INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

CHRONICLE CHRONIQUE CRÓNICA

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Editorial — Avril Calder

May I start by saying thank you to those members who sent me e-mails in praise of the last edition. It is very gratifying to receive them—I only hope that I can maintain the standard, but with your help and that of the Editorial Board, we will do our best to do so.

Guides to Juvenile Justice

You will recall that in my last editorial I mentioned the planned inclusion of handy guides to the JJ systems of member countries. I glad to say that the first ones are now available. They are for Austria, Germany and Switzerland and I'm very grateful to Professors Birklbauer and Sonnen and Dr Bürgin of those countries for the time and thought they have given in getting the project off to a flying start. I'm also grateful to one of our Council members, Petra Guder for her unstinting help in translating two of the documents from German into English.

So far three countries have taken up the JJ Guide challenge and will be in the next edition. Please contact me if you would also like to take part next time or the following (deadlines 15 Sep 2008 and 15 Feb 2009).

Developments in juvenile justice

Continuing the theme of publishing articles on recent developments in Youth Justice, you will find positive articles from places as far apart as Macedonia—two articles from different perspectives; and Guernsey—a small island between England and France—which is proposing big changes to its current system.

Child Welfare

We are all involved in making decisions about child welfare and so I was very pleased to receive several articles which seemed to fit together. They are from Judges Edwards (USA) and Boshier (NZ) and Baroness Pitkeathly, Chair of the Child and Family Courts Advisory and Support Service (Cafcass) Board, England. Cafcass has a crucial role in the functioning of Family Courts as you will see when reading her article.

In addition, I was recently invited, as an Executive member of IAYFJM, to a meeting with Lord Justice Thorpe, Head of International Family Justice for England and Wales. His work is at the highest level and his legal secretary has provided us with a fascinating view of what is involved.

Glasgow (Scotland) Drugs Project

The welfare of children as seen from their perspective is starkly presented in the article from Professor Marina Barnard, whose professional life is much involved with the Glasgow. Drugs Project. Drugs and alcohol are ever present factors in the children's lives and anything further removed from 'welfare' is impossible to imagine. I am grateful to her for allowing us this insight into the children's lives.

Correspondents

There is good news from several correspondents—Argentina's Association is off to a fresh start and its recent meeting is reported by its new President, Dr Elbio Ramos; New Zealand's Parliament has not passed the Act which would have changed its Juvenile Justice system radically; and the voice of our Association was heard at the Vienna Commission on Crime Prevention and Criminal Justice Conference in the address given by Davinia Ovett.

Editorial Board

I would like to welcome a new member to the Editorial Board. She is Cynthia Floud, a magistrate who has recently retired and who was particularly active in the Family Courts. Cynthia was also Director of a charity, "Parents for Children", which found parents for children with very special needs who were particularly difficult to place. I am happy to say that on top of these attributes Cynthia has excellent editorial skills. I know I am going to find her a great help.

Renate has written about Jacob van der Goes, whose place Cynthia is taking, but I would like to add my sincere thanks to hers for the support Jacob has given to the Chronicle over many years.

I would also like to say thank you to Judge Durand Brault of Canada who has helped me greatly in the proofreading of the articles in the French Edition.

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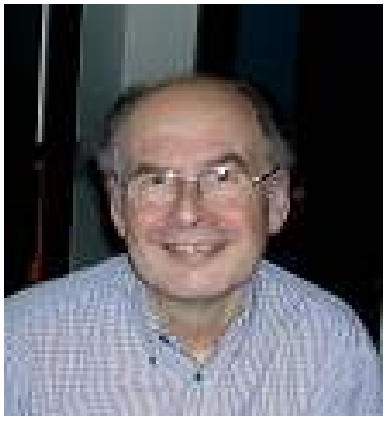
Developing a draft Code of Ethics—a call to Members Jean Trépanier



The President and the Bureau of the Association have mandated the Scientific Committee to prepare a draft code of ethics to be submitted to the members of the Association. Such a code would hopefully serve as a source of inspiration for members of the Association as well as for other people who might wish to design and implement such a code in their respective countries.

The task will not be an easy one. Norms of ethics are likely to include rules that can be quite similar from one country to another, as well as other rules that may vary according to the cultural and legal traditions of various countries. The Scientific Committee will have to work in such a way that the document it proposes will be helpful to members in a range of different countries.

This can be achieved only if we are able to draw on the experience and reflections of members from several countries and continents. That is why we wish to call upon all members to come forward and help. At this stage, it would be particularly helpful to be informed of any rules of ethics that are currently in force or that might be contemplated for magistrates involved in youth and family matters. Similarly, any thoughts that members of the Association may have written or come across and that might be relevant for the task that the Committee will have to do would be welcome. This would stimulate the thoughts of Committee members and ensure that the final document reflects views and practices from a diversity of countries and legal traditions.

Please send any contribution you think might be helpful to me. **Professor Jean Trépanier**, **École de criminologie et Centre international de criminologie comparée, Université de Montréal C.P. 6128, Succursale Centre-ville Montréal, Québec H3C 3J7**

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We look forward to receiving your contributions and we thank you for your help.

News from the President — Renate Winter

Renate Winter in Tunis

Dear friends and colleagues,

World Congress 2010

It is with great pleasure that I can tell you about the first concrete step taken by the Executive towards the realisation of our next international congress. In April the Executive was invited by its Tunisian partner, ATUDE, to travel to Tunis to look into proposals for the 2010 congress, discussing details of programmes and logistics. Some preparations have now been made; more discussions and planning will be needed to finalize the programme. Furthermore, we will soon have to contact keynote speakers and chairs of workshops. Jean Zermatten, vice-president of the UN-Committee on the Rights of the Child, has generously agreed to assist in the difficult job of getting ideas together and distilling pertinent conclusions. I hope that at the next meeting, which will take place in October in Sion/Switzerland, we will be ready with a rough skeleton-programme to be sent around for further suggestions, ideas and comments.

Sion and Biennial Association Meeting

Speaking about Sion: the annual conference of the Institut International des Droits de L'enfant (IDE) will take place from 14-18th October and will focus on child victims and witnesses—an important subject where a lot remains to be done, because not very much has happened so far to secure their special interests and to respect their special needs. [see page 46 below Editor]

I hope that many colleagues from all over the world will participate, as new legislation, new approaches and new systems that have to be implemented by Member States to the CRC will be presented and discussed with judges who will have to work with them later on. I also very much hope to have the pleasure of welcoming many members of the Council and the General Committee to the Association meeting. Invitations will be sent soon.

Secretary General and communication

As you may have seen (and I hope liked) the Executive, due to the diligence of our Secretary-General, regularly sends you information via e-mail on interesting events concerning all of us. We are especially addressing members living close to the region where an event is due to take place.

Questionnaires to be filled out to assist researchers in the field of juvenile justice and child protection are often sent to you as well. I would be very grateful if at least some members of our Association would sacrifice a bit of time to convey information, as it is always a very hard job to convince politicians and other decision makers to listen to the voice of professionals. Now, when we have the chance of being heard, we should make our opinions known, shouldn't we!

Contacts and sources of information

Recently many events have taken place worldwide and a few networks are now available to continuously circulate information on seminars, congresses, meetings, as well as on new developments or newly arising problems in our field of work. Thus we hear regularly from the Interagency Panel on Juvenile Justice (IPJJ)—we have been a member since January 2008. We get news from all the other member organisations concerning such matters as available posts for persons wishing to work abroad for some time in the legal field. Other matters concerning children flow in as well as frequent requests for assistance on research projects, as I mentioned above. Events, such as regular meetings of the member organisations, are announced as well. Davinia Ovett, [see page xx editor] the very capable secretary of this "umbrella panel", is ready to assist both in dissemination of information and requests for information. She can be found under dovett@juvenilejusticepanel.org

Terre des Hommes publishes regular newsletters containing up-to-date information and press articles about new developments in the field of child protection. The link is: newsletter@tdh-childprotection.org. This news is often very important for family judges having to decide cases involving more than one country and is available free of charge.

The International Juvenile Justice Observatory (www.oijj.org) focuses in its newsletter under newsletter@oijj.org on national but mostly international congresses and seminars worldwide and summarises the content and conclusions of these events afterwards.

IDE publishes information on very concrete issues, regularly updating its electronic library on

available laws on juvenile justice or codes on child protection and national NGOs working in the field. Under www.childrights.org a lot of valuable information especially for judges interested in the international development of juvenile justice can be found.

Threats to Juvenile Justice

In this regard, focusing again on the international development of juvenile justice, a very strange situation can be diagnosed. On the one hand, Member States of the CRC in Latin America and to some extent in Africa are trying to introduce more and more alternatives to punishment and deprivation of liberty, having acknowledged both the damage that deprivation of liberty causes to children and adolescents as well as the advantages of using alternatives and diversion mechanisms. , In European countries on the other hand a significant return to retributive justice can be seen, mostly on the pretext of national security, whatever that might mean in the context of children and adolescents.

In France, when politicians started to undermine the institution of the juvenile judge, many colleagues took part in a very important study about their profession. Their example shows how to get problems discussed and the voice of juvenile and family judges heard. This is especially important in cases where the working conditions for all of us as well as our resources to try to solve the problems of children and the families that we are working with and we are working for, are deteriorating because of politics.

The Centre of Sociology of Organizations at the University of "Sciences Politiques" in Paris has recently published "a sociological study concerning a professional group under pressure", entitled "The judge of minors is not a minor judge" ("Le juge des enfants n'est pas un juge mineur").

I would like to cite a few sentences (trying to translate as best I can) and I am sure you will recognize quite a lot of the thoughts mentioned—

"Juvenile judges have, until recently, had a special place within the justice system: although marginalized, they nevertheless had a special reputation, because they were engaged in a mission of education for children and their families, different from the traditional implementation of the law. They were surrounded by all kinds of specialists who became partners and they themselves have asked for the creation of educative structures.

"What has become of the juvenile judge? How has the profession changed in response to new demands by society, especially the increased importance given to the repression of offences committed by minors?"

Sounds familiar, doesn't it?

The study continues: "In order to analyse the changes in the profession of a juvenile judge, the present study tried to observe these judges within their organisational environment in the justice system. The research … relies on interviews with judges and their institutional partners, Judicial Protection of Youth …"

Wouldn't it be important to have such an exercise in many of our countries? Isn't it necessary to find out if it is still true that, as the study states, there is a "heart of the profession" accepted by all juvenile judges? That judges insist on their independence and autonomy if the specificity of their work with minors is at stake? That one can still confirm the existence of the particular identity of a juvenile judge, even more so, as his or her existence is put into question because there are risks evolving concerning the continuation of this institution? Let me state as an aside that a similar situation exists in many countries for family judges.

Wouldn't it be crucial for our profession to stress that "all the possible outcomes for young people stem from this *key person*—the judge ... It is from this point of stability that he/she constitutes and from the directions that he/she gives that all actions taken are authorised and supported. In the field, all our observations confirmed support for this special position of the juvenile judge."

I would very much like to open a discussion among our members concerning the "added value"—an important parameter for all international projects—of the juvenile and family judge to society. If globalisation—be it global economic policy or global feelings of threats to security—leads to an ending of effective and well-established practices in dealing with children in their best interest, sacrificing them to costs and angst, any possible success in our work of enabling children and adolescents to get another, better chance of a decent life in society will vanish. As we—representatives of a special profession—disappear, so our capacity to educate instead of punish will disappear, and children and adolescents at risk or in conflict with the law will increasingly be regarded as a threat to society rather than as young, not yet fully developed human beings primarily in need of protection and guidance.

Any letters, comments and ideas about how to deal with this new situation would be welcome. It will be an important new task for the Chronicle to provide space for discussion.

I look forward to your views!

And finally I would like to say a really big thank you to Jacob (Jaap) van der Goes of the Netherlands, who has played such an inspirational part in the publication of the Chronicle from the very first. Jaap has continued over many years to foster the Chronicle and is now stepping down from the Editorial Board. In his place, I welcome Cynthia Floud from England who brings to the Board her long experience of working with troubled children.

Renate Winter

Trying Childhoods—Glasgow Drugs Project Professor Marina Barnard

The lawyer, Atticus Finch, in 'To Kill A Mockingbird' held that sometimes you just had to get into someone's shoes and walk about in them to have any sense of what made a person. To walk in the shoes of a child living with a parent's drug or alcohol problem is, I suspect, a challenge beyond most of us. Perhaps this is part of why we know so little of the experiences of children living with parental drug or alcohol problems. Despite their large numbers, their conspicuousness in social welfare and in the courts, as well as their propensity to get into trouble themselves, these children have largely escaped our notice. They have been invisible children. It's not so much that we have not got into their shoes, as that we have failed to notice they were there to be got into at all.

It was this invisibility that motivated the art exhibition *Trying Childhoods* in which children and young people from all over Scotland worked over a period of two years to express through art something of what it is like to live with drugs and alcohol in the home and in the community. As an academic this was a departure from the more usual practice of reporting research, mostly to a small and very specialist audience. The aim here however was for a more deliberately emotional, more visceral evocation of the problems these children face in trying to grow up well. The hope was that in making their experiences visible through the work they produced, these children and young people might jolt some greater recognition of their needs to a largely unknowing public as well as to the community of practitioners and policymakers.

It is, if you think about it, a strange turn of events for such children and young people to be so highly visible on say, child protection registers, but to be at one and the same time so largely invisible in policy terms. Before 2003 and the publication of the UK Government document 'Hidden Harm: an inquiry into the needs of children of problem drug users' (ACMD, 2003), there had been no recognition of the particular needs of this population. Given that the drug problem in the UK began its sharp upward trajectory in the mid 1980s you would think we might have cottoned on earlier to the potential for problems once these young people became parents themselves. We now know for example that there are 350,000 children in England and Wales with at least one parent who has a serious drug problem. This translates as 1-2% of all children under the age of 16. The figures in Scotland are more alarming, with a staggering 4-6% of such children with a parent with drug problems. There has been no equivalent work around the children of parents with alcohol problems but educated guesses indicate about 1.3 million (Prime Minister's Strategy Group, 2002). By any standard, this is a lot of children. The problem however with statistics is they tend to wash over one, they leave unanswered the question 'so what?'

Children from homes where one or both parents have drug or alcohol problems are over-represented on UK Child Protection Registers, mostly under the category of physical neglect, although it is known that abuse often comes as a package rather than parcelled into neat categories. Children who are neglectfully unsupervised for example are often emotionally deprived too, but it is difficult to provide clear and sufficient evidence of this. A dangerously dirty house, a small child left home alone—these offer more concrete measures of neglect.

In my own research with families where one or both parents have drug problems the catalogue of troubles created for children as a result of parental preoccupation with drugs was a long and sorry litany (Barnard, 2006). In the midst of their drug dependency, parents could rarely see beyond the cycle of finding, buying and using drugs with children being dragged along in their wake. Days and nights structured primarily around meeting the needs imposed by a drug habit leave little time for meeting the needs of children. When a parent says 'we never bothered with him (their son), drugs always came first, it didn't matter what was wrong with him, drugs always came first' you begin to get a glimmer of the costs to children.

When drugs come first, the needs of children have to come second, which translates into children left alone at home, often for hours at a time, or being taken at all hours of the day or night to buy drugs regardless of the weather, or of how hungry or tired they might be, and how dangerous such places might be for children to be present in. Parents described terrifying situations that had come about through incapacity as a result of drug use and equally terrifying times where they and

their children had been subjected to violent attack from drug predators. It might sound like the stuff of soap operas but my interviews with parents were replete with the risks that children almost routinely ran as a result of the chaos that drug dependency created.

