



Child-Friendly Justice and Children's Rights

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Introduction

Whether children come into contact with the law as victims, witnesses, offenders or complainants, it is equally important that they are met with a system that understands and respects both their rights and their unique vulnerability.

This idea – that we must take special care with children whose lives have become entwined in the legal system – is the backbone of child-friendly justice, a movement that calls for a dramatic shift in the ways that our justice systems interact with children. Child-friendly justice embraces the idea that courts can be a powerful tool to positively shape children's lives and at the same time recognises the reality that contact with the legal system is all too often more a source of additional trauma than a remedy for children.

Building on international children's rights obligations, child-friendly justice introduces principles that empower children to enforce their rights and encourages government, court, and law enforcement officials to develop policies that address children's precarious situation in the justice system.

Child-friendly justice asks us to appreciate and minimise the challenges that children face at each step in each aspect of a legal proceeding, building confidence in the view of the justice system as a solution to children's legal issues rather than another of an already long list of problems. Respecting child-friendly justice principles will not only eliminate many of the traumatic experiences children face in the legal system, it will foster greater respect for their rights by providing children the full access to justice they need to bring violations of these rights forward.

This report aims to provide information about the obligation to follow child-friendly justice principles; international, regional, and national standards for doing so; studies, research surveys, and position papers on the subject; and other relevant resources. We hope to add to it on a regular basis, and would very much appreciate your help in drawing our attention to additional information on the subject - please email us at info@crin.org with any comments or suggestions.

Child-Friendly Justice: A Term of Art

The notion that children deserve special attention in the legal system is not a new one, and has taken on various forms and a number of different names throughout its development. You may run across other terms that reference the ideas and principles discussed in this report, from “child-friendly justice” and “child-sensitive justice” to “justice for children” and “children in contact with the law.” Recognising that these terms all cover similar ground, we have chosen for purposes of simplicity to refer to the core of the movement described solely as “child-friendly justice.”

Examples of Child-Friendly Justice Practices

Child-friendly justice can sound abstract and theoretical, so it can be helpful to review sound laws, policies and practices that flow from accepted principles of child-friendly justice. However, it is first important to note that there may not always be one correct solution to a problem that children face in the legal system. Rather, the aim of child-friendly justice is to provide a range of strategies that can be used to adapt a legal proceeding to the particular circumstances of the child or children involved. Please bear in mind, then, that the examples below present just some of these solutions in just some of the contexts that children engage with the legal system.

Children as victims:

- Social workers, police officers, teachers, doctors, nurses, hospital receptionists and anyone else who might encounter child victims should receive appropriate training and be able to quickly refer them to designated points of contact in the legal system.
- Steps should immediately be taken to protect child victims from further harm and to link them with services they may need to reach a full physical and psychological recovery.
- Free 24-hour helplines should be put in place to offer child victims a chance to discuss their options before bringing matters to the attention of authorities.

Children as witnesses:

- Children should be interviewed by trained professionals in the presence of trusted adults; the number of interviews should be kept to an absolute minimum; and, where multiple interviews are necessary, the same interviewer should conduct each session.
- When a child agrees to testify in court, measures should be taken to keep the child at ease. Children should not be forced to have contact with alleged perpetrators and, where appropriate, audio-visual or closed-circuit television technology should be made available to facilitate prerecorded testimony or live communication from a remote location.
- Children should be asked straightforward questions in language that they understand; techniques designed to test or confuse witnesses, as are frequently employed during cross-examination in adversarial legal systems, should be avoided.
- It should never be presumed that children's testimony or evidence is untrustworthy or inaccurate simply because it is not submitted by an adult.

Children as offenders:

- Any child apprehended by the police and suspected of wrongdoing should be given an immediate opportunity to contact a parent, guardian or trusted person and provided with access to a lawyer free of charge.
- Police officers should explain to children why they have been apprehended in a way that they can understand, and should not question children about their potentially offending behaviour until a parent, guardian, trusted person or lawyer has arrived.
- Children should only be detained in exceptional circumstances and, where this is necessary, should never be detained alongside adults.

Children as complainants:

- Children should have access to free legal advice to discuss their rights and the options available for pursuing violations of these rights.
- Children should be able to initiate legal proceedings directly, through a parent or guardian, and through a chosen or appointed legal representative. Young adults should also be able to initiate legal proceedings to address childhood violations of their rights.
- Court fees, parental permission requirements, legal representation mandates, and any other constraints that might prevent children from bringing legal proceedings should be removed.

