubt, too, that enhanced vigilance to implementing the constitutional and international law principle of deprivation of liberty of children as a last resort and for the shortest appropriate period of time, by the various stakeholders in the child justice system must be credited too. The strict limitations on the use of imprisonment as a sentence as crafted in the CJA appear to have had the intended effect of structuring previously unfettered judicial discretion appropriately.

3.5. Reform Initiatives

It is likely that the Bill to raise the minimum age of criminal responsibility is going to be promulgated shortly, in the view of the author, and that 12 will henceforth become the minimum age of criminal responsibility. This will not, however, drastically affect the operation of the child justice system, as currently few children below that age encounter the system in the first place. However, it will take South Africa one step nearer to compliance with international best practice. It does not appear that further (legal) reform initiatives are being contemplated. However efforts at the level of practice to deliver more training, to enhance skills development of practitioners, and to integrate more seamlessly the functions of the different departments concerned with implementation of the CJA will be an ongoing project.

⁵⁷ A Commissioned Study which was supposed to investigate the overall implementation of the CJA, and which could have shed light on this, has reportedly stalled at the time of writing.

Blessing Mushohwe*

1. General Introduction to Juvenile Justice Social Work in Zimbabwe

1.1. *Social Work*

The profession of social work is considered relatively young in Zimbabwe and was heavily influenced by colonialism in its formation.¹ Kaseke states that the development of social work in Zimbabwe, like in many countries was a direct response to the problems created by the processes of industrialisation and urbanisation.² The money economy as a result of capitalism created the need to work among the indigenous population and resulted in rural-urban migration, which in turn resulted in proliferation of social problems in urban areas namely destitution, unemployment, adjustment problems and social disorganisation, overcrowding and lack of shelter. The development of social work in Zimbabwe is thus seen as an attempt by the colonial government to provide services that approximated as much as possible to the social welfare services provided in Britain at that time.³ Chitereka adds that the philosophy of the colonial policy makers at that time was that societal ills, if unattended, would undermine order and stability.⁴ Social work was, therefore, seen primarily as an instrument of social control, and never seriously addressed itself to the root of social problems.

The very earliest notions of social work in Zimbabwe are traced to the containment of the problems of juvenile delinquency and truancy among the non-African community around 1936.⁵ In response to the problem of juvenile delinquency and truancy, a probation and school attendance officer was appointed. The officer was recruited from Britain as there were no trained personnel in the country at that time. This eventually led to the establishment of the Department of Social Welfare in 1948 in the then Rhodesia and its activities in those early days included investigation of juvenile delinquency among all races.⁶ The first black probation officer was appointed in 1949 and appropriate institutions were established in Harare, Bulawayo, Gweru and Mutare to provide the controlled environment necessary for the behavioral modification process.⁷ As the demand for social welfare services increased, in 1964, the Department of Social Welfare (DSW) increased its scope of operation and it began to run a public assistance programme, relief services for the destitute, probation services, adoption and child welfare, family counselling, supervision of orphanages, old people's homes and administration of refugee issues among other personal social services. Since independence of Zimbabwe in 1980, the DSW has been decentralised with the creation of social welfare offices in every province down to district and ward level throughout the country.⁸

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1 C. Dziro, 'Trends in Social Work Education and Training: The Case of Zimbabwe', 2:2 *International Journal of Development and Sustainability* (2013) p.14-24.

2 E. Kaseke, 'Social Work in Zimbabwe: A Short Country Statement ASWEA 6th Annual General Meeting', Abidjan March 1987 (Conference Presentation).

3 E. Kaseke, 'Social Work Education in Zimbabwe: Strengths and Weaknesses, Issues and Challenges', 20:1 *Social Work Education* (2001)101-109, p.102.

4 C. Chitereka, 'Social Work Practice in a Developing Continent: The Case of Africa', 10:2, *Advances in Social Work* (2009) p.149.

5 Kaseke, *supra* note 3.

6 R.S. Mupedziswa, 'Social Work Practice in Zimbabwe and the Factors Instrumental in its Development', *Paper Presented During an Exchange Visit to the University Of Zambia, Lusaka, June 6-1988.*

7 E. Kaseke, 'Social Work Practice in Zimbabwe', 6:1 *Journal of Social Development in Africa* (1991) p.37.

8 Kaseke *supra* note 8, p. 37.

However, according to Kaseke, the development of social work as a profession did not run in tandem with social work education, with the later lagging behind in development.⁹ Social work education in Zimbabwe began with the establishment of the School of Social Services in 1964 by the Jesuit Fathers of the Roman Catholic Church in Harare. This followed intensive investigations by Father Ted Rogers on the need for social work education in the country. These investigations revealed that the magnitude of social problems such as unemployment, destitution, juvenile delinquency, prostitution and overcrowding was increasing in the urban areas and therefore justifying the need for more social workers to compliment those trained in Zambia and South Africa, particularly for servicing the African population.¹⁰ The increasing workload for the few social workers made for a compelling case for providing social work education in order to produce cadres who could assist individuals, groups and communities to achieve and maintain satisfactory levels of social functioning.

In 1966 the School of Social Service was launched, which was later to change its name in 1969 to the School of Social Work and at the same time becoming the first associate college of the then University of Rhodesia (now the University of Zimbabwe) and it began to award a three-year Diploma in Social Work of the University of Rhodesia.¹¹ In 1975, a Bachelor of Social Work degree was launched and in 1978, a one-year Certificate in Social Work programme (for para-professionals) was also started. In association with the University of Zimbabwe, a course leading to the Bachelor of Social Work (Honours) in Clinical Social Work was started in 1983 and this was followed a year later with the launching of a Master of Social Work degree and a Bachelor of Science (Social Rehabilitation) degree in 1984, closely followed by the Journal of Social Development in Africa in 1985.

Since these formative years, other notable developments have been the enactment of the *Social Workers Act*¹² into law, the introduction of a four-year degree in social work at the Bindura University of Science Education and a two-year diploma in social work at the Women's University in Africa both in 2010 and subsequently a four-year degree in social work at the Women's University in Africa in 2017.¹³ These developments were effectively removing the long held monopoly on social work training by the University of Zimbabwe and at the same time, extensively expanding the training of social workers in the country.

As regards curricula, Kaseke asserts that during the formative years of social work education, the curricula, although it included community work, placed greater emphasis on casework.¹⁴ However, in view of the structural economic and social challenges facing Zimbabwe, this has gradually fundamentally shifted over the years to social development curricula that prepare its students to function meaningfully as agents of social change.¹⁵

9 Kaseke *supra* note 4, p.102.

10 *Ibid.*

11 Mupedziswa *supra* note 7.

12 Social Workers Act [Chapter 27: 21].

13 V. Mabvurira, 'Social Work in Zimbabwe: Past, Present and the Future', *Lecture notes prepared for the Bachelor of Social Work students for HSW 119 Foundations for Social Work Course*, Department of Social Work, (2017), University of Zimbabwe.

14 Kaseke *supra* note 3.

15 G.R. Mushongera, 'Hearing the Voice of the Child: Participatory Practice in Statutory Child Protection in Zimbabwe', 5:8 *International Journal of Humanities and Social Science* (2015) p. 62.

1.2. Juvenile Justice System

Currently in Zimbabwe, there is no *Child Justice Act*. As such, matters relevant to juvenile justice are dealt with through various pieces of legislation, the principal ones being the *Children's Act*,¹⁶ the *Criminal Law (Codification and Reform) Act*¹⁷ and the *Criminal Procedure and Evidence Act* (CPEA).¹⁸ Without a specific *Child Justice Act*, there also seem to be no clearly stated objectives of juvenile justice in Zimbabwe, save for attempts by various pieces of law mentioned above, including the Constitution of Zimbabwe¹⁹ and more to ensure the best interests of a child in conflict with the law and to use the least punitive measures available for such a child.

According to section 70 (1) (a) of the Constitution of Zimbabwe, there is a generic presumption of innocence until proven guilty for everyone who is accused of having committed an offence, including for children. Specifically, as regards capacity to commit an offence for children, this is depended on the age group of the children involved as regulated by the *Criminal Law (Codification and Reform) Act* in Zimbabwe. According to sections 6-8 of the Act:

1. A child below the age of seven years shall be deemed to lack criminal capacity and shall not be tried for or convicted of any crime which he or she is alleged to have committed.
2. Between the ages of 7-14 years, such children, unless the contrary is proved beyond a reasonable doubt, are presumed to lack the capacity to form the intention necessary to commit the crime; or where negligence is an element of the crime concerned, to lack the capacity to behave in the way that a reasonable adult would have behaved in the circumstances.
3. Those over the age of 14 years are deemed to have capacity to form the necessary intention to commit any crime or, where negligence is an element of the crime concerned, to behave in the way that a reasonable person would have behaved in the circumstances of the crime. In terms of the law, these are children but for the purposes of criminal capacity they are treated the same with any other adult person. However, their court proceedings and the penalty that is imposable is still that which is in the best interests of the children. This means that although they may be criminally liable for their conduct, the law still treats them as children for purposes of sentence and they can still be accompanied by their parents to court, the proceedings of their cases conducted in camera and their sentences are still imposed with lenience since they are children.

The cut-off age for a child in Zimbabwe is however 18 years as per section 81 (1) of the Constitution and as such, that also becomes the cut-off upper age for juvenile justice.

Juvenile justice in Zimbabwe follows two different processes depending on the nature and gravity of the crime committed, age of accused and jurisdiction where the offence has been committed. The first (1st) process, often used for very serious offences, normally by older accused children or for those whose jurisdiction does not have an

16 Children's Act [Chapter 5: 06].

17 Criminal Law (Codification and Reform) Act [Chapter 9:23].

18 Criminal Procedure and Evidence Act (CPEA) [Chapter 9: 07].

19 Constitution of Zimbabwe Amendment (No 20) Act of 2013.

operative diversion programme, is the normal process of going through the normal court processes as may be used for adults, with minor adjustments to accommodate a child.

This process begins with the arrest of a child by the police or they may invite the child through the parents to the police station for investigations and the child must always be represented by a guardian. At arrest, it is rare that the child is handcuffed unless when the police is dealing with a hardened child offender. The police proceed to conduct their investigations, draw up a charge sheet and present the child to court within the mandatory 48 hours as per the law for purposes of remand.

If the child is below the age of 12, the prosecution cannot proceed with the matter until they refer the docket to the Prosecutor General (PG) for authority to prosecute. The PG or his or her representative has the power in terms of Section 9 of the *Criminal Procedure and Evidence Act* [Chapter 9:07] to decline to prosecute any matter if it satisfies the following conditions: accused is below the age of 21 years, accused has, without any doubt, admitted to the crime committed, and that the crime committed would not usually attract a jail sentence of more than 12 months. Where the PG has authorised prosecution in respect of children below 12 or where a child of above 12 has been arrested, the prosecutor or the police may proceed with the trial in the normal way as would for an adult or may refer the matter for pre-trial diversion as will be discussed below.

When the child appears for normal court processes, the court is immediately converted into a Children's Court as established by sections 3-5 of the *Children's Act*. This court is enjoined to take a rather child-friendly format which relaxes some strict rules of procedure as may be applicable to an adult. At this stage, a probation officer from the DSW is assigned to the case or the presiding officer requests for the case to be referred to a probation officer. He or she is henceforth guided procedurally by section 46 of the *Children's Act*. According to Kaseke, the probation officer is required to write reports for the criminal courts in respect of juveniles brought before them accused of criminal acts.²⁰ The probation officer is expected to investigate the socio-economic circumstances of the child with particular reference to upbringing, family background, relationships within the family, discipline, financial position, peers, performance and relationships at school, the nature of the community in which the child lives, and possible reasons why the child committed the offence. The probation officer can, under sections 351 and 389 of the *Criminal Procedure and Evidence Act*, make various recommendations which are supposed to be taken into consideration by the presiding officer when dealing with the matter and making a determination to convict and sentence.

The second (2nd) process under which juveniles are dealt with in Zimbabwe is the one that uses diversion of children away from the formal criminal justice system. This, at the moment is only largely and effectively applicable in five districts (Harare, Bulawayo, Chitungwiza, Gweru and rural Murewa) where the Pre-trial Diversion (PTD) Programme is being piloted. Introduced in 2009, the PTD Programme was a way by which government sought to deal with juvenile criminality without unnecessarily prosecuting and imprisoning

²⁰ Kaseke *supra* note 8, pp. 37-38.

children, burdening them with criminal records at such young ages (Pre-trial Diversion Report 2016). The objectives of the programme are generally to achieve the following:²¹

- To make young persons, responsible for and accountable for their actions,
- To provide an opportunity for reparation,
- To prevent young offenders from receiving a criminal record early in their lives and being labelled as criminals as this may become a self-fulfilling prophecy,
- To open the judicial process for education and rehabilitative procedures to come into play for the benefit of all parties affected by the offence,
- To some extent, lessen the caseload on the formal justice system.

The pre-trial diversion system as a juvenile justice mechanism has the following conditions for eligibility: the young offender must be:

- Young persons under the age of 18;
- Young persons who would have committed a non-serious offence;
- A non-serious offence is one that would not attract a sentence of over twelve (12) months imprisonment;
- Young person's committing serious offences such as murder, rape and robbery will not be eligible;
- Repeat and serious offenders will not be eligible;
- Who without coercion, accept responsibility for the offence;
- Young persons who deny their guilt are not eligible and entitled to due process;
- Are willing to take part in a programme of activities identified by the diversion officer.
- The diversion process in Zimbabwe and roles.

According to the Pre-trial Diversion Report of 2016, the PTD process currently in use in Zimbabwe has the following stages and roles: ²²

The Police - The diversion process starts with a report of an alleged crime to the police. Upon arriving at the scene of the alleged crime, the police should use their power of arrest as a last resort.²³ The police are entitled to divert minor cases and may choose not to charge the young person but to caution them with or without conditions. When an informal caution is issued at the scene of the crime, this is often the end of the matter – the child is diverted from the criminal justice system. For slightly more serious crimes such as theft, assault or damage to property, the police may decide to (a) arrest the young person and bring them to the police station for further investigation; or (b) not arrest the young person but to bring them to the police station anyway for further investigation.

21 'Pre-trial Diversion', *Ministry of Justice, Legal and Parliamentary Affairs*, <www.justice.gov.zw/index.php/departments/policy-legal-research?showall=&start=4>, visited on 16 June 2018.

22 Pre-trial Diversion Programme in Zimbabwe: End of Pilot Programme Evaluation Commissioned by UNICEF and Ministry of Justice, Legal and Parliamentary Affairs November 2016.

23 Ministry of Justice, Legal and Parliamentary Affairs, 'Zimbabwe Pre-trial Diversion Programme for Young Persons Consolidated Guidelines', September 2012, p. 3.

Prosecutor and Magistrate - For children who are arrested, the police carry out a criminal investigation and complete a docket, which contains a summary overview of the investigation findings. The docket is then submitted to the prosecutor. The prosecutor is an important stakeholder in the diversion process as he/she has the power to decline or proceed with prosecution. The prosecutor will use the information provided in this docket to make his or her decision about whether to proceed with prosecution. As the prosecutor makes a decision here, it also informs the diversion office of the case.

Diversion Officer: social enquiry - Once the diversion office has been informed of the case, the diversion officer (who is a social worker) would ideally travel to the police station, accompany the child through the police process and then take the child home. At the child's home, the diversion officer would undertake the social enquiry process, assessing the social, economic, psychological and physical environment of the child and his/her family. During the social enquiry process, the diversion officer interviews the child and the guardian to find background information. During the social enquiry process, on an informal basis, the diversion officer will often provide counselling support to the child and her/his family. The diversion officers will also often start to facilitate victim-offender mediation. The social inquiry report is submitted to the Magistrate and is used as a basis for decision making regarding the course of action to take with the child and more specifically, the diversion options appropriate for such a child.

Diversion Committee - Strictly speaking, as per the PTD guidelines, any recommendation made by the diversion officer should be carried out after the diversion committee has met and made its recommendation. However, in the real world, the diversion process is much more fluid and flexible: the child and her/his family will often need immediate support. The diversion committee does not meet immediately on a case-by-case basis; they will usually meet when they have a cluster of cases to deliberate on. The diversion committee is made up of people such as prosecutors and magistrates, who have extremely busy and challenging schedules. To overcome the process delays at this stage of the process, the diversion officers normally proceed to providing services such as counselling and victim-offender mediation on an informal basis to ensure that the needs of the offender and their family are being met in a timely fashion.

Diversion Options - When the diversion committee meets, there are nine diversion mechanisms that it can recommend. The police have the power to issue an (1) informal caution and a (2) formal caution can be administered at the direction of the diversion committee. Where the diversion committee is of the opinion that the child should be diverted, the committee considers the recommended diversion activity as well as its duration. A child may undertake one or more of the following as recommended by the diversion committee before charges can be withdrawn or prosecution declined: (3) reparation; (4) community service; (5) counselling; (6) attendance at a particular institution for educational or vocational purposes; (7) constructive use of leisure time; (8) victim-offender mediation; (9) family group conferencing.

Child Welfare and Probation Officers: monitoring and follow-up - Once children have been diverted from the criminal justice system and the diversion methods have been implemented, the diversion team should then refer the child to Child Welfare and

Probation Services for ongoing monitoring and support. This is a key bottleneck in the system: in many cases, the child is not being referred to child welfare and when a child is referred, they are not receiving support because the child welfare officer has such a high case load.

While statistical data on juvenile offenders is available, mainly in the DSW, it is not easy to get due to bureaucratic processes involved. However, some indicative statistics on juvenile justice in Zimbabwe has been obtained from the PTD Programme. According to its Pre-trial Diversion Report of 2016, since the injection of budgetary support by UNICEF and Save the Children to the programme, about 1,728 children in conflict with the law have been diverted from the formal criminal justice system in Zimbabwe between 1 January 2013 and 28 September 2016.²⁴ Only 429 children have been referred to the formal criminal justice system (due process) during that period. This means 2,157 children in conflict with the law passed through the justice system during that period. This gives an average of 540 children committing offences each year and passing through the justice system.

1.3. *Juvenile Justice Social Work*

Since the establishment of the DSW in 1948, the field has since developed quite notably with laws and regulations being enacted around social work involvement in juvenile justice.

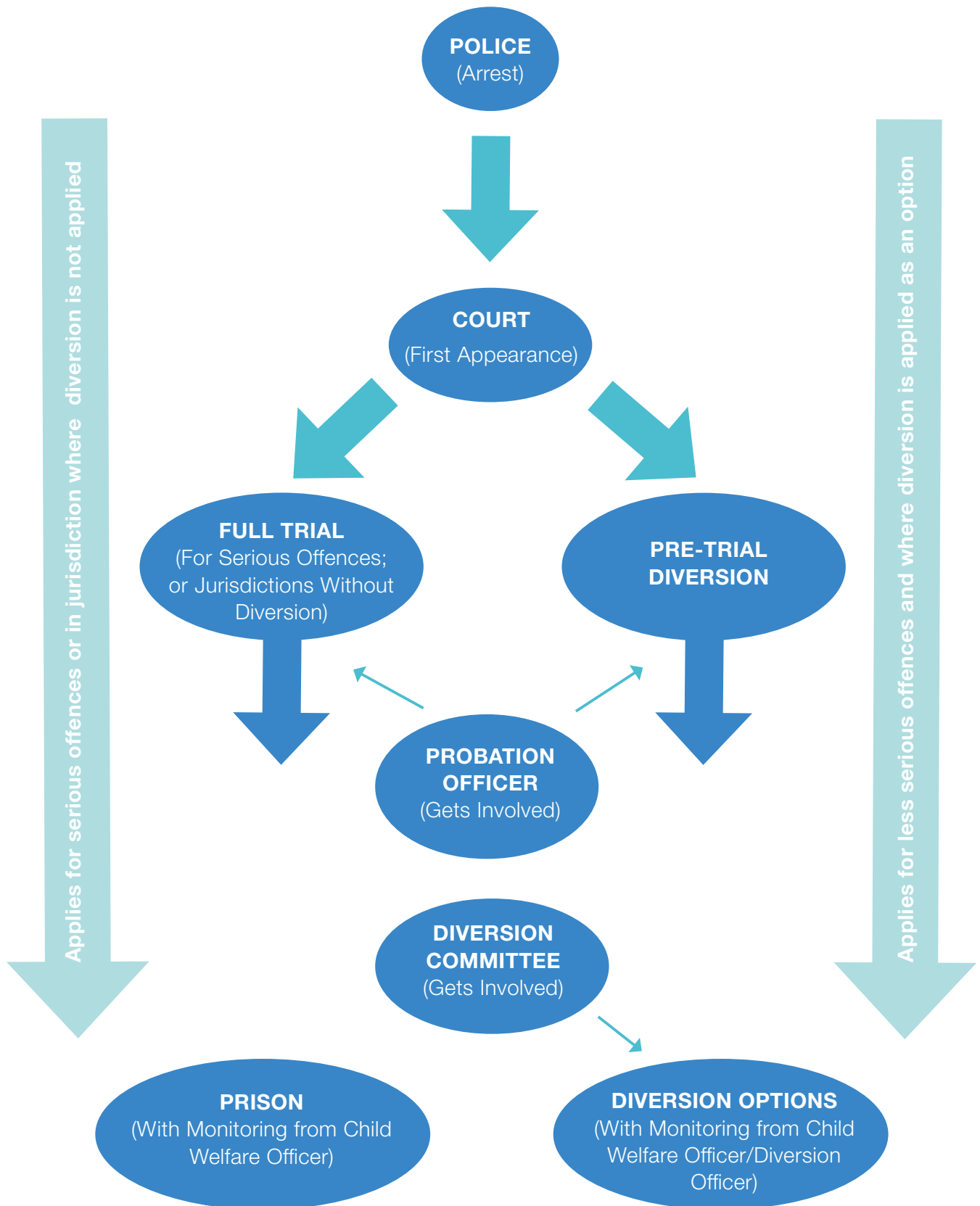
Currently, there are no specialised programmes on juvenile justice at university level. However, within broad social work programmes offered, juvenile justice may appear as a course or as a topic in degree programmes offered at the University of Zimbabwe, Bindura University of Science and Technology, Midlands State University and Women's University in Africa. At the University of Zimbabwe's School of Social Work, the closest they have as a course to juvenile justice is Child Welfare Policy and Practice.