The drama of parental drug or alcohol misuse is most often the neglect we can see. However it was not this that children focused on. Their stories of living with a parent with drug and alcohol problems were rooted in a deep-seated sense of loss and abandonment through parents so caught up in their substance use that they went unnoticed. The flat statement of the 15-year old who said 'when my mum is using drugs it just makes me feel as if I am here myself—not got anyone else here' speaks of just this ache. They wanted to be important to their parents and felt cheated by drugs and drink of their place at the centre of their parents' attention. To have a parent who was 'there for them' was the single thing they most wanted, then they wouldn't have to pretend family outings to their friends or make up presents they never received, wouldn't have to live with their granny, wouldn't have to fend for themselves and take on the care of their younger siblings. In short they wanted the mundane assurance of parental care, which signalled security and safety.

A Game of Chance

Barbie overdosed in the bath;

The world seen through methadone-tinted glasses

The life you can have if you don't take drugs;

Baby and needles

A world structured by the unpredictability and instability of a parent preoccupied by the needs of their drug or alcohol habit is a lonely, confusing, and frightening place for a child. Being so wrapped up in secrecy to avoid the shame of public notice adds to the burden, which seems to become weightier with the passing years. Small wonder, then, that so many of these children develop problems themselves.

Camila Batmangelidjh as founder of the charity *Kids Company*, which works with many of London's most deprived children, has described the immense challenges faced by kids who have grown up without the nurturance of a caring and consistent adult, often from backgrounds of parental drug or alcohol misuse. She has written powerfully of the desolation of such children and its costs to them and to society as they grow up. 'In children who have been abused there is the urge for revenge. The hate is outward bound towards the victim and/or inward directed towards the self. It is the expression of 'murdered childhoods' (Batmanghelidjh, 2006).

These kids often lack empathy, they have grown up expecting nothing and relying on no one because this is the safest way to protect them from further hurt and harm. The revulsion that we might feel when we recall the vicious 'happy slapping' to death of a man minding his own business by a group of young people led principally by a 13 year old girl has to be seen in the context of that girl's loveless upbringing by a parent on drugs.

When in the summer of 2007 we first put on the art exhibition *Trying Childhoods* it was to encourage an awakening in the public mind of the burdens that children daily confront in living in communities and homes where drugs and alcohol are persistent and endemic. Rather than see these children as troubling and troublesome, the art works produced by these children and young people invited a different interpretation of how they have been themselves troubled by the environments within which they have grown up.

Trying Childhoods was a leap in the dark. We had no idea whether children and young people would be willing to participate in the making of an exhibition that was explicitly about living with addiction. Yet week after week kids were there, even if it meant getting onto a bus after school in mid winter and coming into town to do so. With an art therapist and artist animator the kids produced astonishing, deeply moving images.

Whilst we worked almost entirely with kids who came from backgrounds where drugs and alcohol were an issue, we had to tread very lightly, they did not have to own their parents problem but they could tell others a story of 'what it is like to be me' and it was left deliberately vague to mean either addiction in their communities; 'out there', or, if they felt able, in their homes. Having a parent with a drug or alcohol problem is usually kept secret; kids are fearful of the scorn and pity of others, and moreover, of being taken away from their families. Children understandably run shy of being identified as coming from families with these

It was a tough agenda, what the kids were doing needed to be safe but at the same time they were involved in an initiative that was trying to tell a deeply personal, often sorry tale that was not disinterested. We were not offering a therapeutic service even despite the fact that the groups were run by a qualified art therapist. The responsibility upon us was to make sure kids understood to what they were contributing, that they did not feel any pressure, that they felt cared for and important whilst with us and importantly, that we would honour their trust.

Many initiatives to work with kids are very time limited, neat packages of 8 weeks that are supposed to help turn kids around. Our experience was that it took months, often for not very much identifiable to happen. One group of teenage boys for months and months repetitively produced the same highly stylised graffiti tags, leaving us frustrated and wondering if what we had undertaken was just an expensive madness, motivated by good, but ill judged intentions. Yet these street savvy boys came every week to take part in the group, and even if we could not know what they got from it, it was evident that they saw its value.

The patience and constancy that the art therapist showed the boys paid off as they began to share snippets of their street lives to her; the gangs they belonged to, the fights they were in or had witnessed, the drugs, the drink, football and endemic sectarianism to which they fully subscribed. They had mobile phones full of photos of gravestones of dead family members and friends, of knives and fights, which over time they were willing to show to the artist, Liz Mitchell. Their stories of living in the East End of Glasgow, close to what is known locally as 'the murder mile' —Glasgow is the murder capital of Europe and the East End is its epicentre—evolved to become the centrepiece of *Trying Childhoods*; a violent cityscape scarred by drugs and alcohol.

Out of cardboard and papier maché they made playgrounds strewn with discarded needles, bottles and knives and a school where prostitutes worked outside the gates. They constructed a disproportionately large graveyard and covered all the graves with tobacco because so many of the people they collectively knew had died through smoking. In one of their cardboard houses one boy placed a tiny bag of tic tacs on a table. He accompanied this with the story of how as a wee (little) boy he had eaten half a packet of what he thought were sweets left by his dad on the table. He had been sick all night, his dad told him they were 'adult tic tacs' (sweets). The boys called the piece 'A Game of Chance' which began with the baby in the playground amidst the needles and

ended with the graveyard, all to be viewed through green tinted glasses in recognition of the dominance of methadone—a heroin substitute, which is green—in their community. The cityscape they constructed made for harsh viewing, all the more so because it derived from their own experiences.

The severity of this landscape was replicated in many other pictures and pieces that the children produced. A forlorn film animation of a father's drug overdose and the terror of the abandoned child, a painting of a remembered knife assault by a drunk father, a story puppetry of 'Vodka Baby', the sixth child conceived in drunkenness, raised in indifference and destined to become a drug user. Such images conveyed not only the drama of violence and loss but also too the ache that went with it. The word 'Help' appeared in many of the paintings. One could not see the exhibition and come away without feeling at some level chastened by what these children have to live with. It was not all bleak; there were beautiful rainbows, and poignant and funny pieces too. Some of their work showed a playfulness and wishful optimism that offset the darker images and was an important reminder of the hopes and dreams they had for their families.

Father with knife:

The girl who painted this recalled the time when, at age 7, her father had used a knife against her in a drunken rage. She said she could not draw herself in the picture

Ritalina

Was *Trying Childhoods* a success? Many people came to see it and to judge from the comments they left, it found its mark. And what of the kids involved? When they came en masse to see their work exhibited in the grand setting of the Rennie Mackintosh Glasgow School of Art, they filled the place with a heady exuberance as they rushed around looking at what they had done. There was pride and diffidence and excitement and, in all of it, a corrective to the tendency to see them as poor wee things. They were not asking to be cast as victims and they did not want our pity. Most of what they hoped for seemed to be that it would inspire us to use our imaginations, step into their shoes for a while—in the words of one young girl; 'to start thinking of what I've been through.' It seems a modest enough challenge—are we up to it?

The Lost Brolly

''One day it was snowing and somebody lost their umbrella in the snow. And then they went home. She went away and left it, leaving it in the snow."

By a 6 year old girl living in a residential rehabilitation unit "thinking about children and how their lives are"

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Professor Marina Barnard works at the Centre for Drugs Misuse Research at the University of Glasgow. Her research career has, over many years, centred on the impacts of drug misuse on communities and families. She works on the premise that research should raise public awareness of the difficulties drugs cause for many people, particularly children, and is motivated by the sense that research should have practical relevance.

"This is a rose, a multi-coloured rose.
It floats about, it's in a cloud.
It doesn't have any other flower friends,
It floats about on its own"

By a 10 year old girl living with her mother in a residential rehabilitation unit

The transition to group decision-making in child protection cases

Judge Leonard Edwards (retired)
Dean Inger Sagatun-Edwards, PhD

Inger Sagatun-Edwards

Leonard Edwards

It was only a few years ago that, in most jurisdictions across the United States, decisions at each stage of a child welfare case were made by individual professionals—law enforcement, child protection workers, social workers and judges—who were all a part of the community's response to child abuse and neglect crises. In the last decade, the development and continuing evolution of best practices have brought about many changes in how professionals approach the resolution of these issues, how they convene interested persons in the decision making process, and how families and children participate in decisions. This paper will examine some of these changes.

The scenario

The police respond to a neighbor's call complaining that the family next door is making too much noise, that the children (ages 4, 7 & 17) are screaming, and that he can hear property being destroyed. This is the fifth call the police have received concerning this family in the last 60 days. All were resolved with the parents promising to stop disturbing the neighbors. Now the officers at the front door meet the parents, who are both under the influence of an unknown substance and very unsteady on their feet. The mother has a bruise on her cheek. Behind them three children are running around screaming, and the seven-year-old is bleeding. The parents state that they were having a little fight, but that the situation is under control now. Both parents are arrested, and the police realize that they must decide what to do with the children.

A social worker assigned to investigate the children's situation decides that court intervention is necessary and files legal papers (petitions) on behalf of each child. She then begins to identify family members so that a family group conference can be held. Before that can be scheduled, the oldest child (the 17-year-old) misbehaves in the relative's home where all three children had been placed, and the relative explains that she cannot keep the child any longer. She must be moved to another living situation that evening.

When the 17-year-old youth continues to misbehave in the subsequent placement, it becomes clear that intensive services will be necessary to address her needs. In preparing for the family group conference, only four members of the family can be located. The social worker considers using a new technique called Family Finding to identify and locate additional family members. During the court proceedings, the attorneys and family members cannot agree on several factual and legal issues. The parents demand a trial. Soon after the legal proceedings are concluded, the 17-year-old turns 18. The social worker consults with the family about issues surrounding her majority and decides to hold an emancipation conference.

From this case history—a hypothetical—it is evident that numerous critical decisions are made in the life of a child protection case. The goals of these decisions will be to keep the children safe by maintaining them with their family, if possible, or otherwise to offer the family the opportunity to regain custody through rehabilitation. If those efforts are unsuccessful, the goal may be to find the children a permanent home. Additionally, it is a goal that the children remain together, if possible, and that they live with people they know, preferably relatives. Hopefully, these decisions can be made in a timely fashion because the children need a permanent home as soon as possible.

Introduction

State intervention on behalf of maltreated children is an integral part of the social service and legal systems in most countries. This intervention seems appropriate because children cannot protect themselves against parental abuse or neglect. The child protection system in most countries is complex, consisting of persons who report suspected abuse or neglect, persons who respond to investigate, persons who decide whether a child must be removed from parental care, and persons who decide what the plan should be for the child and the family. All these decisions may be reviewed in court.

This paper will discuss a series of decision-making models in child protection cases. It will follow the path of the hypothetical case, moving from decision to decision as the child protection system intervenes in the family.

The report of abuse and joint response

Any investigation of child abuse or neglect may involve both child protection and criminal issues. For example, if the police discover that the parents have been neglecting or abusing their children and arrest the parents, the care and control of the children must be resolved as well as any issues relating to possible criminal law violations. However, police are trained in law enforcement and crime investigation, not in child welfare. The issues relating to the care of children in this type of emergency situation will be better addressed by child protection staff trained in working with abused and neglected children. These professionals know how to locate family members, complete background checks on possible placements, and place children in safe surroundings. They also work in civilian clothes and thus are less intimidating to children and families than uniformed law enforcement. In these types of situations, both child protection and law enforcement are necessary to address the full range of issues presented.

One best practice in these situations is to have a *joint response*. In child protection cases, joint response refers to law enforcement working with child protection to address the needs of the entire family.

In 2004 Santa Clara County, California developed a joint response system among various police agencies and the Department of Family and Children's Services—the county's child protection agency. Whenever law enforcement believes a child may have to be removed from parental custody for abuse or neglect, the officers at the scene will call the child protection agency and the agency will send a worker to the scene within 30 minutes. The agency has agreed to respond to a call from law enforcement seven days a week, twenty-four hours a day. At the scene the work will be divided between the two professions: law enforcement will address the issues involving possible law violations and the safety of all persons, and the child protection worker will address the issues relating to the child including safety, care, and emergency placement.

The protocol is used frequently, averaging over 50 calls per month. One result of this practice in Santa Clara County has been the reduction by more than 50% of the necessity of removing a child from the family. Another result has been a reduced number of foster home placements for children.

In the hypothetical case, the police called the child protection agency pursuant to the joint response protocol. A social worker arrived at the house within 30 minutes and took responsibility for the children. She was able to locate a relative willing to care for the children. She was also able to complete a background check verifying that the relative had no criminal record and was able to speak to the relative about the dangers of parental contact with the children. The children were placed with the relative the same evening and were able to stay together, thus avoiding placement in a foster home.

Team decision-making

In our hypothetical case, the joint response protocol enabled the social worker to make a placement with extended family. However, after a few days, the eldest child had to be moved to a different placement because the caretaker was unable to manage her behavior and unwilling to keep her any longer. The social worker needed to find an emergency placement the same day the relative notified her. She could not wait for the family group conference which was scheduled for a future date.

Traditional social worker practice in many jurisdictions has been to have the social worker herself make the decision to change placements, often after consulting with supervisors. One person, even a trained social worker with a supervisor's help, should not make such an important decision, particularly when there is time to contact other interested persons. Because changing a child's placement is a significant intervention in the child's life, care must be taken to make the best decision possible. It was with this in mind that the Annie E. Casey Foundation developed Team Decision Making.

Team Decision Making (TDM) is a meeting of parents, caregivers, professionals, and youth, as appropriate, whenever there is probability that a child will be removed from parental care, that placement may be changed, or that the reunification or permanency plan may be changed. The meeting brings together the people most involved with the child and the family and who care most about them. The goal is to ensure that the best possible decisions are made about the child's safety and placement, with an emphasis on preserving family and community connections.

As explained by the Annie E. Casey Foundation, TDM's underlying values and beliefs are as follows:

- families have strengths and can change;
- we must set up opportunities for families to show their strengths;
- a group can usually be more effective in making good decisions thanan individual;
- families are experts about themselves;
- when families are included in the decision making, they are capable of identifying their own needs and strengths;
- members of the family's own community add value to the process by serving as natural allies to the family and as experts regarding the community's resources.

According to Santa Clara County practitioners, TDM's benefits are that better decisions are made on behalf of the child and family. More information is available, broader participation leads to creative ideas and workable solutions, people and places important to the child are acknowledged and respected, and the TDM process provides participants an opportunity for their voice to be heard.

TDMs cannot be organized immediately, but they can be arranged in a few days and have taken place within 24 hours in some circumstances. The process starts with the social worker calling the TDM specialist to request a TDM meeting. The social worker will advise the specialist about any special aspects of the case, and the specialist will then determine the time and date of the meeting. The specialist notifies the family, service providers, community partners and other necessary persons including an interpreter, if necessary. The family has some control over who participates in the TDM. Children of 12 and older can be included with the social worker and facilitator determining what part of the meeting the child will attend.

In our hypothetical, the social worker convened a TDM when she learned that the relative was unwilling to have the 17-year-old girl remain in her house. The social worker was able to convene a team consisting of the mother (now out of custody), two relatives, and a teacher (by telephone). They decided that the girl should be placed in a group home on a temporary basis. Had the father been able to attend the TDM, the social worker would have used the domestic violence protocol developed by Santa Clara County to ensure safety during the meeting.

Family group conferencing

Family Group Conferencing is known by several other names, including Family Group Conferencing (FGC), Family Group Decision Making, and the Family Unity Model. FCG originated in New Zealand from principles developed by the Maori people. After a period of experimentation, FGC became an integral part of New Zealand child welfare practice with the enactment of the Children, Young Persons and their Families Act 1989 (The Act). The Act empowered families, including extended family members, to participate in planning for the welfare of their children who were at risk of abuse or neglect. The vehicle for empowerment is the Family Group Conference, a meeting of family members, coordinated by government social workers, but one that puts the decision making power in the family's hands.

