



Ministry of Justice  
Balancing Rights and Responsibilities

Canada



# Protocol for Strengthening Multi-Agency Interaction within Jamaica's **Child Justice System**

Strengthening Networks and Services that Improve  
Citizens Access to and Experiences of the  
Justice System in Jamaica Project

## Protocol for Strengthening Multi-Agency Interaction Within Jamaica's Child Justice System: A Handbook

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research  
corrections  
sensitivity institution  
standards  
roles in society  
witness care  
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child witnesses  
CCRC  
streamlined services  
law  
support  
coordination victims  
intuition  
minor  
child rights  
human rights  
guardian  
equitable justice  
cultural rights  
children participation  
children in conflict with the law  
children's advocate  
youth  
gender equity  
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forensic  
family  
survivor  
behavior  
without discrimination  
physical and mental differences  
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## PREFACE

The *Protocol for Strengthening Multi-Agency Interaction within Jamaica’s Child Justice System* was prepared by Althea McBean, B.A., LLB, Attorney-at-law and Justice Sector Consultant engaged by the Caribbean Child Development Centre (CCDC), The University of the West Indies (UWI) Open Campus. The project was commissioned by the Justice Undertakings for Social Transformation (JUST) Programme which is a bilateral justice reform partnership between the Government of Canada and the Government of Jamaica (GOJ).

The Social Order Component of the JUST seeks to provide justice services that are more customer-focused and gender-responsive. An expected outcome under this component was to facilitate increased equitable access by women, men, boys and girls to legal information, advice, and support services. Ultimately, it is expected that a modernised justice system that engenders public trust and confidence will be the key impact of the Programme. Such impact is to be achieved mainly through improved operational efficiency and the implementation of justice reform and policy measures. An immediate outcome contributing to this longer-term result is also improved service delivery and management capacities of justice sector institutions, primarily the Courts of Jamaica.

Towards achieving these aims, the design of the Protocol was informed by research evidence (primary and secondary), international standards and best practices and supported by several individuals who are hereby acknowledged for their invaluable contribution. They are:

Mrs Diahann Gordon-Harrison	Children’s Advocate - for her guidance and direction in developing these Protocols and making recommendations to address critical gaps in the multi-agency interaction with children.
Reverend Osbourne Bailey	Head of the Victim Services Division (VSD) - for providing guidance and information on the services available to child victims in the Jamaican justice system.
Ms Ceceile Minott	Head of CCDC, UWI Open Campus- for leading the process of conducting needs assessment, gap analyses, consultations, site visits and the development of care spaces in the Courts.
Mrs Tania Chambers	Project Manager, JUST Programme, Global Affairs Canada - for providing the scope and direction of the Protocol in keeping with the objectives of the Social Order component of the JUST.
Ms Marva Campbell	CCDC, UWI Open Campus- for providing administrative support to the Project.
Ms Heather Gallimore	CCDC, UWI Open Campus- for conducting and facilitating focus group sessions and Multi-Agency Response to Child Abuse (MARCA) meetings to identify gaps and obtain feedback on improving services to children in the justice sector.

Mrs Ava Ho	CCDC, UWI Open Campus- for organising meetings, site visits and providing administrative support to meetings and focus group sessions
MARCA/Inter-Agency Child Justice Committee	comprising OCA, CPFSA, ODPP, MOJ Child Diversion Unit, VSD, MOEYI, JCF (CISOCA & CSSB), DCS, CMS, RISE Life Management - for considering the issues relating to children in the justice system, making recommendations and reviewing the Protocol at different stages.

The GOJ has made justice sector reform a national priority and on many occasions, emphasised the importance of reforming the country’s justice system. Both the Medium-Term Socio-Economic Policy Framework (MTSEPF) 2009-2012 and the Public Service Modernisation Vision and Strategy 2002-2012 identify priority objectives related to governance issues including justice reform. Additionally, Goal 3 of Vision 2030, Jamaica’s National Development Plan, seeks to achieve a society which is secure, cohesive and just. The national outcome for this goal is security, safety and effective governance. Thus, improved treatment of Jamaica’s children, particularly those who come in contact with state services, is directly connected to the achievement of Vision 2030, Goal 3.

The JUST Programme builds on the work of the Jamaica Justice System Reform Task Force which was established in 2006 from a wide cross-section of stakeholders and, given the mandate to review the Jamaican Justice System and make recommendations for its improvement and modernisation. In 2007, the Task Force submitted a Report positing over 200 recommendations for the reform of the justice sector<sup>i</sup>. Many of these recommendations, some modified, have informed the plans, targets and programmes implemented to reform the Jamaican Justice System. At a sector level, the Jamaican Justice System Reform Policy Agenda Framework (2009-2013)<sup>ii</sup> identified priorities for reforming justice sector institutions and policies. All of these recommendations were considered in the formulation of this Protocol.

**Objectives of the Protocol**

The Child Justice Protocol seeks to:

- Improve collaboration among Agencies – MDAs that interact with children who come in contact with the justice system and, treatment programmes;
- Promote consistency in approaches, standards and best practices among MDAs – Standard Operating Procedures;
- Streamline processes and minimum standards during the conduct of cases;
- Discourage the arrest and charge of children;
- Ensure that the best interests of the child are primary concerns and are achieved when a child interacts with the justice system;
- For children who are institutionalised, ensure that their best interests are achieved – in the treatment, psycho-social, educational and emotional care provided.

It is hoped that this Protocol will help to standardise the approach to and foster collaboration and knowledge sharing among state agencies and non-governmental organisations (NGOs) including community-based organisations (CBOs) and faith-based organisations (FBOs) that interact with children, victims and other witnesses. Acceptance and take-up of the Protocol are also important if it is to prevent the re/victimisation of children who interact with the justice system either as victims, children in need of care and protection or children in conflict with the law.

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## LIST OF ABBREVIATIONS

ATSU	Addiction Treatment Services Unit
CARICOM	Caribbean Community
CBOs	Community-Based Organisations
CCDC	Caribbean Child Development Centre, The University of the West Indies Open Campus
CCPA	Child Care and Protection Act
CDA	Child Development Agency <sup>iii</sup>
CDC	Child Diversion Committee
CDO	Child Diversion Office
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIMP	Critical Incident Management Plan
CIMT	Critical Incident Management Team
CISOCA	Centre for the Investigation of Sexual Offences and Child Abuse <sup>iv</sup>
CIPP	Child Interaction Policy and Procedures
CMS	Court Management Services
CPFSA	Child Protection and Family Services Agency
CSO	Civil Society Organisation
CSSB	Community Safety and Security Branch, Jamaica Constabulary Force
CWDs	Children with Disabilities
DCS	Department of Correctional Services
DRF	Dispute Resolution Foundation
FBOs	Faith-Based Organisations
GAD	Gender and Development approach
GOJ	Government of Jamaica
HEART Trust/NTA	Human Employment and Resource Training, Trust/National Training Agency
IACHR	Inter-American Commission on Human Rights
JCF	Jamaica Constabulary Force
JMD	Jamaican Dollars

JUST	Justice Undertakings for Social Transformation
MARCA	Multi-Agency Response to Child Abuse <sup>v</sup>
MDAs	Ministries, Departments and Agencies
MOEYI	Ministry of Education Youth and Information
MoGAVA	Men of God Against Violence & Abuse
MOH	Ministry of Health and Wellness
MOJ	Ministry of Justice
MNS	Ministry of National Security
MTSEPF	Medium -Term Socio-Economic Policy Framework
NCDA	National Council on Drug Abuse
NPSC	National Parenting Support Commission
NGO	Non-Governmental Organisation
OCA	Office of the Children’s Advocate
OCR	Office of the Children’s Registry
ODPP	Office of the Director of Public Prosecutions
PASS	Programme for Alternative Student Support
PMAS	Performance Management Appraisal System
RISE	Reaching Individuals through Skills and Education Life Management Services
RJ	Restorative Justice
SER	Social Enquiry Report
SOP	Standard Operating Procedures
TIP	Trafficking in Persons
TTY	Teletypewriter
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children’s Fund
UWI	University of the West Indies
VSD	Victim Services Division
WCJF	Women’s Centre of Jamaica Foundation

## DEFINITIONS

Accused	A person who is charged and brought before the Court for a criminal offence.
Acquitted	The person charged is found Not Guilty by the Court.
Adjourned	The Court case or matter is set for another date.
At-risk youth	This term is used to refer to persons who are at risk or susceptible to various behaviours or occurrences. Different Agencies use the term to assess individuals for different risk factors.
Child	Any individual under the age of eighteen (18) years.
Child diversion	“A child-appropriate process of determining the responsibility and treatment of a child in conflict with the law without resorting to formal adjudication by a court” (The Child Diversion Act 2018).
Child Diversion Officer	An officer designated by the Minister of Justice to work at the parish level and provide management oversight for the Child Diversion Intervention Programme, which seeks to provide an alternative to formal judicial proceedings for children who, are accused of, or have committed certain offences. Child Diversion Officers prepare case management files, undertake needs assessments of child offenders and, amongst other things, make arrangements for specialised individual and/or group counselling sessions.
Children's Home	Any institution, dwelling-house or other places where four or more children are boarded and maintained other than by a parent or guardian, either gratuitously or for a reward.
Children's Officer	A public officer designated by the Minister to be a children's officer for the purposes of the Child Care and Protection Act and in particular a member of staff (social worker) from the Child Protection and Family Services Agency.
Clerk of the Court "Clerk"	Clerk of the Courts for the parish in which the Court is located who is responsible for performing the administrative functions of the Court and prosecuting criminal matters in the Parish Court, or the person acting as such, and at stations where the Deputy Clerk discharges the duties of a Clerk of the Courts, this title shall include the Deputy Clerk.
Complainant	The victim or person who had made a report in a matter before the Court.

Contribution Order	An order made by a court requiring any person to make contributions in respect of any child committed to the care of a person or to a juvenile correctional centre.
Convicted	The person charged is found guilty.
Correctional Order	An order made by a court sending a child to a juvenile correctional centre.
Domestic violence	Violence perpetrated by individuals who are related through intimacy, blood or law, it includes mental, emotional, sexual, financial and physical violence with a practical demonstration of intimate partner violence (spousal abuse), child abuse, sibling abuse and abuse of the elderly.
<b>Courts:</b>	
Court of Appeal	The highest Appellate Court in Jamaica. Appeals from the Supreme Court and the Parish Courts are heard by the Court of Appeal.
Supreme Court	The Supreme Court is a Court of original jurisdiction in criminal and civil cases. This Court hears serious criminal matters such as murder, rape and wounding and civil cases exceeding a claim for JMD\$1,000,000.00. The Divisions of the Supreme Court are: Circuit Courts and Gun Court, Commercial, Matrimonial, Probate, Constitutional, Insolvency and the Revenue Court.
Circuit Court	This is a special sitting of the Supreme Court criminal Division which hears serious criminal offences in the Supreme Court at King Street and, also periodically in each parish.
Parish Court	Formerly the Resident Magistrate's Court, this Court sits at a main Court in each parish and at outstations and hears criminal matters of summary jurisdiction which carry a maximum sentence of 3-5 years and civil matters under a value of JMD \$1,000,000.00.
Family Court	The Family Court is a specialised Court which was established to deal with all legal proceedings related to family life except divorce, which is done in the Supreme Court.
Children's Court	Has jurisdiction in all matters concerning children and hears matters where children are charged with offences.
Coroner's Court	The Coroner's Court hears matters where an enquiry is held into the death of an individual.

Traffic Court	Persons who are ticketed or cited for Traffic violations and offences appear before the Traffic Court. This Court holds trials for traffic offences.
Drug Court	Specialised sitting in the Parish Court where Accused persons who are addicted to a substance are referred to a treatment programme.
Lay Magistrate's Court	Formerly Petty Sessions Court, is presided over by 2 or 3 Justices of the Peace who sit as Lay Magistrates
Defence	The Accused or Defendant and the Attorney (s) representing him or her.
Detained	Held in custody by the police prior to being taken before the Court or placed in custody.
Disclosure	The service of documents in the case on the other parties.
Fit Person Order	An order that commits a child into the care of a fit person, who is any person or entity designated by the Court or the Minister.
Guardian	Any person who for the time being, has the charge, care or control over a child.
Habeus Corpus	Application to release a person who has been arrested and detained in police custody but not charged with an offence. If successful, a writ is ordered by the Court and served on the institution where the person is held. An Order is usually made for the person to be charged by a certain time or released.
Jury	A group of persons drawn from civil society and empanelled in certain criminal matters to determine the guilt or innocence of a fellow citizen charged before the court.
Justice of the Peace	A member of the community appointed by the Ministry of Justice to conduct social functions such as witnessing documents, verifying the identity of citizens, conducting lockup visits, and sit in Children's Court.
Juvenile Correctional Centre	A place where children are held after the conclusion of a matter where a correctional order is made, that is, they are sentenced to serve time per Section 2 of the Corrections Act.
Juvenile Remand Centre	A place where children are held in custody pending the completion of a matter or whilst awaiting a court date per section 2 of the Corrections Act.

Place of Safety	Any place appointed by the Minister to be a place where trained professionals can assess the needs of children in need of care and work out the next best steps for them in accordance with the Child Care and Protection Act.
Probation After-Care Officer	The staff of the Department of Correctional Service who facilitate the rehabilitation of offenders who receive non-custodial sentences. This might include undertaking Social Enquiry Reports following a court order.
Prosecution	Clerk of Court or Officer in the Director of Public Prosecution's Office responsible for the conduct of the case before the Court. Also referred to as the 'Crown' and is equivalent to the 'State' in other jurisdictions. The Police investigators, Forensic Lab and other State Agencies in a case comprise /fall under the Prosecution.
Remanded	Where an order is made by a court that an individual should be held or kept in police or other custody while awaiting trial.
Summons	A document ordering a person to appear before a Justice of the Peace, Magistrate or Judge in Court
Suspended sentence	A sentence not more than three years that the Judge can order not to take effect, unless, during a specified period, the offender commits another offence
Unattached	Term used to refer to a (young) person who is not enrolled in school and is not gainfully employed, working or connected to any endeavour
Warrant	A legal document authorising the police or other relevant body to make an arrest, search premises or carry out some other function relating to the administration of justice. It is usually signed by a Judge or Justice of the Peace, depending on the relevant Court or statute (law)
Youth	A young person between 18- 24 years <sup>vi</sup>



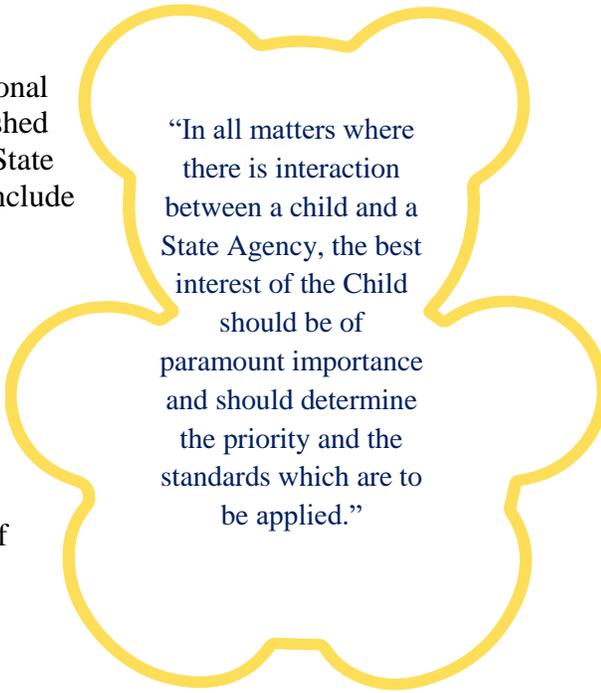


# 1. INTRODUCTION

In September 1990, Jamaica was represented at the first United Nations (UN) World Summit for Children and signed a Declaration agreeing to accept the mandate of the Summit that “ Each country will re-examine, in the context of its national plans, programmes and policies, according higher priority to the programmes for the well-being of children” All participating countries were urged to prepare National Plans of Action to this effect by 1991. The United Nations Convention on the Rights of the Child (UNCRC) was ratified by Jamaica on the 14<sup>th</sup> of May 1991. Following this, a National Consultation on Child Justice was held in Jamaica in August 2001 and was attended by numerous stakeholders, state and non-government organisations which interact with children. Arising from this, a draft Plan of Action was prepared and subsequently considered in island-wide consultations. A Plan of Action 2006-2009 was subsequently finalised, but as of 2009, much of the plan was not implemented. The National Plan of Action for Child Justice 2010-2014 was prepared and approved by Cabinet, and subsequent iterations were done up to 2018.

Jamaica has also ratified and adopted several International instruments which outline certain minimum established standards for the treatment of children who interact with the State and, in particular, with the criminal justice system. These include the:

- UN Convention on the Rights of the Child (“the UNCRC”);
- UN Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”);
- UN Standard Minimum Rules for Non-custodial Measures (“the Tokyo Rules”);
- UN Rules for the Protection of Juveniles Deprived of their Liberty (“the Havana Rules”);
- UN Guidelines for the Prevention of Juvenile Delinquency (“the Riyadh Guidelines”); and
- UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.



“In all matters where there is interaction between a child and a State Agency, the best interest of the Child should be of paramount importance and should determine the priority and the standards which are to be applied.”

States that have ratified the UNCRC are required to implement this treaty to the effect of respecting, protecting and ultimately, realising children rights although it is acknowledged that children also have responsibilities. However, it must always be remembered that the children in state care, children who are victims or witnesses, who are in need of care and protection or even those who have run afoul of the law as minors, are the most vulnerable of children and are looking to the state to protect them where the need arises or to correct them when they are veering off the right path. In all matters where there is interaction between a child and a State Agency, the best interest of the Child should be of paramount importance and should determine the priority and the standards which are to be applied. However, for

various reasons, whether lack of or limited resources, limited training or because of expedience, these standards are often not followed or enforced.

## **Multi-Agency Response to Children**

The objective of the Multi-Agency Response to Child Interaction with the State is to ensure consistency and improvement in the quality of service delivery to children and their families and to provide an early response mechanism to reduce and eliminate the re-traumatisation of child victims, children in the child protection system and the criminal justice system. Children who come in conflict with the law as alleged offenders, convicted offenders or suspects should leave the system better – rehabilitated and reintegrated into society with the necessary life skills, training and education to function in society and become positive members of the community.

The mantra of the Multi-Agency model is to protect vulnerable children from all abuse - sexual, physical, emotional. All children have a right to food, shelter, clothing, love, education, and legal representation. All their basic needs should be supplied. The Model, therefore, seeks to identify vulnerable children within the criminal justice system, develop strategic plans for child protection across agencies and to divert cases involving children from the criminal justice system, where possible.

The aim of the inter-agency collaboration is to ensure that all services provided to children by State Agencies are:

- Evidence-based<sup>vii</sup>
- Trauma-informed, with a focus not only on the clients' trauma but also the impact of repeated exposure to trauma on those delivering services
- Rights-respecting
- Client-responsive, i.e. focus on the individual

The Multi-Agency Response to Child Abuse (MARCA) Committee, which has expanded its remit to a Child Justice Inter-Agency Committee continues to have meetings and has given valuable input to the development of these Protocols. They have indicated that the Multi-Agency response should not be confined to child abuse but to all children who come in contact with State Agencies, whether as children in need of care and protection, victims, uncontrollable or children in conflict with the law.

There are several different agencies that interact with children in Jamaica and research, needs and gap analyses have found that there is very little collaboration, knowledge sharing or sharing of information. These agencies operate in silos with the risk that the persons they are established to help, fall through the cracks. A multi-agency approach to the handling of children who interact with State agencies, in particular in the procedures and processes, will increase efficiency and reduce the trauma experienced by children so that processes will not be duplicated, there will be standardisation of procedures, methodology, approaches and improved coordination among agencies. Focus groups consistently report the lack of communication as a major challenge in dealing with other agencies. The Office of the Children's Advocate (OCA) in the Child Justice Guidelines also reiterated the need and importance of a multi-agency approach.

The multi-agency response was initially aimed at improving the effectiveness of investigations and prosecutions of child sexual abuse cases. This approach saw the collaboration of the Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA), the then Child Development Agency (CDA), Victim Services Division (VSD), OCA, the Office of the Director of Public Prosecutions (ODPP) and the Women's Centre where each agency worked together to minimise the trauma experienced by child victims. Each agency had specific, well-coordinated roles and responsibilities throughout the process that ensured the child the optimal treatment, service, and the meeting of their needs.

Through this multi-agency response, carefully selected cases involving sexual activity that was committed voluntarily between two minors were diverted away from the criminal justice system where this was appropriate and was based on mutual cooperation. In particular, cases, where both parties are under the age of eighteen years and indicate that they were in an agreed sexual relationship and were first time offenders, they would qualify for participation in the multi-agency approach rather than have the boy charged and put through the formal justice system. This project was piloted in Kingston and St. Andrew between 2009 and 2011, it still operates in those parishes, but to date, it has not been extended to other parishes. It is hoped that these Protocols will assist agencies in other parishes to not only utilise this approach to keep scores of young boys out of the formal criminal justice system but also to introduce both parties to life skills and counselling which will enable them to make better choices and act responsibly. These cases still make up a large majority of the cases in the Circuit Courts of the island. In 2019, the third-largest number of cases before the Circuit Court Division of the Supreme Court was for Sexual Intercourse with a Person under 16; it would be interesting to ascertain how many of the persons charged were also minors.

### **Child Diversion**

The incarceration of children should be utilised as an option of last resort. In 2013, 73% of children in juvenile facilities had committed non-violent offences. The authorities were not making adequate use of alternatives to incarceration such as treatment programmes, and there was no official Diversion Programme at that time. The Child Diversion Act has now been passed, and it is expected that the utilisation of this legislation will keep more children out of the formal justice system and steer them into treatment and rehabilitation programmes where behavioural and psycho-social challenges can be addressed and life skills imparted.

### **Children Deemed Uncontrollable**

The challenge of children being reported uncontrollable remains a real one, as large numbers of children were remanded and placed in correctional facilities as uncontrollable for long periods often until they were 18 years old. In the OCA Annual Report of 2012-2013, between 25-30% of children in juvenile facilities were there because they had been reported and deemed uncontrollable. These children were not in custody because they had committed any offence. A policy decision was taken in 2013 to reduce this number and even to change the name and approach of dealing with these children. In August 2013, Cabinet granted approval for amendments to the Child Care and Protection Act (CCPA) to remove the option of a correctional order for children deemed to be uncontrollable. This amendment has not yet taken effect as the proposed amendments to the CCPA and other legislation dealing with sexual

offences have been referred for consideration by a Joint Select Committee of Parliament for more than two years.

In 2016 the UN Human Rights Committee which is the UN treaty monitoring body which oversees the implementation of the International Covenant on Civil and Political Rights around the world, including Jamaica, stated the following in its Concluding Observations for Jamaica: “*The State has an obligation to observe and implement the recommendations made by human rights bodies...*”. The Committee acknowledged the actions taken by Jamaica regarding “uncontrollable children” in Jamaica but indicated that there were remaining concerns and stressed actions that need to be taken to address the situation:

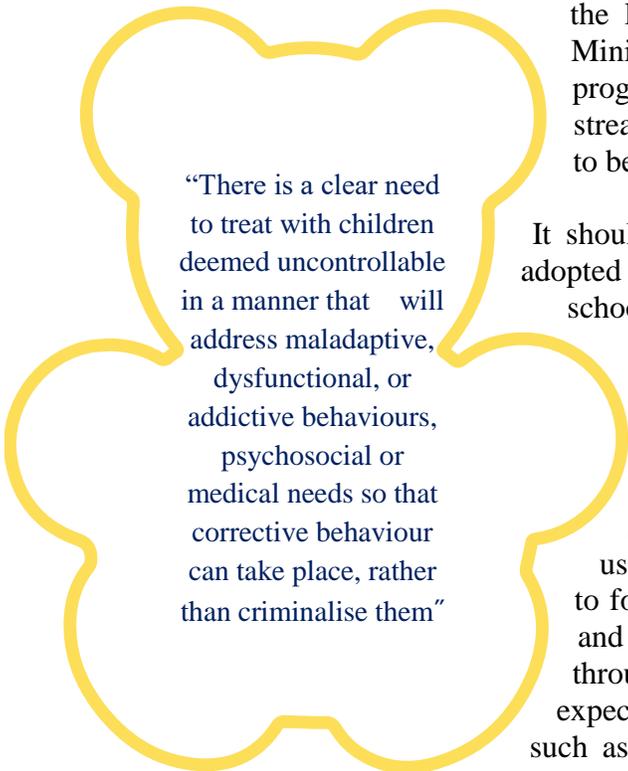
“43. The Committee welcomes the efforts of the State party to review the Child Care and Protection Act, including the removal of the possibility of incarcerating a child on the basis of him or her being “beyond parental control”, and provision of psychological and mental health services to children and their families by the Child Development Agency and Department of Correctional Services. Despite the fact that the number of correctional orders has significantly decreased, the Committee is concerned about reports that there are still children serving such orders. It is also concerned that minors are held in police lockups on a regular basis, often for more than 24 hours (Arts. 9, 10 and 24).

