The International Juvenile Justice Observatory (IJJO) is an international organisation based in Brussels and recognised of public interest. It works as an inter-disciplinary forum for sharing information, communication, debates, analysis and proposals focused on juvenile justice around the world.

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The actual manual is based on the work and national report and products of each partner and is conceived as a support instrument for the online training course Alternatives to Detention for Young Offenders, available on the IJJO’s International School of Juvenile Justice.

Both the manual and the online course have been introduced to the European Council of Juvenile Justice (ECJJ), an IJJO think-tank composed by academics, professors and institutes, NGO representatives; public administrations and Ombudsmen, Justice and Police representatives.

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FOREWORD

The milestone of our work during these two years has been the Convention on the Rights of the Child (CRC) containing two substantial provisions dealing with juvenile justice (Article 40) and detention (Article 37), and constituting the bases of international law setting out best practice and guidance on the treatment of children in conflict with the law, in particular regarding the sanctions and measures to which they are subjected and their treatment in detention that has always to represent the last resort. Particular emphasis is placed within international standards on the promotion of the use of community-based sanctions and measures, as an alternative to detention.

A number of monitoring mechanisms aim to ensure such standards exist. However, although there has been some recent improvement in the availability of community sanctions, serious concerns remain about the gap between the theory of the international rules and the reality of practice. Furthermore, the absence of updated data on the youth justice system intervention frustrates meaningful analysis and makes it difficult, if not impossible, to track trends or compare jurisdictions.

The Juvenile Offenders Detention Alternative in Europe (J.O.D.A.) project was established in order to address the lack of use of alternatives to detention in various European States. In specific, it aimed to identify good practices in alternative to detention measures addressed to juvenile offenders caught in the juvenile justice system, taking into account these two key elements: the need of security coming from society; and the youth’s right to psychosocial intervention and inclusion. The concept of the research was born from the need of mainstreaming of good practices related to detention alternatives addressed to youth offenders.

We would like to thank all the partners of the J.O.D.A. project, led by the Istituto Don Calabria (Italy), and carried out in partnership with the International Juvenile Justice Observatory (Belgium), Kesa-CPE (Estonia), Fundación Diagrama (Spain), Include Youth (Northern Ireland) and Defence for Children (Netherlands). The success of the project would not have been possible without the expertise, research and knowledge of these groups.

Key outcomes of the J.O.D.A. project, developed through field visits and national seminars, are aimed at the further dissemination of knowledge and expertise around best practices in the use of alternatives to detention in a number of jurisdictions across Europe. Key to this was the design and delivery of an online e-learning platform, delivered to youth justice professionals around the World and to members of the European Council of Juvenile Justice (the IJJO’s regional network and think tank) through the International School of Juvenile Justice (the IJJO e-learning platform), aimed at sharing knowledge about alternatives to detention in Europe. A manual of good practices (entitled Juvenile Offenders Detention Alternative in Europe) has been developed to complement this online training, bringing together the key learning principles in relation to the operation of alternatives to detention, and setting out various examples of best practice in use in Europe. This would not have been possible without the remarkable work and engagement of the consultants involved in the creation of both outputs: Professor Ursula Kilkelly, Head of the Faculty of Law, University College of Cork, Ms. Louise Forde, PhD Candidate at the University
College of Cork and Ms. Deirdre Malone, Director of Irish Penal Reform Trust.

We believe that the results of the J.O.D.A. project, and especially this Manual, will participate to a better implementation of Articles 10 and 11 of the new Directive on procedural safeguards for children suspected or accused in criminal proceedings and of Articles 37 and 40 of the UNCRC, through the mainstreaming of good practices relative to non-custodial measures in Europe. In the context of the entry into force of the Directive, the Manual should be a valuable piece of resources and expertise regarding alternatives to detention in Europe, and we hope that Member States will be inspired to follow the successful experiences of their counterparts abroad in order to promote a fair juvenile justice where all measures are individual and tailored made. The Directive brings new perspectives and binding rules that will have a major impact on the use of alternative to detention. For this, we are particularly grateful to Ms. Caterina Chinnici for her work as rapporteur for the Directive, and for her participation in the final Conference of the project on the theme of alternatives to detention in the context of the new Directive, organised by the IJJO at the European Parliament in January 2016.

Dr. Francisco Legaz Cervantes, Chairman of the International Juvenile Justice Observatory

Mr. Alessandro Padovani, Director of Istituto Don Calabria
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The Alternatives to Detention for Juvenile Offenders - Manual of Good Practices in Europe manual was prepared with the invaluable collaboration and support of a number of contributors. The J.O.D.A. project, which forms the basis of this manual, was undertaken in collaboration with partners from a number of jurisdictions, including the Istituto don Calabria (IT), the International Juvenile Justice Observatory (BE), Kesa-CPE (EE), Fundación Diagrama (ES), Include Youth (NI) and Defence for Children (NL). The preparation of this manual would not have been possible without the expertise, research and knowledge of these groups.

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EDITORIAL

International standards are explicit that the detention of children must be a measure of last resort and for the shortest appropriate period of time. Implicit in this obligation is the requirement to put in place a range of community-based sanctions or measures (often described as alternatives to detention) to ensure that children are diverted away from offending, from the criminal justice system and ultimately from detention. Also implicit in this obligation is a duty to ensure that children are treated with proportionality (with regard to their offending and to their individual circumstances) and with regard to their age, their welfare and their ability to play a meaningful role in society in the future. In recent times, efforts have been made in the Member States of the EU to introduce measures and programmes that minimise the use of detention for children. This Manual of Good Practices is published as a result of a project funded by the European Commission and undertaken by the International Juvenile Justice Observatory, the Juvenile Offenders Detention Alternative (JODA) and partners. It is designed to bring together information on the range of measures in place and to present some supporting information on how greater use of such measures might be encouraged. It also places these examples of good practice against the backdrop of international standards. It should play a particularly important role in helping States to prepare for the implementation of the EU Directive on procedural safeguards for children suspected or accused in criminal proceedings. Overall, it is intended to help improve the progressive nature of juvenile justice policy in Europe and to reduce the number of children in detention.

Louise Forde & Ursula Kilkeley
CHAPTER I

ALTERNATIVES TO DETENTION IN THE CONTEXT OF THE ENTRY INTO FORCE OF THE DIRECTIVE ON PROCEDURAL SAFEGUARDS FOR CHILDREN SUSPECTED OR ACCUSED IN CRIMINAL PROCEEDINGS

The new Directive on procedural safeguards for children suspected or accused in criminal proceedings comes under the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings adopted by the Council on 30 November 2009, together with a number of other measures that have already been adopted or are currently under discussion. The roadmap was based in a step by step approach and included a non-exhaustive list of measures relative to translation and interpretation, information on rights and information about the charges, legal advice and legal aid, communication with relatives, employers and consular authorities, special safeguards for suspected or accused persons who are vulnerable, and a green paper on pre-trial detention.

The Directive forms part of the EU Agenda for the Rights of the Child and seeks to promote children’s rights with reference to other instruments, such as the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and the United Nations Convention on the Rights of the Child. Indeed, those instruments do not have the binding force of EU legislation, and as a result the safeguards they provide are not fully and uniformly applied in the Member States.

On 16 December 2015, the Permanent Representatives Committee of the Council (‘the Coreper’) and the European Parliament approved a compromise text. This was an important step towards the entry into force of the Directive. The text of the Directive as agreed on by the Coreper and the European Parliament will be revised by legal-linguists, and will subsequently be submitted to the plenary of the European Parliament and to the Council for adoption.

Between the first Commission’s proposal in 2013 and the adoption of the compromise text, civil society organizations have been very active to help bring the draft text to the level of the most stringent standards regarding children’s rights in the juvenile justice system. The International Juvenile Justice Observatory has drafted two position papers on the subject, with Eurochild on the one hand, and Fair Trials International and the Open Society Foundation on the other, participating in the improvement of the initial proposal text.

Statistics show that 12% of people involved in criminal proceedings in the EU are children (more

1 Council Resolution of 30 November 2009 on a roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings.
than 1 million each year), and there are major disparities in the way in which children involved in criminal proceedings are treated in the various Member States. EU research shows that, at present, children’s rights are not being sufficiently protected at the various stages in criminal proceedings in the EU; numerous judgments against Member States have been handed down by the European Court of Human Rights.

However, despite the large number of international legal instruments in this area, there is no agreed definition of what constitutes a ‘fair trial’ for children, and courts have no choice but to hand down judgments on the basis of an incomplete and fragmentary body of law.

Currently, only six Member States (Belgium, Czech Republic, Greece, Italy, Luxembourg and Slovakia) have dedicated juvenile prosecution services, and nine Member States do not even have juvenile courts. In some Member States, there is no legal obligation for children to be assisted by a lawyer; in others, it is available only in the courts, but not in police stations; in others still, the decision is up to the relevant court. As a result, too many children in the EU do not enjoy the basic right to be assisted by a lawyer. Moreover, special training for judges and lawyers coming into contact with children in their work is mandatory in only 12 Member States.

It is in this context that the Commission presented its proposal for a directive in 2013, with the aim to lay down a limited but properly structured catalogue of rights for children suspected or accused in criminal proceedings (or subject to European arrest warrant proceedings) based on a package of minimum, interconnected standards geared to meeting the specific needs of children at all stages of the judicial proceedings.

The main safeguards provided in the Directive are the following:

- The mandatory right to be assisted by a lawyer, and the right to free legal aid.
- The right to an individual assessment; the rules on questioning; the provision for the child to take part in the proceedings.
- The compulsory special training for judges, law enforcement authorities and prison staff, lawyers and others who come into contact with children in their work; the provisions on detention, under which children should be held on remand only where there is no alternative, and in such cases, it must be ensured that the children are held separately from adults, except where it is in their best interests not to do so.

The new Directive contains several provisions regulating the detention of children. Article 10(1) implements the ‘last resort and shortest period’ principle regarding pre-trial detention, providing that: “Member States shall ensure that children are deprived of liberty before their conviction only as a measure of last resort and for the shortest appropriate period of time. Due account shall be taken of the age and individual situation of the child”.

Article 11 concerns the use of alternative measures to detention: “1. Member States shall ensure...”