As regards interest in becoming juvenile justice social workers by students, this is not clear in Zimbabwe but highly doubtful. This is due to the fact that the profession of juvenile justice social work is in itself not well defined in Zimbabwe as a specialist area. Social workers are normally equipped with general social work training which they can use for a broad range of social work practice, without specific specialisations. Interests in juvenile justice social work specialisation may thus be little, given the not so well defined profession in that area. Only recently with the introduction of the PTD Pilot Programme has there been a noticeable number of social workers specialising in juvenile justice. According to the Pre-trial Diversion Report of 2016, as of November 2016, only 16 diversion officers were employed on a full-time basis in the PTD Programme.²⁵ Very few are employed in the NGO sector. The lack of employment opportunities in the area therefore becomes a dis-incentive to professional specialisation in juvenile justice social work.

²⁴ Pre-trial Diversion Report of 2016, *supra* note 23.

²⁵ *Ibid.*

The Chart below shows the Juvenile Justice Flow Chart in Zimbabwe and how social workers get involved.



2. The Role of Social Work in Juvenile Justice in Zimbabwe

2.1. Legal Basis for Juvenile Justice Social Work

Specific to involvement of social workers, the *Children's Act* becomes instructive. It first of all defines a 'probation officer' as a person registered as a social worker in terms of the *Social Workers Act*, and appointed as a probation officer in terms of section 46 of the Act. This give legal recognition of social workers as probation officers in juvenile justice. Section 46 of the *Children's Act* titled Probation Officers unpacks the role of the officer in juvenile justice.

Apart from probation officers employed as such by the DSW, section 46(1a) further allows the relevant authorities to even appoint any private person registered as a social worker to act as a probation officer where there is need for such. Section 46(2) boldly declares probation officer as officers of the High Court, every Children's court and every Magistrates court. With this, the role and involvement of social workers in juvenile justice in Zimbabwe is not guess work but well regulated by the law. The role of professional social workers as probation officers is further referred to in the *Social Workers Act* in the First Schedule as including performing the functions of probation officers in terms of the *Children's Protection and Adoption Act* (now the *Children's Act*) and any other enactment. Sections 351 and 389 of the CPEA also makes reference to a probation officer, thus again giving credence to the role of social workers in *Zimbabwean law*. Guidelines such as the Pre-trial Diversion Guidelines of 2012 also become persuasive as far as defining the involvement of social workers in juvenile justice.²⁶

As regards adhering to international standards, the most notable regulatory domestic instrument is the Pre-trial Diversion Guidelines of 2012 (which is merely persuasive but not binding). It is the one that reflects current juvenile justice dictates of international law. The rest of the instruments still fall way short of such alignment, mainly because many of them were enacted before the juvenile justice international instruments that are now operational. As noted by Ruparanganda,²⁷ international and regional framework that note juvenile justice include the United Nations Convention on the Rights of the Child (UNCRC);²⁸ the African Charter on the Rights and Welfare of the Child;²⁹ United Nations Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules*);³⁰ United Nations Guidelines on the Prevention of Juvenile Delinquency (Riyadh Guidelines);³¹ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules);³² United Nations Basic Principles on the use of Restorative Justice Programs in Criminal Matters, and the Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines). The UNCRC forms the bedrock for administration of juvenile justice. Article 40 (1)–(4) of the UNCRC provide a comprehensive framework within which states are obliged to design a juvenile justice system.

26 Pre-trial Diversion Guidelines of 2012 *supra* note 24.

27 B. Ruparanganda and L. Ruparanganda, 'Reformations in Zimbabwe's Juvenile Justice System', 6:1 *African Journal of Social Work* (2016) pp.8-9.

28 Ratified by Zimbabwe on the 11th of September 1990.

29 Ratified by Zimbabwe on the 19th of January 1995.

30 Also known as the Beijing Rules, adopted by the General Assembly Resolution 40/33 of 29 November 1985.

31 Also known as the Riyadh Guidelines, adopted and proclaimed by General Assembly Resolution 45/112 of 14 December 1990.

32 Adopted by the General Assembly Resolution 45/113 of 14 December 1990.

Zimbabwe ratified the UNCRC in 1990 and the ACRWC in 1999 as stated above, and both treaties oblige the state to develop a juvenile justice system defined by the parameters set by these instruments. The Constitution of Zimbabwe Amendment provides rights for people alleged to have committed a crime including juveniles. This, however, falls far short of properly implementing the dictates of international law on juvenile justice. Only a dedicated *Child Justice Act* can cure this inadequacy.

2.2. *The Role of Social Work in Juvenile Justice: Law and Practice*

As noted by Ruparangada, the Ministry of Labour and Social Welfare launched the Department of Child Welfare Services in 2014.³³ The department now houses probation officers whose key role as stipulated in the *Children's Act* is to provide child welfare services to children in conflict with the law. The new approach ensures specialization by social workers in child welfare issues and is expected to bring enhanced functioning for the benefit of children. The Zimbabwean position therefore is that probation officers, who fall under the Department of Child Welfare Services, are called upon by the police and the courts to carry out assessments of juvenile offenders. The police make such a request in all cases involving juveniles. The assessments are passed to the Prosecutor General in order for him or her to decide whether or not to prosecute a juvenile offender. If a docket is referred to the PG without this report, it will be returned to the police to enable them to obtain the report. The courts also request probation officers to provide an assessment report on the risk of recidivism and rehabilitation before passing sentence. Probation officers are professionals and presiding officers are accordingly guided by their recommendations in passing sentence. The nature of involvement may, however, vary depending on the jurisdiction in question, some of which may be applying the PTD programme and others may be using the normal court process which does not strictly use diversion since it may be outside the pilot districts.

When the child appears for normal court processes as explained above, the court is immediately converted into a Children's Court as established by sections 3-5 of the *Children's Act*. This court is enjoined to take a rather child friendly format which relaxes some strict rules of procedure as may be applicable to an adult. At this stage, a probation officer from the Department of Social Welfare is assigned to the case or the presiding officer requests for the case to be referred to a probation officer. This flows from the fact that children are vulnerable due to their age and mental immaturity.³⁴ Social inquiry reports are critical in explaining the special circumstances of the juvenile. Hence the courts should seriously consider probation officer's recommendations in disposing cases of juveniles.

The probation officer is henceforth guided procedurally by section 46 of the *Children's Act*. According to Kaseke, the probation officer is required to write reports for the criminal courts in respect of juveniles brought before them accused of criminal acts.³⁵ The probation officer is expected to investigate the socio-economic circumstances of the child with particular reference to upbringing, family background, relationships within the family, discipline, health, education, special problems and strengths. It is from the

33 B. Ruparanganda and, L. Ruparanganda, *supra* note 28.

34 *Ibid.*

35 Kaseke, *supra* note 8 pp.37-38.

information gathered during this assessment that a clinical social work intervention is made and completed. The probation officer can, under sections 351 and 389 of the CPEA, make various recommendations which are supposed to be taken into consideration by the presiding officer when dealing with the matter and making a determination to convict and sentence. Social workers should also provide support during custodial sentences linking the child to other resource systems and ensure that the child is rehabilitated. Further, they provide support consistent with the child's needs which includes ensuring that the child furthers education whilst incarcerated. Social workers should prepare the child for release, facilitate family reunification and offer post release support such as counselling to help the child re-adjust to the home environment.

The second process under which juveniles are dealt with in Zimbabwe is the one that uses diversion of children away from the formal criminal justice system. At the centre of this process are diversion officers who according to Rupanganda, quoting the Pre-trial Diversion Guideline of 2012, are social workers who are deemed to play a facilitation role in pre-trial diversion process.³⁶ This has shaped a new field of social work where specialist social workers work as diversion officers who deal solely with children in conflict with the law and related aspects.³⁷ The social worker thus plays a critical role in this process as a diversion officer whose role goes slightly beyond just the social enquiry as is the case with normal role of a probation officer described above.

As already discussed, once the diversion office has been informed of the case, the diversion officer (who is a social worker) engages with the child from the police station through the social enquiry process, assessing the social, economic, psychological and physical environment of the child and his/her family. The diversion officer may also recommend a programme of activities as a diversion option for a child. In that regard, the officer will have to continue to monitor the child as he/she undertakes the prescribed activities at whatever institution chosen. Linked to this is the monitoring and follow-up role of Child Welfare Officers. As discussed above, once children have been diverted from the criminal justice system and the diversion methods have been implemented, the diversion team should then refer the child to Department of Child Welfare Services for ongoing monitoring and support. As highlighted already, this is a key bottleneck in the system in that in many cases, the child is not being referred to child welfare and when a child is referred, they are not receiving support because the child welfare officer has such a high case load. Because of this well-known huge caseload for social workers in Zimbabwe, there seem to be no strict consequences for social workers who may not do their work as regards juvenile offenders, provided the workload is the justification, which normally is the case.

In addition to social work services provided by probation officers and diversion officers at government level, there are also social workers from NGOs that also provide services for children in conflict with the law. The National Action Plan for Orphans and Vulnerable Children (NAP for OVC) II Strategy of 2015 incorporated social work professionals in selected legal aid organization for an integrated approach in handling and processing of juvenile delinquency cases. Organisations such as Legal Resources Foundation and Care at the Centre of Humanity (CATCH) have been complimenting government efforts

³⁶ B. Ruparangaand, L. Ruparanga, *supra* note 28 p.11.

³⁷ *Ibid.*

on juvenile justice, particularly as regards prevention efforts for children not to offend in the first place. The social work profession has also seen the incorporation of a case management system as a product of NAP for OVC II. The approach seeks to employ extensive community involvement in administration and management of child welfare cases. As noted by Rupanganda, its benefits have spilled to the juvenile justice system.

38

With all the above activities and more, in the end, the DSW, as noted by DCI Juvenile Justice Newsletter (2011) is the custodian of a great deal of data on juvenile justice cases. This includes probation officers' reports to the Prosecutor General; sociological reports on juvenile offenders; juvenile court registers; data on repeated offenses; juveniles released before their sentence is over; monthly case contacts; statistical returns; monthly and yearly reports; procedural information from the Ministry of Justice, Legal and Parliamentary Affairs; and review orders regarding juvenile offenders.

2.3. Cooperation Between Social Workers and Other Relevant Stakeholders

Cooperation between social workers and other stakeholders is largely defined as already spelt out above in part 1.2. The most notable stakeholders are the police, the judicial officer and sometimes the responsible authorities of institutions where delinquent children may be placed either pending trial or as a recommended alternative to imprisonment. All this as discussed already is guided by the *Children's Act* with parts being legislated by the CPEA, *Social Work Act* among a few more statutes. These stakeholders are largely amenable to working with social workers as part of their juvenile justice work. This is partly due to the fact that social workers as probation or diversion officers do in a way lessen the workload of the stated stakeholders. Instead of doing an intensive investigation, completing a full docket, going through a full trial and then sentencing to imprisonment which presents challenges to prison authorities, the social worker can simply intervene with a simpler solution of diversion or other child-friendly alternative. The cases where there has seemed to be discordance between social workers and stakeholders in the juvenile justice system is where the social worker has a huge workload such that engaging them will delay cases that judicial officers want removed from their desks. In such cases, social workers as probation officers are skipped from the process and a case is just dispensed with the normal way without a social inquiry report. Where this happens, there are no clear cut consequences for the judicial officers. The most that can happen is that when the record of proceedings goes for review at the higher courts, it is returned for reconsideration, which is supposed to include a probation officer's social inquiry. No personal sanctions are known.

2.4. Qualification and Evaluation of Juvenile Justice Social Work

As already stated in part 1.3 above, in Zimbabwe there is no strictly speaking any juvenile justice social work. What is present are requirements by the law for certain social workers to act as probation officers or diversion officers where a child has been accused of a crime. This can be done by any person who has qualified as a social worker in or outside Zimbabwe and registered as such with the Council for Social Workers. There are no other specific requirements. The more specialised of juvenile justice social workers

38 B. Ruparangaand, L. Ruparanga, *supra* note 28.

are found in diversion officers who were described above in part 1.2. While these may be recruited with general social work, additional training has been given by development organisations to these on specific juvenile justice topics and skills sets. However, this is again ad hoc and not structured for consistency and predictability.

As regards the probation officers, there is no strictly speaking, any internal or external evaluation of their work that is done. Government of Zimbabwe does not do evaluations of its projects outside funding that is received from donors. The closest that one can get to an evaluation is an annual appraisal that is done of a government employee against his/her agreed objectives for the year. This however scratches the surface as it is more focused on the individual employee rather than the project and its beneficiaries. Where there is donor funding, i.e. in the Diversion Programme discussed in part 1.2 above, evaluations are done as a requirement of the funding agreement. For the current programme, the only evaluation that has been done so far is the PTD Programme in Zimbabwe: End of Pilot Programme Evaluation Commissioned by UNICEF and Ministry of Justice, Legal and Parliamentary Affairs in November 2016. More such evaluations are envisaged for as long as the programme is still being funded by donors.

3. Experience, Main Challenges, and Reform Initiatives Regarding Juvenile Justice Social Work in Zimbabwe

3.1. Experience and Achievements

While Zimbabwe has bits and pieces of a juvenile justice system, it is still very much underdeveloped. This is shown from various angles explained above. These include that Social Work Schools in the country have recently just increased from the long service of the profession by just the University of Zimbabwe. This had the effect that not many social workers were being produced by the country and with that meant a huge workload for those in the profession. Some areas such as juvenile justice would thus suffer where workload is too much for a social worker. Even with a few more universities now teaching social work, still none has a programme nor even a mere course that is specific to juvenile justice. As such, juvenile justice does not become a profession which one can specialise in in Zimbabwe. This is worsened by the fact that even in employment, there was no specialised juvenile justice as a profession until recently with the launch of a pilot PTD Programme that some are now working entirely as diversion officers which is some kind of specialisation. The fact that some children in conflict with the law who fall outside the pilot districts for the PTD Programme are dealt with using the normal justice system used for adults means that there is still worrisome lack of uniformity in the juvenile justice system in the country.

The PTD Programme, while having its challenges of limited coverage, however, presents the country with an opportunity to align its juvenile justice system with international standards on juvenile justice. The programme has all the elements of a modern and international standards compliant system, which if extended throughout the country, can easily shift the country to a modern juvenile justice system.

3.2. Main Challenges

According to Kaseke, one of the most disheartening weaknesses in the juvenile justice system is the apparent lack of appreciation of the contribution of probation officers in the disposition process.³⁹ In many instances juvenile cases are disposed of without reference to social inquiry reports. Furthermore, social inquiry reports are rarely taken seriously by judicial officers thus turning the whole exercise of preparing social inquiry reports into a ritual. The juvenile court tends to be seen primarily as a legal institution and consequently the welfare objectives are relegated to the periphery. Kurevakwesu refers to probation officers as “obscure in professional scopes”.⁴⁰

Social work in juvenile justice in Zimbabwe in the DSW tends to be more of an instrument of social control, favouring the protection of the society at the expense of the welfare of the juvenile offender. The principles of participation and the best interests of the child normally come second. The current system as argued by Kaseke is often centred around providing support to the juvenile offender to adjust to their environment, with little attention paid to the root causes; the social, political and economic factors that work against the welfare of young people.⁴¹ There seem to lack deliberate efforts at focusing on preventing juvenile crime through creating a protective environment in which children are not exposed to crime and are not pushed into criminal activity.

Juvenile justice social work in Zimbabwe faces a critical shortage of resources, top among them being human resources to the extent that DSW cannot employ adequate social workers.⁴² According to Kurevakwesu,⁴³ the child-social worker ratio in Zimbabwe at its all-time high was 1 social worker per around 50 000 children.⁴⁴ However, this has reduced to one social worker per over 14 000 children. As such the few social workers that are available are overworked and thus tend to give little time and effort to their work, including juvenile justice. This is made worse by the fact that they are somewhat poorly paid as well. Other resources such as vehicles are also not available, even in the much improved PTD Programme, such that diversion officers rely on the goodwill of the police or others for them to do their work.⁴⁵

The juvenile justice system in Zimbabwe also still lacks a comprehensive legislative and policy framework that clearly defines how it is supposed to be implemented in the country. Without a clear framework, social workers currently working in juvenile justice become confused as regards the applicable laws or policies.

While the DSW possesses a great deal of data on juvenile justice cases as noted in part 2.2. above, this information is not shared, analysed or coordinated among relevant bodies in a way that would create a stronger and more effective juvenile justice system in Zimbabwe.

39 E. Kaseke, 'Juvenile Justice in Zimbabwe: The Need for Reform', 8:1 *Journal of Social Development in Africa* (1993) 11-17, p. 14.

40 W. Kurevakwesu, 'The Social Work Profession in Zimbabwe: A Critical Approach on the Position of Social Work on Zimbabwe's Development', 3:1 *Afro Asian Journal of Social Sciences* (2017) p. 3.

41 Kaseke, *supra* note 41 p. 13.

42 B. Ruparangaand, L. Ruparanga, *supra* note 28, p. 12.

43 Kurevakwesu, *supra* note 42, p. 10.

44 A. Wyatt, R. Mupedziswa, C. Rayment, C. 'Institutional Capacity Assessment – Department of Social Services Final Report' (2010), Zimbabwe Emergency Food Security and Vulnerability Assessment.

45 Pre-trial Diversion Report of 2016, *supra* note 23.

In areas or districts where the PTD Programme is not being implemented, the options available to the court are limited as opposed to what would be available in a PTD Programme area.⁴⁶ This results in lack of uniformity in the discharge of justice for juveniles who may have committed the same offence but coming from two different districts.⁴⁷

Juvenile justice in Zimbabwe still uses corporal punishment as a form of punishment for a juvenile offender, particularly where diversion is not available or for more serious offences. Despite two High Court judgements having ruled the practice unconstitutional, the judgements have been awaiting Constitutional Court confirmation for over three years and in the meantime, the torturous, degrading and inhumane use of corporal punishment continues on child offenders.

It is still disturbing to note that juveniles, in some cases are still remanded in custody several times before their cases are finally heard. It is quite common for juvenile criminal cases to take several months before they are finally disposed of by the courts. Such a practice, which is supposed to be used as a last resort, only serves to undermine the freedom of the juvenile and is thus a violation of his/her rights.

3.3. Reform Initiatives

Top of the list of reforms in Zimbabwe for juvenile justice social work has been the pilot PTD Programme of the Ministry of Justice, Legal and Parliamentary Affairs that started in 2009 and became properly functional in five districts in 2012 with budgetary support from UNICEF and Save the Children. This was meant to cater for the socio-demographic needs and processes of juvenile delinquents. This effectively introduced an alternative that is rehabilitative, educative and restorative as opposed to the condemned punitive and retributive practices built on incarceration, detention and formal criminal trials in courts. It is hoped that this programme can now graduate from being a pilot to a fully-fledged programme throughout the country. It is further critical that the state takes ownership of this initiative and does not leave the donors and NGOs to lead it, as it can only be sustained with its inclusion into government programmes and financial planning.

Even in districts where pre-trial diversion is not being used, according to Rupanganda, in recent years, there have been changes in the system which has been increasingly becoming child-friendly through incorporating elements of restorative justice, thus gradually moving from being retributive and punitive to becoming rehabilitative.⁴⁸ The country now has Children's Courts which has largely contributed to this shift in approach to a more child friendly juvenile justice system.

There has also been the creation of the Department of Child Welfare in the Ministry of Labour and Social Welfare in 2014. The department now houses probation officers whose key role as stipulated in the *Children's Act* is to provide child welfare services to children in conflict with the law. The new approach ensures specialization by social workers in child welfare issues and is expected to bring enhanced functioning for the benefit of children.

46 Kaseke, *supra* note 41, p. 13.

47 B. Bhaiseni, 'Zimbabwe Children's Act Alignment with International and Domestic Legal Instruments: Unravelling the Gaps', 6:1 *African Journal of Social Work* (2016) p. 5.

48 B. Ruparanga and L. Ruparanga, *supra* note 28 p. 10.

The National Action Plan for Orphans and Vulnerable Children II (2012-2015) also introduced the Access to Justice for Children Programme in which the legal aid directorate in partnership with Legal Resources Foundation, a civil society organisation are mandated to provide free legal assistance to children in contact with the law.⁴⁹ The programme incorporates the justice/welfare model in assisting juvenile offenders through provision of specialist legal and psychosocial support services. Lawyers provide legal assistance while social workers give psychosocial support services for children who come in contact with the law. This is a crucial component of their work that has been incorporated to assist the juvenile in a holistic manner because the child receives both legal assistance and psychosocial support.

In addition to the above, NAP for OVC II also incorporated the case management system to the social work profession.⁵⁰ The approach seeks to employ extensive community involvement in administration and management of child welfare cases. Its benefits have spilled to the juvenile justice system as re-integration and rehabilitation of juveniles have made use of the system already and successfully.

There has also been the drafting of a new Child Justice Bill which is expected to usher in a new and advanced juvenile justice system for Zimbabwe. While the process has been taking long, the fact that the Bill is being worked on is encouraging in the juvenile justice sector. The Bill is expected to give the much needed comprehensive legal framework and guidance on juvenile justice in Zimbabwe.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, p.11.

Chapter IX The Role of Social Work in Juvenile Justice in Hong Kong

*Lee Koon-mei**

1. General Introduction of Juvenile Justice Social Work in Hong Kong

1.1. Social Work

Throughout the Second World War, Chinese voluntary associations and missionaries organized social welfare programs for locals. These efforts saw the birth of many Non-Governmental Organisations (NGOs). The first real involvement of the Colonial Government in social service provision began in 1947, when the Social Welfare Office was established. The main activities of the Social Welfare Office were providing public assistance, child welfare, probation, training schemes for workers, and NGO liaising. In 1958, the Social Welfare Office became an independent government department called the Social Welfare Department (SWD).¹

In the 1960s, as the economy improved and the social situation in Hong Kong stabilized, there was a move to professionalize social services.² The Government commissioned reports on the future of social services, the training of social workers, and youth work service from overseas experts. The findings of these reports led to the very first government white paper on social welfare in 1965³ - 'Aims and Policy of Social Welfare in Hong Kong'.