44. The State party should amend its law in a timely manner to remove the possibility of incarcerating a child on the basis of him or her being “beyond parental control” and to address gaps in: service delivery to children in conflict with the law, the coordination and oversight of the child protection sector, support to families and rehabilitation of children who experienced exploitation, abuse and other trauma. The State party should detain children only as a last resort and for the shortest possible period provided by law; continue establishing child-friendly holding cells; and provide alternative arrangements to detention, in line with the Covenant. It should continue to provide children in conflict with the law with alternative support, including psychological and rehabilitation services and conflict resolution programme.<sup>viii</sup>”

The number of children deemed uncontrollable decreased temporarily but is now on the rise again. There is, therefore, a clear need to treat with children deemed uncontrollable in a manner that will address maladaptive, dysfunctional, or addictive behaviours, psychosocial or medical needs so that corrective behaviour can take place, rather than criminalise them. Criminalising children deemed uncontrollable does not help them, nor does it help the Jamaican society.

There are several State agencies, non-government organisations and faith-based groups that are equipped, ready and willing to assist these children and the referral of children to such agencies is highly recommended and encouraged, as opposed to correctional orders.

Parenting interventions will be critical to treating with children who have challenges and have ended up “in the system” whether for care and protection, deemed uncontrollable or children in conflict with the law. The National Parenting Support Commission in the Ministry of Education, Youth and Information offers parenting programmes and support. Efforts should be made to expand and streamline this programme and for greater utilisation and referral to be done by agencies.



“There is a clear need to treat with children deemed uncontrollable in a manner that will address maladaptive, dysfunctional, or addictive behaviours, psychosocial or medical needs so that corrective behaviour can take place, rather than criminalise them”

It should be noted that Government Ministries in Jamaica have adopted a policy to discontinue the use of corporal punishment in schools and institutions. Unfortunately, this practice persists.

Various studies have found that the continued use of corporal punishment in homes and in schools from an early age results in an increased likelihood of young persons displaying violent behaviours and using violence as a means of resolving conflicts and disputes (see Burton 2008; Smith 2016; Baker-Henningham and Francis 2018). The

use of other methods of correcting behaviour besides resorting to force is essential for all stakeholders who deal with children and have them in their care. A different approach to disciplining through reasoning and counselling is called for and is now expected to be the norm. International human rights treaty bodies,

such as the United Nations Human Rights Committee, provided specific recommendations to the Jamaican government in 2016 to

address the issue of corporal punishment by encouraging alternatives in the form of non-violent forms of disciplining children and by conducting “public information campaigns to raise awareness about the harmful effects of such punishment.”<sup>x</sup>

## Youth and the Criminal Justice System

- Ninety per cent (90%) of the victims of crime and 90% of the perpetrators of crime are young people, mainly males, under 30 years old<sup>x</sup>.
- In 2013, over 2,850 children were brought before the Courts for various offences.
- In 2018, 82% of matters before the Parish Courts were committed by young males<sup>xi</sup>.

Many children in volatile communities are raised in environments of violence. Their early socialisation experiences are frequently marked by physical and psychological abuse, whether as victims or observers, seeing persons close to them, often their mother being beaten, sometimes brutally. Their lives in some of these communities expose them to extreme violence, stabbings, shootings and murder; at times they witness these directly. The sound of gunshots, disturbing their homework, school attendance and preparation for exams is common. This violence is compounded in instances by poverty, insufficient money to attend school every day, hunger, and having to drop out of high school because their families are unable to afford to continue their education. This is the background of many children who enter the justice system. Rough, harsh treatment in an intimidating setting, unsuitable conditions in police lockups and harsh punishment meted out to them intensifies feelings of hopelessness and leaves them angry and frustrated. Insensitive, violent and oppressive means of handling children,

imposing discipline and attempting to correct behaviour result in the likelihood of increasingly aggressive and anti-social behaviour.

It is intended and expected that State agencies are there to protect these children, to rehabilitate and reintegrate them into constructive activities and direct them on a positive path.

Adequate State care for these children is required. It is acknowledged that the Child Protection and Family Services Agency (CPFSA) has a mammoth task and slim resources; however, all efforts must be taken to ensure the safety, care and protection of children in State care. Even with the slim resources and large numbers of children requiring attention, it is hoped that children in need of care and protection will never again be kept in adult correctional or remand facilities. Furthermore, all steps should be taken to provide adequate supervision, meals, amenities, educational opportunities, medical treatment and psychological attention. Places of safety should provide a safe environment.

The 2003 Keating Report on the Review of Children's Homes and Places of Safety<sup>xii</sup>, made 43 recommendations to the Government of Jamaica on steps to improve the conditions for children in places of safety. Homes and other facilities, as well as the relevant Ministries and persons responsible for monitoring and inspecting these facilities, should objectively measure the facilities against these recommendations and ensure that an appropriate minimum standard is maintained. Recommendations made by the Report of the Armadale Commission of Enquiry should also be implemented fully.

Children who are abused in their home or community by persons known to them also look to the State to protect them. The environment into which these children are taken should be a safe environment where the effects of the trauma they have suffered can be reversed. It should not be made worse.

The case of Armadale<sup>xiii</sup> should be a turning point in State care. Overcrowding at Armadale was a major problem. Serious consideration should be given to restricting the population in institutions to the permitted maximum. The Commissioner of Corrections must be aware at all times, whenever the maximum occupancy of a juvenile institution is attained. The Children's Court should also be advised, and no further correctional orders should be made to receive a child into the institution until a vacancy exists. This will require close monitoring of all such institutions island-wide and strict enforcement.

Lockdown as a form of punishment is inherently unjust, being the collective punishment of everyone for the errors of a few, 'the good suffering for the bad'. It must be discontinued. The debacle of Armadale displayed 'a hardening of hearts and a coarsening of consciences.'<sup>xiv</sup> Disadvantaged children in an institution, primarily due to errant parents, give us the opportunity with compassion, understanding, love, sincerity, and genuine humility to rescue this segment of our youth in the society. Most of us as parents have experienced the "rebellion" of our teenage children, but our response is not to abandon them to institutional life, but with controlled caring to recognise it, probably as an assertion of their emerging individuality<sup>xv</sup>.

One solution to our problems in Jamaica is to commence building conscience in our children, instilling the difference between good and bad, right from wrong, from the early infant stage. Our children from early infancy, are the prime nucleus for change, to a more mature, caring, humane and just society.

Efforts to address violence against children require better coordination, reporting procedures and management, including budgetary allotments. Policies to adequately address these issues are imperative<sup>xvi</sup>.

Social learning theorists, Bandura, Mischel and Shoda<sup>xvii</sup>, suggest that “people acquire aggressive responses the same way they acquire other complex forms of social behaviour - either by direct experience or by observing others.”

According to The American Psychological Association<sup>xviii</sup>, “*violence is a learned behaviour.*” Children’s experience of, or exposure to violence, particularly at young ages, can have harmful lifelong consequences. Indeed, “*violence is learned...But it can be unlearned.*”<sup>xix</sup>

## **Developing a Gender-Responsive Children’s Protocol**

Gender is defined as the complex systems of social and personal relations through which women and men are socially constructed and maintained and through which they gain access to, or are allocated status, power, and material resources within society<sup>xx</sup>.

Based on the gender and development approach to gender equality, there needs to be a greater focus on providing conditions that will enable women and men to reap equal benefit from society and in particular, the justice system. It is critical that all stakeholders appreciate the need to apply these principles and approaches to ensure equality and non-discrimination based on gender.

Several international treaties and initiatives such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Beijing Declaration and Platform for Action and the Caribbean Community (CARICOM) Regional Plan of Action indicate that for there to be gender equality, gender has to be mainstreamed in policies, plans and programmes.

Some policies are gender-neutral, in that they assume the same impact for men and women, boys and girls. However, men and women, boys and girls are impacted differently by any planned action, whether social, economic, or political. Therefore, to avoid any unintended consequences and potentially negative impact of policies, careful analysis should be done to determine the repercussions, costs and benefits to men and women.

There are also cultural stereotypes ascribed to boys and girls as well as systemic barriers towards empowerment that can hinder gender equality.

There is now a growing realisation that the focus cannot be on women and girls only, and so the gender and development approach was adopted. This is a more equitable approach to gender equality and focuses on global and gender inequalities. It also incorporates issues of class and ethnicity. The Gender and Development (GAD) approach focuses on relationships between men and women; it recognises unequal power relations (between and among women and men; rich and poor and social classes) which hinder development.

The Cabinet of Jamaica has developed a checklist of questions to be examined in policy implementation:

- Is there a different impact on men and women?
- Do existing gender relations affect the practicality of the programme?
- Are there cultural factors that will affect the implementation of the project?
- How do existing power relations affect the implementation of the programme?
- Will special allowance have to be made for women? For men?
- Who is most likely to be affected by this programme?

Special attention needs to be given to these issues. Traditional gender assumptions may not always apply in the Jamaican context given our historical background and the current levels of empowerment of men and women in society, knowledge of their rights as well as the willingness and ability of both genders to access justice to enforce those rights. There are still challenges arising from the historical position of privilege conferred on the male gender based on certain assumptions that allow the male gender to control a broader social space. There are also challenges based on the traditional roles of males and females in the home and family and the continuing perception of those roles and authority levels conferred on men in the household. These perceptions have implications for violence in the home and need to be addressed.

Current government policies focus on principles which include: providing adequate protection and means to redress women and children who are victims of family violence, incest, rape and sexual harassment.

The CEDAW was ratified by Jamaica in 1984, while the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the Belem do Para Convention was ratified by Jamaica in 2005. The Government signified its commitment to respect, protect and ultimately realise the rights of women and the girl child and, prevent, punish and eradicate violence against women. The Convention seeks to protect the rights of women and supports Member States in their efforts to ensure full access to civil, political, economic and cultural rights so that women and men may participate equally in all spheres of society and enjoy full and equal benefits from the country's resources.

Jamaican boys are at a remarkably high risk of becoming involved in violence or a life of crime, and so services should seek to rehabilitate them where this is a practical and achievable objective. Men now report feeling marginalised and underserved by society - social and justice services.

Increasingly, however, men are the subject of violence both as victims and perpetrators. The Vision 2030 states that despite progress being made in fostering gender equity in Jamaica, inequities persist in the positioning of men and women. This is particularly evident in areas such as the education system and politics. Women are better represented at the higher levels of the education system. At the tertiary level, they exceed men by a margin of two to one and outperform males at the secondary level. In the area of political power and leadership, women are under-represented.

The high levels of gender-based and domestic violence against women continue to hamper Jamaica's national development due to the loss of productive time, cost to the health sector and the negative impact on families and children.

## **Specific Gender Issues**

### **Children and Violence**

Domestic violence continues to be a pervasive problem in Jamaica. The State agencies are called on to provide protection for victims of domestic violence, and multi-agency response is called for in this regard. The Jamaica Constabulary Force has commendably implemented two Care Spaces at the Matilda's Corner and Constant Spring Police Stations to address the needs of victims, manage investigations into these matters and provide counselling and other support.

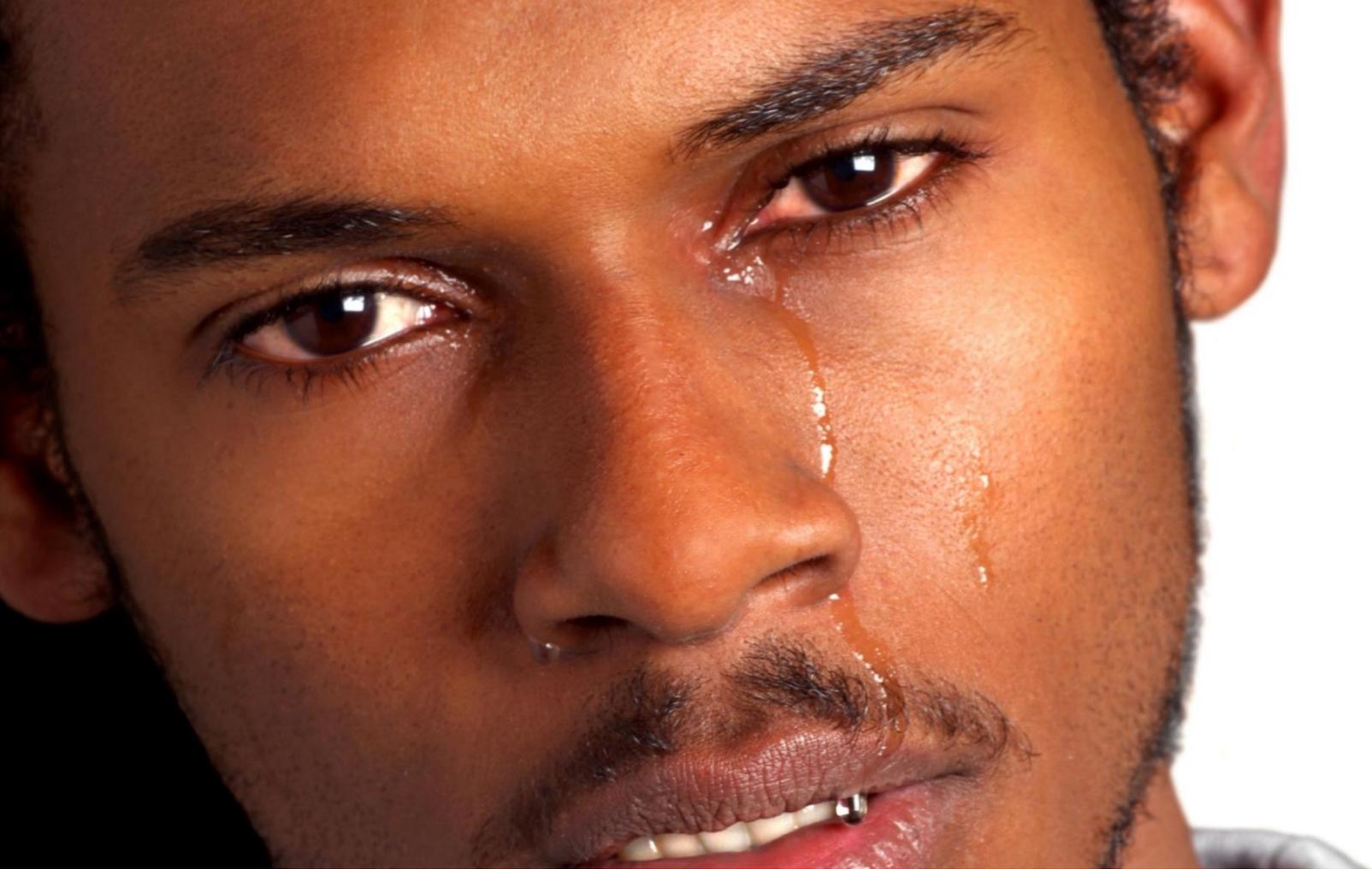
According to the recently released findings of the 2016 Women's Health Survey in Jamaica<sup>xxi</sup>, one in four women (25.2%) has been physically abused by a male partner. Research carried out in 2017 by the Violence Prevention Alliance (VPA)<sup>xxii</sup> in a study of women's safety and security in 13 volatile communities suggested that at least 60% of women were beaten in these communities. It is therefore likely that a significant proportion of children have been witnesses to this violence against their own mother. It is also noteworthy that many observed that children who witnessed this, especially boys, became bullies from as early as basic school, often targeting girls.

However, practitioners in this area and in the criminal justice system should be aware of the realities taking place on the ground and all the factors involved. The Final Report on Gender Barriers to Justice, a Baseline Study conducted in four communities in 2011<sup>xxiii</sup>, state that, "The extent to which adults (males and female spouses) and male youth are perpetrators and victims of violence have significant implications for safety, security and for the gendered nature of their experiences. They will also influence the nature of the corrective measures to be utilised to address gender barriers to justice". It is significant to note that in one of the communities examined in St. James, the male youth was the main perpetrator of domestic violence at 46.15%. For the communities studied in Clarendon, St. Catherine and Kingston, the adult male accounted for 48% - 62%. In three of the four communities, the adult female was the second main perpetrator of domestic violence (ibid).

### **Victims of Domestic Violence/ Violence against Boys**

In relation to victims of domestic violence, the male child and the female spouse topped the list. In all four communities studied in St. James, with the exception of Granville, the male child was the primary victim of domestic violence (47.62%)<sup>xxiv</sup>. In May Pen (74%), Spanish Town (56.25%), Kingston (41.82%), the second most common victim of domestic violence in these communities was the female spouse followed by the female child. It is safe to say that these statistics and this ratio has been and is perhaps still being overlooked. It is without a doubt, essential and critical to give attention to women victims of domestic violence and abuse, but the plight of the male child cannot be overlooked, this is ignored to the nation's detriment.

Clearly, broad generalisations cannot inform the issue of gender and violence. What is also clear is that children who learn, experience and observe violence, go on to perpetrate violence.



Regional research indicates that the perpetrators of violence against children are primarily parents/caregivers, especially mothers, as well as teachers (also predominantly female).

Corporal punishment in the Region is very prevalent. Children experience this primarily in the home, but also in the school and at times, even in the community. There is widespread acceptance of corporal punishment by students, teachers, administrators, and parents/caregivers. According to regional researchers and professionals, “physical punishment has been found to have a significant relationship with childhood aggression and antisocial behaviour.” The history of penal policies and punishment institutionalised the physical disciplining of children.

The use of corporal punishment as a form of discipline is common in the Caribbean and is used to discipline children from young ages. Support for corporal punishment has continued due to the social and historical context: the belief that physical punishment is a part of character building, the lack of knowledge on non-violent approaches and the religious linkages have perpetuated the use of corporal punishment<sup>xxv</sup>.

Children experience violence (including corporal punishment) across all stages of their development. These threats grow as the child matures. While some children may not demonstrate violent behaviour when young, they may start in the pre-teen and teen years. In addition, in large households with young children, the pre-teen and teenager frequently face isolation, in preference to younger siblings. Such parental neglect can arouse strong feelings. Academics are important at this age, with examinations

determining placement in secondary school, there is peer pressure, in addition to the occurrence of physical and emotional changes. These circumstances all contribute to stressors to pre-teen and teenaged children. Many adolescents express a need to share their feelings, fears, anger and insecurities at this age, with few outlets apart from social media and each other (See Violence Prevention Alliance 2020).

Data from a cohort study of 12-year-old children showed that those who were exposed to violence, particularly as victims, displayed externalising behaviour<sup>xxvi</sup>. Children's experiences as witnesses to violence occur chiefly in communities, but their experience as victims of violence, apart from sexual violence, occur primarily at school<sup>xxvii</sup>. Children who exhibit conduct disturbances when very young, who are not securely attached, and have poor intellectual development, tend to have extreme reactions to stress. Without significant protective factors, such as parental care and guidance, and school supervision, communication and psychosocial engagement, school-aged children may not learn how to control anger, aggression and impulsive behaviour.

Alternative approaches and methods of disciplining children in institutions, schools and in the home are essential to breaking the cycle of violence. This falls squarely in the purview of the National Parenting Support Commission and the Ministry of Education Youth and Information.

### **Sexual Abuse of Children**

The sexual abuse of minors remains a real problem with many cases of sexual intercourse with a person under sixteen committed by adults as well as cases of the rape of minors being reported to CISOCA annually. In recent times, there have been stark cases of kidnapping, rape and murder of young girls. The response time of the first responders has been criticised. The processes and level of sensitivity in the care of the victims and their families and management of these cases can be improved.

### **Early Sexual Activity**

In many communities, girls may resign themselves to having to take part in opportunistic sexual relations for economic support to remain in said communities. They may become pregnant, and conventional practice may force them to drop out of school on that account. Peer pressure on boys and girls to have sex early is intense.

The majority of cases in the criminal justice system against minors are for the offence of sexual intercourse with a child under 16. Early sexual activity between two minors should not lead to the criminalisation of the male child. Alternative and complementary methods of treating these cases such as counselling and diversion should be exercised in all parishes.



### **Child Victims and Witnesses of Violence**

Using the United Nations definition, violence disproportionately affects children (under the age of 18 years), whether they are direct victims or they witness violence, in the home, school or community and increasingly, in the media. When abuse occurs between adults, many may not realise the impact that witnessing this abuse has on children.

Research has increasingly indicated that as the young brain develops, significant changes occur. Stress adversely affects brain function and development in minors. Excessive exposure to and/or experience of violence causes chronic stress, fear, and anxiety, which are toxic to the brain and impairs brain development. Given that, the brain becomes fully developed at age 25, these early brain impairments can contribute to emotional and cognitive challenges, and the child is more prone to impulsive behaviour, fights and violence and their judgment is negatively affected. Consistent, early exposure to domestic violence can lead to learning disabilities, behavioural issues, physical and mental health problems.

The findings of the Social Norms Survey conducted by the Violence Prevention Alliance (2020: 35) suggest that much of the anger and defiance in children, and later when they are young adults, is rooted in the experience of severe corporal punishment, and extreme cursing on a daily basis in the family. For a high percentage of children, this comes with witnessing their mothers being physically abused by their fathers or stepfathers in an average of 60% of the homes in volatile communities, this intimate partner violence often being very severe.

Exposure to violence, including drive-by shootings, at home and in the community, school-yard bullying, and widespread corporal punishment at school and at home was particularly worrying. These factors apply to both boys and girls. In some countries, children were targeted for kidnappings and murders, and problems with security forces were documented, including beatings and incarceration in

highly unsuitable ‘lock-ups’ along with adult offenders. The countries with the highest levels of violence against children were Jamaica, Trinidad & Tobago and Haiti. Some of the underlying causes of violence against children were the same as those contributing to violence in general. These included historical precedents of violence for punishments and in addressing conflicts, politically-based arming of civilians, the rise of narco-trafficking, and social factors such as poverty and wealth disparity, migration leading to family instability, and inadequate educational systems.<sup>xxviii</sup>

Human trafficking has become a scourge of society and has been termed modern-day slavery. Practitioners need to be aware of this offence and know how to identify it and establish the elements to conduct investigations and, therefore, mount successful prosecutions.

## **FACTORS AND KEY CONCEPTS IN DEVELOPING GENDER-RESPONSIVE PROTOCOLS FOR CHILDREN (DEFINITION OF TERMS)<sup>xxix</sup>**

### **Gender Equity**

The process of being fair to men and women. To ensure fairness, measures must often be put in place to compensate for the historical and social disadvantages that prevent women and men from operating on a level playing field. Equity is a means – equality is the result<sup>xxx</sup>.

### **Equity**

The quality of being fair, unbiased and just. Equity involved ensuring that everyone has access to the resources, opportunities, power and responsibility they need to reach their full, healthy potential as well as making changes so that unfair differences may be understood and addressed.

### **Gender Equality**

The equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women will be indistinguishable in abilities, behaviour and preferences or require the same treatment as their male counterparts. But, that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both men and women are taken into consideration, recognising the diversity of different groups of women and men.

### **Equality**

Equality is about ensuring that every individual has an equal opportunity to make the most of their lives and talents and a belief that no-one should have poorer life chances because of where what or whom they were born, what they believe or whether they have a disability.

### **Gender Neutrality**

An assumption that development interventions will benefit men and women equally. This leads to a failure to analyse a plan for the social relationships between men and women and how those relationships will impact the implementation of development programmes.

## **Gender Analysis**

Gender analysis is a critical examination of how differences in gender roles, activities, needs, opportunities and rights/entitlements affect men, women, boys and girls in certain situations or contexts. Gender analysis examines the relationship between females and males and their access to and control of resources and the constraints they face relative to each other. A gender analysis should be integrated into all sector assessments or situational analyses to ensure that gender-based injustices and inequalities are not exacerbated by interventions.

## **Gender Sensitivity**

Gender sensitivity is being aware of how gender can result in different privileges and opportunities for men and women.

## **Gender Stereotypes**

These are simplistic generalisations about the gender attributes, differences and roles of boys, girls, women and men. Stereotypes are often used to justify discrimination more broadly and can be reflected and reinforced by traditional and modern theories, laws and institutional practices.

## **Gender-Responsive**

Using an understanding of how gender can result in different privileges and opportunities for boys and girls to use policies and programmes to redress these existing gender inequalities.

## **Children Who Interact with the State**

There are various groups of children who interact with State agencies. These primarily include the following:

### **Children in Need of Care and Protection**

A child in need of care and protection is one who has been abandoned, neglected or abused by his or her parent, children who have been harmed or are likely to suffer harm and it also includes children who are found wandering, destitute or begging. Children having no or no fit parent or guardian, children who are falling into bad associations or exposed to moral danger.

### **Children Reported to be beyond Parental Control (Uncontrollable)**

These children have not committed an offence; however, their parent or guardian has reported that they are unable to control them. The Court then decides how this child is to be dealt with.

### **Children in Conflict with the Law**

These children have committed or are suspected or accused of committing an offence. They are usually charged by the Police and brought before the Court for a determination to be made on guilt or innocence and the punishment to be administered if found guilty. Diversion is now being increasingly

acknowledged and available as an option for dealing with these children as well as the reintegration of those who receive a sentence, whether non-custodial or custodial, which is an option of last resort.

