

SITUATION **ANALYSIS** of

JUSTICE for Children IN BARBADOS



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Situation Analysis
of Justice for Children
in Barbados

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ACRONYMS AND ABBREVIATIONS

Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
CRC	Convention on the Rights of the Child
CXC	Caribbean Examination Council
GIS	Government industrial School
ICCPR	International Covenant on Civil and Political Rights
JDLs	United Nations Rules for the Protection of Juveniles Deprived of their Liberty
JLS	Juvenile Liaison Scheme
NGO	non-governmental organization
OECS	Organisation of Eastern Caribbean States
Riyadh Guidelines	United Nations Guidelines for the Prevention of Juvenile Delinquency
SBH	Serious Bodily Harm
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

In recent years, the issue of children in conflict with the law has become an increasing concern in the Caribbean region, and significant reform initiatives are underway in most countries. There is an ongoing attempt to ensure that such children are treated in a manner substantially different to adults at all stages of the proceedings. The low age of criminal responsibility in most Caribbean countries remains a serious cause for concern, however, as does the absence in some countries of juvenile justice protections for children between the ages of 16–18 or children who have committed serious crimes and are confined in facilities with adult offenders.

This Situation Analysis of Juvenile Justice in Barbados was grounded in the firm acknowledgment that the country must confront the shortcomings of its own national response to juvenile justice. It is informed by the clearly understood need for well-considered reform of the system and the resulting call for a fresh approach to the way in which juvenile matters are addressed. A more restorative approach, with greater emphasis on rehabilitation and reintegration, is required.

KEY FINDINGS

Key findings of the Situation Analysis are divided into the following thematic areas:

1) The international standards established for juvenile justice

The main child-focused norms that regulate the field of juvenile justice are contained in the following instruments:

United Nations Convention on the Rights of the Child 1989 (CRC), which by the end of 1997 had been ratified¹ by all countries except Somalia and the United States

United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (JDLs)

United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines)

Application of these international standards to Barbados's national response to children in conflict with the law has implications for almost every stage of the justice system, from arrest procedures to sentencing and reintegration into communities.

¹ Ratification is the legal act whereby a country that has signed a convention agrees to be bound by its provisions.

2) The need for reform of national legislative frameworks

A major overhaul of the laws that govern the administration of juvenile justice is long overdue and ought to be given some priority. There are several troubling aspects of the law, some relating to the Juvenile Offenders Act and others that are more relevant to the Reformatory and Industrial Schools Act. Some of the deficiencies are general and reflect the overall archaic nature of the legislation, whereas others are more specific and are rooted in specific provisions that are contrary to international standards and the best interests of the children of Barbados.

• Deficiencies under the Juvenile Offenders Act:

- ◆ Out-dated (1932), which is reflected in the language used and lack of incorporation of more modern principles grounded in the articles of the CRC
- ◆ Narrowly defines a child as a person under the age of 14
- ◆ Creates different categories of children: those under 14 and those aged 14–16
- ◆ Does not extend to children aged 16–18
- ◆ Establishes 11 years as the age of criminal responsibility, which is below the regionally accepted age of 12
- ◆ Is silent on the notion of diversion and restorative justice²
- ◆ Does not sufficiently enshrine the child's right to participation in the proceedings
- ◆ Has limited sentencing options
- ◆ Includes inappropriate sentencing options, including whipping
- ◆ Is inherently discriminatory against boys by exempting girls from whipping
- ◆ Does not expressly address the issue of expungement of records
- ◆ Prohibits publication of identifying information but permits the presence of the media in the courtroom

• Deficiencies under the Reformatory and Industrial Schools Act:

- ◆ Out-dated (1926), which is again reflected in the language used
- ◆ Has a strong punishment orientation as opposed to a treatment and rehabilitation philosophy
- ◆ Incorporates children in need of care and protection under a legislative scheme that is otherwise very punishment oriented
- ◆ Allows whipping of boys who do not conform to the institution's rules
- ◆ Encourages the 'criminalization' and stigmatization of conduct that is more appropriately handled within a child protection legislative framework (children found wandering, begging, destitute, etc.)
- ◆ Creates a very discriminatory and harmful mandatory sentencing provision of a minimum of three and a maximum of five years.

• **The Child Protection legislation** was also found to be unsatisfactory given its failure to provide for a comprehensive and sufficiently specialized legal response to

² *Diversion* in this context means that cases are 'diverted' out of the criminal justice system and dealt with in other ways (e.g., a treatment programme for drug offences).

children in need of care and protection. The current fragmentation of the law was also identified as a major challenge.

3) Data collection on juvenile crime trends and related issues

The collection of social data in the region is challenging, and the findings demonstrated that this is the case in Barbados. Comparatively few disaggregated data were readily available in the juvenile justice sector. This is a major problem, given the implications for policy-making, law re-form and even budgeting issues.

Despite the challenges, revealing data were collected on the following areas:

- ▶ Perceptions of juvenile crime
- ▶ Diversion referrals
- ▶ Arrest rates
- ▶ Information relating to remand/ pre-trial detention
- ▶ Information relating to post-trial committal/ detention

Some key trends identified were:

- ◆ Referrals for diversion are primarily to the Juvenile Liaison Scheme run by the Royal Barbados Police Force. Most of the referrals are from schools and parents for behavioural problems as opposed to referrals from the police of young people who have been charged with offences.
- ◆ Juvenile arrests (persons age 12–18 years) over the three-year period 2011–2013 were 386 (316 males, 70 females). Males represent the majority of arrests for each year: 85.3 per cent, 84.6 per cent and 78.6 per cent for 2011, 2012 and 2013, respectively.
- ◆ The most common offence among males was assault (17.1 per cent), which was also the most common for each year. The most common offence overall among females was also assault (24.3 per cent); however, wounding (35.7 per cent) was most common in 2011, assault (43.8 per cent) in 2012 and causing a disturbance (25 per cent) and wandering (25 per cent) in 2013.
- ◆ During the five-year period of 2009–2013, there were 602 remands (435 males, 167 females). The number among males is higher than females for all five years, with male remands doubling those among females (67.9 per cent males, 32.1 per cent females) in 2013.
- ◆ The offences for which children were remanded into custodial care at the Government Industrial School (GIS) ranged from assault, breach of probation, burglary, causing a disturbance, possession of a controlled substance (cannabis), possession of an offensive weapon, serious bodily harm, theft and wandering. The most common offence overall was wandering at 23.4 per cent (36.4 per cent male, 63.6 per cent female). Wandering was the most common offence among females (53.3 per cent) and theft was the most common among males (18.3 per cent).

- ◆ In 2013, 21 children (12 males, 9 females) were sentenced to custodial care. Their average age was 14.3 years (14.3 males, 14.2 females), which is similar to that seen throughout the previous 10-year period.
- ◆ Of the 88 children committed over a five-year period (2009–2013), 26 (15 males, 11 females) or 29.6 per cent were from the Child Care Board/ children’s homes.
- ◆ Currently there are four persons under the age of 16 in prison. This represents less than 1 per cent of the prison population. However, this figure does NOT include those children who are between the ages of 16–18, which accounts for a higher number of children.
- ◆ The sentences imposed range from one to five years and also include until age 16 or 18. During the period 2004–2013, three-year sentences were issued the most, with 141 children (90 males, 51 females) sentenced to three years, which represents 74.6 per cent of the sentences.

4) A gap analysis based on the internationally established standards

This part of the report assessed the progress made by Barbados in meeting the internationally established standards for juvenile justice. National juvenile justice systems, procedures and practices were reviewed against the key requirements of the CRC and the UN guidelines on juvenile justice.

Although several gaps within the system were identified, the weaknesses are best treated on a more thematic basis under the following three broad headings.

- I. Insufficient emphasis on rehabilitation versus punishment
- II. Systemic challenges within the legal setting
- III. Service and programmatic limitations

• Insufficient emphasis on rehabilitation versus punishment

The research found that the system in Barbados insufficiently ensures that rehabilitation is the core principle informing the administration of juvenile justice. This was manifested in several ways, including:

- i. The lack of emphasis on diversion of cases and the inherent shortcomings with the existing national diversion scheme
- ii. Inappropriate remand practices that result in the unnecessary detention of children
- iii. Inappropriate and discriminatory sentencing practices. Of particular note is an unfortunate interpretation of the law that has resulted in sentences of a minimum of three years and a maximum of five years. This practice has been applied to all cases involving juveniles, including status offences such as wandering. Children who are clearly in need of care and protection are being sentenced on the three-to-five year principle.
- iv. Insufficient access to family and community, with children who are detained

having limited access to their families through structured visits to the facility and rarely allowed into the general community

v. Placement of children in the adult prison: At the time of the review, there were 17 children aged 18 years of age or less at the adult prison and, contrary to the law, young persons under the age of 16 were not segregated from adult prisoners.

• Systemic challenges within the legal setting

The research revealed some issues of a more systemic nature within the justice system that compromise children's rights and, by extension, do not comply with international standards. In this regard, there were four main areas of concern:

i. Delay: There was a finding of systemic delay in the administration of justice, which had a negative impact on juveniles.

ii. Lack of child participation: The research painted a picture of children who were deemed part of a process because they had been charged with an offence but were not viewed by key stakeholders as active participants in a process where their views mattered.

iii. Lack of specialized courts and training: The court structure does not yet include a family court and so juvenile matters are handled in magistrate's courts across the country, with no attempt at bringing any specialized orientation to the handling of juvenile cases.

iv. Lack of legal representation: Most of the children who are detained and/or convicted for criminal offences were not represented by legal counsel. Over the almost two-year period of January 2013 to November 2014, a total of eight juveniles aged 12–16 had sought legal aid representation. There is also no duty counsel system to afford legal representation to juveniles.

• Service and programmatic limitations

The review of the national context in which the juvenile justice system operates underscores that current service and programme delivery is inadequate and uncoordinated. Agencies are striving to perform their mandate with limited resources, including a lack of both infrastructural and human resource capacity to deliver effective services. All the key stakeholders lamented that they were attempting to work with young people in conflict with law with limited re-sources, which were dwindling as opposed to growing.

Areas of particular concern were:

- i. Educational and vocational programming
- ii. Psychosocial services and programming
- iii. Probation services
- iv. Child protection services

The research was designed to provide an evidence-based platform on which the reform agenda can be built, taking into account a candid assessment of any legislative, policy and programmatic deficiencies. The findings pave the way for the reform process that is critical to achieving a modern and effective national juvenile justice system.

1. INTRODUCTION



1.1 PROJECT SUMMARY

In recent years, the issue of children in conflict with the law has become an increasing concern for countries in the Caribbean, and significant reform initiatives are underway in most countries in the region. While all countries have some differentiated procedures for such children, there is an ongoing attempt to ensure that they are treated in a manner substantially different to adults at all stages of the proceedings. The low age of criminal responsibility in most countries in the region remains a serious cause for concern, as does the absence, in some countries, of juvenile justice protections for children between the ages of 16–18 and/or children who have committed serious crimes and are confined in facilities with adult offenders.

In most territories, some progress has been made toward enhancing the juvenile justice responses by introducing specialized juvenile police units or procedures for the arrest of children, as well as some form of differentiated court proceedings. However, there is widespread acknowledgment that these are small steps in the long journey to bring systems into compliance with internationally established standards.

This Situation Analysis of Juvenile Justice in Barbados is grounded in the firm acknowledgment that the country must confront the shortcomings of its own national response to juvenile justice. It is informed by the indisputable need for well-considered reform of the system and the resulting call for a fresh approach to the way in which juvenile matters are addressed. A more restorative approach, with greater emphasis on rehabilitation and reintegration, is required.

As suggested in the Terms of Reference for the project,³ the diverse and complex needs of children who come into contact with the law and the associated challenges they encounter are compounded by their psychosocial immaturity. A range of factors including age, sex, race and socio-economic background should be considered in responding to this population and their interactions with the justice sector. Effective public policy, laws and intervention strategies to prevent and reduce offending require a solid evidence base. Knowledge of the types and nature of offences committed, and the characteristics of children in the system, will contribute to a greater understanding of the nature and extent of the problem and to the development of pro-programmes to effectively prevent and intervene. Likewise, analysis of the gaps between current processes and international best practice will help to show what is lacking in the juvenile justice system in Barbados.

The project is therefore designed to provide the evidence-based platform on which the reform agenda will be built, taking into account a candid assessment of the legislative, policy and programmatic deficiencies that will have to be remedied to achieve the modern and effective justice system that children deserve in their journey toward being well-adjusted and productive adult members of Barbadian society.

³ UNICEF Office for the Eastern Caribbean Area Terms of Reference for the Preparation of a Situation Analysis of Juvenile Justice (August 2014)

1.2 PROJECT BACKGROUND

The juvenile justice system in Barbados, similar to many of those in the Caribbean, is regarded as weak and unable to significantly benefit children in conflict with the law. It has been de-scribed as not working in the interests of either the individual children or the society from which they come and to which they will return. A recent report highlighted many of the more challenging deficiencies in that regard, including poor assessment and management of the special needs of juveniles; a lack of after-care services such as counselling and rehabilitation; limited diversion programmes to provide educational opportunities; the use of corporal punishment as an integral part of the system; the lack of coordination between existing services; and antiquated legal frameworks.⁴ These systemic weaknesses in the State's mandate to provide an effective and child-centred juvenile justice system run contrary to the many global commitments that the Barbados Government has ratified in demonstration of its intent to be guided by international standards in the administration of juvenile justice.

It is noteworthy that Barbados is a State party to the United Nations Convention on the Rights of the Child (CRC), which was ratified on 9 October 1990. The convention forbids torture, capital punishment and life imprisonment without the possibility of release for all persons under 18 years old. It also calls for limited use of detention and only as a measure of last resort – when all other alternative solutions do not seem possible or adequate. In those cases when it is required, it should only be administered for the shortest period possible. Barbados has also embraced the principles of the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), which require progressive delinquency prevention policies. The CRC and other international treaties and guidelines require that the system include efforts to address the root causes of offending behaviour and implement both preventative and integrative measures through which children can play a constructive role in society.

Against this backdrop of obvious gaps and deficiencies in the State's juvenile justice regime, together with a stated intention to be guided by the international human and child right's agenda, the Government approved the appointment of a legal consultant (under the former Ministry of Family and present Ministry of Social Care) to identify and propose remedies for reform of children, women and family law. The need for this proactive step was underscored by a recent study highlighting that the administration of juvenile justice in Barbados is still regulated by the out-dated Juvenile Offenders Act, enacted in 1932, and the Reformatory and Industrial Schools legislation – which regulates custodial care of juveniles – enacted in 1926.⁵ These antiquated pieces of legislation clearly do not reflect or promote the sought-after objectives of the international instruments that Barbados has committed itself to achieving.

The United Nations Children's Fund (UNICEF) Caribbean Office is supporting the Government through the commissioning of this Situation Analysis of Juvenile Justice. The analysis is expected to be a major contributing factor to the enhancement of Barbados's systemic responses to children who come into conflict with the law by providing the foundation on which legal, policy and programmatic reform can be developed.

⁴ Stern 2008.

⁵ Marshall–Harris 2013.

1.3 PROJECT SCOPE AND OBJECTIVES

As identified in the Terms of Reference, the overall project is comprised of two main components:

- i. An assessment of juvenile crime trends and related issues in Barbados
- ii. An analysis of the current juvenile justice system in relation to international best practice

The purpose of the consultancy was to provide the Government with an evidence base that contributes to national planning and reform processes in the juvenile justice sector through a situation analysis that provides an assessment of legislative deficiencies and a vision of a new model of restorative justice.

1.4 METHODOLOGY

The research approach was both quantitative and qualitative, involving a series of stakeholder interviews, an extensive legislative and literature review and some limited use of focus group sessions to solicit collective feedback across multi-disciplinary groupings of stakeholders and service providers.

The quantitative analysis involved an empirical review of data from a number of sources including juvenile facilities, the prison, probation and the Royal Barbados Police Force. This review was geared primarily at identifying trends and patterns of juvenile offending, but it also explored other important dimensions of the national juvenile justice system.

The review of legislative covered both criminal and civil statutes, with a focus on legislative frameworks and provisions that directly impact the delivery of justice services for children who have come into conflict with the law. There was a deliberate attempt to examine the intersections of the criminal law relevant to juveniles who commit crimes and the civil law addressing children who are in need of care and protection.

The literature review involved a probing analysis of all documentation relevant to the area of study, including training documents; national reports, policy manuals and background reports. Whenever appropriate and accessible, statistical records were also referenced.

The interviewing process, both independent policy and practice interviews as well as focus group discussions, was an integral feature of the research methodology. Special effort was made to solicit the views and general contributions of young people who were directly affected by the inadequacies of the current national juvenile justice system, ensuring that their critical personal reflections on the system were captured. An interviewing format was devised for each group, and questions were formulated based on the identified areas of inquiry. There was a preliminary interviewing phase followed by more in-depth interviews.

Site visits were made to government ministries, correction facilities, non-governmental organizations (NGOs) and other entities that provide services to young people who are involved with the criminal justice system or are otherwise vulnerable because of perceived delinquent behaviour. In this regard, police stations, courthouses, juvenile and correctional facilities and social service departments were all visited by the consultant.

The coordination of the visit to Barbados was facilitated by the Ministry of Home Affairs, in partnership with the consultant and her research team. The Ministry played a pivotal role in the scheduling of interviews and the overall logistical management of the consultant's country re-search.

Two suitably qualified research assistants were identified and retained to assist with the consultancy. The assistance of persons resident in Barbados was a deliberate strategy to promote on-going access to stakeholders and the primary sources of information. The participation of locally based research assistance also facilitated the sourcing of additional expertise in the areas of social work and epidemiology. The epidemiological experience was particularly helpful given the need for specialized knowledge in data collection and quantitative analysis.

2

2. JUVENILE JUSTICE: THE INTERNATIONAL STANDARDS

2.1 INTERNATIONAL LEGAL FRAMEWORKS

The violation of children's rights in the area of juvenile justice is a growing concern. Policy and practice relating to juvenile justice are among those areas most frequently criticized by the Committee on the Rights of the Child, the body responsible for monitoring the implementation of the United Nations Convention on the Rights of the Child (CRC).⁶ Noncompliance with the relevant provisions of the CRC occurs despite the existence of long-standing international rules governing the implementation of justice for children.

Relevant international norms have existed for several decades. The 1955 Standard Minimum Rules for the Treatment of Prisoners, themselves inspired by standards endorsed by the League of Nations in 1934, already set out the principle of separation of 'young prisoners' from adults in custodial facilities. The 1966 International Covenant on Civil and Political Rights (ICCPR) reiterates these same principles and goes on to prohibit the death penalty for persons found guilty of a crime committed when they were under the age of 18 (article 6.5). The ICCPR also contains many safeguards applicable to all persons brought to trial and detained, and specifically states that "in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation" (article 14.4).

The main child-focused norms currently regulating the field of juvenile justice are contained in the following instruments:

- I. United Nations Convention on the Rights of the Child 1989 (CRC), which by the end of 1997 had been ratified by all countries except Somalia and the United States
- II. United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)
- III. United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (JDLs)
- IV. United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines)

The last three instruments do not have the same status as the CRC because they are not treaties that States ratify and by which they consent to be bound. Rather, they are internationally accepted minimum standards to which States should have regard when setting up or amending their existing juvenile justice system. Setting policies and drafting legislation that incorporates the minimum standards will assist States to comply with the obligations imposed on them by the CRC.

⁶ *Innocenti Centre* 1998.

Barbados is a member of the UN General Assembly and ratified the CRC in 1990. In so doing, it has committed to ensuring that it will bring its national laws, policies and overall juvenile justice system into conformity with the international frameworks mentioned above. Continued failure to do so not only demonstrates flagrant disregard for the legal obligations to which Barbados has committed itself but also undermines the State's moral obligation to ensure the safety and best interests of its children.

2.1.1. The United Nations Convention on the Rights of the Child (CRC)

The CRC is the primary instrument guiding the development of juvenile justice and is seen as the overarching framework for a child rights approach. It contains an elaborate set of guidelines for maintaining human rights standards in juvenile justice systems and for the administration of juvenile justice itself. The CRC also defines 'a child' as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (article 1).

In article 40, the CRC establishes the core guiding principle for the treatment of children in conflict with the law:

"State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect or the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

To this end, States parties are required to establish laws, procedures, authorities and institutions specifically applicable to children.

To ensure a common approach to the spectrum areas addressed by the convention, the Committee on the Rights of the Child has identified four general principles that are a guiding reference for its implementation:

- ◆ Best interest
- ◆ Non-discrimination
- ◆ Child participation
- ◆ Right to survival and development

These principles and the articles associated with them are relevant to juvenile justice in the sense that respect for rights – such as the right to education, to protection against abuse and exploitation, to adequate information, to an adequate standard of living and to appropriate moral guidance – helps keep children from becoming involved in crime. It leads to the conclusion that any meaningful attempt to prevent juvenile crime must involve promoting and protecting all rights for children.

However, the most relevant provisions of the Convention that deal more directly with the administration of juvenile justice are included in articles 37, 39 and 40.⁷

⁷ Discussion of the all the international instruments is taken from United Nations Children's Fund and Penal Reform International 2006.

Article 37 prohibits torture, cruel, inhuman, degrading treatment or punishment, capital punishment and life imprisonment without possibility of release and protects children deprived of their liberty. Arrest and detention shall only be used as a measure of last resort and for the shortest appropriate period of time. Children deprived of their liberty have the right to be treated with humanity, respect and dignity in a manner that takes into account their age, to be separated from adults, to maintain family contact, to have prompt access to legal and other assistance, to challenge the legality of their detention and to expect a prompt decision in relation to any resulting action. In contrast with article 40, article 37 is not limited to children accused or convicted of an offence.

Article 39 recognizes the right to rehabilitation and social reintegration of child victims of neglect, exploitation and abuse.

Article 40 specifically covers the rights of all children accused of infringing the penal law. Thus, it covers treatment of the child from the moment an allegation is made, through investigation, arrest, charge, the pretrial period, trial and sentence. It details a list of minimum guarantees for the child ('due process rights'). It requires States to promote a distinctive system of juvenile justice with specific positive rather than punitive aims and to set a minimum age of criminal responsibility. In addition, it provides measures for dealing with children in conflict with the law without resorting to judicial proceedings as well as alternative dispositions to alternative care.

2.1.2 United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)

The Beijing Rules, adopted in 1985 and reflected in article 40 of the CRC, provide guidance to States on protecting children's rights and respecting their needs when developing separate and specialized systems of juvenile justice. The rules encourage:

- ◆ The use of diversion from formal hearings to appropriate community programmes
- ◆ Proceedings before any authority to be conducted in the best interests of the child
- ◆ Specialized training for all personnel dealing with juvenile cases
- ◆ The use of deprivation of liberty as a measure of last resort and for the shortest possible period of time
- ◆ The organization and promotion of research as a basis for effective planning and policy formation

According to the Beijing Rules, a juvenile justice system should be fair and humane, emphasize the well-being of the child and ensure that the reaction of the authorities is proportionate to the circumstances of the offender as well as the offence. The importance of rehabilitation is also stressed, requiring the child to be given necessary assistance in the form of education, employment or accommodation and calling on volunteers, voluntary organizations, local institutions and other community resources to assist in this process.