The Act mandates that when a social worker or police officer believes that child is in need of care or protection, they shall report the matter to a Care and Protection Coordinator, "who shall convene a Family Group Conference in accordance with section 20." The Act describes how the FGC is to be planned, the people to be invited, notice, and the procedures to be followed. The purposes of the FGC are to consider issues relating to the care or protection of the child or young person on whose behalf the conference was convened, to formulate plans regarding the child and to review any recommendations, decisions and plans made by the conference.

FGC has been fully implemented in the New Zealand child protection system. It has also been adopted by other countries, including numerous local jurisdictions in the United States and Canada. FGC is not mandated by law in California or in any state in the United States – it is a procedure that a child welfare agency can choose to adopt. The Santa Clara County model is of particular interest because it is part of a continuum of models of group decision-making, available when a child protection case has come to the attention of the state.

In our hypothetical case, a FGC was convened and the family developed a plan for the children and a service plan for the parents. Several family members agreed to assist with supporting both the children and the parents. The children were able to participate in the FGC with the other family members. However, based on the experience of the relative caretaker and the attitude of the 17-year-old, the family was at a loss for how to manage the teenager's behavior and asked the social worker for assistance. Since both the mother and father were able to attend the FGC, the local domestic violence protocol was used to ensure safety for all family members.

Child protection mediation

Once legal documents have been filed on behalf of children, the juvenile or family court judge will make orders regarding removal, visitation by parents, and placement.

The traditional legal process is not the preferred method of resolving disputes that arise in the context of child protection proceedings. Because the legal process involves lawyers, legal rules, and a judge, it is often uncomfortable and even intimidating for parents and social workers. These people do not know the legal rules, are unsure when to speak and what to say, and are likely to be scolded if they do not follow the proper court etiquette. There are no opportunities for parents to tell the judge their side of the case in their own words. Trials are particularly difficult for people who are not legally trained. Cross-examination can be brutal as attorneys probe witnesses concerning their weaknesses and failings, factual inconsistencies in their statements, and possible biases.

Child protection mediation is an alternative way to resolve legal, social and factual disputes that may arise in the court process. It is "a process in which specially trained neutral professionals facilitate the resolution of child abuse and neglect issues by bringing together, in a confidential setting, the family, social workers, attorneys, and others involved in a case." Child protection mediation first began in California in the 1980s, and has expanded greatly in the past decade throughout California and the United States.

Santa Clara County has used child protection mediation for over 10 years. The court refers cases to mediation at any time in the court process. Mediation includes all participants in the case. In cases involving domestic violence special protocols prevent face-to-face contact between some family members. Moreover, victim-advocates and/or support persons may accompany one or more of the participants. The mediation program is continually evaluated, and comprehensive records are maintained. Approximately 240 mediations are held each year each taking 2-4 hours, although on occasion there are multiple sessions. Of all cases referred to mediation, 80% are resolved entirely, 11% are resolved in part, and 9% are not resolved. The court refers only the most difficult, complex contested cases to mediation.

In our hypothetical, the case was referred to mediation which resolved the legal issues without a trial

Wraparound services

In our hypothetical the oldest child had to be removed from the relative because she was beyond the relative's control, and the relative was unwilling to continue to care for her. Although an emergency placement was identified through a TDM, it became clear after the Family Group Conference that intensive services would be necessary to address her serious emotional difficulties and uncontrollable behaviors. One model for addressing her needs is wraparound services

Wraparound is a unique approach to providing services to a child and family facing multiple adversities. Wraparound services are developed by a team of family members (including the child), community partners and professionals who are convened to address the needs of the child and family. They are strength-based and youth and family centred services provided in their natural environment and are driven by the individual strengths and developmental needs of the youth and family. One goal of wraparound services is independence from formal professional supports and services. A second goal is to keep children out of institutional care and in care with families.

Wraparound services interact with all of the systems that impact youths and their families. The services for each child are described in a plan developed by a Child and Family Team consisting of the people who know the child best. The plan is needs driven rather than service driven, and is strengths based and focused on normalization.

The Team makes a commitment to unconditional care. Wraparound has been evaluated both locally in Santa Clara County and nationally. Along with therapeutic foster care intervention, wraparound has demonstrated effectiveness with foster children.

In our hypothetical the 17-year-old was referred for wraparound services. A Child and Family Team was formed that included family members, community representatives and professionals. A plan was developed that permitted the 17-year-old to live with a family member with wraparound services.

Family finding

Family group conferencing, wraparound services, child protection mediation, and other group decision-making models rely for their outcomes on the involvement of family members. The extended family is an untapped and under-utilized resource for the nuclear family facing adversity. It can provide additional supports for the youth and for the family as well as be a possible placement option. Unfortunately, most child protection systems do not fully use the extended family because social workers often do not know who the members of the extended family are. Moreover, the parents and other close relatives may not know of the existence or whereabouts of relatives, may not want to contact them because of poor family relationships, or may not want to make it any easier for authorities to place their child outside the home.

One promising approach to identifying extended family members is called Family Finding, a philosophy that emphasizes the importance of family members as a solution to the problems facing abused and neglected children. A unique aspect of the Family Finding process is the use of advanced technology to locate extended family members. It is particularly useful for teenagers who are in the child welfare system and whose parents and other close relatives are not available. Using specialized software programs that search the web, social workers can locate on average over 100 relatives in a short period, relatives who are biologically related to the child, but whom the child and family may be unaware of or have lost contact with.

One advantage of utilizing Family Finding is that from a biological perspective, family placements are usually safer than non-family placements particularly when non-biologically related males reside in the home. People who share the same genes as a child are usually more willing to "go the extra mile" for her. Another advantage is that by locating family, the child may feel a part of something bigger and more inclusive than the family she has experienced before the discovery. Locating family can produce a sense of belonging.

In the hypothetical case Family Finding identified several relatives who could be supportive of the wraparound plan, including one relative who lived in a neighboring county. After a transition period, the 17-year-old moved to that relative's home with support from the wraparound team.

Emancipation conferences

An emancipation conference brings the youth together with family, professionals, and significant persons in the youth's life to plan for the time when the youth will reach majority and no longer will be within the child welfare system's jurisdiction. These conferences are usually convened by the social worker. Emancipation conferences can be important in a youth's life because experience has shown that youth aging out of the foster care system have a poor chance of success in life. Outcomes for emancipating foster youth have been so poor that several national initiatives have addressed this special population. The California legislature has mandated that no child under juvenile dependency court jurisdiction be emancipated without the social worker ensuring that important documents are in order and that supports have been identified for the youth.

At the emancipation conference, the attendees address the following questions:

1. What are the youth's short and long-term goals?
2. What is the youth's plan for education, employment and living arrangements?
3. What is the target emancipation date that would most benefit the youth?
4. What does the youth need in order to emancipate successfully?
5. What kind of support system does the youth have or need? Who will the youth turn to when there are problems?
6. Does the youth have special needs? If so, how will they be addressed after emancipation?

In the hypothetical case, an emancipation conference was held, and it was agreed that the youth would remain with her relative, attend school, and seek part-time work. Several family members and others indicated that they would be support persons for her in this living situation.

Conclusion

We believe that each of these decision-making models has a place in the child protection system. Each has a value under certain circumstances. A child protection system that uses these models and, where possible, draws upon family strengths as a part of a spectrum of responses to different situations that arise during the life of a child's case, will serve the child, the family, and the community in a more nuanced and effective way. The fact that Santa Clara County child protection system has embedded these models in practice is further evidence that it is possible to use all within one jurisdiction and thereby improve outcomes for children and families.

Footnotes to this article can be obtained from Judge Edwards. Edwardsleonard@comcast.net

Judge Leonard Edwards is a retired judge from San Jose, California.

Dean Inger Sagatun-Edwards was a Dean of Applied Science and Arts at San Jose State University. Dean Sagatun-Edwards died shortly after completion of this article.

The Parenting Hearings Programme— less adversarial children's hearings.

Judge Peter Boshier

Introduction

In November 2006 the New Zealand Family Court launched a two year pilot aimed at reducing the harmful effects of lengthy trials and delay within child care proceedings. As it draws to a close later this year, early feedback indicates this pilot, the "Parenting Hearings Programme: Less Adversarial Children's Hearings" (PHP) has been positive.

As an initiative, the PHP scheme is being undertaken in six Family Courts within New Zealand; in Auckland (in one docket), Tauranga, Rotorua, Palmerston North, Wellington and Dunedin; and derives its procedure from both statute and natural justice.

With this in mind, the overarching intention has been to resolve some of the deficiencies that pervade the 5% of child care cases that are not solved by the Court's conciliation arm, and those proceedings exhibiting high risk or urgency.

How the Programme is being piloted

The programme itself is clearly structured, with four identifiable stages. Having singled out suitable cases, an urgent Judicial / Issues Conference is undertaken within 14 days, (contingent on there being no contemporaneous defended domestic violence proceedings). At this time the case is assessed, a preliminary hearing date is set, directions are given for the conduct of the preliminary hearing and other administrative matters are attended to.

Between the list call and the preliminary hearing the parties watch a DVD that both explains the PHP process and places particular emphasis on the importance of putting the interests of children first.

This, in conjunction with other strategies such as the "Parenting Through Separation" programme, helps parents better understand the effects their separation and litigation may have on their children. Consequently, by adopting such a multi-faceted approach, the Parenting Hearings Programme aims to foster co-operation between parents so that they can settle matters that will inevitably crop up again in the future, such as the child's schooling arrangements, without recourse to the Court.

If a preliminary hearing remains necessary its objective will be to identify key issues and where possible resolve them. To facilitate this, the Judge hears from the parties themselves, their lawyers and lawyer for the child. Moreover, Judges play an active role in steering the course of proceedings, deciding what the key issues are and what evidence should be presented.

Consequently, as at 31 October 2007, 70% of cases heard under PHP were disposed of at the preliminary hearing, with only 17% requiring a final hearing.

Where issues can not be resolved at the preliminary hearing, a final hearing date will be set within 2 months; and the Judge will give explicit directions as to what evidence is to be filed for this final hearing.

At this stage, the Judge will often determine whether an expert report, from a psychologist or cultural reporter, will be required. This streamlined process allows PHP cases to exhibit a distinct advantage over non-PHP proceedings - in reducing the need for follow up reports; considerably better use is made of the experts involved.

Whilst the emphasis of the Parenting Hearings Programme is on agreement through consensus, it is important to note that the consent of the parties is not a pre-requisite to an outcome of the Court. Where agreement between the parties is not possible the Court will deliver a timely judgment in order to prevent the negative effects of an entrenched case perpetuating.

The timetabling detailed above is however subject to the absence of concurrent defended domestic violence proceedings. Where such proceedings do exist, findings as to violence and its impact on the child are heard first. Accordingly, provision exists within the pilot to hear these matters with some degree of urgency.

Benefits

The PHP pilot therefore illustrates how significant reductions in the duration of a case can be made. In and of itself this is extremely constructive, but it is particularly beneficial for any children involved in the proceedings. Undoubtedly, five months of limited contact with one parent (a possible reality of an interim parenting order) can amount to a significant proportion of a young child's life. Such a situation would hardly be consistent with the principles of family legislation and the PHP is one way consistency is being achieved.

In addition to overcoming the injurious effect of delay on families, the PHP aims to:

- Reduce the corrosive effect of adversarial proceedings.
- Address the imbalance between social protection and natural justice that arises within ex parte applications.
- Prevent the inappropriate creation of status quo positions.
- Allow for efficient proceedings which focus on the legal matters by only introducing relevant evidence.

Informal evaluation to date

The PHP pilot has now been up and running for nearly 16 months and informal interim evaluation has provided very positive feedback (although firm conclusions must await a formal evaluation).

During the pilots first year, overall time frames for the completion of cases appeared to drop significantly when a case was channelled into the PHP; with the median disposal time for PHP cases from the date of the application to the date of the disposal only 18.1 weeks. The median duration from PHP entry to application disposal was 5 weeks.

Moreover, on the presumption that most PHP cases would be defended a telling comparison can be observed between the median disposal time of defended non-PHP Care of Children Act cases and PHP cases. The former was 38.1 weeks, some 20 weeks (or five months) more than PHP cases.

Informal qualitative feedback has also been very positive, with comments that the process is supportive, easy to understand and generates a lasting outcome.

Conclusion

In conclusion, the PHP pilot has sought to re-emphasise the importance of parenting education programmes and the place of conciliation processes within the Family Court; whilst addressing underlying concerns regarding lengthy trials and delay.

The pilot's clear and structured process seeks collaborative solutions whilst preventing the case from becoming entrenched. Nevertheless, where agreement can not be reached, the Court retains its ability to impose decisions and see orders enforced. This, in and of itself, perhaps contributes to the success of PHP.

Finally, whilst formal evaluation of the pilot has only just commenced, informal evaluation has seen very positive results. Accordingly there is considerable hope that the Parenting Hearings Programme will continue as a successful component of New Zealand's Family Court proceedings.

Judge Peter Boshier is the Principal Family Court Judge of New Zealand.

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Young Offenders (Serious Crimes) Bill—New Zealand Tracey Cormack

No second reading for the Bill

Last year the Principal Youth Court Judge of New Zealand, Judge Andrew Becroft made a submission to a Parliamentary Select Committee to address his concerns regarding the proposed Young Offenders (Serious Crimes) Bill. The Private Member's Bill would effectively have resulted in 12 to 13 year olds being charged in the adult courts for virtually all offences. It would also have removed the historic (although seldom relied upon) protection of *doli incapax* afforded to 10-13 year olds. This doctrine presumes that children are criminally incapable, but is rebuttable and a child may be convicted of an offence if there is proof that the child understood their act to be wrong. In keeping with constitutional convention, Judge Becroft's submissions were limited to matters of drafting, structure and implications for the Youth Court, but not matters of policy. His prime concern was that the drafting of the Bill was very poor—"abysmal"—Judge Becroft's words to the Select Committee.

The Law and Order Committee issued a report on 30 November 2007 recommending the Young Offenders (Serious Crimes) Bill not be passed and on 20 February 2008, the second reading debate was postponed. This Bill did not get a second reading (negatived 21/05/2008). On the motion *That the Young Offenders (Serious Crimes) Bill be now read a second time,* the votes were ayes 7 and noes 107. The Bill will not proceed

Tracey Cormack is Research Counsel to Principal Youth Court Judge, Judge A J Becroft, Chief District Court Judge's Chambers, Wellington, New Zealand.

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Cafcass–putting children first in family courts in England

Baroness Jill Pitkeathley OBE

Cafcass—the Children and Family Court Advisory and Support Service—represents the interests of children in family courts in England. Chair of the Board, Baroness Jill Pitkeathley OBE, outlines developments at Cafcass over the past eighteen months.

Cafcass is now in its seventh year, following the amalgamation of the Family Court Welfare Service, the Guardian ad Litem and Reporting Service (for local authority disputes) and the children's branch of the office of the children's Official Solicitor in 2001. There have been many difficult times since inception but Cafcass is now able to focus on improving frontline practice.

Introduction to Cafcass

Cafcass has a statutory responsibility in England to ensure that children and young people are put first in family proceedings, their voices are properly heard, the decisions made about them by courts are in their best interests and they and their families are supported throughout the process, no matter what form their family takes in the modern world. We operate within the law set by Parliament and under the rules and directions of the family courts. Our role is to:

- safeguard and promote the welfare of children
- give advice to the family courts
- make provision for children to be represented
- provide information, advice and support to children and their families.