### **Child Victims and Other Witnesses**

A child victim is a child against whom a crime or offence has been committed. A witness is a child who has seen or observed an offence or who has information pertinent to a case before the court. A child victim may be required to give evidence in court, and a child may be treated as a witness in relation to an offence in which he or she was a victim.

### **Children who are Subjects of Custody and Maintenance Proceedings**

Children can interact with the Court system if they are the subject of custody, access or maintenance proceedings. Their attendance at Court is rare and usually happens if they are specially required or requested by the Court. These proceedings are initiated by the parent or guardian through the Family Court or Parish Court. These matters can also be filed at the Supreme Court.

### **Especially Vulnerable Children**

All children by virtue of their age, stage of development and sensibilities are vulnerable; however, there are some children who are more vulnerable than others.

These include children who fall into the following groups:

- Children with disabilities
- Children suffering from mental illness
- Child victims of violent crime and children who have suffered emotional and psychological trauma
- Children unable to read
- Children of low socio-economic background and especially children living in absolute poverty
- Children with no parents, guardians, or caregivers
- Children of inmates
- Undocumented children



# Legal Framework

## 2. LEGAL FRAMEWORK

### International Instruments

#### Rights of the Child

Jamaica ratified the UNCRC on May 14, 1991 and has agreed to observe the rights of children as set out in the Convention<sup>xxxi</sup>. The Convention provides a framework of norms and principles which recognise the child's status as a human being and calls upon the Jamaican State to ensure that these rights are acknowledged and observed. The primary rights which are relevant to children who come in contact with the State are as follows:

- Member States have agreed that they shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status (UNCRC Art. 2).
- “The best interests of the child” is the standard that is to be applied in all matters concerning children (UNCRC Art. 3.1).
- State parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures (UNCRC Art. 3.2).
- State 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, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision (UNCRC Art. 3.3).
- Inherent Right to Life, the State has an obligation to ensure the child's survival and development (UNCRC Art. 6).
- Highest attainable standard of health (UNCRC Art. 24).
- Right to education, and with a view to achieving this right progressively and on the basis of equal opportunity (UNCRC Art. 29).
- Such education shall be directed to the development of the child's personality, talents, mental and physical abilities to their fullest potential.
- Right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts (UNCRC Art. 31).
- Article 12 UNCRC provides for children's right to express their views, which encapsulates the principle of children participation. This is one of the four principles on which the UNCRC is premised, therefore of utmost importance for the rights comprised in the Convention. “*States Parties shall assure to the child who is capable of forming his or her own views the right to*

“ The best interests of the child is the standard that is to be applied in all matters concerning children (UNCRC Art. 3.1) ”

*express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child... For this purpose, the child shall, in particular, be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”*

These rights apply to children in State care as they do to all other children.

### **Children in Conflict with the Law**

A child in conflict with the law has the right to treatment which promotes the child’s sense of dignity and worth, takes the child’s age into account and aims at his or her reintegration into society. The child is entitled to basic guarantees as well as legal or other assistance for his or her defence. Judicial proceedings and institutional placements shall be avoided whenever possible<sup>xxxii</sup>.

“ A child in conflict with the law is entitled to basic guarantees as well as legal or other assistance for his or her defence. Judicial proceedings and institutional placements shall be avoided whenever possible ”

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice “The Beijing Rules” applies to children who interact with the State where they are suspected or reported to have come in conflict with the law.

Fundamental perspectives of the Beijing Rules are that:

- Member States shall seek, in conformity with their respective general interests, to further the well-being of the child and his or her family.
- Sufficient attention shall be given to positive measures that involve the full mobilisation of all possible resources, including the family, volunteers and other community institutions, for the purpose of promoting the well-being of the child, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the child in conflict with the law.

### **Objectives of Institutional Treatment**

Where this option of last resort has been utilised, the following objectives and principles should be observed:

- The objective of training and treatment of children placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.
- Children in institutions shall receive care, protection, and all necessary assistance: social, educational, vocational, psychological, medical and physical – that they may require in the interest of their wholesome development.

- Medical and psychological assistance are critical for addicted children, the violent and mentally ill.

## **National Legislation**

The law which governs the interaction with children in Jamaica is the Child Care and Protection Act (2004).

The objectives of this Act are:

1. To promote the best interests, safety and well-being of children.
2. To recognise that:
  - i. while parents often need help in caring for children, help should give support to the autonomy and integrity of the family unit and wherever possible, be provided on the basis of mutual consent;
  - ii. the least restrictive or disruptive course of action that is available and appropriate in a particular case to help a child should be followed.
3. To recognise that child services should be provided in a manner that:
  - i. respects the child's need for continuity of care and for stable family relationships, and
  - ii. takes into account physical and mental differences among children in their development.
4. To recognise the unique needs of children in conflict with the law.

## **Children in Need of Care and Protection**

The Child Care and Protection Act 2004, section 8 outlines when a child is considered to be in need of care and protection. This covers a wide range of examples of ill-treatment, abuse, abandonment and neglect of children as well as circumstances in which, due to poverty or other risk factors, a child needs the intervention of the State.

A child is in need of care and protection if he or she:

- Has no parent or guardian
- Has a parent or guardian who is unfit to exercise care and guardianship
- Has a parent or guardian who is not exercising proper care
- Is falling into bad associations
- Is exposed to moral danger
- Is beyond control
- Is exposed to moral danger
- Is destitute
- Is wandering without any settled place of abode
- Has no visible means of subsistence
- Is begging or loitering for that purpose
- Is being assaulted, ill-treated or neglected
- Is being treated in a manner likely to cause suffering

- Child's physical health, mental health or emotional state is being seriously impaired or is substantially at risk
- Is a child against whom one of the offences outlined below has been, is being or is likely to be committed
- Is a child who lives in the same household as a child victim or convicted perpetrator of any of the following offences (under schedule 2 of the Child Care and Protection Act):
  - Murder or manslaughter of a child
  - Abandoning or exposing a child
  - Child stealing
  - Common assault
  - Aggravated assault against women or children
  - Unnatural crime
  - Attempt to commit an unnatural crime
  - Outrages on decency
  - Sexual touching
  - Sexual intercourse with a person under sixteen years of age
  - Householder inducing violation of child
  - Abduction of a child under sixteen
  - Abduction of a child for sexual intercourse
  - Grievous sexual assault against a child
  - Indecent assault against a child
  - Violation of a person suffering from a mental disorder
  - Procuration
  - Procuring violation by threats or fraud
  - Unlawful detention of a child in premises.
  - Any offence involving bodily injury to a child.



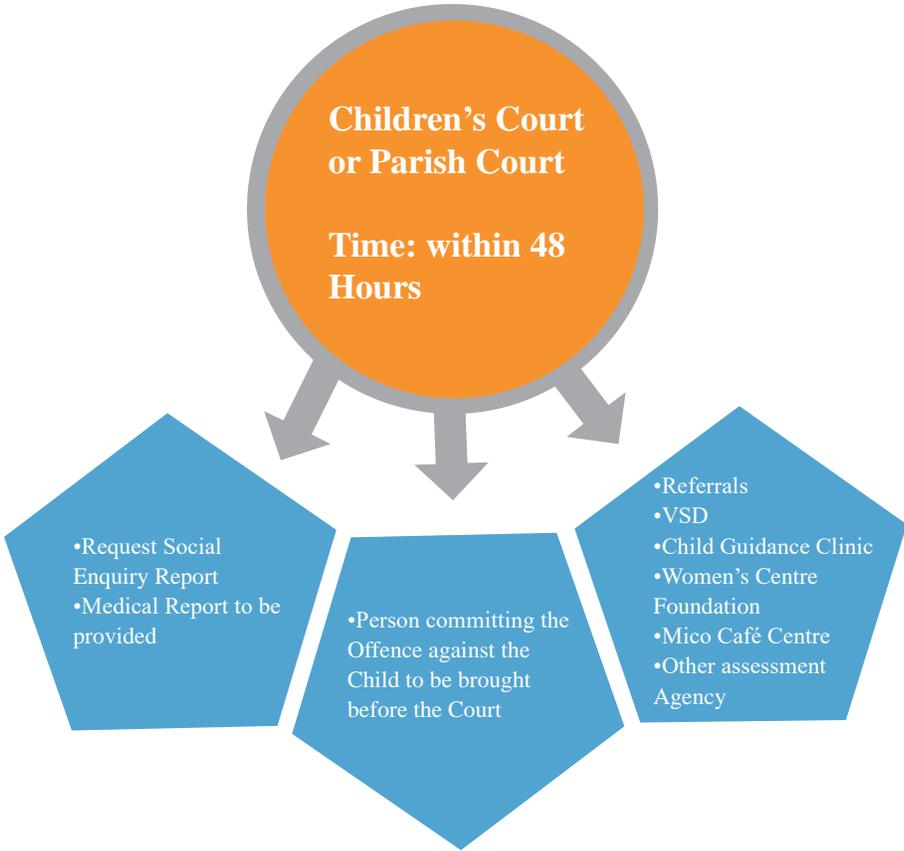


# Mapping of Multi-agency Referral Processes

### 3. MAPPING OF MULTI-AGENCY REFERRAL PROCESSES

#### CHILD IN NEED OF CARE AND PROTECTION

A child who is being assaulted, ill-treated, neglected in a manner likely to cause harm or suffering or against whom an offence has been committed.



**ORDERS WHICH CAN BE MADE:** Fit Person, Supervision, Foster Care  
**PROGRAMMES:** School, Child Guidance Clinic

## CHILD IN CONFLICT WITH THE LAW

A child who is suspected, accused or charged with committing an offence

### REPORT MAY BE MADE BY:

Citizen/ Individual

School - School Resource Officer, Dean of Discipline, Guidance Counsellor

School should first consider alternatives to a Police Report, enrol the child in an intervention Programme.

See the list below:

The option of last resort is the police. OCA or an Attorney determines if a matter can be diverted or if all diversion options have been exhausted.

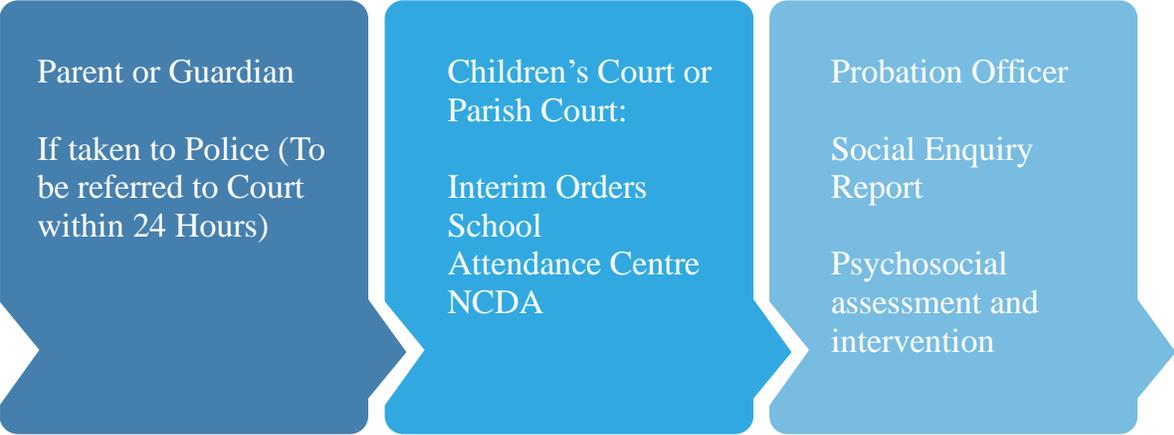


ORDERS WHICH CAN BE MADE	PROGRAMMES
<b>Supervision</b>	Family Court Attendance Centre
<b>Counselling</b>	NCDA – Drug Treatment
<b>Probation</b>	Heart Trust NTA - Educational/ Vocational

<b>ORDERS WHICH CAN BE MADE</b>	<b>PROGRAMMES</b>
<b>Fine the parent</b>	Fight For Peace
<b>Fit Person Educational Programme</b>	Community Youth Club
<b>Mediation</b>	School Suspension Programme – DRF Restorative Justice Also, see Diversion Options (see Chapter 4)
<b>Community Service</b>	RISE Life Management
<b>Curfew</b>	Teen Challenge
<b>Bond</b>	Ministers’ Fraternal
<b>Correctional – Rehabilitation/Reintegration</b>	PARENT: National Parenting Support Commission

**CHILDREN REPORTED UNCONTROLLABLE**

A parent may bring a child to the Children’s Court if they are unable to control the child CCPA Section 24



**FINAL ORDERS WHICH CAN BE MADE**

- Fit Person (Relative or other person)
- Probation Order (DCS)
- Correctional Order (DCS)

**PROGRAMMES**

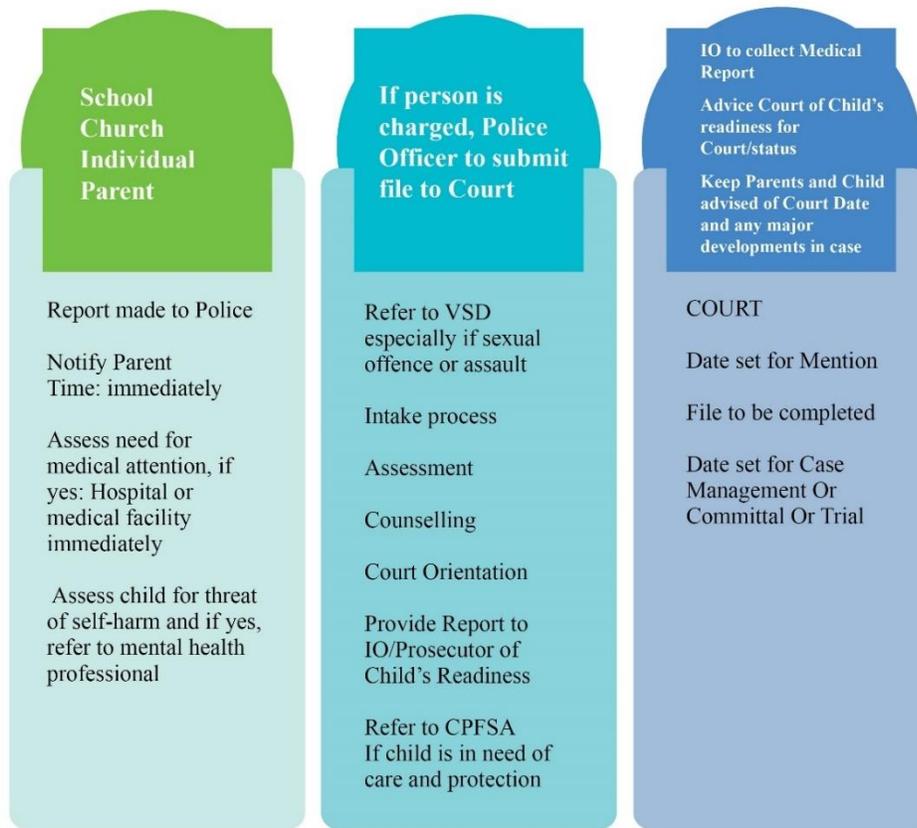
- Attendance Centre
- NCDA
- Heart Trust NTA
- Community Youth Club
- School Suspension Programme – DRF
- RISE Life Management
- Teen Challenge
- Fight For Peace
- Minister’s Fraternal

Also, see **Diversion Options** (see Chapter 4)

**PARENT: National Parenting Support Commission**

**CHILD VICTIM AND OTHER CHILD WITNESSES**

Child against whom an offence or crime has been committed or a child who has witnessed a crime or has information relevant to a case.



Victims in sexual offences and assault matters should always be seen by a Doctor immediately AND should also be referred to VSD.

## Inter-Agency Referral Processes

Most of the agencies canvassed use a referral form which may or may not be accompanied by a letter. It is recommended that one multi-agency referral form be developed and utilised by agencies within the Multi-Agency Partnership. This may be accompanied by a letter. However, the preparation and signing of a letter should not be a source of delay in referring a child to obtain the services of another agency.

A standard referral form should be developed and copies kept by all the agencies in the Multi-Agency Partnership. This Form can be transmitted electronically by secure methods of communication between agencies.

It is preferable for a telephone call to be made to the agency to which the child is being referred in order for that agency to expect the child and make the necessary arrangements to receive them or to set an appointment. The child should be introduced to the agency to which he or she is being referred by the referring agency, and an appointment should be scheduled for the child.

The Multi-Agency machinery should develop and distribute a list of all agencies in each parish that interact with children. Each agency within the Partnership should have access to the list and keep a copy with contact numbers, email addresses and the names of contact persons. The list should include CPFSA Homes and Centres, CISOCA offices, VSD offices, Hospitals and Clinics, Police Stations and Child Guidance Clinics. Information should also be kept on Referral Agencies such as treatment programmes, counsellors, psychologists, police youth clubs, approved non-government organisations and faith-based organisations.

A specific entity or individual should be assigned by the Multi-Agency Partnership to update this list annually or as the need arises. Agencies such as the CPFSA and VSD should operate a hotline or on-call services outside of work hours so that contact can be made in case of an emergency. All other Agencies should have these emergency contact details.

The issue of communication between agencies was raised as a major concern, and so the submission of reports in a timely manner and provision of feedback and updates are critical to advancing matters without delay.

### Protocols for Inter-Agency Coordination

- Referral Form should be completed and sent with the client's parent;
- Phone call made in advance to make appointment or alert agency of client's pending visit
- The recording and sharing of statements of child victims between the Investigating Officer, medical doctor and counsellor, are recommended to prevent the child from having to recount their story to several service providers. In the alternative, steps should be taken to have these personnel present for the initial interview;

“ Cooperation and knowledge sharing among agencies will be critical for a successful and well-functioning inter-agency response ”

- Key first responders should be rostered, and on-call in each parish for instances when a report of abuse is made, or a child is taken in for care and protection. This process should be similar to the “one-stop-shop” utilised at the CISOCA corporate area offices, where a doctor, CPFSA Children’s Officer, social worker and VSD personnel are present when the child is first taken in and interviewed by the Police Intake Officer;
- Service providers such as the doctor, VSD, psychologists may only need to see critical portions of the statement at the early stages of a matter, bearing in mind that the accused person also has certain rights and has not been found guilty by the Court. Steps should be taken to secure the identity of the Accused and not to unduly disclose information on the case or identity of the Accused;
- There should be an expedition of appointments and testing with agencies such as the Mico Centre, Child Guidance Clinics, Hospitals and the Forensic Institute for child victims or children in conflict with the law;
- Reports are to be submitted within a given timeline, updates can be provided by phone, especially to Departments such as the ODPP where the information is needed to advise the court and inform the setting of trial dates and other decisions regarding the case;
- A Readiness Report which speaks to the child’s state to give evidence should be submitted by the VSD or other Counsellor to the ODPP or Clerk of Court;
- Cooperation and knowledge sharing among agencies will be critical for a successful and well-functioning inter-agency response;
- There should be realistic, well-functioning multi-agency response mechanisms;
- There should be a multi-agency panel or committee at the level of each parish that meets regularly;
- There should be clearly defined roles, and functions agreed and established;
- Roles and responsibilities of each agency should be acknowledged and respected;
- Each agency is to have standard operating procedures (SOPs);
- There should be a timely sharing of information;
- Resources such as vehicles can be shared among agencies. Offices or space at the courts, police station, remand centres as well as stationery can also be shared when necessary;
- There should be joint training sessions and counselling of inter-agency personnel;
- School personnel should be engaged more and sensitised to the State interaction with children. Guidance Counsellors, Deans of Discipline and School Resource Officers are the first point of contact: they should be familiar with the process and be sensitised on which agency to report matters to, what procedure should be followed when a matter is discovered or suspected at school. Positive interventions should be sought before referring “problem students” to the police;
- A restorative approach should be utilised;
- All personnel who interact with children should receive sensitisation in restorative practices and specialised training to equip them to deal with children;
- There should be joint consultations and sensitisation sessions with stakeholders;
- Different methods and types of counselling should be distinguished, Christian counselling, medical counselling, general counselling as distinct from counselling offered by the VSD or CPFSA which is required for child victims;
- Parents should also receive counselling or be referred to the NPSC;

- There should be an effective and secure case tracking system with formats for each agency/entity to report their findings;
- Shared communication channels should be established;
- Common data collection processes should be put in place;
- Terminology and processes should be standardised;
- The same procedure should be utilised in all parishes;
- There should be regularly scheduled meetings of multi-agency stakeholders;
- There should be common goals among the agencies in the inter-agency partnership;
- Advocacy should take place to improve processes, procedures, policies and relevant Laws;
- Joint public education campaigns should be pursued.



# Child Diversion

## 4. CHILD DIVERSION

Diversion of children who are accused or suspected of coming in conflict with the law is a critical option for dealing with children who have committed minor offences in order to divert them away from the formal criminal justice system and into programmes that can facilitate their reintegration into educational and other development stages.

### VISION OF NATIONAL CHILD DIVERSION POLICY

Children in conflict with the law are restored toward positive development and life outcomes by fair, transparent and effective Justice mechanisms that allow them to achieve their full potential (as functional Jamaican citizens).

Children coming in contact with the law, being detained and brought before the Court should be a last resort.

### CISOCA (Multi-Agency) Diversion Programme

The pilot programme in the corporate area started in 2009 and sought to keep out of the court system children who have been charged as a result of involvement in sexual activity. It involves the CISOCA, CPFSA, VSD, OCA, WCJF, ODPP.

Many of these boys are charged and brought before the Court in circumstances where they have engaged in agreed sexual activities with girls. They are kept in holding areas of police stations and the Courts, placed in handcuffs, lose time from school, experience long delays in awaiting mention and trial of the case, receive Probation Orders and in some instances, serve time in Correctional Institutions.

What currently obtains in the Pilot programme is that a matter involving a minor male child who is charged or reported to have committed the offence of 'sexual intercourse with a person under sixteen years, is referred to the Office of the Director of Public Prosecutions to make a determination on whether that matter is an appropriate one for Diversion.

If the child is accused and brought before the Court, the Judge can make a Probation Order or refer them for Counselling. No criminal record is entered against the child. Encounters of these children with holding areas at the Police Station or the Court should be avoided at all costs or minimised, especially holding areas where adults are kept. Such children should be granted bail by the Investigating or Arresting Officer.

The programme looks at children who admit they are together, consider themselves a "bonafide" couple (boyfriend and girlfriend), are close in age, agree they are in a sexual relationship or have voluntarily engaged in sexual activity. Parents of both parties are asked to agree to the terms and conditions of the programme, and a series of counselling sessions are done at the WCJF. The WCJF then writes back to say the sessions were successfully completed. A completed file will then be sent to DPP indicating that the child or children have complied with the requirements for counselling or other intervention and the matter would go no further.



If such a matter is appropriate for Diversion, the male offenders will be referred to the Women’s Centre Foundation for counselling, and the girl should be referred to the Victim Services Division for counselling and other psychological intervention. If the girl is pregnant, then she should be enrolled in the Women’s Centre Programme.

An office of the Victim Services Division is in place in every parish. The Women’s Centre Foundation of Jamaica also has offices in each parish.

Where these children are charged and placed before the Court, a Probation Order is usually ordered upon the entering of a guilty plea, and no conviction is recorded against their name.

The model has worked very well in the Kingston and St. Andrew area and should be extended to other parishes. Children outside of Kingston should be afforded the same opportunities as those in the Corporate Area.

### **REASONS THE CISOCA PROGRAMME HAS WORKED SUCCESSFULLY**

- CISOCA, corporate area headquarters, operates as a “one-stop” shop for victims, where other services are done on-site or where there is a smooth, integrated referral process to other relevant agencies;
- There are two (2) CDA representatives at CISOCA;

- Victim Services Division is readily accessible for counselling. Reports are sent to the OCR on time;
- Pregnant teens are referred to the Women’s Centre with a view of reintegration into the school system;
- Communication between agencies remains healthy especially because the heads are easily accessible;
- One Medical Doctor is fulltime at CISOCA complemented by three (3) on call at nights and on weekends.

## CONSIDERATIONS/EXCEPTIONS

In cases of rape committed by a minor, incest or other offence involving force or violence, the matter is dealt with in the usual manner, subject to the ODPP’s ruling.

Children who are abused by “high profile” individuals are reported to OCA.

### Drug Treatment Programme

Where children brought before the Court are suspected or reported to be addicted, they are referred for examination, and if confirmed, they are referred to the NCDA, UWI Treatment facility and agencies such as RISE Life Management for treatment and intervention. If they successfully complete the Programme, the matter may be dismissed.

### Accused Persons with Mental Health Challenges

The Half-Way-Tree Court reserves one day per week when the cases for Accused persons with mental health issues are dealt with. It is recommended that this be replicated in the Family Courts and Children’s Court.

## CHILD DIVERSION

“ Child Diversion is the process of implementing measures for dealing with children who are alleged to have infringed the law without resorting to formal judicial proceedings ”

Child Diversion is the process of implementing measures for dealing with children who are alleged to have infringed the law without resorting to formal judicial proceedings. The process seeks to divert children from the criminal justice system while addressing their needs and addressing maladaptive behaviours by referring them to rehabilitative and reintegration programmes.

Child Diversion acknowledges the principle that charging, remanding, convicting and incarcerating children for offences should be an option of last resort.