2.1.3. United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (JDLs)

The principles of the JDLs, concerned with the treatment of juveniles in detention, have been incorporated into the CRC. The JDLs set out standards applicable when a child (any person under the age of 18) is confined to any institution or facility (whether penal, correctional, educational or protective and whether the child is convicted or suspected of having committed an offence or is deemed 'at risk'). In addition, they include principles that define the specific circumstances under which children can be deprived of their liberty, emphasizing that this must be a last resort measure, for the shortest possible period of time and limited to exceptional cases.

Where deprivation of liberty is unavoidable, the following conditions should be fulfilled:

- ◆ Priority should be given to a speedy trial to avoid unnecessarily lengthy detention periods.
- ◆ Children should not be detained without a valid commitment order.
- ◆ Small, open facilities should be established with minimal security measures.
- ◆ Deprivation of liberty should only be in facilities that guarantee meaningful activities and programmes promoting the health, self-respect and responsibility of juveniles.
- ◆ Food should be suitably prepared, clean drinking water must be available, bedding should be clean and sanitary installations sufficient, clothing should be suitable for the climate, and preventive and remedial medical care should be adequate.
- ◆ Detention facilities should be decentralized to facilitate contact with family members, and children should be permitted to leave the facilities for visits to their family homes.
- ◆ Education should take place in the community and children should have the opportunity to work within the community.
- ◆ Juvenile justice personnel should receive appropriate training, should respect the child's right to privacy and should protect children from any form of abuse or exploitation.
- ◆ Qualified independent inspectors should conduct regular inspections

2.1.4 United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines)

The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social reintegration, detailing social and economic strategies that involve the family, school and community, the media, social policy, legislation and juvenile justice administration. Prevention is seen not only as a matter of tackling negative situations but also as a means of positively promoting general welfare and well-being in partnership with society and community-based programmes.

The Guidelines are based on the assumption that the "prevention of juvenile delinquency is an essential part of crime prevention in society". They thus have a child-centred orientation and favour preventative programmes that focus on the well-being of children and their development. More particularly, countries are recommended to develop

community-based interventions to help prevent children coming into conflict with the law, and to recognize that ‘formal agencies of social control’ should be utilized only as a means of last resort.

The Guidelines also call for the decriminalization of status offences and recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited and abused.

2.2 APPLICATION OF THE STANDARDS: THE IMPLICATIONS FOR REFORM

It is important to note that none of the international instruments sets out exactly how a system should operate, nor do they provide draft legal provisions. Instead, together with the general comments of treaty bodies, they provide a framework for developing a rights-based juvenile justice system. Assistance on interpreting the CRC and the standards and norms has, however, been provided by the Committee on the Rights of the Child in General Comment No. 10.⁸ It states that a juvenile justice system encompasses legislation, norms, standards, guidelines, policies, procedures, mechanisms, provisions, institutions and bodies specifically applicable to children in conflict with the law who are over the age of criminal responsibility. Reform of the juvenile justice system in Barbados must therefore be guided by these standards, mindful of the fact that there are many clearly established guidelines that ought to be applied to every aspect of the system, whether it relates to legislative, policy or programmatic reform.

By nature, a juvenile justice system is complex, involving a variety of government bodies, agencies, departments, organizations and institutions such as the police, prosecutors, lawyers, the judiciary, social welfare bodies, education bodies, probation services, residential facilities, after-care bodies and community-based NGOs. The application of international standards to Barbados’s national response to children in conflict with the law will have implications for almost every stage of the justice system, from arrest procedures to sentencing and reintegration into communities.

Although many of these areas will be examined subsequently under other thematic headings, it is useful to very briefly outline the more essential components of the system that are necessarily affected by the standards.⁹

2.2.1 General issues regarding scope and jurisdiction

• Age of criminal responsibility

The CRC requires States to establish special laws, procedures, authorities and institutions specifically applicable to all children in conflict with the law. In both its concluding observations to State party reports and in General Comment No. 10, the Committee has emphasized that all children under the age of 18 who are in conflict with the law must be provided with the protection of the CRC and other international standards.

⁸ UN Committee on the Rights of the Child 2007.

⁹ The application of the standards to key components of the system is largely taken from a study conducted by UNICEF on Juvenile Justice in South Asia: UNICEF 2006.

The CRC also calls for a minimum age to be established below which children are presumed not to have the capacity to commit a crime (article 40.3.a). However, there is no clear international standard for this. The Beijing Rules indicate that: “the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity” (rule 4.1).

• **Distinctive system for juveniles**

Article 40(3) of the CRC requires the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognized as having infringed the criminal law. This requirement applies to the entirety of the juvenile justice system from the initial contact until all involvement ends. One report addressing legislative reform for juvenile justice¹⁰ argues that in order to implement this article, States need to take a systemic approach to juvenile justice and establish a comprehensive system. In addition, States need to develop procedures, codes of practice, regulations and guidelines.

• **Juvenile courts**

The Committee on the Rights of the Child has recommended, in General Comment No.10, that States should establish juvenile courts. Courts could be either in a separate court building or in a courtroom in an existing building. If this is not feasible, the existing court should be used as a juvenile court on certain days of the week to prevent children having to mix with adults accused of offences.

The advantages of a specially designed juvenile court, which provides a child-sensitive environment, have been documented and the international guidelines accordingly encourage the introduction of these specialized courts over time.

However, establishing specialized juvenile courts – or, by extension, specialized units in the police and prosecutor’s office or within the judiciary, social services and the probation service – is unlikely to contribute significantly to the establishment of an effective juvenile justice system unless it is accompanied by on-going, effective training. This is therefore another broad policy area that ought to inform systemic reform of Barbados’s juvenile justice system.

• **Status offences**

Status offences refer to acts that constitute offences when committed by children but are not considered such when perpetrated by adults. In other words, the conflict with the law stems from the status of the offender as a child rather than from the nature of the act itself. These status offences usually concern situations where the child has run away from home, is considered to be out of control and/or is indigent.

Whereas the CRC does not explicitly mention this issue, the Riyadh Guidelines state without hesitation that *“legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person”*.

¹⁰ Hamilton 2011.

• The role of prevention strategies

Prevention strategies should form an integral part of a comprehensive juvenile justice policy, as stated by the Committee on the Rights of the Child in General Comment No. 10: *“a juvenile justice policy without a set of measures aimed at preventing juveniles coming into conflict with the law suffers from serious shortcomings”*. The Committee also requires that States fully integrate the Riyadh Guidelines into their comprehensive national policy for juvenile justice.

The Guidelines require emphasis to be placed on prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and work, as well as through voluntary organizations. Prevention programmes should include support for particularly vulnerable families and the involvement of schools in teaching basic values, including information about the rights and responsibilities of children and parents under the law. The measures of assistance to families should not only focus on the prevention of negative situations but also, and even more, on the promotion of the social potential of parents.

2.2.2 Powers of arrest and arrest procedures

The CRC states that the arrest and detention of a child must be in conformity with the law and should be used only as a last resort. Children have the right to be informed promptly of the charges against them and to have the assistance of their parents and a legal representative at all stages of the proceedings. They must not be subject to torture or other cruel, inhuman or degrading treatment or punishment, and their right not to be compelled to give testimony or to confess guilt must be guaranteed.

The Beijing Rules state that, when a juvenile is arrested or detained, his or her parents must be notified immediately – or within the shortest possible period of time. In addition, any contacts between law enforcement agencies and a juvenile must be managed in such a way as to respect the legal status of the juvenile, promote his or her well-being and avoid harming her/him. Specifically, police must not use harsh, abusive or obscene language or physical violence in their dealings with children. In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles must be specially instructed and trained.

2.2.3 Bail and pre-trial detention

The CRC states that detention pending trial shall only be used as a last resort and for the shortest possible period of time. The Beijing Rules state that, whenever possible, alternatives such as close supervision, placement with a family or in an educational or home setting should be used. In addition, the JDLs state that juveniles detained under arrest or awaiting trial are presumed innocent and must be treated as such. Detention before trial must only be used in exceptional circumstances, and all efforts should be made to impose alternative measures. When detention is used, courts and investigators must give the highest priority to expediting the process to ensure the shortest possible period of detention. Juveniles detained at the pre-trial stage must be separated from convicted juveniles and should have opportunities to pursue work and continue their education or training.

2.2.4 Trial procedures

The CRC states that children alleged or accused of breaking the law have the right to have the matter determined without delay by a competent, independent and impartial authority in a fair hearing. Throughout the proceedings, children have the right to have a parent present and to have appropriate legal or other assistance. In addition, children must be provided with the opportunity to express their views and be heard in any judicial or administrative proceedings affecting them.

The Beijing Rules state that proceedings must be conducive to the best interests of the juvenile and be conducted in an atmosphere of understanding, which allows the juvenile to participate fully and to express herself or himself freely.

In addition, both the CRC and the Beijing Rules require that juveniles' right to privacy be respected at all stages of the criminal proceedings in order to avoid harm being caused to them through publicity or the process of labelling. No information that may lead to the identification of a juvenile shall be published.

2.2.5 Sentencing

The CRC states that deprivation of liberty shall be used only as a last resort and for the shortest appropriate period. A variety of sentencing options, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes and other alternatives to institutional care should be available to ensure that juveniles are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and to the offence. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed on children under the age of 18.

The Beijing Rules require that any reaction to juvenile offenders must be in proportion to the circumstances of both the offenders and the offence. Before imposing a sentence on a juvenile, the background and circumstances in which s/he is living and the conditions under which the crime has been committed must be properly investigated. The sentence imposed should be proportionate not only to the gravity of the offence but also the circumstances and needs of the juvenile.

The Rules also stipulate that deprivation of personal liberty shall not be imposed unless the juvenile is judged to have committed a serious act involving violence against another person or to have persistently committed other serious offences, and unless there is no other appropriate response. A wide variety of dispositions should be available, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Furthermore, in order to promote minimum use of detention, appropriate authorities should be appointed to implement alternatives. Volunteers, local institutions and other community resources should be called on to contribute to the effective rehabilitation of juveniles in a community setting.

2.2.6 Conditions in detention

The CRC requires that every juvenile deprived of liberty must be treated with humanity and respect for their inherent dignity and in a manner that takes into account the needs

of persons of his or her age. Juveniles must be separated from adults in all places of detention.

The JDLs set out a complete code for the care and treatment of juveniles deprived of their liberty, with a view to counteracting the detrimental effects of institutionalization. They promote the establishment of small, decentralized facilities for juveniles with no or minimal security. Children in detention must be afforded the same right to basic education as others and should have access to vocational training and other meaningful activities. Emphasis is placed on promoting community contact through leaves of absence, outside schooling and liberal family visiting policies. Rules should also be in place to ensure that children are not subject to corporal punishment and solitary confinement.

2.2.7 Diversion and alternative sentencing

The CRC requires the establishment of measures for dealing with juveniles in conflict with the law without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

The Beijing Rules provide further guidance on diversion, stating that consideration should be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal proceedings. The police, the prosecution or other agencies dealing with juvenile cases should be empowered to dispose of such cases, at their discretion, without initiating formal proceedings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in the Rules.

Any diversion involving referral to appropriate community or other services requires the con-sent of the juvenile, or her or his parents or guardian, and must be subject to review by a competent authority. Efforts should be made to provide for community programmes, such as temporary supervision and guidance, restitution and compensation of victims.

3. NATIONAL LEGISLATIVE FRAMEWORKS: THE NEED FOR REFORM

3.1 JUVENILE JUSTICE: WHAT'S LAW GOT TO DO WITH IT?

Juvenile justice by its very nature has everything to do with the law, but it is not exclusively about legal processes and procedures. In reality there is no single 'juvenile justice system' but a complex mixture and overlap between many different systems. Children pass through processes, institutions and personnel from a variety of different government departments, agencies and organizations such as the police, social welfare and probation departments, the judiciary, lawyers, detention centres and even prisons.

The juvenile justice system is thus made up of the legislation, processes, institutions and personnel involved in the treatment of children in conflict with the law. Due to the specific needs and circumstances of children, this should to be distinct from the workings of the regular adult criminal justice system. Indeed, the unique nature of juvenile justice is that it is often described as that area of law where the penal law or criminal law intersects with civil child protection law.

Any meaningful analysis of the national response in Barbados to young people in conflict with the law must therefore involve not only a focus on the criminal law but also some analysis of the child protection laws, given the expected interplay between these two legal systems.

3.2 JUVENILE JUSTICE: THE CRIMINAL LAW CONTEXT

Legal research has confirmed the unsatisfactory state of the law relating to juvenile justice in Barbados. A 2008 UNICEF report on legislative reform related to the CRC expressly stated that in the country:

*“Juvenile justice continues to be governed by outdated laws ... and the child protection legal regime has been expanded by law reform. However, here too, the reform has been piecemeal, and the result is that the child protection regime is under-inclusive, under-utilized and inadequate.”*¹¹

Another report on laws relating to children, women and their families in Barbados also de-scribed the juvenile justice laws as “out-dated” and even called for the complete repeal of the Reformatory and Industrial School Act.¹²

The stakeholder interviews also clearly demonstrated the far-reaching public dissatisfaction with the status of the laws. The views expressed were all consistent in assessing these as antiquated and inadequate. Opinions were often offered in very

¹¹ Robinson 2008.

¹² Marshall-Harris 2013.

3



emphatic terms and with language that made it abundantly clear that legislative reform was a priority area for Barbados.

The overwhelming consensus is that a major overhaul of the laws that govern the administration of juvenile justice is long overdue and ought to be given some priority. Aspects of both the Reformatory and Industrial Schools Act and the Juvenile Offenders Act were identified as problematic. Some of the deficiencies are general and reflect the overall archaic nature of the legislation, whereas other shortcomings are more specific and are rooted in specific provisions that are contrary to international standards and the best interests of the children of Barbados (see Table 1).

Table 1. Legislative deficiencies

Juvenile Offenders Act	Reformatory and Industrial Schools Act
<ul style="list-style-type: none"> ❖ Outdated as it dates back to 1932 and this is reflected in the language used ❖ Lacks creativity and does not incorporate most of the more modern principles that are grounded in the articles of the CRC ❖ Narrowly defines a child as a person under the age of 14 ❖ Creates different categories of children: those under 14 and those aged 14–16 ❖ Does not extend to children 16–18 years of age ❖ Establishes 11 years as the age of criminal responsibility, which is below the regionally accepted age of 12 ❖ Is silent on the notion of diversion and restorative justice ❖ Does not sufficiently enshrine the child’s right to participation in the proceedings ❖ Has limited sentencing options ❖ Includes inappropriate sentencing options, including whipping ❖ Is inherently discriminatory against boys by exempting girls from whipping ❖ Does not expressly address the issue of expungement of records ❖ Although it prohibits publication of identifying information, it permits the presence of the media in the courtroom. 	<ul style="list-style-type: none"> ❖ Outdated as it dates back to 1926 and this is reflected in the language used ❖ Has a strong punishment orientation as opposed to a treatment and rehabilitation philosophy ❖ Incorporates children in need of care and protection under a legislative scheme that is otherwise very punishment oriented ❖ Allows whipping of boys who do not conform to the institution’s rules ❖ Encourages the ‘criminalization’ and stigmatization of conduct that is more appropriately handled within a child protection legislative framework (children found wandering, begging, destitute, etc.) ❖ Creates a very discriminatory and harmful mandatory sentencing provision of a minimum of three years and a maximum of five years

3.2.1 The Juvenile Offenders Act (CAP 138)

This Act dates back to 1932 and seeks to amend and consolidate the law relating to proceedings concerning juvenile offenders. It has jurisdiction over all offences committed by children and defines a child as anyone under the age of 14. However, the Act also creates a category of children called “young persons” who are 14–16 years of age. The Act does not extend to anyone over the age of 16 and accordingly children 16–18 years of age are treated as adults for all in-tents and purposes. Section 7 states that a child must be “above the age of 11 years” to be deemed to have sufficient capacity to commit a crime. This age of criminal responsibility is below the proposed age of 12 that has been established in model regional legislation.

Where the juvenile appears before the court, is committed for trial and is not released on bail, he must be remanded to the Government Industrial School (GIS). However, if it is shown that he is so unruly as to be unmanageable at the School and cannot be safely detained there, then he may be remanded to prison until the hearing. Interestingly, section 5 of the Act only requires that:

“the Commissioner of Police shall make arrangements for preventing, so far as practicable, a child or young person, while being detained, from associating with an adult...”

This is noticeably inconsistent with the prohibition against association with adult prisoners once the young person is sentenced pursuant to section 13 of the same Act. Clearly, it also contravenes the international requirement of segregation of adults and children in correctional facilities.

Notably, Section 9 of the Act does allow for obtaining background information on the child. Before sentencing, the court is required to obtain reports regarding his/her general conduct, home environment, school record and medical history and may question him/her about matters contained in those reports. The court may remand the juvenile pending the submission of reports, either on bail or in custody, and may make orders in his/her best interests if necessary. As noble as the intentions of this provision may appear, it does not sufficiently outline the psychosocial interventions that are now emphasized in modern legislative schemes. It also expressly encourages the remand of children for the sole purpose of having the social inquiry report completed or for “special medical examination”.

Under section 16, which addresses the sentencing of a juvenile, the court is required to consider the following alternatives.

- a) Reprimand and discharge the offender
- b) Discharge the offender on his entering into a recognizance
- c) Discharge the offender under the supervision of a probation officer
- d) Commit the offender to the care of a relative or other fit person
- e) Commit the offender to a Reformatory and Industrial School
- f) Order the offender to be whipped
- g) Order the offender to pay a fine, damages or costs
- h) Order the parent/guardian of the offender to pay a fine, damages or costs
- i) Order the parent/guardian to give security for the offender’s good behaviour
- j) Sentence him to imprisonment, if the offender is a young person

These options are limited and lack creativity as compared to modern legislation that accommodates a wide range of options including curfews, school attendance orders and community service orders. The absence of community service is a glaring omission. Upon enquiry it was learnt that community service is only available to person over the age of 16 because it would be considered child labour to require anyone younger to perform this. It is important to note that community service is an available option in model juvenile justice legislation and has not been rejected on the basis that it exploits children. The argument that it is potentially exploitative is also compromised by the reality that all of the young people sent to the GIS perform chores and are assigned work responsibilities while resident at the facility.

In addition, the retention of whipping is problematic and violates international guidelines. It is also discriminatory because this sentencing option is restricted to boys. Admittedly, respondents in the consultations explained that whipping is rarely if ever ordered by the court. Nevertheless, it is still available under the law and due consideration should be given to its removal.

The legislation is silent on a number of important issues that it should expressly address, including diversion, restorative justice and the expungement (removal) of youth criminal records. Diversion and restorative justice are modern concepts that not only create informal ways of holding children accountable for criminal conduct while emphasizing rehabilitation but also help facilitate a more balanced and restorative child justice system. The lack of any provisions on the expungement of juvenile records has created some uncertainty. In the consultations, most stakeholders stated that a child's record was confidential; however, they were nevertheless unsure about what would appear on the police certificate of character if a juvenile required this for employment or other purposes.

There are provisions in the Act that afford protection to the release of children's identity, but one noteworthy provision permits 'bona fide' media personnel to be present in court. This undermines the child-friendly environment expected of juvenile court settings and cannot be justified as in the best interests of the child.

3.2.2 The Reformatory and Industrial Schools Act (CAP 169)

“The Reformatory and Industrial Schools Act, Cap. 169, enacted in 1926, is the best example of a statute relating to children still in force in Barbados that was enacted by the colonial legislature well before current understandings of the rights of the child emerged.”¹³

This Act establishes a reform school for instruction and training, in addition to employment in agricultural work of boys who are sent to school, to be known as the Government Industrial School (GIS).

Under section 11, where a child under the age of 16 years appears before a magistrate and is convicted of an offence punishable with imprisonment, the court or magistrate may sentence him/her to the school to be detained for a period of not less than three

¹³ Robinson 2008.

years and not more than five years and in any case not beyond the time when s/he has attained the age of 19 years.

This section in particular has caused an inordinate amount of discrimination, resulting in almost all of the residents at the GIS having sentences in excess of three years, regardless of the nature of the offence or other relevant factors. In fact, the focus group sessions conducted at both the girls' and boys' school revealed that the average length of sentence for residents exceeded three years. This finding is extremely disturbing given the relatively minor offences for which the children were detained and, equally troubling, given the reality that adults would not receive the same length of sentence for even more serious crimes.

During the consultations, the length of sentence was justified by some respondents on the basis that an extended period of time was required in order to facilitate treatment and rehabilitative interventions. One respondent offered the following rationale:

“I am not saying that it is right ... but it is grounded in trying to meet the best interests of the children. These kids are coming out of very dysfunctional home environments and are emotionally damaged. They need some intensive counselling and other types of therapy. That takes time and so the Act reflects that need.”

This rationale not only violates the child rights agenda but it is also flawed from the standpoint that children alone are being confined for supposed treatment needs in a context where little to no interventions are happening for other family members of the 'dysfunctional' home from which they come.

Regrettably, section 11 is also routinely utilized by magistrates to commit a child for a minimum of three years as though this is a mandatory sentence. It is important to recognize that the word used is “may” as opposed to “shall”, which the rules of statutory interpretation require be interpreted as giving the magistrate the discretion to operate within those sentencing parameters. On that basis, it is arguable that mandatory sentences of three-to-five years are not necessarily an accurate application of the law.

The use of this sentencing range for all matters before the court requires further legal scrutiny. Many of the children, particularly girls, have been sent to the GIS under sections 14 or 16 of the Act. These provisions, which will be discussed subsequently under this section, deal with children who are in “need of care and protection” and have been brought before the magistrate for matters such as wandering or begging. The Situation Analysis revealed that these children are subjected to the same three-to-five year sentences as children who are before the court under section 11 (i.e., accused of committing an offence). There appears to be no distinction made in the sentencing of children based on the presenting issue.

One magistrate has boldly questioned and tested the legal accuracy of this practice by sending some children to the GIS for much less than the supposed minimum period of three years on the basis that the sentence cannot be mandatorily imposed, as well as on the basis that children who are sent to the school under section 14 are not subject to that range. She argued as follows:

“The three year limitation is problematic because the law cannot impose a minimum sentence on the Court. ...But in any event, I do not deal with the minimum sentence for wandering. If you look at it carefully, wandering and those types of issues are not to be treated in the same way as the other of-fences coming under Section 11. I invoke Section 14 (3) to send those types of cases to the Industrial School... I do not rely on Section 11.”