We are a non-departmental public body accountable to the Minister for Children, Young People and Families in the newly created Department for Children Schools and Families (DCFS). We work within the strategic objectives agreed by our sponsor department and contribute to wider government objectives relating to children.

We have a role in relation to measures outlined in the government policy document 'Every Child Matters', which sets out five key outcomes for children, young people and families—being healthy, staying safe, enjoying and achieving, making a positive contribution and experiencing economic well-being.

Expanding role

One of the changes resulting from the creation of the new government department is that Cafcass is now at the heart of a new Children's Plan published in December 2007.

Our role is set to become more integrated into plans for delivering better outcomes for children. The UK Government's Children's Plan states:-

"Working across government and with organisations such as Cafcass we will launch work on how better to support parents (including non-resident parents) and their children during and after family breakdown. We will look to highlight opportunities for universal services to spot warning signs of relationship breakdown early and to signpost support to parents and children at critical moments. And we will look to find better ways to enable children to maintain regular contact with both parents if they part.[1]"

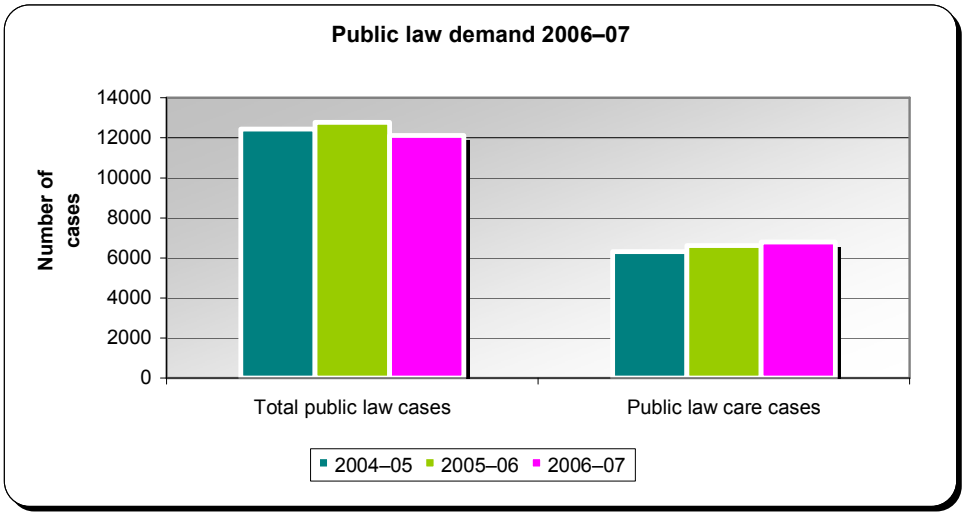
This obviously will shape the way our services develop over the next three years but before I briefly explore the implications of this I want to give you an update on progress since 2006.

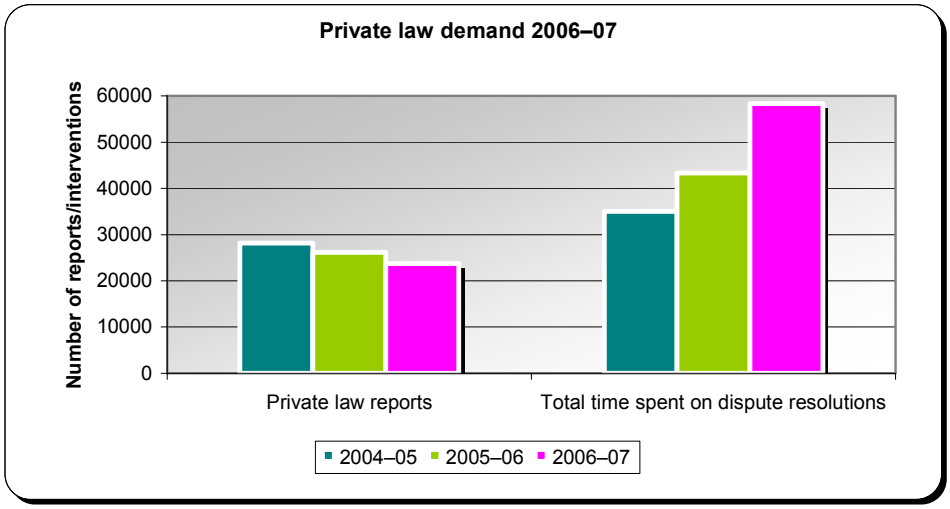
The demand for our services

Overall, we responded to a total of 12,104 public law requests (for instance care cases) of all types during 2006–07, compared with 12,775 in 2005–06, a decrease of 5.3%. These figures include all types of proceedings such as Care, Adoption, Discharge of Care and Emergency Protection.

In private law we have worked with courts and judges to introduce dispute resolution schemes in family courts throughout the country in an effort to reduce conflict when parents divorce and separate. In 2006–07 our practitioners participated in 26,344 dispute resolution meetings, spending 57,880 hours on these cases. This is an increase in time spent on early intervention of 33.6%.

[1] The Children's Plan: Building brighter futures; HM Government, CM7280, page 24, section 1.28, December 2007





Dispute resolution schemes
Dispute resolution schemes have been developed in all parts of the country and have proved successful in terms of better outcomes for families – around 60% of this work achieves full or partial agreements. Many of these schemes have directly involved children, and the focus is to encourage parents to work out their own agreements and to communicate better with their children.

Children in cases
We promoted the interests of a total of 80,536 children and young people involved in our services. This comprised 40,813 boys and young men (50.7%) and 39,723 girls and young women (49.3%). This figure does not, however, include all of our support work with contact centres. We estimate that we are involved with around 100,000 children each year.

Strengthening systems
Cafcass has in the past experienced backlogs in terms of allocating casework. However our efforts over the last three years mean that allocations are now well within our targets.

During the past year we have developed stronger frameworks in vital practice areas like safeguarding (children)—although there is work to be done to support the consistent delivery of this vital activity. We have delivered practice improvements in the assessment of risk in private law cases involving domestic violence, progress that was validated by our inspectors. We improved our response times in public law cases, in a year when demand for this service rose considerably, as it has done consistently in recent years. We have strengthened our infrastructure and this includes completion of the roll-out of our new Case Management System (CMS) to all teams thus enabling better analysis of our work. Important practice programmes like Extended Dispute Resolution and Family Group Conferencing have also been expanded.

Our new National Standards have been developed following extensive internal and external consultation. These ten standards clearly set out what children and families can expect from Cafcass, covering areas such as safeguarding, early intervention, children's active involvement and Quality of Service.

Getting the structure right
As the needs of the families we work with evolve it is important to ensure our structures can meet the rising expectations of a public keen to see positive

outcomes from their public services. Cafcass moved to a new structure in April 2008 to provide more management and supervisory input to frontline staff. Our analysis, validated by consultation with staff and inspections, had shown that there needed to be more support for practitioners to support improved case management and analysis. In summary we are implementing the following key changes:-

- the establishment of a new Head of Safeguarding post dedicated to making sure children are protected from harm and continue to be at the centre of what we do;
- running over 500 practitioner training courses in 2007 to enable better analysis, case planning and management;
- a new leadership development programme including the better use of supervision to support practice improvement;
- the creation of three national areas (North, South and Central England) with Operational Directors, supported by 27 Heads of Service, to drive improvements in management and practice in their area; and
- the development of new roles such as Family Support Worker and Practice Supervisor.

Listening to children and families

Devising a feedback system that is used in sensitive areas such as family justice is a complex matter. We have recently launched an online feedback system called HearNow which seeks to capture the experience of children and families using our services. It is in the early stages of use and over the course of 2008-09 we will identify a benchmark service user satisfaction figure that will form the basis of a Key Performance Indicator that we will report to Parliament.

A great deal of work has been conducted by our Children's Rights Team who have been exploring ways, in partnership with our Young People's Board (18 youg people aged 11-18 who advise us on matters relating to service delivery), of ensuring the voice of children is at the heart of what we do. Together they have devised a Needs, Wishes and Feelings pack which is used by our practitioners to ensure children can get their views directly in front of the courts and in their own words.

A new Public Law Outline

The process of taking children into care is being improved through a revision of a judicial protocol known as the Public Law Outline. The Public Law Outline, or PLO to use its acronym, is a revision of the 2003 Judicial Protocol, which was itself an attempt to reduce unwarranted delays in family court cases. For the right reasons, reducing delay remains a top political priority as every day matters for some children in the care system.

The PLO emphasises the importance of strong judicial case management throughout a case; of narrowing the issues in dispute and seeking to resolve these at a much earlier stage; of reducing the amount of written material and oral evidence so that practitioners can focus on the big issues in a case; and of introducing a pre-proceedings gate-keeping regime to ensure local authority cases are better assessed prior to an application to court being made. With more than 80% of applications to court currently lacking a core assessment, there is a long way to go to make the system operate as intended.

A significant change under the PLO is the requirement for an individual timetable for each child to eventually replace the wooden 40-week target to complete all cases. The shift is a recognition that some cases can be dealt with in less than 40 weeks, while others will take longer for a good reason – even with the PLO in full flow. The next year will be seen as an implementation year as this is a complex change involving multiple agencies.

Future plans

What then of the years ahead? As I made clear at the outset of this article government is keen to use Cafcass' position in the family justice system to support families and children both during and after family breakdown. We are embarking on a programme of contracting with voluntary sector providers to deliver contact centres to facilitate the introduction of the 2006 Children and Adoption Act. The legislation is designed to provide more support to families to make contact work.

New developments include exploring the potential, with other stakeholders, of delivering services online to complement the work of our practitioners in preparing families for dispute resolution work. The public sector is increasingly looking at a self directed model of social care, where appropriate, to offer service users both choice and a sense of self-empowerment. The challenge for Cafcass will be to respond to this agenda whilst also providing a high quality core service.

For Cafcass we need to improve both the consistency and quality of our frontline practice. We know we have the right policies and procedures but we need to ensure that these good intentions translate into effective outcomes for children and their families.

Baroness Jill Pitkeathley OBE is Chair of Cafcass—Children and Family Court Advisory and Support Service for England

The life of the Legal Secretary to the Head of International Family Justice for England & Wales

Delia Williams

Lord Justice Thorpe was appointed Head of International Family Justice for England and Wales in 2005, to deal with the steady and continuing growth of international family litigation and its consequent demands. The impact of immigration on family can be neither ignored nor overestimated. Between 1991 and 2005 the number of foreign-born Britons increased from 3.3 million to 5.8 million and that figure is rising at the rate of half a million per annum. Lord Justice Thorpe is adamant that the family justice system should be able to help and cater for all who enter it. Among other initiatives, we are in the process of establishing a list of mediators for international family cases. We are targeting mediators who may have family/cross-border mediation experience or accreditation. With the existence of a central directory published on the internet and managed by this office, we hope to be able to help cases in need of mediation.

My position was created to support and assist him in this capacity. The title of '*legal secretary*' can mean many things. In this instance, my three principal responsibilities are to:

- **assist** in responding to developments in European and international family law and policy and in managing arrangements for international conferences.
- **advise** on legal issues related, but not limited, to international child abduction and relocation including specific issues arising under Brussels II revised and the 1980 Hague Convention.
- **liaise** with the Ministry of Justice (MoJ), Foreign and Commonwealth Office (FCO), and European and International bodies on all aspects of International Family Justice.

In order to better illustrate these headings, the following are examples of situations that I have encountered and dealt with since kick-off in September 2007.

As an adjunct to the European Judicial Network (EJN) for Civil and Commercial judicial collaboration, the office has pursued the creation of an EJN for judges who specialise in family law. We have so far persuaded 22 of the Member States to designate these specialist judges and we chase constantly for the remainder to follow suit. Judicial collaboration within family law is of paramount importance. During my short tenure we have secured appointments of specialist family judges in Lithuania, Bulgaria and Slovenia. We will be meeting with a few of these specialist judges during the EJN meeting in Brussels in January to discuss ways in which to strengthen the network. Individual Hague Convention matters have resulted in exchanges with Spain, France, Belgium, Germany and The Netherlands.

Our "little black book" is not limited to European specialist family judges. I was recently able to help the President of the Family Division with an urgent Hague Convention matter concerning the return of two children to Alberta, Canada. Thanks to Lord Justice Thorpe's hard-won judicial contacts, I was able to get through to a Hague Liaison Judge for the common law Canadian provinces, who then put me in touch with the judge designated as the contact in Alberta for Hague Convention matters. We have also been able to assist with cases concerning Convention matters in the US and Peru.

This office also deals with cases relating to the UK-Pakistan Protocol on Child Abduction. These cases crop up, on average, about once a week. The work involves exercising our alliance with the Child Abduction Section of the Foreign and Commonwealth Offices as well as solicitor's firms in the UK and Pakistan, and requires effective communication with, and assistance from, the contact Liaison Judge for Pakistan. I am very pleased to be of assistance in these cases. It is especially encouraging to note that we have been able to help resolve some recent cases despite political turmoil.

Since I am employed under the umbrella of the Judicial Office in the Ministry of Justice, it will occasionally fall to me to help with judicial visits. Most recently we received a Japanese family judge for whom I designed a comprehensive itinerary of visits to demonstrate the inner workings of family justice in our jurisdiction. This included time at barristers' chambers, such as 1 Hare Court, and specialist family law solicitors, such as Levison Meltzer Pigott, and Goodman Ray, and at each tier of the family law courts. Many other judicial visitors are keen to visit Thorpe LJ in the Court of Appeal; on these days I may even be lucky enough to be invited to lunch with them in the Inner Temple where we dine with other esteemed Masters of the Bench and enjoy coffee in the comfortable surroundings. (I hasten to add that I am a proud Middle Templar….)

In October 2007 we hosted an Indian delegation of specialist Supreme Court judges. I was able to organise, at very short notice, a seminar involving a few of the leading practitioners on Hague Convention matters in the UK. We were able to explore any potential assistance that we might be able to provide when India accedes and thereafter creates a Central Authority to deal with Child Abduction matters.

Every year the office manages a conference on family law, which alternates annually between Anglophone/Francophone and Anglophone/Germanophone judges. This year, 2008, the conference will be held in Vienna in September. The topics at these conferences can range from contact issues to the latest EU Directives on family law. We will be corresponding and coordinating with the delegates, keynote speakers and judges involved. The programme is nearly finalised and we are grateful to those who have agreed to contribute papers.

I recently had the pleasure of attending a family law conference hosted by Professor Nigel Lowe at Cardiff University in place of Thorpe LJ, who was unable to attend. There are other conferences planned for 2009 and 2010 and I hope to be able to visit the Permanent Bureau at The Hague, Brussels and Cairo. This February found me in Paris for the purpose of swotting up on their family law Court of Appeal system. I also had the opportunity to meet our counterparts at the Ministère de la Justice, with whom I correspond regularly.

In my limited experience, I would say that the most important aspect of my role as legal secretary to the Head of International Family Justice is an ability to network and communicate effectively (often in a foreign language) with others. This is not a task of Herculean proportions; the foundations have been expertly laid. Lord Justice Thorpe dedicates a great deal of time and effort to ensuring effective worldwide judicial collaboration on family law. Many of these relationships are personal, following meetings at international conferences and followed up by dogged perseverance through correspondence from this office with foreign Ministries of Justice, judges and legal practitioners worldwide. It is these relationships that have generated the mutual confidence and trust required to ensure a growing worldwide commitment to the facilitation of International Family Justice.