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International Standards and Obligations

Child-Friendly Justice and the CRC

Both the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography place obligations on States to follow the principles of child-friendly justice. Obligations under the CRC tend to be of a more general nature, while those under the OPSC are more explicit in their child-friendly justice aims. While the latter specifically address child victims of exploitation, there is no reason that these more detailed provisions should not be applied to all children, particularly as the adoption of the OPSC has confirmed States' ongoing commitment to child-friendly justice principles. The Committee on the Rights of the Child has also authored a General Comment on children's right to be heard, which provides ample guidance on the implementation of child-friendly justice principles before, during and after legal proceedings. Relevant provisions from both instruments and an illustrative extract from the General Comment are presented below:

Convention on the Rights of the Child:

- [Article 3](#): Best interests.
 1. "In all actions concerning children...the best interests of the child shall be a primary consideration."
 2. "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being...and, to this end, shall take all appropriate legislative and administrative measures."
 3. "States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent

authorities....”

- [Article 9](#): Separation from parents
 1. “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine...that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.”
 2. “In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.”

- [Article 12](#): The child's opinion.
 1. “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child....”
 2. “For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body....”

- [Article 19](#): Protection from abuse and neglect
 1. “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation....”
 2. “[P]rotective measures should...include effective procedures for the establishment of social programmes to provide necessary support for the child...and, as appropriate, for judicial involvement.”

- [Article 22](#): Refugee children
 1. “States Parties shall take appropriate measures to ensure that a child who is seeking refugee status shall...receive appropriate protection and humanitarian assistance....”
 2. “For this purpose, States Parties shall...assist such a child...to trace the parents or other members of the family.... In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment....”

- [Article 37](#): Torture and deprivation of liberty

“States Parties shall ensure that:

 - (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment...
 - (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
 - (c) Every child deprived of liberty shall be treated with humanity and respect...and in a manner which takes into account the needs of persons of his or her age. In particular every child deprived of liberty shall be separated from adults...and shall have the right to maintain contact with his or her family...;
 - (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation

of...liberty before a court or other...authority, and to a prompt decision on any such action.”

- [Article 39](#): Rehabilitative care
“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”
- [Article 40](#): Administration of juvenile justice
 1. “States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.”
 2. “To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that...
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees...
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance...;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and...in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality...
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.”
 3. “States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular...
 - (b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.”
 4. “A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

Optional Protocol on the sale of children, child prostitution and child pornography:

- [Article 8](#):
 1. “States Parties shall adopt appropriate measures to protect the rights and interests of child victims...at all stages of the criminal justice process, in particular by:

- (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
 - (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
 - (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected...;
 - (d) Providing appropriate support services to child victims throughout the legal process;
 - (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures...to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
 - (f) Providing...for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims...”
3. “States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims..., the best interest of the child shall be a primary consideration.”
 4. “States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims...”
 5. “States Parties shall...adopt measures in order to protect the safety and integrity of those persons...involved in the prevention and/or protection and rehabilitation of victims...”

- [Article 9:](#)

3. “States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims..., including their full social reintegration and their full physical and psychological recovery.
4. “States Parties shall ensure that all child victims...have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.”

Committee on the Rights of the Child General Comment No. 12 on the right of the child to be heard:

- “Article 12 [of the CRC]...specifies that opportunities to be heard have to be provided in particular “in any judicial and administrative proceedings affecting the child”. The Committee emphasizes that this provision applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies. Typical administrative proceedings include, for example, decisions about children’s education, health, environment, living conditions, or protection....

The right to be heard applies both to proceedings which are initiated by the child, such as complaints against ill-treatment and appeals against school exclusion, as well as to those initiated by others which affect the child, such as parental separation or adoption....

A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information,

adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.”