Should this interpretation of the law be correct, as it in fact may be, it is not being routinely or consistently applied. The fact that nearly all the children who were at the school for section 14 matters were serving the same long sentences of three-to-five years is extremely disturbing and underscores the value of questioning the routine application of legal provisions without determining their validity.

Whether section 11 is being legitimately or illegitimately applied, it should be removed. It is inherently flawed in many respects and has led to the unfair, discriminatory and offensive treatment of too many children.

Section 14 of the Act, as suggested earlier, sets out another basis from which children can be sent to the GIS. These are children who are under the age of 16 and are in need of care and protection. The child can be sent to the school if any of the following conditions are met:

- a) Found begging or receiving alms (whether actually or under the pretext of selling or offering for sale anything) or is in any street or public place for the purpose of begging or receiving alms
- b) Found wandering and not having any home or settled place of abode or proper guardianship or visible means of subsistence
- c) Found destitute, either being an orphan or having a surviving parent who is undergoing imprisonment
- d) Frequenting the company of known thieves
- e) Lodging, living or residing with common prostitutes, or in a house resided in or frequented by prostitutes for the purpose of prostitution
- f) The daughter of a father who has been convicted of an offence under Sections 4 and 5 of the Sexual Offences Act, in respect of any of his daughters
- g) Being a girl, living in circumstances calculated to cause, encourage or favour her seduction or prostitution

This provision is extremely problematic and, as suggested earlier, has provided the platform for flagrant disregard of children’s rights in Barbados. It has been relied on by courts across the country to place children in need of care and protection in the same facility as children sentenced for committing offences, even when the primary issues are neglect, abandonment, sexual and physical abuse and poor parenting. Children who have run away from home or children who are living on the streets can be, and in fact have been, placed at the GIS for three-to-five years. This is outrageous and needs to be remedied immediately.

The out-dated nature of the legislation is further exemplified by the powers given to the principal of the school. The Act permits him to “*whip boys with a birch or tamarind rod or suitable cane*” and “*to apprentice a child to a trade or to bind a child by indenture under hand and seal to perform work on a British ship or outside of the island and within the Commonwealth as specified in the indenture.*”

The criminal legal statutes that govern the administration of juvenile justice in Barbados are thus almost embarrassingly out-dated, socially irrelevant and by extension compromising of the best interests of affected children. The law on its own is not the only way of assessing a system’s effectiveness, but it is an important tool for effecting change. It is also a significant indicator of the State’s commitment to the broader child’s rights agenda and ensuring that all reasonable efforts are made to bring the national responses to juvenile justice into compliance with internationally accepted standards. The criminal legislation being applied to children in Barbados falls extremely short of any standards reasonably expected of an independent State that has ratified the CRC without reservations. This is an area deserving of immediate attention and action should any meaningful progress on the appropriateness and effectiveness of the juvenile justice system be achieved in the country.

3.3 JUVENILE JUSTICE: THE CIVIL LAW CONTEXT

The inextricable link between juvenile justice and civil child protection laws is well established. One report that explored those important linkages suggested that:

“Increasingly, practitioners and policy makers are recognizing the overlap of the child welfare and juvenile justice systems. This overlap is evidenced by maltreated children who become juvenile delinquents, delinquent children who have histories of maltreatment, and families that have intergenerational histories with both systems. It is also evidenced by some administrative and operational realities, in that agencies face duplication of services, competition for scarce programme dollars, unmet service needs, and a dearth of prevention activity to help stem the tide of children coming into the two systems.”¹⁴

Given this growing awareness of the important nexus between the two systems, it is important to briefly examine the civil legal context within which the juvenile justice system is operating.

It should be noted first that child protection legal frameworks in the region have been assessed as in need of reform. A report examining the laws of the OECS States, for example, noted that many of the countries did not have separate child protection acts that offered a legal scheme for addressing all aspects of child protection from reporting through investigation, placement and overall case management.¹⁵ That same report spoke of the shortcoming that child protection was often inadequately handled

¹⁴ Wiig et al. 2008.

¹⁵ OECS 2004.

within juvenile justice acts without any attempts at bringing a different philosophy or even different language to address the special needs of children who were abused. It highlighted that:

“The child protection component of the Juvenile Acts is a clear ‘after-thought’ and was not designed with a view to promoting meaningful child protection objectives. The legislation does not even offer a helpful definition of child abuse and it offers little to nothing in terms of the process that should be implemented in the prevention, detection, treatment, rehabilitation and follow-up of child abuse cases.”¹⁶

Barbadian legal minds have also determined that the legal terrain for child protection is relatively weak and could benefit from a process of review and reform. In a paper on the topic, Her Lordship Justice Jacqueline Cornelius, High Court Judge, made the following statement:

“Given the inherent difficulties of the criminal law system in remedying child abuse, the civil law, with its differing and less vigorous standard of proof should be strengthened and the relevant social agencies reformed to deal more completely with child abuse. The law is extensive, but scattered.”¹⁷

The scattered nature of the law on child protection in Barbados was also the subject of another report, which mentioned that “the combined use of the Prevention of Cruelty to Children’s Act; the Child Care Board Act and the Judicature Acts permits the Child Care Board to remove a child from an abusive home environment and pursue an order for Wardship.”¹⁸ Consequently, the report recommended the creation of a comprehensive child protection act that would serve as a better legal platform for ensuring the safety and security of children:

“Despite the fact that the removal and placement of a child who is at risk of abuse can ultimately be effected through the combined effect of several pieces of legislation, this is far from an ideal situation and should not be regarded as a viable alternative to a comprehensive Child Protection Act. This patch-working of legislation was not designed with a view to promoting meaningful child protection objectives.”¹⁹

The Child Care Board, as the legally mandated child protection agency, is currently undertaking work that goes beyond responding exclusively to child abuse cases and operates with what is perceived as limited human resource and infrastructural support.

¹⁶ Ibid.
¹⁷ Cornelius 2006.

¹⁸ Sealy-Burke 2007.
¹⁹ Ibid.

This brings into question the agency's capacity to meaningfully support the juvenile justice system as would be anticipated.

3.3.1 Hard-to-place children: A child protection or juvenile justice issue?

Throughout the consultations, there was debate over the role of the Child Care Board vs. that of the juvenile justice system, including the GIS, in responding to the needs of children who were difficult to place because of behavioural issues. In other words, the question often arose, "What do we do with children who allegedly cannot be placed in foster care or even child care institutional settings because their conduct does not facilitate such placement?"

This question was one that the Child Care Board representative felt very strongly about as she explained that the child protection system was not equipped to handle some of the behaviours that arose. She lamented the fact that children were having to be referred to the juvenile justice system, but argued that until such time as the child protection system had the available facilities and other resources, this was the course that had to be followed.

On the other hand, the representatives from the juvenile justice system, including the leadership of the GIS, were of the view that quite a few of the referrals to the school were clearly child protection cases that did not warrant juvenile justice interventions and should not have been sent into that system. Anecdote after anecdote was shared of children, especially girls, who were sent to the GIS simply because the Child Care Board had been unable to find a suitable placement for them. One of the stories was particularly disturbing (see box). A fictitious name has been assigned to the girl who is the subject of the story.

The story of the girl who was difficult to place

Maria was soon going to be 16 years old and had been residing at one of the child care homes. There were reportedly some behavioral issues but nothing too challenging. Nevertheless, none of Maria's family members were stepping forward to take her in. The Child Care Board had exhausted all community-based placements in their search for somewhere for Maria to live. In desperation, the Board brought an application under section 16 of the Reformatory and Industrial Schools Act just two days before her 16th birthday to have her placed at the GIS on the basis of 'refractory' behaviour. The court made an order for three years, and Maria will be confined until she is almost 19 years old.

There were other stories of children who were placed at the GIS for no other compelling reason than that it was proving difficult to find somewhere for them to reside. The Principal expressed deep regret over this state of affairs and spoke passionately about the need for the system to reflect "more soul".

"We have not developed an infrastructure that is sufficiently supportive of these children. We rely on punishment to change behaviour. I am

seeing too many victims who get channelled through the criminal justice system. But the system has not been set up correctly and it is unable to accommodate them.”

The findings on the status of the national child protection system, including the very laws that inform the delivery of child protection justice, suggest that it is experiencing its own share of challenges. This has compromised the role that it ought to play in the treatment and rehabilitation of children who require those kinds of services. That system has not been able to accommodate children who are ‘hard to place’ and therefore it has resorted to the referral of children to environments that are viewed as more ‘suitable’ for them. Unfortunately, this has meant referrals to an environment that has traditionally housed children who are in conflict with the law and has been stigmatized as a place for children who are criminally delinquent.

The failure of the child protection system to bring these difficult cases under its jurisdiction is a systemic failing that reflects the tendency to place more onus on the criminalization of children than the treatment and recovery of those who have experienced harsh and often demoralizing life conditions. The location and categorization of interventions for children is a critical factor in ensuring that they can access services and programmes free of stigma and discrimination. The appropriate use of the child protection context is a strategic way of facilitating access to services for children who are in desperate need of support. This should be done without resort to proceedings that have a criminal undercurrent to them or that result in criminal-like sanctions being imposed.

3.4 CHARTING THE WAY FORWARD FOR LAW REFORM: OECS MODEL LEGISLATION

Coming to terms with the deficits in the current status of the law relating to both juvenile justice and child protection should pave the way for reflection on how the legal frameworks can be improved. Reform need not start from scratch as there are useful models that can inform the process.

Several of the OECS States have recently undertaken significant law reform of their juvenile justice and child protection legislation based on Model Bills prepared by the OECS Secretariat with the support of UNICEF, the Canadian International Development Agency (CIDA), UN Women and other reputable international agencies.²⁰ The legal frameworks produced as a result of this initiative are an excellent starting point for law reform on child-related areas of legal practice and should be duly considered as potential models for large-scale adoption in Barbados.

3.4.1 Summary checklist for a juvenile justice framework

Just prior to the discussion of the OECS Model Bills, it would perhaps be instructive to evaluate the proposed framework against a model checklist that was created by UNICEF and the Children’s Legal Centre as part of a “Guidance for Legislative Reform on Juvenile Justice”.²¹

²⁰ The OECS Family Law Reform and Domestic Violence Project produced a number of Model Bills that were intended to guide law reform in the nine OECS Member States.

²¹ Hamilton 2011.

Juvenile Justice: Summary checklist

- ✓ States should pass a juvenile justice law or code implementing the provisions of articles 37, 39 and 40 of the CRC. This should cover treatment of the child from the moment the s/he is apprehended or detained by the police right through to post-sentencing after-care.
- ✓ The law should state clearly that all children over the age of criminal responsibility but under the age of 18 should fall within the juvenile justice system regardless of the nature of the offence.
- ✓ Legislation should provide that specialized children's units should be established in the police, prosecutor's office, court administration, social services and probation.
- ✓ Legislation should require that all administrative and other professional staff dealing with children in conflict with the law should receive training on children's rights.
- ✓ Juvenile courts should be established and provide a child-sensitive environment.
- ✓ Legislation should ensure court procedure in children's cases that allow children to understand and participate in the hearing or trial.
- ✓ Legislation should provide for alternative measures, such as diversion and a range of community-based sentences.
- ✓ Legislation should set a minimum age of criminal responsibility; this age should apply to all children, rather than differing ages for different offences or for different children. The minimum age of criminal responsibility should be no lower than 12 and preferably higher.
- ✓ Legislation should require police and prosecutors to prove the child is over the age of criminal responsibility where this is in doubt; where the doubt remains, the law should specify that the child should not be held criminally responsible.
- ✓ Legislation should state clearly that only children who are alleged as, accused of or recognized as having infringed the penal law can fall within the jurisdiction of the juvenile justice system.
- ✓ Legislation should make it unlawful to charge or try a child for a status offence. Any existing status offences should be repealed.
- ✓ The juvenile justice law should be supported by legislation providing for effective prevention programmes and child protection measures for children at risk of abuse.

3.4.2 The OECS Model Juvenile Justice Bill

The OECS Secretariat, as part of its mandate to produce harmonized legislation across the sub-region, initiated a comprehensive programme geared at reforming the laws relating to the family and domestic violence.

The driving force behind the project was a clear acknowledgement by attorneys' general across the OECS region that existing laws were archaic, in many cases were no longer socially relevant and could not meet the requirements of many of the international obligations – including the CRC – that the countries in the region had ratified.

More specifically, the purpose of the Juvenile Justice Bill was to establish a judicial process for children accused of committing offences and to protect the rights of such children. The Bill is presented in 13 parts. The main objectives are:

- ◆ To establish a criminal justice process for children accused of committing offences, aiming at protecting the rights of children as provided for in international instruments
- ◆ To provide for the minimum age of criminal responsibility of a child
- ◆ To incorporate diversion of cases away from the formal court procedures
- ◆ To establish a procedure for the assessment of children and an initial inquiry as compulsory procedures
- ◆ To ensure that children are tried in the appropriate court, where their rights are acknowledged, and to extend sentencing options available in respect of children
- ◆ To entrench the notion of restorative justice in respect of children

The Draft Model Bill was reviewed and passed in the Parliament of Grenada in July 2012. A summary of those legislative provisions is as follows:

Part I contains the preliminary provisions and also outlines the guiding principles to be applied by the court or any person performing a function under the Bill.

Part II provides for:

- ◆ the application of the Bill to persons who allegedly commit a criminal offence under the age of 18 years
- ◆ a rebuttable presumption that a child under 12 years old cannot be said to have criminal responsibility for committing an alleged criminal offence
- ◆ prior to an initial inquiry, the director of social services is empowered to designate a place of assessment for a child in conflict with the law

Part III makes provision for the assessment of a child by a probation officer before appearance at initial inquiry before the magistrate and for the powers and duties of the probation officer.

Part IV makes provision for the establishment of a secure treatment facility. Such a facility is intended for the reception, evaluation or rehabilitation of children. The minister has the discretion to make rules to govern the management of such a facility.

Part V addresses the procedures to be followed by the police when handling children in conflict with the law.

Part VI provides for the initial inquiry of a child and diversion options.

Part VII provides for court proceedings with respect to a child. The child must be informed of his or her rights, evidence such as confessions are not admissible unless a child or an appropriate adult is present at proceedings, and trials are to be kept to a maximum of six months, unless they involve certain types of offences.

Part VIII provides for the sentencing of a child. Life imprisonment is not allowed. There are a variety of sentences, such as community-based sentences, restorative justice sentences, family group conferences, sentences involving correctional supervision, sentences with a compulsory residential requirement, referral to a secure residential facility and referral to prison (as a last resort).

Part IX makes provision for the right to legal representation and requires state-assisted legal representation in certain circumstances.

Part X sets out the general provisions relating to court proceedings.

Part XI makes provision for records of conviction and sentences where records are expunged.

Part XII sets out offences and penalties for the hindering or obstruction of a police officer or probation officer in the performance of his duties under the Act, and also the publishing of confidential information by the media.

Part XIII contains the miscellaneous provision that empowers the minister to make regulations under the Bill.

The Model Bill that was passed in Grenada achieved the following:

- ◆ It was premised on some core principles that clearly acknowledge that children, by their very nature, are to be treated differently from adults and should be afforded access to a criminal justice system that reflects that philosophy.
- ◆ It established a new age of criminal responsibility, which was set at 12 years old.
- ◆ It established two new stages in the juvenile justice legal process – an initial Inquiry and an assessment – before the commencement of any formal proceedings against the child. The new features are geared at ensuring that, wherever possible, children can be diverted from formal court processes and dealt with through diversion measures. It also facilitates presentation of relevant information on the child and the circumstances of the alleged offence. The assessment is to be conducted by probation.
- ◆ It creates three levels of diversion, moving from level 1 for the less serious offences to level 3 for the more serious offences.

◆ It stipulates a number of child-friendly measures that are to be observed.

Some of the special considerations are:

- ▶ that the child be informed of his or her rights
- ▶ that procedures be conducted in a child-friendly and informal manner
- ▶ that the child and the child's parents or an appropriate adult be encouraged to have active participation in the proceedings
- ▶ that the wearing of leg irons is prohibited and the use of handcuffs only utilized when absolutely necessary
- ▶ that court proceedings involving children should be addressed as expeditiously as possible, with delays being avoided at all costs
- ▶ that no information that would reveal the identity of a child should be published

◆ The sentencing options were significantly increased and enhanced. They included many noncustodial or community-based sentences. The concept of restorative justice was also introduced.

◆ Life imprisonment and flogging are expressly prohibited under the new legislation.

It is important to note that a model Child Protection and Adoption Act was also drafted under the OECS Family Law Reform Project, and this too could go a long way in helping to inform the overhaul of the child protection laws in Barbados.

4

4. ASSESSMENT OF JUVENILE CRIME TRENDS AND RELATED ISSUES IN BARBADOS

4.1 THE CRITICAL ROLE OF DATA COLLECTION

One of the main problems for children’s justice work is the lack of adequate data about children who are already in the justice system and – perhaps even more importantly – children who are at risk of coming into conflict with the law. Research and data collection and analysis therefore must be a key element in the development of children’s justice programmes.

In its General Comment No. 10 (2007), the Committee on the Rights of the Child expressed its deep concern about the lack, in many countries, of basic disaggregated data on the number and nature of offences committed by children, the use and the average duration of pre-trial detention, the number of children dealt with by resorting to measures other than judicial proceedings (diversion), the number of children convicted and their age and gender, and the nature and the duration of the sanctions imposed on them.

The Committee urged States parties to systematically collect disaggregated data relevant to the administration of juvenile justice and necessary for the development, implementation and evaluation of policies and programmes aiming at preventing and effectively responding to juvenile delinquency in full accordance with the CRC.

Data collection, including basic information on juvenile delinquency and solid indicators of the justice system’s performance with respect to children in conflict with the law, is required in order to measure progress toward delinquency prevention and child protection goals. Despite this widely recognized fact, the Caribbean as a region has been criticized for its poor performance in that regard. The UNICEF Situation Analysis of children and their families in the Eastern Caribbean made express mention of the difficulties experienced with sourcing data:

“A major challenge in preparing the Situation Analysis was the availability and accessibility of social data, which was uneven from country to country. A critical issue for all countries is the lack of systematic up-to-date data with which to monitor implementation of the United Nations Convention on the Rights of the Child (CRC)...”²²

Barbados has experienced its own challenges with data collection, especially social data, and this is reflected in the juvenile justice sector where comparatively few disaggregated

²² Blank 2007.

data are readily available. This is a major problem given the implications for policy-making, law reform and even budgeting issues.

In fact, the dearth of empirical data on the region's juvenile justice systems prompted a recent initiative under the OECS/United States Agency for International Development (USAID) juvenile justice reform project. It took the form of a training workshop to strengthen national statistics and data on juvenile delinquency. The sessions were geared at establishing systems that would help to improve the level of statistics shared and communicated across agencies. It was designed to provide participants with the methodology and tools for the measurement of juvenile justice indicators.

The United Nations Office on Drugs and Crime (UNODC) has also done significant work globally and within the Caribbean to ensure a more systematic approach to data collection. A critical UNODC product has been the development of juvenile justice indicators²³ that, if implemented, could go a long way in building on the current paucity of information available on this sector.

The research for this report reinforced the need for implementation of the UNODC indicators in Barbados. Most interview respondents were ignorant of the existence of the recommended data collection framework, and none had taken any steps to ensure its implementation. Most entities were unable to produce comprehensive, disaggregated and consistent statistical information. Where some information was available, it was sometimes inconsistent and not informed by any of the key indicators of the effectiveness of a juvenile justice system. The accuracy of the data was sometimes questionable, and this was reinforced by the lack of a rationalized data collection methodology.

4.1.1 The implementation of juvenile justice indicators

The UNODC juvenile justice indicators provide a framework for measuring and presenting specific information about the situation of children in conflict with the law.²⁴ They cover both quantitative values, such as the number of children in detention on a particular census date, and the existence of relevant policy. The indicators are not designed to provide complete information on all possible aspects of children in conflict with the law in a particular country. Rather, they represent a basic dataset and comparative tool that offers a starting point for the assessment, evaluation and service and policy development. This is a starting point that could be of significant value for Barbados.

UNODC explained the selection of indicators as follows:

“All of the indicators were chosen because they are feasible to measure and because doing so assists local and national officials to assess the extent to which juvenile justice systems for which they are responsible are in place and functioning. The indicators do this by providing information on what happens to children who come into conflict with the law, as well as by providing a means to assess the policy environment needed to ensure the protection of such children.”²⁵

23 United Nations Office on Drugs and Crime 2006.

24 Ibid.

25 Ibid.

The 15 indicators are captured in Table 2. Five of these are identified as core indicators on which information collection strategies should focus.

Table 2. UNODC indicators for measurement of juvenile justice systems

Definition	Indicators
Quantitative indicators	
1. Children in conflict with the law	<ul style="list-style-type: none"> Number of children arrested during a 12-month period per 100,000 child population
2. Children in detention (CORE)	<ul style="list-style-type: none"> Number of children in detention per 100,000 child population
3. Children in pre-sentence detention (CORE)	<ul style="list-style-type: none"> Number of children in pre-sentence detention per 100,000 child population
4. Duration of pre-sentence detention	<ul style="list-style-type: none"> Time spent in detention by children before sentencing
5. Duration of sentenced detention	<ul style="list-style-type: none"> Time spent in detention by children after sentencing
6. Child deaths in detention	<ul style="list-style-type: none"> Number of child deaths in detention during a 12-month period per 1,000 children detained
7. Separation from adults	<ul style="list-style-type: none"> Percentage of children in detention not wholly separated from adults
8. Contact with parents and family	<ul style="list-style-type: none"> Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last three months
9. Custodial sentencing (CORE)	<ul style="list-style-type: none"> Percentage of children sentenced receiving a custodial sentence
10. Pre-sentence diversion (CORE)	<ul style="list-style-type: none"> Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme
11. Aftercare	<ul style="list-style-type: none"> Percentage of children released from detention receiving aftercare
Policy Indicators	
12. Regular independent inspections	<ul style="list-style-type: none"> Existence of a system guaranteeing regular independent inspection of places of detention Percentage of places of detention that have received an independent inspection visit in the last 12 months
13. Complaints mechanism	<ul style="list-style-type: none"> Existence of a complaints system for children in detention Percentage of places of detention operating a complaints system
14. Specialized juvenile justice system (CORE)	<ul style="list-style-type: none"> Existence of a specialized juvenile justice system
15. Prevention	<ul style="list-style-type: none"> Existence of a national plan for the prevention of child involvement in crime

Although the relevant agencies and institutions in Barbados have not been using the proposed framework for data collection purposes, the interviews and data review process for this research were informed by the indicators.