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that, where the conditions for deprivation of liberty are fulfilled, the competent authorities have recourse to alternative measures, wherever possible.

2. The alternative measures may include:

   (a) an obligation for the child to reside in a specific place.
   (b) restrictions of contact with specific persons.
   (c) reporting obligations to the competent authorities.
   (d) undergoing of therapeutic treatment or treatment for addiction.
   (e) participation in educational measures”.

Similar provisions already exist in many EU Member States, but the lack of available alternatives to detention leads to a very high number of children placed in detention. The adoption of the Directive will give those safeguards a basis in law and not only in practice, with monitoring mechanisms in place. It will also have the effect that safeguards provided by International Human Rights texts will be implemented in EU legislation, making them binding obligations on Member States under EU law.

The mainstreaming of good practices relative to non-custodial measures in Europe is an important part of the road to a thorough implementation of Articles 10 and 11 of the Directive. In this context, this Manual of good practices will be a valuable resource for EU Member States.

Caterina Chinnici, European Parliament
Silvio Masin, Instituto Don Calabria
Cédric Foussard, International Juvenile Justice Observatory
CHAPTER II

ALTERNATIVES TO DETENTION

2.1 Introduction to Alternatives to Detention

The problem of youth crime exists in all countries across Europe, and States’ responses to this problem take a variety of forms. The models of juvenile justice adopted to respond to offending behaviour by young people vary from State to State. While the model of juvenile justice adopted, the legislative framework, and the social context may vary from country to country, there now exists a body of international standards which sets out the key principles and minimum standards to be reached by each State in implementing their juvenile justice system. Particular emphasis is placed within these international standards on the promotion of the use of community-based sanctions and measures, as an alternative to custodial sentencing.

These international standards and principles are set out in a number of key instruments. Chief among these is the United Nations Convention on the Rights of the Child (UNCRC), which contains both statements of general principles and rights applicable to all children, and rights which are specifically applicable to young people in conflict with the law. A central principle emerging from these standards is that detention should only be used as a last resort and for the shortest appropriate period of time. The full realisation of this principle requires that a range of alternative measures be available to youth courts and other authorities in responding to offending behaviour by young people. This is also explicitly required by the UNCRC, in order to ensure that children are dealt with in a proportionate way which takes their needs and well-being into account. This standard is replicated in European regional standards and guidelines, such as the European Rules for juvenile offenders subject to sanctions or measures and the Guidelines on child-friendly justice. It is reflected in the EU Directive on procedural safeguards for children suspected or accused in criminal proceedings which will be formally adopted by the EU in 2016.

At the UN level, the key international standards and guidelines include:

- Committee on the Rights of the Child’s General Comment No. 10 (2007) on children’s rights in juvenile justice (especially paras. 68-77).
At the European level, the key international standards on alternatives to detention and their implementation include:

- European Rules for juvenile offenders subject to sanctions or measures.
- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

A number of key principles emerge from these international standards which are critical when considering the use of alternatives to detention. These principles must be considered and incorporated into the development and implementation of alternatives to detention in any national context. In light of these standards and principles, the importance of ensuring that viable and effective alternative measures are available and utilised to the maximum possible extent is clear. This section of the Manual therefore aims to examine a number of these key principles. In doing so, it aims to highlight the importance of alternatives to detention within youth justice systems, consider the need for effective and viable alternatives to detention in light of the international standards and principles, and set out some fundamental concepts in youth justice which will be essential to understanding the operation and effective implementation of alternative sanctions and measures.

2.1.1 Introduction to key principles in Youth Justice

A number of principles have emerged from the international standards therefore, which all youth justice systems should take into account. These principles are of particular significance in considering the implementation and promotion of effective alternatives to detention within domestic juvenile justice systems. These key concepts include:

- Child-friendly justice.
- Dignity in criminal justice processes.
- Detention as a measure of last resort.
- Diversion.
- Alternatives to detention.
- Proportionality.
- Best interests.

The focus on developing child-friendly justice within juvenile justice systems has recently become more visible in international standards and policy documents discussing the
development of juvenile justice systems. The Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice, in particular, have set out key provisions on the role and treatment of children in justice proceedings in order to enhance the quality of their participation and to ensure their rights are fully respected. A child-friendly justice system is one in which the relevant children’s rights standards, as set out in the international guidelines, are not only fully respected, but are also promoted to the greatest extent possible. Adjustments to criminal procedures and to the language used in order to make it less formal, as well as ensuring that children are adequately informed and represented in these proceedings are key components of child-friendly practice. It has been noted that the use of such child-friendly procedures and language are essential in order to ensure that children understand both the procedures, the outcomes and what is expected of them as a consequence of these procedures.

The protection of the dignity of the child is another key principle which is central to the international standards, and which must be respected in implementing alternatives to detention. Article 37 of the UNCRC addresses the situation of the child deprived of their liberty. It protects the child against torture and other cruel, inhuman or degrading treatment, provides that children deprived of their liberty should be treated with humanity and respect for their dignity, and that detained children should not be held together with adults. The Committee on the Rights of the Child has expanded on this principle in its General Comment No. 10 on Children’s Rights in Juvenile Justice, and stipulates that this principle requires that children be treated in a manner consistent with their dignity and worth, that reinforces their respect for the rights and freedoms of others, that takes into account their age and the desirability of promoting their reintegration, and that prohibits absolutely all forms of violence against children in conflict with the law (see further paras. 13-14).

The principle that detention should only be used as a measure of last resort is a central principle emerging from the international standards, and one which is of particular relevance when considering the use of alternative sanctions and measures. It will be discussed in more detail below. In brief, however, this principle is set out in Article 37(b) of the UNCRC, which states: “The arrest, detention or imprisonment of a child shall be in conformity of law and shall be used only as a measure of last resort and for the shortest appropriate period of time.” This principle has emerged from a recognition that a sentence of detention has harmful effects on young people. This is one of the most fundamental principles underpinning a rights-compliant youth justice system.

Leading on from this principle, the question of viable alternatives to detention is an obvious one. Article 40(4) is of special significance here, and provides that a variety of different types of alternative measure should be available to courts in disposing with criminal matters involving children.

The principle of proportionality is also extremely important. The principle of proportionality places theoretically important limits on the sentencing authority’s powers to impose sentence on a young person accused of committing a crime. Article 40(4) of the UNCRC requires that such a variety of alternative measures are available in order “to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.” Therefore both the child’s individual characteristics and needs, as well as the type

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and seriousness of the offence need to be weighed in the balance when imposing a sanction on a child. Both of these separate elements are essential in order to curb excesses in sentencing. In particular, it is important in ensuring that courts do not justify excessive interventions on the basis of either disproportionate welfarism, or disproportionate punitivism (see further Committee on the Rights of the Child, General Comment No. 10, para. 71). At the European level, under Rule 5 of the Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, it is provided that the imposition of sanctions or measures should be guided by the child’s best interests, and limited both by the principle of proportionality (gravity of the offence) and by the principle of individualisation (personal circumstances of the child).

The best interest of the child is also a central concept in rights-compliant, child-friendly juvenile justice systems. The need to take into account the best interests of the child as a primary consideration is set out in Article 3 of the CRC. This is a principle of general application which applies in the context of juvenile justice as it does in other contexts, such as family law. In particular the Committee on the Rights of the Child have emphasised the importance of this principle in juvenile justice:

“Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.”

2.1.2 Detention as a measure of last resort

The principle that detention should only be used as a measure of last resort and for the shortest appropriate period of time is set out in Article 37(b) of the UNCRC, and is a fundamental principle in the operation of youth justice systems. Its centrality is such that it is repeated and reaffirmed strongly in a number of other international standards in the area.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty is one such instrument, and emphasises the need for imprisonment of children to be used only as a last resort (Rule 1). In particular, it acknowledges the need to avoid pre-trial detention to the greatest extent possible, and thus, to make efforts to apply alternative measures (Rule 17). In addition, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, otherwise known as the Beijing Rules, highlight the importance of positive measures to respond to young people who commit crimes (Rule 1.3), and, like the UNCRC, emphasise the need to promote the well-being of the young person as well as ensuring the response is proportionate to both the offence and the young person’s circumstances (Rule 5). The Rules emphasise that pre-trial detention should only be used as a last resort, and recommend that alternative measures should be used instead of detention wherever possible (Rule 13).
At the European level, Rule 10 of the **European Rules for juvenile offenders subject to sanctions or measures** enshrines the principle that deprivation of liberty should only be used as a last resort, and that special efforts should be made to avoid pre-trial detention. The **Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice** also stipulate that any form of deprivation of liberty of children should be a last resort and for the shortest appropriate period of time (Part IV, Rule 19).

It should be noted that different forms of detention exist. These range from imprisonment and deprivation of liberty in a detention centre on the one hand, to restrictions on liberty which take place in more therapeutic settings. Interventions exist which take place in a custodial setting in jurisdictions like Spain, which often involve a deprivation of liberty, but which operate on educational or therapeutic principles. Such custodial measures are often limited in nature, create a more informal setting, and include interventions which include working closely with the young person’s family, as well as with the young person him- or herself. While such measures may involve a deprivation of liberty, they can still be distinguished from other custodial settings which operate on fundamentally more restrictive principles, and in jurisdictions where these arrangements exist, often offer a less restrictive alternative to deprivation of liberty in a prison or a detention centre.

The principle that detention should only be used as a last resort has emerged from a recognition that the detention of children is a harmful and damaging practice. In particular, Penal Reform International has stated that:

> “The removal of children from their family and community networks as well as from educational and vocational opportunities at critical and formative periods in their lives, can compound social and economic disadvantage and marginalisation.”

The negative effects have been the subject of scholarly comment for some time, and have led commentators such as Goldson and Kilkelly to call for the abolition of child imprisonment altogether. Therefore, this principle exists in order to limit the harmful effects of custodial sentencing for children as much as possible.

The use of detention only as a last resort is also strongly linked to the central motivation to rehabilitate young people in conflict with the law to the greatest extent possible in the international standards. It has been commented:

> “There is also compelling evidence to suggest that detaining young people makes them more, rather than less, likely to commit further offences. This is because children who enter the prison system are more likely to be damaged in the short term through the trauma of the experience, and in the long term will find it more difficult to return to school or obtain employment or vocational training, and are therefore more likely to be a burden on the economy and society at large, rather than being able to contribute to its advancement and healing in times of economic crisis.”