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Other International Standards

A number of other international standards, guidelines, rules and model laws relate to child-friendly justice and, while non-binding, provide a solid basis for improving the ways that children interact with various aspects of the legal system. Nevertheless, these instruments are by no means comprehensive, and relate primarily to children's direct involvement in the criminal and juvenile justice systems. They include:

- [Standard Minimum Rules for the Administration of Juvenile Justice \(the Beijing Rules\)](#)
- [Guidelines for the Prevention of Juvenile Delinquency \(the Riyadh Guidelines\)](#)
- [Rules for the Protection of Juveniles Deprived of their Liberty](#)
- [Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime](#) (Child-friendly version available [here](#))
- [Guidelines for Action on Children in the Criminal Justice System](#)
- [UNODC-UNICEF Model law on Justice in Matters involving Child Victims and Witnesses of Crime](#)

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Regional Standards

The Council of Europe approved [Guidelines on Child-Friendly Justice](#) in November 2010. The Guidelines are the first regional standards of their kind and, according to the Council, aim to “give European governments guidance to enhance children's access to and treatment in justice, in any sphere – civil, administrative or criminal.” The Guidelines “are not only a declaration of principles, but aspire to be a practical guide for the implementation of internationally agreed and binding standards in both in-court and out-of-court proceedings.” While they have been developed with a regional context in mind, the Council's Guidelines serve as a fine model to be elaborated and adapted in other parts of the world. Resources related to their development appear below:

- View the [Guidelines](#) online
- Read a [Summary](#) of the Guidelines or a short [Fact-sheet](#) about the Guidelines
- Visit the [Council of Europe's website on Child-Friendly Justice](#) for background documents, a recap of the drafting process, and information about the involvement of children in the process

- Review a [Compilation of texts relevant to child-friendly justice](#) in Europe
- Read a list of national [Examples of Good Practice](#) from Council of Europe countries
- Follow CRIN's coverage:
 - September 2008: [Developing Guidelines on Child-Friendly Justice](#); Read some of the reports presented at the initial meeting, including "[Achievements in taking children's rights further in civil justice](#)", "[Crossing boundaries in the administration of children's justice](#)", and "[Elements for European Guidelines on Child-friendly Justice](#)"
 - December 2009: Read [CRIN's Statement to the Council of Europe](#)
 - December 2009: Read an [article about the Council's plan for the Guidelines](#) by Sabrina Cajoly in the CRIN Review
 - February 2010: [Call for Consultation of Children on Guidelines on Child-Friendly Justice](#)
 - November 2010: [New Council of Europe Guidelines on Child-Friendly Justice](#)

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Research

Many legal and psychological research studies and texts have been published on matters related to child-friendly justice, especially on the situation of child victims. While there is undoubtedly a need for further research, particularly in the juvenile justice and civil court contexts, an interest in comparing child-friendly justice practices across jurisdictions has recently emerged and promises to spread positive developments in the field around the globe. A selection of relevant publications appears below:

- [Child Witnesses in the New Zealand Criminal Courts - A review of practice and implications for policy](#), including independent research in New Zealand and detailed information on relevant laws and practices in Australia, France, Israel, South Africa, and the United Kingdom (England and Wales).
- [Testimony Without Fear \(?\), Non-Revictimizing Cultures and Practices: A Map of Practices for Taking Special Testimony from Children and Adolescents \(Brazil\)](#), including detailed information on relevant laws and practices in Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Ecuador, France, Germany, Iceland, India, Israel, Jordan, Lithuania, Malaysia, New Zealand, Norway, Paraguay, Peru, Poland, South Africa, Spain, Sweden, the United States, and the United Kingdom

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Other Resources

Countless other events, articles and resource pages on child-friendly justice exist. Please alert CRIN at info@crin.org if you are aware of any forthcoming events or publications, or would like for us to include your work in the lists above or below.

- Read materials from the European Union's “Children in the Union: Rights and Empowerment (CURE)” conference child victims in the criminal justice system:
 - Read the [Final Report and Recommendations on Child Victims in the EU](#)
 - Visit the [CURE homepage](#) or the [CRIN event page](#) for the conference
 - Read the [EU framework decision on the standing of victims in crime proceedings](#)
- Visit Child Abuse and Neglect in Eastern Europe's (CANEE) [page on children as witnesses](#)
 - Read the [Polish Charter of Rights for Child Victims and Witnesses](#), prepared by the Nobody's Children Foundation in partnership with the Polish Ministry of Justice and Coalition for Child-friendly Interviewing
- Read a [newsletter on children as witnesses](#) in the criminal justice system from the Brazil-based Agência de Notícias dos Direitos da Infância (ANDI)

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