4.2 JUVENILE JUSTICE: EVIDENCE OF REGIONAL TRENDS

Several studies have generated interesting and potentially useful information on regional trends relating to youth crime. Barbados has been the subject of research in some of these studies, which would therefore serve as a helpful source of information for assessing juvenile crime trends. However, whether or not Barbados was an integral feature of regional studies does not negate the value of the overall findings for national purposes. There is a lot to be gained by having an appreciation of regional trends, given the often shared social, political and economic context within which the region's young people exist.

The United Nations Development Programme (UNDP) Caribbean Human Development Report is one useful source of empirical information that should inform national and systemic responses to youth crime and to the children who come into conflict with the law.²⁶ The country studies and the findings of the UNDP Citizen Security Survey 2010 highlight that, “while young people are involved in serious crimes, most of the activities they undertake that violate the law or social norms are not serious or violent”.²⁷ In fact, the Report found that although there may be some valid reasons for underreporting of violent youth crime:

“there is sufficient evidence in the country studies and the survey to suggest that violent behaviour is not prevalent or endemic among the youth populations of the region. In the context of overall youth behaviour in the Caribbean, reliance on violence is uncommon.”²⁸

This is an important finding given the increasing view that young people in the Caribbean are not only becoming more involved in criminal activity but also committing more acts of violence. The Citizen Security Survey casts some doubt on that widespread public sentiment. It certainly provides an interesting contrast to public perception surveys such as that conducted by UNICEF on views of juvenile offending in Barbados, Dominica and St. Lucia.²⁸ In that study, the perceived prevalence of juvenile offending in each country was an average of 44 per cent in Barbados, 53 per cent in Dominica and 54 per cent in St. Lucia. The respondents from all three countries also felt that they had seen an increase in offending in the past five years.

The survey underscores another critical point, which is that many of the young people coming into conflict with the law have been victimized in their family settings and are hence more deserving of care and protection interventions:

²⁶ United Nations Development Programme 2012.

²⁷ *Ibid.*, p. 46.

²⁸ *Ibid.*

²⁹ United Nations Children's Fund 2011.

“Most youth who come into contact with the police and the justice system are not involved in violent crimes, but have run away from home or are associated with behaviour indicating a desperate need for care and protection following abuse, neglect, or abandonment. Such ‘status offences ... are not considered criminal if they are committed by adults.’”³⁰

The survey highlighted that 52 per cent of the female juveniles who appeared in court in 2007 in Jamaica were found to be in need of care and protection, while 23 per cent of the male juveniles fell into the same category. Although comparable data are not immediately available for the other countries of the Caribbean, national-level research suggests there is a similar gender pattern in court appearances by juveniles for non-violent offences. Meanwhile, young men are more likely than young women to be in conflict with the law for violent offences. These figures for Jamaica are consistent with the findings in Barbados that a large percentage of girls detained at the GIS had been abused and could be classified as ‘in need of care and protection’.

Some key patterns associated with the incidence of youth violence were observed in the UNDP Citizen Security Survey 2010. A sample of these findings is captured in Table 3.

Table 3. Findings on patterns in youth violence

General finding	Development of finding
Youth violence has a gender dimension	<ul style="list-style-type: none"> • Across the region, the majority of aggressors and victims are young men who use violence for protection against threats or who have been socialized into a male-dominated tradition of conflict resolution through violence. • The gender dimension is apparent among the youngest offenders: it is mostly boys who use violence, although the incidence of female aggression also appears to be increasing. Younger boys tend to commit less serious offences than older boys but at greater frequency.
School violence has escalated	<ul style="list-style-type: none"> • Consequent on the emergence of younger offenders, violence in schools appears to have increased. • Where school violence has been observed, there have been suggestions that the acts of violence have become more brutal. • The resort to violence at school has been expressed as a function of the need for self-defence, self-protection or peer protection and, in rarer instances, also for image profiling and to intimidate others.
Youth violence is often a response to the threat and fear of victimization	<ul style="list-style-type: none"> • The fear of victimization has contributed to the formation of delinquent groups in schools, as students seek to defend themselves from community violence that permeates the educational environment.
Youth violence is closely associated with community violence.	<ul style="list-style-type: none"> • The use of violence has often emerged from exposure to various forms of neighbourhood or community violence, either directly as a victim or indirectly as a witness.

30 Ibid.

Regional data provide empirical information that can assist individual Caribbean countries in analysing possible trends in youth crime and general delinquent behaviour. In the absence of sustained, consistent and comprehensive data for Barbados, reference to regionally based studies is a useful approach.

4.3 JUVENILE JUSTICE: A SNAPSHOT OF NATIONAL TRENDS

As previously mentioned, collection of meaningful data at the national level was challenging. In the absence of good record-keeping, systematic collection of information, well-conceived disaggregation of data and effective monitoring and evaluation, it is difficult to present a comprehensive picture of the national juvenile justice system in Barbados. Some of the data relied on in this section are therefore from previous studies, whereas others were specifically captured for the purpose of this research and draw on raw data at some of the facilities. This provided enough information to present a snapshot of various features of the national juvenile justice system and from which to draw some critical points in its assessment.

This section therefore presents a composite of the quantitative research findings. Some of the areas of information will be examined more closely from a qualitative standpoint in Chapter 5.

4.3.1 Perceptions of juvenile crime

As noted above, UNICEF commissioned a study in 2010 on public perceptions of juvenile offending in the Eastern Caribbean with the intention that the findings would provide insight and guidance for future advocacy and behaviour change campaigns aimed at avoiding repressive reforms that have failed to address youth crime elsewhere.³¹ The main findings as regards Barbados were:

- i. Many young people are offending, but many of them do not come into contact with the juvenile justice system.
- ii. There is an alarming increase in the number of girls offending.
- iii. Aggression among youth is now very evident.
- iv. There is no gender disparity in relation to offences.
- v. Involvement with illegal drugs is a precursor to other criminal activities.
- vi. Poor parenting and poor socialization are the main causes of juvenile offending.
- vii. Many of society's ills have a great impact on juvenile offending.
- viii. Incarceration is favoured, although to be used sparingly.

³¹ *Ibid.*

Figure 1. Perceived causes for most serious offences

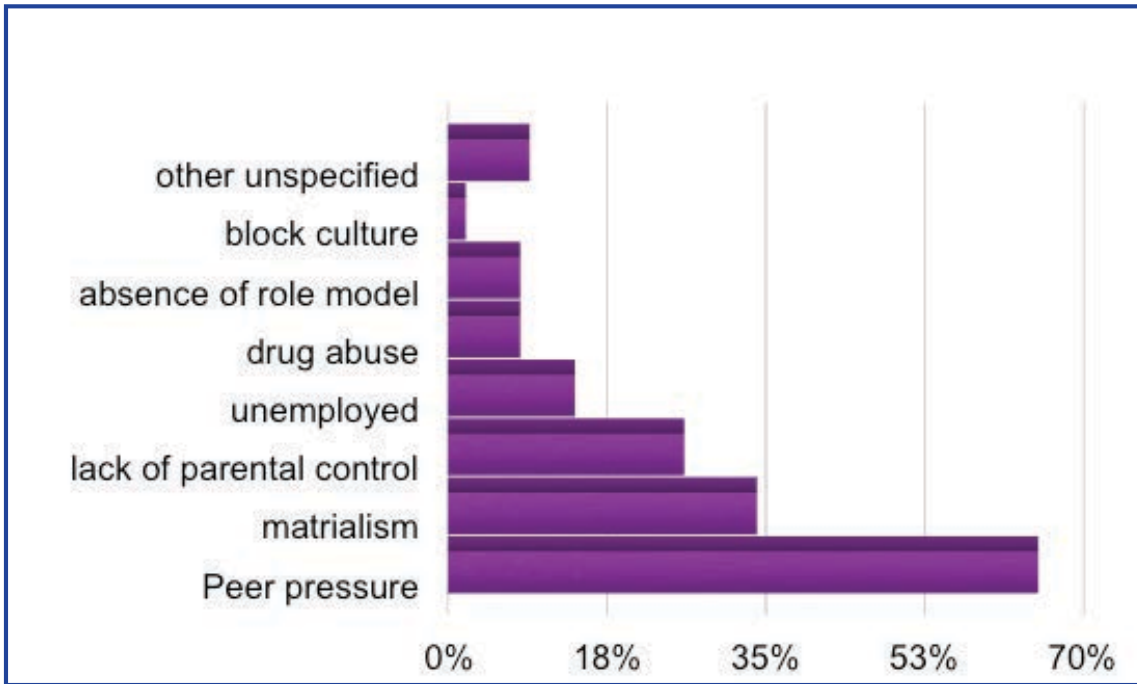
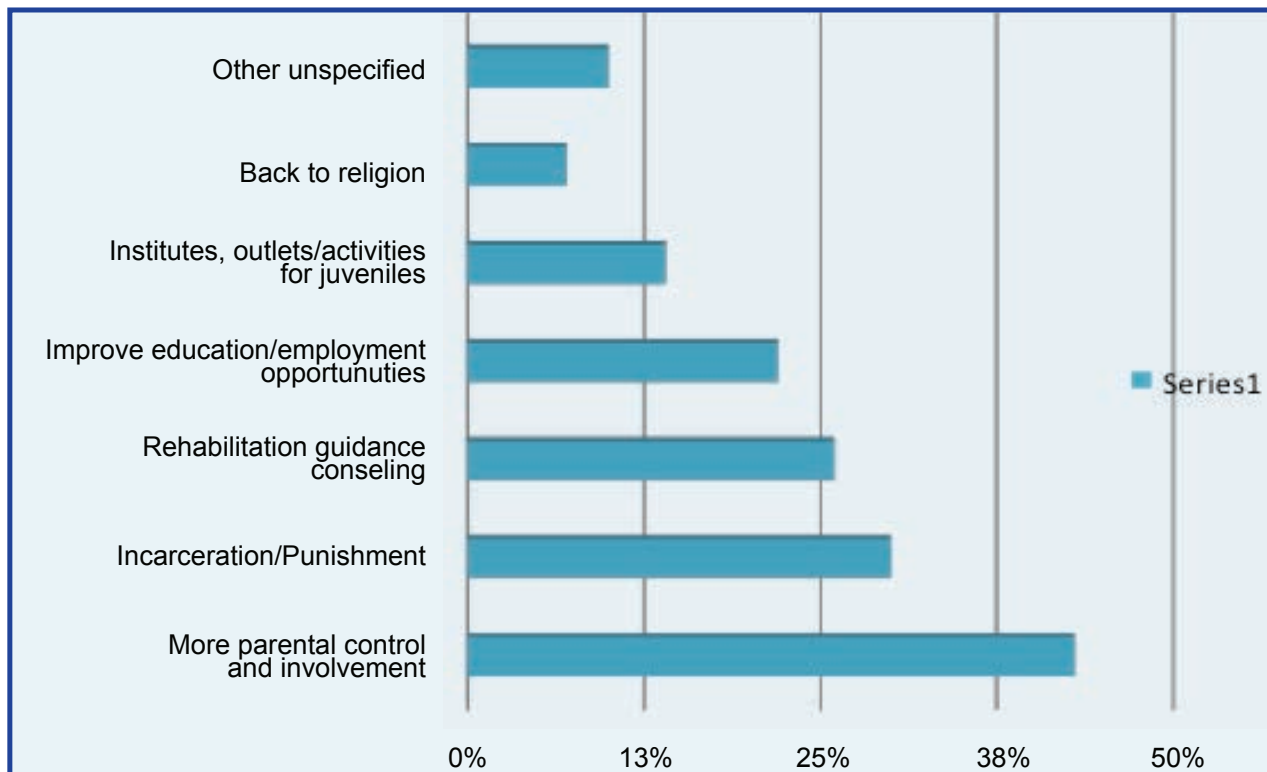


Figure 2. Perceived best options for responding to delinquent behaviour



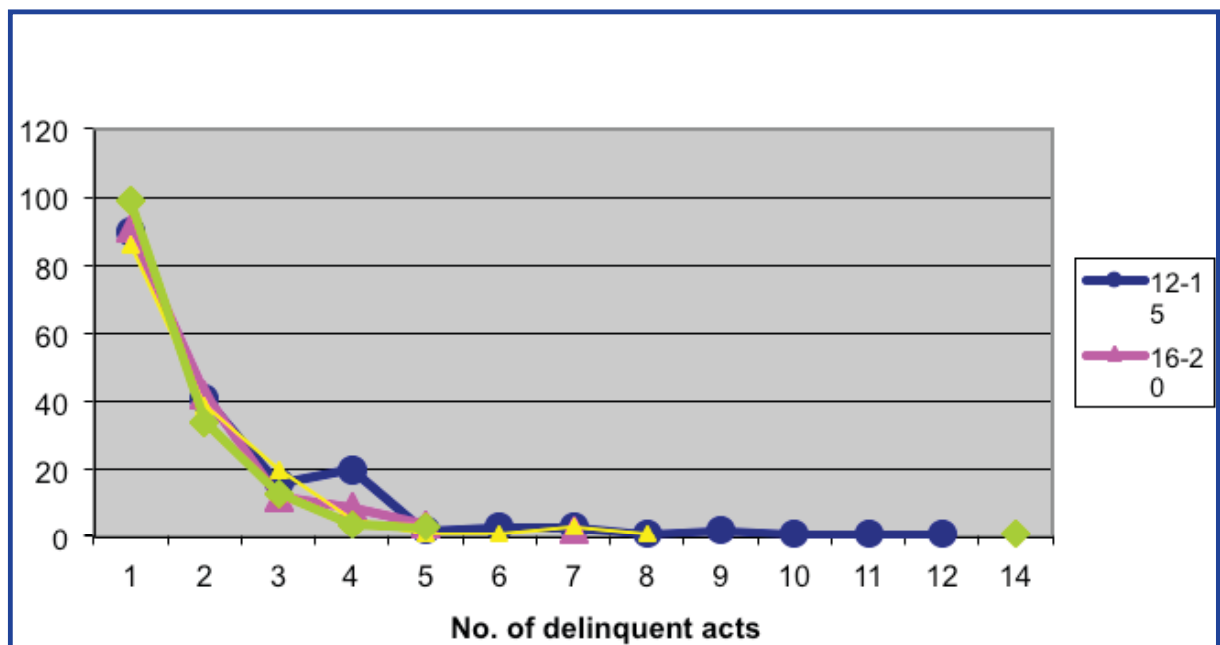
4.3.2 Self-reporting delinquency surveys

Almost 10 years ago, the Barbados Youth Crime and Lifestyle Survey examined the socio-economic background, lifestyles and extent of offending by young people across the island.³² It surveyed 2,500 people between the ages of 12 and 30 years old, chosen at random across the enumeration districts in each parish on the island. The survey was carried out by the National Task Force on Crime Prevention to examine the lifestyles of young people in Barbados as well as to gauge the extent of crime and delinquency that was self-reported.

Some of the findings most relevant to the populations of children falling under the jurisdiction of a juvenile justice system were:

- ◆ Among all males, 35 per cent had committed at least one act of delinquency compared to 17 per cent of females. Males were twice as likely as females to engage in delinquent behaviour.
- ◆ More than half of all persons who committed several acts of delinquency were between 12 and 15 years old. This age group was most likely to continue to commit multiple acts of delinquency.

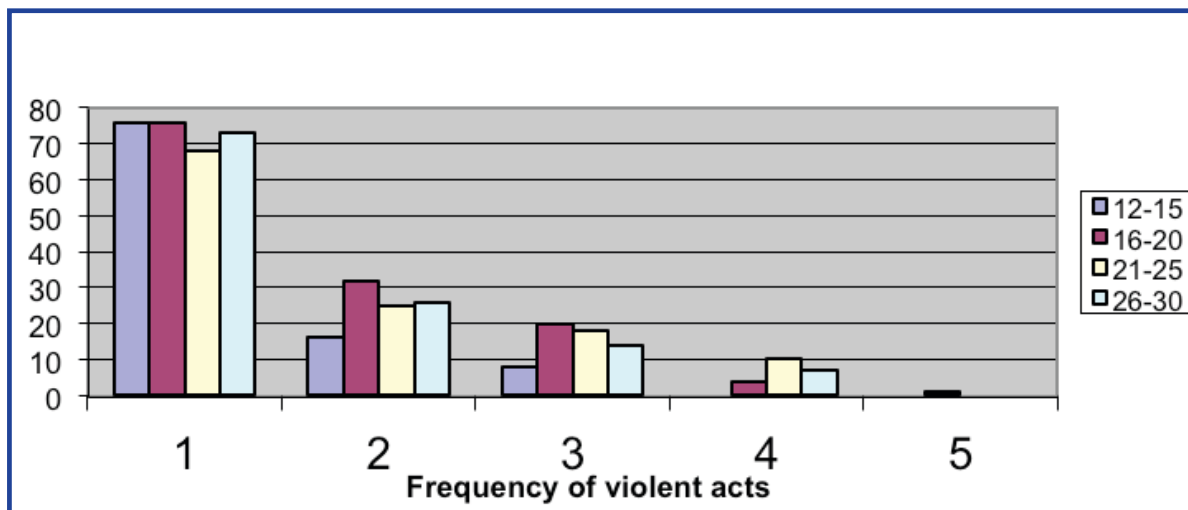
Figure 3. Self-reported delinquency by age



³² National Task Force on Crime Prevention 2004.

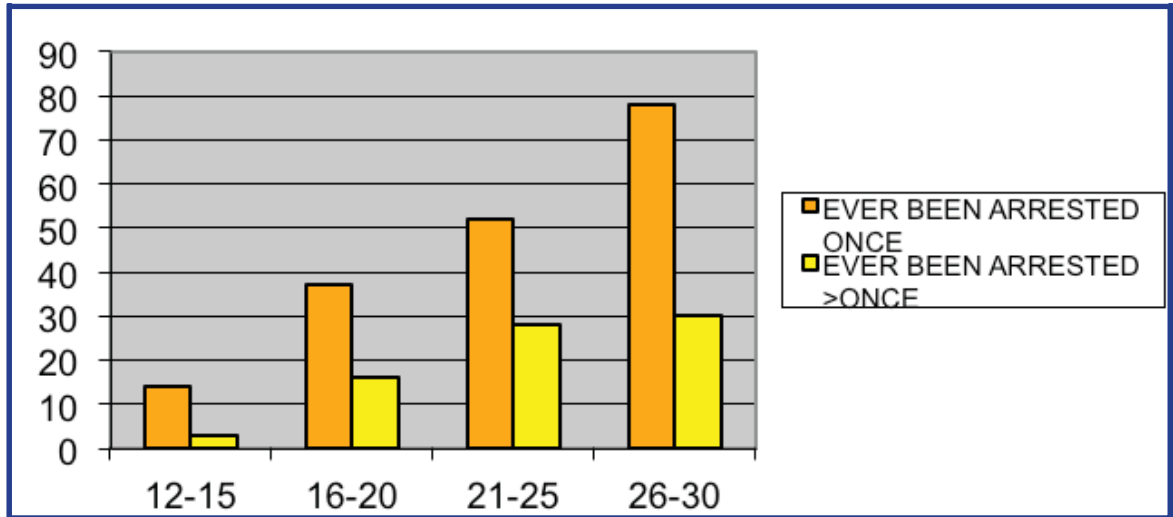
- ◆ Of persons under the age of 16, 42 per cent lived with their mother only while 34 per cent lived with both mother and father.
- ◆ Females under the age of 16 (95 per cent) were more likely than males (87 per cent) to state that their parents question them as to their whereabouts. Thirteen per cent of males said they were not questioned on their whereabouts by their parents.
- ◆ The 16–20 age group was most likely to commit multiple acts of violence within the past year. However, there was no evidence to suggest that persistent offenders commit an increasing number of violent offences. While some persistent offenders commit multiple acts of violence, the majority commit only one act of violence.

Figure 4. Frequency of violence by age



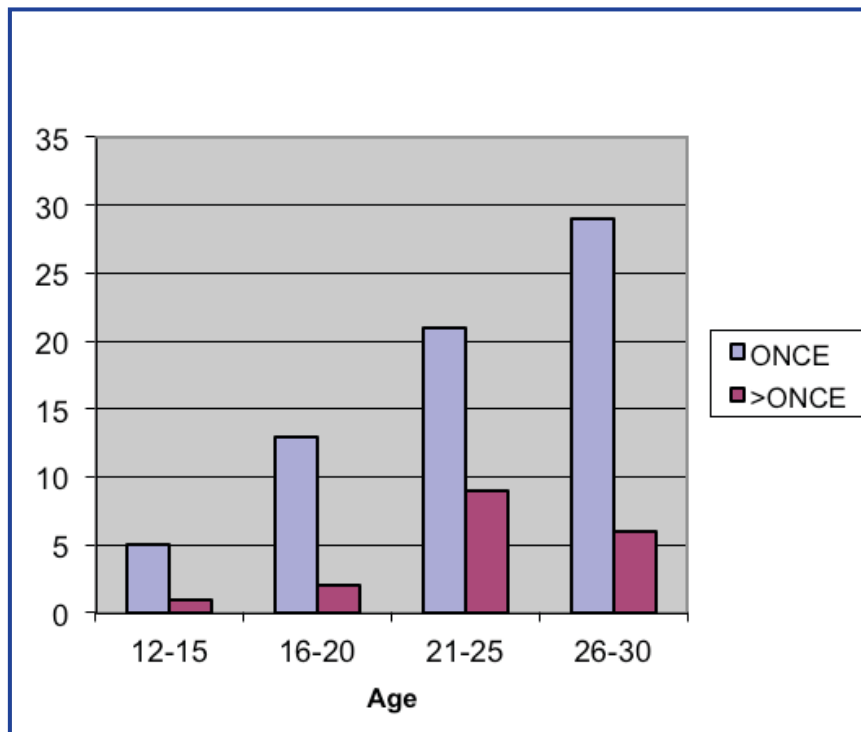
- ◆ An estimated one quarter of all persons who drink alcohol are 16–20-year-olds.
- ◆ Close to half of respondents (46 per cent) in the 26–30 age group who admitted to drug use in the past year started using drugs between the ages of 16–20 years.
- ◆ One in five persons who were arrested once in their lives were between the ages of 16 and 20 years.
- ◆ Eight per cent of those arrested only once were aged 12–15 years and 20 per cent (one in five) were aged 16–20. Similarly, 4 per cent of those arrested more than once were aged 12–15 years. However, the bulk of one-off arrests (43 per cent) came from those aged 26–30 years.

Figure 5. Age range of persons arrested



◆ Seven per cent of all persons imprisoned/ placed in a correctional facility at least once in their lifetime were aged 12–15 years. The peak age of repeat imprisonment was 21–25 years, declining after the age of 26.