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8 See, for example, Goldson, B., “Child Imprisonment: A Case for Abolition” (2005) 5(2) Youth Justice 77.
It has been commented that there is little evidence to suggest that detention has any positive effects on rates of recidivism or in acting as a deterrent to commit further crimes.\textsuperscript{11}

Despite the existence of this principle, a number of concerns have continued to be expressed that the numbers of children in detention across Europe are still too high,\textsuperscript{12} and that in particular, efforts should be made to ensure that the pre-trial detention of children only occurs in exceptional cases.\textsuperscript{13} Therefore, the active promotion of effective alternative sanctions and measures is closely linked with ensuring that the detention is only used as a last resort and for the minimum appropriate time period.

2.1.3 The importance of alternative sanctions and measures

The importance of alternatives to detention, in order to make the principle that detention should only be used as a last resort a reality, is clear. This is reflected in the emphasis which is put on alternative measures within the relevant international standards. Article 40 of the UNCRC is also directly concerned with the child in conflict with the law, and sets out minimum standards for the administration of justice when a child is alleged as, accused of, or recognised as having infringed the penal law. This sets out a number of requirements which must be met to ensure that children will receive a fair trial. Article 40(4) is of particular significance, and provides that “A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.” The wording of this requirement is mandatory, and therefore States are required to ensure that a variety of alternative measures are available. The list of the types of alternatives which may be used contained within this article is a non-exhaustive list, but provides some guidance to States on the variety and types of alternatives which should be available in any given system. This provision complements and reinforces the standard contained in Article 37 that detention should only be used as a last resort. It also important that it is explicitly stated that the use of alternative measures should be used both to ensure that a proportionate response is taken to the child both in light of their personal circumstances and the offence committed, and to ensure that the child’s well-being is taken into consideration.

The Committee on the Rights of the Child have also emphasized the importance of the availability of alternative measures in General Comment No. 10 (see especially paras. 68-77). In discussing the need and use of these alternatives to detention, the Committee has given the following guidance as to what they should include:

“As far as alternatives to deprivation of liberty/institutional care are concerned, there is a wide range of experience with the use and implementation of such measures. States


parties should benefit from this experience, and develop and implement these alternatives by adjusting them to their own culture and tradition. It goes without saying that measures amounting to forced labour or to torture or inhuman and degrading treatment must be explicitly prohibited, and those responsible for such illegal practices should be brought to justice.”

The Beijing Rules also emphasise the importance of the use of alternatives, at various stages of the process. As well as promoting their use to the maximum extent at the pre-trial stage, they also make clear their importance in the guidelines addressing dispositions following a finding of guilt. Rule 17 sets out the guiding principles which should be followed, including a recommendation that deprivation of personal liberty should not occur unless the child is convicted of a serious offence involving violence to another person, or unless offences are persistent, or there is no other appropriate response. Rule 18 also requires that a range of measures should be available to the competent authority, so that institutionalisation of a young person can be avoided to the greatest possible extent. This rule recommends that some of these measures may include: “care, guidance and supervision orders; probation; community service orders; financial penalties, compensation and restitution; intermediate treatment and other treatment orders; orders to participate in group counselling or other educational settings; other relevant orders.” Again, it is significant that this list is non-exhaustive, and the commentary to this rule emphasises that separation of a child from the care of their parent should only be used as a measure of last resort.

More detailed guidance on the content and purpose of alternative sanctions is available under the European standards. Rule 5 of the European Rules for juvenile offenders subject to sanctions or measures states that the imposition of sanctions or measures should be guided by the child’s best interests, and should be limited both by the principle of proportionality (gravity of the offence) and by the principle of individualisation (personal circumstances of the young person). The Rules also provide that a wide range of community sanctions or measures should be available at all stages of the process (Rule 23.1), and further that priority should be given to sanctions with an educational impact as well as a restorative aspect (Rule 23.2). These Rules also require that community sanctions are specified in detail in national legislation (Rule 24), and stipulates that the imposition or revocation should be undertaken by a judicial authority, or, if undertaken by an administrative authority, be judicially reviewable (Rule 26). These Rules also state that failure to comply with the conditions of a community sanction should not automatically lead to detention, and where possible, should be replaced by another community measure (Rule 30.1). The Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice require that alternatives to judicial proceedings such as mediation and diversion be available children where it is considered to serve the child’s best interests (Part IV, Rule 24) In addition, the Guidelines state that:

“Measures and sanctions for children in conflict with the law should always be constructive and individualised responses to the committed acts, bearing in mind the principle of proportionality, the child’s age, physical and mental well-being and development and the circumstances of the case. The right to education, vocational training, employment, rehabilitation and reintegration should be guaranteed.” (Part IV, Rule 82).

14 Committee on the Rights of the Child’s General Comment No. 10 (2007) on children’s rights in juvenile justice at para. 73.
The centrality of the use of alternatives to detention within the relevant international standards in the area make the importance of promoting effective alternative measures within domestic systems clear. It has been suggested that interventions which are carried out in the community may be more effective as a means of reducing re-offending. The benefits of alternatives to detention have been outlined as follows:

“Interventions delivered in the community are more effective at reducing reoffending than those delivered in custodial or institutional settings. This is likely to be because interventions carried out closer to a young person’s home environment are more likely to be meaningful to the young person, can confront family problems in their existing context, enable them to integrate into education and society more easily, and allow them to maintain existing positive networks. Community sanctions have been proven to work even on serious and violent offenders, reducing recidivism by as much as 50%. Community sanctions are also cost-effective.”

Therefore, the use of alternative sanctions also have the benefit of being more cost-effective than detention, which is comparatively significantly higher. The promotion of the use of alternative measures is also in line with the principle of minimum intervention, with the need for respect for the dignity of the child, and the desirability of promoting their reintegration.

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CHAPTER III

GOOD PRACTICE GUIDE FOR ALTERNATIVES TO DETENTION IN OPERATION IN EUROPE

3.1 Introduction

Part II of the Manual aims to outline examples of good practice in designing and implementing alternatives to detention which are in operation in a variety of jurisdictions across Europe. In doing so, it aims to provide an insight into the operation of various types of alternative measures within different legal and social contexts. While juvenile justice systems and the legal frameworks which govern responses to young people in conflict with the law vary from jurisdiction to jurisdiction, a number of different types of alternatives can operate successfully within different legal contexts. By providing a variety of alternative measures, a juvenile justice system can respond to the particular circumstances of the young person as well as to the offence committed, and can reduce the frequency with which it resorts to custodial measures as much as possible.

Therefore, this part will consider the variety of alternative measures which are available in Spain, Italy, Northern Ireland and in the Netherlands. These alternative measures are each considered in relation to the category of alternative measure that they fall into, and examines the implementation of a number of examples of good practice, considering the evaluations and assessments which have been carried out of these practices.

3.2 Alternatives to Detention

As discussed previously, the principle that detention should only be used as a last resort for the shortest appropriate period of time is a central principle emerging from the relevant children’s rights standards. In order for this principle to be meaningful, therefore, a wide range of alternative measures need to be available, and they need to be used by judges and other decision-makers within the juvenile justice system. Therefore, these stakeholders need to have confidence that these measures are both accessible and effective.

This section of the manual aims to provide a comprehensive look at alternatives to detention, and to provide examples of how they are implemented across Europe. It aims to address the stages of the criminal justice process that they can be utilised at and consider what we mean by “alternative measures”, as well as the linked question of diversion. In addition, this section will set out a guide to the different types of alternative measures which are used, as well as providing a number of examples of these measures being used in practice in various jurisdictions across Europe.
3.2.1 Definition and use of alternative measures

The first question that needs to be addressed, then, is what do we actually mean by the term “alternatives to detention”? The phrase is vague as the range of measures which can fall under this umbrella term is extremely wide. Essentially, anything which is not a full deprivation of a young person’s liberty in a custodial institution may be considered to be an alternative measure. These measures can range from probation, to counselling, to supervision orders, to foster care or educational placements. Given the breadth of what is encompassed by this phrase, these measures are often difficult to fit into a single category. Other common terms used include “community sanctions” or “non-custodial measures”. While the term “alternative measures” is commonly used, it is worth noting that even this nomenclature is not without difficulty. If the principle that detention should only be used as a last resort is realised, it follows that these “alternative measures” should be used far more often than custodial measures. In setting these non-custodial measures up as “alternatives” however, it implicitly suggests that detention is the primary disposition available. It is important, however, that a wide range of alternatives exist within any one system, in order to ensure that the most suitable measure for each child’s individual circumstances and needs can be selected. There are a number of points in a young person’s pathway through the criminal justice system where such alternative measures may be implemented.

Before noting these points, however, it is worth considering the issue of diversion. Diversion can mean diversion from offending, from the courts, from detention or from the criminal justice system generally. It most commonly refers to diversion away from the formal criminal justice system or from further formal action. It often involves a free acceptance of responsibility by the young person for their criminal behaviour, and their consent to diversion. This process is often reserved for less serious offending and those who are not considered persistent offenders. It frequently works to give the young person a chance to change his/her behaviour before formal action is taken against him/her. While diversion may be considered an “alternative” insofar as it is used instead of full, formal criminal justice processes, it can be distinguished from the other measures discussed in this Manual as it keeps a young person away from the formal criminal justice system altogether, rather than being a sanction imposed within the criminal justice system where a sentence of detention, whether on remand or on conviction, may otherwise be imposed. While diversion is a key aspect of any criminal justice system, therefore, and its importance is emphasised in the relevant children’s rights standards, it is an essentially separate issue to the issue of alternatives to detention.

The possibility of utilising alternative measures, rather than imposing a custodial sentence, exists at a number of separate points in the juvenile justice system. At any point in the system where the possibility of detaining the child exists, the possibility of utilising an alternative measure instead should also exist. Therefore, alternative measures should exist both at the pre-trial stage, where the possibility of detention on remand exists, and at the sentencing and disposition stage after a child has been convicted or has pled guilty to a criminal charge. Pre-trial alternatives which may be available include police cautioning, release on bail and probation. Alternatives at the point of sentencing can include a wide variety of community, care and educational measures, as well as probation or another type of supervision order. Depending on the framework for juvenile justice in place in each State, the decision whether or not to implement an alternative measure may fall to different decision-makers. Judges dealing with the young person will have the power to implement an alternative measure instead of a sentence...
of detention, and in some States the decision to impose an alternative detention may lie with the prosecutor. Various other actors within a juvenile justice system may have responsibility for implementing the non-custodial measure. Responsibility for implementation may fall to probation services, social services, foster care services, counselling services, mentoring services, etc. Volunteers and voluntary groups are often an important part of delivering these services.