Diversion can be done at three stages:

- By police officers
- At the Court
- Correctional Services (post-conviction)

Detailed protocols are to be issued by the Ministry of Justice, especially as it relates to Diversion by the Police, which can be done by way of formal or informal warnings and Police cautions. This Protocol will therefore focus on Diversion by the Court to be done in accordance with the Child Diversion Act 2018.

## **CHILD DIVERSION ACT**

There shall be a Child Diversion Committee (CDC) in each parish to:

- Advise the Child Diversion Office (CDO)
- Conduct evaluations and advise the CDO
- Implement Child Diversion programmes and supervise the participation of children
- Coordinate Child Diversion activities
- Provide advice and make recommendations to Constables, Correction Officers, and the Parole Board in relation to the treatment of children and Child Diversion generally.
- Conduct research, studies, evaluation, collect data on:
  - the efficiency of programmes
  - performance and results achieved by programmes
  - implementation and outcome of policies and procedures
  - identify the causes and trends of child delinquency and criminal activity by and against children
  - children detained or incarcerated in correctional institutions

There shall be a Child Diversion Office:

- Responsible for the rehabilitation of children
- Advise the Minister on matters of policy
- Monitor the operation of Child Diversion in the justice system
- Review the methods, procedures and processes
- Develop, approve and administer programmes

## **OPERATION OF CHILD DIVERSION (Section 9 Child Diversion Act)**

Unless the public interest otherwise requires, a child who is suspected of having committed or charged with the commission, or who has been convicted of a diversion offence may be referred to the CDC in the parish in which the offence was committed or in the parish in which they reside, for participation in a Child Diversion programme, by:

- a) the Court
- b) a Constable (for offences in the first schedule)
- c) Prosecutor

## **CONDITIONS FOR REFERRAL**

A child may be considered for Diversion if:

- He/she accepts responsibility for the offence without undue influence
- There is a prima facie case against the child
- The victim gives consent, if identified and located
- Consent of the child in question, given in the presence of parent/guardian, adult or OCA

### **Court Diversion**

- Where a child is charged and brought before the Court, the Court may hear the case or issue a warning to the child and suspend prosecution, refer the matter to a CDC or adjourn the matter without a date.
- The issue of a warning and suspension of prosecution shall not preclude the exercise of the powers of the Court to issue an order under the Child Diversion Act, the CCPA or a Probation Order. The Court can, therefore warn a child and suspend the matter before the Court and make one of the following orders.

## **ORDERS WHICH CAN BE MADE UNDER THE CHILD CARE AND PROTECTION ACT**

- For probation under the Probation of Offenders Act;
- Placing the child under the supervision of a Probation After-Care Officer or some other person to be selected for the purpose by the Minister for a specified period not exceeding three years;
- Committing the child to the care of any fit person, whether a relative or not, who is willing to undertake the care of the child;
- Ordering the parent or guardian of the child to pay a fine, damages or costs;
- Ordering the parent or guardian of the child to enter into a recognisance (bond) for the good behaviour of such offender;
- Curfew Order: require the child to remain at a place specified in order for a period of time so specified;
- Refer the matter for mediation by an approved mediator;
- Community service: require the child to perform unpaid work for such number of hours (between 40 – 60 hours);
- Sending the child to a juvenile correctional centre;
- Where a child has been found guilty of any offence before a Children's Court, that court may, subject to the provisions of the CCPA, make an order dismissing the case;

- A court shall not order a child under the age of twelve years to be sent to a juvenile correctional centre unless for any reason the court is satisfied that the child cannot suitably be dealt with otherwise;
- Where a child has been placed under the supervision of a Probation After-Care Officer or any other person, that officer or person shall, while the order remains in force, visit, advise and befriend the child and when appropriate, endeavour to find suitable employment for the child and may, if it appears necessary in the child's interest so to do, at any time while the order remains in force and the child is under the age of eighteen years, bring the child before a Children's Court;
- The Minister at any time during the period of the child's detention at a juvenile correctional centre establishes to the satisfaction of a Children's Court that the child is of so recalcitrant a character that it is not expedient that he should continue his detention at such centre.

## REFERRAL AGENCIES

Minors who are charged before the Court can be referred to available programmes which seek to treat with the educational, social or psychological needs of children. These can either be Government programmes or established programmes offered by NGOs, community-based organisations or faith-based organisations.

Existing programmes are offered by:

- Family Court Attendance Centre;
- Heart Trust NTA (which incorporated the Jamaica Foundation for Lifelong Learning);
- National Council on Drug Abuse;
- Women's Center of Jamaica Foundation;
- RISE Life Management Services;
- Dispute Resolution Foundation;
- Restorative Justice;
- Fight For Peace;
- Police Youth Clubs;
- Teen Challenge;
- Men of God against Violence and Abuse (MoGAVA);
- Peace Management Initiative;
- Violence Prevention Alliance;
- Church summer camps;
- Approved NGOs;
- National Parenting Support Commission; and
- Child Guidance Clinics.

## EFFECT OF REFERRAL

- Where a child completes the Diversion programme

- If the child was not charged, they should not be charged
- Where charged, Court shall dismiss the charge
- Where the child was convicted but not sentenced, the Court shall discontinue the matter
- Where the child has been sentenced: the Court shall make a suspended sentence Order, and the child shall not be detained in a lock-up, remand centre or correctional institution
- Where the child fails to comply with the programme, the matter shall proceed

## **DIVERSION OPTIONS**

- Oral or written apology to a specified person;
- To attend school for a specified period of time;
- To accept the supervision and guidance of a mentor or peer;
- To report to a specified person at such time and place as specified;
- To spend a specified number of hours with family, time, place and activities as specified;
- To associate with persons or peers who can contribute to improvement in the child's behaviour;
- To refrain from associating with persons or peers;
- To comply with the terms of an agreement made between child and parents, to comply with specified standards of behaviour;
- To desist from visiting or frequenting a specified place;
- To attend counselling or therapy sessions with an approved counsellor or psychologist;
- To attend a vocational institution, education or therapeutic institution;
- Make restitution of a specified object to a specified victim, if it can be replaced or restored, if not make a symbolic act of restitution;
- Perform community service; and/or
- With the consent of the victim, to provide service to the victim as approved.

## **SUSPENDED SENTENCES AND REPARATION ORDERS**

- Where a child is brought before the Court as a child in need of care and protection or as a child offender, the Court may suspend the sentence of the child who completed the Child Diversion programme (make amends or renders service to the community, makes restitution or participates in a Child Diversion Programme)
- The court may also make a reparation order where there has been physical injury or damage to property if a Children's Officer, Probation After-Care Officer, parent/guardian or a Constable has cause to believe and reports to the Court that the child may be willing to make amends to the person who has suffered injury or loss (unpaid service or monetary compensation) (Section 35, Child Care and Protection Act)

## DIVERSION OFFENCES

- Sexual Offence: sexual intercourse with a person under 16; Indecent assault;
- Offences Against the Person Act;
- Unlawful wounding;
- Assault with intent to commit felony, common assault, aggravated assault;
- Larceny Act: simple larceny, larceny of a dwelling house, from the person, by tenants, embezzlement, conversion);
- Noise Abatement Act;
- Town and Communities Act;
- Exposing goods for sale, Disturbing public worship, Negligent use of fire, Riotous behaviour while drunk, drunk and disorderly conduct, noisy and disorderly conduct;
- Malicious Injuries to Property Act: injury to buildings, fences/wall;
- Offences under the National Solid Waste Management Act;
- Trespass Act;
- Section 13 of the Terrorism Act (information about terrorism offence)
- An offence for which penalty is less than three (3) years

## DISQUALIFICATION

- Where the child commits another offence within three (3) years of starting the programme, the child shall not be eligible to continue in the programme or for participation in another programme.



# Child Justice Procedures and Protocols

## 5. CHILD JUSTICE PROCEDURES AND PROTOCOLS

The procedures and protocols outlined in this Chapter are complementary to and should be read in tandem with the OCA's Child Justice Guidelines.

### Procedure and Protocol for Dealing with Children in Need of Care and Protection

- A Justice of the Peace or other person may report the matter to the police
- The police may search for and remove the child to a Place of Safety
- An authorised person: Probation After-care Officer, Children's Officer from the CPFSA or person appointed by the Minister, may also bring a child in need of care and protection to a Place of Safety
- Police officer, Probation Officer or Children's or other Officer should determine if the child is in need of medical attention
- If so, the child should be taken to the nearest health facility or medical doctor immediately
- The child should be interviewed in a private, comfortable, child-friendly room
- The interview should be conducted by a Police Officer with special training to deal with children
- If the child is determined to be in need of care and protection, this should be reported to CPFSA
- The child should be immediately taken to a Place of Safety
- The child should NOT be kept at the Police Station
- The child should be taken before the Family Court, Children's Court or Parish Court within 48 hours
- CPFSA should provide a hotline or contact numbers outside work hours where the Police can reach the Office
- Ideally, there should be a CPFSA Officer on call in each region in the event that a child is removed from their home outside of work hours
- Each Police Station should keep in a visible place, the contact numbers for the CPFSA, nearest Place of Safety and on-call CPFSA Officer

Each Police Station should keep in a visible place, the contact numbers for the CPFSA, nearest Place of Safety and on-call CPFSA Officer

## **Powers of the Court in Relation to a Child Victim of a Major Offence**

### **Formal orders for a child in need of care and protection under the Child Care and Protection Act**

A Children's Court before which any child is brought under this Part, or against whom any of the offences in the Second Schedule has been committed, may if satisfied that the best interests of the child so require, make any of the following orders:

- a) Require the child's parent or guardian to enter into a bond to exercise proper care and guardianship;
- b) Commit the child to the care of a fit person, whether a relative or not, who is willing to undertake the care of the child. The child can also either be placed in an institution or in foster care, with a relative or non-relative;
- c) In addition to one of the orders above, or solely, to place the child, under the supervision of a Probation After-Care Officer, or some other person selected for the purpose for a period not exceeding three years;
- d) Prohibit a person found guilty of an offence against a child for a period, not exceeding two years, from doing any of the following: (i) entering onto or residing at any premises at which the child resides, including premises the person owns or has a right to occupy; or (ii) from contacting or interfering with, or attempting to contact or interfere with the child, except that where the person is the child's parent, the order may set out such conditions for supervised contact between the parent and the child, as the court may think fit having regard to the best interests of the child;
- e) If there are reasonable grounds to believe that a person is likely to interfere with a party who has custody of a child, prohibit that person from contacting or interfering with or attempting to contact or interfere with, the party who has custody of the child;
- f) Where any person found guilty of an offence against a child is a person having the custody, charge, or care of the child, require that person or the child or any other child who resides with that person to receive counselling for a specific period from a fit person, qualified in psychology or psychiatry and appointed by the court.

FOSTER CARE is an option and result of a Fit Person Order. This option is arranged under the 'Living in a Family Environment Programme' and is a process that enables persons who are not the biological parents of a child in residential care to raise and provide a nurturing environment for his or her physical, emotional and spiritual growth and development.

### **Trafficking in Persons**

The Child Care and Protection Act prohibits the sale or trafficking of children.

The Trafficking in Persons (Prevention, Suppression and Punishment) Act 2007 outlines the offence of Trafficking in Persons.

It is important for practitioners and stakeholders who interact with children to be able to identify this offence.

Human Trafficking or Trafficking in Persons is defined by the Palermo Protocol, which was ratified by Jamaica in 2003.

The Palermo Protocol defines human trafficking as:

- (a) [...] the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or
- receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
- Exploitation shall include, at a minimum, the exploitation of or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Jamaican Law outlines the offence of Trafficking in Persons as follows:

- **TRAFFICKING IN PERSONS ACT**
- A person commits the offence of Trafficking in Persons, where for the purpose of exploitation, he:
  - a) recruits, transports, transfers, harbours or receives another person within Jamaica
  - b) recruits, transports or transfers another person from Jamaica to another country, or
  - c) recruits, transports, transfers, or receives another person from another country into Jamaica by any of the means set out below:
    - ❖ threats or use of force or other forms of coercion
    - ❖ abduction
    - ❖ deception or fraud
    - ❖ the abuse of power or position of vulnerability
    - ❖ giving or receiving a benefit to obtain the consent of a person who has control over another person
- The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set out.

It is usually required to prove all three elements to constitute a case of human trafficking:

- Activity
- Means
- Purpose

However, in the case of children, it is not required to show means to establish or prove a matter to be Human Trafficking.

## Children Reported as Being Beyond Parental Control (Uncontrollable)

Children brought to a police station and reported as being in need of supervision (or uncontrollable), usually by their parent or guardian must be taken before the Court within 24 hours of being detained

Children are often brought to a Police station and reported as being uncontrollable, usually by their parent or guardian. These children should be taken before the Court within 24 hours of being detained. In fact, the Child Care and Protection Act states that these children may be brought before a (Juvenile) Court, and **NOT** to a Police station. In 2013, a quarter of the children detained in Correctional facilities were there because they had been reported as uncontrollable. Jamaica correctional indicates that between 2009-2018, the second-largest number of children sent to prison were because they were “uncontrollable”.

These children have not committed an offence; however, they are considered and treated as “status” offenders. This means that a child can be subjected to a supervision order, fit person order or correctional order and sentenced to a facility without having committed a criminal offence, or any offence at all. This is in contravention of international law standards and best practices and should be discouraged. The option of making a correction order for a child who has been deemed uncontrollable by the Court is an option of absolute **LAST RESORT** if none of the alternative methods is appropriate.

### The Law regarding children who are reported as uncontrollable:

Child Care and Protection Act 2002, section 24

The parent or guardian of a child may bring the child before a **juvenile court**, and where the parent or guardian proves to the court that he is unable to control the child, the court may make an order in respect of the child if it is satisfied-

- (a) that it is expedient to deal with the child; and
- (b) that the parent or guardian understands the results which will follow, and consents to the making of the order.

Orders the Court may make:

- the child to be committed to the care of any fit person, whether a relative or not, who is willing to undertake the care of the child;
- to be placed under the supervision of a Probation After-Care Officer, a Children's Officer or some other person to be selected by the Minister, for a specific period, not exceeding three years
- Correctional Order
- It is important to note that under s. 8 of the Child Care and Protection Act, a child who is beyond control is listed as a child ‘in need of care and protection’.



### **Protocols for Dealing with Children Reported Uncontrollable**

- It is important to remember that children reported as uncontrollable have not committed an offence.
- If the child is not reported to the Court but to the Police Station, these children should be brought before the Children’s Court, Family Court or Parish Court within 24 hours. An interim Order can be made for them to be committed to the care of a Fit Person.
- The Child should receive a referral for psycho-social assessment and intervention by a behavioural/mental health specialist.
- The Court also requests a Social Enquiry Report into the family, school and living arrangements of the child
- These children should be kept at a Place of Safety, never in a remand facility or at the Police Station. The Court should enquire where the child is being kept.
- Children reported as uncontrollable in Places of Safety should be kept separately from Children in need of care and protection.

The Court should refrain from making a determination in the matter until it has received a report from a qualified mental health/ behavioural specialist and a Social Enquiry Report regarding the child.<sup>xxxiii</sup>

- The Court should consider a correctional order to be a last resort and have primary recourse to a supervision or fit person order.
- Where a correctional order is made, the period should be stated, and this should be for the minimum necessary period.
- Children who are addicted to drugs or other substances should be referred to the Drug Court and enrolled in a drug treatment programme.

- Children suffering from a mental illness or psychiatric/psychological issues may be referred to the Mental Health Court in the Corporate Area or referred to a treatment facility where these issues can be addressed.

## **Children in Conflict with the Law**

The term ‘Children in Conflict with the Law’ refers to anyone under 18 years of age who comes in contact with the justice system as a result of being suspected, accused or charged with committing an offence. Most children in conflict with the law have committed minor offences such as vagrancy, begging, loitering, alcohol use which are considered ‘status’ offences, for which adults might not necessarily be charged and are not considered as criminal when committed by adults.

Every child alleged or accused or recognised to have infringed the law should be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, reinforcing the child’s respect for 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 assuming a constructive role in society.

A child in conflict with the law has the right to treatment, which promotes the child’s sense of dignity and worth, takes the child’s age into account and aims at his or her reintegration into society. The child is entitled to basic guarantees as well as legal or other assistance for his or her defence. **Judicial proceedings and institutional placements shall be avoided whenever possible.** Article 40, UNCRC.

## **USE OF CHILD DIVERSION PRACTICES FOR CHILDREN IN CONFLICT WITH THE LAW**

The Child Diversion Law was passed in Jamaica in 2018 and provides for the diversion of children accused or charged by the police or who are brought before the Court, so that these children where appropriate can be diverted from the formal justice system and referred to intervention or treatment programmes to steer them away from criminal activity, rehabilitate and reintegrate them.

In accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice “The Beijing Rules”, State agencies should seek to further the well-being of the child and his or her family.

Positive measures should be utilised that involve the full mobilisation of all possible resources, including the family, volunteers and other community institutions, for the purpose of promoting the well-being of the child, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the child in conflict with the law.

It has been found and should be noted that many of these children have been used or coerced by adults to become involved in criminal activity.

UNICEF indicates that justice systems designed for adults often lack the capacity to adequately address the issues surrounding children which is primarily the need for rehabilitation that involves the family and community as a safer more appropriate and effective approach to punitive measures. The traditional justice system is more likely to harm than improve a child’s chances for reintegration into society.

The Citizen Security and Justice Programme has implemented a case management system in Jamaica which identifies and addresses the psycho-social needs of medium and high-risk clients. Early interaction with the criminal justice system has been identified and established as a risk factor for a young person embarking on a life of crime and becoming a violence producer. Other risk factors include:

- Age
- Gender
- Lack of family support
- Limited education
- History of family incarceration or involvement with the criminal justice system
- Psychological factors
- Mental issues
- Exposure to gang activity
- Negative peer influences
- Lack of job opportunities
- Absence of protective factors: Caring family, education, job opportunities.

Children who have grown up and been exposed to violence and criminal activity from an early age usually experience developmental gaps and challenges that can be remedied if caught at an early stage and every effort should be made to remedy such issues.

It has been observed that children who spent a large part of their formative years around or in gangs experience psychological or developmental gaps, caused by a disruption in education and positive social support, harsh living conditions, drug abuse and exposure to a climate of violence and distorted moral values. For some children, this gap can be hard to fill, and it increases the psycho-social impact of their experiences.<sup>xxxiv</sup>

However, research increasingly shows that many of these children develop more harmoniously than expected and do show moral sensitivity despite their time exposed to violence. Children also develop coping strategies that protect them ... and help reintegration.<sup>xxxv</sup>

Remanding children to a juvenile facility or making a Correctional Order will impair these objectives and should be avoided whenever possible.

However, if that option is exercised, it should be recognised that the objective of treatment of children placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

## Objectives of Institutional Treatment

No child shall be subject to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty... Any child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so. A child who is detained shall have legal or other assistance as well as contact with the family<sup>xxxvi</sup>.

Where the child is convicted, the approach to dealing with these children in accordance with International Conventions and Best practices is to take steps to rehabilitate and reintegrate the child. The Child Care and Protection Act gives Judges a wide range of sentencing options where children are convicted. These are listed in the section on Diversion.

- Children in institutions shall receive care, protection, and all necessary assistance- social, educational, vocational, psychological, medical and physical – that they may require... in the interest of their wholesome development.
- Medical and psychological assistance are critical for addicted children, the violent and mentally ill.
- Deprivation of liberty should not lead to the denial of a child's rights.
- Doctors and treatment professionals should be on call so that staff can make contact and obtain medical or psychological assistance quickly if this is needed.
- Routine medical and dental visits should also be arranged to maintain children's health

As outlined in “The Beijing Rules”, the approach taken with these children who have offended should focus on:

- Positive measures
- The full mobilisation of all possible resources, including the family, volunteers and other community institutions, for the purpose of promoting the well-being of the child; reducing the need for intervention under the law; effectively, fairly and humanely dealing with the child in conflict with the law.
- Rule 79 of the Havana Rules, which provides that all children should “benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.” Rule 80 of that instrument goes on to make it clear that stakeholders in the justice system should provide specialized services to assist children in re-establishing themselves in society and to lessen prejudice against them. These services should ensure, to the greatest extent possible, that the child is provided with suitable residence, employment and clothing, and sufficient means to maintain himself or herself upon release to facilitate successful reintegration.
- Reintegration programme must be tailored to the age and particular needs of each child, and must include the family and the community to which the child belongs. For children who have no family, or whose family is unable to support them, child protection services should be ready to step in to offer the support that will enable these children to provide for their social and economic needs. Children who are on the verge of attaining their adulthood, or who have already attained it, may require guidance to enroll in an educational or vocational training

programme, and support to obtain housing, a job and connect with other resources in the community. While these support programme should be available to all children who have been released, it is important to note that reintegration into the community ought not to begin when the child is released; instead, reintegration is a process that should begin as soon as the child is sentenced and continue to be implemented the entire time that the child is serving his or her sentence.

- Any programme or service whose purpose is to assist children deprived of their liberty with their re-assimilation into the community must make every effort to fight the discrimination and stigmatization that these children tend to suffer for having been offenders. It is therefore imperative that the confidentiality of the records of children either accused or convicted of violating criminal law be kept confidential.

### Protocols for Children in Conflict with the Law

- These children are suspected, accused, charged or convicted of having committed an offence. However, it should be remembered that they are presumed innocent until proven guilty and should be treated accordingly.
- For minor offences, Diversion should be the first option of consideration. (See Chapter on Diversion).
- Charge, detention, remand and institutionalization to a Correctional Facility should be the option of last resort.
- Where there is deprivation of liberty, this should not lead to the denial of a child's rights.
- Upon the arrest of a child, the child should be told in plain, simple, appropriate language that they can understand, the reason for their arrest.
- The child's parent(s) or guardian(s) should be immediately notified by the Police and told the reason for the arrest.
- The parents or guardians should be given the child's location, the name of the arresting or investigating officer and the contact number for the location where the child is being held.
- Any transfer to another location should be immediately communicated to the parent(s) or guardian(s).
- The child and his or her parent(s) or guardian(s) should be given the date and location of the first Court hearing and all subsequent court dates.
- Children who are arrested or detained should be assessed for medical needs and where necessary, arrangements should be made forthwith for them to see or be seen by a Medical Doctor or a Psychiatrist/ Psychologist in appropriate cases.
- Arrangements should be made by the investigating or arresting officer to contact the Office of the Children's Advocate (OCA).

Upon the arrest of a child, the child should be told in plain, simple, appropriate language that they can understand, the reason for their arrest.

- If the OCA is not available or able to represent the child, and the child's parent(s) have not retained an Attorney, then an Attorney-at-law on the list of Legal Aid Duty Counsel should be contacted and requested to give legal representation to the child. Children detained have a right to legal representation.
- The contact numbers for the OCA and a list of Duty Counsel shall be kept at each police station setting out the Attorneys on the list of Duty Counsel for that parish. This can be obtained from the Legal Aid Council.
- A child suspect shall not be interviewed in the absence of his or her parents.
- An Attorney should be present for the questioning or interview of a child suspect.
- A child who is not charged should be released to his parents after 24 hours of detention.
- Where a child is charged, he or she shall be brought before the Court within 48 hours.
- Where an identification parade is to be held, this shall be done within 72 hours of arrest.
- The investigating officer should consider station bail in respect of children detained, where that is an appropriate option for the offence alleged and shall grant station bail where appropriate for the child to attend court on the given date.
- A child should not be brought before the court without a file setting out the particulars of the matter being submitted to the court's office.
- The primary source of representation for children is the Office of the Children's Advocate. However, if the OCA is not able to provide representation for a trial, then Legal Aid services are available, and contact should be made with the Legal Aid Clinic or the Legal Aid Council to assign an attorney to represent the child. The relevant numbers should be displayed at the Court so that parents or guardians can make contact with these Agencies.

#### **Protocols for the Separation of Children: Preventing Undue or Negative Influences<sup>xxxvii</sup>**

- Untried children should be separated from convicted children.
- Child detainees who have not been charged with an offence should be held separately from the other categories of detainees.
- Children who are reported as uncontrollable should be kept separate from children who are in need of care and protection and separate from children who are charged with an offence.
- Children who are in need of care and protection should be immediately taken to a Place of Safety or other approved facility. These children should never be kept in the holding area of police stations with adults.
- Children in detention pending trial shall be kept separate from adults and shall be detained in a separate institution or a separate part of the institution. Ideally, they should be kept at a juvenile remand facility. Children and adults detained should not be able to interact with each other during detention or while being transported.

#### **Protocols for State Facilities for the Detention, Remand and Correction of Children<sup>xxxviii</sup>**

- Conditions of facilities where children are detained should be appropriate to the needs of children.

- Facilities should be clean, well ventilated, have the necessary amenities including bathroom facilities, play and recreational area, meeting rooms, spaces for interviews and visits with family and should NOT be overcrowded.
- Staff in these facilities should be highly trained in dealing with children and should receive ongoing training and stress management.
- Care/Case Officers should be assigned to particular children to effectively manage and monitor them.