If this service is to be effective, practitioners and judges must know of its existence and how to access it. You can find me in Room C16 of the Royal Courts of Justice in London, and my direct line is +44(0)2079477906. My email address is delia.williams@judiciary.gsi.gov.uk

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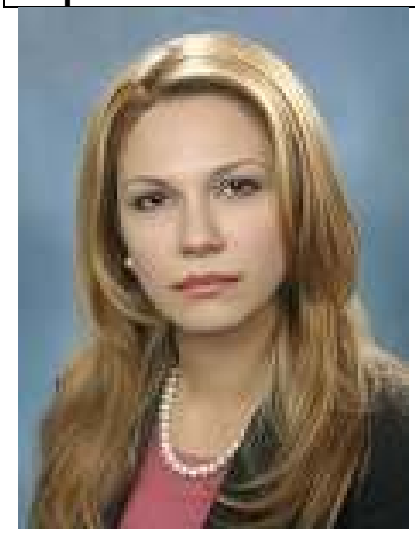
The Reform of Juvenile Justice in the Republic of Macedonia

Aleksandra Deanoska MSc



Introduction

The Republic of Macedonia is undertaking crucial reforms of the entire social system within the Euro-Atlantic integration process including many steps in the modernization of the justice system in different areas.

Significant changes have been introduced in the juvenile justice sphere, since the whole old system has been changed to a new one based on the principles of restorative justice and according to international standards. Thus for the first time, a separate law on juvenile justice has been adopted, focusing solely on juveniles in conflict with the law. Until now all substantial, procedural and other provisions for juvenile offenders were included in the laws dealing with adults.

The Law on Juvenile Justice

The new Law on juvenile justice was adopted by the Macedonian Parliament on July 4th, 2007. It entered into force on July 19th, 2007 and will be implemented in September 2008. The implementation has been postponed because the new solutions provided in the Law require major institutional changes, capacity building etc. It is planned that in this period the Macedonian institutions get prepared for the successful implementation of the law and find appropriate mechanisms for the realization and application of the new competences.

The Law consists of 151 articles systematized in six parts and seventeen chapters; it contains substantive, procedural and execution provisions codifying legislation for juveniles. Previously there were separate articles for juvenile delinquents in the Criminal Code, the Law on Criminal Procedure and in the Law on execution of the criminal sanctions. The main objective of the introduction of the new Law was the extraction of the juvenile offender from the system dealing with adult offenders and the creation of a legal-institutional framework for a consistent and codified system of juvenile justice in its own right.

The Law on juvenile justice incorporates the standards of the relevant international child protection instruments—conventions, protocols and recommendations of the United Nations, the Council of Europe etc—in its operational provisions.

The new Law is based upon the principles of:

- protection of juveniles and their rights
- socialization and assistance in the treatment of the juvenile offender,
- restorative justice and
- the prevention of juvenile delinquency.

It operates more with terms such as “child at risk”, “measures of assistance and protection” etc. rather than with “delinquents”, “sanctions” etc. Hence, the procedural provisions confirm the prevalence of the non-judicial and informal procedures over the standard formal court procedures that will be applied only in exceptional cases (severe crimes committed etc.).

The sanctions foreseen in this Law are the following:

- educational measures of several kinds,
- juvenile imprisonment,
- fine,
- prohibition on motor vehicle use and
- eviction of a foreigner from the country;

the alternative measures are:

- probation with a protective supervision,
- probationary suspension of the criminal procedure and
- work for general benefit.

The procedure and the sanctions for misdemeanours are also regulated with this Law, as well as the procedures of intercession and mediation.

As to court procedure, it mostly remains as until now with, in addition, all the special protective actions and characteristics of the procedures for juvenile offenders.

Special attention in the Law has been paid to the protection of juvenile-victims of criminal offences.

That is to say, the protection of juvenile victims is strengthened, especially when they appear as witnesses in a criminal case. Besides all the protective measures for the physical and mental integrity of the juvenile victim, their protection is also secured by the Law on Criminal Procedure and the Law on witness protection.

The prevention of juvenile delinquency is also one of the objectives of this Law and there is a special chapter dedicated to this issue. With this Law the state establishes a State Council for the prevention of juvenile delinquency as an autonomous and independent body that will have the responsibilities of managing:

- the Damage Reparation Fund,
- the adoption of a National Strategy for prevention of juvenile delinquency,
- annual programmes,
- initiatives for legislative amendments,
- co-operation with international organizations for the protection of the rights of the child etc.

The administrative works of the Council will be performed by the Ministry of justice from whose budget the activities of the Council will be financed. Besides the State Council, municipal councils will also be established with similar competences at a local level.

The action plan for implementation of the Law on Juvenile Justice

The Ministry of Justice of the Republic of Macedonia has also prepared an Action plan for the implementation of the Law on juvenile justice and submitted it to the Government. It is expected to be adopted by the Macedonian Government shortly.

The activities contained in the Action plan are:

- plans to build on institutional capabilities and competencies;

and the establishment of

- the legal grounds
- the system of by-laws
- new institutions for the prevention of juvenile delinquency including the State Council, the municipal councils and the Damage Reparation Fund

It is planned that the financial needs be met from the state budget, donations and from the pre-accession funds of the European Union. Financial and technical assistance is also expected to be provided by UNICEF, OSCE etc.

The following institutions are responsible for implementing the Action Plan:

- the courts,
- the public prosecution offices,
- the Ministry of Justice,
- the Institute for execution of sanctions,
- the Academy for training of Judges and prosecutors, the Ministry of Labour and Social Policy,
- the Public Institution for Social actions,
- the Ministry of the Interior,
- the Police Academy etc.

It is intended that the approach of these institutions should be multidisciplinary. The timeframe for implementation of the action plan is January 2008 – December 2009.

Conclusion

The introduction of this new juvenile justice system in the Republic of Macedonia involves facing challenges and risks. Nonetheless, Macedonia has decided to undertake this reform. Although the new system requires fulfillment of a number of prerequisites in order to become efficient and functional, such as financial assets, institutional and capacity building, training etc., this is a step forward in the right direction of achieving international standards in juvenile justice, not only for the purpose of bringing the legislative system in line with other members of the EU, but also and primarily for the purpose of protection of the world's future—the children.

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The Juvenile Justice System in the Republic of Macedonia

Damco Kokoski

The Republic of Macedonia approaches the issue of dealing with juvenile offenders in the same way as other countries with laws regulating procedures for minor wrongdoing while also protecting the young person. But juveniles also commit criminal acts such as murder, robbery and acts against property—most frequently theft, misappropriation of another's property, misappropriation of a motor vehicle and so on. The Macedonian legislature, therefore, has acted to regulate procedures and measures that have to be taken in these serious cases.

Current criminal law allows the following measures:

Disciplinary Measures which consist of:

reprimand

sending to a disciplinary centre for minors

Measures of Raised Observation, which are:

raised observation by parents or tutors,

raised observation in another family,

raised observation by an educational establishment

Institutional Measures which are:

sending to an educational institution and

sending to an educational correction centre

Depending on the age, gravity, method of operation and consequences of the criminal act and taking into consideration whether it is a juvenile's first offence or if he/she is a recidivist, the court determines which of the above mentioned measures will be implemented.

Age ranges

A young person who at the time of committing a criminal act is under the age of 14 is not criminally liable. Persons between the ages of 14 and 16 are in the category of junior juveniles, while persons between the age of 16 and 18 are considered senior juveniles. A person who at the time of perpetration of a criminal act is older than 18 and younger than 21 years of age is considered a junior adult and is fully criminally liable, but, depending on the gravity of the criminal act, the circumstances under which it was committed, the person's previous record and the consequences of the criminal act, a lower sentence may be imposed compared with other offenders of a similar age.

The law also allows for an endangered child category—that is a child under 14 years old who offends. For these children there are measures of assistance and protection. In this phase the role of social services is predominant and the law oversees in detail the measures and the procedures for this age category.

In the next category, *junior juvenile,* only 'educational' measures can be implemented. These are:

- disciplinary measures—-reprimand or sending to a disciplinary centre for minors;
- measures of raised observation by the parent or placement in another family; and
- institutional measures.

Disciplinary measures

When imposing this measure a juvenile is verbally informed about the harmfulness of criminal acts and is warned that repetition will be punished.

When a court sends a junior juvenile to a disciplinary centre, the purpose is to achieve educational effects which are especially directed towards the juvenile's attitude and behaviour.

The court may send him/her to a disciplinary centre :

- for a certain number of hours during public holidays, but for not more than 4 days of continuous public holiday,
- for a certain number of hours during the day, but for not more than a month of days,
- for up to 20 days continuously.

Measures of raised observation

When pronouncing any measure of raised observation, the court may order the juvenile:

- to apologize personally to the victim,
- to put right damage caused by the criminal act (within his/her abilities)
- to attend school or prepare for a profession/trade in accordance with his/her abilities and talents,
- to accept placement in another family
- to restrain from consumption of alcohol and drugs,
- to visit a proper medical institution
- not to mix with persons who are a bad influence;
- to take part in the activities of both humanitarian and youth organisations
- to take part in sport and other activities.

Institutional measures
These are the most severe measures for the junior juvenile and measures are imposed when there is a need for permanent observation of the juvenile by experts or expert teams. A junior juvenile may spend between 6 months and 3 years in an educational institution and between 1 to 5 years in an educational correction centre. The latter is reserved for the most serious crimes and can last up to 23 years of age.

The actual length of time spent in either an educational institution or educational correction centre depends on the effects of the education process on the juvenile and the degree of re-socialisation achieved while there. The court is obliged to oversee these measures, to take note of their effect and then make decisions about their duration.

The following punishments may be imposed on a *senior juvenile*:

- juvenile imprisonment;
- a fine;
- disqualification from driving a motor vehicle;
- deportation of a foreigner from the country.

Finally, the new law allows for the introduction of mediation and special authorisations for the public prosecutor.

This, in brief, is what is contained in the new law, which entered into force on July 7th 2007 and will be implemented on September 1st 2008, bringing Macedonia into line with EU legislation and international juvenile justice norms.

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Overview of the Juvenile Justice System in Austria

Professor Dr. Alois Birklbauer

1. Support focus or judiciary priority?

The Austrian Juvenile Justice System is based on the law while simultaneously taking into account remedies based on restorative justice.

2. Brief Statistical Overview

In 2005 per 100 000 juveniles:

- 7159 were subject to an investigation for an alleged criminal offence.

Out of the total number of offences:

- 55% were property offences; and
- 24% were offences against the person
- the remaining 21% were divided between all other offences. It included a high percentage of drug offences.

In absolute terms, 25,000 young people were accused of a criminal offence and were subject to juvenile court proceedings. Girls made up 20% of all alleged offenders.

Of the 25,000 alleged offenders only 3,000 were sentenced by a court and for those offenders the categories of crimes were:

- 18% offences against the person;
- 45% property offences; and
- 22% drug offences. A disproportionately high number of drug offenders received juvenile court sentences. This reflects the lower level of trust in the success of diversion measures for such offenders when compared with other offenders.

3. Age Limits

3.1 Children

Before the age of 14 years only child protection measures under the Youth Welfare Act are available. These may include educational steps.

3.2 Juveniles

The age for juveniles to be held accountable for a crime is the 14th birthday. The privileges of the juvenile justice system and the protection of the Youth Welfare Act end when a juvenile reaches his 18th birthday.

3.3 Young Adults

Between 18 and 21 adult law applies, but there are special mitigating circumstances eg no life sentence is possible and there is no minimum sentence. Some special provisions for this age group are maintained, such as a specialized court allocation or restricted public access to the trial. For short sentences young adults may be sent to a juvenile prison, where all of the privilege provisions for juveniles apply.

4. Sanctioning System

4.1 Diversion

Diversion was first introduced by law in 1988 and there has been continuous development since then.

Diversion measures are handled before trial by the public prosecutor. If a case does go to court the judge handles diversion. (Most cases are diverted see paragraph 2 which shows that out of 25000 case, only 3000 were sentenced by a court). The general diversion prerequisites for juveniles (not young adults) are wider compared with those applicable for adults.

A prerequisite for a juvenile is that the offence carries less than 5 years custody. An offence that carries more that 5 years eg repeated robbery would not qualify for diversion.

The 'lightest' option for a judge is to find guilt but not to impose a sanction. The next option is to find guilt but to 'suspend pronunciation' (this may be likened to a conditional discharge). Both these options are only available for offences which carry less than 5 years.

4.2 Formal sanctions

Sanctions may not be imposed to generally prevent crime. But it is possible to impose sanctions to **specifically prevent** further crime by an individual.

For 14-16 year olds who commit a minor offence and for whom **special prevention** is not necessary (eg because of good parenting) it is possible to use the 'lightest' option or the 'suspended pronunciation' mentioned above.

The Austrian system **never** sends a juvenile to an adult court.

The sanctions which can be imposed against juveniles and young adults are similar to those for adults. Primary penalties are merely fines or custodial sentences. However, the option of settling juvenile criminal proceedings by diversion are extensive compared with criminal proceedings against adults. The sanctioning system is:

- a wide range of diversion measures;
- fines; and
- custodial sentences.

Fines and Custodial sentences can be

- conditional,
- unconditional,
- partly conditional and partly unconditional .

Example 1— 3 years custody may be 1 year in prison and 2 years on probation. This is partly conditional.

Example 2— a fine of 2000 Euros may be divided into 1000 Euros which is paid immediately and 1000 Euros which is suspended with a condition that the young person stays out of trouble.

Substitute sanctions

Under restricted conditions it is possible to substitute a fine with a custodial sentence and vice versa. It is not possible to use diversion as a subsitute for a fine or custody. Probation is not a substitute for diversion or a fine.

4.3 Fines

Fine assessments in Austria are calculated on a 'daily rate' system. Thus, in the case of an adult, 1 day in prison is equivalent to 2 daily fine rates. The range is from 1 day to 90 days (2 daily fine rates to 180 daily fine rates).

For 14-18 year olds the adult prison rate is halved. So, if the sanction for an adult would be 100 days, that for a 14-18 year old would be 50 days which falls within the fine system.

The number of daily rates is measured in connection with guilt.

The amount of the fine is related to ability to pay.

An inability to pay 2 daily fine rates may be substituted by serving one day in prison. The option to serve community service hours if a fine cannot be paid has, since 2008, been regulated by law.

One daily rate of an assessed fine can range between 2 and 500 Euros. There are no special provisions for juveniles regarding the minimum daily rate of 2 Euros, although they regularly have a smaller income at their disposal. The daily rate fine assessment is not only dependent on the offender's daily income („net income principle"), but rather what he or she could save per day ("loss principle"). Calculation is based on the amount of money at the offender's disposal. It is not based on the assets of parents.

4.4 Imprisonment

A life sentence is not available before the 21st birthday.

14-16 year olds: the maximum prison sentence is 10 years

16-18 the maximum prison sentence is 15 years

18-21 the maximum prison sentence is 20 years

The offence limit for an adult for a single offence is halved for a juvenile if the mandatory threat of punishment for such offence is not 10 years minimum.

A lower limit for a juvenile does not exist (it can be 1 day under specific conditions). Prison sentence assessments for juveniles have to take into account the principle that **special prevention needs generally have priority over general preventive needs**.

In the case of imprisonment it is in the discretion of the judge, after consultation with the prison director, to decide whether a young adult is placed in a youth prison or not.

14-21 year olds can apply for parole when half the sentence has been served. If the judge does not allow the application, he has to give reasons why not. In recent years very few applicants have been refused (approximately 9%) where probational custody has been the sentence imposed by the court.

4.5 Other penalties

In general penalties other than fines or custodial sentences are not known in Austrian Criminal Law. Educational measures or **specific** juvenile prison sentences are not known. The implementation of community services as a primary sanction is under discussion. Up to now there has been no attempt, to translate this into legislation.