There are many different types of alternative sanctions. While the variety of measures available within and across jurisdiction makes any attempt at a neat or a definitive categorisation extremely difficult, a loose grouping of different types of orders is possible. These include:

- Probation, community service and the imposition of fines.
- Educational measures and mentoring.
- Care-based and therapeutic measures.
- Restorative approaches.
- Pre-trial detention supports.

In the next chapter, a number of these separate groupings will be considered, and examples and case studies will be provided of the implementation of these measures in various jurisdictions and contexts. First, however, it is worth considering some key issues which should be borne in mind in thinking about these alternatives, and their implementation in practice. A number of points will be given brief consideration before turning to each alternative measure in turn.

### 3.2.2 Key learning in implementing alternatives to detention

It is important to note that the types of alternatives to detention outlined in the last section are representative only of the most common types of alternative measures utilised across Europe, and are non-exhaustive in their scope, and further that a number of different types of categorisation are available. Indeed, none of the lists provided of types of alternative measures in UN or European international guidelines in this area purport to be exhaustive. Instead, States are encouraged to develop their own alternative measures which respond appropriately to children in conflict with the law within the context of their own legal framework.

In developing appropriate alternatives to detention, there are a number of factors which will need to be taken into account. These include the individual circumstances and personal characteristics of the young people concerned. A wide variety of measures will need to be available in order to respond to young people’s needs and requirements on a case by case basis. A number of common characteristics have been identified among young people who come into contact with the criminal justice system, and it may also be useful to bear some of these factors in mind when designing alternative measures within a national system. A significant number of young people who come into conflict with the law have also had experience of the care system. Young people from poorer socio-economic backgrounds are also overrepresented in the youth justice system. Having a parent or a sibling who has been imprisoned is also a significant risk.
factor. Mental health and/or addiction problems are also more common amongst young people who offend as compared to their non-offending peers. Peer group influence is also a significant factor in offending by young people. While these can only be broad brush strokes, they may be useful factors to consider in more detail in a national context when designing appropriate alternatives to detention. There is a need to develop and choose alternative measures which meet the various needs of young people in conflict with the law. It has been said of alternative measures that “...it is clear that what is proposed here are not punitive sanctions, but rather measures designed to address holistically the factors that underlie a child’s offending placed within the health, education and family context.” Kilkelly further notes the need for the implantation of these alternatives to be “based on individualised assessments and best practice in social work and youth care.”

With any alternative measure, however, there will be a need to keep each measure under regular review and to evaluate the outcomes of the measure appropriately. This issue of evaluation raises a number of questions. What makes alternatives to detention effective? What do we mean by “effective”? How do we assess effectiveness? A number of factors need to be taken into account when considering these questions. A key factor is that of compliance with the international standards and guidelines in this area. There is a need to ensure that alternative measures are consistent with children’s rights, and that children’s rights are upheld in the imposition and implementation of these measures. These factors will need to be taken into account along with statistical information on the success of a programme based on recidivism rates, etc. There is, however, a need to ensure that in evaluating a measure, a qualitative as well as a quantitative approach is taken. A further key issue for measuring effectiveness is that of data collection. The absence of effective systems of data collection is a common problem across many aspects of juvenile justice systems across Europe. Therefore developing robust systems of data collection and measurement are also an important aspect of measuring alternatives to detention.

It is important to remember that no one-type-fits-all measure exists. A measure which will be effective in one jurisdiction may be less so within the context of a different legal framework and different social conditions in another country. There is a need therefore, for each juvenile justice system to carefully consider what will work in its own particular context and in the context of the overall legislative framework and system.

3.3 The Use of Alternative Measures in Practice

This chapter will consider in detail the different types of alternative measure in operation across Europe, and will present information about how these alternatives have been implemented in a number of different jurisdictions. The categorisation we have utilised is non-exhaustive, and other types of categorisation can be used, however, these categories present examples of some of the most common types of alternative measures in operation in Europe. The implementation of each particular alternative measure in each jurisdiction must also, of course, be taken into


17 ibid. at p. 21.
account in relation to the broader juvenile justice system and the juvenile justice principles in operation in each country.

The examples we have chosen have been categorised under the following headings:

- Probation, community service and the imposition of fines.
- Educational measures and mentoring.
- Care-based and therapeutic measures.
- Restorative approaches.
- Pre-trial detention supports.

These examples are drawn from the Juvenile Offenders Detention Alternative in Europe project led by the Istituto Don Calabria (Italy), and carried out in partnership with the International Juvenile Justice Observatory (Belgium), Kesa-CPE (Estonia), Fundación Diagrama (Spain), Include Youth (Northern Ireland) and Defence for Children (Netherlands). It presents a snapshot of various types of alternative measures in action in European jurisdictions. In particular, the information presented is drawn from the following national reports:

- Italy National Report: JODA Juvenile Offenders Detention Alternative in Europe (JUST/2013/JPEN/AG/4573)

An important issue to note in relation to the practices presented is that all of these examples come from different systems, with different legal frameworks, and which take different responses overall to the problem of offending by young people. No two youth justice systems are alike, and there can be considerable diversity and variability from one system to the next. Therefore, the practices presented are not intended to be read in isolation. Rather, they each exist and operate within the context of the overall youth justice system in place in each jurisdiction. They point to good practice that may be useful to explore, without suggesting that it could be implemented ‘as is’ in another juvenile justice system. Therefore, when implementing these approaches in a new jurisdiction, the national and local context should be taken into account in considering their suitability and their operation overall. Here, these examples are presented as illustrations of the different kinds of programmes, projects and approaches which are possible within any system.
3.3.1 Probation, community service and the imposition of fines

Two of the alternative measures which can be used in lieu of a custodial sentence include the imposition of a fine, or ordering that the young person be subject to the supervision of a probation order. Both of these types of measure will be considered in this part, and a number of case studies of the use of probation, in particular, will be set out.

The imposition of fines as an alternative is possible under the legislation of many jurisdictions at the sentencing stage. The young person may be required to make restitution or pay some form of compensation to the victim. This may also be an element within many restorative justice processes, particularly where the young person is required to pay some sort of reparation to the victim to compensate them for the damage caused by their offending. In imposing a fine as an alternative sanction, the sentencing judge or decision-maker will have to take into account the means of the young person and his or her ability to pay.

Probation is a common type of alternative measure. Young people are placed under the supervision of probation officers in the community. They may be required to meet certain requirements such as curfews and behaviour requirements. They may also be required to take part in an education, training, or other type of programme which is considered beneficial. Probation services may also act as an access point for a young person to counselling or mentoring services. They may also have responsibility for monitoring the implementation of various other types of community service or community sanction specified by the courts. Often, specialised divisions of the probation service will be dedicated particularly to the supervision of young offenders under the age of eighteen. A probation or supervision order will be imposed by the court and will last for a fixed period of time.

A number of examples of good practice in relation to the use of probation exist in countries across Europe. The implementation of these practices in two different countries will now be considered. These are:

- Probation and Tailored/Individualised Educative Project – Italy.
- Probation – Northern Ireland.
A probation with a Tailored/Individualized Educatve Project (PEI) aims to responsibilise the young person for his or her criminal behaviour. A probation period can be imposed for up to three years if a serious crime is committed. When a judge decides to impose a period of probation, the trial process is halted until it is carried out. A Tailored/Individualised Educatve Project (PEI) is used in order to respond through probation to young offenders, and is drawn up by the Juvenile Social Service Offices. This office has responsibility for co-ordinating through the entire process of the child’s pathway. The PEI is drawn up by social workers in conjuction with several other bodies. Key aims of this type of intervention include:

- To support the young person in developing a plan for the future, particularly to aid the reintegration into the community, by providing effective alternatives to deviant behaviour.
- To support the young person in developing positive behaviours.
- To support the young person in developing skills and interpersonal relationships skills with adults and peers in small and larger groups.
- To encourage the young person to take responsibility for his or her actions.

The individual plan for the young person is drawn up by social workers in co-operation with various other agencies. In drawing up the plan, it is important that there is an awareness of the complexity of the social issues involved and to ensure that the plan is individualised to meet those needs, and to enable the young person to complete it successfully. The plan should be detailed, and should provide for the involvement of the young person and their family, while taking into account their personal and social circumstances. It should also detail specific commitments concerning education, work and other activities, and should detail the role of the particular actors involved in implementing the plan. It should provide a plan for possible restoration and conciliation with the victim and the community. The judge may also impose particular measures, including restrictions on behaviour, restorative measures, or measures concerning the young person’s health care.

**Evaluation and assessment**

Particularly positive aspects of this intervention have been said to include that it involves an in-depth assessment of the young person, their attitudes and skills, and that these factors are taken into account when drafting the PEI. In addition, the involvement of family and other groups in the community is a positive factor, as is the provision of support for the young person in establishing and maintaining interpersonal relationships, and thereby helping them to build a network of support. The level of monitoring involved to ensure the programmes effectiveness, the development of instruments to improve the professional skills of those involved, and the

inclusion of groups and networks within the local community to help with the implementation of the plan have also been cited as positive aspects of this intervention.

In evaluations, the programme’s relevance, efficiency and effectiveness, its impact, and its transferability were all found to be satisfactory, while its sustainability and the ability to translate evaluation findings into statements of good practices were rated as average.

PROBATION – NORTHERN IRELAND

A probation order may be imposed by a Youth Court judge and can last for a period between 6 months and three years. A probation officer works with the young person over the specified period of time, and has the potential to provide a package of supports which address the young person’s behaviour. The aims of the probation order are as follows:

- To encourage the young person not to commit any further offences.
- To provide a package of supports to the young person to help them address their offending behaviour.
- To involve the extended family and community groups in the supervision process.
- To support and challenge young people to change their behaviour.
- To encourage the young person to find employment.
- To support changes in the young person’s behaviour through helping them to access the relevant health supports.