The staff at remand or correctional facilities should:

- enquire whether a child has legal representation;
- give the child the opportunity and arrange for an appropriate, private space for the child to consult with their attorney or another representative at the earliest possible opportunity;
- afford the child reasonable periods of time away from the facility so as to enable him or her to fully participate in any legal proceedings;
- fully support the child's participation in legal proceedings, through the provision of transportation and related assistance; ensure that the child is ready in time and transported to Court so as to arrive at least 20 minutes before the start of Court;
- accompany the child, where feasible, to court so that he or she could fully and comfortably participate in legal proceedings;
- give the parents, guardians or support persons of the child the opportunity to support the child while he or she is being accommodated at the facility by, for example, allowing reasonable visitations;
- remind the child, his or her parents, guardians or support persons of the date and time of any hearings.

Staff at facilities should:

- assess and closely monitor the child to determine whether he or she has experienced or is experiencing undue discomfort, trauma, exhibiting suicidal tendencies, experiencing harassment or intimidation, and indicate this to relevant authorities or stakeholders at the earliest possible opportunity;
- suggest that the court utilise special measures such as live link if the child is experiencing undue stress and apprehension at appearing in Court as the circumstances of the case demand;
- monitor compliance with any rehabilitative programme imposed in respect of a child who comes into contact with the justice system;
- establish rehabilitation programmes suited to children;
- ensure that children who are detained at detention centres or residential facilities receive supervised visitation from parents, guardians or support persons, caretakers and legal representatives, since "isolation from the outside world causes moral suffering and emotional trauma, makes them particularly vulnerable and increases the risk that they will be mistreated or abused";<sup>xxxix</sup>
- ensure that every child deprived of his or her liberty is accommodated separately from adults, since "it is absolutely impossible to achieve reform and social rehabilitation in penal institutions where children are forced to live alongside adult criminals";<sup>xl</sup>

- ensure that, as far as is reasonably practicable, boys and girls are accommodated in separate facilities;
- ensure that it is not an automatic rule that a child placed in a detention/residential facility for children has to be moved to a facility designated for adults immediately after he/she turns 18 as much depends on whether this is in his/or her best interests;<sup>xli</sup>
- ensure that children deprived of their liberty live in conditions compatible with their personal dignity and physical integrity. This effectively means that they should ensure that the physical space that accommodates children is sufficient as to ensure respect for children's privacy, dignity and health, and allow the development of intervention proposals for assisting them;<sup>xlii</sup>
- take positive measures to ensure that children accommodated at the detention or residential facilities effectively enjoy all their rights including the right to suitably prepared and presented food at normal meal times; the right to physical and mental health; the right to an education; and the right to suitable recreation;<sup>xliii</sup>
- ensure that the facilities which accommodate children are appropriately configured to accommodate children with special physical needs;
- take all security, evacuation, and emergency measures necessary to safeguard the rights of children deprived of their liberty.<sup>xliv</sup>
- monitor the implementation and effectiveness of various reintegration measures, including educational and vocational services and counselling.

Staff at detention centres/residential facilities should seek to:

- formulate an assessment that could assist them in determining the physical and psychological needs of the child;
- consider the range of medical, counselling and other support services required in light of the child's immediate and long term needs;
- refer the child to relevant agencies so that he or she can receive appropriate medical, counselling or other support services;
- regularly review the extent to which support services are provided to the child, as well as the quality of said services;
- suggest, where appropriate, the variation of any orders made regarding the provision of medical, counselling or other services.

According to Rule 35 of the Havana Rules, this right entails a recognition that the possession of personal effects is a basic element of the *juvenile's* right to privacy and essential to the psychological well-being of the *juvenile*.

### **Protocols for the Property of Children**

Staff at detention centres/residential facilities should seek to:

- place children's personal effects in a safe place at the facility;
- keep an inventory accounting for these personal effects to be signed by the child;

- keep children’s personal effects in good condition; and
- return all personal effects and money to the child on release, except where these articles need to be withheld for legal purposes.

## PROVISION OF EDUCATION

- A child’s educational development should not be interrupted because they are placed in a Home or Facility.
- Children in Homes and State facilities should have access to classes and be able to sit critical exams such as PEP, CSEC and CAPE.
- There should be adequate learning facilities in all Child institutions and Remand Centres, and they should be of a similar standard.
- Homes should ensure that there are remedial programmes for children who are below grade level achievement
- There should be Access to education for Children with Disabilities (CWDs)

## Protocols for The Transportation of Children to and From Court

While efforts have been made to keep children in remand facilities or in holding areas separate from adult offenders, there is still a challenge where children are transported with adults, sometimes adult offenders.

It should be clearly agreed and understood among State agencies whose duty and responsibility it is to transport children, and also which agency is responsible for the collection and transportation of different categories of children.

- It is the responsibility of the police to transport children held in juvenile remand centres and police lockups to and from the court.
- Children should never be transported together with adult prisoners in the same vehicle; neither should male and female children be transported together.
- Transportation duties should commence at an appropriate time to allow for the arrival of children at least 20 minutes before the opening of court. This is to afford them sufficient time to adjust and prepare for a court appearance.
- Children who are transported to Court should be left at a secure location in the care of personnel from the CPFSA, Court or another responsible person (and not in the cells with adults).
- Children should not be transported to or from Court in marked police vehicles.
- Children should never be transported to or from Court with adults not connected to their matter or in the same vehicle as adult detainees.
- Children should be collected from the Court as soon as possible after their matters are completed.

“ Children should be transported in vehicles with adequate ventilation and light, and in conditions that should in no way subject them to hardship or indignity. ”

- Children should be transported in vehicles with adequate ventilation and light, and in conditions that should in no way subject them to hardship or indignity.
- Police should refrain from using handcuffs on children unless it is absolutely necessary to preserve the security of the child and others.
- If the child is not residing with his/her family, the Court should enquire where the child is being kept and ensure that it is an appropriate facility.
- Children should not be kept in the holding area with adults.
- The holding area at the Court where children on remand are placed should be well lit and ventilated.
- Arrangements should be made for children to receive a meal when they have Court days.

## **Protocols for the Discipline of Children**

### **Methods of Discipline**

Corporal punishment or any form of a physical assault should never be administered to children in State care. Lockdown or isolation are also not appropriate punishments for children, except in very extreme circumstances. The effects of violence on children have been mentioned in the introduction to these Protocols. It increases anger, aggression and violence in children, many of whom are already predisposed to these behaviours due to their upbringing and environment.

These alternatives were recommended by the Multi-agency Committee on child interaction with the State:

- Withholding of games, phone, television privileges, tablets
- Time-out
- Denial of special treats
- Special assignments
- Extra chores
- Warning or reprimand
- Counselling
- Positive reinforcement
- Frank discussion with older children conveying disappointment
- Behaviour modification techniques
- Talk therapy
- Games and rewards to reinforce good behaviour
- Restorative circles



# Minimum Service Standards



## 6. MINIMUM SERVICE STANDARDS

A standard refers to widely agreed, accepted and sometimes mandatory quality of performance. These include guidelines, best practices or instructions based on expectations that guide procedures. There are certain minimum service standards that ought to be made available to all children who interact with the State whether they be victims of abuse or other offence, children in need of care and protection or those accused or charged with an offence. These standards should apply regardless of geographical location given resource constraints. Steps should be taken to aim for these standards and use existing resources to ensure that the best interest of the child is achieved.

“ Children should benefit from the involvement of personnel who are specially trained and are sensitized and alert to child rights issues and exposed to the appropriate guidelines and methods that can inform the manner in which they treat the children with whom they come in contact ”

Children should benefit from the involvement of personnel who are specially trained and are sensitized and alert to child rights issues and exposed to the appropriate guidelines and methods that can inform the manner in which they treat the children with whom they come in contact.

While children should benefit from trained and sensitive personnel, the mammoth task and Herculean workload of service providers in the childcare and justice sectors poses a challenge to staff who wish to provide the best care and attention to children. Staff must manage myriad responsibilities in a pressurised setting. Self-care and regeneration are therefore critical for personnel working with children so that they themselves are not unduly stressed. In addition, the distressing nature of the cases that they are often called on to deal with will take a toll if staff themselves do not receive counselling and have group sessions.

The same practices, procedures and policies should be utilised in all parishes across the island.

It is critical that all personnel understand the importance and the need to preserve evidence and maintain the chain of custody.

There should be mutual respect, professional courtesies, and regard for the role of each entity and personnel from the different agencies.

It is critical that there be early psychological assessment and screening of the child so that they can be placed in the most suitable environment.

There are certain minimum standards that are recommended for the interaction of State Agencies and representatives with children. Primary among these are:

- Adequate & fully trained staff
- Child friendly and private interviewing/counselling rooms
- Confidentiality upheld
- Absence of discrimination
- Quick access to services – police, medical doctor, medical personnel, psychologist, counsellor, Court
- Quick turnaround time for receipt of reports
- Speedy investigation process
- Records of matters involving children are strictly confidential and closed to third parties. Only persons authorised, or dealing directly with the care, protection or custody of that child should have access to their file.
- Records of matters involving children should be kept up to date at all times
- Accountability and transparency should be ensured
- Follow up mechanisms to be in place
- Institutions should utilise resources such as a petty cash system to provide for meals, personal items and critical needs of victims and other children
- Selected doctors should be on call at all times
- Mental health specialists should be on call at all times
- A self-harm assessment should be done of children entering State care and steps taken to mitigate this risk
- The safety, confidentiality and privacy of the child should be observed and protected at each step of the process
- Counselling and interviews should never be done in the hearing or presence of others
- On-call officers, systems and processes need to be in place for when a child is taken in outside of work hours. The Police holding area should not be the default location.
- Ongoing training is essential
- Each agency should have a suggestion box

## **Best Practices**

These Requirements were identified by the MARCA Group

- 1) Consistent, standardized terminology across agencies;
- 2) A common referral process across agencies;
- 3) A central data system as data currently exists in “silos”.
- 4) Ensure the protection of data
- 5) Utilise prior research/reports, e.g. research done by Dr Tony Butler for the JCF and the report out of child justice project done by UNICEF to inform discussions;
- 6) A child predator profile should be prepared. The MAP Group was advised that the OCA is currently working on a child predator profile in conjunction with the Ministry of National Security;
- 7) There should be a common understanding of when and how a child enters the justice system, identification of all agencies that play a role and at what stage, and the various services offered by those agencies;

- 8) Establish a “one-stop-shop” in rural parishes as the current focus is on Kingston;
- 9) Training of all related service personnel should be conducted.

Minimum Service standards have been established for individual Agencies; however, these should always be observed, and it will be useful if the other agencies in the Partnership are aware of the standards which other entities should observe.

Every effort should be made to avoid charging and placing a child before the Court.

To achieve this objective, the policies and procedures in place for the relevant institutions are outlined below.

## SCHOOLS

The procedures to be followed in the occurrence of incidents of violence and infractions committed at schools are as outlined in the Critical Incident Management Plan (CIMP) for a Safe School Environment. The CIMP is a proactive and direct way of planning for and managing critical incidents. A Critical Incident Management Team (CIMT) should be established in every school and should consist of seven (7) – ten (10) persons. The CIMT should assist the Principal in managing the response to critical incidents at the school. This Team should be specially trained and will be the first Unit called upon to act during a critical incident.

“ A Critical Incident Management Team (CIMT) should be established in every school and should consist of seven (7) – ten (10) persons ”

### Protocols for Preventing Fights or Acts of Violence in Schools

Fighting between or among students; fighting between a member of staff and student; with or without weapons.

#### Pre-plan Action

- Establish and maintain zero tolerance of fights within the school setting.
- Create a culture of respect.

- Establish and maintain zero tolerance for violent play within the school setting.
- Conduct frequent, spontaneous searches among students for weapons and other instruments that could become weapons.
- Confiscate all tools that could become weapons.
- Ensure that adequate resources are in place.
- Ensure adequate supervision of classrooms and other areas where students congregate.
- Avoid promoting any form of idleness on the school compound.
- Do an annual review of the school rules by members of staff, students and parents.
- Implement a violence prevention programme, for teachers, students and parents with special emphasis on conflict resolution and anger management strategies. **Training in Restorative Justice and Mediation for staff is recommended.**
- Establish student assistance and welfare programmes for needy students.



## Protocols for Immediate Action and Follow up Action in the Event of Violence

### Immediate Action

- Assess the situation. Notify the Principal if necessary, call the police
- Activate the CIMT.
- CIMT to intervene.
- Try to de-escalate the situation verbally.

- Remove students who are not involved in the incident.
- Encourage students to leave the class in an orderly fashion and convene in a safe area. Allow the CIMT to apply physical restraint if it appears safe to do so.
- If this fails, contact security personnel or the police if necessary.
- Remove any instrument that could be used to cause harm.
- Isolate students involved and allow a cooling-down period.
- Take the injured child(ren) to the nurse's office/hospital.
- Provide counselling services for affected persons.

### **Follow-Up Action**

- Convene a meeting of CIMT to debrief the handling of the incident.
- Set up special meetings with parents, students, and teachers.
- Remind students and parents about school rules in regard to fighting.
- Determine appropriate disciplinary or legal action to be taken in accordance with policies and regulations.
- Provide counselling services and/or PASS intervention, as is necessary.
- Communicate with relevant stakeholders.
- Traumatized individual(s) should be seen by a school counsellor or other competent service provider.
- Negotiate the signing of a student contract to target specific improvement in behaviour.
- Assess the need for staff training for this kind of situation.
- Document the incident and submit a report to MOEYI.

### **Protocols for Prevention of Gang Activity**

- Ensure the CIMT is trained in gang-prevention strategies.
- Identify groups – students hanging out together regularly for no authorised activity.
- Share all information about suspected gangs, existing gangs and their activities with the School Resource Officer.
- Ensure that the school compound is adequately supervised.
- All visitors to the school compound must be identified with a visitor's ID.
- Question suspected gang members; warn them of the school's policy regarding consequences for persons involved in gangs.
- Pay attention to other students who indicate that gangs are in schools and investigate every rumour.
- Notify the parents or guardians of all students suspected to be involved in gang activity.
- Establish and enforce zero-tolerance policies toward gangs.
- Ensure that parents and students know school policy and consequences regarding gangs and gang activities.

- Carry out random searches of classrooms and lockers for weapons and other contraband. If gangs exist within the school environment, attempts should be made to discover how the gangs are funded and to whom they might be linked externally.
- Develop and enforce dress codes that ban gang-related and gang-style clothing.
- Provide appropriate educational programme.
- Promote and establish crime prevention programme.
- Liaise and engage organisations that can administer these programmes.
- Develop anonymous reporting systems that allow students to share crime-related information.
- Establish a suggestion box.
- Restrict symbolic expressions of gang affiliation.
- Search students regularly where there is convincing suspicion but follow the correct procedure in doing this.
- Negotiate with the police in that area or the Community Relations Department to give regular talks to students that exhibit violent tendencies.
- Establish and maintain zero tolerance of any form of shooting game or firecrackers being taken to schools; follow the rules of the school concerning this matter.
- Post security personnel at strategic points in the school.
- Stay away from the fences and the gate area during school hours. If there are open areas that are not properly fenced or secured, make them out of bounds to the students for security purposes.
- Searches are best conducted by two or more persons.
- Confiscate and hand over to the police any instrument that looks like a weapon, whether real or home-made.

### **Protocols for Ensuring Safe Environment in Schools**

- Conduct a crime-prevention assessment in collaboration with the police.
- Ensure clear lines of sight by removing unnecessary obstacles and trimming vegetation.
- Limit access to the school compound.
- Identify all persons visiting the school compound.
- Ensure that the police have been told of any threats received by the school. Familiarise staff on emergency procedures for responding to intruders.
- Ensure that vehicular traffic on the school compound is supervised.
- Ensure that the school's evacuation plan is up to date and viable.
- Promote crime-prevention programme.

### **Protocols for Preventing and Dealing with the Possession and Use of Drugs**

Alcohol, cigarettes, and marijuana (cannabis/ganja) are the substances most frequently misused by students. There should be no smoking of substances on school compounds. Schools should seek to introduce preventative programme:

- Take measures and introduce a programme to build the self-esteem of students to prevent substance misuse.
- Substance misuse prevention programme should be introduced in schools.
- This can be done in collaboration with the National Council on Drug Abuse.
- Students and Teachers should be equipped with life skills such as decision-making, coping and problem-solving.
- Parents should be included in such programmes.
- Alternatives to drug misuse such as extra-curricular activities, sports, recreation, awareness campaigns and dissemination of material should be utilised and encouraged.
- The rehabilitation programme should also be encouraged in the school community for students who have begun to misuse drugs.

**If a member of staff detects a case of substance misuse, they should:**

- Immediately notify the Principal or other person nominated to deal with such matters.
- Meet with the parent/guardian
- Meet with the student in private
- Determine the action that should be taken
- Refer the matter to the school's Disciplinary Committee
- Ensure that counselling of the student takes place
- Communicate in writing to the parent or guardian
- If necessary, make a referral to the relevant support agencies for treatment or rehabilitation
- If necessary, depending on the substance involved and nature of the infringement, make a report to the School Resource Officer.

**Possible courses of action to be taken:**

- Organised in-school monitoring
- Community service
- In-school suspension
- Referral to other educational or treatment programmes

**Schools should:**

- Educate students on substance abuse, misuse and prevention;
- Nominate a staff member (preferably a guidance counsellor) who is primarily responsible for dealing with substance abuse cases and provide counselling;
- Ensure that parents and students are aware of the school's policy regarding drug possession and drug use;
- Involve community support groups in drug prevention campaigns;
- Conduct training for staff on the signs of drug ingestion as well as on drug identification;
- Conduct unexpected searches; once there is reasonable doubt;
- Limit access to the school compound;

- Promote crime prevention education programme. Regularise and monitor vending at the school gate;
- Develop anonymous reporting systems that allow students to share drug-related information;
- Refer to the Ministry of Education's policy regarding Drug Use and Abuse;
- Activate the CIMT if necessary;
- Isolate the student involved;
- Allow school resource officer to conduct the search, if there is reasonable doubt;
- Secure any drug or weapon that is found;
- Find out from the student what the drug is and where it was obtained;
- Turn over drug or weapon to the police;
- If the student is suspected of having ingested the drug, have the student examined by the nurse or other individual trained in first aid; seek medical attention and notify parent or guardian immediately;
- Check whether there are witnesses and gather information.

### **Parents and Teachers should:**

- Pay close attention to changes in the students' pattern of behaviour
- Ensure that students have regular medical check-ups
- Take note of the child's friends or companions
- Make random checks of school bags
- Establish and maintain a good rapport with students

### **Follow-up Action**

- Determine if other students are involved.
- Meet with the parent or guardian to discuss the matter.
- Determine the counselling needs of the student(s).
- Take appropriate disciplinary action.
- Refer the student to PASS.
- Follow-up with appropriate actions if an incident is determined to be a criminal act.
- Students found to be addicted and charged should be referred to the Drug Court Treatment Programme.
- Document the incident.
- Complete the appropriate forms for the school file and the Ministry of Education.
- Refer to Ministry of Education's regulations re substance abuse
- Remind the school community of regulations and consequences



# Partner Roles & Responsibilities

## 7. PARTNER ROLES & RESPONSIBILITIES

### Police Officers

The Child Interaction Policy and Procedures (CIPP) promulgated by the Jamaica Constabulary Force in 2015 with the assistance of CCDC and funded by UNICEF is a manifestation of the Jamaica Constabulary Force's commitment and multiple efforts to uphold human rights; particularly to lift professional standards to meet the organisation's responsibilities in supporting the best interests of children. Members of the Jamaica Constabulary Force (JCF) have legal and ethical obligations to operate in accordance with domestic laws and international conventions, such as the Child Care and Protection Act, 2004 and the UNCRC to protect and safeguard child rights during encounters with all persons under the age of 18 years.

The objectives of the Policy are:

- 1) To foster a child-friendly environment within the JCF where the sensitive needs and well-being of children are paramount;
- 2) To protect and safeguard the rights of all children;
- 3) To build the capacity of the JCF and its members to support the best interests of children;
- 4) To enable the JCF to protect and treat all children, including those in conflict with the law, in accordance with the Constabulary's legal and ethical obligations and in a manner whereby all parties emerge from the encounter with dignity and respect.
- 5) To strengthen collaboration with governmental and non-governmental agencies to foster inter-agency cooperation and coordination to collectively serve the best interests of every child.
- 6) To facilitate and enhance the protection of the rights of children within the justice system and eliminate any possibility of re-victimisation by the police.

### Vulnerability

The JCF understands and accepts that childhood is the most vulnerable stage of human development. Therefore, service delivery and treatment of children in the justice system is predicated on this understanding.

### Best interests of the child

The JCF recognises that every child has the right to have his/her best interests, given primary consideration in the decisions that affect him/her. (See **2013 CRC General Comment No. 14**) (**Child Care and Protection Act**)

## **Non-discrimination**

The JCF recognises that every child, including those in conflict with the law, has the right to be treated fairly and equally regardless of his/her gender, social or economic status, sexual orientation, health or religious persuasion or those of his/her parent/guardian. The JCF will guard against any act of discrimination, particularly to vulnerable groups, such as street children and children who are repeat offenders (recidivists).

## **Child-sensitive**

The JCF recognises that all children should be treated in a caring and sensitive manner, taking into account at all times, their personal circumstances and immediate needs, age, gender, disability, and level of maturity and fully respecting their physical, mental, and moral integrity.

## **Deprivation of liberty – a last resort**

The JCF acknowledges that children should be deprived of their liberty only as a last resort and for the minimum period necessary. If and when deprived, primacy is to be given to reintegration into society at the earliest possible time.

## **Right to participation**

The JCF recognises that every child has, subject to procedural law, the right to express his/her views, opinions and beliefs in his/her own words, and to contribute to the decisions affecting his/her life and to have those views considered according to his/her abilities, age, intellectual maturity and evolving capacity.

## **Safety and well-being**

The JCF shall uphold the rights and safety and promote the physical and mental well-being of all children. Its members will also ensure that any interaction with alleged child offenders is proportionate to the circumstances of both the alleged offender and the offence and that all efforts should be corrective and not punitive.

## **Family Life**

The JCF recognises that the family setting is the preferred environment for the care, upbringing and protection of children, and this responsibility rests primarily with the parents/guardians. Separation of children from parents, and by extension, their siblings, should be a last resort.

## Partnership

The JCF recognises that the well-being of children can best be achieved through accountable-partnerships between the JCF, other government agencies, non-governmental organisations (NGOs) and the citizenry. The JCF will utilise a coordinated approach at the national and community levels.

## Privacy and Confidentiality

The JCF recognises and respects the importance of privacy and confidentiality as individual rights of all children. The JCF will pursue the highest standards in the appropriate use, storage, sharing and disposal of records relating to all children.



## Children in Police Custody

Children should only be placed in police custody as a last resort, and for the shortest possible time. Children in detention are presumed innocent and should be treated as such; therefore, the following guidelines should be observed:

- a) Children should only be placed in police lockups designated for children.
- b) Where a child is detained but not charged within **24 hours**, the child should be released into the care and custody of his/her parents or guardians once such release would neither jeopardise nor compromise the investigations, nor the well-being of the child.
- c) Children in police custody, who are convicted, and those who are yet to be charged with an offence should be held separately from each other and from all other categories of children.

- d) Children who have been remanded by the court, and those who have been charged but are yet to face the court may be kept together.
- e) Children of opposite sexes should not be placed in the same cell under no circumstance.
- f) Under no circumstance should children and adults be kept in the same cell or be allowed to interact with each other.
- g) The police should under no circumstance make public any information that would identify or assist in identifying a child in their custody.
- h) Children in police custody should be allowed to maintain contact with their families, and as such, a flexible schedule for visitation should be maintained.
- i) Restraint or force should only be used when the child poses an imminent threat of injury to himself/herself or others, and only when all other means of control have been exhausted. Restraint or force must never be used as a means of punishment.

## **Bail**

When a child is charged with a criminal offence, the police should, without delay, consider the question of bail.

- a. Where it is possible, the police should take the child forthwith before any Judge of the Parish Court (formerly Resident Magistrate (RM), whether in chambers or in open court (including Judges (Resident Magistrates) who sit in civil courts).
- b. Where the child cannot be brought forthwith before a court, the police shall:
  - i. Inform the Child Development Agency (CDA) – now the CPFSA;
  - ii. Enquire into the case and may, in accordance with the **Bail Act**, release the child on a recognizance, **unless**:
    - The charge is one of murder or any other Second Schedule Offences in the **Bail Act, 2000**; or
    - It is in the child’s interest to remove him/her from association with any convict, criminal suspect or prostitute; or
    - The police have reason to believe that the child’s release would defeat the ends of justice or could otherwise cause injury or danger to the child.
- c. Where a child cannot be brought forthwith before the court and cannot be released on recognizance due to the circumstances outlined in **b (ii) above**, the child should be taken **within 24 hours** of being charged or the first working day after a weekend or public holiday for the matter of bail to be determined.
- d. Until such court appearance, the child should only be held in a police lock-up designated for children.
- e. A child who is remanded in custody by the court should be transported immediately to the designated Juvenile Remand Centre specified in the commitment.
- f. The police should not wait to complete a case file before taking the child before the court if the file cannot be completed within **24 hours** of the charge.