Figure 6. Imprisonment by age

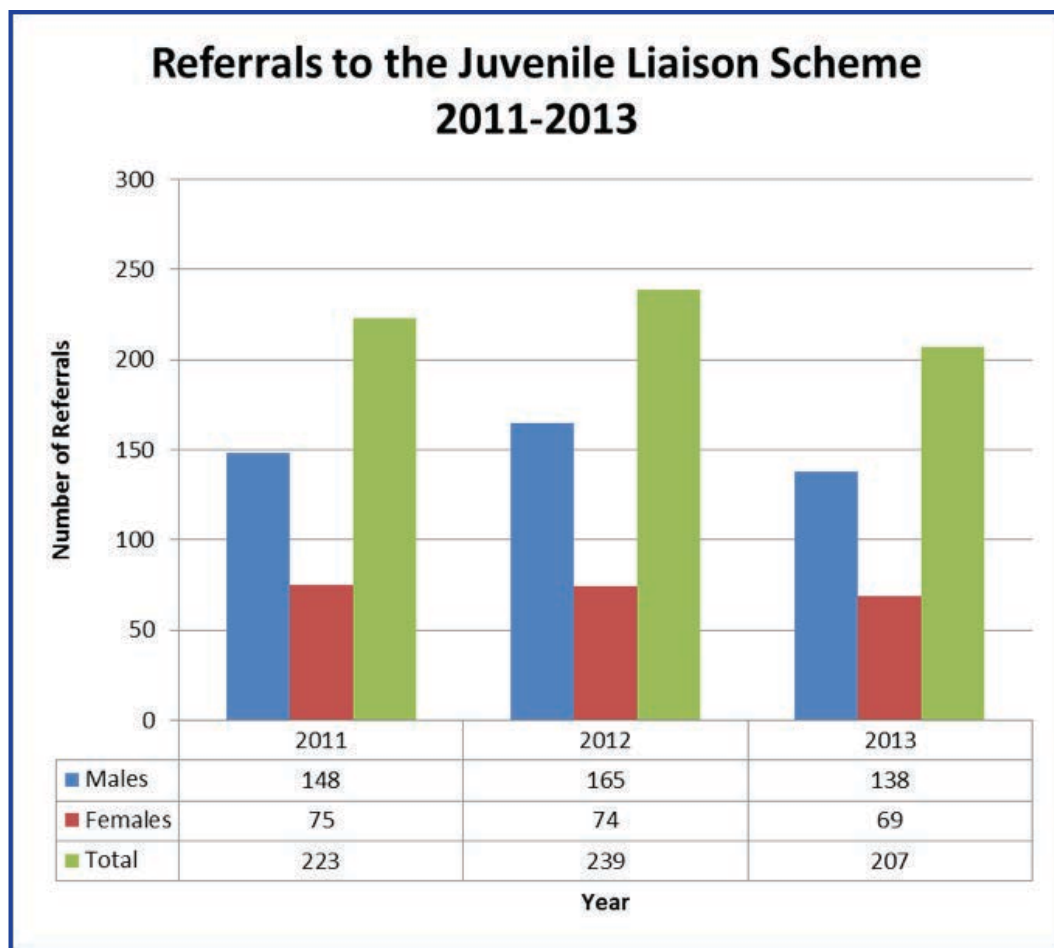


Self-report studies have been shown to be quite useful in providing a picture of youth crime as well as highlighting several risk factors. This particular self-report study was able to cover a range of areas such as lifestyle, schooling, employment, income, family life, leisure activities and lifestyle habits and, most importantly, involvement in delinquent and criminal behaviour.

4.3.3 Diversion referrals

Diversion involves the referral of child offender cases away from formal criminal court procedures to community support. Barbados operates a pre-charge diversion programme through the police called the Juvenile Liaison Scheme (JLS). This programme will be discussed at more length in Chapter 5 but, given the importance of the notion of diversion, efforts were also made to source available data on the functioning of the programme. The information was garnered from the JLS Annual Reports for 2012 and 2013. The data had already been disaggregated and offered useful information regarding the number of juveniles diverted into the programme. The scheme is offered to children aged 7–16 and therefore the data reflect that age spread.

Figure 7. Cumulative referrals to the Juvenile Liaison Scheme, 2011–2013



Source: Juvenile Liaison Scheme Annual Reports 2011–2013.

There were 669 juveniles referred to the scheme for the period 2011–2013: 223 in 2011, 239 in 2012 and 207 in 2013. For all three years, males exceed females. Their ages ranged between 6–17 years. The average ages were 12.9 (12.8 males, 13.0 females) in 2011, 13.3 (13.2 males, 13.6 females) in 2012 and 13.6 (13.6 males, 13.6 females) in 2013. The average ages of the referrals increased over the years.

The referrals are divided into criminal matters or general behavioural problems. Persons referred for criminal matters over the period combined were 196: 79 in 2011, 66 in 2012

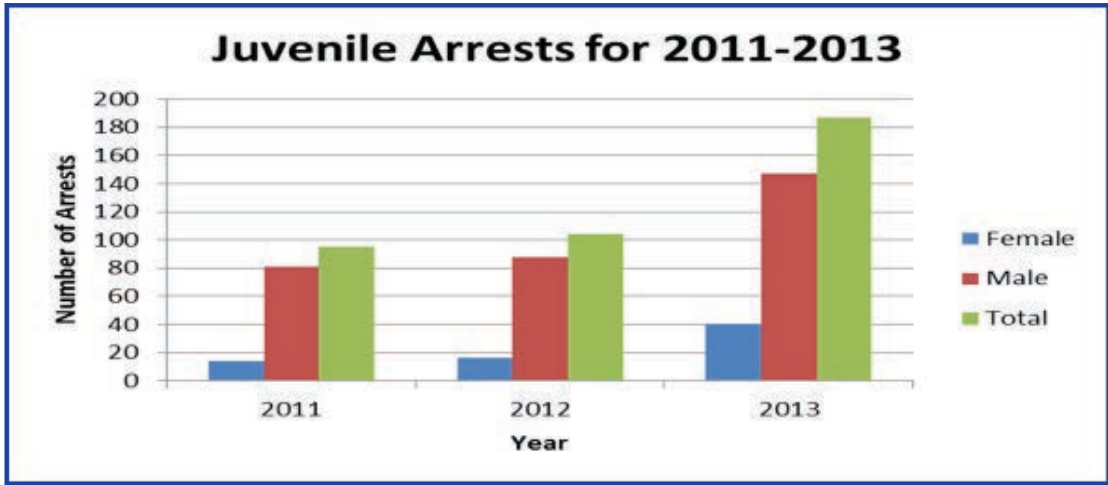
Referrals for general behavioural problems exceeded criminal matters for all three years, and in 2013 these were three times the referrals for criminal matters. As the referrals decrease throughout the period for criminal matters – with an overall decrease of 35 per cent over the three years – there is an overall increase in the number of referrals for general behavioural problems (8.3 per cent).

During the three-year period of 2011–2013, the JLS did not administer any cautions, although if utilized these would ordinarily be issued by the arresting or investigating officer. The police were unable to provide any information about the use of cautions at the station level.

4.3.4 Information relating to arrests

Arrest is an important stage in the juvenile justice system. Information on arrests of children aged 12–18 years, separated by offence and sex, were obtained as aggregate data from the po-lice Criminal Records Department. Although most of the information relating to juveniles in Barbados uses 16 as the age cut off point, the Department accommodated the request to re-report on all persons under the age of 18.

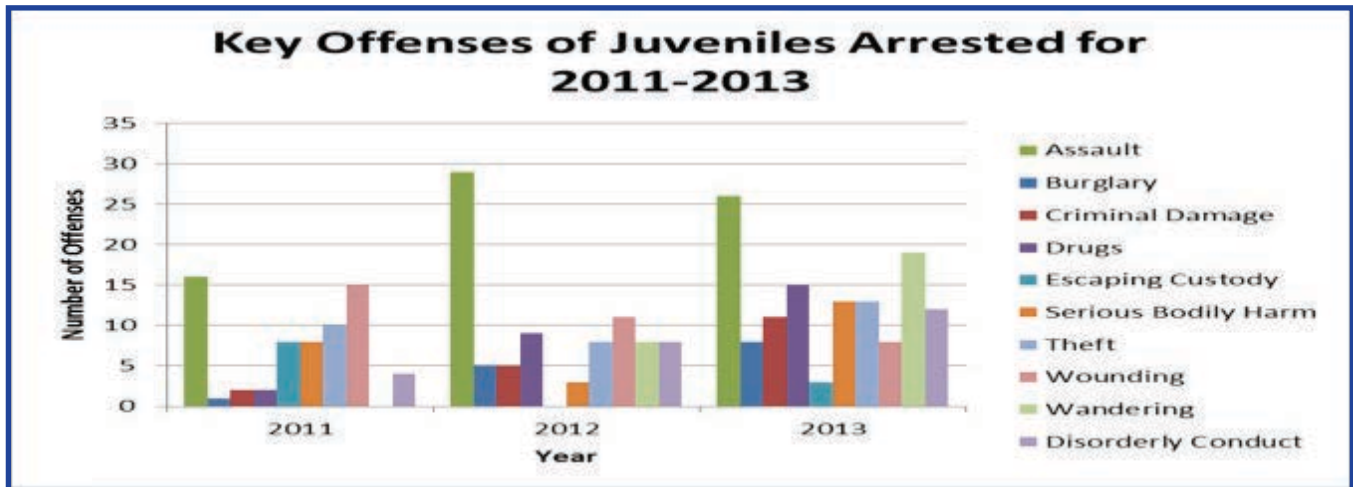
Figure 8. Juvenile arrests, 2011–2013



There were 386 (316 male, 70 female) juvenile arrests (persons aged 12–18 years) over the three-year period 2011–2013. Males represent the majority of arrests for each year: 85.3 per cent in 2011, 84.6 per cent in 2012 and 78.6 per cent in 2013. The number of arrests of both sexes increased over the period as well as the percentage of females in each year.

The offences for arrest include abusive language, arson, assault, assault with intent to rob, assault of a police constable, burglary, causing a disturbance, criminal damage, disorderly con-duct, drugs, escaping custody, indecent assault, kidnapping, loitering, murder, offensive weapon, rape, sex with a minor, serious bodily harm, taking indecent photos, threats, theft, wounding and wandering.

Figure 9. Frequency of key offences of juveniles arrested, 2011–2013



The most common offence over the years was assault, which represented 16.8 per cent of all offences in 2011, 27.9 per cent in 2012 and 13.9 per cent in 2013. Wounding offences went down over the same period from 15 (15.8 per cent) in 2011 to 8 (4.3 per cent) in 2013. Drug-related arrests, wandering and disorderly conduct increased throughout the period. Drug-related arrests increased from 2 in 2011 to 15 in 2013, wandering from zero in 2011 to 19 in 2013 and disorderly conduct tripled from 4 in 2011 to 12 in 2013. The two drug-related arrests in 2011 were both females, while those in other years were all males.

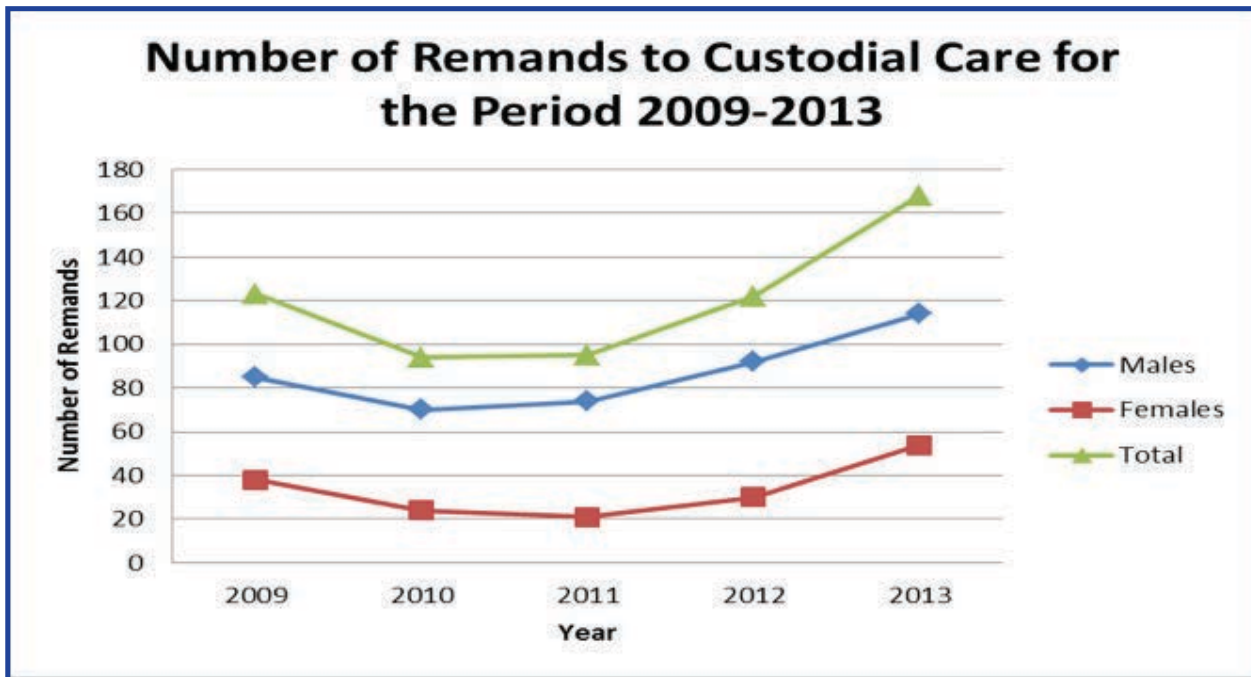
The most common cause for arrest among males overall was assault (17.1 per cent) and it was also the most common for each year. The most common offence for females overall was also assault (24.3 per cent). However, wounding (35.7 per cent) was most common in 2011, assault (43.8 per cent) in 2012 and causing a disturbance (25 per cent) and wandering (25 per cent) in 2013.

4.3.5 Information relating to remand/pre-trial detention

Remand of children refers to their detention pending their appearance in court. Data for detention before and after trial was collected from the GIS remand and committal records for a five-year period (2009–2013) and represents the number of remands not the number of individuals. A child can be remanded at several stages of the process and on several occasions. Other information collected was the age/date of birth, offence, place of residence and date of arrival at the institution.

The remand information revealed that data labelled similarly at different organizations actually represented different information. They either represented the number of remands inclusive of overnight holding in cases of investigations or also represented the number of children remanded after being brought before the courts and charged. The record keeping did not sufficiently distinguish these two different circumstances.

Figure 10. Remands to custodial care, 2009–2013



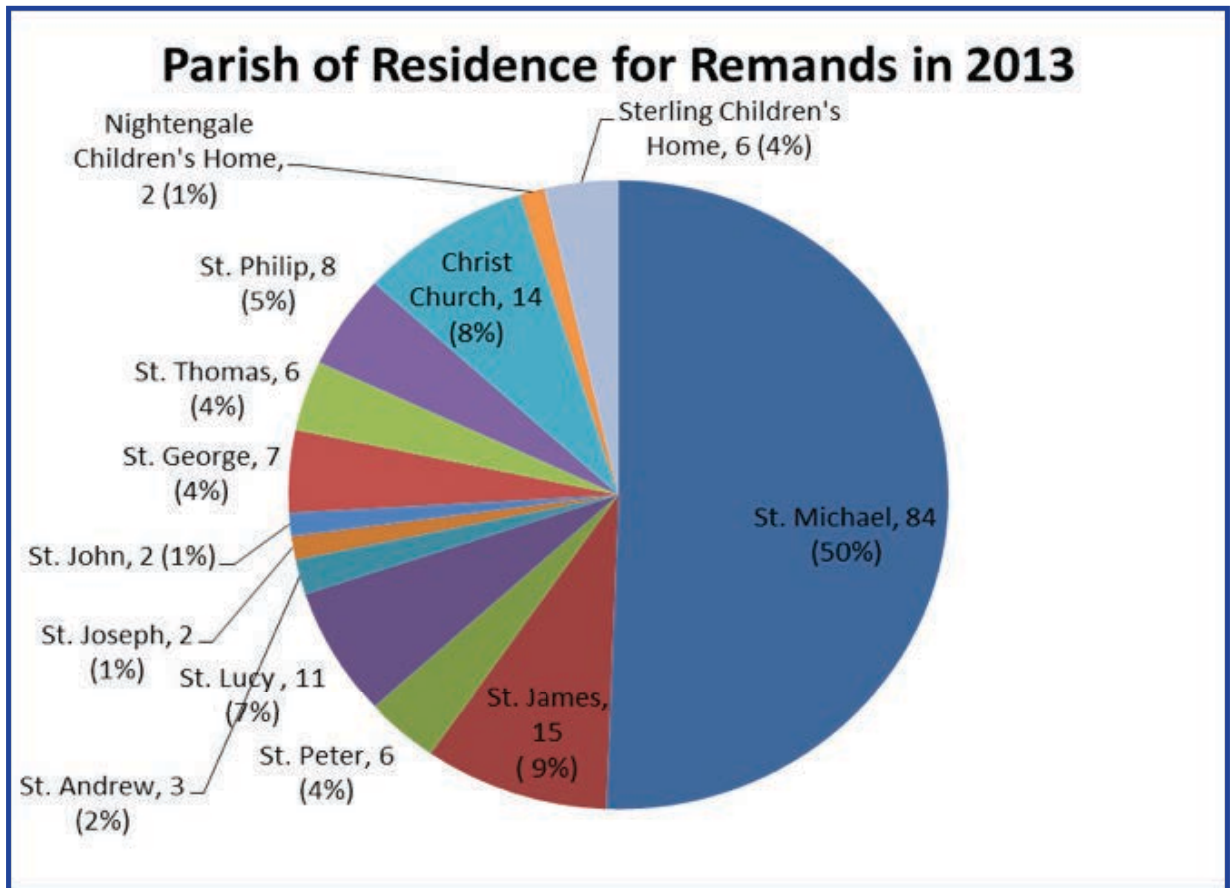
Source: Government Industrial School 2014.

During the five-year period of 2009–2013, there were 602 remands (435 males, 167 females). The number of remands among males was higher than females for all five years, with male remands doubling those among females (67.9 per cent to 32.1 per cent) in 2013. The number of remands ‘dipped’ in 2011 to 94 (70 males, 24 females) and increased to 168 (114 males, 54 females) in 2013. Currently, two juveniles under the age of 16 are remanded to the prison service.

The ages of those remanded during 2009–2013 ranged from 11 to 16 years. The average age was 14.2 years (14.2 males, 14.1 females). There is no difference between the average ages of males and females remanded to custodial care pre-trial.

Half of those remanded during the period of 2009–2013 resided in St. Michael (222 males, 78 females). Figure 11 illustrates the places of residence for all those remanded in 2013. The majority (50.6 per cent) lived in St. Michael, while 5.8 per cent resided in children’s homes.

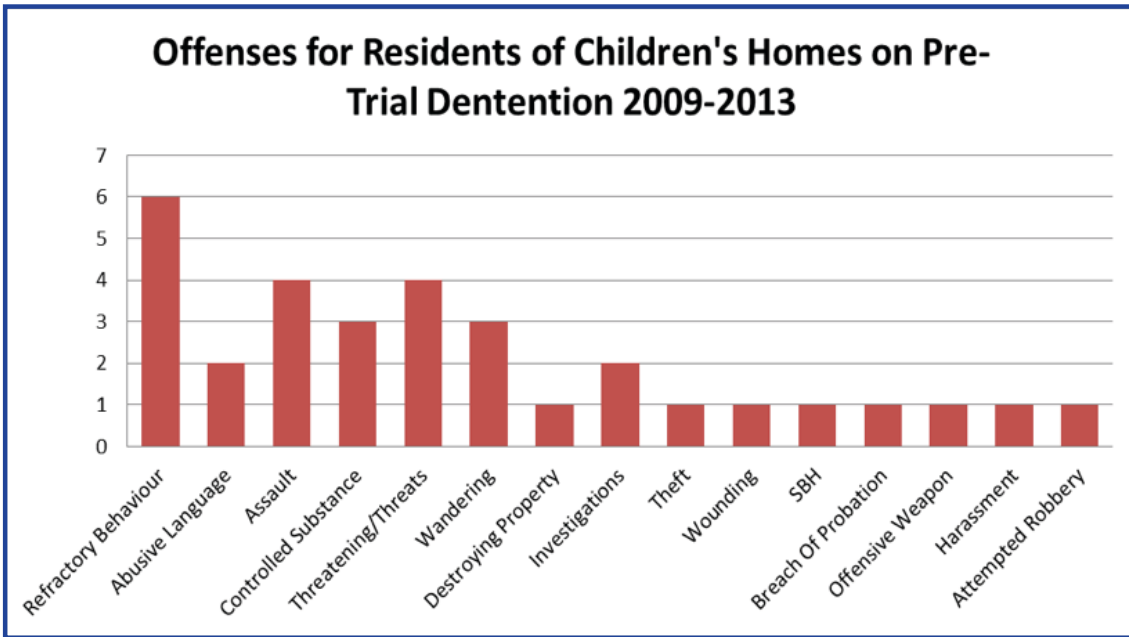
Figure 11. Parish of residence for remands, 2013



Of those remanded during the period, 33 children were residing in children's homes (18 males, 15 females). Their ages ranged between 11–15 years, with the majority aged 13 and 14 years.

The offences for which the children from the homes were placed on remand included refractory behaviour, destroying property, abusive language, assault, possession of a controlled sub-stance, wounding, threatening words/threats, theft, wandering, breach of probation order, at-tempted robbery, harassment and serious bodily harm (SHB). The most common offences were refractory behaviour (3 males, 3 females), assault (1 male, 3 females) and threatening words/threats (4 males).