5. Juvenile Criminal Proceedings

5.1 Involvement of Youth Court Assistance Officers (YCAO)

In Vienna, the Youth Court Assistance Office is an independent institution situated in the Youth Court. The Juvenile Judge, Family Judge and Prosecutor **must** ask the YCAO for their expert advice before trial.

The YCAOs are specialised in social work, education and psychology and report on the character and home circumstances of a juvenile as well as commenting on possible diversion procedures. Outside Vienna the YCAO role is taken by agencies such as Social Services which have duties regarding youth welfare matters. In addition YCAOs may be put in charge of the defence of a juvenile.

Finally, it is up to a particular public prosecutor or judge how much they take into consideration the advice of the YCAO. The final decision on disposal rests with the Judge alone.

Note that Social worker and Probation Officer roles are distinctly separate from the role of the YCAO because they work directly with the juvenile.

5.2. Mandatory defence

In all district court proceedings a defence lawyer is mandatory for juveniles. For young adults it is only necessary if the offence carries more than 3 years imprisonment.

In municipal court proceedings a defence lawyer is mandatory if this is in the interests of justice, particularly with regard to a juvenile's rights. When making the decision about legal representation the age and developmental stage of the juvenile must be taken into account.

A defence lawyer does not have to be present at every hearing or stage of proceedings, but according to the criminal procedure code (StPO) gives general legal advice before a juvenile is interviewed and is present at the interview. However a suspect is not allowed to ask his legal representative for specific advice in answering a specific question. The attendance of a legal representative at the interview may be dispensed with if it is thought that it may interfere with the investigation or impact on evidence. These limitations apply only until remand centre admission which has to occur within 48 hours after arrest and are independent of the reason for arrest. The decision about limitations is made by the prosecution agency conducting the interview (police or prosecutor`s office). An appeal may be filed at court against the prohibition of a defence, but lawyer's attendance has no immediate effect. Therefore in reality the enlistment of a defence lawyer during interview cannot be enforced (compare § 106 StPO).

Where a defence lawyer is assigned, the accused is always entitled to free legal aid if certain social conditions apply. The court makes the decision based on ability to pay and the main test for covering the total cost is whether the juvenile's position would be adversely affected if he were not represented. The parents' assets are not taken into account in making this decision.

In addition to being represented, juveniles and young adults—until 21 years of age—may be accompanied throughout proceedings by a trusted third party eg parents, relatives, teachers, probation officers or representatives of the youth welfare authority. There are no consequences for criminal proceedings if no confidant is called.

6. Current tendencies and reform debates

This brief guide shows that age, development, mental health and circumstances of the offender are to a considerable extent taken into account in substantive criminal law, in proceedings and in disposals.

The reform debate is fairly quiet, but there is a demand for some changes. In particular there is a move towards extending the privileges for 14-18 year olds to the age of 21 because adolescence is not seen as ending at 18 years of age.

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Juvenile Criminal Law in Germany

Professor Dr. Bernd-Rüdeger Sonnen

1. Support focus or judiciary priority?

The German criminal law system provides a separate juvenile criminal procedure including independent sanctions for young persons aged 14 up to 18 years. The criminal offences are the same as those contained in the *Allgemeines Strafgesetzbuch* (General Penal Code). In each individual case concerning a young offender it has to be verified whether the person involved is mature enough in terms of his or her capacity to understand and to be held responsible under juvenile criminal law. If this is not the case, reactions and procedures under juvenile criminal law are not considered, but measures relating to young offenders under the guardianship law are taken.

In legal terms, young people aged under 14 years are described as children; they are considered as not yet having attained the age of criminal responsibility in accordance with the statutory requirements of the General Penal Code. Delinquent children and children displaying behavioural problems and their parents obtain comprehensive state aid pursuant to the Child and Youth Welfare Act, with the youth welfare offices of the cities and municipalities being the competent authorities. If the state has to interfere, by withdrawing parental custody or by taking measures defining residence, the guardianship court will become active as a civil court.

2. A brief statistical overview

A great majority of young people commit some kind of petty offence at some point during their adolescence without developing a criminal career later on. Violent crimes among young people account for only a small portion (approximately 3%) of all crimes committed by juveniles. Violent crimes among young people are mostly due to conflicts among youths in the same age group. Only a small number within that group become career criminals. This small group has various problems. Those problems cannot be appropriately addressed by using the traditional interventions of criminal law. "Prevention and helpful intervention oriented towards an individual's problems and future risk of offending are necessary. An essential prerequisite for this intervention is the creation of a relationship characterized by acceptance and respect, which opens up perspectives for the future"—*First Periodical Report on Crime and Crime Control in Germany, 2001, p. 41.*

Youth crimes and formal sanctions

rate per 100,000 juveniles

	Youth crimes		Formal sanctions	
Age	**14-17**	**18-20**	**14-17**	**18-20**
1993	5163	5299		
2003	7102	7717	1589	3077
2004	7194	7921	1668	3208
2005	6744	7795	1662	3120
2006	6799	7618		

Sources: Police Crime Statistics and Criminal Justice Statistics

3. Age limits

3.1 Delinquent children under 14 years—competences to intervene

- not liable under criminal law—no competence of *Youth Courts*
- *Youth welfare department* (Jugendamt) offers help or services to child and family; and has a duty to inform the family court if child welfare is endangered
- *Family Court* is obliged to investigate the case and intervene if "child welfare" is endangered.

3.2 The age of criminal responsibility is 14 years

3.3 Young people between age 18 and 21

In individual cases, the juvenile criminal law is also applicable to young people over the age of 18, but below the age of 21, i.e. in legal terms the so-called "young adult offenders", provided that they are equal to a young person in terms of their state of maturity, or provided that their offence has a juvenile character. At present, approximately. 60 to 65 percent of young adult offenders are assessed to fall under the juvenile criminal law and are sentenced accordingly. The others are sentenced according to the adult criminal law. Whether under juvenile or adult criminal law: the judge of a juvenile court is principally competent for all young offenders.

4. Sanctioning system

4.1. Informal kinds of settlement

The JGG additionally provides kinds of settlement prior to a formal judgement. These are not only practical but also avoid the disadvantages of formal sanctioning after a trial.

For young offenders, such kinds of settlement only exist if the juvenile criminal law is applied pursuant to Sect. 105 JGG.

The following possibilities exist for informal settlement:

a. refraining from prosecution by the public prosecutor—prior to accusation

- *Insignificance*—pursuant to Sect. 153 of the German code of criminal procedure
- if educational measures or efforts to bring about an offender-victim reconciliation have already been made and a formal settlement would not be suitable.
- if a judicial admonition, instruction or condition has been imposed at the suggestion of the public prosecutor and has been fulfilled.

b. dismissal by the judge with the approval of the public prosecutor—after accusation

- pursuant to Sect. 153 of the German code of criminal procedure
- if an educational measure has already been made, a judgement is not required.
- a judgement can be dispensed with if the young person has confessed his or her guilt and an admonition, instruction or condition has been imposed.

4.2 Formal sanctions pursuant to the JGG

The juvenile criminal law distinguishes three categories of legal consequences which may partly be ordered to run in parallel. These categories include:

- educational measures
- disciplinary measures
- sentence of youth custody

In addition, general measures of correction and prevention can be imposed; but not preventive custody.

a. educational measures

Educational measures can be imposed at the due discretion of the judge and must be for an educational effect. Other purposes must not be pursued by this measure. Account must be taken of the principle of proportionality, which makes reference to the unlawfulness of the offence. The law distinguishes two kinds of educational measures:

The judge may issue instructions:

in particular;

- regarding residence
- placing the young person in a family or in an institution
- for vocational training or employment
- for the performance of work
- putting the young person under the care or supervision of a social worker
- for social training—learning social responsibility within the group
- for efforts for an offender-victim reconciliation
- restricting personal contact or abode

and, with the approval of the guardian and the statutory representative, and for young people older than 15 years only with the young person's approval:

- curative education
- withdrawal treatment

Under the Child and Youth Welfare Act there is an obligation to accept educational assistance (not only for young offenders)

b. in the form of educational supervision
c. in an overnight and day institution (upbringing in a community home)

b. disciplinary measures

Disciplinary measures are imposed where a sentence of youth custody is not suitable, but where the young person is to be firmly shown the seriousness of the offence which he or she has committed. In this context, reconciliation and punishment play a role besides the educational concept. Disciplinary measures include:

- a **warning**
- **imposing conditions** which may include:
  - compensation
  - an apology to the injured person
  - performance of work
  - payment to a non-profit institution (in cases of petty offences, solvency of the offender or confiscation of profits of crime are considered).
  - in the case of culpable non-compliance, juvenile detention can be imposed;
- **juvenile detention**
  - spare-time detention (one or two per week)
  - short-term detention—continuous imprisonment instead of spare times
  - permanent detention from one to four weeks

c. sentence of youth custody

A sentence of youth custody has to be imposed in those cases where

- educational and disciplinary measures for educational purposes are insufficient due to harmful inclinations (ie criminally or personally harmful due to repeat or serious offending);
- a punishment is necessary because of the seriousness of guilt.

range of punishment
The minimum sentence of youth custody is six months (in contrast, the minimum adult prison sentence is one month), the maximum being five years for serious crimes and in general for young offenders ten years. (If the general criminal law is applied to a young offender rather than the juvenile criminal law, a prison sentence of 10 to 15 years can be imposed instead of a life sentence.) The youth custody sentence of an indefinite period of time has been abolished.

suspension on probation
In the case of a positive forecast which also takes account of the educational effect in the probationary period, a sentence of youth custody not exceeding one year must be suspended. The same applies to a sentence of youth custody of up to two years unless execution is required in view of the negative development of the young person.

The appointment of a probation officer is always obligatory (not so in adult criminal law).

suspension of the imposition of a sentence of youth custody
The imposition of the sentence of youth custody can be suspended for a probationary period of one to two years if it cannot be securely assessed whether the offender has harmful inclinations and if the offender has been *found* guilty.

measures of correction and prevention in accordance with the general criminal law
The following measures are admissible pursuant to the JGG:

- committal to a psychiatric hospital
- committal to an institution for withdrawal (from drugs/alcohol)l treatment
- supervision of conduct
- withdrawal of a driving licence.

5. Juvenile criminal proceedings
The German juvenile justice system is a modified adult criminal justice system. The diversion rates relating to juvenile offenders have steadily increased to 69 percent in 2005. For the other 31 percent the normal place for decision-making is the courtroom where public prosecutors and judges determine the appropriate response to offending behaviour.

Youth court prosecutors and youth court judges should have appropriate education and training as well as experience in the education and upbringing of young persons (Juvenile Court Act, Section 37). They also ought to have special training in criminology, paedagogy, adolescent psychology and psychiatry. However, they only have to study law and qualify for a judge's position.

A special agency is called Jugendgerichtshilfe (Youth courts' assistance service, Section 38), established in 1923 to represent and safeguard the educational, social and welfare oriented aspects of criminal proceedings against a young person. The main task for the social workers working in the youth courts' assistance service is to help investigate the personal and social circumstances of the young offender to provide the court with information. This is a very important pre-trial task, especially because the young persons themselves as well as their parents, teachers, employers or neighbours, are believed to be more likely to be willing to provide a social worker with personal information than a police officer.

6. Current tendencies and reform debates
The main aim is the education of juvenile and young offenders to lead a sentence-free life (new section 2, 2008). Our juvenile criminal law provides a broad catalogue of possible reactions. It is a moderate system of "minimum intervention" (priority of diversion and educational measures). But we need evidence-based practices with more restorative justice elements (for example: mediation and family group conferences) and not a shock and hard sanction policy. International and European future development opens chances for a harmonization of all juvenile justice systems especially towards a 'European juvenile justice system'. It should be oriented more towards educational measures, minimum intervention and/or restorative justice and not to neo-liberal ideas.

Professor Dr Sonnen is President of the German National Juvenile Court Judges and Probation Officers Association and Professor of Criminal Law at the University of Hamburg.

Articles in German were kindly translated into English by Council member, Petra Guder.

Juvenile Criminal Law in Switzerland

Dr Christoph Bürgin

1. Support focus or judiciary priority?

On 1 January 2007 the new juvenile criminal code (JStG) came into effect in Switzerland. It is the first time that the juvenile criminal code has constituted a legal code in its own right, which shows what significance is attributed to this field of law. With the emphasis on protection and education as the main principles in the implementation of the new law, the idea of special prevention is given stronger emphasis than up to now. This, for example, is borne out by section 2 of the JStG that states that the juvenile's family background and life pattern and the development of his personality are to be given special consideration. These principles are to be understood as a clear commitment to an offender-orientated (welfare) criminal law and to the priority of educational measures.

2. A brief statistical overview

Analysis of the time series on the conviction of juveniles compiled by the Federal Statistical Office from various data sources shows that juvenile delinquency is often an episodic phenomenon, related to a certain phase in life. In relation to the population segment in question, an increase in convictions is to be noted from 600 convictions per 100,000 juveniles in the 1950s and 1960s to 1,400 in the 80s and 90s. The increase can be explained by societal change such as the proliferation of a consumption-oriented lifestyle, the growth of supermarket-culture, increased mobility and urbanisation and the concomitant growth of anonymity; these are factors that encourage the committing of offences—*Federal Statistical Office, excerpt from a media release of 4 September 2007*. For the last few years convictions of minors (excluding petty offences) in Switzerland have been reported to the Federal Statistical Office according to standardized criteria. In 2005, 14,106 minors (11,189 male, 2,917 female) were convicted in Switzerland. 3,170 of these were under the age of 15, 10,936 between 15 and 18. 62.8% were Swiss citizens, 30% foreign citizens resident in Switzerland, 2.8% foreigners with no residence in Switzerland, and 4.4% were asylum seekers. 83.9% of the convictions were for non-violent offences, 16.1% pertained to offences involving violence.

3. Age limits

Although the age of criminal responsibility has been raised from 7 to 10 years, the figure is still below the European average. The upper limit of the applicability of juvenile law remains unchanged at the age of 18. The fact that only juveniles who have reached the age of 16 can be sentenced to imprisonment or a monetary fine makes allowance for the low age of criminal responsibility. The protective measures that are applicable to all minors are basically identical to those in civil law. Offenders who are 18 and over are subject to the normal adult criminal law, with special provision being made for transitional offenders (offences committed before and after the completed 18th year). A clause in the criminal code states that an offender who at the time of the crime was under the age of 25 and seriously impaired in his personal development may, in special circumstances, be admitted to an institution for young adults (Section 61 of the Criminal Code).

4. Sanctioning system

According to the previous juvenile law the court imposed either a measure or a penalty. The new juvenile criminal code has now departed from this standard and introduced the **dualistic-vicarious system** that has been part of adult criminal law already for a long time. The dualism stipulates that, in addition to a measure, the court also imposes a penalty.

4.1. Protective measures

The new juvenile criminal code grades protective measures according to the increasing intensity that the interventions exert on the responsibilities of the parents and the juvenile's freedom. Here the principle of proportionality applies. In other words, whenever possible, provided public safety is not endangered, the less invasive measure is to be applied. All protective measures end when a person completes his 22nd year of age. All protective measures are assessed on a yearly basis. The measure is lifted if it has achieved the desired effect or it shows that it is no longer having an educational or therapeutic effect.

4.1.1. Supervision

Supervision can be ordered if there is sufficient reason to believe that the holders of parental authority or the foster parents are making the necessary arrangements to ensure the provision of appropriate educational support or therapeutic treatment for the juvenile in question.

4.1.2 Personal care

In this case the court appoints a person as the juvenile's caretaker; usually this person is a staff member of the juvenile court's social service. The caretaker actively supports and counsels the holders of parental authority on questions concerning the juvenile's education, and attends personally to the juvenile. In this case, parental rights are restricted—since certain powers regarding the juvenile's upbringing; treatment and education pass into the hands of the caretaking institution.