**These best practices have been taken from the Child Justice Guidelines, the Child Care and Protection Act (CCPA) and the Child Interaction Policy and Procedures (CIPP)**

- Police officers should respond immediately to reports of the abuse of a child. Response time - within 24 hours
- Unless a crime is committed against a child, the police should be the last point of contact; they should be the option of last resort where a child is being reported as uncontrollable or accused or suspected of a minor offence such as shoplifting.
- For children reported uncontrollable, the law provides for these reports to be made to the Children’s Court. (It is the Court where the report is to be made according to the Law.)
- Ensure the child victim is seen within 30 minutes at the hospital.
- Police officers do not need to be in the hospital room when a child is being examined, particularly for a sexual offence.
- Medical report forms should be readily available, and copies kept in stock and on hand
- Interviews should be taken in a private, comfortable setting where the possible interview should be recorded to prevent the victim recounting the story to other service providers.
- Ascertain if the child needs anything, water, use of bathroom if they have eaten.
- CISOCA Officers should ensure and lobby for adequate rape kits and other vital equipment such as exhibit envelopes and labels. The preservation of evidence, or lack thereof will make or break the case.
- Police Officers who man the Family Court or deal with children should wear civilian clothes.
- Follow up the preparation and production of medical reports soon after the examination of a child. Submit the report to the court early.

These standards are subject to the Force Orders which guide the operations of the Jamaica Constabulary Force and its members.

- To ensure the timely transmission of the case files to prosecutions departments.
- Enhancing the police’s relationship with other stakeholders should be a priority concern;
- Present data which they collect with respect to children who come into contact with the justice system in a manner which other stakeholders could use to facilitate early intervention.
- Collaborate with other stakeholders in the justice system to ensure the timely transmission of the case files to the Court.
- See themselves as important actors in the delivery of rehabilitative and reintegration services for children who come into contact with the justice system.
- Foster and maintain a positive relationship with other stakeholders who work with children
- Proactively investigate any situation that has the potential to harm a child.

“ It is the duty of the Investigating Officers to ensure that all evidence to prove or advance a case is provided to the Prosecutor or the Court. This includes statements, personal information on the accused, medical and other forensic reports ”

- Treat with utmost seriousness and urgency, any credible report made with regard to the alleged exploitation or abuse of a child.
- Police Officers should appreciate the importance of the need to provide rehabilitative and reintegration services for children who come into contact with the justice system.
- Children who might be in their care or custody should not be treated in the same way as adults.
- Collaborate with other stakeholders in the justice system.
- Police Officers who work in the Family Court or Children’s Court should not wear Police uniform but plain clothes.
- These Officers should not carry guns at Court unless absolutely necessary.
- Police Officers who man the Courts should speak with parents and children at the Court in a polite and sensitive manner.
- A child’s name should never be shouted in the corridors of the Court.
- Antecedent reports and information necessary for the granting of bail should be produced in a timely and efficient manner. Court hearings should not be delayed or adjourned due to delays in providing this information.
- Officers should keep victims and other witnesses updated on proceedings and developments in their cases, including the granting of bail, guilty pleas, sentencing and parole (if they are aware).
- It is the duty of the Investigating Officers to ensure that all evidence to prove or advance a case is provided to the Prosecutor or the Court in a timely manner. This includes statements, personal information on the accused, medical and other forensic reports.
- Police Officers should promptly submit exhibits to the Lab (Forensic Institute) for testing and should follow up on the testing and reports in respect of those exhibits or samples.
- The reports of such testing should be promptly collected and submitted to the Court.
- The Courts should be notified of any causes of delay in the completion of reports, outside of the standard 2 weeks.

### **Probation After-Care Officers**

The role of Probation Officers and social workers in assisting and protecting children who come into contact with the justice system is affected by the many duties they are called on to carry out. These include:

- Interviewing of clients, producing Social Enquiry Reports, providing mediation services, carrying out supervision and Probation Orders.
- Providing all relevant materials necessary to enable other stakeholders to proceed with any hearings at the earliest possible opportunity.
- Where Probation or supervision Orders are made, make arrangements for the child and their parent or guardian to meet at the earliest opportunity, providing them with the address, directions (if necessary) and contact numbers.
- Follow up and monitor children assigned who have been given supervision or Probation Orders
- Endeavour to prepare a social enquiry report at the earliest possible time so as to inform the court, on the situation of the child before the court, making recommendations as to possible interventions and suitable sentencing options, always bearing in mind that a Correctional Order is the option of absolute last resort.

- Recommend in the SER appropriate alternative treatment and rehabilitation programme offered by other State Agencies, Executive Agencies, NGOs and faith-based organisations.
- Recommend appropriate intervention programme that might suit the child, to the Court and the child's parents.
- Visit, advise and befriend child placed under their supervision for a Probation Order and when appropriate, endeavour to find suitable employment or placement for the child.



### **Child Protection and Family Services Agency**

The CPFSA which manages Children's Homes and Places of Safety should be the first point of contact for children taken in as being in need of care and protection or those reported uncontrollable, and NOT the Police Station.

The following outlines the procedure for making a report to the CPFSA:

- The CPFSA has registration officers at all CPFSA locations across the island. The Officers take reports on a daily basis, Mondays to Friday 8:30 a.m. – 5:00 p.m. Reports are also made

through the National Children's Registry at 10 Charlton Avenue, Kingston 10 where persons can call in and make a report.

- The opening hours for the Children's Registry are: Monday – Friday 7:00 a.m. – 11:00 p.m. and Saturdays and Sundays 8:30 a.m. – 4:30 p.m.

### **Procedure for the placement of children after hours and public holidays**

- Contact can be made with the Placement Coordinator of the CPFSA who will advise on the procedure.
- The Police Stations across the island should have a duty roster with the officers of CPFSA who are on duty for a specific day and time (First Responder group). These duty rosters have been generated from the different regions within the CPFSA. The police can also make contact with Places of Safety to seek placement of a child if necessary.

### **Role of the Victim Services Division**

- Response time immediately or as soon as is practicable
- Make contact with victim within 24hrs
- Provide feedback and updates to the Police and Prosecutor in a timely matter so that decisions can be made regarding the conduct and management of the case, in particular timelines and any special needs or measures to be utilised
- Provide adequate court orientation to victims and other witnesses
- Follow up on the progress of the child and do additional or check-in sessions where required
- Take steps to ensure the child is reintegrated and functioning in school

The Victim Services Division (VSD) is a Division of the Ministry of Justice and provides assistance to persons against whom a crime has been committed. The Division has an office in each parish of Jamaica and assists victims by managing the emotional trauma associated with the crime. They also provide services that orient victims with the Court process and setting, advising them on what to expect when they attend Court.

The VSD is the first of its kind in the Caribbean and provides a corrective balance to the justice system by acknowledging and seeing to the rights of the victim as these are often minimized or overlooked in the Court process.

Literature produced by the Victim Services Division states that: "An accumulation of a sense of victimisation or a sense of injustice can increase and foster hostility in the community and lead to a deterioration of the society". The role of the Victim Services Division is therefore very important.

The Victim Services Division seeks to ameliorate the experience of victims by doing the following:

- Ensuring that victims have means of recourse or redress
- Ensuring that justice is done

- Facilitating reparation in some cases
- Providing counselling for victims
- Facilitating the mediation of matters
- Ensuring that the victim is informed of his or her rights and the means through which justice may be attained

The VSD also acts as a referral mechanism to access justice as many of the persons referred to them by schools, churches, hospitals and who are walk-ins had not reported the matter to the police.

- The VSD most significantly provides counselling services to victims to enable them to cope with the harm and trauma being experienced by the victim because of the offence.
- It has been recommended that all child victims and victims of sexual offences should be referred to the Victim Services Division for counselling.
- The VSD personnel also attend Court with the victim to provide emotional support.



# Child Victims & Witnesses

## 8. CHILD VICTIMS AND WITNESSES

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on November 29, 1985 outlines principles for the care and interaction with victims and other witnesses who are involved in the criminal justice system.

The International Criminal Court and other national tribunals have put in place a variety of measures to protect the rights of child victims and other witnesses participating in judicial proceedings. The Innocenti Working Paper” Psychological Support for Children: Protecting the Rights of Child Victims and Witnesses in the Transitional Justice Processes developed by Michels (2009:2-4) is also instructive in this respect:

‘Having children participate in justice mechanisms is important to address crimes against them, in particular the crimes of recruitment and use of children in criminal organisations and also crimes of gender-based violence and abuse. Children’s involvement is necessary to provide crucial evidence of these crimes; it also constitutes an important opportunity for them to have their voices heard. Effective

“ Steps have to be taken to ensure that children’s participation in the justice process is safe and protected and has a positive impact on their lives; criteria governing their participation must, therefore, be established “

participation, support and protection in the justice process can help to break the cycle of violence.

Due to their age, however, child witnesses are particularly vulnerable to violation of their rights and to psychological harm by the process. Steps have to be taken to ensure that children’s participation in the justice process is safe and protected and has a positive impact on their lives; criteria governing their participation must therefore be established.

Psychosocial support is for facilitating children’s meaningful and productive participation in the justice process while also protecting their rights. Experiences

also show that the availability of psychosocial support helps children to feel safe, which improves the quality of their testimony and makes them more confident witnesses. There can be no successful prosecution of crimes against children without functioning support and protection mechanisms for witnesses. Children’s participation in the justice processes is influenced significantly by their personal experiences, their cognitive, social and emotional development, their coping skills, their social support and the context. These factors influence children’s capacity to give an accurate statement, deal with the stress of testifying, be confronted with the accused and cope with cross-examination. As such, developing appropriate psychosocial support and protection strategies for children is crucial for ensuring that their participation is meaningful and fair.

All children who are exposed to violence, experience various harms that affect their developmental growth. Particularly vulnerable, for example, are children who were direct victims of violence, witnesses to murders and other serious crimes, victims of sexual violence or those who have very few support systems.

Children who were separated from or lost their parents, have to deal with the loss of their social support system and/or the loss of parents and other caregivers. The events surrounding the loss of a close relationship are among the most significant in the development of life-long issues for children. The loss of attachment figures and of a stable social environment make separated and unaccompanied children, especially if the persons they lost were the head of a household, much more vulnerable, particularly for subsequent abuse and exploitation’.

## **UNITED NATIONS DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER**

- “Victims” mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
- A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term “victim” also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation. (These persons are usually termed secondary victims).
- The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

## **ACCESS TO JUSTICE AND FAIR TREATMENT**

- Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
- Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive, and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
- The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings;

(c) providing proper assistance to victims throughout the legal process; (d) taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

- Informal mechanisms for the resolution of disputes, including mediation and restorative justice, should be utilised where appropriate to facilitate conciliation and redress for victims.
- Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims. This should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimisation, the provision of services and the restoration of rights.
- Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.
- Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
- Police, justice, health, social service and other personnel concerned should receive training to sensitise them to the needs of victims, and guidelines to ensure proper and prompt aid.
- In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors which make them vulnerable.

“ In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors which make them vulnerable ”

### **Protocols Relating to Child Victims and Other Child Witnesses**

“Child victims and other witnesses” are children and adolescents, under the age of 18, who are victims of crime or witnesses to crime.

Child victims and other witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.

- Every child should be treated as an individual with his or her individual needs, wishes and feelings.

- Interference in the child’s private life should be limited to the minimum needed, at the same time high standards of evidence collection should be maintained to ensure fair and equitable outcomes of the justice process.
- To avoid further hardship to the child; interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.
- All interactions with a child during the progress of a case should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. They should also take place in language that the child uses and understands.
- Child victims and other child witnesses should have access to a justice process that protects them from discrimination based on the child’s, parent’s or legal guardian’s race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.
- The justice process and support services available to child victims and other child witnesses and their families should be sensitive to the child’s age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, , socio-economic condition and immigration or refugee status, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences.
- In certain cases, special services and protection will need to be instituted to take account of gender and the different nature of specific offences against children, such as sexual assault involving children.
- Age should not be a barrier to a child’s right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child’s age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.

## **CHILD VICTIMS AND OTHER CHILD WITNESSES HAVE CERTAIN RIGHTS WHICH SHOULD BE RESPECTED AND PROTECTED**

### **THE RIGHT TO BE INFORMED**

- Child victims and other child witnesses, their parents or guardians and legal representatives, from their first contact with the justice process and throughout that process, should be promptly and adequately informed, to the extent feasible and appropriate, of, among other things:
  - a) The availability of health, psychological, social and other relevant services as well as the means of accessing such services. That the Clerk of Court or Prosecutor is the party in Court who will assist them; however, that they can obtain the services of an Attorney to watch proceedings on their behalf if they wish to do so;

- b) The procedures for the adult and juvenile criminal justice process, including the role of child victims and other child witnesses, the importance, timing and manner of testimony, and ways in which “questioning” will be conducted during the investigation and trial;
- c) The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;
- d) The specific places and times of hearings and other relevant events;
- e) The availability of protective measures;
- f) The existing mechanisms for review of decisions affecting child victims and other child witnesses;
- g) The relevant rights for child victims and other child witnesses pursuant to the UNCRC and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

In addition, child victims, their parents or guardians and legal representatives should be promptly and adequately informed, to the extent feasible and appropriate, of:

- a) The progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case;
- b) The existing opportunities to obtain reparation or restitution from the offender, through alternative civil proceedings or through other processes.

### **THE RIGHT TO BE HEARD AND TO EXPRESS VIEWS AND CONCERNS**

- Professionals should make every effort to enable child victims and other child witnesses to express their views and concerns related to their involvement in the justice process, including by:
  - a. Ensuring that child victims and/or their parent/guardian and where appropriate witnesses; are consulted on the matters set out above and the matter of sentencing through the means of a Social Enquiry Report conducted by a Probation Officer;
  - b. Ensuring that child victims and other child witnesses are enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process;
  - c. Giving due regard to the child’s views and concerns and, if they are unable to accommodate them, explain the reasons to the child.

## **THE RIGHT TO EFFECTIVE ASSISTANCE**

- Child victims and other child witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's reintegration. All such assistance should address the child's needs and enable him or her to participate effectively at all stages of the justice process.
- In assisting child victims and other child witnesses, professionals should make every effort to coordinate support so that the child is not subjected to excessive and repetitive interventions.
- Child victims and other child witnesses should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until such services are no longer required.
- Professionals should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include: (a) Child victim and witness specialists to address the child's special needs; (b) Support persons, including specialists and appropriate family members to accompany the child when it is time to give testimony; (c) Where appropriate, to contact the OCA or obtain legal representation to protect the child's legal interests.

## **THE RIGHT TO PRIVACY**

- Child victims and other child witnesses should have their privacy protected as a matter of primary importance.
- Information relating to a child's involvement in the justice process should be strictly protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process.
- Measures should be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony, where permitted by national law.
- All sexual offence hearings involving children in court are to be held 'in-camera' meaning only the minimal number of essential persons connected to the case should be in court when the matter is being dealt with, and especially when evidence is being given.

## **THE RIGHT TO BE PROTECTED FROM HARDSHIP DURING THE JUSTICE PROCESS**

- Professionals should take measures to prevent hardship during the detection, investigation and prosecution process to ensure that the best interests and dignity of child victims and other child witnesses are respected.

- Professionals should approach child victims and other child witnesses with sensitivity so that they:
  - a) Provide support for child victims and other child witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;
  - b) Provide certainty about the process, including providing child victims and other child witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. The child's participation in hearings and trials should be planned ahead of time, and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process;
  - c) Ensure that trials take place as soon as practical, unless delays are in the child's best interest. Investigation of crimes involving child victims and other child witnesses should also be expedited, and there should be procedures, laws or court rules that provide for cases involving child victims and other child witnesses to be expedited;
  - d) Use child-sensitive procedures: including interview rooms or safe spaces designed for children, interdisciplinary services for child victims which are integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, scheduling of cases during school breaks and outside of exam periods, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony.
  
- Professionals should also implement measures:
  - a) To limit the number of interviews: special procedures for the collection of evidence from child victims and other child witnesses should be implemented to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through the use of video recording;
  - b) To ensure that child victims and other child witnesses are protected, if compatible with the legal system and with due respect for the rights of the defendant, from being cross-examined by the alleged perpetrator: as necessary, child victims and other child witnesses should be interviewed, and examined , out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided; Applications under the Evidence (Special Measures) Act can be used to facilitate this.
  - c) To ensure that child victims and other child witnesses are questioned in a child-sensitive manner and allow for applications to be made to the Court to facilitate testimony remotely and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.



## THE RIGHT TO SAFETY

- Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.
- Professionals who come into contact with children should be required to notify appropriate authorities if they suspect that a child victim or witness has been harmed, is being harmed or is likely to be harmed.
- Professionals should be trained in recognising and preventing intimidation, threats and harm to child victims and other child witnesses. Where child victims and other child witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child. Such safeguards could include:
  - a) Avoiding direct contact between child victims and other child witnesses and the alleged perpetrators at any point in the justice process;
  - b) Using court-ordered restraining orders supported by a registry system;
  - c) Ordering pre-trial detention of the accused and setting special “no contact” bail conditions;
  - d) Placing the accused under house arrest;
  - e) Wherever possible and appropriate, giving child victims and other child witnesses protection by the police or other relevant agencies and safeguarding their whereabouts from disclosure.
  - f) Ensure that any family members the child victim has in common with the Accused is warned that there should be no undue influence of the child.

The following provisions for protection and support of children who interact with the justice system are therefore critical:

- Selection of specialised staff and adequate training of all staff on issues related to dealing with child witnesses;
- Vulnerability assessment of potential child witnesses;
- Individual support and counselling before, during and after testimony;
- Establishment of protective measures before, during and after testimony;
- Long-term support and referral;
- Involvement of the community in support strategies and the use of local approaches to healing;
- Victims and other witnesses should be provided with regular communication and updates on the progress of their matter;
- Victims should receive the necessary support: emotional, material, medical, psychological and social assistance through governmental and community-based means;
- Victims with disabilities including those who are mentally challenged, those with vulnerabilities and those prone to intimidation should be provided with specialised intervention or the support needed;
- Victims who have to testify in Court should be oriented about Court proceedings, dealing with the media and public opinion and should have someone available to provide emotional support during the conduct of police interviews, statements and following their testimony;
- Victims should be provided with direct assistance to ensure their safe passage to and from Court, as well as a 'safe space' within the precincts of the Court. Facilities for victims and defendants or accused persons should be separated;
- Mechanisms to increase victim and witness participation in the justice process should be put in place;
- Criminal Justice Agencies must be sensitized to the needs of victims. Police Officers, Prosecutors, Court Officials and Social Workers must be alive to those special needs, from the victims' or witness' first point of contact with the criminal justice system.



# Children with Disabilities



## 9. CHILDREN WITH DISABILITIES

It is important to understand the obligation to accommodate children with disabilities in seeking to ensure that they have access to justice.

### **Providing access to services**

To be successful in accommodating the needs of CWDs, it must be realised that accommodation commences upon first contact with a client. Immediately upon becoming aware of a client's impairment, the office officials or other personnel should be informed of the matter, the nature of the disability and the contact information of the guardians of the child requiring special accommodation. This will enable the Agency to adopt a strategy to accommodate that particular person.

It would also be beneficial to have a note put on the child's file as well as the file at Court.

When a client is having difficulty accessing a service, ask him/her or their guardian how you may best accommodate their access to services. It is important to recognise that all clients have their own specific needs or preferences. Being positive, flexible and open to suggestions will help to create a good client experience.

Often, good client service for people and children with disabilities can be achieved through simple and effective solutions to challenges.

For example:

- Your client is in a wheelchair and cannot enter the room where you work because of a step at the door. You could offer to move to another room that is accessible or you could serve your client at the door.
- Your client is deaf and does not have a sign language interpreter with him. Ask him, in writing, what would be his preferred method of communication and ask whether using a pen and paper to communicate would be a good way to serve him.
- Your client has low vision and cannot read the documents provided. Ask how these documents could be made accessible to him or her.

It is important to consider the needs of the individual and the accessibility features or limitations of the building or facility. Efforts should be made for appropriate arrangements to be in place.

Although the best practices outlined are broad ranging, there may be circumstances when there is a requirement to accommodate a client with a disability which is not provided for. In the event you receive a request for a form of accommodation which is not included, you should inform the supervisor or person in charge.

**Follow-up:**

When serving a client with a specific disability, it is always important to follow-up with the individual. This will help in determining any shortfalls or gaps in the accommodations provided to clients and assist in refining the approach to accommodation. This becomes even more important if the client has experienced difficulty in the past.

**BEST PRACTICES****Communications****When communicating with a client with disabilities**

- If you are not sure what to do, ask your client, "May I help you?" Your clients with disabilities know if they need help and how you can provide it.

- Speak directly to the person with a disability, not to his or her support person or companion. Avoid stereotypes and make no assumptions about what type of disability or disabilities the person has.
- Consider including people with disabilities in the testing or evaluation of your communication services.

### **When communicating with a client with disabilities over the phone**

- Speak naturally, clearly and directly.
- Don't worry about how the person's voice sounds. Concentrate on what your client is saying.
- Don't interrupt or finish your client's sentences. Give your client time to explain or respond.
- If you don't understand, simply ask again, or repeat or rephrase what you heard and ask if you have understood correctly.
- If a client is speaking on the telephone with the assistance of an interpreter, speak naturally to the client, not the interpreter.
- If you encounter a situation where, despite repeated attempts you are not able to communicate with the client, make alternative arrangements such as making contact with external organisations which can provide your office with an interpreter.

### **When Providing Service to Persons with Assistive Devices**

Many persons with disabilities have their own assistive devices, such as wheelchairs, scooters or walkers. Do not touch or handle the client's assistive device without permission.

If you have permission to move a person in a wheelchair, remember to:

- Request, wait for and follow the instructions
- Confirm that the client is ready to move
- Describe what you are going to do before you do it
- Try to avoid uneven ground or objects and alert the client if it is not possible to avoid such objects
- Don't leave the client in an awkward, dangerous or undignified position such as facing a wall or in the path of opening doors
- Don't move items or equipment, such as canes and walkers, out of your client's reach
- Respect your client's personal space. Do not lean over him or her or on his or her assistive device.
- Direct the client to accessible features in the environment, such as accessible washrooms and ramps.



### **Clients Who Have Vision Loss**

Vision loss reduces a person's ability to see clearly. Many persons with vision loss are not totally blind. Many have limited vision such as tunnel vision, where there is no peripheral or side vision; or a lack of central vision which means they cannot see straight ahead. Some persons can see the outline of the objects while others can see the direction of the light.

Vision loss can restrict the client's abilities to read signs, locate landmarks, see steps or hazards. Some of these clients may use a white cane or stick while others may not. Elderly persons may have different stages of vision loss. Sometimes it may be difficult to tell if a person has vision loss.

### **Aides used by persons with Vision loss**

- Braille
- Large print
- Magnification devices
- Guide dog
- Support person such as a sighted guide.
- Digital audio player - enables people to listen to books, directions, art shows, etc.
- Magnifier - makes print and images larger and easier to read
- Portable global positioning systems (GPS) - helps orient people to get to specific destinations
- White cane - helps people find their way around obstacles

### **General Tips**

- Do not assume the individual cannot see you
- Do not touch the client without asking permission
- Offer your elbow to guide the person. If he or she accepts, walk slowly, but wait for permission before doing so. Lead the person – don't pull.

- Do not touch, speak to or play with service animals; they are working and need to pay attention at all times.
- Don't leave your client in the middle of a room. Show him or her to a chair or guide them to a comfortable location.
- If you need to leave your client, let him or her know you are leaving and will be back.
- Identify yourself when you approach your client and speak directly to him or her, even if he/she is accompanied by a companion.
- There is generally no need to raise your voice because the person does not necessarily have hearing loss. Say your name even if you know the person well as many voices sound similar.
- Be clear and precise when giving directions, e.g., two steps behind you, a meter to your left, etc. Don't use "over there" or point in the direction.
- If you are uncertain about how to provide directions, ask the person how to do so.
- Do not be afraid or embarrassed to use words such as "see", "read" and "look." People with vision loss also use these words.
- When providing printed information, offer to read or summarise it.
- Offer to describe information. Verbally itemise a document or explain what is on it.

### **Clients Who are Deaf or Hard of Hearing**

People who have hearing loss may be deaf, oral deaf, deafened or hard of hearing.

People who are profoundly deaf may identify themselves as Deaf or oral Deaf. In the Deaf community, the term Deaf is used to describe a person who has severe to profound hearing loss, with little or no hearing.

The term Deaf is acceptable when referring to such persons. Persons who have little hearing are not described as Deaf.

Oral Deaf is a term describing a person who was born deaf or became deaf before learning to speak, but is taught to speak and may not typically use established Sign Language.

The term "deafened" describes a person who has lost their hearing slowly or suddenly in adulthood. The person may use speech with visual cues such as captioning or computerized notetaking, speech reading or sign language.

The term "hard of hearing" describes a person who uses their residual hearing (hearing that remains) and speech to communicate. The person may supplement communication by speech reading, hearing aids, sign language and/or communication devices.