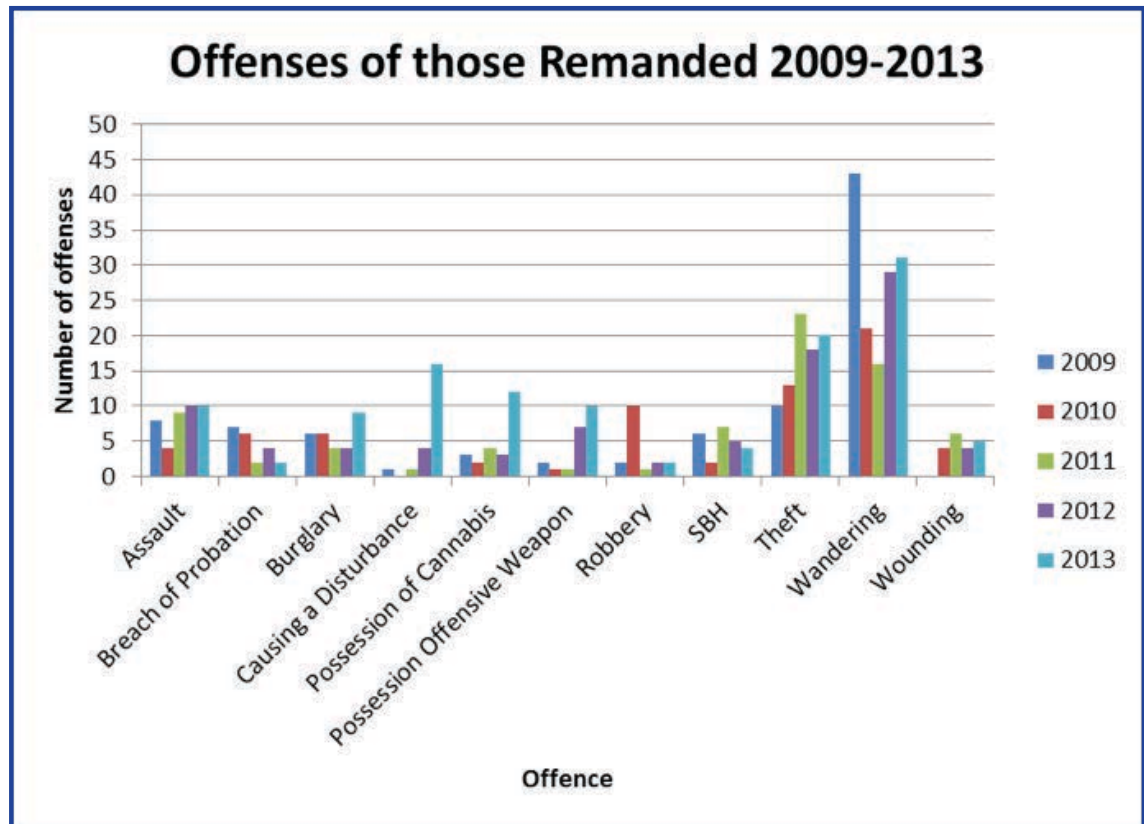
Figure 12. Offences of residents of children’s homes on pre-trial detention, 2009–2013



Source: Government Industrial School 2014.

The offences for which children were remanded into custodial care at the GIS included assault, breach of probation, burglary, causing a disturbance, possession of a controlled substance (cannabis), possession of an offensive weapon, SBH, theft and wandering. The most common offence over the five-year period was wandering: 23.4 per cent (36.4 per cent male, 63.6 per cent female). Wandering was the most common offence among females (53.3 per cent) and theft was the most common among males (18.3 per cent).

Figure 13. Offences of those remanded, 2009–2013



Source: Government Industrial School 2014.

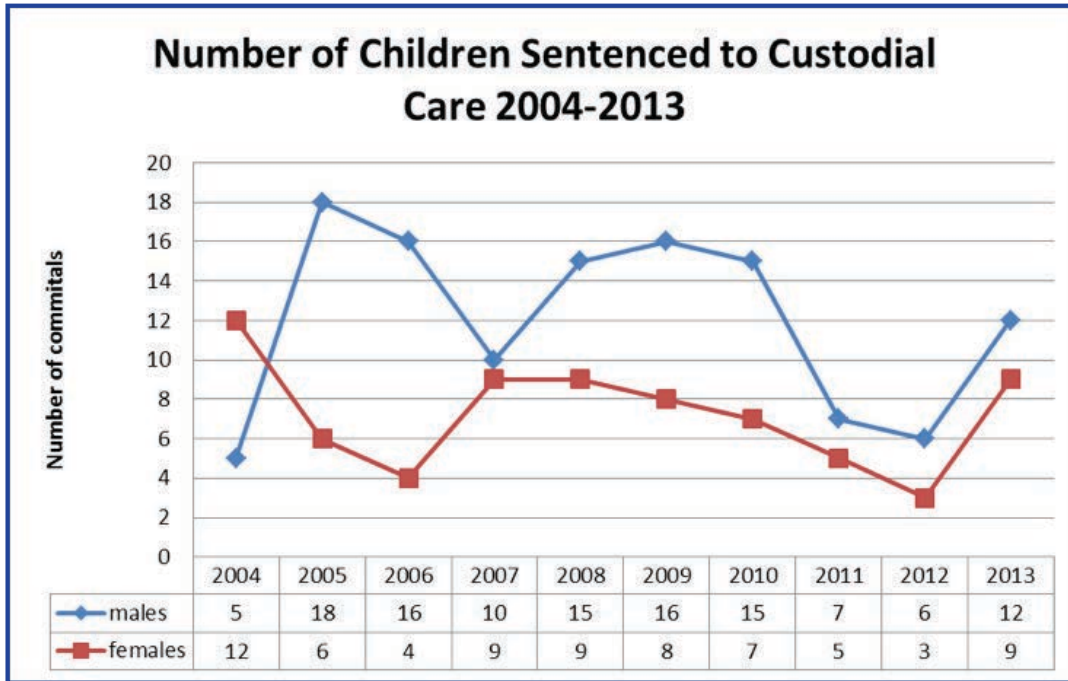
4.3.6 Information relating to post-trial committal/ detention

Once a child has been convicted of an offence, a sentence is generally imposed. Although the CRC has expressly stated that confinement in a facility should be the option of last resort, some young offenders are sentenced to custodial sentences. In the case of Barbados that will mean being sent to the GIS for boys or girls.

According to the 2010 census, there are 47,922 children under 16 years of age in Barbados and 53,942 under 18 years. The number of children sentenced to custodial care under the age of 16 in 2013 was 21, which represents 4.38 per cent of that age group.

Figure 14 illustrates that 192 children under the age of 16 (120 males, 72 females) were committed to custodial care in the period 2004–2013.

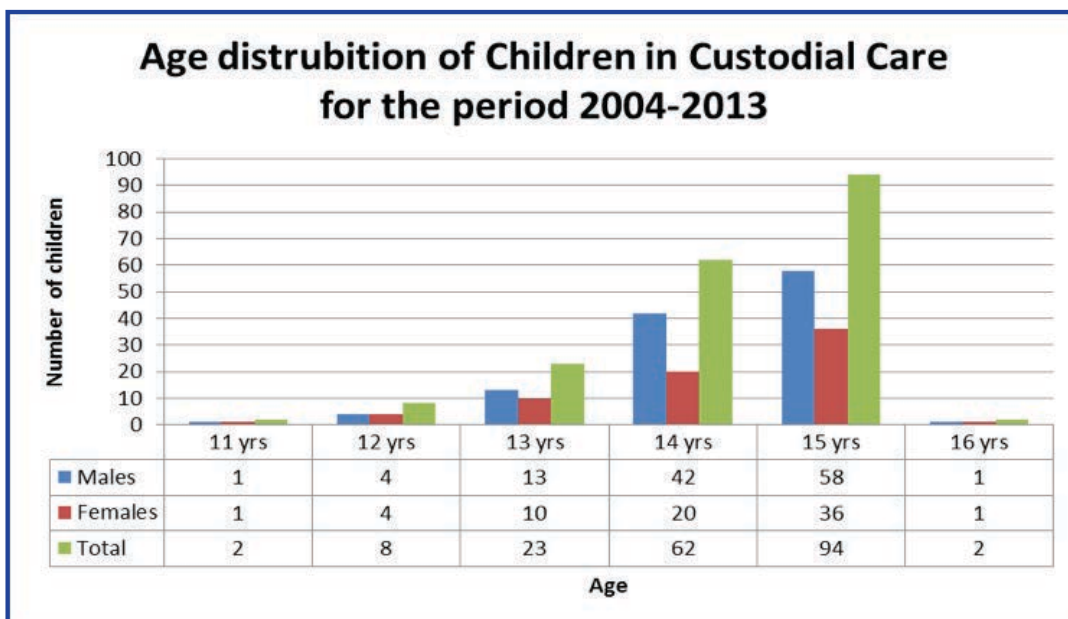
Figure 14. Number of children sentenced to custodial care, 2004–2013



Source: Government Industrial School 2014.

More males overall have been committed and make up 62.5 per cent of those sentenced. However, in 2004 more females were committed into custodial care than males (29.4 per cent males, 70.6 per cent females). In 2011, one male was released unconditionally on medical grounds.

Figure 15. Ages of children sentenced to custodial care, 2004–2013



Source: Government Industrial School 2014.

The age distribution at sentencing ranged from 11 to 16 years, with the average age being 14.3 years (14.3 years males, 14.2 years females). There is no significant difference in the age between the two genders. Approximately half (49.2 per cent) of the children were aged 15 years at the time of sentencing (48.7 per cent males, 50.0 per cent females).

Of the 88 children committed over a five-year period (2009–2013), 26 (15 males, 11 females) or 29.6 per cent were from the Child Care Board/children’s homes.

Table 5. Juveniles committed from the Child Care Board

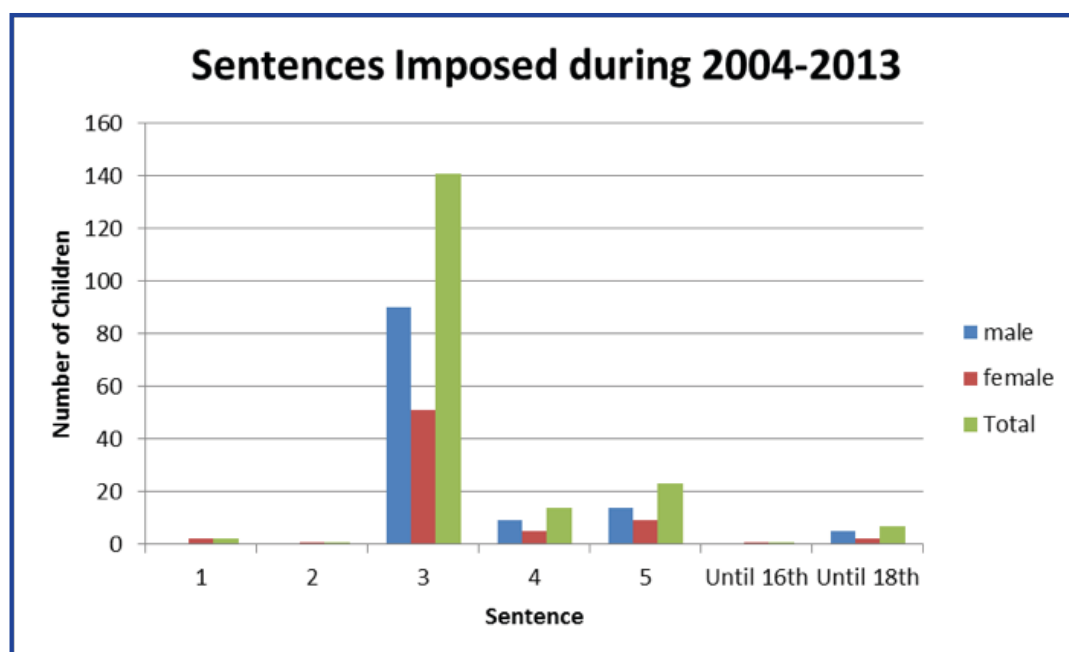
Sex	2009	2010	2011	2012	2013
Males	4	3	3	2	3
Females	3	1	2		5
Total	7	4	5	2	8

Source: Child Care Board, 2014

Despite the fact that children under the age of 16 are not ordinarily sent to Her Majesty’s Prison, one male child was committed at HMS Dodds in 2012 and there are currently four children under the age of 16 in the prison. While this figure represents less than 1 per cent of the prison population, it does NOT include those children who are between the ages of 16–18 years, who account for a higher number of children.

The sentences imposed range from one to five years and also include until age 16 or 18. In 2004–2013, the three-year sentence was issued the most, with 141 children (90 males, 51 females) being sentenced to three years, which represents 74.6 per cent of the sentences (see Figure 16).

Figure 16. Sentences imposed, 2004–2013

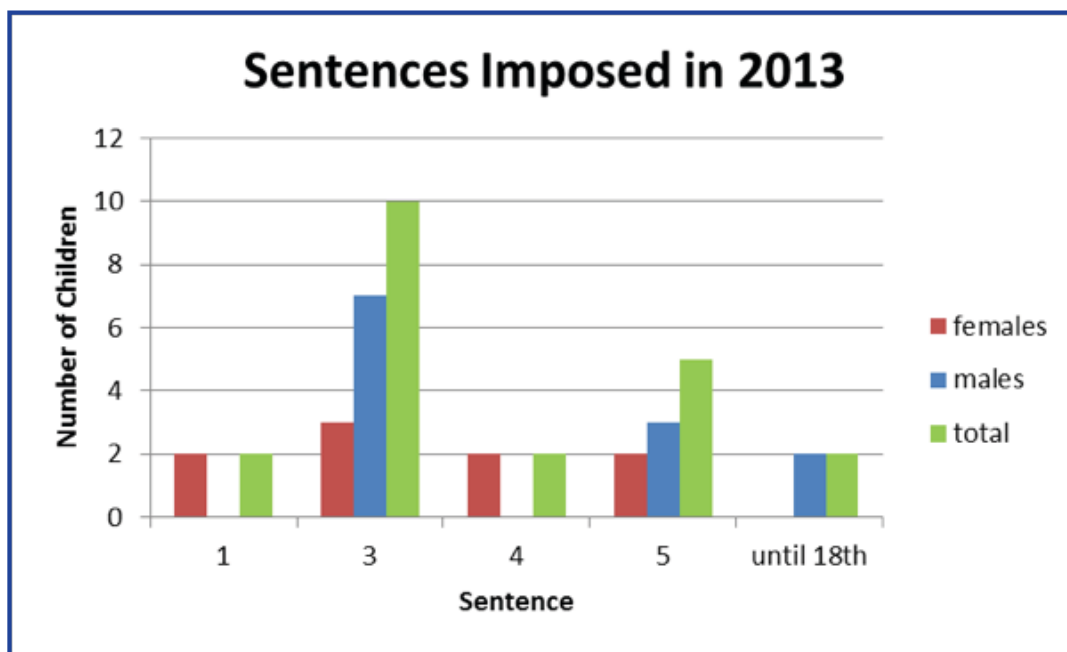


Source: Government Industrial School 2014.

Three years was the minimum sentence given to males while shorter sentences of one to two years were given to females. The shorter sentences represent 1.59 per cent of the sentences during the 10-year period of 2004-2013. One female during this same period was also sentenced until age 16.

In 2013, sentences ranged from one year to five years and also included until age 18. Sentences of three years were the most common, making up approximately half (47.6 per cent) of the 21 sentences imposed (Figure 17). Twenty-five per cent of males were sentenced for three years and 22 per cent of females received the same sentence.

Figure 17. Sentences imposed, 2013



Source: Government Industrial School 2014.

5. JUVENILE JUSTICE: A GAP ANALYSIS BASED ON THE INTERNATIONALLY ESTABLISHED STANDARDS

5.1 IDENTIFYING SYSTEM LIMITATIONS

One of the core requirements of States parties to the United Nations Convention of the Rights of the Child (CRC) is the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the law.

This component of the report seeks to assess the progress made by Barbados in meeting these obligations. National juvenile justice systems, procedures and practices are assessed against the key requirements of the CRC and the UN guidelines on juvenile justice. Whereas Chapter 3 looked at the legislative frameworks, this chapter will focus on the practical, procedural and programmatic limitations of the system. Some of these have already been mentioned, such as weak data collection protocols. However, there are a number of other challenges that need to be addressed and will require urgent attention to bring Barbados closer to the internationally established standards.

The stakeholder consultations were very helpful in formulating the priority areas for exploration in this gap analysis, and comments from the interviews and focus groups will be shared throughout this assessment. The voices of the children will feature significantly, given the interest they have in a reformed juvenile justice system that will be better meet their needs.

The gaps in the system are treated here on a thematic basis under the following three broad headings.

- I. Insufficient emphasis on rehabilitation versus punishment
- II. Systemic challenges within the legal setting
- III. Service and programmatic limitation (the GIS, prison, psychosocial interventions, probation)

It is important to acknowledge from the outset that the issues under each of these headings often intersect or overlap. Topics explored under one of the thematic areas could equally fit under another. The arrangement of areas to be examined was approached with that reality in mind and should not be read as confining the issue to one thematic categorization over another.

5.2 INSUFFICIENT EMPHASIS ON REHABILITATION VERSUS PUNISHMENT

There was a consensus among key stakeholders that the current system does not place sufficient emphasis on the rehabilitative needs of children brought into the system. The general view is that a number of factors have compromised the child-centred focus of the system and have supported an approach that is too punitive in nature. The comments on this particular point were often very passionately expressed.

In describing the rights of any child alleged to have violated criminal laws or accused of or found guilty of having violated those laws, article 40 of the CRC emphasizes the desirability of promoting the child's reintegration and of the child assuming a constructive role in society.

A juvenile justice system whose policy on crime is geared merely toward retribution, and that puts considerably less emphasis on such fundamental goals as prevention and opportunities for successful reincorporation into society, is incompatible with the international standards on the matter.

“Understanding about the triggers for delinquent behaviour is just not there. People focus on the presenting behaviour and don't think about the causes. This is the thinking that informs our system's responses, which focus on punishment.”

“In Barbados we have not developed an infrastructure that is supportive of these children. We rely on the use of punishment to change behaviour.”

“I often see too many victims who are caught up by the criminal justice system.”

“As a country, we don't have the systems in place to deal with juveniles effectively....so we lock them up for long periods and say that we are doing it for their own good.”

Under article 40 of the CRC, States parties must endeavour to deal with children in conflict with the law without resorting to judicial proceedings, such as through referral to alternative (social) services, whenever appropriate and desirable. Generally speaking, international human rights law favours reserving those penalties that most severely restrict a child's fundamental rights for only the severest of crimes; thus, the trend in juvenile justice systems is toward abolishing penalties of imprisonment or deprivation of liberty.

In those cases in which a child or adolescent is found to be responsible for serious offences that do carry penalties of imprisonment or deprivation of liberty, the State is still to be guided by the principle of the best interests of the child. The Beijing Rules reiterate this point and provide that “restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum” and that this “shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of society.”

These international standards must serve as the backdrop by which the Barbados juvenile justice system is measured. Rehabilitation is the bedrock of juvenile justice and punishment, thus any form of confinement that would lead to the ‘deprivation of liberty’ is actively discouraged and viewed only as an option of absolute last resort.

5.2.1 Diversion of cases

International standards underscore the critical role of diversion as a mechanism for promoting a more effective juvenile justice system. Diversion involves the referral of cases away from formal criminal court procedures and directing child offenders toward appropriate services and community support. It is viewed as a key element in meeting the objectives of a system that is rational and humane, child centred and encouraging of a multidisciplinary approach that draws on multiple and interconnected systems.

Through diversion, a child who is accused of committing a crime or an offence is given the opportunity to take responsibility for his or her conduct and to make good for the wrongful action. Diversion is closely linked to restorative justice and may involve a component of this, depending on the nature of the diversion.

Diversion options can come into play at any point of decision-making, either as a generally applicable procedure or on the decision of the police, prosecutor, court or similar body. Some diversion measures are pre-charge and are generally overseen by the police; others are post-charge and usually court connected in nature. In theory, diversion can be used for children committing any kind of offence, though in practice it is rarely used for the most serious crimes or for persistent offenders.

The present law in Barbados gives no legal recognition to the concept of diversion and this was already identified as a serious gap in the legal responses to juveniles. It stands in stark contrast to other legislative frameworks in the region that have incorporated diversion as an essential ingredient of child justice. For example, the OECS Model Bill on Child Justice presents three levels of diversion options that are diverse and comprehensive.

Despite that lack of a legal context for the operationalization of diversion, Barbados does have a pre-charge diversion programme implemented through the police: the Juvenile Liaison Scheme (JLS), established in 1883.³³

The mandate of the JLS is expressly captured in its 2013 annual report as being “*established ... with the general goal of diverting juveniles (aged 7–16) from the Criminal Justice System, thus contributing to the overall reduction in juvenile delinquency*”.³⁴

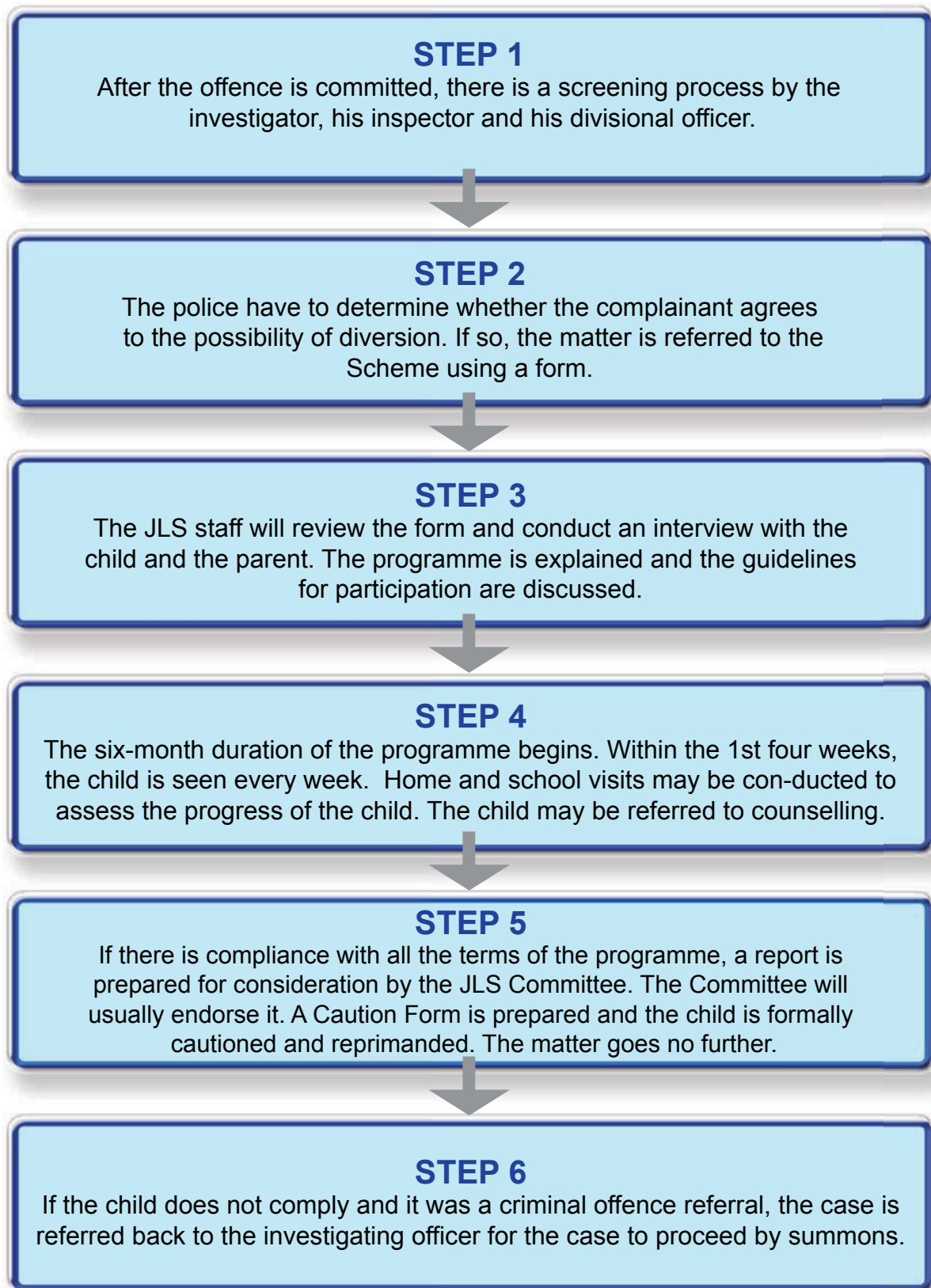
The Scheme receives referrals for “matters of a criminal nature” and referrals for “behavioural problems”. The referrals for the former come from the police, whereas those for the latter come largely from parents and schools. In 2013, 207 juveniles were referred to the Scheme: 51 for matters of a criminal nature and 156 for general behavioural problems. This clearly indicates that the JLS is used far more by parents and schools as a prevention strategy than it is actually used by the police as an alternative to charging.