Social worker training originally began under the sponsorship of the Social Welfare Office, and the University of Hong Kong (HKU) introduced a two-year social study course and a postgraduate diploma course in 1950. This qualified as the earliest social work training program in Hong Kong. Training programs began to expand during the 1960s. In 1961, the Social Work Training Fund was established, and in 1962, a training unit under the newly established SWD was set up. By the 1960s, there were four post-secondary colleges offering social work as a major. In 1966, the first batch of degree holders in social work graduated from the Chinese University of Hong Kong (CUHK). In 1967, HKU established the Department of Social Work, with the first batch of graduates graduating in 1970. This marked the beginning of a complete social work training programme at the university level in Hong Kong.⁴

In June 1997, the *Social Workers Registration Ordinance* was enacted, making it compulsory for social workers to register in the same way as medical doctors. Individuals holding social work qualifications but unregistered, could no longer professionally be

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1 G. T. Ng, 'The Context of Social Welfare in Hong Kong: History, Economics, and Politics', *Singapore Association of Social Workers*,

<www.social-dimension.com/2013/08/the-context-of-social-welfare-in-hong-kong-historyeconomics-and-politics.html> visited on 27 April 2019; N. Peter, *A History of Youth Work in Hong Kong*, (Youth Outreach, 2008).

2 *Ibid.*

3 Hong Kong Government, *Aims and Policy of Social Welfare in Hong Kong*, (Hong Kong Government Printer, 1965).

4 W.H.F. Lai, & K.T.T Chan, 'Social Work in Hong Kong From Professionalisation to "Re-professionalisation"', 2:2 *China Journal of Social Work*, (2009) pp.95-108.

recognized as a 'social worker'. The Social Worker Registration Board (the Board), as a statutory body established under the *Social Workers Registration Ordinance*, was established on 16 January 1998. The Board is financially independent, and its mandate strictly governed by the *Ordinance*. The *Ordinance* provides a regulatory system to monitor the quality of social workers, and ultimately protects the interests of service-users and the general public. According to the Social Workers Registration Board, there are 23,174 registered social workers in Hong Kong as of 23 April 2019.

1.2. *Juvenile Justice System*

Hailing from its pre-1997 colonial past, Hong Kong follows the common law in its legislation and judicial structure concerning juvenile justice. Therefore, the Hong Kong legal system was a British model directly transplanted into a Chinese setting. Before the 1930s, juvenile offenders were treated as adult criminals.⁵

In 1933, the first probation officer was appointed. Probation services were overseen by the police force until 1939, when the Prisons Department (renamed as 'Correctional Services Department' in 1982) took over the responsibility. In 1949, after the Second World War, the Social Welfare Office was established. In 1950, Mr D. Peterson, a trained social worker from Australia, was appointed as the first Principal Probation Officer to head the Probation Section newly developed under the Social Welfare Office.⁶ With the reform, juvenile justice in Hong Kong gradually shifted from a punitive approach to a rehabilitative approach.

In 1933, the first version of the *Juvenile Offenders Ordinance* was enacted. Offenders under 16 years old were to be put into Juvenile Court. According to the *Ordinance*, careful separation from adult criminals was required during the detention or remand of juveniles. Under the *Ordinance*, in order to enable the juvenile court to deal with the case according to the best interest of the child or young person, the court had the responsibility to obtain information about the juvenile offender's general conduct, home surroundings, school record, and medical history before deciding on how to deal with him/her.

In 1951, the *Protection of Women and Juveniles Ordinance* was introduced. In 1956, the passing of the *Probation of Offenders Ordinance* extended the possibility of probation to all offenders, irrespective of age or sex. Reforms continued into the early 1960s, including some spearheaded by the Prisons Department. In 1960, most young prisoners of age 14 to 21 were sent to Chi Ma Wan open prison where they were separated from adult prisoners. Statutory aftercare services for the juvenile offenders were also strengthened.⁷

The police force also played an important role in the juvenile justice system. The Superintendent Discretionary Scheme was first introduced in 1962. In 1963, a Juvenile Liaison Section was set up in each police district. By the mid-1960s, a rehabilitative juvenile justice system was already well-developed in Hong Kong.

5 G.B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press, 1964).

6 I.T. Heath, 'The Sentencing of Juveniles in Hong Kong', *Hong Kong Law Journal*, 17:2 (1987) pp.193-198.

7 T. Tam, *Juvenile Delinquency Policy in Hong Kong: The Role of Outreaching Social Workers* (University of Surrey, Britain 1984).

In Hong Kong, the minimum age of criminal responsibility was set at seven in 1933, and remained the same until July 2003. A child below the minimum age of criminal responsibility was presumed to be incapable of committing crimes. The minimum age of criminal responsibility now is ten. Those ages ten to 15 who are convicted of an offence are termed 'juvenile offenders'. Convicts ages 16-20 are 'young offenders', and those 21- 25 are 'young adult offenders'.

Merely transplanting the British common law system into Hong Kong proved to be inadequate. Riots in 1966 and 1967 forced the Government to face youth problems seriously. To divert youth from rioting, the Government launched large-scale youth activities and summer programs, such as outdoor activities, uniform groups, etc. Different government departments worked together, and the Recreation and Sport Service Department was established. The Government hoped that young people's time could be better occupied, and they be given a better energy outlet when participating in organized youth activities, hence decreasing the chances of them engaging anti-social acts.

Apart from launching traditional types of youth social programmes, the Government also conducted research on finding solutions to juvenile delinquency. In 1973, the Government commissioned the Social Research Centre of CUHK to conduct a study of the social causes of violent crimes committed by juvenile offenders in Hong Kong. The report was released in 1975, and found that juvenile crime was due to multiple factors, including personality problems, irresponsible parenthood, undesirable peer influence, and low academic achievement.⁸ The report recommended establishing more personalized social work services for young people, including more youth outreach social work, school social work, and family life education. The recommendations were accepted in 1977, and they became the backbone of social services for young people afterwards. Most of those recommended social services were operated by NGOs, and funded by the Government. The juvenile justice system from 1980s onwards has henceforth remained more or less the same since then, with general increase in scale and manpower.⁹

The juvenile justice system still carries out rehabilitative functions and is oriented towards personalized treatment. This was also reflected in the Report on Community Service Orders. The courts have increasingly come to consider the offender as an individual who has a need for assistance, deterrence and punishment.¹⁰

This principle of personalization in sentencing was further strengthened in April 1987, when the Young Offender Assessment Panel was established as a result of the recommendation made by the Standing Committee on Young Offenders under the Fight Crime Committee. The Panel consists of representatives from the SWD and Correctional Services Department (CSD). It was set up to co-ordinate the two departments in giving advice to juvenile court judges to accurately assess offenders' individual needs and deliver sentences in their best interest. The personalization approach also applies to crime prevention - the belief that juvenile delinquency can be prevented by an individual, psycho-social-level of intervention.

8 A. Ng, *Social Causes of Violent Crime Among Young Offenders in Hong Kong*, (The Chinese University of Hong Kong, 1975).

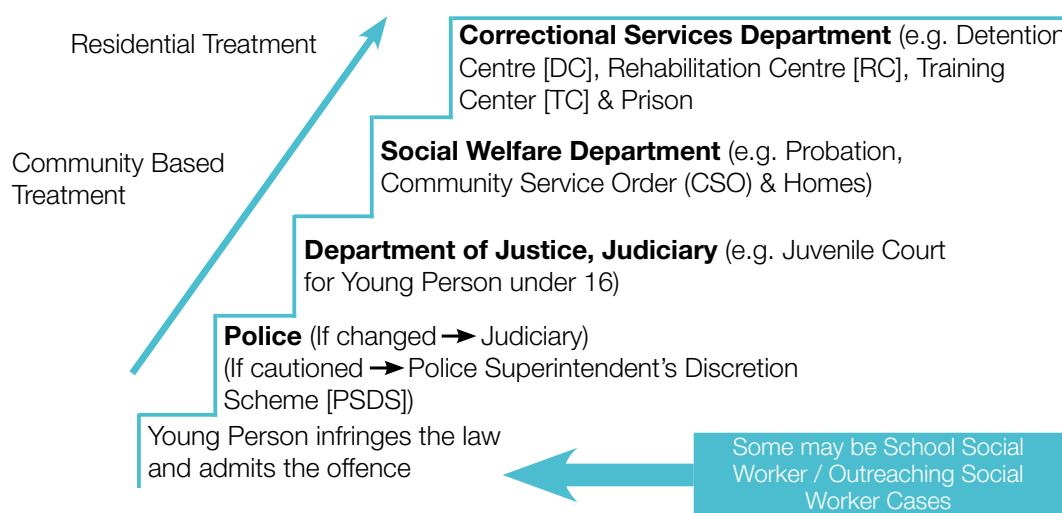
9 Heath, *supra* note 7.

10 Hong Kong Government, *Report on Community Service Orders (Topic 7)* (The Law Reform Committee of Hong Kong, 1983).

Another overriding principle in the juvenile justice system is diversion. This function is carried out by two major mechanisms already built in the justice process. The first one is the discretionary power possessed by the police to opt to not prosecute young offenders. The second is probation. Offenders sentenced to open supervision by probation officers (PO) are naturally diverted away from custody. Other milder sentences having the same effect include discharge, fines, suspended sentences., etc.

In 1986, a third mechanism of diversion was established - the Community Service Order (CSO), modelled after British practice. The CSO is a community-based sentencing option pursuant to the *Community Service Orders Ordinance, Cap 378*. A court may give a CSO requiring a person of or over 14 years of age and convicted of an offence(s) punishable with imprisonment to perform unpaid work for a number of hours (not exceeding 240 hours within a period of 12 months) under the supervision of a PO, who shall also provide counselling and guidance to the offender.¹¹

Figure 1: Criminalisation Process



The process of becoming a juvenile or young offender involves the following: a young person commits acts suspected of being illegal, the acts are reported, the suspect is arrested by police, the young person admits or denies guilt, the police prosecutes on the basis of the evidence, and court proceedings lead to conviction and sentencing. When young person is convicted crimes in Hong Kong, they are handled by the Hong Kong Police Force, the Department of Justice, Hong Kong's courts and its Judiciary, the SWD, and the CSD.

1.3. Juvenile Justice Social Work

To cover a wider scope of the juvenile justice system, the below figure includes crime prevention services, Superintendent Discretion, Community-based Treatment Probation, and CSOs to Residential Treatment.

¹¹ Hong Kong Ordinances, *Community Service Orders Ordinance CAP 378*, Part 2, Section 4

Figure 2: Social Workers Roles in Juvenile Justice Process

Crime Prevention	Minor	Offences	Repeated Offences	Serious Offences
Integratd Children and Youth Services Centres (ICYSCs)	Police Superintendent's Discretion Scheme	Fine Bound Over	Probation Home (SWD Social Worker)	Detention Centre Training Centre
District Youth Outreaching Social Work Service	Juvenile Protection Section (Police)	Care & Protection Order (SWD Family Service Social Worker)	Reformatory School (SWD Social Worker)	Rehabilitation Centre Youth Prison
Overnight Outreaching Service for Young Night Drifters	Community Support Service Scheme (operated by NGO Social Worker)	Probation Order (SWD Probation Officer) Community Service Order (SWD Probation Officer)		* All of the above are taken care by CSD officers and they are equipped with social work knowledge.
School Social Work Service				

As mentioned above, a trained social worker from Australia was appointed as the first Principal PO in Hong Kong in 1950. This signified an entry point for social work into Hong Kong's juvenile justice system. At present, all POs serve as Assistant Social Work Officers (or more senior positions) under the SWD, and are university-level social work graduates. They are trained with social work's values, principles, and intervention skills. However, 'probation' is not an independent subject taught in any university.

The POs have to perform statutory duties, and they must be trained before taking up any formal PO's duty. If a social work student is interested in becoming a PO, he/she has to be firstly employed by the SWD as a civil servant social worker. By then, when he/she is posted to the probation service unit, he/she will undergo induction training. The training will last about 30 weeks and the content is specific, comprehensive and highly reflective of respective ordinances, court procedures, and judicial understanding. On top of that, the training also includes the values and duties of probation service, needs, characteristics and techniques required when working with different groups of probationers, as well as the skills and knowledge in writing Social Enquiry Reports, etc.

The SWD has trained 109 POs between 2013-2018. The number of juvenile probationers (under 16 years old) from 2013-18 was 2,140. The number of juvenile probationers admitted to probation homes in the past five years from 2013-2018 was 199.¹²

New social work graduates can enter any discipline within social work youth services. They could be employed as an NGO worker, as a school social worker, a youth outreaching worker, a youth social worker, or a family social worker, etc. The university-level social work training is generic, and the legal knowledge of the typical social work student is relatively basic and general. One has to conduct further study on his/her own accord to strengthen his/her judicial and legal knowledge.

In Hong Kong, a wide range of welfare services for victims of child abuse are provided by the SWD, as well as subsidized and non-subsidized NGOs. Family and Child Protection

¹² Social Welfare Department, *email Reply by @1823 on 17 November 2018* (Social Welfare Department, 2018a).

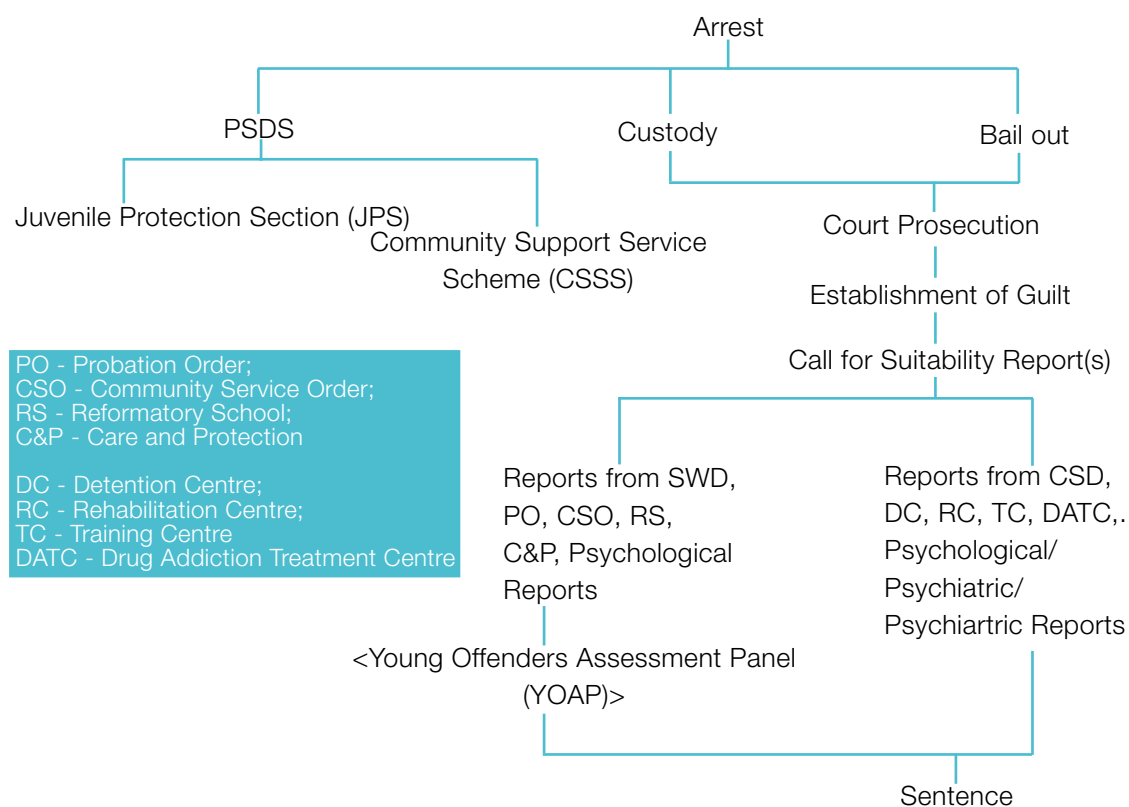
Service Units (FCPSUs) of the SWD are specialized units managed by experienced social workers. They provide a coordinated package of one-stop services including outreach, social investigation, crisis intervention, statutory protection, and intensive individual and group treatments to victims of child abuse and their family members. Referrals for various other services such as legal aid, school placement, residential placement and so on would be made whenever necessary.¹³

2. The Role of Social Work in Juvenile Justice in Hong Kong

2.1. Legal Basis for Juvenile Justice Social Work

The SWD and the CSD are the two major statutory bodies providing rehabilitation programmes for juvenile offenders between ages ten to 20. The Detention Centre also provides rehabilitation programmes for male offenders ages 21 to 24.

Figure 3: Juvenile Justice Process



According to the *Criminal Procedure Ordinance Cap 221*, no court shall sentence a person under 21 years of age to imprisonment unless it is of the opinion that no other method of dealing him/her is appropriate.¹⁴ To determine which programme is most suitable for the juvenile offender, the court obtains and considers information which is relevant to the character of the juvenile offender and his or her physical and mental condition.

¹³ Social Welfare Department, 'Family and Child Protective Services', *Social Welfare Department, 2018b*, <www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_listofserv/id_familyandc/> visited on 15 December 2018.

¹⁴ Hong Kong Ordinances, CAP 221, Criminal Procedure Ordinance, Section Sections 109A(1)

The overall objective of the SWD's services for offenders is to help them reintegrate into the community as law-abiding citizens. The SWD uses social work approaches which include community-based statutory supervision and guidance for offenders through probation service, the CSO scheme, residential training and aftercare services. The SWD service provisions are in line with the standards and requirements under statutes and relevant international covenants. It is hoped that through proper supervision, counselling, academic, prevocational and social skills training, the offenders can be equipped with the necessary skills to reintegrate into society.¹⁵

The SWD administers rehabilitation programmes for young offenders through the:

1. *Juvenile Offenders Ordinance*, Chapter 226 (enacted in 1933)
2. *Probation of Offenders Ordinance*, Chapter 298 (enacted in 1956)
3. *Community Service Order Ordinance*, Chapter 378 (enacted in 1984)
4. *Reformatory Schools Ordinance*, Chapter 225 (enacted in 1933)
5. *Protection of Children and Juveniles Ordinance*, Chapter 213 (enacted in 1933)
6. *Immigration Ordinance*, Sec(1) of Chapter 115 (enacted in 1972)

The above Ordinances were enacted at different times and related services were developed and established according to specific contexts then. Under the above Ordinances, the SWD is responsible for: discharging statutory responsibility, preparing social enquiry reports, providing probation services; administering CSOs; providing community support services, remand home services, residential training services, and assisting magistrates through the Young Offender Assessment Panel (YOAP).

To streamline and integrate its service delivery model, the SWD completed an integration review of the community-based services for offenders, including probation services, the CSO Scheme, and the Community Support Service Scheme. The new integrated model took effect in 2012. After the review, a holistic one-stop service was proven to better meet the needs of offenders.¹⁶

The mission of the CSD is to protect the public and prevent crime by providing secure, safe, humane, decent and healthy environment for persons in custody, creating rehabilitation opportunities in collaboration with community stakeholders, and promoting law-abiding and inclusive values through community education.¹⁷ Although there is no pre-requirement that CSD officers have to be social work graduates, the CSD has liaised with Social Work Departments of local universities to provide social work practice and skills training to CSD staff.

Apart from placing emphasis on 'safe custody' and 'rehabilitation', the CSD is committed to working jointly with different community stakeholders to implement a wide range of community education initiatives to promote law-abiding values and prevent crime. The CSD administers rehabilitation programmes for young offenders under the:

1. *Detention Centres Ordinance*, Cap. 239 (enacted in 1972)
2. *Training Centres Ordinance*, Cap. 280 (enacted in 1953)

¹⁵ Social Welfare Department, 'Services for Offenders', SWD, 2018c, <https://www.swd.gov.hk/en/index/site_pubsvc/page_offdr/> visited on 15 December 2018.

¹⁶ *Ibid.*, *supra* note 14.

¹⁷ Correctional Services Department, 'Mission', CSD, <https://www.csd.gov.hk/english/about/about_vmv/abt_vis.html>, 157 visited on 15 December 2018.

3. *Prisons Ordinance*, Cap. 234 (enacted in 1954)
4. *Drug Addiction Treatment Centres Ordinance*, Cap. 244 (enacted in 1969)
5. *Rehabilitation Centres Ordinance*, Cap. 567 (enacted in 2001)

In 1994, Hong Kong adopted the *Convention on the Rights of the Child*. In 1991, China approved the *Convention*, and the *Convention* continues to apply to Hong Kong after the handover of sovereignty in 1997. At present, there are a number of laws in Hong Kong protecting children's rights. The Ordinances mentioned above are closely related to the juvenile justice process.

The *Convention* guarantees the protection of children from exploitation, abuse or other adverse effects, while ensuring the rights of children to participate in family, cultural and social life.¹⁸ As mentioned, the main goal of the juvenile justice system is to help the individual juvenile reintegrate into society through social work and rehabilitation approaches. Children and juveniles' rights are widely protected by laws and regulations in Hong Kong.

2.2. *The Role of Social Work in Juvenile Justice: Law and Practice*

Hong Kong is generally considered to be relatively understanding and lenient when dealing with young offenders. The juvenile justice system takes offenders' welfare needs into account, and measures are highly treatment-oriented. In assessing crimes, the system weighs not only on judicial factors but also on the individual (including social, emotional, and educational) needs of young offenders. Interventions are based on a holistic integrated, inter-disciplinary, and inter-agency cooperation approach.