4.1.3 Non-residential treatment

The responsible authority has the power to impose non-residential treatment. This is the case if a juvenile is subject to psychological disorders, if his personal development is impaired or if he is suffering from drug- or any other form of addiction.

4.1.4 Placement

The term *placement* means that a juvenile may be placed in the residential care of a private individual, an educational institution or a treatment centre; this type of care involves both educational and therapeutic assistance. Placement can be either in an open or a closed institution; in doing so the law prescribes differing prerequisite conditions. Placement is only imposed if less invasive protective measures do not suffice to achieve the required standards of education or treatment.

4.2. Penalties

4.2.1. Reprimand

A reprimand constitutes the mildest penalty; it involves a formal judicial expression of disapproval of the offence. A reprimand is issued if there is reason to believe that it is sufficient to stop a juvenile from committing further offences.

4.2.2 Performance of personal (community) service

Work service is to be rendered to the benefit of social institutions, projects of public interest, disadvantaged people in need of support or the victim of the offence—provided that the person is in agreement. Service may also refer to the obligation to take lessons in traffic education or attend courses on drug abuse, violence prevention, health maintenance, or similar educational activities. Juveniles under 15 can be sentenced to at most 10 days of service. The upper limit for individuals over the age of 15 is 3 months. In the latter case it can be in conjunction with the duty to reside at an assigned location.

4.2.3. Fines

This form of punishment is only applicable to juveniles over the age of 15. The maximum fine is set at CHF 2,000—approximately € 1,200.

4.2.4. Imprisonment

The maximum term of imprisonment—this punishment is only applicable to juveniles over 15—is one year. In exceptional cases, and given that the juvenile has completed his 16th year, a sentence of at most 4 years can be imposed for serious offences—e.g. murder, voluntary manslaughter, certain aggravated forms of robbery, hostage-taking, sexual coercion, rape or arson. Prison terms up to 30 months can be imposed as suspended sentences. A term in prison cannot be served in an institution where protective measures (placement) are implemented. At present, Switzerland does not have specialised institutions where juveniles could serve long-term prison sentences. However, institutions of this type are in the advanced planning stage.

4.3. Exemption from punishment

Diversion in the strict sense of the term is not part of the Juvenile Criminal Law. But there exist a number of cases where the judicial authority may refrain from imposing a punishment. This involves following cases, namely if

- a punishment would put the aim of an ongoing or a planned educational measure at risk;
- the juvenile actually carries little blame and the consequences of the offence are negligible;
- the juvenile has been able largely to redress the damage through performing services or making a special effort to offset the wrong that his offence caused, while, at the same time, prosecution would be of little value to the general public and the victim;
- the juvenile himself is so heavily affected by the consequences of his offence that punishment seems excessive;
- the juvenile has been sufficiently punished by his parents, other holders of parental authority or a third party;
- the offence was committed a comparatively long time ago;
- the matter has been settled through mediation.

5. Juvenile criminal proceedings

In Switzerland there exist two different models for organising the juvenile judiciary authority. These are laid down in the various cantonal codes of criminal proceedings. The different forms are historically explicable. In effect, both models serve their function, that is, they both serve the need to deal with each juvenile delinquent on an individual basis.

The juvenile magistrate, or juvenile court, model is common to the French-speaking cantons and in the bilingual Canton of Bern. In this system the same person conducts the inquiry into the facts of a case and the personal background of the suspect, and, in mild offences, also acts as the single magistrate. In more severe cases, the same person acts as president of the juvenile court—usually consisting of three judges—and monitors the execution of the sentence.

In the juvenile attorney model these functions are partly kept separate. Here too, the juvenile attorney conducts the inquiry, acts as the single magistrate in petty cases—depending on the sanction—and usually monitors the execution of the sentence. But unlike the juvenile magistrate model he is not a member of the juvenile court but, instead, acts as the juvenile state prosecutor before the court.

5.1. Juvenile court care management system

An independent juvenile court care management system does not exist in Switzerland. The social service agency, which is responsible for carrying out inquiries into the personal background of an alleged offender (except for establishing psychological or psychiatric expert opinions) and also monitors the execution of the sentence, is in most cases affiliated to the either the juvenile court or the juvenile attorney's office. The proximity of the social service agency to the judiciary and, to a certain extent, also to the police authorities facilitates communication and understanding between the different professional groups and is economical in procedural terms. Both aspects enhance the efficiency of the proceedings, which is to the benefit of the juvenile involved.

5.2. Mandatory defence

Each canton still has the power to regulate procedural issues on its own (see section 6 below). However, in the substantive Juvenile Criminal Code the Swiss legislative body has established a number of basic procedural principles. Concerning the question of defence counsel, the minimum standard stipulates that a juvenile or his legal representative has the right to defence counsel during the period of inquiry and during the hearing. Defence counsel is mandatory in the case of a serious offence, if the juvenile or his legal representative is clearly not in a condition to defend himself or if the juvenile has to remain in custody for more then 24 hours or is subject to precautionary placement.

6. Current tendencies and reform debates

Up to the present day, each of the 26 cantons has a code of criminal procedure of its own, for adults as well as for minors. Parliament recently passed legislation on a new federal code for adults; it is expected to come into force on 1 January 2010. Presently a new federal code of juvenile criminal procedure is being drawn up which should also come into effect at the beginning of 2010. This standardisation will result in substantial changes to the criminal proceedings in each canton.

At present there is a considerable amount of discussion going on among and between the various political parties and individual politicians in Switzerland on the issue of tightening the Juvenile Criminal Code. How much this has to do with the recent federal elections is left open. However, the great majority of experts working in the field and most people involved in teaching show great scepticism and have little sympathy for such demands. There is more or less overall agreement that it would make more sense to see first how the revised juvenile criminal code and the standardised code of juvenile criminal procedure prove themselves over time. After nearly a year in operation one can say that the revised juvenile criminal code has proved to be a sound basis to work from in responding to the complex issues that juvenile delinquency poses.

Dr. Christoph Bürgin is President of the Juvenile Criminal Court, Canton Basel-Stadt, Switzerland.

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New children laws for Guernsey

Ruth Bowen

In January 2008 the States of Deliberation, the parliament of Guernsey, approved two major pieces of legislation. The Children (Guernsey and Alderney) Law 2008, together with The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law 2008, will make far reaching changes in the fields of juvenile justice, child protection, children's rights and private family law. This article will summarise the main provisions of the new legislation, and outline the process by which this was arrived at and the work that still needs to be done.

Constitutional context

The Bailiwick[1] of Guernsey is one of three self-governing dependencies of the British Crown (the other two being the Bailiwick of Jersey and the Isle of Man). The relationship between these dependencies and the United Kingdom government is complex and has evolved over nearly 1,000 years. A Royal Commission[2] in 1973 acknowledged that there were areas of uncertainty and did not attempt to draw up an authoritative statement. It is thus well beyond the scope of this article to provide a definitive guide, but some basic facts are:

- United Kingdom laws, except in matters of defence, do not cover the Crown Dependencies, which are responsible for their own domestic legislation. Although international relations are also the responsibility of the UK, international treaties and agreements are normally only extended to the Dependencies if they specifically wish. In rare circumstances, and only with agreement, a piece of UK legislation may be extended to the Dependencies.
- The Dependencies are not members of the European Union, but they do have a special relationship with it, which provides, for example, for the free movement of goods and common customs tariffs. On the other hand, free movement of people, and Council Regulations such as Brussels II (governing jurisdiction in family law matters) do not apply.
- The three Crown Dependencies are entirely independent of one another, although the Bailiwicks of Guernsey and Jersey are collectively known as "the Channel Islands".
- The Bailiwick of Guernsey is a collection of small islands in the English Channel, about 70 miles from England, and 30 miles from France. It comprises Guernsey (population approx 65,000), Alderney (2,500), Sark (600) and several smaller islands.
- Guernsey's parliament is the States of Deliberation, known as "the States". There is no party politics—the 45 elected deputies are all independent. There is a general election every four years, following which the members elect a Chief Minister and then Ministers to head each of the 10 States Departments.
- Within the Bailiwick, Alderney and Sark are semi-autonomous, each with their own legislature. Again, this is complicated: suffice to say that:
  - Guernsey has Bailiwick-wide authority in respect of criminal law.
  - Alderney has autonomy in private law matters but in respect of education and social services law provision is made by Guernsey.
  - Guernsey education and social service provision and law does not extend to Sark.
  - Guernsey's 1939 divorce law, and the various amendments (including, for example, issues of custody and access) has covered Alderney for some time, but was not extended to Sark until 2003. The Adoption Law 1960 covers Guernsey and Alderney, but not Sark.

[1] A Bailiwick is the area of jurisdiction of a bailiff (see note 3).

[2] Report of the Royal Commission on the [UK] Constitution, published in 1973 and known as the Kilbrandon Report. This should not be confused with an earlier report of the same name, and headed by the same senior Scottish judge, which led to the creation of the Scottish Children's Hearing (see below).

- Each of the three Bailiwick jurisdictions has its own court system and judiciary. Overarching them all is the Guernsey Royal Court, presided over by the Bailiff[3] of Guernsey, who—as well as being the Bailiwick's senior judge—is also the Presiding Officer of the States of Deliberation.
- Proposals for legislation are initially passed in principle by the States, voting on a report presented by a Department. The law is then drafted and re-presented to the States as a *Projet de Loi*. Following acceptance by the States at this stage, laws must be approved by the UK Privy Council and, finally, returned to Guernsey for formal registration at the Royal Court.
- Secondary legislation must be approved by the States, but it does not need to go to the Privy Council.

Background to the new children legislation

In 2001 the Director of Children's Services for Guernsey initiated a wide-ranging review of Bailiwick legislation affecting children and families. The recently passed Human Rights (Bailiwick of Guernsey) Law 2000 highlighted what had long been known by those working in the field—that the existing law was piecemeal, out of date and wholly unsuited to family life in the 21st century. The current main piece of legislation, governing both juvenile justice and child protection was passed in 1967, and is based on UK law passed in the early 1930s.[4] Thus, for example, there is no provision for children to have a voice in their own proceedings, no status for unmarried fathers, and, where children do need to be taken into state care, almost all parental rights are transferred to state authorities.

Often in Guernsey, new law is based on that of England and Wales, with some adjustments for the Guernsey situation. On this occasion however, children's services saw an opportunity to create law specifically geared to the needs of the Bailiwick, looking beyond the usual parameters.

Research, consultation, proposals and drafting

Inevitably, a small jurisdiction will not have the resources to undertake world-wide research in depth, and it was not possible to pursue interesting developments in New Zealand, Bermuda and France. It was also necessary to take account of other limitations of scale, including a small judiciary—in 2001 there were three full time qualified judges, each covering the full range of legal work. At an early stage, children's services started looking in detail at the Scottish *children's hearing* system. This has been operating since 1971 and was set up following a report by the Kilbrandon Committee in 1964[5].

Briefly, the Kilbrandon Report had concluded:

i. that children appearing before the court because they had offended almost invariably had the same needs and background as children who were before the court because they lacked proper care and protection;
ii. a court, with its emphasis on establishing facts and formal procedures, was an inappropriate forum for looking at the needs of these troubled children.

In response to Kilbrandon, the Scots set up a system of lay panels, to make decisions about what should happen to children in need of statutory intervention, in order to provide them with appropriate care, protection, guidance or control. Members of the panels are highly trained volunteers drawn from the local community, and the emphasis is on direct engagement with child and family. They do not adjudicate on disputed issues of fact, which are dealt with by a court. The gatekeeper to the hearing is an independent official known in Scotland as the *reporter*. Anyone can make a referral to the reporter, although the majority are from the police and social services. The reporter investigates the matter and, if s/he decides that compulsory intervention may be necessary, and the statutory grounds for referral are met, the case is referred to the children's hearing, comprising three members of the lay panel. About 75% of cases referred to the reporter do not proceed to a hearing—many are settled on the basis of voluntary agreement and provision.

In Scotland, all but the most serious cases of offending by children under 16 are referred to the children's hearing The hearing has the power to make a *supervision requirement* for up to a year at a time (which can then be renewed), placing the child under the supervision of social services. The supervision requirement may have conditions attached detailing, for example, where the child is to live, with whom the child may have contact, or requiring the child to attend a project to address offending behaviour.

Guernsey has a strong tradition of community involvement, and it was felt that a lay panel could work very well. Of particular interest to Guernsey was how the children's hearing operates in Scotland's island communities and how they deal with issues such as confidentiality and recruitment of panel members and the conflicting needs to provide some children with specialist facilities, while keeping them within their own community. The Scots proved to be exceptionally generous in providing support and information at this crucial

[3] Historically, a bailiff was the French king's representative in a specified area, in charge of justice and administration.

[4] The Children & Young Persons Act 1933

[5] See note 2 above

research stage. There were visits to Guernsey by Scottish officials, and opportunities for Guernsey to see the children's hearing in action in Scotland. These exchanges included members of the judiciary, reporters, trainers, panel members, government officers, lawyers, social workers, the police, probation officers and academics.

In tandem with research into a children's hearing style system, Guernsey children's services also looked at how the law might be updated in the areas of parental responsibility, custody, access, children as court witnesses, assisted reproduction, duties of state authorities to provide preventative support to families, regulation of day care provision, duties to children in the care of the States, the needs of children placed out of the jurisdiction[6] of the Bailiwick, court procedures and the ratification of various international instruments dealing with children. It was decided that adoption law should be updated once the main children law is implemented.

A total of 14 public consultation documents were issued in October 2003, including "*Having a Say*", a summary of consultation undertaken with various groups of children and young people. This had encompassed those who were or had been in state care—placed both within and outside the Bailiwick—children's experience of court proceedings and children subject to imprisonment.

In October 2004, a 147-page *Billet d'État* (policy paper), was considered by the States of Deliberation, which accepted virtually all the recommendations of the children's services department. A summary of these is in the next section.

There then followed an extended period of legal drafting. The *Billet d'État* provided an outline only and although UK legislation[7] was helpful in some respects, in others it could be misleading, such as where it had been decided to deviate, or even improve upon (!), what is in those statutes. In addition, there were areas unique to Guernsey, such as special provision for children placed by social care agencies out of the jurisdiction. The specialist draftsmen in the Law Officers' Chambers[8] worked closely with children's services, as well as representatives from the judiciary, the Guernsey Bar (advocates in private practice) and advisors from both England and Scotland.

It had been anticipated at one stage that Sark would be a full party to the new law, but it gradually became clear that this was not going to be possible within the proposed timescale. One consequence of this was that there had to be two separate pieces of legislation, one dealing with civil, and the other with criminal issues, to take account of the special relationship between the three Bailiwick jurisdictions.

Although approval of the laws in January represents a very important milestone, there is still much to be done before Guernsey is ready for implementation of the new laws, fixed for April 2009.

Summary of the main provisions of new Guernsey law

1. The biggest change is the introduction of system based on the Scottish children's hearing. These are the main features:

- A lay tribunal will deal with most cases of juvenile offending and child protection. It will be called *The Child Youth and Community Tribunal* (CYCT) and will differ from the Scottish model in several respects including, for example, the fact it will not deal with applications to detain children in secure accommodation on welfare grounds—these will continue to be heard by a court.
- The gatekeeper to the CYCT will be known as the *Children's Convenor*. Again, although based on the Scottish children's reporter, there will be some significant differences in the role.

2. Parental responsibility has been defined in more detail than in either Scotland or England. It will be granted to unmarried fathers (among others) in a number of specified circumstances.