The supports which can be provided to a young person as part of a probation order can include mentoring, work placements, imposition of monitored curfews, treatment for drug and alcohol issues, attendance at youth clubs, victim awareness programmes, etc. Regular meetings are held with the young person. Each support package can be specifically tailored to the needs of the young person. There is no requirement as part of probation to carry out community service.

Evaluation and assessments

Probation was not always seen as an effective or positive intervention, particularly in evaluations with the young people who were subject to the order. They did not always consider that it had made any significant impact in helping them to stop their offending behaviour, and were often frustrated with the operation of probation services and how much it intruded on their time. They did not consider that it had an appreciable impact on their behaviour.

Community service

A common element of practice in many probation services is community service, however, this can also be implemented as a stand-alone measure by a judge or other decision-maker. Community service will generally involve the young person performing some sort of work or service in his or her community that will be of benefit to that community. This type of community work, used effectively and in conjunction with various other supports, can be an important means of trying to achieve a young person’s successful reintegration into his or her community.

A number of good practices can be identified in various European countries of these types of alternative in action. These include:

- Socio-educational tasks – Spain.
- Community service – Spain.
- Actions useful for society – Italy.
- Community service – Northern Ireland.

SOCIO-EDUCATIONAL TASKS - SPAIN

This programme operates in the province of Alicante, and is part of a broader service managed by Fundación Diagrama. It is a social intervention which aims to reintegrate young people subject to judicial measures in a non-custodial setting. It is implemented within the young person’s community, and educators involved in implementing the programme travel to the community where the young person lives in order to work with them in their own environment, drawing on local resources and family support wherever this is possible. The aims of the measure include:

- To prevent recidivism and the commission of further offences through providing an educational intervention aimed at increasing a young person’s awareness and encouraging them to assume responsibility for their offending.
- To promote the cognitive and social development of young people and to enhance their personal resources and skills.
- To promote positive attitudes amongst young people towards their own health.
- To help young people who need educational support and/or training.
- To help develop pro-social attitudes.

This measure involves the young person taking part in educational activities which are designed to develop social competencies. An initial interview is held with the young person and his or her parents, where the measure is explained, and the possible tasks the young person will be required to undertake are discussed. The interview takes into account the amount of time that the young person is already engaged in training, work or other activities. Before the measure is begun, an Individualised Educational Project is drawn up. The measure must be approved by a Juvenile Court Judge before it is implemented. If a local community group or resource is involved in the implementation of this measure, a meeting is also held with the head of this resource in order to develop a programme. The implementation of the programme is monitored throughout through regular contact with Fundación Diagrama, the body with overall responsibility for co-ordinating the response. A final assessment interview is carried out once the measure is completed, and this assessment is attached to the final report to the court.

Key socio-educational tasks which the young person may be required to undertake include: psycho-social competence workshops; emotional intelligence workshops; workshop on co-education; workshop on conflict resolution; training and labour orientation workshop; driver education workshop; literacy classes; school support; sex education workshop; gender violence workshop; drug abuse prevention.

**Evaluation and assessment**

Evaluations of this measure have indicated satisfactory outcomes in relation to all criteria, including programme relevance, programme efficiency and effectiveness, programme impact, programme sustainability, programme transferability, and translation of evaluation findings into statements of good practice. This evaluation has been made internally by Fundación Diagrama. External evidence-based evaluations have not yet been carried out on this measure.

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**COMMUNITY SERVICE – SPAIN**

This programme operates in Las Palmas de Gran Canaria, and is part of a broader service managed by Fundación Diagrama. Community service is an intervention which aims to promote the reintegration of young people subject to judicial measures in a non-custodial setting. It is implemented within the young person’s own community, and educators involved in implementing the programme travel to the community where the young person lives in order to work with them in their own environment, drawing on local resources and family support wherever this is possible. The aims of this intervention are:

- To prevent recidivism and further offences through implementing an educational intervention aimed at increasing the young person’s awareness of the consequences of his or her behaviour and encouraging him or her to take responsibility for their offending behaviour.

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To promote the cognitive and social development of young people and to enhance their personal resources and skills in order to function better in society.

To develop pro-social attitudes.

To promote interest in activities which allow young people to interact more with their social environment.

To involve the community and various social partners to the greatest extent possible in providing an educational intervention for young people.

According to the Organic Law 5/2000, about the criminal responsibility of Minors, this type of measure cannot be imposed without the consent of the young person. Under this law, the young person is required to undertake unpaid activities which have a social benefit or which benefit people in precarious situations. If this measure is considered suitable, the young person is interviewed together with his or her parents in order to explain the measure to them. The time which the young person is already engaged in training, work, or other activities must be taken into account. Before the measure begins, an Individualised Project of Judicial Measure Execution is drawn up. The measure must be approved by a Juvenile Court Judge before the measure is implemented.

The work to be carried out by the young person may vary depending on what is required by the beneficiaries of the work. It generally falls into the category of either work relating to caring, or work relating to the environment. Different local groups may be involved in the implementation of the measure, and Fundación Diagrama, who have overall responsibility for co-ordinating the measure, and who remain in contact with these groups as well as with the young person and his or her parents throughout the period of implementation. A final assessment interview is done once the measure is completed, and this assessment will be attached to the final report on the judicial measure.

Evaluation and assessment

Evaluations of this programme have demonstrated satisfactory outcomes under all relevant categories – programme relevance, programme efficiency and effectiveness, programme impact, programme sustainability, programme transferability, and in translating evaluation findings into statements of good practice. This evaluation has been made internally by Fundación Diagrama. External evidence-based evaluations have not yet been carried out on this measure.
Actions useful for society refers to a community service which a young person may be required to undertake as an alternative measure. This type of measure is a recognition of the fact that offending causes harm to society and to the community at large, and aims to address this by requiring young people to carry out community services with practical as well as symbolic value. This type of measure enables the young person to demonstrate his or her abilities and to play an active role in the community through direct citizenship, responsibility and solidarity. The aims of this type of measure include:

- Supporting the young person in reflecting on the damage caused by the offending.
- To attempt to provide the opportunity for the young person to repair the damage by doing something useful for society.
- To provide the opportunity for the young person to test and demonstrate his or her skills and abilities in a safe, controlled environment.
- Facilitating the re-inclusion of the young person through socially useful work.
- Promoting the direct participation of civil society.

In implementing this type of measure, there is a need to create networks between various agencies. It involves an assessment of the skills and abilities of the young person concerned through putting these skills to the test in restorative-based actions. The networks between agencies are useful in gathering information, and aim to enlarge the available networks which may provide young people with the opportunities to participate in socially useful activities. It requires knowledge to be gained of the young person in order to create an appropriate action which they may complete.

Evaluation and assessment

A number of potential aspects of good practice have been noted in relation to this practice, for both the young person and the network to be created. In relation to the minor, it has been noted that it requires building knowledge about the young person in order to ensure that an appropriate action is identified, evaluating the opportunities available within the network, supporting and guiding the young person through the process, the establishment of processes aimed at social inclusion and enhancing the participation of the young person and the monitoring and evaluation of objectives. From the point of view of the network, it provides opportunities to involve stakeholders with the aim of cooperation and developing sustainable actions, to organise conferences to better implement and enhance cooperation, to conduct awareness campaigns and to further research in the area.

Evaluations of the practice have noted satisfactory outcomes in relation to programme relevance,
efficiency and effectiveness and programme impact. They have noted average outcomes in relation to programme sustainability, programme transferability and in translating evaluation findings into statements of good practice.

COMMUNITY SERVICE – NORTHERN IRELAND

The purpose of the community service orders is to require young people to spend a specified period at time working at a particular activity which involves an element of helping either the victim or the community at large. Community service is an aspect of a number of different types of order including:

- Reparation Orders.
- Community Responsibility Orders.
- Community Service Orders.

The implementation of community service orders depends on the involvement of a number of community and voluntary organisations. The orders require the young person to take part in an activity which benefits the victim or the community in some way, thereby incorporating an element of reparation/restoration into the sanction.

Evaluations and assessments

During evaluations of this type of intervention, both strengths and weaknesses of the intervention were identified. One of the key strengths was that it allowed the young person to remain in the community, and further that it provided for an element of restorative justice through allowing the involvement of the victim. However, a number of weaknesses were also identified in relation to the intervention, including the feeling that the orders did not address the underlying causes of the young person’s offending behaviour in a direct enough manner.

CONCLUSION

Probation is one of the most common forms of alternative measure which is utilised in many countries across Europe. It is an established practice in many juvenile justice systems across Europe, and involves provision of supervision in the community to the young person. In the good practices identified above, a number of themes and important elements emerge. One key element of good practice emerging from probation supervision across Europe is the use of individualised plans for young people under supervision. These individualised plans are in use.

in Italy, Spain and Northern Ireland. In drawing up individual plans, tailored to the needs of the young person, there is much more scope for responding in an effective way to the young person concerned.

In addition, measures can often help to ensure that there is a level of accountability of the young person, through requiring some element of community service. As we can see from the good practice examples discussed in detail above, in all jurisdictions, these can include either an educational element, or a task which will be of benefit to the community. This type of measure allows the young person the opportunity to repair some of the damage to the community caused by his or her offending. If this type of task also involves a benefit to the victim of the offending, it can also be said to incorporate a restorative element. Finally, a key benefit of these types of measures is that they are implemented within the young offender’s own community. The implementation of a measure within the community and the social environment of the young person is a key benefit in offering the opportunity to the young person for rehabilitation and reintegration.

3.3.2 Educational measures and mentoring

**Mentoring orders** involve pairing the young person with an adult volunteer in the community. Mentors may work with both the young person and his or her family, and meets with them on a regular basis. Mentors provide support, advice and guidance to young people, and listen to the young person and any concerns that they may have. Mentors can often serve as positive role models for young people, and, through the process of forming a friendship, can provide stability in the young person’s life.

An example of mentoring can be found in the Republic of Ireland, where an organisation called Le Chéile delivers mentoring services and family support services to young people in conflict with the law and their families. Le Chéile recruits and trains volunteers who are then matched with young people in the community, with whom they work to develop strong personal relationships and act as a role model. In addition, the mentor provides a stable and supportive point of contact for the young person. Le Chéile also provides family support services to the parents and families of the young people it works with, as well as the young people themselves.