Without intervention, the severity of crimes that delinquents commit may accelerate, and the young offenders might grow into adult criminals. The organisations involved shift from informal to formal services, with incarceration in CSD institutions as a result.¹⁹

There are three juvenile delinquency control strategies in Hong Kong. They are: the Positive Youth and Preventive Strategy, the Whole-School Strategy, and the Statutory Criminal Justice Strategy. The former two strategies are framed as informal prevention services for youngsters. Those services are provided by NGOs and funded by the SWD. There are no specific Ordinances that govern those youth services. Social workers deliver services according to their professional values, practices, and skills. All registered social workers are governed under the *Social Workers Registration Ordinance*, where their professional conduct is regulated. The following figures give an overview of youth services being provided by NGOs.

18 Constitutional and Mainland Affairs Bureau, 'Convention on the Rights of the Child', March 2009.

19 F. W.L. Lee, 'Services for Young Offenders: The Way Ahead. In Children and Youth Division, HKCSS (ed.), *Youth Work in the 21st Century- Challenge, Change and Development*', 3 *Resource Book on Children and Youth Services*, (1996) pp. 147-158.

Figure 4: Figures of Social Work Services for Young People Operated by NGOs (2015-2017)²⁰

	No. of Service Units		No. of #Members / Cases	
	2015-2016	2016-2017	2015-2016	2016-2017
Children Centre	5	5	#6,260	#7,129
Youth Centre	4	4	#4,005	#3,963
Children & Youth Centre	14	14	#21,588	#22,420
Integrated Children and Youth Services Centre (ICYSCs)	138	138	#296,369	#315,779
Youth Outreaching Team (YOT)	19	19	6,577	6,584
Overnight Outreaching Service for Young Night Drifters (YND)	18	18	16,938 (no. of young night drifters served)	17,083 (no. of young night drifters served)
Community Support Service Scheme (CSSS)	5	5	2,473	2,299
Counselling Centre for Psychotropic Substance Abusers (CCPSA)	11	11	2,151	2,230
Residential Service for Young Probationers	1	1	41	45
School Social Work Service	465 (no. of schools covered)	465 (no. of schools covered)	15,499	15,665

The Positive Youth and Preventive Strategy - The Positive Youth and Preventive Strategy's core value is early identification and prevention of juvenile delinquency by developing children and youth through personality development and character training. An integrated and holistic approach is employed to strengthen the support for children, youth, and youth-at-risk.

Integrated Children and Youth Services Centres (ICYSCs) aim at providing one-stop centre-based social work, school social work, and community outreach services to young people, and are administered by a team of social workers under the holistic management of one supervisor. The SWD sub-vents NGOs to operate ICYSCs, employing personalized and community approaches to meet the various needs of children and youth ages 6-24. ICYSCs provide professional social work intervention, including preventive, developmental, supportive, and remedial services when working with children and youth, their significant others, and the community. Guidance counselling, supportive programmes, developmental and socialization programmes, and community engagement programmes are provided by the ICYSCs.²¹

20 Social Welfare Department, 'Social Welfare Services in Figures, (2017) pp. 11-12, <<https://www.swd.gov.hk/storage/asset/section/296/en/swdfig2017.pdf>> visited on 15 December 2018.

21 Social Welfare Department, 'Services for Young People', Social Welfare Department, 2018d, <www.swd.gov.hk/en/index/site_pubsvc/page_young/> visited on 15 December 2018.

19 District Youth Outreaching Social Work Teams are operated by NGOs and funded by the SWD. Social workers seek to reach out and provide counselling services and guidance to young people ages 6-24 who do not join conventional social or youth activities and are vulnerable to negative societal influences.²²

To address the needs of young night drifters (YNDs) in a more comprehensive manner, the Government has (since 2001) extended service hours and the mandate of 18 ICYSCs to providing overnight outreach services for YNDs on a territory-wide basis. The 18 designated ICYSCs are provided with additional manpower and recurrent (as well as non-recurrent) funding to purchase seven-seater vans and mobile phones for swift and responsive service needs. Related back-up services include all-night drop-in centres, crisis residential services, and late-night programmes at indoor recreation centres.²³

The Community Support Service Scheme (CSSS) aims at helping children and youth under the Police Superintendent's Discretion Scheme (PSDS) reintegrate into the mainstream education or work force (discussed below).²⁴

There are 11 Counselling Centres for Psychotropic Substance Abusers (CCPSA) under the subvention of the SWD that aims at providing counselling and assistance to habitual, occasional, and potential psychotropic substance abusers, as well as to youth at risk. The aim is to assist them to abstain from psychotropic substance abuse and develop a healthy life-style. Services provided by social workers include counselling, preventive education programmes, professional training, and on-site medical support services.²⁵

The Whole School Strategy - Before 2000, NGOs provided social work services to secondary schools to identify and help students handle problems in their studies, social relationships, and emotional well-being, etc. From the 2019-2020 school year onwards, the number of school social workers for each secondary school will increase to two, with a concomitant increase in supervisory support. More and more NGOs use the "Whole-School Strategy" to assist schools in dealing with school crises, and help build a harmonious school culture. School social workers play multi-functional roles in their stationing schools. Apart from providing counselling, group work and school-wide programmes, school social workers also work with parents, psychologists, the police, and governmental bodies to provide training to teachers, organize after-school activities and life education programmes, as well as train students and sit in crisis management teams. With proven impact, the school social work service has been expanded to primary schools and kindergartens.

The Statutory Criminal Justice Strategy - An alternative to prosecution: the Police Superintendent Discretion Scheme (PSDS) and subsequent referrals.

The PSDS focuses on the rehabilitation of juveniles whose offences are minor in nature, and should be dealt with through corrective supervision rather than legal sanction. When a juvenile, from age ten to under 18, has committed an offence and there is sufficient

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

evidence to lay a charge against him/her, the police may prosecute the juvenile in court or administer a caution under the PSDS.²⁶

Juveniles may be put under police supervision for a period of two years, or until the juvenile reaches the age of 18, whichever is earlier. Fingerprints are taken from cautioned offenders, and a record of the cautioning is made. However, the police will destroy these records when the offender turns 18 or after two years, whichever comes first.²⁷

According to the information provided by the Fight Crime Committee Report No. 32-37, a total of 1,987 juveniles in the year of 2011, and a total of 579 juveniles in the year of 2017 were under the Superintendent's discretion. The percentage of arrested youth under discretion was 37.1 per cent and 36.8 per cent respectively.

Figure 5: Juveniles (Ten to Under 18 Years Old) Arrested for Crime and Under the PSDS, 2011-2017 (Arrested = Released + Prosecuted + Cautioned)²⁸

	Youths (Ten to under 20 years old) Arrested for Crime	Juveniles (Ten to under 18 years old) Arrested for Crime	Under the PSDS	Per Cent of Arrested Youth Under PSDS
2011	7,693	5,355	1,987	37.1%
2012	6,522	4,198	1,453	34.6%
2013	5,397	3,413	1,059	31%
2014	4,324	2,534	834	32.9%
2015	4,135	2,346	757	32.3%
2016	3,366	1,883	603	32%
2017	2,732	1,575	579	36.8%

A juvenile offender is regarded as a recidivist if he/she is arrested again for a crime within two years from the date of caution, or before he/she reaches 18 years of age, whichever occurs first. The recidivism rate for juvenile offenders who were issued a caution was 9.1 per cent (69 juvenile offenders) in 2015, compared with 6.8 per cent (57 juvenile offenders) in 2014, 9.3 per cent (98 juvenile offenders) in 2013, 15.6 per cent (226 juvenile offenders) in 2012, and 12.6 per cent (251 juvenile offenders) in 2011. Due to the two-year rule, the recidivism rate for juvenile offenders arrested in 2016 and thereafter is not yet collected.²⁹

²⁶ Fight Crime Committee, *Report No. 37* (Hong Kong Government Printer, 2017).

²⁷ *Ibid.*

²⁸ Fight Crime Committee, *Report No. 32-37* (2012 -2017).

²⁹ *Ibid.*

Figure 6: PSDS Juveniles (Ten to Under 18 Years Old) Recidivism Rate, 2011-2015³⁰

	Juveniles (Ten to under 18 years old) Arrested for Crime	Under PSDS	Per Cent of Arrested Youth Under PSDS	Per Cent of Recidivism (no. of juveniles)
2011	5,355	1,987	37.1%	12.6% (251)
2012	4,198	1,453	34.6%	15.6% (226)
2013	3,413	1,059	31%	9.3%(98)
2014	2,534	834	32.9%	6.8%(57)
2015	2,346	757	32.3%	9.1%(98)

After administering the caution, the Police Superintendent will assess if any referrals are required. These may take the form of post-caution visits under the Police Juvenile Protection Section and/or referral to the SWD, the Education and Manpower Bureau (EMB) and/or NGOs running the Community Support Service Scheme, as appropriate. Parental consent is mandatory for referrals, and the offender may be referred to more than one agency.³¹

Police Supervision: by Juvenile Protection Section (JPS) - The cautioned offender's case is referred to the JPS for follow-up work. The main purpose of the follow-up work, which consists of home visits, is to ensure that the young person does not lapse back into crime or be associated with characters judged by the police to be undesirable. The officer involved determines the frequency of home visits. They typically continue up to a maximum of two years from the date of caution, or until the offender's 18th birthday, whichever comes first.³²

The Community Support Service Scheme (CSSS) - If the juvenile is a school drop-out, is unemployed, or not participating in any youth activities and is likely to benefit from such participation, a referral to the CSSS may be made. As mentioned earlier, the CSSS is run by NGOs under the SWD's subvention. The scheme aims at helping juveniles cautioned under the PSDS to improve their interpersonal relationships, develop their sense of social responsibility, reintegrate themselves into mainstream education or the workforce, and hence reduce their likelihood of re-offending.³³ Most of the time a cautioned youth would be under both JPS and the CSSS. The service content includes individual and family counselling, therapy groups, skills training, educational groups, adventure activities, as well as recreational and community services. There are five NGOs sub-vented by the SWD to operate CSSS teams, which are attached to five existing ICYSCs.³⁴

Family Conference (FC) - For PSDS cases, besides the CSSS, the SWD may conduct a

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ SWD, *supra* note 15.

FC for a juvenile ages ten-18. This happens when the SWD assesses that the juvenile's problems or needs require the intervention of three parties or more, or where the juvenile has been cautioned under the PSDS twice or more. The FC aims to bring together the cautioned juvenile, his/her family members, and professionals from different disciplines to assess his/her needs and devise comprehensive follow-up action plans. The key social worker appointed by the FC will follow up with action plans endorsed at the meeting. Follow-up actions include: making the necessary referral(s) for the juvenile and his/her family to relevant service units, and performing post-conference liaison with JPS and other stakeholders concerning the implementation of the action plan. The Education Bureau is also represented at the FC to advise on the schooling and school adjustment needs of the juvenile.³⁵

Bind-Over - Although less commonly used for offending juveniles, the bind-over procedure is a possible form of preventive justice which allows the juvenile defendant to avoid conviction, but requires him/her to be recognized as having good behaviour and/or be out of trouble for one year. As a follow-up to bind-over cases involving juveniles, referrals may be made to the SWD/NGOs where appropriate. Social workers will then see to the needs of the juveniles and their families, and provide follow up services accordingly. The profession of social work is widely recognized in Hong Kong, and whenever a juvenile needs assistance, other professional disciplines would prefer to refer juveniles and their families to social workers for assistance.

Probation Services - Where statutory intervention for offenders provided by the SWD is necessary, options such as Care or Protection Orders may be exercised. Probation Services and the juvenile court may, under section 34 of the *Protection of Children and Juveniles Ordinance (Cap.213)*, appoint the Director of Social Welfare to be the legal guardian of a child/juvenile, commit the child/juvenile to the care of any person who is willing to undertake the care of him/her (or of any institution which is so willing), order his/her parent or guardian to exercise proper care and guardianship, or make an order placing him/her for a specified period (not exceeding three years) under the supervision of a person appointed for the purpose of the court.³⁶

³⁵ *Ibid.*

³⁶ *Ibid.*

Figure 7: Figures of the SWD's Services for Offenders (2015-2017)³⁷

	No. of Service Units		No. of Cases	
	2015-16	2016-17	2015-16	2016-17
Probation Service	8	8	1,781	1,797
Social Enquiries Report (Probation Service)	8	8	4,181	4,116
Community Service Orders (CSO) Scheme	8	8	926	974
Social Enquiries Report (CSO Scheme)	8	8	2,715	2,619
Probation Home	1	1	29	39
Remand	1	1	20	13
Reformatory School	1	1	13	18
Aftercare Service	1	1	9	9

*The figure includes all age of offenders.

Probation Services is a community-based programme whereby, in accordance with the *Probation of Offenders Ordinance (Cap.298)*, an offender is placed under statutory supervision of a probation officer for a period of one to three years. Probation is a sentencing option for any person ages ten or above. Offenders who have attained the age of 14 could also be dealt with by the *Reformatory School Ordinance*. The ultimate goal is to assist offenders to reintegrate into the community as law-abiding citizens. Should a probationer perform unsatisfactorily, and is found to be no longer suitable for probation supervision, the court may discharge the Probation Order and re-sentence him/her for the original offence.³⁸

Where the social work approach is adopted, all probation officers are trained and are registered social workers, and must also go through the gazetting process. Their roles are to advise, assist, and mentor probationers. Regular interviews, home or workplace visits, and mobilisation of community resources, are part of the social work approach. Depending upon need, arrangements for pre-vocational and social skills training, as well as psychological services, are provided.³⁹

The Community Service Orders (CSO) Scheme - The CSO Scheme may also be considered by the court. These services aim at helping juveniles through counselling, supervision and participation in social services for the community. CSOs are another community-based sentencing option that the courts can pass down to offenders ages 14 or above. It is a sentencing option for offences punishable by imprisonment, and is modelled after British practice. CSOs are supervised by probation officers. They are regarded as a sentencing option with rehabilitative and reparative aims. Offenders under CSOs have to perform unpaid community work of not more than 240 hours within

³⁷ Social Welfare Services in Figures, 2017 Edition, SWD.

³⁸ SWD, *supra* note 15.

³⁹ *Ibid.*

12 months. The supervising officer has both statutory and administrative tasks. The statutory tasks include preparing social enquiry reports, arranging work placements, and supervision. The administrative tasks include liaising with work-providing agencies, and supervising part-time site supervisors. The work assigned in a CSO context can be either tasks or services.⁴⁰

Residential Treatment - Figure 8: Different Types of Residential Treatments for Juvenile Offenders

Options	Age	Duration	Responsible Department
Probation Home	10-15	Max. 12 months	SWD
Reformatory School	10-15	12-36 months	SWD
Training Centre (TC)	14-20	6-36 months	CSD
Detention Centre (DC) (for male only)	14-20 21-24	1-6 months 3-12 months	CSD
Rehabilitation Centre (RC)	14-20	3-9 months	CSD
Drug Addiction Treatment Centre (DATC)	14-20	2-12 months	CSD
Youth Prison (YP)	14-20	Determined by Court	CSD

Correctional / Residential Homes: The Tuen Mun Children and Juvenile Home - If the court considers custodial arrangements appropriate, a host of services provided by the SWD and the CSD are available to cater to offending juveniles' different needs.

Residential services hosting juvenile offenders are another sentencing option, and are generally regarded as a last resort for sentencing. The completion of the Tuen Mun Children and Juvenile Home (TMCJH), with a capacity of 388, allowed all six institutions to relocate to this gazette home. It serves as a place of refuge, a remand home, an approved institution ('probation home'), and a reformatory school. 'Probation home' is a short-term correctional treatment for juveniles ages ten to 15 under a probation order of less than one year. Reformatory schools are for repeated juvenile offenders ages ten to 15 for long-term treatment (one to three years).⁴¹

The TMCJH provides temporary custody and residential training for children, juveniles and young offenders in accordance with the statutory requirements of the:

1. Protection of Children and Juveniles Ordinance (Chapter 213) (a place of refuge)
2. Immigration Ordinance (Chapter 115)
3. Child Abduction and Custody Ordinance (Chapter 512)
4. Juvenile Offenders Ordinance (Chapter 226) (a remand home)
5. Probation of Offenders Ordinance (Chapter 298) (an approved institution - 'probation home')
6. Reformatory Schools Ordinance (Chapter 225) (a reformatory school)

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

The services include education and vocational training, individual counselling and group work services, community connections, recreational activities, guardian visits, family work, providing a leave of absence, and medical care.⁴²

CSD Residential Treatment - Although CSD officers are not required to be social workers, they are recommended to be equipped with social work knowledge for their rehabilitation work. The handling of young offenders would not be completed unless the work and contribution of CSD officers are taken into account. Three major residential centres: Training Centres (TC), Detention Centres (DC) and Rehabilitation Centres (RC) will be discussed below.

The CSD aims to correct the delinquent behaviour of young offenders through a series of programmes, including education, vocational training, and counselling. These programmes aim to help young offenders develop socially-acceptable behaviour, improve their interpersonal skills, strengthen their confidence and ability in coping with stress and difficulties arising from their reintegration into society, and thus increase the likelihood of them finding suitable employment after their release.

Figure 9: The Number of Young Inmates in TC, DC, and RC (2011-2015)⁴³

Year	Training Centre Inmates	Detention Centre Inmates	Rehabilitation Centre Inmates
2011	186	73	127
2012	184	59	104
2013	200	53	105
2014	180	60	74
2015	136	52	52

Training Centres (TC) - The operation of TCs are governed by the *Training Centre Ordinance (Cap. 280)*. The objective of the TC programme is to provide reformatory training to young offenders ages 14 to 21. The training period for inmates is between six to 36 months, the average being 18 months. There is a three-grade system, from beginner to advanced. The inmates in a TC are divided into 'A' and 'B' groups for different activities, including vocational training and educational classes.⁴⁴

In order to facilitate inmates' rehabilitation and reintegration into the community and to encourage them to lead law-abiding lives after their release, aftercare services are provided. The principle of 'thorough-care' is evident in the aftercare services provided by a TC. These services include in-centre activities such as individual and group counselling, familiarisation visits, parent programmes, birthday parties, and reintegration programmes for advance-grade inmates.⁴⁵

After discharge, an inmate is subject to statutory supervision for three years, with a recall mechanism. If an inmate breaches supervision requirements, the commissioner may issue a recall order for up to six months. The success rates of the TC programme

⁴² *Ibid.*

⁴³ CSD, <www.csd.gov.hk/english/facility/facility_stat/chartdata.html> visited on 18 December 2018.

⁴⁴ T.W. Lo et al., *Research on the Effectiveness of Rehabilitation Programmes for Young Offenders: Full Report* (City University of Hong Kong, 1997)

⁴⁵ *Ibid.*

within the supervision period between 2016-2018 are 74.2 per cent, 77.8 per cent and 79.2 per cent respectively.⁴⁶

Detention Centre (DC) - The DC's operation is governed by the *Detention Centre Ordinance (Cap. 239)*. The only DC in Hong Kong is for males only, a model transplanted from Britain. It was developed firstly for offenders between 14- 20. The *Detention Centre Ordinance* was amended in late 1976 to cover offenders up to age 24. The young adults section of the *Ordinance* was put into operation a year later.⁴⁷

DC emphasizes strict discipline and hard work. It implements the three S's: Short, Sharp, and Shock. Discipline under detention for a brief period is intended to deliver a sharp shock to offenders. Sentences to the DC are not pre-determined, and release depends on performance. Discharged detainees will be given a year of aftercare supervision. The commissioner can recall a former detainee to the DC for up to three months if he breaches rules during the supervision period. The success rates of the DC programme within the supervision period between 2016- 2018 are 97.8 per cent, 94.1 per cent and 100 per cent respectively.⁴⁸

Rehabilitation Centres (RC) - *The Rehabilitation Centre Ordinance (Cap. 567)* governs the operation of RCs. In 1996, the Standing Committee of Young Offenders of the Fight Crime Committee of Hong Kong commissioned the City University of Hong Kong (CityU) to study the effectiveness of rehabilitation programmes for young offenders operated by the CSD and the SWD. A year later, the study recommended a short-term residential training that would be longer than DC stays but shorter than TC stays. Hence, the RCs were introduced to widen the range of sentencing options available to the courts in dealing with young offenders ages between 14-20. Unlike other British transplants, this recommendation is viewed as a locally-generated suggestion for the juvenile justice system.

The training is institutionally-based, and the total training period is between three to nine months. Phase I of the treatment involves disciplined training in a correctional setting with half a day given to basic work skills, and half a day given to an educational and counselling programme. This phase is intended to enhance self-control and encourage a regular living pattern. Phase II in RCs involves inmates living and taking part in a reintegration programme in a halfway house. The RC programme emphasises three R's: Reconstruction, Resilience, and Reintegration. Recalls of up to three months can be made in cases when supervision requirements are breached. The success rates of the RC programme within the supervision period between 2016-2018 are 95.5 per cent, 94.2 per cent, and 96.1 per cent respectively.⁴⁹

2.3. Cooperation between Social Workers and Other Relevant Stakeholders

Hong Kong has a very comprehensive supply of youth services. Social workers provide services to young people seven days a week, and the services are preventive, developmental, and remedial in nature. Close cooperation and collaboration between

46 Correctional Services Department, 'Success Rates of Reintegration Programmes within the Supervision Period' <<https://www.csd.gov.hk/annualreview/2018/web/en/appendices/>> visited on 30 September 2019.

47 Lo et. al, *supra* note 44.

48 CSD *supra* note 46.

49 *Ibid.*

social workers and other relevant stakeholders provide a good foundation that supports the development of quality services.

The SWD plays a vital role in protecting and promoting the well-being of children and youngsters in Hong Kong. Most of the preventive youth services in Hong Kong are provided by NGOs, but subsidised and monitored by the SWD. NGO social workers are given a free hand in cooperating with different stakeholders. There is no legislation or legal requirement for those collaborations.

Many government departments are involved in handling juvenile offenders. The Police Force, the Department of Justice, Correctional Services, Social Welfare, Health, the Security Bureau, and the Juvenile Court all have a part to play. In particular, the SWD is a statutory body which trains social workers as probation officers in handling juvenile offenders. Probation officers are the institutional representatives tasked to collaborate with various governmental departments, NGOs and schools in helping the juvenile offenders.