3. There are various provisions aimed at multi-agency working, with an emphasis on early assistance and intervention for children in need, in the expectation that problems caught early enough prevent children becoming at risk of harm. These provisions include the preparation of a multi-agency strategic plan for children's services, a multi-agency child protection committee, and clear provisions for sharing information (irrespective of data protection considerations) where children are at risk of harm.

[6] A jurisdiction the size of the Bailiwick cannot feasibly provide services for children who have, for example, a complex combination of needs (eg: special education, physical disability and emotional difficulties) or require very specialist help (eg: because presenting dangerously violent or sexual behaviour). Out of jurisdiction placements are usually in England or Wales.

[7] The Children Act 1989, covering (England and Wales); The Children (Scotland) Act 1995

[8] There are two law officers in Guernsey, HM Procureur, equivalent to Attorney general, and HM Comptroller (Solicitor general). Together with lawyers working in these chambers, the law officers provide the full range of legal services to the Bailiwick government, including drafting, criminal prosecutions, advice and representation.

4. There will be safeguards for children whose needs can only be met by a placement out of the jurisdiction of the Bailiwick.

5. The law will be underpinned by a set of 12 guiding principles. These are based on UK and international principles and case law, foremost of which is that the child's welfare is the paramount consideration. Others include that delay is normally detrimental to a child's welfare, and that statutory intervention should only be used where voluntary assistance has failed to provide the necessary care, protection, guidance or control.

6. The age of criminal responsibility is being increased from 10 to 12 years (in England it is 10, and in Scotland, eight).

Further work

Before the law can come into effect, it must be approved by the Privy Council, and it is hoped that this will happen by the end of 2008 at the latest. In the meantime, considerable additional work is underway and this includes:

- drafting secondary legislation, including rules for the courts dealing with family cases and the CYCT and children's convenor;
- setting up the tribunal service, including recruitment and training of the lay members and acquisition and adaptation of premises;
- training across the States in the implications of the new laws;
- recruitment of the children's convenor. This post is crucial to the success of the new system and it is hoped to appoint as soon as possible, so that the person may have an input into the implementation. The post holder will be an independent official, though required to work with States agencies and bodies at a senior level, including the judiciary and law officers. They will be responsible for the conduct of some cases before the courts and, more widely, they will promote children's rights and interests throughout the Bailiwick.
- ensuring that the necessary services are in place to enable the law to operate effectively.

Conclusion

This is an enormously exciting time for children's law and services in Guernsey. It is rare to have the opportunity to see a new system operating from the beginning and in such a small jurisdiction it ought to be possible to measure the effects, and respond quickly to any difficulties. It is proposed that the Chronicle will publish progress reports, both before and after full implementation of the laws.

Ruth Bowen is an English solicitor. She has been legislative consultant to the States of Guernsey Services for Children & Young People since 2001. Her e-mail address is: rbowen@ruthbowen.co.uk

Association News from Argentina — Dr Elbio Raúl Ramos

Buenos Aires
May 2008

Friends:
With real happiness, I wish to inform you about the results reached in the Assembly held on 26 April 2008.

There has been a lot of effort and determination by the members of the Temporary Commission to achieve the mission entrusted to us in December 2007—our commitment was to re-establish the institution of our dear Association.

Accompanied and supported throughout these four months of intense work by our members, we achieved the following objectives:

1. We refounded the Association, establishing juridical legal status.
2. We approved the new statute proposed by the Temporary Commission.
3. We constituted a new Board of Directors.

The members of the new Board of Directors are:

President: Dr. ELBIO RAMOS

First Vice-president of Management
Dra. MARIA ANGELICA BERNARD

Second Vice-president of Finance
Dra. ELBA ALLENDE

Third Vice-president of Institutional and Academic Affairs
Lic. IVONNE ALLEN

General Secretary
Dra. CLEMENTINA CRISTINA LANDOLFI

Pro-secretary of Management
Dra. SILVIA ZEGA

Pro-secretary of Finance
Dra. PATRICIA ALEJANDRA FARIAS

Pro-secretary of Institutional and Academic Affairs
Dra. GLADYS V. KRASUK

Treasurer
Dra. CLAUDIA DANA

Pro-treasurer
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Fiscal and Audit Committee
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Dr. JUAN CARLOS CAIRO
Dr. JUAN CARLOS FUGARETTA.

We invite you visit our web site www.ajunaf.com.ar , and to collaborate by sending any information and material you consider of interest to ourmembers.

You may contact us at info@ajunaf.com.ar.

Best regards,

Elbio Raúl Ramos
Presidente AAMFyPJNyA

Commission on Crime Prevention and Criminal Justice, 17th Session, Vienna, Austria, 14-18 April 2008

Davinia Ovett

Oral Statement on behalf of members of the Interagency Panel on Juvenile Justice (IPJJ)

Madame/Mister President,
Distinguished members of the Commission on Crime Prevention and Criminal Justice,

Thank you for giving me the floor on behalf of the following members of the Interagency Panel on Juvenile Justice—

- Defence for Children International (DCI);
- **the International Association of Youth and Family Judges and Magistrates (IAYFJM**);
- the International Juvenile Justice Observatory (IJJO);
- Penal Reform International (PRI);
- Terre des hommes Foundation (Tdh);
- the World Organisation Against Torture (OMCT);
- the Office of the United Nations High Commissioner for Human Rights (OHCHR); and
- the United Nations Children's Fund (UNICEF).

1. The Panel was established following Economic and Social Council (ECOSOC) resolution 1997/30 that called for a "coordination panel on technical advice and assistance in juvenile justice." It is currently composed of thirteen members, including United Nations agencies and non-governmental organisations, active in child justice reform.

2. The work of the Panel is guided by the Convention on the Rights of the Child, in particular articles 37 and 40 thereof, and other relevant United Nations standards and norms.[1]

Child Justice reform

3. We would like to recall ECOSOC resolution 2007/23 entitled *Supporting national efforts for child justice reform, in particular through technical assistance and improved United Nations system-wide coordination* adopted on 26 July 2007 at the suggestion of the Commission on Crime Prevention and Criminal Justice at its 16th Session.

4. We would like to reiterate the resolution's invitation to Member States to adopt comprehensive national action plans on crime prevention and child justice reform containing, in particular, specific targets with regard to reducing the pre-trial detention and imprisonment of children, including through the use of diversion, restorative justice and alternatives to imprisonment and ensuring that proper detention conditions prevail.

5. We would also like to welcome the resolution's explicit support for the work of the Panel and its members, including the Panel website, the Panel publication *Protecting the rights of children in conflict with the law* (2006) and the UNICEF/UNODC *Manual for the Measurement of Juvenile Justice Indicators* (2007).

6. In this respect, we would like to inform the Commission that since May 2007 the Panel has sought to increase its cooperation and effectiveness on juvenile justice by establishing a permanent Secretariat based in Geneva. The Secretariat has sought to develop and strengthen the work of the Panel, including by: increasing cooperation and visibility of the issue through outreach to members at the international, regional and country level; making information, tools and resources available on juvenile justice, notably through the Panel website in English, French and Spanish (www.juvenilejusticepanel.org) and a monthly electronic newsletter (www.juvenilejusticepanel.org/en/newsletter);

[1] Including, amongst others: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLs); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines); the Committee on the Rights of the Child, General Comment No.10 (2007) "Children's rights in juvenile justice" and the Vienna Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines).

developing common tools to strengthen technical assistance, including a roster of juvenile justice experts; and sharing requests for technical advice and assistance in the area of child justice amongst members. We encourage Member States to make use of the Panel and its tools and to share their own good practices with the Panel Secretariat.

Violence against children in conflict with the law

7. According to article 37 of the CRC, the arrest, detention or imprisonment of a child should only be used as a measure of last resort and for the shortest possible period of time. We are concerned that an estimated 1, 1 million children worldwide are deprived of their liberty, of which 59% are in pre-trial detention.[2]

8. Although prohibited by the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR), we are strongly concerned that some countries still impose the death penalty for crimes committed by children under 18. We are also strongly concerned that corporal punishment and life imprisonment continue to be used by countries as a sentence for crimes committed by children. We call on all Member States to abolish such sentences and to comply with their obligations under international law.

9. In this respect, we would like to recall the recommendations in the *Report of the independent expert for the United Nations study on violence against children* (2006) (A/61/299) and the *World Report on Violence against Children* (2006)

In particular, we call on Member States to implement all of the recommendations for the protection of children in conflict with the law against violence, including the specific recommendations concerning the reduction of detention, legal reform, registration and collection of data, and the establishment of child-focused juvenile justice systems, as well as those relating to: the regular assessment of placements; ensuring effective complaints, investigation and enforcement mechanisms; ensuring that children are aware of their rights and can access the mechanisms in place to protect these rights; ensuring effective monitoring and access to all places where children in conflict with the law may be held; and the ratification of the Optional Protocol to the Convention against Torture.

10. We would also like to welcome the UN General Assembly resolution on the *Rights of the Child* adopted on 16 November 2007 (A/RES/62/141) that requests the UN Secretary-General to appoint a Special Representative on violence against children for a period of three years. In this regard, we invite Member States to collaborate in the follow-up to the recommendations of the UN Study and to support the work of the Special Representative who will soon be appointed.

Thank you.

Davinia Ovett is Secretariat Coordinator of the Interagency Panel on Juvenile Justice. A British and Swiss national, she has an LLB in European Law from Warwick University, an LLM in International Law from the London School of Economics and a Postgraduate Diploma in Legal Practice from Guildford College of Law. Before joining the Panel in May 2007, she worked on human rights and children's rights issues in different non-governmental organisations.

[2] UNICEF, 2008

Contact Corner — Editor

We receive many interesting e-mails with links to sites that you may like to visit and so we are including them in the Chronicle for you to follow through as you choose. Please feel free to let me have similar links for future editions. **Editor**

From	Topic	Link
Bernard Boeton Fondation Terre des Hommes (TdH)	Comparative Studies of European Laws on International Adoption	http://tdh-childprotection.org/content/view/437/1/
Cédric Foussard International Juvenile Justice Observatory	Legal assistance for children in conflict with the law—175 countries compared	http://www.oijj.org/home.php
Bernard Boeton Fondation Terre des Hommes (TdH)	Child Protection Project In Europe	newsletter@tdh-childprotection.org
Bernard Boeton Fondation Terre des Hommes (TdH)	Global Initiative to Fight Human Trafficking (UN.GIFT)-Vienna Forum. Tdh collected twenty media articles on the subject, from different sources and countries—from Scotland to Spain; Albania to Finland.	newsletter@tdh-childprotection.org
Jean Zermatten Institut international des Droits de l'Enfant (IDE)	Children in street situations. Prevention, intervention, rights-based approach Book available from web-site from October 2008	www.childsrights.org

From time to time we also receive amusing stories. Here is one from Betül Onursal, a Turkish member. I am grateful to Betül for allowing me to publish it.

Dear Friends,

Two days ago in Adana there was an illegal demonstration by the PKK with children in the front line, as has recently become the fashion. The police began to use water cannon and a riot was about to break out when—out of the blue—a man appeared selling bananas. The children all crowded round him. The police-chief, using all the money he had on him, bought ten kilos of bananas from the man and handed one to each child. The situation changed instantly from a demonstration into a banana festival and the children went off into the surrounding alleyways waving happily to the police-chief, who told journalists the following day that he had had a very impoverished childhood, just like these children. As a result, he had developed a strong affection for them and simply wanted to make them happy.

With my best wishes,
Betül, 5 Feb 2008

Treasurer's column — Avril Calder

Subscriptions 2008

In the early months of 2008 I sent out email requests for subscriptions to individual members (GBP 20; Euros 30; CHF 45) and national associations.

If you have not already paid, may I take this opportunity to remind you of the ways in which you may pay:

1. by going to our website at www.judgesandmagistrates.org, clicking on subscription and paying online, using PayPal. This has two stages to it, and is both the simplest and cheapest way to pay; any currency is acceptable. PayPal will do the conversion to GBP;
2. through the banking system. I am happy to send bank details to you of either the account held in GBP (£) or CHF (Swiss Francs). My email address is ac.iayfjm@btinternet.com; or
3. if under **Euros 70**, by **cheque** (either in GBP or euros) made payable to the International Association of Youth and Family Judges and Magistrates and sent to me.

If you need further guidance, please do not hesitate to email me.

It is, of course, always possible to pay in cash if you should meet any member of the Executive Committee.

Without your subscription it would not be possible to produce this publication.

Council Meeting Tunis, April 2008

Ridha Khemakhem; Avril Calder, Willie McCarney;
Oscar d'Amours, Renate Winter, Nesrin Lushta

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The immediate Past President is an ex-officio member and acts in an advisory capacity.

Chronicle Chronique Crónica — Voice of the Association

The Chronicle is the voice of the Association. It is published bi-annually in the three official languages of the Association—English, French and Spanish. The aim of the Editorial Board has been to develop the Chronicle into a forum of debate amongst those concerned with child and family issues, in the area of civil law concerning children and families, throughout the world

The Chronicle is a great source of learning, informing us of how others deal with problems which are similar to our own, and is invaluable for the dissemination of information received from contributions world wide.

With the support of all members of the Association, a network of contributors from around the world who provide us with articles on a regular basis is being built up. Members are aware of research being undertaken in their own country into issues concerning children and families. Some are involved in the preparation of new legislation while others have contacts with colleagues in Universities who are willing to contribute articles.

A resource of articles has been built up for publication in forthcoming issues. Articles are not published in chronological order or in order of receipt. Priority tends to be given to articles arising from major IAYFJM conferences or seminars; an effort is made to present articles which give insights into how systems in various countries throughout the world deal with child and family issues; some issues of the Chronicle focus on particular themes so that articles dealing with that theme get priority; finally, articles which are longer than the recommended length and/or require extensive editing may be left to one side until an appropriate slot is found for them

Contributions from all readers are welcome. Articles for publication must be submitted in English, French or Spanish. The Editorial Board undertakes to have articles translated into all three languages—it would obviously be a great help if contributors could supply translations. Articles should, preferably, be 1500 - 2000 words in length. 'Items of Interest', including news items, should be up to 500 words in length. Comments on those articles already published are also welcome. Articles and comments should be sent directly to the Editor-in-Chief. However, if this is not convenient, articles may be sent to any member of the editorial board at the addresses listed below.

Articles for the Chronicle should be sent directly to:
Avril Calder, Editor-in-Chief,
e-mail : acchronicleiayfjm@btinternet.com

Copies in our three working languages (English, French and Spanish) would be appreciated. Alternatively, articles may be directed to any member of the Editorial Panel. Names and email addresses are given below

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Children as Victims and Witnesses. A Question of Law... and of Rights !

Generally speaking, justice, and included specialized Juvenile Justice, has for a long time and almost exclusively focused on the person of the crime's or the deed's perpetrator. It has engendered intervention models and systems designed as Welfare Model (objective: perpetrator care) or Justice Model (objective: retribution of the deed). However the victim, especially the **child victim**, has been conjured away; and little case has been made of the situation of the **child being witness**, in particular in criminal cases. The emblematic case id the child victim of sexual exploitation (Trafficking, prostitution, sex tourism…).

The promulgation of the Convention of the Rights of the Child and its famous **article 12** (right of the child to express his/her opinion) and the Optional Protocol on the sale of children, child prostitution and child pornography (2000), have suddenly shed light on the specific needs of children exposed to justice.

However, numerous questions remain open, and practice has not yet integrated the new international standards.

The IDE 2008 Seminar ***Children as Victims and Witnesses. A Question of Law... and of Rights !*** to be held in **Sion, Switzerland from October 14th to 18th, 2008**, intends to give a clear picture of the problems, and to underline best practices in the matter.

Outline and Programme : http://www.childsrights.org/html/site_en/index.php?c=for_sem
With kind regards
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