**Educational interventions** are a common type of alternative measure, and can take various forms. Often, orders which are not purely educational will nevertheless have an educational component or aim. The European rules for juveniles subject to sanctions or measures are particularly strong on the need for an educational response to offending behaviour by young people. They stress that sanctions or measures should be based on principles of social integration, education and the prevention of re-offending (Part I, Rule 2). In particular, those guidelines go on to say that when considering community sanctions, particular priority should be given to those which may have an educational impact as well as constituting a restorative response (Part II, Rule 23.2). Orders made may require young people to attend at specified educational or vocational training programmes, or attend youth groups or other programmes. Educational measures can often be delivered at day centres and allow the young person to remain in their family home, however, in some jurisdictions it is also possible to order a child’s residential placement in an educational home or group for a certain period of time.
A number of different types of educational measures are in operation in many European countries. These frequently take place in day centres, allowing children to remain at home with their families while undertaking them. Educational placements outside of the family home are also possible, however. Educational measures have been implemented across Europe in a variety of ways. A number of good practices have been identified, and are set out below. These examples include:

- Placement in the community – Italy.
- Behavioural measures – the Netherlands.

“Los Pinos” Educational Home is an educational group. It is possible for the court to order a young person to reside in such an educational group home for a fixed period of time. The purpose of this placement is to allow for the child to be guided in his or her socialisation process. The aims of the measure are as follows:

- To provide individual attention to the young person in a conflict-free structured family and social environment.
- To develop personal resources which will help the young person to reintegrate effectively into their family.
- To temporarily remove the young person from an inadequate social environment.
- To provide the young person with guidance in relation to his or her development.
- To address the underlying factors which may be contributing to the young person’s offending behaviour.

“Los Pinos” Educational Home has the capacity for twelve young people – both male and female – between the ages of 14 and 17 years old. The order to live in an educational home is made by the juvenile court. This order therefore temporarily separates the child from their social surroundings and their family, and provides them with a positive social environment. It is considered to be the most appropriate judicial measure for young people who have been violent towards their parents. Interventions implemented within the educational home, therefore, are designed specifically to address this type of behaviour, and aim to encourage accountability and the social reintegration of the young person, and includes both the young person and his or

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her family. The measure is focused in particular on the re-education and re-integration of the young person into his or her family. Specific interventions are tailored to each individual, and to the traits and circumstances of both the minor and their family. They follow a structured assessment, and specific activities are planned in order to achieve the desired objectives. This individual assessment is reviewed every three months, in order to allow the details of the measure to be adapted to ensure that the desired outcomes are achieved.

This measure can be implemented for a maximum of two years, during which time the children retain all their rights and maintain contact with their family. The main objective of the measure is to return the child to his family with the maximum possibility for social reintegration. This measure, can, however, be changed to a sentence of detention if the child does not fulfil the requirements imposed on him or her, or if his or her behaviour is determined to be inadequate.

Evaluation and assessment

An evaluation and assessment process is built into this measure in order to assess whether it is effectively meeting its objectives and goals. The Educational Home uses a Quality Management System in order to maintain the system and to improve its methods and the procedures involved in carrying out its activities. The activities of the home are divided into a number of different processes. Each process has a number of general objectives, which are in turn divided into specific objectives, each with specific quantifiable indicators in order to measure progress. This quality and evaluation framework is used in order to review progress, identify any potential negative outcomes and implement changes as required. This framework, itself, is re-evaluated every three months to ensure that objectives, indicators and achievement criteria are amended as necessary.

PLACEMENT IN THE COMMUNITY – ITALY

An order directing the child’s placement in the community may be ordered by the juvenile court at the preliminary hearing stage of proceedings. This measure involves placing the young person in the community in the Italian services for Juvenile Justice. It is focused on the reintegration of the child into his or her family environment and social context. The aims of the placement can be summarised as follows:

- To make the young person appreciate the consequences of his or her offending behaviour.
- To assess the educational and social opportunities which may exist for the young person within his or her community.
- To involve the young person’s family and other juvenile services and resources in the pro-

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cess to maximise the young person’s individual, family and environmental resources.

• To develop and implement an educational plan which targets the young person’s particular needs and utilises his or her family and social resources.

• To gather information which will enable the judge to make a decision in relation to sentencing which best fits the educational needs and best interests of the young person.

• To develop connections and links with the resources in the community.

• To provide aftercare support services to prepare the young person to leave the community placement.

• To reintegrate the young person successfully within his or her social context.

A key part of the methodology involved is inter-agency co-operation between the bodies responsible for drawing up the individualised plan. In the context of the plan that is drawn up, the young person’s family and peer group are considered particularly important resource for planning the young person’s re-inclusion pathway.

**Evaluation and assessment**

Particularly positive aspects of this practice include the focus on the family environment, the development of relationships of mutual trust, the involvement of qualified personnel, as well as of family and other local resources, and its focus on re-inclusion.

In evaluations of this programme its relevance, efficiency and effectiveness, its impact, and its transferability were all found to be satisfactory, while its sustainability and the ability to translate evaluation findings into statements of good practices were rated as average.

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**BEHAVIOURAL MEASURES – THE NETHERLANDS**

The behavioural measure was introduced in the Netherlands in February 2008 as an alternative to detention. The measure can be implemented while the young person remains at home with his or her family, or while they are in a foster care placement. It is aimed at young people who are repeat offenders or who are serious offenders. The aims of this measure include:

• To close the gap between the conditional youth detention and deprivation of liberty.

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• To stop the development of a criminal career.
• To strengthen protective factors.
• To remove negative factors.
• To provide care to the young person.
• To change the behaviour of the young person.
• To promote successful reintegration of the young person into society.

The measure is imposed by a judge on the advice of the Child Protection Board. The measure can be imposed for between six months and one year, and can be extended once. The measure can consist of several separate interventions. It can include training programmes and treatment, including specific behavioural interventions such as aggression therapy or programmes aimed to address issues around drugs or alcohol. Foster care may be included as part of this measure.

Evaluations and assessment

This measure is rarely implemented – around 60 times every year – and research was carried out as to why this is the case. The Ministry responsible for this measure wishes to keep it in place in order to help to meet obligations under the UNCRC, and to provide an alternative to custodial measures. They are therefore working on providing better information to stakeholders in relation to the measure. However academic research has not yet been carried out on young people who have been subject to a behavioural measure in the past.

In practice evaluations, the programme relevance has been rated as satisfactory, while efficiency and effectiveness of the programme have been rated as unsatisfactory. The translation of evaluation findings into statements of good practices have been rated as average. However, programme impact, programme sustainability and programme transferability are unknown.

CONCLUSION

Alternative measures which have an educational focus have a number of distinct advantages. It should be pointed out that alternative measures other than the ones listed above within this group may also incorporate an educational aim. The good practices listed above demonstrate the operation of measures with an educational focus in operation in a number of different legislative contexts. It can be seen that these measures can be delivered either while the young person remains in his or her community, or while the young person is placed in an educational home, foster placement, or other situation. A key element of good practice which emerges from the examples above is that the measure often involves working closely with the young person’s family, as well as with the young person him or herself. Often, aftercare support services are also in place if the young person is in an out-of-home placement, in order to assist them in the
transition back into their family and community situation. Another key benefit of these types of educational focus is that they allow for specific interventions to be targeted at particular problem behaviours, and allow for the social and psychological development of the young person. It should also be noted that the use of educational measures are strongly endorsed by the international guidelines, particularly the European Rules for juveniles subject to sanctions or measures.

3.3.3 Care-based and therapeutic measures

Alternative measures which are based on providing care and looking after the welfare needs of the child are used in a number of jurisdictions. The way in which care can be provided can vary from one jurisdiction to another, but a common type of measure in this category would include an order for foster care. Such care-based orders may be particularly useful if it is considered that the child’s family environment is contributing to his or her offending behaviour. Orders may also be made for cohabitation with another person, family or educational group. In these types of orders, the aim is to provide care for a young person outside of their family group for a period of time, during which their offending behaviour can also be addressed. These care-based measures can also be combined either with educational measures or therapeutic measures.

Measures with a therapeutic aim or component are also utilised in many jurisdictions. Access to counselling services, in particular, are often used as a component of another measure (for example, an offender under probation may be given access to counselling through this route), or as a measure in and of itself. Participation in anger management or to addiction programmes are also used as alternative measures, where these are appropriate for the particular young person. Interventions involving multi-systemic therapy (MST) are also becoming common as types of therapeutic interventions as alternative measures.

A number of alternatives which can be considered either therapeutic or training-based are also in place in European jurisdictions. A number of different examples of good practice in therapy-based measures have been identified and are implemented in Italy and in the Netherlands. These include:

- Solid Basis training programme – Italy.
- Family Root initiative – Italy.
- Multi System Therapy – The Netherlands.
- Tools4U cognitive and skills training programme – The Netherlands.
- Responsive Aggression Regulation Therapy – The Netherlands.
The Solid Basis training programme aims to develop an intervention which increases the self-respect of young male offenders and develops the self-esteem and social competencies which will ultimately reduce the risk factors for delinquency and high-risk behaviours such as substance abuse and auto-aggressive behaviour. This intervention is targeted at males aged between 14 and 23 years old who show deficits in self-respect and/or social competencies. The aims of this intervention include:

- To increase the self-esteem and social competencies of young male offenders in the juvenile justice system.
- To exchange knowledge with similar existing programmes to identify best practice and minimum standards.
- To integrate scientific research on effective elements in interventions for young male offenders on self-esteem and social competencies into the programme.
- To integrate the use of validated psycho-diagnostic instruments into the intervention.
- To train the trainers in implementing the programme.
- To test the draft programme on a pilot basis.

The programme consists of five separate sections. The first of these meetings is an introductory meeting. This is followed by three substantive modules. The first module, Me and Myself, consists of eight separate meetings and focuses on the individual participant and focuses on developing self-knowledge and self-awareness. The second module, Me and Relations, consists on seven separate meetings and focuses on the young person and his relationships with others. The final substantive module, Me and Society, consists of seven meetings and focuses on the young person’s place in the wider society. The programme ends with a closing meeting where the young person is invited to give a presentation on what they have learnt and on their plans for the future, and are awarded a certificate for successful completion.