2.4. Qualification and Evaluation of Juvenile Justice Social Work

All the SWD and NGOs' social workers are required to be registered social workers. There is no pre-requisite for any specific juvenile justice training for youth services social workers in NGOs. Social workers who provide services to juvenile offenders may take further study in criminology to facilitate their work, but such training is not mandatory. All probation officers are trained by the SWD's senior probation officers in handling offenders. They are required to attend standard introduction courses and pass an assessment before being gazetted. The probation officers' or youth services social workers' performance are evaluated by their own supervisors from time to time. NGO youth services social workers also have to meet certain requirements set up by their funding bodies, such as the SWD.

The rate of satisfactory completion of a PO and CSO was 80-89 per cent and 95-98 per cent for the past ten years between 2008-2018 respectively.⁵⁰ There was no breakdown on the rate of satisfactory completion of a probation order or a community service order by age or type of probationers. Satisfactory completion rate means the percentage of Orders for which probationers have satisfactorily completed. A probationer is regarded as having completed the PO or CSO satisfactorily if there is no outstanding warrant upon expiry of his/her PO/CSO; and the PO/CSO is not discharged before the expiry date due to further convictions.

In Hong Kong, there is no mandated schedule or method that the juvenile justice social work has to be evaluated externally and/or regularly. Instead, the Government may commission universities or other organisations to conduct juvenile justice-related research or surveys if deemed appropriate and necessary.

In April 1996, the Security Branch of the Hong Kong Government commissioned CityU to conduct an evaluation of the effectiveness of rehabilitation programmes for young offenders.⁵¹ This external evaluation covered rehabilitation programmes run by the SWD and the CSD, including POs, CSOs, probation homes, probation hostels, remand

⁵⁰ SWD, *supra* note 12.

⁵¹ Lo, et al. case, *supra* note 44.

homes and CSSSs of the SWD, as well as NGOs and DCs, TCs, youth prison and halfway houses of the CSD at that time. Young offenders, inmates, judges, magistrates, CSSS clients, clients' parents, probation officers, and service providers from the SWD and CSD were surveyed and/or interviewed.

Effectiveness of the rehabilitation programmes was widely evaluated and a series of recommendations were made and accepted by the Government. Suggestions such as an expansion of CSSSs under NGOs to serve cautioning youngsters, and an expansion of short-term residential treatment to be provided by the CSD were supported. This research could be regarded as one of the most comprehensive pieces of evaluative research for juvenile justice rehabilitation programmes in Hong Kong's to date.

There may be some scholars, social workers and students who opt to choose juvenile justice service as their evaluation topics now and then, but those research recommendations would less likely be taken into serious consideration by the Government.

3. Experience, Main Challenges, and Reform Initiatives Regarding Juvenile Justice Social Work in Hong Kong

3.1. Experience and Achievements

As mentioned, the foundation of Hong Kong's juvenile justice system was greatly influenced by the British model. Most juvenile justice ordinances were transplanted from Britain. However, some clauses in the ordinances were revised timely according to local context and raised needs. Also, youth services have evolved extensively from preventive, developmental, to remedial in nature. In practice, the youngsters in trouble are referred by institutions, such as schools, the police, the Court, the SWD, the CSD, and so on for the social work services.

There are many international agreements that relate to juvenile justice. These include: the *United Nations Convention on the Rights of the Child*, the *UN Standard Minimum Rule on the Administration of Juvenile Justice (Beijing Rules)*, the *UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*, and the *UN Guidelines on the Prevention of Delinquency (Riyadh Guidelines)*. All of these rules set out the standards of which member countries are requested to meet in relation to juvenile justice.

In most circumstances, the *Hong Kong Juvenile Offenders Ordinance* and the *Protection of Children and Juveniles Ordinance* are consistent with international standards. Hong Kong, as a signatory to the international documents is responsive to those standards. The *United Nations Committee on the Rights of the Child* and the *United Nations Committee on the International Covenant on Civil and Political Rights* have called for reviewing the law in Hong Kong in raising the minimum age of criminal responsibility.

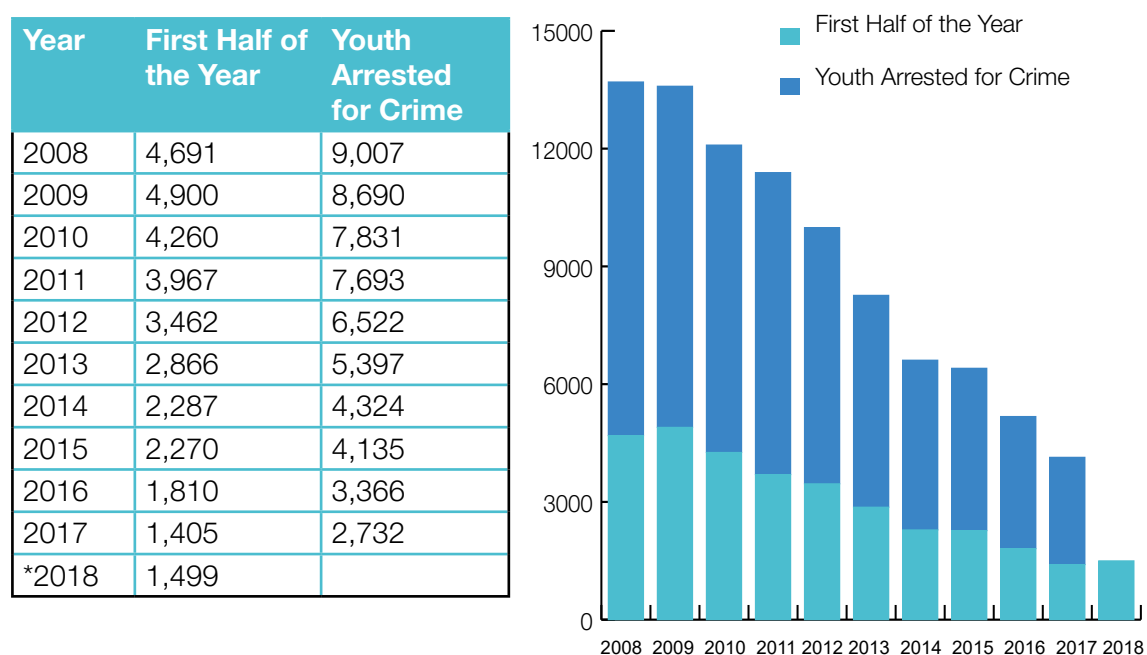
In 1998, the Law Reform Commission (LRC) began to review the minimum age of criminal responsibility. In 1999, the Commission published a consultation paper to collect public opinion on what should be the appropriate age that one should be held criminally accountable for his/her offending. The *Juvenile Offenders (Amendment) Bill*

2001 sought to implement the LRC's recommendation by raising the minimum age of criminal responsibility from seven to ten. It was passed by the Legislative Council on 12 March 2003. The increase in the minimum age of criminal responsibility shows that the Government has responded to international standards; and some other enhanced measures targeting unruly children and young offenders have been introduced since 2003.⁵²

Children under ten deemed to be in need of supporting services are referred to the SWD with parental consent. There are many established mechanisms for the police to refer unruly children between ten and under 18 to relevant government departments and/or other NGOs for follow up support services. The mechanisms are considered to be effective and comprehensive, as there should not be any unruly children or young offenders being left behind without any support from social work services.

In terms of the number of youth arrested for crimes, a continuous decline was reported in the past ten years. There were 9,007 youths arrested for crimes in 2008, while only 2,732 were arrested in 2017. A total of 69.6 per cent decline in arrested youths was reported. With the wide range of measures in place in handling delinquent juveniles, the problem of juvenile crime was said to be under control.

Figure 10: Youths (Ten to Under 20 Years Old) Arrested for Crime, 2008-18⁵³



- 69,6%

Source: Hong Kong Police Force

3.2. Main Challenge

The government may not find juvenile justice social work services requiring reform, or that additional resources need to be budgeted, as there has been a continuous significant decline in the number of arrested youth in past ten years. The proposal to incorporate the principles and practices of restorative justice in dealing with juvenile

⁵² Legislative Council, 'Report of the Panel on Administration of Justice and Legal Services on Juvenile Justice System', Hong Kong Government, 2007a, <www.legco.gov.hk/yr06-07/english/hc/papers/hc0706cb2-2369-e.pdf> visited on 27 April 2019.

⁵³ HK Police Website, <www.police.gov.hk/ppp_en/09_statistics/csd.html> visited on 29 April 2019.

offenders was introduced by the report - 'Measures Alternative to Prosecution for Handling Unruly Children and Young Persons: Overseas Experiences and Options for Hong Kong' published by CityU in 2003. However, the proposal was rejected by the Government in 2007.

Although the report mentioned that there was an international trend favouring the adoption of restorative justice options to respond more effectively to both offenders and victims⁵⁴, the Legislative Council Paper in 2007 concluded that there was no single best criminal justice system that suits all jurisdictions. The paper mentioned that "different communities and societies find their own appropriate ways to express justice as a response to wrongdoing. In the Hong Kong context, the Administration considers that any possible extra benefits that victim participation in the criminal justice system might bring on top of the existing measures are not apparent."⁵⁵ Where the youth crime rate is declining, it is not difficult to understand why the Government does not want to change the existing juvenile justice practice.

If one considers crime rate as the main element in evaluating a juvenile justice system's effectiveness and impact, there would not be much incentive for improvement given the current low youth crime rate in Hong Kong. However, I suggest that research on the effectiveness of juvenile justice systems and social work services should be conducted regularly and externally to ensure updated and consistent quality.

Probation officers' practices based on descriptive information and non-evidenced-based experience may be a challenge for the SWD. The development of evidence-based assessment instruments and interventions should be explored. The formation of a specialised pool of juvenile justice social workers to provide services is highly recommended so as to maintain the quality of services.

Although there are abundant juvenile justice social work services available in Hong Kong, there is no Youth Justice Committee nor a comprehensive set of explicit guidelines about the objectives and principles underlying its juvenile justice system. A Youth Justice Committee and a document with a clear set of objectives, principles and standards is recommended. The Committee could include the members of the juvenile court magistrates, police youth officers, lawyers, prosecutors, youth justice social workers of NGOs and government departments. The Youth Justice Committee Members could meet regularly and find ways to timely improve the overall juvenile justice practices. In addition, a guiding document with clear objectives and principles underlying juvenile justice processes could assist respective parties in handling juvenile offenders, and in the long run could even be adopted into juvenile justice legislation.

3.3. Reform Initiatives

According to the database on particular policy issues – 'Administration of Justice and Legal Services', the latest document that related to the juvenile justice system was the 'Report of the Panel on Administration of Justice and Legal Services on Juvenile Justice System' in 2007.⁵⁶ Strictly speaking, there has been no formal reform initiative being discussed or developed in regard of juvenile justice practice in the last ten years.

54 T.W. Lo et al., *Measures Alternatives to Prosecution for Handling Unruly Children and Young Persons: Overseas Experiences and Options for Hong Kong*, (Hong Kong Government Printer, 2003).

55 Legislative Council, 'Report of the Panel on Administration of Justice and Legal Services on Juvenile Justice System', *Hong Kong Government*, 2007a, <www.legco.gov.hk/yr06-07/english/hc/papers/hc0706cb2-2369-e.pdf> visited on 27 April 2019. Legislative Council, 'Panel on Administration of Justice and Legal Services, Restorative Justice for Juveniles Offenders - Victim Participation', *Hong Kong Government*, 2007b, <www.legco.gov.hk/yr06-07/english/panels/ajls/papers/ajl0423cb2-1618-2-e.pdf> visited on 27 April 2019.

56 *Legislative Council case, supra* note 43.

One of the focuses of the Report was to report on the progress of the enhanced measures to strengthen the support for unruly children and young offenders (introduced by the Government in October 2003). In 2003, after the increased minimum age for criminal responsibility, a series of enhanced measures were made. Those measures included the following:⁵⁷

1. The Juvenile Protection Section (JPS), an aftercare service of the Police was extended to unruly children under the age of ten.
2. Children under the age of ten deemed to be in need of support services were referred to the SWD (SWD) with parental consent.
3. A variety of mechanisms were established for referring unruly children between ten and under 18 to the relevant government departments and/or other agencies for support services by the Police.
4. Enhanced accessibility of professional support services for unruly children and youngsters by the Police, such as providing the youth and their parents with Youth Information Services Leaflets.
5. The launching of a pilot Family Conference (FC) scheme in October 2003 for children/juveniles ages between ten and under 18, provided under the Police Superintendent's Discretion Scheme (PSDS). There was a general consensus in the welfare sector supporting the continuation of the FC scheme. The SWD will continue to monitor the implementation of the scheme and review it when necessary. Learning from past experiences, both the SWD and the Police support extending the mechanism to children under the age of ten, and will work out the necessary administrative and logistical arrangements accordingly.

All of the above measures focus on taking care of both unruly children under ten, and children/juveniles ages between ten and under 18 who are under cautioning, as well as further strengthening the collaboration and referral mechanisms between the Police, the SWD, other government departments, and NGOs.

Another focus of the Report was reporting the review outcomes of the development of a new juvenile justice system incorporating the principles and practices of restorative justice.⁵⁸ As discussed earlier, the Government has concluded that "there is no single best criminal justice system that suits all jurisdictions", and has pointed out that existing juvenile justice practices and handling practices are effective, and the youth crime rate is under control. By and large, the resources and manpower for juvenile justice social work are sufficient in Hong Kong, and the recent youth crime rate has been declining. The current environment is a good time for the Government to review and integrate all the protections and principles provided by international standards into legislation and juvenile justice social work.

⁵⁷ *Ibid.*, *supra* note 46.

⁵⁸ *Legislative Council case*, *supra* note 43.

Chapter X The Role of Social Work in Juvenile Justice: Taiwan's Experience

*Tzu-Hsing Chen**

1. Introduction

Judicial social work has its roots in the social welfare system, which mainly focuses on helping people and solving social problems. Judicial social work focuses mostly on the criminal judicial process, and assists both parties, especially the victim, during the course of criminal proceedings. It should be noted that although social workers assisting the judicial system in Taiwan are generally referred to as “Judicial Social Workers”, they are not recognized as an independent category of social workers, and are instead usually judicial officers or juvenile judicial officers.

Juvenile justice social work in Taiwan started with the *Child Welfare Act* of 1993. In 2003, the *Child Welfare Act* and the *Youths Welfare Act* were merged, forming the *Protection of Children and Youths Welfare and Rights Act*. It stipulated that social workers should assist with the interview and assessment report in child adoption cases, and that children who have misbehaved due to family changes or other reasons should be provided with diversion and placement services. Since then, the work of judicial social workers has been focused more on juvenile victims. For example, the *Regulations on the Prevention and Control of Children and Juveniles Sexual Transactions* of 1995 stipulated that during the investigation and trial of juvenile cases, especially during interrogation, the county/municipal authority shall assign social workers to accompany the juvenile and may be asked to testify.¹

Therefore, there are two main types of juvenile justice social work in Taiwan. The first type, like traditional judicial social work, involves assisting, accompanying, and comforting juvenile crime victims in litigation. The second type is about assisting the juvenile offender in the investigation, trial, and execution of the court case, within the framework of special juvenile justice procedures.

This paper focuses on juvenile justice social work in Taiwan, and discusses the following three topics using literature review and practical work analysis:

First, this paper will give a general overview of juvenile justice social work in Taiwan.

Second, this paper will review the practice of juvenile justice social work in Taiwan, including the legal basis of juvenile justice social work; the structure of juvenile justice social work; the cooperation between social workers and other stakeholders; and professional qualifications and assessment of juvenile justice social workers. In addition, the paper will also introduce the procedures of the special juvenile law in Taiwan, as well as different types of judicial assistance offered by juvenile justice social workers.

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1 H. Y. Tseng and C. J. Pai, 'Judicial and Social Work Practice', *128 Quarterly Journal of Community Development* (December 2009) p. 37.

Third, this paper will cover the experience, challenges and reform of juvenile justice social work in Taiwan. This paper will analyze problems existing in the judicial practice in Taiwan, as well as provide reform suggestions.

2. General Overview of Juvenile Justice Social Work in Taiwan

2.1. Overview of Social Work Development

Scholars Huang Yuan Hsieh and Hsieh Hsiu Fen have studied Taiwan's social work history in depth. The following is a summary of their work.

According to Huang Yuan Hsieh, the beginning of Taiwan's social work can be traced back to the period of the Japanese occupation and the Kuomintang government's ruling in mainland China. During the Japanese occupation, the concept of social work was transplanted to Taiwan under the active promotion of the Taiwan Governor's Office. Later, theories from other western countries were also introduced. Meanwhile, in mainland China, the idea of social work was introduced in church hospitals. According to Huang Yuan Hsieh, the development of social work in contemporary Taiwan can be divided into four periods.² First, the germination period (before 1940s).³ Second, the party-policy period (1940s-1960s).⁴ Third, the professionalization period (1960s-2000s).⁵ Fourth, the maturing period (after 2000s).⁶

Compared to Huang Yuan Hsieh, Hsieh Hsiu Fen did not clearly divide the history of social work into four periods. However, she pointed out that social work in Taiwan originated from social work culture during the Japanese occupation period and American-style professional social work introduced by the Kuomintang government when it moved to Taiwan. She believes that due to Taiwan's unique historical background, Taiwan's social work was influenced by Japanese culture during the Japanese occupation, and mixed with American professional social work elements introduced by the Kuomintang government. According to Hsieh Hsiu Fen, the evolution of social work in Taiwan can be divided into four parts: the practice of traditional philanthropy, the social welfare and social work system developed during the Japanese occupation, social policy and social work practiced after 1949, and, finally, the establishment of a professional social work system.⁷

According to the two scholars, social work in Taiwan originated during the Japanese occupation period, where there were policies to improve the quality of social life, such as unemployment assistance and crime prevention. From the 1960s to 1970s, with the establishment of formal social work frameworks, the Taiwan government began to attach great importance to social welfare and social assistance.

In 1965, the Taiwan government put forward the "Present Social Policy of the People's Livelihood Principle."⁸ In 1973, the Taiwan provincial government began to recruit social workers. From then on, social work was formally recognized as a profession.

In 1973, in response to the government's policy of recruiting social workers, the sociology department of Taiwan University began to teach sociology and social work

2 Y. H. Huang (Editor-in-Chief), *Introduction to Social Work* (1st Edition) (Shuangye Bookstore, September 2015) p. 56.

3 *Ibid.*, p. 57-58.

4 *Ibid.*, p. 60.

5 *Ibid.*, p. 59.

6 *Ibid.*, p. 62.

7 H. F. Hsieh (Editor-in-Chief), *Introduction to Social Work* (2nd Edition) (Shuangye Bookstore, September 2018) pp. 49-50.

8 H. F. Hsieh (Editor-in-Chief), *Introduction to Social Work* (1st Edition) (Shuangye Bookstore, September 2015) pp. 59-60.

to train professional social workers. In 1979, the private Donghai University established a department of social work, which was the first independent social work institution at the college-level in Taiwan. In 1984 and 1994, Donghai University established the first master and doctoral programs for social work in Taiwan. From 1997 onwards, the department of social work expanded. To meet the needs of society and the certification system for social workers, social work departments in various schools and enrollment of students both saw exponential growth.

Although social work was already introduced in Taiwan in the 1970s, the official social work system was not formalized until the *Social Worker Act* in 1997. The reasons for social work legislation are as follows: social workers should provide professional knowledge and services. The *Social Worker Act* was finally formally passed in 1997 in order to ensure industry professional quality, to formalize the professional status of social workers, to clearly define the rights and obligations of social workers, and to ensure the rights and interests of clients. After seven years of continuous deliberation, including the establishment of the “Social Workers Act Promotion Alliance” during the process, as well as continuous negotiation and adjustments by all sectors of society.⁹ Following the adoption of the *Social Worker Act*, the qualification exams for social workers were introduced in the same year. Some universities also set up social work-related departments to train outstanding social work students.¹⁰ However, due to the great demand for social work, social workers in Taiwan do not necessarily need to graduate from the social work department of a university. If they have completed the relevant credits for the social worker qualification exam while studying in other relevant departments, they can also be qualified to take the exam.

The implementation of the *Social Worker Act* gave legal basis to the professional qualifications and duties of social workers (including judicial social workers). Details as follows:

According to Article 2 of *the Social Worker Act*:

“A social worker prescribed in this Act refers to a professional who can assist an individual, a family, a party and a community to promote, develop or resume its social function and to pursuit his/her welfare, relying on his/her professional knowledge and technique of social work.

The mission of social worker is to promote the benefit of the public and social welfare, to assist the public to satisfy their basic needs, to pay attention to the minor groups and realize social justice.”

In addition, qualifications for appointing of social workers is mainly based on Article 5 of the *Social Worker Act*:

“Once a social worker has completed vocational social work training, and has been evaluated as qualified by the Taiwan competent authorities, they shall receive the vocational social worker certification.

⁹ *The legal system of the Legislative Yuan in Taiwan*, <lis.ly.gov.tw/lglawc/lawsingle?00216677DDE50000000000000000001E000000005000000^01228086031100^001CC001001>, visited on 24 February 2019.

¹⁰ The exam subjects for licensed social workers include: Chinese language (writing skills), social work, human behaviour and social environment, social work direct service, social work research methods, social work management, social policy and social legislation. For social work exams, reference is made to *Taiwan's exam and selection department*, <wwwc.moex.gov.tw/main/content/wHandMenuFile.ashx?menu_id=623&strType=>_>, visited on 24 February 2019.

The preliminary examination of the vocational social worker evaluation shall be conducted by a national professional social work organization entrusted by the Taiwan department-in-charge. Persons in possession of social worker certification, who have completed the related vocational social worker training, are eligible to participate in the relevant vocational social worker professional evaluation.

The regulations governing the classification and evaluation of a vocational social worker is prescribed by the Taiwan department-in-charge.”