### **Types of assistance the client might use**

- Hearing aid - makes the sound louder and clearer
- Paper and pen
- Personal amplification device (e.g., Pocket Talker)
- Phone amplifier
- Relay Service

- Support person such as a sign language interpreter.
- FM transmitter system or another amplification device – boosts sounds closest to the listener while reducing background noise
- Teletypewriter – helps people who are unable to speak or hear to communicate by phone. The person types their message on the keyboard, and messages are sent using a telephone line or through an operator.

### General Tips

- Attract the client’s attention before speaking. Generally, the best way is by a gentle touch on the shoulder or with a gentle wave of your hand.
- Ask how you can help. Do not shout.
- Move to a well-lit area, if available, where your client can see your face.
- Do not put your hands in front of your face when speaking. Some people read lips.
- If necessary, ask if another method of communicating would be easier, for example, using a pen and paper.
- Be patient if you are using a pen and paper to communicate. The client may be using a Sign Language with its own grammatical rules.
- Look at and speak directly to your client. Address your client, not the interpreter or support person.
- Be clear and precise when giving directions and repeat or rephrase if necessary. Confirm that your client understands you.
- If the person uses a hearing aid, reduce background noise or move to a quieter area, if possible, so the person can hear or concentrate better.
- Do not assume that the client knows sign language or reads lips.
- It is important to determine whether the child is familiar with standard or traditional, widely used sign language (such as American sign language or Jamaican sign language). If not, then a regular interpreter might be of limited assistance. The child’s caregiver may be the only person who is able to communicate with them. However, it is critical to determine whether the caregiver may be the abuser or be complicit in any acts committed against the child.

“ The caregiver of a child witness, with a disability, might be the only person who is able to communicate with them. Therefore, it is critical to determine whether the caregiver may be the abuser or be complicit in any acts committed against that child ”

### Clients Who are Deafblind

A person who is deaf and blind can neither see nor hear to some degree. This results in difficulties in accessing information and managing daily activities. Many people who are deafblind may be accompanied by an intervener, a professional who helps with communicating.

### **Types of assistance your client might use:**

- Braille
- Large print
- Print on paper (using a black felt marker on non-glossy white paper or using portable white and blackboards)
- Communication boards
- Hearing aid with a built-in FM system
- Magnification equipment such as monocular or magnifier
- Teletypewriter (TTY)
- White cane
- Service animal
- Support person, such as an intervener.

### **General Tips:**

- Do not assume what a person can or cannot do. Some persons who are deafblind have some sight or hearing, while others have neither. It is best to ask.
- Ask the person how they wish for you to communicate with them or give you an assistance card or note explaining how to communicate with them.
- Identify yourself to the intervener when you approach but then speak directly to the client.
- Do not suddenly touch a person who is deafblind or touch them without permission.

### **A client with a physical disability**

There are many types, and degrees of physical disabilities, and not all require a wheelchair. People who have arthritis, heart or lung conditions or amputations may also have difficulty with moving, standing or sitting. It may be difficult to identify a person with a physical disability.

### **Types of assistance your client might use:**

- Elevator
- Support person
- Mobility device (e.g. a wheelchair, scooter, walker, cane, crutches) - helps people who have difficulty walking
- Personal oxygen tank - helps people breathe

### **General Tips:**

- Speak naturally and directly to your client, not to his or her companion or support person.
- If you need to have a lengthy conversation with someone in a wheelchair or scooter, consider sitting so that you can make eye contact.
- Ask before you help. People with physical disabilities often have different ways of doing things. The objective is towards providing assistance that allows persons with disabilities to fully engage in life activities; it is important to recognise that not all persons with disabilities necessarily need or want your assistance. Unneeded assistance can, in some cases make such

persons feel helpless or victimised. It is therefore important to only help persons with disabilities after asking them if they need assistance.

- Respect the client's personal space. Do not lean over him or her or on his or her assistive device.
- Do not move items or equipment, such as canes and walkers out of the person's reach.
- Do not touch assistive devices without permission. If you have permission to move a person in a wheelchair, remember to:
  - Wait for and follow the person's instruction
  - Confirm that your client is ready to move
  - Describe what you are going to do before you do it
  - Avoid uneven ground and objects
  - Do not leave the person in an awkward, dangerous or undignified position such as facing a wall or in the path of opening doors
  - Let your client know about accessible features in the immediate area (i.e. automatic doors, accessible washrooms, elevators, ramps, etc.).

### **Clients with a Mental Health or Developmental Disability**

Mental health disabilities are not as visible as many other types of disabilities. You may not know that your client has a mental health disability unless you are informed of it.

Examples of mental health disabilities include schizophrenia, depression, phobias, as well as bipolar, anxiety and mood disorders.

A person with a mental health disability may have difficulty with one, several or none of the following:

- Inability to think clearly
- Hallucinations (hearing voices, seeing or feeling things that are not there)
- Talking to persons who are not there
- Depression or acute mood swings (e.g. happy to be depressed with no apparent reason for the change)
- Poor concentration
- Difficulty remembering
- Apparent lack of motivation

If someone is experiencing difficulty controlling his or her symptoms, or is in a crisis, be calm and professional. Ask how you can assist or seek help. Your office should make arrangements to have medical personnel who are nearby on call.

### **General Tips:**

- Treat a person with a mental health disability with the same respect and consideration you have for everyone else.
- Be patient.
- Be confident and reassuring. Listen carefully and work with your client to try to meet their needs.
- If someone appears to be in a crisis, ask him or her to tell you the best way to help.

“ Treat a person with a mental health disability with the same level of respect you have for everyone else ”

### **Clients with Intellectual or Development Disabilities**

People with intellectual or developmental disabilities may have difficulty doing many things most of us take for granted. These disabilities can mildly or profoundly limit the person’s ability to learn, communicate, socialise and their ability to take care of their everyday needs. You may not know that someone has this type of disability unless you are told.

As much as possible, treat the client with an intellectual or developmental disability like everyone else. They may understand more than you think, and they will appreciate that you treat them with respect.

Types of assistance this client might use:

- Support person
- Communication boards (used to pass on a message by pointing to symbols, words or pictures)
- Speech generating devices - used to pass on a message using a device that “speaks” when a symbol, word or picture is pressed.

### **General Tips:**

- Do not assume what a person can or cannot do.
- Use plain language and speak in short sentences.
- To confirm if your client understands what you have said, consider asking the person to repeat the message back to you in his or her own words.
- If you cannot understand what is being said, simply ask again.
- Provide one piece of information at a time.
- Be supportive and patient.
- Speak directly to your client, not to their companion or support person.

## **Clients with Learning Disabilities**

The term “learning disability” describes a range of information processing disorders that can affect how a person acquires, organises, expresses, retains, understands, or uses verbal or non-verbal information. Examples include:

- Dyslexia (problems in reading and language-based learning);
- Dyscalculia (problems in mathematics or with numbers);
- Dysgraphia (problems in writing and fine motor skills).

It is important to know that having a learning disability does not mean a person is incapable of learning. Rather it means they learn in a different way.

Learning disabilities can result in different communication difficulties for people. They can be subtle, such as difficulty reading or can be more pronounced. They can interfere with the client’s ability to receive, express or process information. You may not know that a person has a learning disability unless you are told.

### **Types of assistance the client might use:**

- Alternative technology for writing
- Scanning or reading technology
- Tape recorders, mini pocket recorders.
- Electronic notebook or laptop computer - used to take notes and to communicate
- Personal data managers - stores, organises and retrieves personal information
- Mini pocket recorders - records information for future playback

### **General Tips:**

- When you know that someone with a learning disability needs help, ask how you can help.
- Speak naturally, clearly, and directly to your client.
- Allow extra time if necessary - people may take a little longer to understand and respond.
- Remember to communicate in a way that takes into account the client’s impairment.
- Be patient and be willing to explain something again, if needed.

## **Clients with Speech or Learning Impairments**

Some people have problems communicating because of their disability. Cerebral palsy, hearing loss or other conditions may make it difficult to pronounce words or may cause slurring or stuttering. They also may prevent the person from expressing themselves or prevent them from understanding written or spoken language. Some people who have severe difficulties may use communication boards or other assistive devices.

Types of assistance this client might use:

- Communication Board
- Paper and pen
- Speech generating device
- Support person

### **General Tips**

- Do not assume that because a person has one disability, they also have another. For example, if a client has difficulty speaking, it does not mean they have an intellectual or developmental disability as well.
- Calmly and politely ask the client to repeat the information if you do not understand.
- Ask questions that can be answered “yes” or “no” if possible.
- Try to allow enough time to communicate with your client as they may speak more slowly.
- Don’t interrupt or finish your client’s sentences. Wait for them to finish.



# Care Spaces in the Courts

## 10. CARE SPACES IN THE COURTS

### RESULTS OF THE NEEDS ASSESSMENT

Interviews were conducted with Court users as well as Court personnel regarding the CARE Spaces to be developed in the Courts. The Court Users identified challenges based on their experience with the Court system. Court personnel made recommendations on the CARE spaces and what the ideal safe space or environment should include.

#### Protocols for Children In Court

The Rights of the Child and the expected standards have been outlined earlier in this protocol. There are other practices which can reinforce the feeling that the court is a safe environment for a child.

- Court rooms in the Family Court or Children’s Court should be child friendly and not severe in furnishings, equipment or colour. It is preferable for the Judge to be on a level which is closer to the child than in a regular Court room.
- In all proceedings in the Court which involve children, the best interest of the child should be the primary objective.
- Children in the Court should be treated in a caring and sensitive manner.
- Children should not wait in the general waiting area, and child victims should not interact or be within the sight or hearing of the offender while waiting for the matter to be addressed.
- Only essential Court personnel and individuals concerned with the matter should be in Court when a matter is being dealt with involving a child victim, especially during the trial or when evidence is being taken.
- Ideally, the Family Court and Children’s Court should be in a separate building from the Parish Court. However, where this is not feasible, Children’s Court should not sit on the same day as Criminal Court involving adults.
- Accused children should not be placed in the Dock.
- Child victims and other child witnesses should not attend Court unless it is necessary. They are not required on every Court date, and Court personnel should indicate to caregivers when the child is required to attend.
- The period that children are made to wait for the calling of their matter should be minimal. Where feasible, a specific time should be scheduled for matters involving child witnesses.
- Matters involving children should be dealt with as early as possible.
- Child victims and other child witnesses who have to sit in the Courtroom should sit on a separate side of the courtroom.

“ Children should not wait in the general waiting area and child victims should not interact or be within the sight or hearing of the offender while waiting for the matter to be addressed ”

- Matters should be scheduled outside of school hours where possible and should not be scheduled during an exam or test periods.
- Ideally, Children attending court should not wear uniform (unless they will be going to school after Court). They should only be made to attend court when their presence is absolutely necessary.
- Ideally, there should be a separate entrance to the Court and the courtroom for children and vulnerable witnesses.
- Children who will be giving evidence should come to court earlier when the courtroom is not in use and be shown the courtroom by the Clerk, VSD personnel or Probation/Children's Officer, observing where they, the other parties and the Judge will sit so that they will not be overly intimidated when it is time to give evidence.
- Children and vulnerable witnesses should be able to enter the Courtroom from the CARE Space without passing through the general waiting area.



## **CARE SPACE**

A child-friendly space should be provided for children in a separate room to wait while they are at Court. The JUST programme in partnership with the Courts and CCDC have developed a prototype CARE Space in the Clarendon Parish Court, which serves as a model for future court construction. Similar child-friendly spaces (smaller in size) can be found in Parish or Family Courts in Kingston, Lucea and St. Mary. Based on this and comparable prototypes, waiting rooms for children should contain the following:

- Adequate comfortable seating for children and youth;
- Place to eat a meal;
- Changing area for babies and toddlers;
- Books and other child-appropriate learning material;
- Sleeping area with appropriate equipment;
- Stackable cots for children under three (3) years who may need to nap;
- Television or monitor which can be programmed with information on the Court process and what to expect in Court, including the layout of the Court. Other educational material can also be shown on the screen;
- Books/magazines for all ages with a comfortable place for the child to sit and read;
- Toys for the children under three (3) years;
  - Building blocks
  - Abacus
  - Lacing beads
  - Basic car/train set
  - Easel
- Table and chairs for meeting with legal advisors or counsellor;
- A computer for larger children to do homework or research while they wait;
- First Aid Kit;
- Snack machine;
- Water cooler;
- The room should be painted with pastel colours;
- Child-friendly pictures should be used to decorate the waiting room;
- The room should be air-conditioned;
- There should be a separate entrance and/or exit to the court and courtroom from the Accused and the general public;
- Onsite counselling should be available for children, victims and other witnesses;
- Children should be supervised at all times while waiting for their matter to be called at Court and after they return to the waiting area;
- There should be specially trained staff assigned full time to monitor these spaces;
- The equipment should be secured and maintained regularly. Court staff should receive training in the use and care of the equipment;
- Where victims' statements are recorded, or live-link is being used pursuant to the Evidence (Special Measures Act), Court staff should be trained and familiarised with the process of tendering such statements and using the equipment to facilitate such evidence;
- There should be a sick bay for older children.

Arrangements should be made for the provision of meals for children who are brought to Court from Places of Safety, who are in State care or children who are on remand.

The accommodation should be made for support persons to wait with vulnerable witnesses or victims and for caregivers to wait with babies and small children. Matters involving children should be called up early and should be set for a specific time, where feasible. Parties should be reminded that the matter is scheduled for a specific time of the day.

It should be noted that there are different categories of children who attend Court:

- Child victims and other child witnesses as well as children in need of care and protection should not be kept or made to wait with children who are charged with an offence or before the court because they are reported as uncontrollable.
- Children who are charged and are on bail or children who are being held on remand at a facility should wait separately from other children.

“ Children should never be transported to or from Court with adults not connected to their matter or in the same vehicle as adult detainees ”

### **Protocols for The Transportation of Children to and from Court**

While efforts have been made not to keep children in remand facilities or in holding areas with adult offenders, there is still a challenge where children are transported with adults, sometimes adult offenders.

- Children should not be transported to or from Court in marked police vehicles.
- Children should never be transported to or from Court with adults not connected to their matter or in the same vehicle as adult detainees
- Children should be left in a secure location at the Court or other facility in the care of an authorised person.
- Children should be collected from the Court as soon as possible after their matters are completed.
- Children should be transported in vehicles with adequate ventilation and light, and in conditions that should in no way subject them to hardship or indignity.
- Police should refrain from using handcuffs on children unless it is absolutely necessary to preserve the security of the child and others.
- If the child is not residing with his/her family, the Court should enquire where the child is being kept and ensure that it is an appropriate facility.
- Children should arrive at court at least 20 minutes before the opening of Court to give them sufficient time to adjust and prepare themselves for their court appearance.
- Children should not be kept in the holding area with adults.
- The holding area at the Court where children on remand are placed should be well lit and ventilated.

### **VICTIMS AND OTHER WITNESSES**

There should be a separate room or space for Victims and other Witnesses to wait for their matter to be called.

This space should:

- Have a separate entrance and exit to and from the Court and Courtroom from the entrance used by accused persons and the general public.
- Have comfortable and adequate seating.
- Be supplied with tea/water cooler and if possible a snack machine.
- Monitor or television where information on the Court can be displayed.
- Ideally, a victim or witness should be able to give evidence from this room by way of video-link without having to enter the courtroom. This can be used for particularly vulnerable witnesses.
- Desk and chairs for the taking of further statements or for interviews or the provision of counselling services.

## **ACCUSED PERSONS**

There should be a separate space for accused persons to meet with their Attorney to receive advice and give instructions, further statements or sign agreements or written instructions regarding their matter. Accused persons should always sign written instructions to enter a Plea of Guilty, give an unsworn statement or to agree to a settlement or the offering of compensation in a matter.

Where an Accused person in custody has a Mention Date and is not required to be physically present in Court, arrangements can be made for them to attend the Court proceedings remotely by way of live link. This facility is already available at the Horizon Remand Centre and should be utilised in other institutions, at least at Metcalf Street and in particular for children who have to travel far distances to court.

The Accused person may be required to sign a ‘Designation of Counsel’ to authorise Defence Counsel to represent him or her in their absence for procedural hearings.

## **SAFE SPACES IN POLICE STATIONS**

Safe spaces are also being established in Police Stations. Two spaces have been established for victims of Domestic Violence at the Matilda’s Corner and Constant Spring Police Stations. CISOCA has established the practice of providing safe, private spaces for the interviewing of victims, particularly at its corporate area headquarters.



# Use of Technology

## 11. USE OF TECHNOLOGY

“ Greater use should be made of technology which provides the opportunity for evidence to be given by way of live link from remote locations ”

The Courts should seek to provide a safe environment for users and in particular users who are vulnerable due to the nature of their cases.

Greater use should be made of technology which provides the opportunity for evidence to be given by way of live link from a remote location. Four Courtrooms are already equipped with this technology, and it is expected that each Court House will have this capability.

There are outstations in each parish which are unutilised for most days out of each month.

An application can be made pursuant to the Evidence (Special Measures) Act for this

arrangement to be made. The Evidence (Special Measures) Act introduced special measures that can be used to facilitate the giving of evidence by vulnerable witnesses and other witnesses specified.

"**SPECIAL MEASURE**" means the giving of evidence by a witness in proceedings, by means of a live link or video recording, in the manner and circumstances provided for pursuant to the provisions of the Evidence Special Measures Act. These special measures utilise technology to facilitate the recording and giving of evidence, mainly by the following means:

### LIVE LINK

**Live link** means a technological arrangement whereby a witness, without being physically present in the place where proceedings are held, is able to see and hear and be seen and heard by the following persons present in such place:

- (a) the Judge or Coroner;
- (b) the parties to the proceedings;
- (c) an Attorney-at-law acting for a party to the proceedings;
- (d) the jury, if there is one;
- (e) an interpreter or any other person permitted by the court to assist the witness; and
- (f) any other person having the authority to hear and receive evidence.

### RECORDED EVIDENCE

**Video recording** is an interview of the Witness recorded before or after the commencement of the proceedings and is a recording on any medium from which a moving image may be produced by any means and includes any accompanying soundtrack.

“**Witness**” for the purposes of the special measures application means: a person who has given, has agreed to give or has been summoned or subpoenaed by the court to give evidence in relation to any proceedings.



### **Vulnerable Witnesses for the Purpose of Special Measures Applications**

A witness is considered a vulnerable witness for the use of the technology allowed under this Act if:

- a) the witness is a child witness at the time that an application or a motion under the Act is being determined by the court;
- b) the witness is a complainant in criminal proceedings relating to a sexual offence; or
- c) the court determines that the evidence of the witness is unlikely to be available to the court, or the quality of the evidence if given in court by the witness is likely to be diminished as regards its completeness, coherence or accuracy, by reason of:
  - i. fear or distress on the part of the witness in connection with testifying in the proceedings; or
  - ii. the fact that the witness has a physical disability, physical disorder or suffers from a mental disorder within the meaning of the Mental Health Act.

### **Factors the Court Will Use to Determine Whether To Allow a Special Measure**

In the case of criminal proceedings:

- the nature and circumstances of the offence to which the criminal proceedings relate;
- the age of the witness;
- any threat of harm made to the witness, a family member of the witness or any other person closely associated with the witness, or to any property of the witness;
- any views expressed by or submissions made on behalf of the witness; and
- any other matter that the court considers relevant.

### **OTHER FACTORS THE COURT WILL CONSIDER**

Whether the special measure is appropriate in the interests of the administration of justice, bearing in mind:

- the nature and importance of the evidence to be given by the witness;

- whether the special measure would be likely to facilitate the availability or improve the quality of that evidence;
- whether the special measure may inhibit the evidence given by the witness from being effectively tested by a party to the proceedings; and
- whether the witness is a vulnerable witness; or
- whether the witness is available to testify, but it is not reasonably practicable to secure his physical attendance at the proceedings;
- in the case of a witness in civil proceedings or at a Coroner's inquest, the court is satisfied that the special measure is appropriate in the interests of the administration of justice.

**The Court shall also consider:**

- the age and maturity of the child witness;
- the ability of the child witness to understand what is involved in giving evidence by means of the special measure;

**APPLICATION TO BE MADE**

A party to the proceedings may make an application to the Judge, or the Judge may decide on his or her own, to issue a direction that a special measure, or a combination of special measures, shall be used for the giving of evidence by a witness.

**FACILITIES MUST BE AVAILABLE**

The court shall not issue a direction for a Special Measure unless arrangements to implement the special measure are available to the court.

Facilities for live link are available in Jamaica at the following Courts:

- The Supreme Court, King Street, Kingston
- Half-Way-Tree Parish Court
- St. James Parish Court
- Ministry of Justice Mobile Unit

**THE ACCUSED MAY APPLY (CHILD OR VULNERABLE ACCUSED)**

In any criminal proceedings, an application may be made by or on behalf of an Accused person, or the Judge may decide on his or her own motion, to issue a direction that live link evidence shall apply in relation to the evidence given by the Accused, if the court is satisfied that:

- a) the accused (i) is a child; or (ii) has a physical disability, physical disorder or suffers from a mental disorder within the meaning of the Mental Health Act, which renders it impracticable for him or her to be physically present to give evidence in court;
- AND
- b) the special measure would enable the accused to participate more effectively in the proceedings;
  - c) arrangements to implement the special measure are available to the court;

- d) the special measure is appropriate in the interests of the administration of justice

### **Regulations for the Use of Special Measures**

- Where a direction provides for a witness to give evidence by means of a live link, the witness may not give evidence in any other way in the proceedings unless the court revokes or varies the direction.
- The court may, on an application by a party to the proceedings or on its own motion, revoke or vary a direction that provides for a witness to give evidence by means of a live link, if the court is satisfied that there has been a material change in the circumstances since the direction was issued; or it is otherwise appropriate in the interests of the administration of justice.
- A direction issued may provide for all or part of a video recording of an interview of a witness, whether recorded before or after the commencement of proceedings, to be admitted as evidence in chief in the proceedings.
- The court may exclude part of a video recording from the direction issued, if the court is of the opinion, having regard to all the circumstances of the case, that the prejudicial effect of that part outweighs its probative value.
- If a direction provides for a video recording of an interview of the witness to be admitted as evidence in chief, the court may direct that any other evidence to be given by the witness in the proceedings be given by means of a live link, or it may be given in person.

### **Evidence To and From A Foreign State**

Evidence can be given by a witness in Jamaica to a foreign court. A Witness in a foreign State can also give evidence in a matter in Jamaica by way of live link.

### **Video Recorded Interviews**

The Evidence, Special Measures Act, allows for video-recorded interviews to be given in evidence. In order for this to be done, however, it means that police officers would need to record the statements of victims and other witnesses electronically.

- Care and attention should be given that if interviews are recorded, all technical requirements are in place, and there are checks and balances to ensure the admissibility of the evidence taken.
- The rules of evidence will still apply to electronically recorded statements.
- Facilities and reliable equipment need to be in place at the Police station or other secure location to facilitate the recording of interviews.
- Electronic statement taking is highly recommended in the cases of children and vulnerable witnesses as this will minimise the need for them to repeat their account several times to several different persons and agencies, which re-traumatises and is a source of severe stress and discomfort to victims.

“ The rules of evidence will still apply to electronically recorded statements. ”

- Inter-Agency Protocols for the sharing of electronic interviews should be developed and implemented.
- The information should be shared only as needed and only to critical persons in the process, such as doctors and counsellors.
- Extreme care needs to be taken to ensure the confidentiality and security of the video recorded statements to protect the privacy and ensure the security of the victim, as well as the rights of the suspect or accused.

## CHECKS AND BALANCES

It should be noted that only technical person(s) should be present in the room when a child is giving their evidence by live link. Any attempts to assist or influence the child may result in the evidence being ruled inadmissible and the case being thrown out. Support persons can be nearby during this time but cannot interfere with the process.



# A Strengthened Monitoring Mechanism

## 12. A STRENGTHENED MONITORING MECHANISM

A National Consultation on Child Justice was held in 2001. Arising out of those Consultations, a National Plan of Action for Child Justice was prepared under the direction of a National Steering Committee. This Plan of Action has been updated by a Coordinating and Monitoring Committee. There should be continuous monitoring of the implementation of policies and procedures that seek to improve the care of children who interact with the State as well as the coordination among State agencies.

This monitoring should encompass both the monitoring and evaluation of the implementation of the Protocols and the work of the Multi-Agency partnership or Child Justice Council as well as the monitoring of facilities.

- State facilities should be monitored on a regular basis to ensure that minimum service standards are being observed and adhered to. There should be planned and unplanned visits.
- Standardised data collected among all agencies should be used for policy making and for improving the care of children.
- Monitoring mechanism should be in place at each Agency, to monitor the children, the success of interventions as well as the adherence to procedures and established standards.
- Follow up should be done to monitor the progress of children and progress reports prepared and placed on file
- Exit interviews should be done with the child.
- Reports should be done on children who run away from Homes and the reasons.
- A client feedback form should be utilised for both children and parents as well as for other referral agencies.
- Steps taken for the follow up on the care and service given to children should be routinely recorded and placed on file.
- Notes of meetings, findings, updates and major incidents or developments should be recorded on the child's file.
- There should be proper record keeping, files should be maintained in a neat, secure manner and kept highly confidential. However, files should be retrievable when required by authorised personnel.
- Performance appraisal mechanism for the handling of children should be implemented for staff who interact with children.
- Established and accepted child interaction best practices should form part of Performance Management Appraisal System (PMAS).