**Evaluation and assessment**

In testing this programme, positive outcomes were noted. The final programme will be sent to accreditation commissions for validation. The methodology has been found to be adequate, and the exercises were understood by young people involved, notwithstanding particular difficulties around some delicate issues. Storytelling was found to be a particularly useful aspect of the intervention.

Evaluations of the programme have found programme relevance and programme efficiency

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and effectiveness to be satisfactory. Programme impact, sustainability, transferability and the ability to translate evaluation findings into statements of good practices have all been rated as average for this intervention.

**FAMILY ROOT INITIATIVE – ITALY**

The Family Root initiative is an intervention aimed at providing tools to families of young people involved with the juvenile justice system. This is an acknowledgement of the importance of the family to the social reintegration of the young person, and to help ensure continuity of the supportive measures provided to the young person once a formal intervention comes to an end. The aims of the intervention are:

- To support the birth families of young people in the juvenile justice system and to respect the difficulties met.
- To enhance cooperation between families of young people and the formal Juvenile Justice Services.
- To provide new tools and methodologies to Juvenile Justice Services.

This initiative is divided into six separate sections. The first section consists of an introduction of the models to families of young people in contact with the juvenile justice system. The second section provides training on four separate support models – Gestalt groups, Multi-family groups, mutual and self-help groups and Family Group Conferences. The third section then deepens the examination into and tests one of the models. The fourth section focuses on group creation, while the fifth section is focused on group implementation. The final section involves monitoring this testing process. Professionals involved in this process include a psychologist, a co-conductor and an observer. It is supported by local authorities and the Juvenile Social Service Office.

**Evaluations and assessment**

Experiences of such interventions have demonstrated that initial communication between families were characterised by negative approaches. However, the group was found to offer a space for reflection and dialogue which encouraged an analysis of these negative dynamics and a better understanding of each other. It decreased feelings of loneliness amongst parents and relatives. The strengths of the programme were said to include an increase in sensitivity and increased ability to identify with other people’s situation and emotions. Young people were encouraged to share their feelings and experiences with their family more openly and with less fear, levels of contact between parents and children decreased, and participating families were able to gain mutual support systems.

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In an evaluation of the programme, programme relevance and programme efficiency and effectiveness were found to be satisfactory. Programme impact, programme sustainability, programme transferability and translation of evaluation findings into statements of good practice were all rated average.

**MULTI-SYSTEM THERAPY – THE NETHERLANDS**

This intervention – known as MST – is used for young people between 12 and 18 with complex behavioural problems. It can be used as alternative for placement in a custodial institution. The measure is imposed by a judge. The intervention involves both the young person and their family. It is used in response to problems such as aggression, lying, running away, substance abuse and negative peer influences. The aims of the intervention are:

- To reduce re-offending rates, to halt the development of criminal careers and to prevent the young person being placed in a custodial institution.
- To ensure the minor lives at home and attends school or has a daily programme.
- To empower parents to raise their children.

The intervention can last for between three and five months, and takes place in the home environment with the involvement of those who have significant influence on the young person’s life. It involves the family of the young person being visited by a therapist several times a week, and work being carried out to improve social networks in the family and the wider community. After the formal programme is completed, further supervision is required to support the practice of new strategies and behaviours for both young people and parents.

Experts have expressed positive views about the use of MST, and it has been said that it is effective in terms of reducing recidivism and empowering young people and their families. MST is recognised internationally, and has consistently demonstrated positive outcomes with persistent young offenders. It has successfully treated issues with sexual behaviour, substance abuse, serious emotional disturbances and chronic health care conditions.

In the Netherlands, evaluations of the effectiveness of MST are also being carried out. Outcomes have shown that 85% of the programmes are successfully completed and 82% of young people do not re-offend. MST interventions have shown positive outcomes as compared to deprivation of liberty in a custodial institution or in closed youth care. In the Netherlands behavioural interventions have been officially acknowledged by the Commission for the Accreditation of Interventions. These interventions aim at changing behaviour and reducing recidivism. Interventions judged by the Committee of the Recognition System for Interventions are evidence based. For an intervention to be acknowledged, the Committee requires that it is: “A programmatic and structured programme of methodological procedures aiming at influencing someone’s behaviour or circumstances.” MST is an officially acknowledged intervention.

This tool is used as an alternative measure and may be imposed by the Juvenile Court as a punishment for young offenders with an IQ of more than 85. This programme is based on cognitive and behavioural therapy techniques, and is based on what works principles and existing research literature. There is also a variant of this tool which is extended in order to enhance parental skills. The tool is used for young people where it is considered that a lack of skills is linked to their offending behaviour, and who are considered to present moderate risks of recidivism. Young people must be willing to participate in this programme, and must also have access to individual training programmes. The aims of the programme include:

- To reduce recidivism through developing skills.
- To improve cognitive and social skills deficits.
- To strengthen young people’s protective abilities.

An intensive method is followed in implementing this intervention. A MST trainer works with the young person and his or her parents for 1.5 hours a week. Depending on the needs of the young person, there are 6, 8 or 12 meetings, of which some are held with the young person on their own, some with the parents present, and some with the parents on their own. The Tools4U training programme consists of three stages: 1) two meetings based on getting to know each other, information gathering and awareness; 2) six or ten meetings where cognitive behavioural therapy is used to improve the skills of the young person; 3) a closing meeting where there is an evaluation and the young person receives a certificate of completion.

**Evaluation and assessment**

Evaluations of this intervention have not demonstrated optimal results from this intervention. Particular problems were noted with the intervention, including insufficient integrity in the programme. The selection of young people to take part in the programme was also highlighted as a problem, and levels of supervision differed. In the Netherlands, behavioural interventions have been officially acknowledged by the Commission for the Accreditation of Interventions. These interventions aim at changing behaviour and reducing recidivism. Interventions judged by the Committee of the Recognition System for Interventions are evidence based. For an intervention to be acknowledged, the Committee requires that it is: "A programmatic and structured programme of methodological procedures aiming at influencing someone’s behaviour or circumstances.” Tools4U is an officially acknowledged intervention.

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This intervention is used for young people with very aggressive behaviour and who are considered to be at high risk of re-offending. It involves using cognitive behaviour treatment and drama-therapeutic techniques. The measure can be imposed by a judge as a behavioural measure, as an after-programme, or as a condition during conditional youth detention. It aims to motivate and improve the self-belief of young people and their possibilities. The intervention is designed to meet the individual needs of the young person. The aims of the intervention include:

- To help the young person to learn to regulate his or her aggressive feelings and behaviour.
- To reduce rates of re-offending.
- To reduce individual risk factors related to problems with aggression regulation.
- To increase the learning skills and self-esteem of the young person involved.

The treatment last between 6 months and 2 years, and is aimed at young people between the ages of 16 and 24. The programme consists of weekly hour-long sessions, as well as group meetings of 1.5 hours. Work is done on individual motivation, the offence committed, prevalence, control skills, assertiveness, and changing dysfunctional cognition. Other classes are focused on reduction of stress, impulse control, mediation and breaking negative cycles of behaviour.

Evaluation and assessment

Evaluations of this intervention have shown that it shows promise for young people with severe aggression problems. It has shown improvements in behaviour and in reducing the risk of re-offending in residential settings. However, weaker results were shown in cases where the intervention was not implemented properly. In the Netherlands, behavioural interventions have been officially acknowledged by the Commission for the Accreditation of Interventions. These interventions aim at changing behaviour and reducing recidivism. Interventions judged by the Committee of the Recognition System for Interventions are evidence based. For an intervention to be acknowledged, the Committee requires that it is: “A programmatic and structured programme of methodological procedures aiming at influencing someone’s behaviour or circumstances.” Responsive Aggression Regulation Therapy is an officially acknowledged intervention.

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This programme operates in Las Palmas de Gran Canaria, and is part of a broader service managed by Fundación Diagrama. Community service is an intervention which aims to promote the reintegration of young people subject to judicial measures in a non-custodial setting. It is implemented within the young person’s own community, and educators involved in implementing the programme travel to the community where the young person lives in order to work with them in their own environment, drawing on local resources and family support wherever this is possible. The aims of this intervention are:

- To prevent recidivism and further offences through implementing an educational intervention aimed at increasing the young person’s awareness of the consequences of his or her behaviour and encouraging him or her to take responsibility for their offending behaviour.

- To promote the cognitive and social development of young people and to enhance their personal resources and skills needed to function in society.

- To evaluate, assess and undertake a psychotherapeutic intervention based on the specific needs and problems of each young person.

Under the relevant legislative framework, the Organic Law 5/2000 of January the 12th, about the criminal responsibility of Minors, young people who are subject to this measure must attend a day centre with a designated frequency. While there, they must follow the established guidelines for the treatment of a mental disorder, an addiction to alcohol or other substances, or for alterations in their perception. This measure can be applied as a standalone measure, or in addition to other measures. If the young person refuses treatment for addiction, the judge may apply other suitable measures.

An initial interview is held with the young person and his or her parents in which the content and meaning of the measure is explained. The time which the young person is already engaged in training, work, or other activities must be taken into account. Before the measure begins, an Individualised Project of Judicial Measure Execution is drawn up. The measure must be approved by a Juvenile Court Judge before the measure is implemented. The treatment is then co-ordinated by the mental health resources available in the area, focusing in particular in psychotherapeutic support and family intervention. At the end of the intervention, an assessment interview is carried out with the head of the resource, with the young person and with his or her family. This will then be included in the final report. The main services involved in this measure include psychotherapeutic treatment for a drug abuse problem and psychotherapeutic treatment due to psychopathologies.

CONCLUSION

The good practice in care-based measures demonstrate the use of such interventions in a number of different contexts. This allows for the incorporation of such measures into different legal frameworks and different legal and social contexts. It is possible to deliver a care-based intervention either while the young person remains in his or her family environment or while the child is cohabiting with another person, family or group. These types of placement can be particularly beneficial if it is considered that the family environment is contributing to the offending behaviour. A key benefit of many of these types of measures is, however, a close working relationship with the family of the young person concerned. A further key advantage of these types of care-based or therapeutic measures is that they can be used to target specific problem behaviours, or particularly problematic groups of young people, including those who are considered to be at high risk. This allows this type of alternative interventions to be used for young people who may not otherwise benefit from the use of alternatives. In addition, the specific targeting of programmes at particular types of problem behaviour can allow the causes of offending behaviour to be directly addressed. In addition, it provides a mechanism for psychological techniques such as cognitive behavioural therapy to be incorporated into interventions. A key benefit of these types of practices are the indications of positive effects on young people with particularly problematic behaviours.