The work tasks of a social worker are mainly stipulated in Article 12 of the *Social Worker Act*:

“A social worker shall provide the following services:

- 1. social and psychological evaluation and diagnosis of problems regarding behavior, social relationships, marriage, social adaptation, etc.;*
- 2. protective services prescribed in each relevant social welfare act;*
- 3. preventative and support services for an individual, a family, an organization and a community;*
- 4. development, distribution, and referral of social welfare service resources;*
- 5. design, manage, research, supervise, and evaluate social welfare projects implemented by social welfare organizations or projects in the fields of health, job-placement, education, justice and national security;*
- 6. safeguard people’s social welfare rights;*
- 7. support to any other business delegated by the Taiwan department-in-charge.”*

From the above provisions, it is clear that the scope of social workers’ services is broad, and spans not only social welfare, but also health, employment, education, justice, national defense and other fields. In judicial practice, the scope of social workers’ tasks includes providing social work services for children and adolescents, prevention and control of domestic violence and sexual assault crimes, behavior correction, and providing social work services to the elderly, the disabled, and patients. Judicial social work falls under the umbrella of social work.

2.2. Overview of the Development of Juvenile Justice Social Work

The introduction of social work in the field of juvenile justice stems from an emphasis on human rights and the rule of law in Taiwan society after the 1980s. After the 1990s, laws and regulations placed more emphasis on the integration of law and social work. The views of scholar Chen Hui Nu are very similar to those of scholar Tseng Hua Yuan and others mentioned above. Chen Hui Nu pointed out that with the enactment and implementation of the 1993 *Child Welfare Law*, social workers began to play the roles of investigators, coordinators and counselors in child abuse cases, and provided relevant reports on whether children were abused as a reference for judicial decisions. Later, with the enactment and implementation of many welfare laws and regulations, the role of social work in juvenile justice became more and more important. After the enactment of the *Child and Juvenile Welfare Law* (later the *Child and Juvenile Welfare and Rights*

Protection Law in 2011), the *Child and Juvenile Sex Trade Control Ordinance* (later the *Child and Juvenile Sexual Exploitation Control Ordinance* in 2015), the *Disability Welfare Law* (later the *Rights and Interests Protection Law for Physically and Mentally Handicapped Persons* in 2007), the *Elderly Welfare Law*, the *Juvenile Proceeding Act*, the *Sexual Assault Crime Prevention Law* and the *Domestic Violence Prevention Law*, social workers can be seen to assist parties in judicial practice in many ways.¹¹ In addition, scholar Chen Tzu Hsing pointed out that judicial social workers became particularly important in the last decade in domestic violence and sexual assault cases, and the trial procedure of juvenile cases. Especially in the proceedings of sexual abuse cases in Taiwan, social workers assisting and accompanying the victim has become a very important key in the trial procedure, especially when the victim is a juvenile or a child.¹²

Finally, the role of social workers in juvenile justice mainly involves counseling and follow-up to prevent juveniles from committing crimes again. In Taiwan, there are special laws and procedures on handling juvenile cases. The following is an introduction to juvenile judicial procedures in Taiwan.

11 H. N. Chen, *Legal Social Work (2nd Edition)* (Psychological Publishing House, September 2017) pp. 7-8.

12 C. T. H. Chen, 'New Amendments to Taiwan's Family Violence Prevention Law 2015 and Court Social Work Services', *Child Protection Forum and Cross-Strait Seminar on Juvenile and Family Law*, November 2015, Zhuhai Campus of Jinan University, China.

2.3. Juvenile Justice Procedure in Taiwan



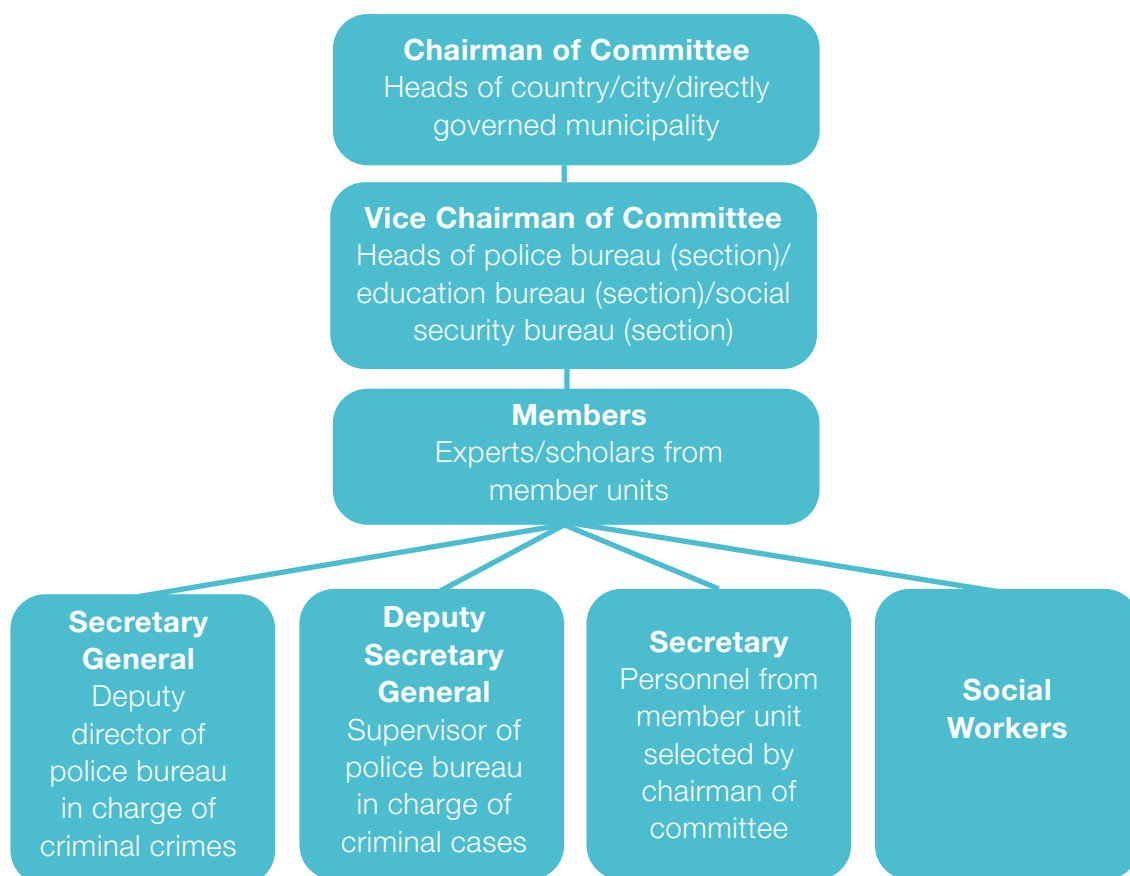
Figure 1: Juvenile Justice Procedure in Taiwan
(information provided by Jiayi Juvenile Counseling Committee)

When giving an overview of juvenile judicial procedures in Taiwan, Juvenile Counseling Committees should be introduced. It should be noted that Juvenile Counseling Committees are not juvenile justice institutions, but are set up for the guidance of delinquent juveniles. They are mainly affiliated with local governments in Taiwan, and members are composed of directors, experts and scholars from various organizations (refer to Figure 2 for its organization structure). They mainly provide guidance and crime prevention to juvenile delinquents who are not involved in serious cases and who are referred by police agencies and other units.

The Juvenile Counseling Committee has an important function in preventing juvenile crime and misdemeanors. The counseling is usually one-on-one, given by a counseling teacher based on the juvenile's situation, and juvenile justice social workers would assist in improving his/her situation. According to interviews with the staff of the Jiayi Juvenile Counseling Committee, most juveniles improve after receiving counseling by the Juvenile Counseling Committee. In a few cases, if they or their parents are unwilling to cooperate with the Committee, or if they don't respond to counseling, they may be eventually transferred to juvenile court.

Generally speaking, in cases of serious offences, the juvenile delinquent will be directly sent to juvenile court. In the process of counseling, if the juvenile is found to have committed serious offences involving other cases and needs a judicial trial, the Juvenile Counseling Committee will close its own procedure. As mentioned above, the Juvenile Counseling Committee mainly focuses on counseling, prevention, and front-end work to avoid juveniles from entering the judicial process. Through one-on-one counseling, better understanding the problems faced by the juvenile, interviewing parents when necessary, and collaborating with different stakeholders, the Committee seeks to alleviate the juvenile's problems.

Figure 2: Organizational Structure of a Juvenile Guidance Committee



According to the Taiwan juvenile justice process shown in Figure 1 above, there are two channels for juvenile judicial processes. One is through the police juvenile department; the other is through the juvenile court system. Although according to Articles 17 and 18 of Taiwan's *Juvenile Proceeding Act*, anyone who finds a juvenile involved in criminal activity, the prosecutor, judicial police or court may directly inform the juvenile court. But in general, most juvenile cases are still handled by the juvenile department of police stations. After receiving the case, the juvenile department will evaluate how severe the case is. If the case is minor and does not require counseling, the case will be closed. If the case is minor and requires counseling, the case will be referred to the Juvenile Guidance Committee for counseling. If the case is severe, the case will be transferred to the juvenile court for judicial hearing. In addition to the aforementioned Juvenile Counseling Committee and the juvenile department of the police station, another distinctive feature of Taiwan's juvenile justice system is the *Juvenile Proceeding Act*. Under the influence of Japanese colonization, Taiwan adopted the same juvenile legal framework as Japan and set up juvenile reformatories and prisons similar to Japanese juvenile correction institutions. Subsequently, Japan was defeated in the Second World War and Taiwan came under the rule of the Kuomintang. In 1962, Taiwan again inherited Japanese law and enacted the *Juvenile Proceeding Act* currently in force in Taiwan.¹³ In addition to the illustration in Figure 1, the detailed procedures are described as follows:

¹³ C. T. H. Chen, 'Present Situation and Reform of Juvenile Correctional Education: Focusing on Correctional Education, Criminal Disciplinary Policy for Juvenile Students', *Collection of Theses on Criminal Policy and Crime Studies (21)* (Judicial Officers College, Ministry of Justice of Taiwan, 2018) p. 357.

Figure 3: Judicial Procedure of the Juvenile Proceeding Act in Taiwan¹⁴

Juvenile (juvenile likely to commit a crime, or juvenile suspected of committing criminal acts) – the police department accepts the case – the juvenile court accepts the case – counseling (if necessary) is ordered -- pre-trial investigation (issuing a juvenile investigation officer's investigation report) – investigation report is sent to the juvenile court/tribunal judge – the trial commences (the juvenile investigation officer must appear in court to give his/her opinion) – a ruling is issued – protective measures are delivered to the juvenile investigation and protection officer for execution (if the case involves a serious offence, it will be transferred to a public prosecutor for investigation, and afterwards transferred back to the juvenile court for trial)

From the aforementioned procedures, it is clear that juvenile procedures in Taiwan are almost identical to those in Japan's juvenile legal framework. Cases are handled through the protection procedure or criminal procedure according to their nature and severity. After the police station receives the case, the case will be sent to juvenile court for trial. The juvenile investigation officer will make a pre-trial investigation report, and then the judge will hear the case. If the judge decides that it is a protection case, he/she will make a ruling. However, if he/she decides that it is a criminal case, it will be transferred to the prosecutor for investigation and prosecution, and then be brought before the court for judgement.

In addition, there remain several important characteristics of juvenile cases in Taiwan, including a specific applicable age for applying the *Juvenile Proceeding Act*, differences in the protection procedure and criminal procedure, instances where juvenile court takes priority, and situations where the juvenile investigation and protection officers' pre-trial investigation and assistance in trial is needed. The following section details these important characteristics.¹⁵

First, the applicable age of the *Juvenile Proceeding Act* is discussed here. Generally according to the *Juvenile Proceeding Act*, the scope of juvenile cases covers "juveniles over 12 years old but under 18 years old who violate the criminal law or are in danger of violating criminal law" (Article 2 of the *Juvenile Proceeding Act*). However, the *Juvenile Proceeding Act* also extends to two other age groups. The Act reads that cases involving children over the age of seven but under the age of 12 who violate the criminal law should be treated as juvenile protection cases (Article 85-1 of the *Juvenile Proceeding Act*). The Act also applies to juvenile delinquents over 18 years of age and under 20 years of age (Article 27.1 of the *Juvenile Proceeding Act*). Therefore, generally speaking, the *Juvenile Proceeding Act* applies to ages seven to 20 years old.

Second, the difference between protection procedure and criminal procedure is discussed. The aim of the *Juvenile Proceeding Act* is to support the physical and mental growth of juveniles rather than to punish them (Article 1 of the *Juvenile Proceeding Act*). In addition, juvenile cases can be classified into two types: protective procedure, which issues protective measures when an offence is relatively minor; and where the offence is relatively serious, criminal procedure, which issues criminal punishments. Children

¹⁴ C. T. H. Chen and M. L. Tsai, *Theory and Practice of Juvenile Proceeding Act (Revised Third Edition)* (Yuanzhao Publication, 2018) p. 154.

¹⁵ *Ibid.*, pp. 15-16.

are only treated with minor protection procedure when involved in criminal case (refer to Table 1 below).

Table 1: Children and Juvenile Cases and Corresponding Law Provisions and Dispositions

Type of case	Child protections	Juvenile protection	Juvenile protection	Juvenile criminal case
Age	7-12 years old	7-18 years old	12-13 years old	14-20 years old
Provisions referred to in the <i>Juvenile Proceeding Act</i>	Article 85-1, paragraph 1	Article 3-1, paragraph 2	Article 27, paragraph 2	Article 27, paragraph 1
Legal Requirements	The juvenile court shall apply the regulations on juvenile protection to those who are over 7 years old but under 12 years old and who have committed criminal acts.	Juveniles have one of the following behaviors and may violate the criminal law depending on their character and circumstances: (I). Those who regularly have contact with persons with criminal habits; (II). Those who have frequent access to places dangerous or improper to juveniles. (III). Those who often play truant or run away from home. (IV). Those who join improper organizations.	Juveniles who commit acts in violation of the criminal law. However, as this group of juveniles is less than 14 years old, the protection procedure applies to their cases.	The juvenile court shall decide whether to transfer the juvenile to the public prosecutor's office of the court with jurisdiction if, after taking into account the investigation results of the case, it recognizes that the juvenile has violated the criminal law and one of the following circumstances: (I). Those who commit a crime for which the minimum sentence of fixed-term imprisonment is not less than five years.

Disposition categories		(V). Those who often carry knives and weapons without justified reasons. (VI). Those who take or use psychedelic substances other than cigarettes or narcotic drugs. (VII). Those who commit preparatory crimes or attempted crimes and are not punished by law.		(II). The offender reaches the age of 20 years old after the trial of the case. In addition, the juvenile court may, based on the results of the investigation, decide to transfer the case to the public prosecutor's office of the court with jurisdiction if it deems the case to be appropriate to be subject to criminal punishment, taking into account the circumstances of the case, such as character, personality and experience.
	Child protection measures	Juvenile protective measures	Juvenile protective measures	Juvenile criminal punishments
	Executive institution	Child welfare agencies or foster families in all regions	Non-residential measures (admonition and holiday counseling, probation and supervision) are issued by the juvenile court. Residential measures (placement counseling: admission to the	Non-residential measures (admonition and holiday counseling, probation and supervision) are issued by the juvenile court. Residential measures (placement counseling: detention in the

		welfare agency for children and adolescents, and correction education in the juvenile auxiliary education institute and the juvenile correction school. Hsinchu Chengzheng Middle School)	welfare agency for children and adolescents, and correction education in the juvenile auxiliary education institute and the juvenile correction school. Hsinchu Chengzheng Middle School)	
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Third, the priority of the juvenile court is discussed. In adult criminal procedure, the prosecutor investigates before the case goes to court. However, for juvenile cases, the juvenile court conducts the investigation procedure first and takes priority in such cases. Criminal procedure for adult cases focuses on investigation, evidence and discovery for the purpose of achieving justice. However, the main focus of juvenile cases is rehabilitation and to help the youth re-integrate into society. In addition, in order to protect juveniles and prevent them from being unfairly labeled in the future, the *Juvenile Proceeding Act* specially provides for closed hearings and guaranteed confidentiality of case records. Therefore, these protections allow juveniles to lead a new life without stigma. (Article 34, 83, 83-1 of the *Juvenile Proceeding Act*).

Fourth, a juvenile investigation and protection officer's pre-trial investigation provides assistance at trial. The juvenile and his/her legal representative shall, after receiving notice from the juvenile investigation officer, attend the pre-trial investigation of the juvenile court (Article 19 of the *Juvenile Proceeding Act*). The investigation mainly focuses on the relevant specificities of the juvenile case (including the juvenile's family, family occupation, academic performance, social skills, etc.), and assesses the juvenile's psychological wellbeing, finally forming an opinion to inform the judge.

Juvenile justice social workers will assist juvenile investigation and protection officers in the process. These processes will be discussed in the following sections.

3. The Role of Social Work in Juvenile Justice in Taiwan

3.1. The Legal Basis of Juvenile Justice Social Work

The turning point in the development of Taiwan's juvenile justice social work was the adoption and implementation of the 1993 *Child Welfare Act*. Social workers began to act as investigators, coordinators and counsellors in child abuse cases, providing professional opinion on whether children were abused to inform judicial decisions. In addition, with the implementation of welfare laws and regulations, social work became more and more important in the judicial practice. The legal basis for social workers to participate in juvenile justice can be found in the *Protection of Children and Youths Welfare*

and Rights Act, the *Regulations on the Prevention and Control of Sexual Exploitation of Children and Juveniles*, and the *Juvenile Proceeding Act*, which are discussed below. To implement the 1989 *United Nations Convention on the Rights of the Child* (CRC), improve the physical and mental development of children, and protect and promote their rights, Taiwan enacted the *Implementation Act of the CRC* in 2013. The *Implementation Act of the CRC* stipulated that the *CRC* shall have the effect of domestic laws to protect and promote the rights of children (Article 2 of the *Implementation Act of the CRC*).¹⁶ In addition, the relevant laws and administrative measures shall be implemented in accordance with the intent of the *CRC* and the interpretation of the *CRC* by the United Nations Committee on the Rights of the Child (Article 3 of the *Implementation Act of the CRC*). Article 4 of the *Implementation Act of the CRC* also stipulates that government agencies at all levels shall act in accordance with the provisions of the *CRC* on the protection of the rights of children and juveniles, avoid illegal infringement of the rights of children and juveniles, and actively promote the rights of children and juveniles. Laws and regulations related to children, such as the *Protection of Children and Youths Welfare and Rights Act*, the *Regulations on the Prevention and Control of Sexual Exploitation of Children and Juveniles*, the *Domestic Violence Prevention Act*, relevant articles in Taiwan's *Criminal Law*, and other relevant laws and policies shall be interpreted and implemented in accordance with the *CRC*. The conclusion of this chapter outlines the implementation and effectiveness of the *CRC* in Taiwan.

3.2. *Juvenile Justice Social Work in Taiwan*

In juvenile judicial cases, juvenile justice staff's duties include: referral of juveniles to social welfare or rehabilitation institutions for counseling, placement counseling and corrective education, support for referral and observation, support for rapid counseling, support for holiday counseling, support for probation and supervision, and participation in pre-trial investigation talks. The following is an overview of the investigation, trial, execution and follow-up stages in the juvenile justice process, based on data obtained from interviews with juvenile investigation and protection officers of Kaohsiung Family and Juvenile Court:

During the investigation stage, where there are cases that should be reported (such as drug, sexual abuse, and child protection cases) and the first-line police station fails to report them, the juvenile investigation and protection officer who handles the case should step in. After reporting, the social bureau will assign a special juvenile justice social worker to intervene and provide protective services. The investigation and protection officer will contact the juvenile justice social worker by phone or in-person to discuss the services to be provided and explore whether other resources are needed. In general, juvenile justice social workers will not accompany juveniles to court for investigation unless there are special circumstances that require the juvenile justice social workers to be present. Their presence must be met with the consent of the juvenile's legal representative, the investigation and protection officer, or the judge (usually, if there are social workers available to support the juvenile before the investigation, a phone inquiry might be conducted).

¹⁶ Article 10 of President Order No.10300085351 dated June 4, 2014; and effective on November 20, 2014.

If the case involves family violence or sexual assault, relevant personnel from social welfare institutions should be notified to appear in court to testify. According to an interview with a juvenile investigation and protection officer of Kaohsiung Juvenile and Family Court, when a juvenile is an offender in a domestic violence case, family members usually worry about the juvenile getting a criminal record and would passively pardon or forgive him/her. At the same time, they would blame the juvenile's offence on external factors (such as school or peer pressure), and would not take responsibility. Thus, these cases usually call for police investigation or pre-trial investigation procedures, and will seldom enter judicial procedures such as habeas corpus or charge of injury. The role juvenile justice social workers play in these situations is usually to explain judicial rights and interests, focusing on providing emotional support and companionship to juveniles outside of the judicial procedures.

During the trial stage, if the juvenile is not accompanied, the court will not normally hold a hearing, and the legal representative will be notified to appear in court. Where there is no legal representative, or if the juvenile is taken in by placement institutions, or if deemed necessary by the judge, the hearing will be attended by social workers with the consent of the judge. If the juvenile is found to be a victim of sexual abuse, the details shall be reported by the front-line police station or hospital treating the victim. In those cases, court hearings should be attended by social workers designated by the social bureau of the local government.

During the enforcement period after the hearing, if the juvenile is referred to a welfare institution, a juvenile justice social worker will be invited to the court together with the juvenile for enforcement. In probation and supervision cases, the juvenile justice social workers are not required by the investigation and protection officer to accompany the juvenile to court. If there are further issues, juvenile justice social workers will be contacted on a case by case basis, and only under special circumstances will they be asked to accompany the juvenile to court (regardless, the juvenile investigation and protection officer will always keep in close contact with the social worker).

It should be noted that in the case of placement institutions, corrective education and drug cases, the social bureau of the local government will assign follow-up juvenile justice social workers after enforcement.