“ A monitoring mechanism should be in place at each agency, to monitor the children, the success of interventions as well as the adherence to procedures and established standards ”

## **Protocols for the Monitoring of Facilities**

- Places of Safety and Children's Homes are visited by the CPFSA on a scheduled basis as well as randomly
- Remand and Detention Facilities for children should be examined regularly
- Adequate and up-to-date records should be kept of the children in State facilities
- The OCA conducts investigations into cases of abuse, neglect or mistreatment of children taking place in Facilities

## **INDICATORS OF SUCCESSFUL INTER-AGENCY PARTNERSHIP**

- Faster turnaround time
- Reduction of the backlog of cases at all levels/service points
- Decrease in complaints against agencies
- Decrease in repeat offenders
- Statistics provided by agencies
- Safety of children in Facilities
- Educational achievement of children who come in contact with the State or are in State care
- Successful reintegration of wards
- Positive Reports



## CONTINUOUS TRAINING

This is essential to maintaining best practices, ensuring that new staff is oriented to the principles and protocols relating to children, and updating personnel with new and emerging information and trends.

### **Training areas**

- Human Rights
- Rights (and responsibilities) of the Child
- Dealing with children
- Dealing with CWDs
- Roles and responsibilities of the different institutions and agencies that interact with children
- Basic understanding of the court process
- Use of technology – Special measures
- Restorative Practices
- Inter-agency Referral Processes
- Use and handling of rape kits, samples, evidence and chain of custody
- Customer service
- Managing stress
- Alternative methods of discipline

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## APPENDIX

### **Ministries Departments & Agencies**

This Appendix outlines the various Ministries, Departments and Agencies which play a role in the interaction with children who come in contact with the State, sets out their role or mandate, mission, responsibilities and the procedures which are followed in the referral process among Agencies. A service map is also provided to guide practitioners on the inter-agency referral linkages. Some of the Departments or Agencies listed fall under a Ministry but their role is so significant in interacting with children that they have been outlined separately.

### **Ministry of Education Youth & Information**

The Ministry of Education's goal is to create a nation empowered by a dynamic system of care, education and training. They place emphasis on providing quality care and education in an innovative, inclusive and enabling environment thereby creating socially conscious and productive Jamaicans. Their focus as a Ministry is on Child and Youth Development, Child Care and Protection, Lifelong Learning, Governance and Accountability, Information and Communication, Quality Education and Training and Stakeholder Engagement. Their objectives summarily involve providing high quality education in a safe and secure environment for as many (children) youths as possible, increasing literacy rates, increasing parent involvement, provision of high quality teachers, equipment and resources for schools and the increased development of the school system.

National Education Inspectorate  
National Parenting Support Commission  
Child Protection and Family Services Agency  
Schools  
Teacher's Colleges

### **Social Services & Welfare**

Guidance Counsellors  
Social Workers

### **Safety and Security in Schools**

Deans of Discipline  
School Resource Officers

### **National Safe Schools Unit**

Assist in making the learning environment safe in schools

## **CHILD PROTECTION AND FAMILY SERVICES AGENCY (FORMERLY CDA)<sup>1</sup>**

### **Role**

The Child Protection and Family Services Agency is an Executive Agency under the portfolio of the MOEYI and was formed from the merging of the Child Development Agency and the Office of the Children's Registry, with the mission to be an extraordinary organisation providing quality services for children, family and team members. The agency's mandate is to provide care and protection to children (0-18 years) deemed in need of care and protection (especially those children who have been abused, abandoned neglected or experiencing behavioural challenges) by the courts and those who are awaiting the outcome of court proceedings. This entails investigation and assessment of children brought into care and the administration of programmes designed to provide a stable and nurturing living environment for the children.

The Agency delivers the following programmes and services:

1. Improving the outcomes for children in state care;
2. Supporting family-based childcare options: Adoption, Foster Care, Family Reintegration and Supervision Order;
3. Independent Living programmes;
4. The licensing and monitoring of Residential Child Care Facilities;
5. Investigating Child Abuse;
6. Child Participation Activities;
7. Data management and research activities.

### **Mission**

The Mission of the CPFSA is to provide care and protection beyond limits to the nation's children, through love, advocacy, education, rehabilitation and family support because they are committed to valuing the children, their families and the team members of the CPFSA.

Contact numbers to make a report:

Toll free: 888-PROTECT (776-8328)

Telephone: (876)908-2132, (876) 631-8933, (876) 754-9133

Mobile: (876) 822-7031 (LIME) or (876) 878-2882

### **National Parenting Support Commission**

This Commission seeks to support and assist Jamaican parents in developing the skills they need to raise and protect their children and encourage a collaborative effort between home and school that parents and teachers may cooperate intelligently in the education of children. The Commission exists to also advise the Minister on policy matters relating to parenting and family matters in Jamaica, including initiatives and actions to achieve the goals stated in the National Parenting Support Policy and to develop stronger and more sustainable partnerships between home and school as well as act as a coordinating agency to ensure the effective streamlining of all Government activities relating to

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<sup>1</sup> Includes Children's Homes and Places of Safety

parenting and parenting support.

### **HEART Trust/NTA (now under the portfolio of the Office of the Prime Minister Incorporated the Jamaica Foundation of Lifelong Learning**

The Human Employment and Resource Training Trust, National Training Agency (HEART) focuses primarily on stimulating economic growth and job creation through the creation of a highly-skilled, productive and competitive workforce. The HEART Trust/NTA operates 27 Technical and Vocational Education and Training locations which focus on providing a variety of training options to ALL Jamaicans seeking to advance their career options. Their goal is to facilitate and ensure the development of Human Capital. Ultimately their goal is to create an empowered Jamaican citizen contributing to family, community and nation-building through universal Human Resource Development.

### **Ministry of Health & Wellness**

The Ministry of Health (MOH) seeks to ensure the provision of quality health services and to promote healthy lifestyles and environmental practices. The Ministry, together with its Regional Health Authorities (RHAs), Agencies and related organisations make up the public health system and are responsible for health care delivery across the island. The MOH seeks to guarantee access to quality health care for every person in our population, at reasonable costs, which considers the needs of the vulnerable among us. It seeks to provide information and to educate the populace, to facilitate individuals taking responsibility for their own health, making informed decisions and adopting healthy lifestyle habits. All this, within a clean, healthy environment where families and communities actively participate and are integrated into the system of health.

There are four (4) Health regions across the island.

- South East Regional Health Authority
- North East Regional Health Authority
- Western Regional Health Authority

There are 18 public Hospitals island-wide and 6 specialist hospitals. Each region consists of hospitals and clinics. Clinical directives are given by the Ministry of Health.

There are over 330 Health clinics ranging from types 1-5. Not all clinics are able to see victims of offences, in particular sexual offences and it is important to know what services are offered and the type of clinics which can perform medical examinations.

Type 1: Maternal - antenatal and postnatal childcare services only

Type 2: May have a visiting Doctor

Type 3 – 5: Has a daily doctor and offers specialist services

### Agencies of the MOH

- National Family Planning Board
- National Council on Drug Abuse

### Councils of the MOH

- Medical Council of Jamaica
- Nursing Council of Jamaica

### Services

- Hospitals
- Clinics
- Child Guidance Clinics in each parish

## **Office of the Children’s Advocate**

### **Role**

The Office of the Children’s Advocate was established under the Child Care and Protection Act 2004 as a Commission of Parliament and does not fall under a Ministry.

The primary role of the Children’s Advocate is to protect and enforce the rights of children. To issue guidance on best practices in relation to any matter concerning the rights or best interests of children. Represents children in Court who come in conflict with the law or makes arrangements for legal representation, monitor court proceedings where children are victims and intervene in any court proceedings involving children. The OCA also reviews laws for effectiveness and adequacy, making recommendations for amendments or improvement. The office inspects places of safety and homes where children in State care are kept and investigates any agency or relevant authority that come in contact with children where there are breaches.

### **Mandate**

To protect and enforce the rights and best interests of children of Jamaica.

## **National Council on Drug Abuse (NCDA)**

The NCDA’s main aim is to provide quality, reliable information, to policymakers, international partners and the general public, about substance use and abuse in Jamaica - its nature, the extent, prevention, treatment, control and underlying problems that negatively impact on nation-building. Ultimately their aim is the elimination of the abuse of illicit substances in Jamaica and the reduction in

the demand, supply, use and abuse of illicit substances. They are dedicated to strengthening protective factors against substance abuse, in collaboration with diverse local and international organisations, through the implementation of treatment and prevention programmes.

Children that come before the Drug Court are placed in a Drug Treatment Programme.

## **Ministry of Justice**

The Ministry of Justice (MOJ) administers legislation, delivers justice services, and provides policy support and analysis on justice issues. It is mandated to ensure that Jamaica is a just and law-abiding society with an accessible, efficient and fair system of justice for all, promotes respect for rights and freedoms, the Rule of Law and the Constitution and promotes an awareness of individual responsibilities and civil obligations. This mandate is to be achieved through protecting the constitutional rights of citizens, maintaining the independence of the judiciary, and reinforcing confidence in Legal Institutions, carrying out law reform to effect greater social justice, providing means of redress when people are abused by organs of the state and carrying out legal directives ordered by the courts for the protection of society. In the short term the MoJ specifically seeks to focus on Justice Reform, Restorative Justice and Protecting Children, Youth and Vulnerable Groups.

Victim Services Division  
Restorative Justice Unit  
Child Diversion Programme  
Legal Aid Council  
Justices of the Peace

## **The Courts of Jamaica**

### **Role**

The overall function of the Court is to carry out justice, resolve disputes, protect the rights of individuals, ensure citizens have fair access to justice, facilitate restitution and generally to uphold the law.

### **Mandate**

To provide sound, timely judgments and efficient services

## **THE FAMILY COURT**

The Family Court is a specialized Court which was established to deal with all legal proceedings related to family life except divorce which is done in the Supreme Court. The Court handles matters of childcare and protection, custody, guardianship, adoption, domestic violence, protection orders, maintenance, property between spouses, cases dealing with children reported as uncontrollable and children who are charged with committing an offence.

## **Office of the Director of Public Prosecutions/Clerks of Court**

### **Role**

To prosecute criminal matters in a manner that is fair to all parties involved

### **Mandate**

To fulfil the Constitutional mandate of the office by providing the people of Jamaica with an independent, professional and effective prosecution service that operates with integrity, inspires public trust and confidence and safeguards the administration of justice throughout the island of Jamaica.

## **Victim Services Division**

### **Role**

The Victim Services Division (VSD) is a Division of the Ministry of Justice and provides assistance to persons against whom a crime has been committed. VSD assists victims by managing the emotional trauma associated with the crime. They also provide services that orient victims with the Court process and setting, advising them on what to expect when they attend Court. They provide therapeutic intervention to victims of crime and individuals who are traumatized.

### **Mandate**

To assist persons against whom offences have been committed and take steps to ensure they are not re-traumatized by the process.

### **Other Roles Carried Out by the VSD**

- Victim crisis counselling,
- Court services: orientation and accompany victims to Court
- Conduct an assessment of case and refer to other agency
- Sensitization
- Welfare
- Family support
- Mentoring (parent, children)

## **Ministry of National Security**

The Ministry of National Security (MNS) exists to contribute to the safety and security of Jamaica. The MNS seeks to facilitate the maintenance of law and order, protect Jamaica against internal and external threats, ensure the safety of Jamaica's borders, punish and rehabilitate offenders. The MNS ultimately seeks to, through the use of highly trained and motivated staff, sophisticated and flexible policy development capacity, effective and efficient deployment of resources, employ modern technology and

the best practices in crime-fighting to facilitate crime prevention and protect the nation from external threats.

The key entities under its portfolio are as follows:

- Jamaica Constabulary Force
- Jamaica Defence Force
- Passport, Immigration & Citizenship Agency
- The Department of Correctional Services
- Private Security Regulation Authority
- Firearm Licensing Authority
- Caribbean Regional Drug Law Enforcement Training Center
- Major Organised Crime and Anti-Corruption Agency
- Jamaica Combined Cadet Force
- Community Safety and Security Branch
- Crime Prevention and Community Division

## **Jamaica Constabulary Force – Police Stations**

### **DETENTION AND COURTS**

#### **Role**

To investigate and solve crime, maintain law and order. To facilitate crime reduction for national development.

#### **Mandate**

To serve, protect and reassure the people of Jamaica and visitors to the island.

### **CENTER FOR THE INVESTIGATION OF SEXUAL OFFENCES AND CHILD ABUSE (CISOCA)**

#### **Role**

To investigate all cases of sexual offences and child Abuse, bring perpetrators to justice and refer victims for counselling.

#### **Mandate**

To serve, protect and reassure the citizens of Jamaica. To educate the public on the role of the organisation

#### **Other functions carried out by CISOCA**

Secure medical attention, evidence collection and make appropriate referrals of children who have experienced sexual or other abuse

- secure medical attention and evidence
- follow-up of Court case, update victim and family
- referral to service partners
- Referral to VSD for initial counselling and support
- family support
- assure safety of victim
- community meetings
- timely submission of reports to and updates to OCR and other Agencies on outcome of investigation
- results from Forensic Lab made available between 2 – 4 weeks
- reassurance and counselling as appropriate, or referral to counselling as needed
- public awareness

### **Department of Correctional Services (DCS)-Remand Facilities**

Operates Juvenile Correctional and Remand Facilities  
Probation and Aftercare Officers

#### Services

Probation Orders  
Prepares Social Enquiry Report  
Provides Mediation services in the Courts

#### **Role**

Provides reintegration of clients in custodial and non-custodial care as well as motivate and support staff.

#### **Mandate**

To contribute to a better society by effectively securing and reforming offenders for successful re-integration.

### **COMMUNITY SAFETY AND SECURITY BRANCH**

Coordinate data collection under the Safe Schools' Programme

Incorporate Child Rights and Responsibilities as part of its wider public sensitization programmes to Parent Teacher Associations, student bodies and other community-based organisations.

#### **Role**

To conduct law enforcement service to the citizens of Jamaica. Foster community policing and positive interactions with citizens.

### **Mandate**

To serve, protect and reassure

## **Non-Governmental Organisations**

### **Addiction Treatment Services Unit on UWI Campus for residential drug treatment**

The Addiction Treatment Services Unit (ATSU), formerly known as the Detoxification Unit, is a section of the Department of Psychiatry at the UWI, that was officially opened on March 13, 1991. It is also an integral part of the National Council on Drug Abuse's integral demand reduction strategy, as well as, a partner in substance abuse treatment services offered in Jamaica. The treatment is voluntary and takes the form of a three (3) weeks residential programme which seeks to help clients balance internal resources with a strong social support system for ongoing recovery after discharge. The programme combines psychoeducational and psychotherapeutic group activities with individual and family counselling.

### **Dispute Resolution Foundation**

The Dispute Resolution Foundation is a private voluntary foundation established in July 1994 to encourage the use of Alternative Dispute Resolution techniques throughout Jamaica. Some of its objectives are to:

- Encourage and educate the public about using ADR techniques and community and restorative justice practices to promote peace and to resolve conflicts without resorting to violence;
- Establish Peace and Justice Centres (service centres) in communities throughout Jamaica; and
- Increase the mediation and arbitration services by the legal profession and courts as dispute resolution options.

### **Eve for Life**

Eve for Life was founded in 2008 in response to a dire need for support to women and children living with or affected by HIV and AIDS. The organisation runs various programmes including interventions that support the social and psychological development of children living with or affected by HIV and AIDS. This involves counselling the children and their guardians, supporting them through providing basic education and in life skills training that enable them to live meaningful lives. HIV care and counselling is also an important part of the support offered by the organisation.

## **Family Life Ministries**

Family Life Ministries is a non-denominational, Bible-based organisation with the purpose of developing and providing a range of ministries related to all aspects of family life. We are a non-profit, non-shareholding organisation which was established in 1982 out of the recognition that the deterioration of family life was an area in urgent need of redress. The organisation creates and conducts a wide range of programmes, each intended to promote the development of family life and interpersonal relationships, reaching out from our counselling centers into the public domain.

## **Fight for Peace**

Fight for Peace uses boxing and martial arts combined with education and personal development to realise the potential of young people in countries around the world. The organisation especially supports young people in communities affected by crime and violence by creating new opportunities for them and supporting them to make the most of existing opportunities. In 2015, Fight for Peace began running the Safer Communities Programme (SCP) in Kingston, Jamaica. The SCP uses collective impact methodology to integrate multiple services and actors in urban violence hotspots where capacity and resources are scarce. Via a local team based in Kingston, the organisation acts as a backbone working alongside local stakeholders to collaborate on youth violence reduction programming. The programme brings together a network of community-based organisations and multi-sector stakeholders to collaborate in key hot spot communities.

## **Men of God against Violence and Abuse**

Men of God Against Violence and Abuse (MoGAVA) is a faith-based organisation that exists primarily to mobilise men/fathers to play their roles in society. Since its formation, MoGAVA has been steering projects such as Fathering Behind Bars and School Fathers, as the organisation seeks to infiltrate communities, schools, youth clubs, prisons, children's homes, churches, and other institutions spreading their message of non-violence. Through advocacy, outreach, media representation, workshops, conferences, mentorship programmes, and networking, the organisation continues to spread its message undergirded by biblical principles.

## **Reaching Individuals through Skills and Education Life Management Services**

Reaching Individuals through Skills and Education (RISE) Life Management Services is a Jamaican civil society organisation established in 1989 as Addiction Alert, offering the island's first outpatient treatment centre for addictive disorder. However, over the years the direction and focus of its programmes were reviewed and adjusted to meet the current needs of the at-risk youth population in Jamaica, particularly those living in inner-city communities. The mission of the organisation is to provide capacity building for other civil society organisations, community-based interventions, life skills training, and support services for the workplace and persons with addictive disorders.

## **Role**

To provide capacity building for civic society organisations, community-based interventions, life skills training and support services for these organisations. Provide assistance and facilitate treatment of persons with addictive disorders.

**Mandate**

To provide effective community violence prevention interventions to at-risk and vulnerable populations

**Richmond Fellowship Jamaica (Patricia house)**

The Government of Jamaica, in partnership with Richmond Fellowship International and the European Union, established a 24-bed residential facility in 1988. The doors were opened on April 17, 1991 and the facility admitted five clients on April 19, 1991. The Richmond Fellowship Jamaica-Patricia House therapeutic community model is designed to focus on the biological, psychological, and social factors that contribute to addiction and the utilisation of these factors in creating order in the life of the client. One of the primary goals of the service is to identify and promote good practices that contribute to the development of demand reduction strategies reducing vulnerability and harm related to drugs.

**Teen Challenge**

Teen Challenge Jamaica is a one-year residential, faith-based (Christian) rehabilitation programme. The mission of the programme is to evangelize people with life-controlling problems and initiate the discipleship process to the point where the student can function as a Christian in society, applying spiritually motivated biblical principles to relationships in the family, local church, chosen vocation, and the community Teen Challenge endeavors to help people become mentally sound, emotionally balanced, socially adjusted, physically well and spiritually.

**Women’s Centre of Jamaica Foundation**

**Role**

To provide continuing education for adolescent mothers during pregnancy and reintegrate them into the formal school system afterward. This is supported by a strong counselling component.

**Mandate**

Initiating new approaches to problems associated with teen pregnancy.

## NOTES

- <sup>i</sup>The Jamaican Justice Sector Task Force Report, 2007 Ministry of Justice
- <sup>ii</sup>Jamaica Justice System Reform Policy Agenda Framework, Dennis Darby, Ministry of Justice 2009
- <sup>iii</sup> now incorporated into the CPFSA
- <sup>iv</sup> formerly the Rape Unit of the JCF
- <sup>v</sup> scope expanded to child justice
- <sup>vi</sup> In accordance with Jamaica's National Youth Policy (2005), youth are recognised to be persons age 15-24 years. But, references to youth within the Protocols speak to persons 18-24 years who are not children. The age of 18 marks the point when the individual is no longer a child and the outer limit of 24 is consistent with the National Youth Policy.
- <sup>vii</sup> In this regard, and for sustainability purposes, monitoring and evaluation of the Protocol will be essential
- <sup>viii</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Jamaica
- <sup>ix</sup> 2016 Human Rights Committee, Concluding observations on the fourth periodic report of Jamaica, CCPR/C/JAM/CO/4, para. 46, available at <https://www.ohchr.org/EN/Countries/LACRegion/Pages/JMIndex.aspx>
- <sup>x</sup> See for example [https://www.unodc.org/pdf/research/Cr\\_and\\_Vio\\_Car\\_E.pdf](https://www.unodc.org/pdf/research/Cr_and_Vio_Car_E.pdf)
- <sup>xi</sup> See [https://jis.gov.jm/media/2018/10/STATEMENT-TO-PARLIAMENT-ON-PARISH-COURT-STATISTICAL-REPORT-2018\\_1.pdf](https://jis.gov.jm/media/2018/10/STATEMENT-TO-PARLIAMENT-ON-PARISH-COURT-STATISTICAL-REPORT-2018_1.pdf)
- <sup>xii</sup> 2003 Keating Report on Review of Children's Homes and Places of Safety
- <sup>xiii</sup> Armadale Report
- <sup>xiv</sup> See <http://jamaica-gleaner.com/gleaner/20100307/lead/lead3.html>
- <sup>xv</sup> Ibid
- <sup>4</sup> Promoting Child's Rights through Research Violence against children in the Caribbean. Julie Meeks Gardner, Aldrie Henry-Lee, Pauletta Chevannes, Joan Thomas, SALISES, UWI Mona, Jamaica 2008, p.4
- <sup>5</sup> Bandura 1983, 2001; Mischel 1973, 1999; Mischel & Shoda 1995
- <sup>xviii</sup> Ibid
- <sup>7</sup> Explore your mind March 17, 2018 Explore your mind.com/ violence learned-unlearned
- <sup>11</sup> Eudine Bariteau 1998, p.188
- <sup>12</sup> 2016 Women's Health Survey in Jamaica
- <sup>13</sup> 2017 Study of women's safety and security in 13 volatile communities, Violence Prevention Alliance (VPA)
- <sup>xxiii</sup> Final Report: Gender Barriers to Justice, Multimedia communications: Dr. Imani Tafari-Ama & Ms. Shirley Campbell April 2011
- <sup>xxiv</sup> ibid
- <sup>xxv</sup> Promoting Child's Rights through Research Violence against children in the Caribbean. Julie Meeks Gardner, Aldrie Henry-Lee, Pauletta Chevannes, Joan Thomas, SALISES, UWI Mona, Jamaica 2008
- <sup>xxvi</sup> See <https://www.ncjrs.gov/pdffiles1/nij/249940.pdf>.
- <sup>xxvii</sup> See for example the work of Professor Samms-Vaughan et al. <https://pubmed.ncbi.nlm.nih.gov/15892384/>

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- <sup>xxviii</sup> Promoting Child's Rights through Research Violence against children in the Caribbean. Julie Meeks Gardner, Aldrie Henry-Lee, Pauletta Chevannes, Joan Thomas, SALISES, UWI Mona, Jamaica 2008
- <sup>xxix</sup> Definitions taken from UN Women Training Centre's Gender Equality Glossary
- <sup>xxx</sup> UNESCO, 2003
- <sup>xxxi</sup> United Nations Convention on the Rights of the Child
- <sup>xxxii</sup> United Nations Convention on the Rights of the Child, Article 40
- <sup>xxxiii</sup> Child Justice Guidelines, Office of the Children's Advocate, UNICEF 2013, p.49,51
- <sup>xxxiv</sup> Innocenti Working Paper, Psychological Support for Children: Protecting the Rights of Child Victims and Witnesses in Transitional Justice Processes. Innocenti Research Centre, An Michels, IWP 2010-14, UNICEF June, 2009
- <sup>xxxv</sup> Ibid
- <sup>xxxvi</sup> UNCRC, Article 37
- <sup>xxxvii</sup> Child Justice Guidelines, Office of the Children's Advocate, UNICEF 2013 p.50
- <sup>xxxviii</sup> Improved Access to Justice in the Caribbean (IMPACT JUSTICE) PROTOCOL SERIES: Working with Children in the Eastern Caribbean Justice System Protocols for Staff at Detention Centres: International Standards and Best Practices 2018
- <sup>xxxix</sup> IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas
- <sup>xl</sup> IACHR, Report N° 41/99, Case 11.491 (Honduras), Admissibility and Merits, Minors in Detention, 10 March 1999, paras. 125 and 126
- <sup>xli</sup> Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 86.
- <sup>xlii</sup> I/A Court H.R., Case of Neira Alegría et al. v. Peru, Merits. Judgment of January 19, 1995, Series C No. 20, para. 60
- <sup>xliii</sup> Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 89
- <sup>xliv</sup> IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, document approved by the Commission at its 131st regular session, held March 3 to 14, 2008, Principle X; I/A Court H.R. Case of the Juvenile Re-education Institute v. Paraguay, Preliminary Objections, Merits, Reparations, Costs. Judgment of September 2, 2004, Series C No. 112, para. 161; I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 84