In terms of the offences for which young persons have been referred to the programme, the 2013 report indicated that the highest number of referrals for a criminal offence was for theft (29.4 per cent), followed by causing a disturbance (17.6 per cent).

³³ There are other less established diversion programmes, such as that run by the Probation Department. Probation also receives referrals from parents of children who have behavioural problems.

³⁴ Juvenile Liaison Scheme Annual Report 2013.

The process followed by the JLS involves the following steps:



The JLS is clearly a welcome addition to the national response to young people who come into conflict with the law. It provides an opportunity for a 'second chance', allowing some young people to escape the more serious implications of the formal criminal justice system. Having acknowledged its positive role, there are several gaps within the diversion programme that have limited its impact.

Limitations with the diversion programme

- ◆ It is the only diversion option available. There is no post-charge diversion that is court connected or any other variation on the pre-charge type of diversion. This does not provide the wide safety net that is expected of a national diversion strategy.
- ◆ The number of referrals for young people who have actually committed a criminal offence is relatively low. The programme is more heavily relied on by parents who are having problems managing the behaviour of their children.
- ◆ Referrals for criminal matters can only occur if the complainant is agreeable to the matter being dealt with in that way. Implicitly, if a complainant requires that charges be pursued then the diversion option will not be considered. This is problematic and is an unnecessary screening procedure that may not operate in children's best interest. Provided that a referral to diversion will not violate the public interest, a referral should be considered.
- ◆ A young person is given only one opportunity to enter the programme. This rigid application of the 'one chance' criteria limits subsequent use of diversion for recurring incidents. Some diversion programmes offer a 'step up' system that draws on different tiers of measures depending on the gravity of the offence or other important considerations.
- ◆ There is no requirement that the State should be able to prove its case against the juvenile offender should the case have proceeded through the 'regular channels'. In other words, children should not be offered diversion simply because the State would not be able to establish its case through formal proceedings.
- ◆ There is not enough of a rehabilitative thrust to the programme. Actual referrals to counselling are reportedly rare. The programme appears to operate more as a supervision intervention, where the police offer some support to children and their families in ensuring that there is better compliance with the law and the rules of the home. Psychosocial interventions, vocational training, self-development programmes, basic life skills training and other well-established rehabilitation tools are not integral features of the Scheme.
- ◆ Police officers have totally unfettered discretion in referring children to the JLS, and the referral rates from police stations are reportedly very uneven. Some stations seldom refer candidates to the programme while others believe in its value and use it more often. The officer in charge of the programme commented on the disparity in referrals from the different stations:

“There is a lot of discretion. Some stations say point blank that they will not consider diversion for some types of offences....even if technically the young person may qualify for the programme.”

This is very concerning and will inevitably have a discriminatory impact on juveniles, de-pending on where they reside and which station processes their matter.

The JLS is definitely a step in the right direction. However, in an effort to bring national juvenile justice responses more in line with rehabilitation objectives, the diversion strategies in Barbados will require more thought, creativity and well-considered restructuring.

5.2.2 Inappropriate remand practices

International standards require that detention pending trial shall only be used as a measure of last resort and for the shortest possible period of time. The rules state that whenever possible, alternatives such as close supervision, placement with a family or in an educational or home setting should be used.

Children who cannot be released at the police station and need to make a court appearance are often detained overnight at the GIS. The police have been doing a very good job of complying with section 4 of the Juvenile Offenders Act, which requires that they use the GIS as a place of detention before the young person’s first appearance in court (in lieu of police holding cells or the remand section of the prison). However, even placement at the GIS pending court appearance should be used sparingly and only after all other community placement options have been exhausted. Detention at the GIS, even on an overnight basis, should not be the default position for children who have to be held pending their appearance in court.

Another very disturbing trend is the use of remand for the primary purpose of facilitating the juvenile’s access to assessments that the court requires. Consultations, especially with magistrates, revealed the troubling practice of children being remanded to the GIS with the primary – and sometimes sole – objective of ensuring that the child is assessed. As one magistrate very frankly stated:

“Sometimes we have to remand them for at least 6–8 weeks simply to get the report... even when they don’t deserve it. The reports cost a few thousand dollars if they are done privately and most parents can’t afford that. There may be other resources but we don’t seem to have access to them. The Government Industrial School can get the children properly assessed but it takes so long. I often have to put the children on further remand to ensure that the assessment is completed. Children can be on remand for a long time while we wait for this to hap-pen“

This particular practice is especially dangerous because it is being done on the pretext that the confinement is “in the child’s best interest”. Detaining children for the sake of getting them access to assessments is not an excuse for deprivation of liberty. The

system is obligated to find a better route for ensuring that children are assessed and that the court can benefit from the information in those assessments. The means by which psychological assessments are facilitated should not be via a locked facility as opposed to community-based sentences. This practice is tantamount to punishment masquerading as rehabilitation.

5.2.3 Inappropriate sentencing

The use of inappropriate sentences is perhaps one of the most telling signs of a system that places undue emphasis on punishment as opposed to rehabilitation. The international treaties and guidelines that form the backdrop to this Situation Analysis all reinforce the principle that “deprivation of liberty shall be used only as a measure of last resort, for the shortest appropriate period”. This is a fundamental principle that should be safeguarded at all costs.

Regrettably, a frank assessment of the sentencing practices in Barbados demonstrates a real disregard for this basic principle, with too many children being removed from their community settings and confined to the GIS for extended periods of time.

This sentencing issue has already been discussed in Chapter 3 but, given its critical importance, it will be further developed in this section.

The concern about sentencing practices in Barbados arises from the following:

- i. The limited range of creative non-custodial sentences
- ii. The length of custodial sentences
- iii. The possible resort to whipping as a sentence

As previously discussed, the out-dated legislation does not embody the more creative and modern sentencing options. Modern frameworks create a range of provisions that courts can use to offer meaningful interventions in the child’s treatment and recovery. The OECS Model Bill, for example, includes a wide range of non-residential (non-custodial) sentences, including probation, suspended sentences, community service and restitution. It also expressly captures the provisions that can be attached to these orders including curfews, peer non-association conditions, school attendance orders and counselling or treatment attendance orders. In addition, the Model Bill includes a hybrid of a residential and community-based sentences that permits the child to be confined for only intermittent periods during a sentence that is served in the community. This sentence is sometimes referred to as an ‘open custodial sentence’. The absence of community service in Barbados on the basis that it is ‘child labour’ is a questionable position that ought to be re-examined.

The length of custodial sentences is yet another indicator of a strong punitive undercurrent to the system. This issue of mandatory custodial sentences of three-to-five years has already been addressed, and this is perhaps the most offensive feature of the sentencing process. Children in Barbados are receiving three years at the GIS for offences that do not even warrant a custodial sentence in the first place. Mindful of the fact that this point has been already discussed, suffice it at this juncture to share the views of the children on this issue.

The focus groups with both the boys and the girls were painfully revealing in general, but on this issue their messages were particularly heart-rending. They spoke openly

of the injustice of being sent to “this place”, “being locked up” and “being taken away” for such a long period of time. They made their comments fully aware of the fact that adults were not being given these same lengthy sentences and had internalized the fact that they were being discriminated against on the sole basis of their youthfulness. The comments were a testimony to the insightfulness of children and their vigorous pursuit of fairness. They spoke often of wanting the system to treat them fairly and yet spoke of “fairness” in such elusive terms, as though they had resigned themselves to the harsh reality that life was not about fairness (see box).

The voices of children on sentencing

BOYS

- “I get sentence to be here until my 18 birthday... that is four years! Big men is do the same thing as what I did and worse and is get much less time... this can't be fair.”
- “For a first charge we is get nuff time and that it is not right... how that could be right?”
- “I was charged with wandering and I don't feel that I should even be in this place... but I am here for three years.”
- “A lot of bad things happen in my neighbour.... I have seen a lot of bad things happen and I know that what I did was not nearly as bad as the stuff that happen all the time in my community. So why I am I in here for such a petty crime? This is unfair.”
- “I stood up in court and listened to all the things they said in my report... things from the school. Some of the things were true and others were not. But that didn't matter cause the magistrate send me up here for this big lot of time anyway. You can't do anything about it... so I just here.”
- “In the big jail a year is really nine months that you have to serve... in here a year is a year... that's not right.”

GIRLS

- “I was having some family problems and I ran away. A plain-clothes policeman catch me and I am in here for three years.”

The issue of whipping is not a complicated one and is easily rectified by the abolition of corporal punishment as a sentencing option. Although the consultations did verify that corporal punishment is rarely used as a sanction by the court, it is nevertheless on the books and available for use by a judicial officer who sees it fit to do so. Whipping or flogging is an indisputable manifestation of a system bent on punishing children as opposed to helping them become well-adjusted and contributing members of society.

5.2.4 Insufficient access to family and community

“Perhaps more than any other at-risk group, youth in the juvenile justice system need meaningful relationships and supportive guidance from the adults in their lives. Everyone who has a personal stake in the healthy development of each child’s life can and should play a role. The importance of family involvement before and during the juvenile justice experience is acknowledged within the system.”³⁵

The above quote from a report prepared by Models for Change reflects the critical role that access to family and community should play in the rehabilitation agenda. Children need to remain strongly connected to their families and communities, and detention of juveniles in institutions compromises that process.

However, even when children are confined, a system that promotes liberal access to families and visits to the community can still accomplish some of the rehabilitation objectives served by this kind of contact. Detention conditions will therefore determine how much these objectives can be realized. The assessment revealed that whereas the conditions at the GIS were generally much better than they had been in the past, there were still several gaps in the general detention conditions. The principal of the school was described by some respondents as a “humanitarian” who had made valiant efforts to change the culture of the school from one steeped in “harshness” and “punishment” to one that was striving toward an environment that was more compassionate. Despite those efforts, however, the school has a history and an orientation that emphasizes punishment and this is not easily overcome. Some of the remaining features of the GIS detention setting that are more informed by punishment than rehabilitation are:

- ◆ The lack of sufficient recreational activities
- ◆ The lack of sufficient and consistent programming, both educational and vocational
- ◆ The lack of a formal complaints mechanism
- ◆ The lack of sufficient access to family and community

Whereas most of the other deficiencies will be addressed under the separate heading of services and programmes (section 5.4 below), the issue of access to family and community directly concerns this section of the report. The school administration readily conceded that visits were limited to once every three weeks. This was explained in terms of the logistical challenges of managing the visiting process, the reluctance of some parents and family members to even visit their children, and the dysfunctional nature of

³⁵ *Mental Health Association in Pennsylvania and the Pennsylvania Council of Chief Juvenile Probation Officers 2009.*

some of the families, which was said to have negative influences on the resident children. Little to no community time is facilitated either. Some boys belong to a pan group that plays at hotels and the children have made a few field trip, but these are very rare. Yet, children need to interact with their family members and persons in their communities.

This was an area where the children's voices were once again powerful and very moving.

*"The one good thing about the visits is that we can hug our family. I hear that up at Dodds you are separated by glass...but at least here... I can hold my mother. I does really look forward to seeing my mother.... I wish I could see her more."
(male resident)*

*"One day, I beg to go out by the gate be-cause my mother had my two little brothers with her and she can't bring them in to see me. My little 4-year-old brother ask my mother 'Who is she?' I felt so bad."
(female resident)*

*"We get visits only once every three weeks and the actual time of the visit is short. It almost feels that by the time you say 'hello'... it is time for your mother to go. We need more visits."
(male resident of the GIS)*

*"We cannot see our little brothers and sisters... they don't let them come in to see us. That is not fair. When I came in here my little sister was small and now she getting big and I don't even get to see her."
(male resident)*

This sentiment of total dissatisfaction with access to family members was echoed by some parents, who spoke of wanting to see their children more often. One parent stated very clearly that "I think the visits are too short, fifteen minutes... that can't be enough... they need to be more regular visits or more times."

5.2.5 Children sent to the adult prison

The international standards informing the administration of juvenile justice requires that every juvenile deprived of liberty must be treated with humanity, respect for their inherent dignity and in a manner that takes into account the needs of persons of his or her age. Juveniles must be separated from adults in all places of detention.

Section 6 (3) of the Juvenile Offenders Act provides the legal justification for "young persons" who are between the ages of 14 and 16 to be sent to prison if they are "so

unruly a character” that they cannot be safely detained at the GIS. However, section 13 (3) of the same Act expressly states that “a young person sentenced to imprisonment shall not be allowed to associate with adult prisoners”.

The sending of children between the ages of 14 and 16 to adult prison is itself a clear indication of a system that is punishment oriented. However, a review of the actual circumstances of the children who are sent there confirmed that there was very little, if anything, rehabilitative about their imprisonment.

At the time of the review, there were 17 children aged 18 years or less at the adult prison (see Table 6).

Table 6. Number and ages of children in prison

Age of child	Number
18 years old	7
17 years old	3
16 years old	5
15 years old	2

The total population of the prison was 911 inmates (884 males and 26 females). Of these, 68 were under the age of 21. Most of the children aged 15–17 were boys who had been referred after masterminding a very sophisticated escape plan from the GIS.

The prison officials were very clear in the view that housing children at the prison was extremely difficult and presented many challenges. For example, one of the interviewees remarked:

“It is challenging to have these younger ones. We try our best but this is not an environment for them. We try to segregate them in a dorm but they do have interaction with persons under 21 and some-times even with the under 25 age category.”

In fact, as the interview with the prison officials unfolded, the many challenges of having children at the prison became more and more apparent. Prison officials explained that the Prison Rules (Cap. 168) determine the youngest category of prisoners to be those under 21 years of age. This creates a major challenge with programming, and there was frank disclosure that re-sources did not permit them to ensure that the children under the age of 18 were receiving the quality and consistency of programming required. Children could not even be included in work programmes in the kitchen or garden because they would be mingling with a wide age range of adult inmates. This issue will be revisited when services and programmes are reviewed (section 5.4 below).

Children sent to prison are also unable to benefit from the facility’s reintegration programme. There are several hurdles preventing their access to this programme, but one of them is the fact that the programme is described as being very “adult oriented”.

There is also the challenge that young people sent to prison become more of a cohesive unit to endure the trauma of being in jail. The constant threat and intimidation from

adult prisoners forces them to band together for safety and protection. It was learned, for example, that some of the young boys had recently been involved in a fight with an adult inmate that had reportedly been triggered by the repeated stealing of food from the boys. This had forced the boys to come together to “take a stand” against this perceived form of victimization.

Housing children with adults in prison also exposes them to criminal elements, which could never be in their best interests. The focus group with the young men currently in the prison revealed that they were exposed to all kinds of inmates and were even put at serious risk of harm. One alarming incident shared by the group involved an alleged attack on one of the boys in the dead of the night by a man who attempted to strangle him with a towel. The boys stated that the incident had been reported to the prison authorities. They stressed the fear that they were experiencing for their personal safety and security.

“We have big men right in here with us... men that doing all kinds of bad things. They are even upstairs in our dormitory... and we don't feel safe.”

“Look at where we shower... right there in the open area. We have to shower with big men right there.”

The confinement of young boys in the environment and circumstances that are clearly present at the prison is far removed from the notion of rehabilitation. It is a recipe for ensuring that boys who are already delinquent are able to associate with hardened adult criminals; and while doing so are at risk of physical harm.

During the focus group the boys shared a range of comments that demonstrated their own appreciation of the inappropriateness of their current conditions of confinement (see box). They were very aware of the violation of their rights and made it emphatically clear that the system was failing to protect them.

Voices of the boys at Dodds

“I am only 14 and I shouldn't be in here.”

“We've never been sexually victimized, but recently a guy was calling out to us and offering us rock cakes for sex.”

“They could have just given us a month in to just scare us or something... but then let us get back to the GIS. We don't belong in here.”

“If we had known what up here was like, we would never have tried escaping from the GIS.”

“We don't get to do any activities up here. We can't go outside to do anything... no football... nothing.”

Following the focus group with the boys at the prison, one of the prison guards explained that the boys “were mixed in with some of the more responsible adult inmates who could act as mentors to them”. This was an interesting explanation for what was evidently a clear violation of both international and national laws prohibiting the mixing of adult and child populations in correctional facilities.

5.3 SYSTEMIC CHALLENGES WITHIN THE LEGAL SETTING

The out-dated or otherwise deficient nature of legislation is only one aspect of the legal context within which juvenile justice operates as there are other critical features that directly influence the quality of justice that children receive. The research revealed some issues of a more systemic nature within the justice system that are compromising of children’s rights, and by extension do not comply with international standards:

- ◆ Delay
- ◆ Lack of child participation
- ◆ Lack of specialized courts and training
- ◆ Lack of legal representation

5.3.1 Delay

Judicial officers were particularly concerned about the issue of delay in the administration of justice and the negative impact that this has on juveniles. One magistrate specifically mentioned this issue in relation to young offenders who have charges “over their heads” for way too long because the system is dragging its feet. This is an issue that is ordinarily raised in relation to child victims but is not sufficiently contemplated for children in conflict with the law.

5.3.2 Lack of child participation

The child’s right to participation is enshrined in the CRC but has not gained nearly enough recognition in the Caribbean. This general principle recognizes the need for respect of the child’s views (article 12); freedom of expression (article 13); freedom of thought, conscience and religion (article 14); freedom of association (article 15); right to privacy (article 16); and access to information (article 17). These rights as protected in the CRC are not forfeited by virtue of a child’s engagement with the criminal justice system. In fact, it is arguable that children in conflict with the law, by virtue of their vulnerability, must be able to rely even more heavily on these rights.

“I didn’t say anything in court and no one asked me if I wanted to say anything. What was the sense of saying anything anyway... nobody really cares what we have to say. As far as they are concerned, we are just children who giving trouble.” (male child offender)

“All you can say in court is ‘Yes Mam’ and ‘No Mam’. When I tried to say something the woman assistant in the court told me to ‘Keep quiet and only answer the magistrate’s questions’. There was things I wanted to say... but couldn’t say them.” (female child offender)

The analysis of the system in Barbados painted a picture of children who were deemed part of a process because they had been charged with an offence but not truly viewed by key stake-holders as active participants in a process where their views really mattered. Studies have confirmed that children charged with crimes are less vocal and less equipped to readily participate in proceedings than children in general. An Australian study of children's involvement in legal process found that:

“The juvenile justice cohort has within it some of the most disadvantaged, disaffected and least articulate young people in our community. Many young accused have little incentive to participate in, and few skills to comprehend legal processes.”³⁶

Given the real possibility that children may not initiate active participation in the proceedings against them, justice sector personnel need to create the conditions that will help them do so. The skills required in this regard are not taught in law schools and call for a certain sensitivity to ensuring child-friendly courtrooms.

The review highlighted a need for children to be given much more of a voice in their court cases, to be given more information about the legal proceedings and to be treated with more “respect” (as they often referred to it themselves). The feedback from the young people on this issue was very critical of the way in which court proceedings were conducted, with many of them totally unaware of what was really happening, often feeling like they were shuffled in and out of court.

The child respondents in the focus groups also made it clear that the treatment in court was very dependent on the magistrate who was presiding. Some magistrates were consistently mentioned by name as being far less “child friendly” in their approach, while others were de-scribed as more “caring”.

Magistrates themselves recognized that courtrooms were intimidating environments and also conceded that children appearing before them were not usually vocal. This begs the question whether there is enough awareness of the need to actively engage children in their own court cases and to ensure that children are sufficiently empowered to seek relevant information.

5.3.3 Lack of specialized courts and training

Linked to the issue of child-friendly court environments is the quest to achieve juvenile justice systems that are sufficiently specialized and presided over by judicial officers who have been duly trained.

Barbados, unlike some of other Caribbean countries, does not have a family court. These specialized courts, which have jurisdiction over family law disputes, usually also have jurisdiction over juvenile cases. Family courts currently exist in Jamaica, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago. Although some of these have fallen short in their expected service delivery, they are at least designed to deal with family-related matters that tend to be of a more sensitive nature. They are expected to combine legal responses with strong social service interventions and to have judicial officers who are specially trained to work in this setting.

36 Cronin 1997.

With no family court in Barbados, juvenile matters are handled in magistrate's courts across the country, with no attempt at any specialized orientation. Reference to a 'juvenile court' on Roe-buck Street is a bit of a misnomer because this court dedicates much less of its time to juvenile matters than other types of cases. The Magistrate who currently operated that particular court, explained that the juvenile justice jurisdiction of the court only operates once a week on Wednesdays. That court also hears domestic matters and coroner's inquests, with the latter demanding most of her attention.

In the absence of a family court or specialized juvenile court, a comprehensive training agenda for all magistrates who oversee juvenile cases is of critical importance. Magistrates need to be formally educated on the many topics that can enhance their delivery of justice services for children who come into conflict with the law.

5.3.4 Lack of legal representation

The importance of legal representation for children who have been accused of committing criminal offences cannot be overstated. Children, by virtue of their youthfulness and lack of maturity, often require assistance in understanding the legal procedures and issues around evidence, which can become quite complicated.

However, it is not uncommon for adults, including judicial officers and other legal professionals, to take the position that children may be 'better off' without legal counsel as 'legal technicalities' may get in the way of affording the child a rehabilitative intervention that is desperately needed. During the consultations, some magistrates stated that children often had their parents with them at court and that lawyers were not really needed. This is a very questionable stance on the child's rights to have independent legal advice that may be different from that given by parents. Parents may, for example, want their child to plead guilty in order to expedite the process and allow the family to put the matter behind them, whereas a lawyer may advise the child not to plead guilty because there is insufficient evidence to convict and s/he does not want the child to have a conviction on record. The child is entitled to have the benefit of all the available information in order to make a more informed decision.

An inquiry into the extent to which the children currently resident at the GIS lacked the benefit of legal counsel was shocking. Of all 20 children who were interviewed at both the boys and girls school, not one of the children had been legally represented at court.