Social workers also play an important role in cases where children and juveniles are victims. More serious juvenile cases such as sexual abuse and sex exploitation, in which juvenile justice social workers in juvenile justice are involved, are discussed here. Except for sexual exploitation cases, sexual assault cases are generally handled using adult judicial social work approaches.

According to Article 15 of the *Sexual Assault Prevention Act*, in light of protecting the victim's free and complete statement, not only can family members accompany the victim in court, the victim's psychologist, counselor, judicial social worker or juvenile judicial social worker may also accompany the victim to court. In practice, however, most of the accompaniers are family members, judicial social workers, or juvenile justice social workers. Moreover, to avoid family members influencing the victim's statement, the prosecutor usually prefers family members to not be present. Therefore, victims are usually accompanied by judicial social workers or juvenile justice social workers. If the victim is a child or a juvenile, the Center for Family Violence and Sexual Violence

Prevention and Control shall, according to its function prescribed in the *Sexual Assault Prevention Act*, appoint juvenile justice social workers to accompany the victim and protect his/her interests during investigation and/or trial.¹⁷ However, in practice, juvenile justice social workers are not allowed to say anything except words of companionship and comfort when accompanying the victim in court. This is due to a concern that judges, prosecutors and lawyers might think they are obstructing the proceedings of the lawsuit.

In addition, according to the definition of the *Regulations on the Prevention and Control of Sexual Exploitation of Children and Juveniles*, many who are accused of being sexual exploiters are actually children and juveniles who are being exploited themselves in the sex trade, and are also victims of sexual exploitation. The *Regulations on the Prevention of Sexual Exploitation of Children and Juveniles* was originally known as the *Regulations on the Prevention and Control of Sex Trade of Children and Juveniles*, amended in 2015. According to Article 34 of the CRC and the *Optional Protocol of the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, the violation of the rights of children and adolescents through the exchange of benefits, such as cash, goods or services, constitutes sexual exploitation of children and juveniles. Thus, the original legal term “sex trade” above was changed into “sexual exploitation.”¹⁸

Before its amendment in 2015, the *Regulations on the Prevention and Control of Sex Trade among Children and Juveniles* stipulated that when interrogating children or juveniles during investigation and trial, government agencies shall assign juvenile justice social workers to accompany the child or juvenile and present their opinions. However, after the law was amended in 2015, the term “sex trade” was changed to “sexual exploitation”, and the term “victim” was defined as a child or juvenile who was sexually exploited or suspected to be sexually exploited. Therefore, in current laws and regulations, all those who engage in sexual intercourse or obscene acts with children or adolescents involving payment, or all those carry out obscene acts involving using them as objects of pictures, photos, films, videos, CD-ROMs, electronic signals or other articles for viewing, or engage them in being table hostess or escorts, or other roles involving pornography are all considered perpetrators. In these cases, the children and adolescents are considered victims.

Social workers shall be assigned by city (county) level authorities to be present and present opinions in the investigation or trial; social workers shall be present and present opinions when the victim is questioned (or interrogated) during the investigation or trial. For individuals determined to be victims by the court in accordance with Article 19.1.1 and 19.1.3, juvenile justice social workers assigned by the city (county) level authorities shall pay regular visits and provide counseling services at least for one year or until the victim reaches the age of 18. For those individuals determined to be a victim by the court in accordance with Article 16.2 or Article 19.1, assistance shall be given to the juvenile justice social workers designated by the city (county) level authorities to counsel the victims.¹⁹

17 H. K. Huang, *The Rights of the Victim in Sexual Abuse*, <www.laf.org.tw/index.php?action=media_detail&p=1&id=207&fbclid=IwAR0nSTyP3mTx99Bx5in5WJqhTEgSErjU4u32Wen2NER8zW8S-GRpMYIRb4>, visited on 1 February 2019.

18 *The Legal System of the Legislation Yuan*, <lis.ly.gov.tw/lglawc/lawsingle?001D058EA83E00000000000000001400000004000000^01234104012300^0009F003001>, visited on 18 February 2019.

19 *The Legal System of the Legislation Yuan*, <lis.ly.gov.tw/lglawc/lawsingle?001D058EA83E00000000000000001400000004000000^01234104012300^0009F003001>, visited on 18 February 2019.

At different stages of the juvenile justice process, social workers involved are affiliated with the central government, local governments, or private institutions. However, in most cases, social workers involved in juvenile justice in Taiwan are affiliated with the Taiwan central government and local governments. In particular, social workers at the central level belong to the Social Assistance and Social Work Department of the Ministry of Health and Welfare, while social workers at the local level are part of social bureaus or social departments. If social workers fail to fulfill their legal duties, they will generally be penalized according to the 2008 *Code of Ethics for Social Work* adopted by the National Federation of Social Workers' Associations in accordance with Article 17 of the *Social Workers Act*.²⁰ The code is applicable to social workers. All social work organizations who have the authority to supervise, assess, and assist social work shall act in accordance with the *Code of Ethics for Social Work*. If a social worker violates the law, the *Regulations of the Social Workers' Association or the Code*, the social worker's association shall decide on their penalty, unless the laws otherwise provides for specific penalties.

3.3. *Cooperation Between Social Workers and Other Relevant Stakeholders*

The different roles and responsibilities of social workers in juvenile justice require all parties to be involved (police, prosecutors, judges, etc.) and cooperate closely. Where an individual case calls for overlapping social work services, juvenile justice social workers will contact social workers of the social departments and education departments. In addition, they will also cooperate with school teachers and other social welfare organizations (such as Sisters of Our Lady Foundation and Lifeline). Such cooperation serves the best interests of the individual in a case, and provides more diversified and targeted services. There are no relevant legal requirements and no agreements or contracts signed between the organizations regarding the cooperation. They will only be noted in case records.

3.4. *Professional Qualification and Assessment of Juvenile Justice Social Work*

Social workers engaged in juvenile justice social work in Taiwan should have a social work educational background, and receive training in counseling. Take the Jiayi Municipal Government Police Department as an example. At present, they have one social worker assigned by the Jiayi Municipal Government Social Bureau and several counselors (volunteers). Counselors are required to have 20 hours of on-the-job professional training every year. Besides social workers, counselors are required to have professional training in counseling. The social worker will follow the counselor to improve his/her knowledge and skills on current affairs, and laws and regulations. In addition, the evaluation mechanism and basic standards of juvenile justice social work, as well as external evaluation standards, are not limited to the *Code of Ethics for Social Work* published by the National Federation of Social Workers' Associations mentioned above.

Take the Jiayi Juvenile Counseling Committee as an example. The Juvenile Counseling Committee is evaluated by the Criminal Bureau of the Police Department from March

²⁰ *Code of Ethics for Social Work*, <dep.mohw.gov.tw/DOSAASW/dl-22659-5b6417e0-ed27-4bfd-aa9c-325a2e321f6e.html>, visited on 10 March 2019.

to April each year.²¹ The evaluation criteria includes the number of juveniles receiving counseling, the need for referrals and subsequent follow up, whether meetings are held as required, and what cooperation is carried out with other organizations. Rewards will be given according to the evaluation results. If the result fails to meet the standards, the person-in-charge and relevant personnel at the police department will be disciplined, and the discipline will affect the person's job performance review. In addition, the evaluation of juvenile justice social workers by juveniles or children as victims shall be in writing and strictly enforced.

4. Experience, Main Challenges, and Reform Initiatives of Juvenile Justice Social Work in Taiwan

4.1. Experience and Effect

From the above, it is clear that Taiwan already legislated on the qualifications of social workers and on the juvenile justice system. The participation and support of social workers in the Juvenile Counseling Committee, the involvement of juvenile justice social workers and juvenile investigation and protection officers in the juvenile justice procedure and their support to juveniles involved in criminal cases, the accompanying of juvenile and child victims by juvenile justice social workers to participate in litigation, and the *Implementation Act of the CRC* in 2014, as well as all provisions related to children and juveniles must be interpreted in accordance with the CRC. Through this, we can conclude that Taiwan has extensive experience and practice in judicial social work and juvenile justice social work in comparison with the four places on both sides of the Taiwan Strait. The greatest impact of social work in juvenile justice service is to reduce the chances of juveniles entering the criminal justice system, and to improve their wellbeing through counseling. The author believes that this is a unique feature of juvenile justice social work in Taiwan, and has achieved great results.

4.2. Major Challenges

Although Taiwan has a long history in juvenile justice social work, the following major challenges still remain:

First, there are no independent judicial social workers in Taiwan (including the independent establishment of juvenile justice social workers). Therefore, judicial social workers are required to assist in judicial work in addition to their social work. According to the interviews with social workers, juvenile justice social workers still need improvement in legal knowledge, as well as their ability to facilitate healthy communication among family members.

Second, when juveniles are involved in sexual assault cases, the following problems arise:

1. According to the *Criminal Law*, if a boy or girl under the age of 16 has consensual sex, both parties can file a complaint, because both parties are victims as well as

²¹ *Code of Ethics for Social Work*, <dep.mohw.gov.tw/DOSAASW/dl-22659-5b6417e0-ed27-4bfd-aa9c-325a2e321f6e.html>, visited on 10 March 2019.

perpetrators. When handling cases, juvenile justice social workers found that the victims were usually unwilling to file a complaint, and it is the parents who insist on filing a complaint. The deadlock would cause tension between the parents and the children, and social workers needed to help them reconcile their relationship. In addition, if the parents insist on filing a complaint for ulterior motives, such as to separate the couple who had consensual sex, or to get settlement money from the other party, social workers are still required to provide legal services.

2. Where victims are unwilling to enter judicial proceedings. In October 2013, the Taiwan Health and Welfare Department stipulated the procedures of such cases for county (city) governments' Sexual Assault Prevention and Control Centres. When the centre accepts cases that have not yet entered judicial proceedings, even if the victim does not want to enter, the responsible social worker must immediately inform the police of the case and other relevant information if the facts of the case touch on Article 228 of the *Criminal Law*, or where there is incest involved. However, in many cases, juvenile victims do not want to report their abuse at all, insisting that they had consensual sex. Where the victim is under 18 and the offender is an adult, they still violate Article 227 of the *Criminal Law* even if sex was consensual. Juvenile justice social workers still need to report in writing, which may have a negative impact on building up their relationship with the victims.

3. There are cases where there is consensual sex but the victim is afraid of being scolded and lies to his/her parents about being sexually assaulted. The 'victim' does not want to file a complaint at all, but the parents force the 'victim' to go to court and give false testimony. The offender may be severely sentenced if he/she is an adult. The juvenile justice staff will face ethical dilemmas when accompanying the victim to court.

4. When juvenile justice social workers or judicial social workers accompany adult or minor victims to be questioned in the isolation room of the court, lawyers sometimes question whether they are influencing the victims' statements.

4.3. Future Reforms

In order to improve juvenile justice social work in Taiwan, some important reforms are being discussed and carried out.

The Taiwan government has attached great importance to social work, judicial social work and juvenile justice social work. Juvenile justice work is preventative and judicial in nature, but also involves social work elements. In recent years, the Taiwan government has continued to pay more attention to social work. In 2018, apart from the 3,021 social workers employed under the 'Strengthening Social Safety Network' policy, an additional TWD 2.7 billion (around USD 86.84 million) was allocated to strengthen social work programs.²² Under the policy, Taiwan has carried out graded training for social workers

22 'Enhanced Social Safety Network', the Ministry of Health and Welfare of Taiwan, <[www.mohw.gov.tw/dl-44382-01fcbb1f-f393-4b89-9b83-b8d615adf2c7.html](http://webcache.googleusercontent.com/search?q=cache:TA3a5ioY8_kJ>, <>, accessed on 25 February 25.

to enhance their knowledge and professional capacity.²³ The policy targeted manpower of social welfare service centres, family service of poverty alleviation programs, the integration of social workers in high-risk cases, the availability of medical centres for children, the identification of mental diseases (including suicide attempts) of offenders, coordination of the offender's treatment and services, correctional services for juvenile deviant behaviour, and the increase in manpower allocation, as well as utilization of social workers in local government. It is clear that the Taiwan government is dedicated to reform its social work, judicial social work and juvenile justice social work systems moving forward.

Although the social work of juvenile justice still has some judicial procedural problems, the Taiwan government has carried out a series of reforms since 2018, including the implementation of 'Strengthening the Social Safety Network' policy, as well as strengthening social work, judicial work, and juvenile social workers' knowledge and abilities. The author has participated in the training and academic discussion of judicial social work and juvenile justice social workers on many occasions. With the gradual introduction and amendment of social work laws and regulations, personnel training, and other reforms, judicial social work and juvenile justice social work in Taiwan will continue to improve, providing a best practice for the field of judicial social work in Asia. Much awaits to be seen.

²³ *Training Rules of the Grading (Level 1) of Planned Social Workers in Enhanced Social Safety Network of the Ministry of Health and Welfare of Taiwan*, <www.mohw.gov.tw/dl-47365-59564baa-c015-42a4-ac29-f7980abd7e90.html>, visited on 25 February 2019.

Chapter XI The Role of Social Work in Juvenile Justice in Mainland China

*Xiaohua Xi**

1. General Introduction to Juvenile Justice Social Work in Mainland China

1.1. *Social Work*

There are two dimensions in understanding the development of social work in mainland China: the development of specialties, and the development of professionalism. The development of specialties started in 1988, when mainland China resumed the social work major in four colleges. The social work major has seen rapid growth and has been established in more than 300 colleges and institutions to date, aiming to educate professional social workers of different education levels (including junior college, undergraduates, graduates, and Ph.D. students).¹ These colleges have developed education and training systems. Meanwhile, social work academics have conducted and published extensive academic research.

The development of professionalism started with the Ministry of Human Resources and Social Security of the People's Republic of China launching the 'Qualification Certification System for Social Workers' in 2008. Since then, social work was recognized as a professional occupation. At the same time, the State and relevant departments have also formulated a large number of policies and guides to promote the professionalization of social work. Judicial social work is one of the most developed areas of social work practice in mainland China. It originated from the beginning of this century and has seen rapid development in recent years.²

1.2. *Juvenile Justice System*

The reform of mainland China's juvenile justice system originated in 1984. In Shanghai, the Changning District Court established mainland China's first juvenile tribunal. After more than 30 years of reform and development, mainland China's juvenile justice system has witnessed many milestones. First of all, the basic principle of 'the best interests of the child' is now widely recognized and supported. Secondly, mainland China has established a juvenile legal protection system, based on the *Law on the Protection of Minors and the Law on the Prevention of Juvenile Delinquency*. Thirdly, public security bureaus, the procuratorates, the courts, and judicial administrative departments have formulated a mechanism for handling juvenile delinquency. This mechanism initially formed a special protection system for minors by all judicial departments. Finally, judicial departments, relevant social organizations, and other stakeholders involved in the judicial process work together to carry out services related to juvenile judicial protection.

In judicial practice, the age of criminal responsibility for juvenile crimes in mainland China is 14 years old. Teenagers between 14 to 16 years old take partial criminal responsibility – which only applies to eight serious criminal offenses. The age for absolute criminal

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1 Statistics from the 2018 Annual Conference of China Association for Social Work Education.

2 In 2003, Shanghai Municipality started to explore and promote judicial social work services in juvenile crime prevention, community correction and drug prohibition. Later, many other provinces in mainland China also started to explore judicial social work.

responsibility is 16 years old. However, juvenile criminals between the age of 14 to 18 should be given a lighter or mitigated punishment by law. For minors suspected of committing crimes, the police, prosecutors, and judges have the authority to reduce their penalty and divert them from the criminal proceedings. At the same time, the judicial departments not only focus on juvenile criminal suspects, but also on the protection of crime victims, creating a comprehensive judicial protection of minors.

1.3. *Juvenile Justice Social Work*

Since the beginning of this century, mainland China began to vigorously promote judicial social work for community correction. Shanghai, Beijing and other cities began to expand the service scope of judicial social work in the fields of juvenile crime prevention and drug control. During this process, the juvenile justice social work began to emerge and develop. Mainland China's juvenile justice social work went through the following stages of development:³

The first stage: initiation and sporadic exploration and development (2003-2009). At the beginning of this century, some provinces in mainland China initiated juvenile justice social work in certain areas involving juvenile crime prevention. For example, since 2003, Shanghai began to introduce professional social work services to prevent juvenile crime at the community-level. In 2005, the Shanghai Pudong New Area Procuratorate began to cooperate with professional social workers to carry out juvenile justice social work services during the process of criminal proceedings. In 2004, I myself began to lead social work teams in Beijing to carry out social work services in the Beijing Juvenile Reformatory and Beijing Haidian District Work Study School to educate and correct minors who have committed misconduct and criminal behaviour. In 2006, the Panlong District Procuratorate in Kunming City, Yunnan Province, began to provide the appropriate adult service by professional social workers. From 2003 to 2009, mainland China began to explore juvenile justice social work, but it was very much still at a nascent stage.

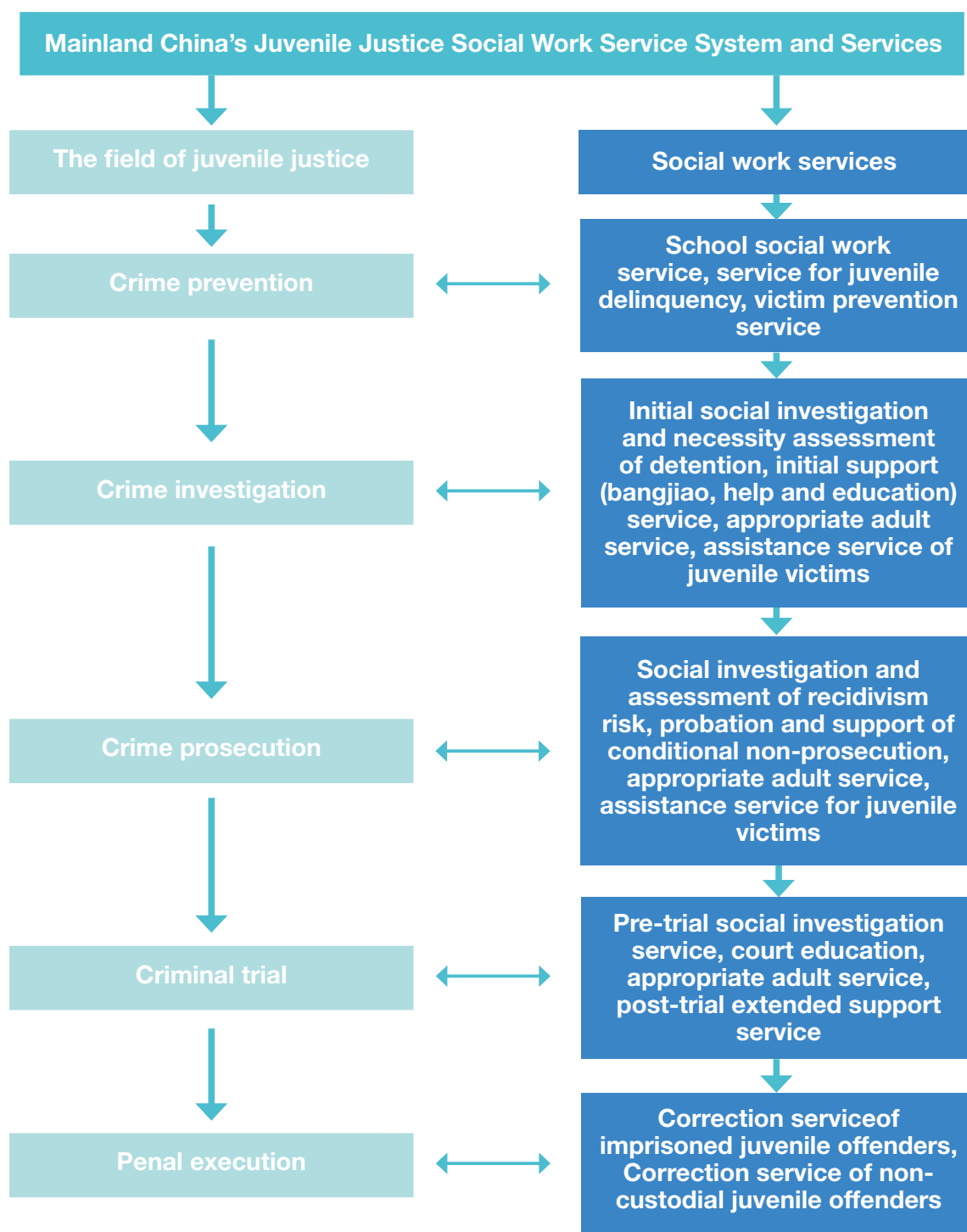
The second stage: systematic exploration (2009-2015). Although a few provinces in mainland China explored juvenile justice social work services before 2009, many provinces had not systematically carried out juvenile justice social work practices. Since 2009, social work teachers and students at the universities in Beijing began to work closely with the judiciary to systematically develop juvenile justice social work, gradually forming a stable cooperation mechanism. Based on youth community services, Shanghai also began to focus on cooperation with other relevant departments such as work study schools, procuratorates, and courts. Shanghai gradually expanded the service scope of juvenile justice social work to become more and more systematic and specialized. Meanwhile, the exploration of social work in other provinces also mushroomed and developed rapidly.