The responses from the children demonstrated the magnitude of this problem:

- "My mother told me that it didn't make no sense getting any lawyer because they had so much evidence against me. My mother couldn't afford any lawyer anyway."
- "My grandmother didn't worry to get me a lawyer."
- "I wanted to get Andrew Pilgrim but my grandmother told me not to bother with that."
- "I didn't have a lawyer... nobody told me that I could even have one"

Interviews with some of the families of residents of the GIS reinforced the view that absence of legal representation was a serious flaw in the system and that some parents themselves were totally ignorant of the importance of legal representation and the possibility of securing legal counsel through the legal aid scheme.

- “She needed a lawyer. But I thought that the police would do their job.”
- ‘I had no lawyer. I am a single parent with four children. I didn’t know nothing, I thought he would go on probation.’
- ‘I did not have any lawyer. I don’t think it would be different if I had a lawyer cause my son had a lot of chances and he would get charge anyway. The probation people tell me it won’t make any sense.’

Even though one of the magistrates interviewed for the Situation Analysis emphasized that it was her practice to inform children of their right to counsel at every first appearance that is made in her court, the data clearly indicate that children do not frequently have the benefit of lawyers, at least not those through the Legal Aid Scheme.

A review of the records at the Legal Services Commission confirmed that children in conflict with the law have rarely been afforded legal representation through legal aid. They show that over the almost two-year period of January 2013 to November 2014, a total of eight juveniles between the ages of 12 and 16 had sought legal aid (see Table 7).

Table 7. Legal aid provided to children aged 16 and under, January 2013 to November 2014

Age of child	Total no. of children applying for legal aid representation	Child’s gender	Nature of the offences
16	4	All boys	2 for theft 1 for possession of a firearm 1 for an unknown offence
15	3	All boys	1 for wounding 1 for assault and possession of cannabis 1 for an unspecified indictable offence
14	1	Boy	1 for wounding
13	None	N/A	N/A

This was surprising even to the Director of the legal aid scheme, who lamented the fact that one of its systemic failures was the lack of public outreach and the resulting lack of community awareness about the existence of the programme. Public awareness was not pursued given the existing demand for services and the lack of resources to support any growth in the number of applications. The Director did expressly state, however,

that applications by minors were prioritized. She also supported the introduction of a “duty counsel” system for young offenders, which would guarantee the presence of a lawyer at court to assist this youthful population.

The lack of legal representation is a serious systemic flaw that continues to plague children’s access to justice and is an impediment to the full realization of an effective juvenile justice system.

5.4 SERVICE AND PROGRAMMATIC LIMITATIONS

A major theme that weaved its way throughout the research for this Situation Analysis, including the consultative process, was the critical role of services and programmes in making juvenile justice effective.

Research shows that single-strategy approaches to addressing delinquency reduction do not work. Indeed, too many practices in juvenile corrections do not deter future criminal behaviour, provide ineffective treatment and are not associated with lower rates of repeat offending. ‘Reactive’ solutions – such as building more custodial settings or adding more beds in existing facilities for those affected by punitive justice policies – are not only less effective but also cost more than proactive approaches such as preventing crime and providing educational supports to offenders and their families and to those individuals considered to be at risk of offending.

Education, mental health, child protection, vocational training and recreation services may all have a role to play in the life of ‘vulnerable’ children and their families. Too often, however, children, particularly ‘difficult’ youth with a variety of challenges, including cognitive and behavioural disorders, have difficulty effectively utilizing these services.

The review of the national context in which the juvenile justice system operates in Barbados underscores that current service and programme delivery is inadequate and uncoordinated. Agencies are striving to perform their mandate with limited resources, including a lack of both the infrastructural and human resource capacity to deliver effective services. All of the key stakeholders lamented the fact that they were attempting to work with young people in conflict with the law in a context of limited resources, which were dwindling as opposed to growing (see box).

“One of our challenges is staffing. Our organizational review found that the facility is understaffed but because of austerity measures no hiring is happening.”

“We are supposed to have more teachers but we don’t have them. ...I help out by teaching English and some social studies... but I am also the house mistress. “

“For the longest time there has been a call for alternative placements for children who are exhibiting behavioral challenges that don’t need to be addressed by the criminal justice system.... nothing has happened.”

5.4.1 Educational and vocational programming

Ideally, a child's educational opportunities should be deliberately enhanced if s/he is considered vulnerable because of other objective conditions operating in her/his life, including conflict with the law. Unfortunately, however, the reverse often operates and 'at-risk' children are frequently deprived of a comprehensive and uninterrupted education.

A review of the conditions at both the GIS and the prison demonstrated that although attempts were being made to improve educational and vocational programming, there were many gaps and this created an overall situation that was far from ideal.

At the GIS, the residents at both the boys and girls facilities complained of a lack of things to do with their time. Objectively, there was a lack of structured activities at both facilities, but this was perhaps even more pronounced at the boys' institution. A comment by one young man at the GIS powerfully captured the widespread sentiment of too much 'down time', with insufficient meaningful activities for the residents. Its depth and profoundness was impressive and disturbing at the same time. It reinforced this young man's journey toward self improvement and a life free of crime, but at the same time highlighted the sad reality that he felt as if he was on that journey with very little in place to help him.

"I feel like my life is on pause. I don't think I will make the same mistakes again... but not be-cause of anything I've learnt in here. We have so much time doing nothing that I get a lot of time to think about my life. I could either get very low because I am in here doing nothing or I can think about how I will do things differently when I get out. There is no motivation from being in here... but there is lots of time to think and I am using that to help change myself from within."

Other residents expressed the same or similar regret about the lack of sufficient programming to keep them active (see boxes).

Comments regarding lack of programming (male residents)

"I wish we could play more sports, we get some sports but not enough."



"The time in here is very boring.... We suppose to have a lot of programmes but they don't really happen."



"We have been in the classroom about five times for the term... since the beginning of the term in September."



"We do get music and I love it... but only some of us do it. The man who teaches the music is a good man.... He is understanding."



"Sometimes we get masonry and sometimes we get carpentry... but not consistent."

Comments regarding lack of programming (female residents)

“I try to understand the situation that they don’t have enough teachers but it is not fair on us. Right now we doing so much self study because they don’t have teachers.”



“Right now we can only get English, visual arts and some social studies as education classes.”



“I like the cheerleading class and sometimes we would play games outside.”



“We don’t get music class anymore and the boys get it. We used to learn calypso singing but that person gone. People does come and go in here and then we lose out.”

The challenge of having insufficient teachers was echoed by the staff and management of the GIS. They reported loss of teaching staff and noted that most of them had not been replaced. Cutbacks and hiring freezes have reportedly severely compromised the programming at the school and, despite repeated efforts, collaboration with the Ministry of Education has not occurred. An official at the Ministry agreed that “there is no fully structured education programme at the GIS.... There may be balloons released in the air when someone passes some CXC... but a system focused on education will allow children to consistently access the appropriate type of education.” The official then went on to explain that given the ‘fractured’ nature of the system and the fact that “the GIS is under the Attorney General” and fits more under a ‘penal system’ than an educational one, the Ministry of Education “did not have much to do with the GIS”.

The lack of coordination and partnerships between services under the jurisdiction of different ministries is a sad reality that is evidently hurting children who have committed criminal offences. Clearly, the GIS cannot evolve into an institution that places sufficient emphasis on education without the necessary support to do so. Meaningful partnerships and effective coordination of services will be an essential ingredient in ensuring that this evolution occurs.

At the same time, it is important to note that, despite obvious room for improvement, the GIS had made considerable progress from the days when, quoting the Principal, “a sentence to be served here was like a death warrant on your educational development”. Residents can now access educational and vocational opportunities that previously did not exist. However, given the international standards that ought to inform juvenile justice reform in Barbados, acknowledgement of some progress is not enough and improvement in educational programming should be a pivotal area in the revamping of the system.

Programming of this nature is perhaps even more restricted for the small numbers of children detained at the adult prison. As suggested earlier, prison officials conceded that the programming at that institution was not designed with children in mind. There were large periods of time when the boys would have no programming whatsoever. The

prison officials, like those at the GIS, were very disappointed with the lack of collaboration with the Ministry of Education. One of the officials remarked:

“Technically, because of their [the boys] age they are not supposed to be in any work pro-grammes. This means that they should be in classes all day and every day... but that is definitely not happening.... We have not been successful in working together with the Ministry of Education. They gave us some books... but no teachers. We end up relying on volunteers.”

The placement of children at the adult correctional facility must take into consideration its ineffectiveness in meeting the desired rehabilitation objectives that define the very nature of child justice. The prison was not intended or designed to service children and readily admits that it is ill equipped to do so. The continued practice of placing children there, especially without housing them separately, is a flagrant violation of their rights to safety, education and positive self-development.

5.4.2 Psychosocial services and programming

Psychological and psychiatric interventions are an essential component of the programming needs of children who have been brought into the system for violating the law and where conduct or behavioural disorders are an issue.

It is fair to say that children who are confined at the GIS have relatively good access to psycho-logical and other health services. The facility utilizes the consultancy services of psychologists and other medical practitioners on a fee-for-service arrangement. Many of the residents, particularly the girls, are able to routinely access these types of services. The facility also has the benefit of internal staff who can assist with emotional support on a more ongoing basis.

One of the obvious gaps in the system is the ability of young people to access mental health services outside the GIS, and this has apparently led to the confinement of children for the sole purpose of being psychologically assessed. This problem has already been discussed in an earlier section of the report. Another glaring deficiency is the lack of access to much-needed services experienced by family members of the children. During the consultation, one of the respondents with the Probation Department made the valuable observation that *“juveniles are often coming from dysfunctional homes and yet we target only the child, offering very little to the rest of the family”*. A meaningful rehabilitation strategy cannot be limited to the child in isolation of the family context within which s/he operates. This needs to be addressed on an urgent basis.

The prison setting also has a number of measures built in for meeting the psychosocial needs of inmates, including even the younger ones who are placed there. The intake process necessarily involves sentencing planning, which requires that a number of assessments be conducted. The authorities at the prison shared their assessment tools, which included general, psychosocial, literacy and numeracy tools. The prison also draws on a fee-for-service arrangements with external mental health professionals. The Medical Unit has an HIV and sexual and reproductive health counsellor on staff. One of the juveniles has a pregnant girlfriend and has already been referred to this specialist as part of his sentencing plan.

5.4.3 Probation services

Probation is an integral feature of a juvenile justice system. Modern legislation, similar to the OECS Model Child Justice Bill, is premised on a highly functioning probation services.

Consultations with the leadership and staff of the Barbados Probation Department showed that it is striving to do its best with an ever-increasing workload and limited staff. There are 17 probation officers of whom only one works exclusively with juveniles; with all other officers under-taking both adult and juvenile probation services. It is also important to note that probation officers do not only do 'probation work' but are also required to offer a range of services to the court, including child support means reports and custody/access assessments. The Chief Probation Officer made the point that *"we've thought about creating areas of specialization, but can't achieve that with the volume of the work that we carry"*.

The passage of the Penal Reform Act has also had a significant impact on the Department's workload. This new Act requires by law an increase in social inquiry or sentencing reports. As explained by the Department, *"we have become so report driven... and we get confined to doing so much of that... so our supervision does suffer."*


One of the steps that should be given due consideration in the reform of the juvenile justice system is the creation of juvenile probation officers who can focus on servicing that population. The service needs of juveniles are sufficiently labour-intensive and different from those of adults that a cadre of probation officers dedicated to this field of work on an exclusive basis is justified.


5.4.4 Child protection services


The pivotal role of child protection services was already mentioned. Suffice it to state at this point that most stakeholders were firmly in support of the view that many of the cases referred to the juvenile justice system, and by extension the GIS, were better suited for the child protection system.

However, the Child Care Board Director and other key stakeholders spoke bluntly about the lack of capacity for that system to meet the needs of children with behavioural issues or what are sometimes referred to as 'hard-to-place' children. The current deficit of the child protection system is not a legitimate basis for denying children the appropriate forum for their residential and treatment needs. It speaks more to the dire need for the strengthening of the child protection system to be better equipped to handle the more difficult cases involving children with behaviours that are difficult to manage.

6. RECOMMENDATIONS AND PLAN OF ACTION

Area of reform	Recommendations	Plan of action
<p> Legislative reform</p>	<p>Major overhaul of the existing legislative frameworks addressing juvenile justice is required to conform to international standards, including those established by the CRC and other international treaties. This would include:</p> <ul style="list-style-type: none"> • Defining a child as anyone under the age of 18 • Establishing the minimum age of 12 as the age of criminal responsibility • Removing all status offences • Expressly establishing the concept of diversion for all cases that do not need to be formally processed • Broadening the range of sentencing options • Removing whipping, flogging and all forms of corporal punishment • Expressly addressing the issue of expungement of criminal records <p>Major overhaul of the laws addressing child protection is needed to facilitate a more comprehensive response to the full range of interventions required for the prevention, detection, treatment, rehabilitation and follow-up of child abuse cases. The reform should include:</p> <ul style="list-style-type: none"> • Creating legislation that expressly addresses the care and protection of children from abuse • Ensuring that provisions in juvenile justice legislation that address child protection are cross-referenced with child protection legislation. This will ensure that child protection issues are not addressed as an afterthought in a 	<p>A review of recently reformed legislative frameworks in the region should be conducted. The OECS Secretariat has created Model Legislation that includes a Child Justice Bill. This Model Bill is a good starting point for informing the reform process in Barbados.</p> <p>A strategy committee should be established to facilitate the development, passage and subsequent implementation of modern legislation. This committee should have oversight over the law reform process and ensure that the issue is prioritized and that the required follow-up actions are taken.</p> <p>Given the importance of legislative reform to the wider reform agenda, the committee should consider the preparation and presentation of a submission to Cabinet. This action presents an opportunity for policy makers to be made fully aware of the current gaps in the system and the critical need for law reform to ameliorate the existing deficiencies.</p> <p>The committee should ensure that technical expertise is available to the Government to facilitate an efficient and effective law reform process. That expertise may be internal to the committee or offered by an external consultant. It is required to help steer the process and to act as a resource to the Drafting Unit and other entities involved in the legal reform process.</p>

<p>(Legislative reform Cont'd)</p>	<p>legal context that is intended to address children in conflict with the law.</p> <ul style="list-style-type: none"> • New child protection legislation should expressly address the issue of children who are in conflict with the law but who may be more appropriately dealt with under the child protection jurisdiction of the court. This feature is captured in the OECS Model Child Protection and Adoption Bill. 	
<p> Data collection</p>	<p>Implement an established approach for the more efficient gathering of empirical data</p> <p>Implement existing internationally designed data collection tools, such as the UN Indicators for Juvenile Justice</p> <p>Ensure consistency in data collection methods within and across key agencies providing relevant child-centred services</p>	<p>A data collection protocol should be developed and used by all agencies offering child justice services. This policy document would incorporate the international guidelines for data collection in juvenile justice systems.</p> <p>There should be a review of existing data collection approaches/ strategies that have been used in the region. Some work has already started on this issue in other Caribbean States, and this should be tapped into in any way possible.</p> <p>The existing national observatory on crime should be afforded a key role in the development and execution of national plans on data collection. This entity should be integrally involved in any work relating to crime mapping, monitoring and evaluation of promising practices.</p>

<p> Stronger emphasis on rehabilitation</p>	<p>The promotion of diversion as an integral feature of the juvenile justice system so as to divert children from formal justice processes to services that are more geared at rehabilitation through:</p> <ul style="list-style-type: none"> • Firmly entrenching the notion of diversion at the legislative, policy and programmatic level • Supplementing the Juvenile Liaison Scheme (JLS) with other diversion strategies including psycho-educational, vocational and life skill development programmes • Introducing post-charge, court-connected diversion, which allows for diversion even after a young person has been charged with an offence. • Reviewing and addressing the identified deficiencies with the JLS, particularly the inconsistent referral of cases to the programme <p>The review of sentencing so as to ensure that the available options are consistent with a rehabilitative focus through:</p> <ul style="list-style-type: none"> • Expanding the range of sentencing options to include other sanctions such as suspended sentences, referrals to vocational and educational programmes, referrals for secure treatment, imposing curfews, etc. • Reconsidering the current prohibition of community service orders for children to allow appropriate community service measures to be applied • Abolishing the current sentencing provision that speaks to a mandatory sentence of three-to five years for juveniles • Abolishing the offence of wan- 	<p>A comprehensive diversion strategy should be created. This policy document would explore the various entry points for both pre-charge and post-charge diversion schemes. The strategy ought to contemplate the institutional frameworks and specific diversion options that will be offered.</p> <p>The development of a national diversion strategy should be consistent with the legislative provisions that may be included in the new legal frameworks.</p> <p>Capacity-building efforts will necessarily need to involve training on diversion, particularly for magistrates, police officers and probation and social service workers.</p> <p>Sentencing options as available in other modern juvenile justice laws should be reviewed and adopted as appropriate.</p> <p>The institutional and infrastructural implications of sentencing reform should be assessed. A needs assessment would clearly indicate what new resources may be required to allow for effective implementation of any new legislative provisions addressing sentencing.</p> <p>The GIS should conduct a full audit of</p>
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<p>(Stronger emphasis on rehabilitation, cont'd)</p>	<p>dering and other status offences, which should be addressed under the child protection mandate of the court</p> <ul style="list-style-type: none"> • Not sending children under the age of 18 to the adult prison to serve a sentence <p>Increased access to family and community is required to support the rehabilitation of children in conflict with the law. This recommendation can be achieved through:</p> <ul style="list-style-type: none"> • Reviewing the current access schedule for residents at the GIS and increasing access to family members from once every three weeks • Reviewing and increasing actual time spent with families during visits • Review the policy prohibiting visits between residents and their younger siblings. • Actively encouraging visits within the community 	<p>existing policies that address issues of access by residents to family members and to their communities. These policies should be brought into compliance with international standards.</p> <p>To the extent that the audit reveals a gap in the capacity of the GIS to meet the access requirements in a way that would be sufficiently safe, the agency should identify what conditions would have to be met to facilitate access while maintaining the safety and security of the facility.</p> <p>As the expected limited ability of the GIS to fully meet the increased access recommendation may well extend to other recommendations, a full audit of its capacity to meet its mandate should be conducted with a view to strengthening this vital service. The audit should include both human resource and infrastructural capacity.</p>
<p>✚ Systemic challenges within the legal setting</p>	<p>Expedite cases involving juveniles so as to ensure that these are not protracted and young people are not compromised by lengthy legal proceedings</p> <p>Actively encourage juveniles to participate in their own proceedings, which will require more child-friendly proceedings and judicial officers who are sensitized to the importance of having children play an active role in their own cases</p> <p>Introduce specialized courts to address juvenile justice, whether in the form of a</p>	<p>The prioritization of cases involving minors, whether victims or offenders, should be an institutionalized policy that will inform the processing of all aspects of a case involving children.</p> <p>Broad-based training for judicial officers, probation officers and court workers should specifically address appropriate interaction with young people.</p> <p>An assessment should be conducted of the current court structure and de-</p>

	<p>juvenile or family court. The specialized court will also result in judicial officers who are specially trained and better equipped to work in a child justice setting.</p> <p>Provide better access to legal representation is major requirement of the reform process. Juveniles require access to legal advice to make full answer and defence to the allegations made against them, as well as to make informed decisions about choices presented to them.</p>	<p>livery of court-related services to young people in conflict with the law. It would examine the existing court services and determine the feasibility of the centralization of juvenile justice. It would also explore possible models for centralization, including youth court and family court models.</p> <p>Public awareness building and sensitization about the existing legal aid scheme should be developed. Juveniles and their families must be made more aware of the availability of legal assistance.</p> <p>Young people’s access to justice should be enhanced through the creation of more opportunities for legal advice and representation. The introduction of a duty counsel system for those court sittings involving young people is one possible method for broadening legal aid opportunities.</p>
<p>✚ Service and programmatic limitations</p>	<p>Prioritize increased access to education and vocational opportunities for child offenders in institutional settings</p> <p>Make psychosocial services more accessible at the community-based level, removing the need for confinement at the GIS or any other facility to facilitate access to such services</p> <p>Increase human and physical resources for critical juvenile justice services. For example, the GIS, probation and child protections are vital to the effectiveness of juvenile justice and will require varying levels of institutional strengthening.</p>	<p>An audit should be conducted of the educational and vocational opportunities for children who have been detained at the GIS and the prison.</p> <p>Areas for collaboration, including partnerships with the Ministry of Education, should be forged through negotiated memoranda of understanding that should clearly identify areas of collaboration with roles and responsibilities expressly defined.</p> <p>An audit of all existing sources for relevant psychosocial support should be conducted to determine the full range of available support for children in conflict with the law.</p> <p>A mapping of human resource and other institutional gaps should be conducted for key agencies that deliver juvenile justice services.</p>

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APPENDIX 1. LIST OF INTERVIEWEES FOR THE SITUATION ANALYSIS

Name of interviewee	Sector/agency
<ul style="list-style-type: none"> Mr Erwin Leacock Mr Joseph Lawrence Ms Julia Rawlins Bentham Ms Joyanne Blackman Jarvis 	Planning Committee for Juvenile Justice Conference
<ul style="list-style-type: none"> Mr Leacock (Principal) Mr Ronald Brathwaite Mr Joseph Lawrence Ms Bradshaw Ms Riley 	Government Industrial School (GIS)
<ul style="list-style-type: none"> Focus group of 10 boys Focus group of 10 girls 	GIS
<ul style="list-style-type: none"> Ms Deborah Babb 	Department of Public Prosecutions
<ul style="list-style-type: none"> Mr Anthony Holder Ms Leena Wilkes-Phillip Ms Alisha Bedeaux 	Barbados Prison Service
<ul style="list-style-type: none"> Mr Cleviston Hunte 	Youth Affairs
<ul style="list-style-type: none"> Ms Joan Crawford (Director) 	Child Care Board
<ul style="list-style-type: none"> Mr John Hollingsworth 	Ministry of Education
<ul style="list-style-type: none"> Sergeant Jemmott 	Juvenile Liaison Scheme
<ul style="list-style-type: none"> Ms Cheryl Willoughby 	National Task Force on Crime
<ul style="list-style-type: none"> Magistrate Barbara Cook-Alleyne Magistrate Manilla Renee 	Magistracy
<ul style="list-style-type: none"> Ms Lovell (Chief Probation Officer) Ms Odle Ms Douglas Ms Frowley 	Probation Department
<ul style="list-style-type: none"> Ms Bernedeth John (Director) 	Legal Aid
<ul style="list-style-type: none"> Focus group of seven boys 	Her Majesty's Prison
<ul style="list-style-type: none"> Three families of children in the juvenile justice system 	Families of children at the GIS
TOTAL NUMBER OF RESPONDENTS: 53 PERSONS	



Published by United Nations Children's Fund
Office for the Eastern Caribbean Area

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