The third stage: expansion and further development (2015-Now). Since 2015, the geographic areas of juvenile justice social work practice have continued to expand. The scope of juvenile justice social work extended to crime prevention, criminal investigation, criminal prosecution, criminal trial, and penalty delivery. The range of juvenile justice social work services also expanded, and currently not only covers crime prevention and correction of juvenile delinquency, but also in civil justice, administrative justice, and other related fields. Some developed provinces have gradually formed a relatively complete

3 X. Xi, "Actions and Reflections of China's Juvenile Justice Social Work [Zhongguoshaooniansifashehuigongzuodexingyusi]", *Journal of East China University of Science and Technology (Social Science)*, Issue 6, 2018.

juvenile justice social work service system. Finally, relevant government departments have begun to formulate policies to encourage social organizations to participate in juvenile justice social work services. An example would be relevant policies and guides formulated by the Supreme People’s Procuratorate and the Central Committee of the Youth League.⁴

To summarize, mainland China’s juvenile justice work and the social services it cooperates with are as follows:



4 On May 27, 2015, the Supreme People’s Procuratorate issued the *Eight Measures of Procuratorial Organs for Strengthening the Judicial Protection of the Minors*. In Section 8, it clearly stated that mainland China was to “promote the establishment of a long-term mechanism for juvenile justice protection with the help of social work professionals”. It requires the procuratorates of all levels to cooperate with professional social work organizations to carry out judicial protection services for minors. On February 9, 2018, the Supreme People’s Procuratorate and the Central Committee of the Youth League signed the *Cooperation Framework Agreement on the Construction of a Social Support System for Minors’ Prosecution*, which clearly defines the intervention methods and institutional guarantees for social work organizations to participate in judicial protection services for minors.

2. The Role of Social Work in Juvenile Justice

2.1. Legal Basis for Juvenile Justice Social Work

2.1.1. Foundational Ideas

There is a strong ideological foundation for juvenile justice social work. More specifically, the core value of the modern juvenile justice system is that the crime of children can be solved through education, and that the country has the responsibility to educate juvenile offenders and help them reintegrate into society. This is the primary cause in introducing social work into the juvenile justice field. On the other hand, social work is based on humanitarian values and social welfare ideas. Humanitarianism emphasizes the idea of a 'human-centred' approach. The main purpose of a society is to fulfil the material and emotional needs of human beings. If people's needs are met, then people will be in a state of content, maturity, justice or production through which most problems will be solved. Humanitarianism emphasizes care and respect for people. It recognizes that human are born with political, economic, social and cultural rights. The concept of social welfare is also a fundamental social work value, and reflects the concern for humanity. It proposes that human are individuals who have needs, which first derives from their material and physical needs, then from development and social function enhancement. Therefore, society should provide a full range of services to meet these needs. The concept of social welfare also emphasizes the respect for humanity, and the responsibility of society to citizens, rather than blaming citizens for the problems they encountered.⁵

To conclude, it can be seen that the juvenile justice values aligns with the basic ideas of social work. Both sets of values believe that humans are born with rights, which should be respected by society. Meanwhile, everyone is an individual with needs, and those needs should be supported and satisfied by society. Although criminal behaviour should be reprimanded, the criminal's dignity should be respected by society. Under the guidance of these basic ideas, juvenile justice and social work both aim to fulfil a juvenile criminal's needs through education rather than punishment, and help them reintegrate into society successfully. The alignment in values of the two fields helps form a strong ideological foundation for juvenile justice social work.

2.1.2. Legal Basis

In mainland China, legislative support for juvenile justice social work is very clear, derived from international law and domestic law. In terms of international law, mainland China, as a signatory to the UN legal documents, has pledged to abide by its provisions. The three most important guiding documents of the UN on juvenile justice are the *Convention on the Rights of the Child*, the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (known as the *Beijing Rules*), and the *United Nations Guidelines for the Prevention of Juvenile Delinquency* (known as the *Riyadh Guidelines*). These three legal documents established a general guiding ideology for juvenile justice systems around the world: for children who commit crimes, emphasis should not be put on imprisonment or punishment, but on using more non-custodial social means to help them re-integrate into society. Such a guiding ideology has made it possible for social workers to intervene in the field of juvenile justice in mainland China.

⁵ S. Wang, *Introduction to Social Work [Shehuigongzuogailun]*, Higher Education Press, 2006, p.78.

Mainland China's juvenile legislation originated from the UN documents. The *Law of the People's Republic of China on the Protection of Minors* emphasizes the principle of "education, reformation, and redemption" for minors who commit crimes. It adheres to the principle of an 'education-based and assisted-punishment' approach, and emphasizes the necessity for social work in juvenile justice. The *Law of the People's Republic of China on the Prevention of Juvenile Delinquency* also emphasizes that juvenile crime prevention requires the participation of government departments, judicial institutions, social organizations, as well as relevant community groups, schools, families, urban residents' committees, and rural villagers' committees. They are all collectively responsible for creating a good, healthy environment for minors.

In order to meet the needs of juvenile justice practice, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and other judicial institutions have issued a number of judicial interpretations, notices, and opinions, some of which include provisions on professional social work. In August 2010, six Central Ministries and Committees of Chinese Government issued the *Opinions on Further Establishing and Improving the Support Working System for Criminal Cases of Minors (hereinafter referred to as "the Opinions")*. The Opinions stipulate that judicial institutions should take effective measures at all stages of criminal proceedings to safeguard the legal rights and interests of minors. At the same time, it also clearly provided for mechanisms such as legal representation, social investigation, legal aid and so on. In addition, the Opinions require public security institutions, the people's procuratorates, the people's courts and judicial administrative institutions, when dealing with juvenile criminal cases, to consider the specific condition of the case, carry out "education, reformation, and redemption" work according to the physical and mental characteristics of the minor in question. It requires relevant government departments to cooperate with professional institutions such as community correction institutions, special schools, and juvenile reformatories. Through the daily correction, rehabilitation and reformative education, society can prevent juvenile criminals from committing crimes again.

The *Criminal Procedure Law of the People's Republic of China*, amended in 2012, added a special chapter on "Procedures for Criminal Cases Committed by Minors" to provide judicial protection for minors involved in crimes. Several special mechanisms such as appropriate adult, social investigation and conditional non-prosecution are clearly stipulated. The establishment of these special mechanisms is an important achievement in juvenile justice system reform. It strengthens the protection of juvenile rights and interests in criminal procedure, and also puts forward a clear role social work can play in the juvenile justice process.

Both international standards and mainland China's juvenile legislation provide for social work to be involved in the juvenile justice system to carry out related services. Meanwhile, these laws also provide institutional protection for social workers to carry out work in the field of juvenile justice.⁶

2.2. *The Role of Social Work in Juvenile Justice: Law and Practice*

At present, mainland China's juvenile justice social work covers a number of services including prevention and remediation.

6 Y. Song, etc., *Collection of Juvenile Laws and Regulations [Weichengnianrenfalvguifanyibentong]*, Peking University Press, 2014, p.114-220.

2.2.1. Social Work Services for Rights-Protection

The core purpose of such services is to protect the legal rights and interests of minors. Due to the special physiological and psychological needs of minors, society needs to give special protection to their basic rights. With the support of relevant laws, mainland China has provided the following juvenile justice social work services.

First, appropriate adult service for juvenile delinquents. Article 270 of the newly revised *Criminal Procedure Law of China (2012)* stipulates: “For a criminal case committed by a minor, the statutory representative of the minor criminal suspect or defendant shall be informed to attend the interrogation and trial. Where the statutory representative cannot be reached or is unable to be present, or is an accomplice him/herself, other adult relatives of the minor criminal suspect or defendant, or representatives from his/her school or employer, the basic-level organization in his/her domicile or the minor protection organization may be informed to attend the interrogation and trial, and relevant information shall be recorded in writing. The statutory representative that shows up may perform the litigation rights of the minor criminal suspect or defendant on his/her behalf.” In practice, many regions rely on professional social workers to provide such service.

Second, victim assistance service. Such service is intended to serve minors who are victims of criminal activity, and are not only a requirement for the protection of children’s rights, but also is significant for crime prevention. Relevant research shows that if the victim is not given timely attention and support, she/he might easily evolve from victim to criminal offender.⁷

Third, civil protection service in civil cases, examples being civil cases involving disputes over custody and visitation rights. Related studies have shown that juvenile crime is highly correlated with family factors. In particular, minors whose parents are divorced need more professional services from social work. Therefore, there has been increasing social work in civil cases.⁸

2.2.2. Social Work Services for Crime Prevention

These services are for juveniles who have not committed crimes yet, but there is a risk that they might. Such services are mainly for:

- Juveniles who have misbehaved. Social workers work with communities and schools (especially special schools) to help these juveniles through individual cases, group activities, as well as family and community services.⁹
- Juveniles with a drug abuse history. Drug abuse is closely related to and can easily lead to illegal and criminal activities. At present, some areas in mainland China have begun to establish professional social work services for drug-abusing juveniles to reduce the possibility of them committing crimes.

7 S. Kang, *On Juvenile Law [Qingshaonianfaxuexinlun]*, Peking University Press, 1998, p.233.

8 In 2016, the Beijing Municipality Higher People’s Court, Beijing Municipality Youth League Committee, and Beijing Chaoyue Adolescents Social Work Services Agency jointly initiated a project on protection service for civil cases involving minors. Such service was explored and practiced in a few other provinces like Guangdong.

9 In 2013, the Beijing Municipality Youth League Committee released a research report, which showed most minors who committed crimes had misbehaved, and some even multiple times.

2.2.3. Social Work Services for Remedial Measures

These services are for juveniles who have already committed illegal or criminal activities and need to be educated and corrected to prevent them from committing crimes again. These services include:

Admonishment service. Such service is targeted at juveniles who have committed minor offenses and have not yet violated the *Criminal Law*. Usually, these juveniles have certain cognitive bias and rebellious tendencies. Due to the absence of juvenile legislation in mainland China and the jurisdiction scope of the *Criminal Law*, we need a social work service system established for such juveniles. Since 2014, the Juvenile Pre-Trial Squadron of the Haidian Public Security Bureau has cooperated with the Beijing Chaoyue Adolescents Social Work Services Agency to carry out the admonishment services. The achievement is remarkable. In recent years, more and more public security departments have begun to establish special institutions and working mechanisms for juveniles. Thus, it is believed that the establishment and development of social service system for juvenile delinquents will be moving forward.

Social investigation service for juvenile offenders. In March 2012, mainland China revised its *Criminal Procedure Law*. According to Article 268, "In handling criminal cases committed by minors, a public security organ, people's procuratorate, and people's court may investigate into the growing up experience, reasons for committing crimes and education and guardianship conditions of the minor criminal suspects or defendants depending on the circumstances." The social investigation service for minors involved in crimes is an important part of juvenile justice social work. Social workers use sociology, psychology and other professional knowledge to establish trust, collect data, and analyse data to produce a social investigation report. By analysing the pros and cons for the returning of minors to society, they put forward educational correction suggestions.

Education and correction service for juvenile offenders. After social investigation, professional social workers focus on the cognitive and behavioural habits of juvenile offenders to provide education and correction services. They take account of environmental factors, and apply principles, knowledge, and methods of social work. By such means, they help the minors to achieve positive development and change, so as to prevent them from committing crimes again.

2.3. Cooperation Between Social Workers and Other Relevant Stakeholders

In order to help juvenile offenders re-integrate into society smoothly, social workers should cooperate closely with the educational institutions, police, prosecutors, judges and judicial correction institutions, to ensure the continuous protection and servicing of minors. Currently, in mainland China, social workers and related institutions mainly cooperate with:

- Educational institutions - The main aim is to provide education and correction services to students who misbehave. The goal of the service is to effectively prevent crime by underage students.
- Police institutions - For minors suspected of committing crimes, social workers

provide social investigation services, education and correction service, appropriate adult service, and assistance service for minor victims. For minors who have seriously violated the law but the offence has yet to constitute a crime, social workers provide admonishment and education and correction service.

- Prosecutors - These social work services mainly include social investigation service for suspected criminal minors, appropriate adult service, education and correction service, and crime victim assistance service.
- Judges - In addition to the services similar to those provided by collaborating with the police and prosecutors, social work services also include court education service and protection service in civil cases.
- Judicial administrative staff - Social work collaboration is mainly aimed at imprisonment correction and community correction services for minors who have already been sentenced.

Based on the cooperation between social workers and related institutions mentioned above, some developed regions in mainland China have begun to establish relatively advanced service systems. Unfortunately, this is only seen in very few developed regions. In many parts of mainland China, such collaborative systems have not yet been established.

2.4. Qualifications and Evaluation of Juvenile Justice Social Work

Juvenile justice social work requires social workers to have strong professional capabilities. Therefore, the determining and evaluation of professional qualifications of social workers is particularly important. Three important aspects include:

- First, the determining of professional qualifications. The social worker who engages in juvenile justice social work needs strict professional training. During the training process, the relaying of social work values, the cultivation of social work knowledge, and the training of professional methods are highlighted. It is especially important to focus on practical training to develop skilled service techniques and abilities. After professional training, one will take the examination to acquire National Social Work Professional Certification, and obtain the professional qualifications to become an assistant social worker, social worker, or senior social worker.
- Second, continuous professional training and supervision. Juvenile justice social work has to deal with and solve complex individual problems and social issues, posing high standards on the service capabilities of social workers. Therefore, continuous training and supervision of social work services is paramount for frontline social workers, and an important resource for them to carry out effective services continuously.
- Finally, professional evaluation. Without a quantitative evaluation mechanism, an objective standard for professional quality cannot be established. Professional evaluation helps improve the professional capacity of juvenile justice social work. Therefore, it is necessary to strengthen the objective assessment of juvenile justice social work institutions and service capabilities, so as to promote the effective development of juvenile justice social work.

In mainland China, both the purchasers and providers of the services have begun to pay attention to the above three issues, and find ways to develop the above.

3. Experience, Main Challenges, and Reform Initiatives Regarding Juvenile Justice Social Work in Mainland China

3.1. Experience and Achievements

Mainland China's experience and achievements after launching juvenile justice social work is as follows.

First, social work services have effectively helped juvenile offenders re-integrate into society smoothly. Social work has greatly improved the quality and level of education and correction for juvenile offenders. As an especially vulnerable group, minors involved in crimes have a lot of service needs. They require intervention from social workers in their cognitive levels, behavioural habits, and being provided with a social support network. Social work services have changed lives, and has prevented juvenile offenders from committing crimes again.

Second, the standardization, quantification, and humanization of juvenile justice social work has greatly improved. With regard to standardization, the intervention of social work services was laid clear in mainland China's criminal justice system. Without the intervention of social work services, the normativity and even the legality of criminal justice will be questioned. Therefore, social work is an important support for the normative behaviour of relevant juvenile justice stakeholders. In terms of quantification, social workers carry out social investigation based on their evidence and grounded knowledge. Through social workers, judicial personnel can truly and dynamically understand minors involved in crimes, and can apply laws in a more personalized way. Thus, social workers have improved the quality and level of the application of laws. With regards to humanization, it means extending humanistic care to minors involved in crimes during the whole judicial process, and understanding the children's needs, circumstances, and aspirations.

Third, the introduction of social work in the juvenile justice process will promote juvenile legislation in mainland China. At present, mainland China is undergoing juvenile legislative and judicial reform. In the upcoming years, basic laws such as the *Law on the Protection of Minors and the Law on the Prevention of Juvenile Delinquency* will be amended. The intervention of professional social work services is necessary, both in juvenile crime prevention and judicial protection. These practical experiences will be reflected in legislation, which are being considered by legislators.

Finally, different developments in juvenile justice social work all lead to the same goal. For example, in Shanghai, where juvenile justice social work started earlier, the system is more mature. In the early years, they paid more attention to services for juveniles in the community, and then gradually expanded to focus on juveniles in conflict with the law. In Beijing, juvenile justice social work first focused on juvenile offenders. In recent years, services have been extended to young people with illegal or bad behaviour. Although the development path of juvenile justice social work varies slightly from place to place,

there is a consensus on what the structure and content of the whole system should cover. It is agreed that both prevention and correction services need to be integrated into the juvenile justice social work system.

3.2. Main Challenges

Generally speaking, juvenile justice social work in mainland China is still in its nascent stage, and there are many challenges for future development.

First, there is huge unbalanced development in juvenile justice social work in different regions of mainland China. Shanghai Municipality, Beijing Municipality, Yunnan Province, Shenzhen Municipality, Shaanxi Provinces and some other places are more developed. They have a relatively complete service system with fully covered services. However, in general, most regions are developing slowly with a severe imbalance in resources. For example, in some provinces, social work organizations are developing slowly. Even though some social work organizations have been established, they do not understand the need for social work services in the juvenile justice process, and there is little collaboration.

Second, the acceptance of social work varies significantly by different judicial departments. In general, procuratorial and judicial departments have a better acceptance of social work. Relatively speaking, the public security department has lower acceptance of social work intervention. In recent years, due to the introduction of a series of laws and regulations including the special chapter for minors in the Criminal Procedure Law and the reform of the juvenile justice system, public security departments in some areas have established specialized investigative agencies equipped with specialized personnel for juvenile cases, which hence establishes a cooperative relationship with social work. However, in general, the public security departments are less likely to accept social work professional services than procuratorates and courts.

Third, the professionalism of juvenile justice social work services needs to be further improved. Research on related issues such as service standards, models, collaborative mechanisms, and effectiveness assessments needs to be further improved. As mentioned above, mainland China has a relatively short history of juvenile justice social work. Therefore, it is necessary to improve the capacity and service level of juvenile justice social work. It requires colleges and universities to strengthen judicial social work education, and also requires the State to formulate special policies to promote the professional development of juvenile justice social work. Thus, we can promote the professional level of juvenile justice social work services through specialization and professionalism.

Fourth, juvenile justice social work requires policy support and guarantees. Mainland China's *Law on the Protection of Minors* and the *Law on the Prevention of Juvenile Delinquency* already provided the basis for the intervention of professional social forces in judicial protection. However, because the provisions of laws are often too general, it is unable to provide strong institutional support for social workers to participate in the juvenile justice process. For example, the *Law on the Protection of Minors* provides for social work in crime prevention. However, except for the principle that juvenile judicial

activities should adhere to the basic policy of “education, reformation, and redemption”, it does not provide any clear provisions for implementation. All in all, juvenile justice legislation lacks the specific institutional design for social work intervention, lacking an operable system for practice and specific guarantees, such as facilities and funding.

Fifth, there is still not yet a complete systematic theoretical framework for research on juvenile justice social work. At present, little research has been done, and what is done tends to be decentralized and fragmented. In existing research, there is still no clear understanding of the basic issues in juvenile justice social work. There is a strong need for cross-disciplinary research between law and social work.

In conclusion, mainland China’s juvenile justice social work has achieved many milestones after more than a decade of development. It has made important achievements in its system construction, service content and service fields expansion. However, there are still obvious gaps and deficiencies in its development. For example, an overarching juvenile justice social work service system has not yet been established, and a stable service mechanism has not yet been formed. Service institutions and service personnel are still relatively insufficient, and service levels still need to be improved. These problems are obstacles that will limit the development of juvenile justice social work in mainland China if not addressed.

3.3. Reform Initiatives

According to the current founding principles and practice of juvenile justice social work in mainland China, it is necessary to reform in the following areas:

- First, service content and scope. In addition to the various services in the field of criminal justice, the protection of minors’ rights in civil law and the assistance of minor victims should become important service areas in the future. Over the past decade, social work services for minors suspected of crimes have been heavily promoted by the judiciary and social organizations. A relatively complete service system has been established. However, with the rising divorce rate in mainland China, the rights of children from divorced families are very unstable and at risk. Therefore, it is strongly recommended that social work be also involved in civil law. In addition, thanks to the effectiveness of juvenile crime prevention in mainland China, the number of minors involved in crimes has been decreasing year by year. Meanwhile, the number of minor victims continues to rise, which is alarming. Therefore, the service for minor victims in civil cases should also become the focus of juvenile justice social work services.
- Second, institutional construction. Social workers’ participation should be stipulated in laws such as the *Child Welfare Law*, the *Law on the Protection of Minors*, and the *Law on Prevention of Juvenile Crime*. The institutional guarantee is an important basis for the sustainable development of social work services. At present, mainland China is amending the *Law on the Protection of Minors* and the *Law on the Prevention of Juvenile Delinquency*,¹⁰ and is preparing the *Child Welfare Law*. The roles and functions of social work services should be clearly stipulated in the formulation and

¹⁰ Mainland China’s legislative departments have included the *Law on the Protection of Minors* and the *Law on the Prevention of Juvenile Delinquency* as major basic laws to be revised in 2019 and 2020.

amendment of the above laws, especially in the area of child welfare protection, juvenile crime prevention, and judicial protection. Clear institutional arrangements should also be made for the intervention of social work in the above areas. Only in this way can we promote the healthy and sustainable development of social work in juvenile justice.

- Third, mechanism construction. We should establish and improve the mechanisms for social workers to participate in juvenile delinquency correction and the protection of children's rights. Legislative guarantees only provide the framework for social workers to participate in areas mentioned above. In practice, it is still necessary to establish a strong institution to lead and coordinate juvenile justice social work services. At present, it is the Communist Youth League at all levels that coordinates juvenile crime prevention in China. However, the Communist Youth League is merely a group organization which does not have a strong ability to coordinate resources. It is difficult for them to coordinate more resources to serve the needs of juvenile justice in a comprehensive way. Therefore, the government needs to consider a more powerful administrative department responsible for juvenile delinquency prevention in the future. Relying on its strong administrative capacity, it should coordinate professional cooperation between social work organizations and judicial institutions, and effectively solve current difficulties and problems in cooperation.
- Fourth, talent building. It is necessary to strengthen the specialties and the professional capacity of social workers in juvenile justice, which is detailed above. Improvement in the professional capacity of juvenile justice social work personnel will maximize the service impact.
- Fifth, conducting more quality research. Both legal and social work scholars need to collaborate as judicial social work research is an interdisciplinary subject, requiring cooperation and participation of experts both in the legal and social work circles. From the legal perspective, experts in criminal and civil law should study the needs in the judicial system for the construction of social work support systems. From the perspective of social work, it is necessary to study how social work services are connected with the judicial system. Thus, we can establish cooperation between the two, and build theoretical support for the advancement of judicial social work practices. Research not only needs to analyse the two macro fields of justice and social work, but also needs to sort out the interaction and rules that apply to both fields. More importantly, research needs to include grounded social relations research, which should provide theoretical support for the practice of judicial social work. At present, legal scholars are not familiar with social work, while social work scholars know little about the law. This requires further collaboration and cooperation between scholars from the two fields to build up the academic frameworks for juvenile justice social work together.