3.3.4 Restorative Approaches

Restorative justice has become a central aspect of practice in many juvenile justice systems, and, although not explicitly mentioned in the UNCRC, its use has been supported and encouraged by the Committee on the Rights of the Child. Restorative justice aims to repair the harm caused by a criminal offence by bringing together the offender, the victim, and members of the community. It is frequently used in juvenile justice systems, and often takes the form of family group conferencing. In this type of restorative justice, the child, his or her parents or guardian or another appropriate adult meet with the victim, and other members of the community, such as a teacher of the child, can also be included if it is thought to be beneficial. The conference is usually run by a facilitator. The process provides a space for the victim to voice how the offence has impacted on them. In doing so, it is hoped that the offender will come to a greater appreciation of how their actions have caused harm, and will take responsibility for their actions. In these conferences, a plan will be drawn up, with the input of the offender and his or her family. In doing so, the young person will make an apology to the victim, and will undertake to make some sort of reparation or pay compensation to the victim. They will also draw up a plan to support the young person to desist from future offending behaviour. The plan will be agreed upon, and may contain certain requirements, such as attendance at school, training, or a particular activity. In some jurisdictions, the plan drawn up at such a family conference can be approved by the court and become a court order. In implementing restorative measures, however, care needs to be taken that young people’s rights are respected in the process.33

A number of restorative approaches are also in operation in a number of European jurisdictions and a number of programmes which represent good practice in this area have been identified.

and are discussed below. These approaches include:

- Victim Offender Mediation – Italy.
- Youth conferencing – Northern Ireland.
- Youth Engagement Clinics – Northern Ireland.
- HALT programme – The Netherlands.

**VICTIM OFFENDER MEDIATION – ITALY**

Victim Offender Mediation is a restorative process in operation in Italy. This can be triggered at various points in the criminal justice process, including during the preliminary investigation, and during the preliminary hearing, as well as taking place during the probation period of a young person. It aims to promote the taking of responsibility by the young person and encourages them to take voluntary action in order to resolve the conflict. Some of the aims of this intervention include:

- The creation of a space for the victim within the criminal justice process.
- To encourage the young person to take responsibility for the crime committed.
- To encourage the young person to demonstrate a willingness to apologise to the victim of their crime, and to take responsibility for the damage caused by taking steps to repair the damage caused.
- To encourage the young person to develop more awareness of the consequences of their actions, and to build positive effects and social relationships.

The process is facilitated by a mediator, who contacts both the victim and the child to arrange a meeting. Preliminary meetings take place separately both with the child and with the victim, in order to allow both sides to describe the offence and to arrange a formal mediation. A meeting then takes place between the child and the victim, which aims to demonstrate the consequences of the incident and to review the different versions of the facts. The mediator plays an active role, and the aim is to formulate an agreement in which the young offender will make some reparation or apology to the victim. The outcome of the mediation is sent to the Judicial Authority, indicating whether the mediation concluded positively, negatively, or in an uncertain manner, but without describing the mediation in detail.

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Evaluation and assessment

A good practice associated with this intervention which has the potential to be transferable has been said to be the role of the mediator. The mediator has responsibility for co-ordinating the mediation, and the positive aspects of this role have been said to include:

- The acceptance of the parties involved through ensuring that victims and offenders can express their viewpoints and vocalise their suffering.
- The ability to re-establish communication between those involved, ensuring confidentiality and non-direct intervention are prioritised.
- The ability to be in the middle of the parties without judging or analysing.
- Maintaining impartiality and neutrality in their relationship with those involved in the mediation.

In evaluations of this intervention, it has been found that its relevance, efficiency and effectiveness and impact were satisfactory, while its sustainability, transferability and the ability to translate evaluation findings into statements of good practice were rated as average.

YOUTH CONFERENCING – NORTHERN IRELAND

Youth conferencing is one of the key restorative approaches adopted to youth offending in Northern Ireland. A Youth Conferencing order can be made by the Youth Court as a disposition. The goal of the conference is to agree an action plan for the child in order to address his or her offending behaviour and to agree on some form of reparation during a meeting or a series of meetings. The consent of the child is required before conferencing can proceed. The aims of the programme include:

- Reducing re-offending rates by the young people concerned.
- To include the victim in a restorative process in an active manner.
- To encourage young people to recognise the consequences of their crimes and to take responsibility for their actions.
- To formulate a plan for the young person, which may include a number of elements, including an apology to the victim, reparation or compensation for the harm caused by their offence, participation in a specified activity.

The Youth Conferencing meeting takes a particular form. The conferences are co-ordinated by a conference co-ordinator, and must include the youth conference co-ordinator to facilitate the meeting, as well as the young person, an appropriate adult to accompany the young person, and a police officer. The victim may also be present, as well as other people considered to be able to contribute meaningfully to the process, such as social workers, probation staff, family friends or teachers. Legal representatives may also attend. These meetings allow the victim, or a representative of the victim, to meet with the young offender, and confront them with the consequences of their offending behaviour. The victim is not, however, required to attend. The action plan may include a written or verbal apology to the victim, reparation or compensation to the victim, some community service work, restrictions on the child’s movement, training or supervision, or counselling or treatment. A plan may also, however, recommend a period of custody for the young person. The plan should be tailored to the individual circumstances of the young person. This plan must be returned to the Youth Court for approval. The child must also consent to the Youth Conference Plan being implemented. The court, in making a Youth Conference Order, will also set a time limit, of up to 12 months, for its completion. If the child does not comply with the terms of this order, he or she will be returned to court.

Evaluation and assessment

Evaluations of the Youth Conferencing order have generally been positive, and have achieved significant reductions in the rates of re-offending by young people involved in them, as compared with those who received a custodial sentence. Three of the key advantages of this type of order are said to be that it reduces offending, is cost-effective, and is supportive of the victim.

The Youth Justice Review Team have also identified the following as strengths which are particularly associated with the intervention:

- Young offenders come to appreciate the link between their offending, the discussion which takes place at the conference, and the plan which is formulated and agreed upon.
- Young people are required to participate and to take responsibility for their actions.
- Well-trained, professional conference co-ordinators.
- The reintegration of the young person is helped by requiring them to take part in community service which requires them to “do good”.

The Youth Justice Review Team also highlighted issues with the intervention which could be improved. This included improving victim participation rates, ensuring proportionality in the outcomes in relation to the offence committed, reducing the time between arrest and the conclusion of the conference, ensuring co-ordinators use their discretion to return cases to court where it is deemed that that is appropriate.
The Youth Engagement Clinics were introduced on a pilot basis in Northern Ireland in 2012 as a part of the preparation for the introduction of Statutory Time Limits for juvenile justice cases, and were rolled out across Northern Ireland in 2014. The clinics were envisioned as a way of allowing young people accused of low level crimes to make earlier, better informed decisions about whether to accept an offer of a diversionary disposal. This was part of the overall aim to reduce processing times, as many young people only agree to accept diversionary measures after the case has gone to court. The aims of the Youth Engagement Clinics include:

- To assist with the diversion of young people who admit low level of offences into a reparative or diversionary process, with the option of further support, at an earlier stage.
- To support young people accused of crimes to make better informed decisions.
- To improve processing times for cases involving young people that are unsuitable for diversion.
- To enhance the rehabilitative and restorative benefits of the measure imposed by ensuring that cases involving young people are resolved as quickly as possible.

To be considered suitable for inclusion in this programme, the young person concerned must be aged over ten and under 18 at the time of the offence, the offence must be a non-indictable low level offence, and they must not be considered by police to be a repeat or prolific offender. The clinics are then run by youth specialists from the PSNI or the Youth Justice Agency who are trained in restorative practice. The clinic explains the nature of the case and the options available. The young person can only receive a diversionary measure if he or she admits the offence. The young person and his or her parent or guardian are informed of the procedure of the clinic and the appointment time in advance, and are advised of their entitlement to bring a solicitor to the clinic. Where there is no full admission of guilt the presence of this legal representative is obligatory. Prior to the appointment, the Youth Diversion Officer and the Youth Conference Co-ordinator will also meet to discuss whether it may be suitable to refer the young person for additional support, should the diversionary measure be accepted. At the clinic, the young person, together with their appropriate adult and legal representative, will be told of the offer of a diversionary measure and the evidence this was based on. The young person is given some time in private to consider the offer, or whether to have the matter dealt with in Youth Court. Disposals which are possible at the Clinic in the case of an admission of guilt by the young person include Diversionary Youth Conferences, Informed Warnings or Restorative Cautions. If a Diversionary Youth Conference is ordered, this will lead to a Conference Plan which must be completed by the young person. If either of the other two disposals are used, further support and referral to a support agency may also be offered at the discretion of the police officer.

Evaluation and assessment

An evaluation of the initiative in 2013 showed that it had reduced the number of young people appearing in the court system and led to more speedy resolutions of cases. It identified early identification of need, expeditious case file processing and the joint approach of the Youth Justice Agency and PSNI as significant in achieving this effect. It also found that it encouraged young people to think about what they had done and the implications of any further offending, and importantly, provided criminal justice organisations to understand the reasons for young people’s offending and enabled them to refer them to additional support services where this was appropriate.

However, concerns were also identified in relation to the need for the young person to admit guilt before accessing diversion and the need for young people to be made aware of the consequences of admission guilt and the importance of having legal representation.

HALT – THE NETHERLANDS

One of the most commonly used is a restorative justice intervention known as the HALT programme. Young people can be referred to the HALT programme either by the police or the prosecutor as a form of diversion. This is an early intervention programme, which aims to divert the minor out of the justice system. It is used where offences of a petty or non-serious nature are committed. Parents play an important role in this process. The aims of the HALT programme are as follows:

- To prevent, reduce and sanction youth crime and to improve public safety.
- To improve awareness of appropriate behaviour and societal norms for young people and their family.
- To keep the young person out of the formal criminal justice system.
- To include the parents and ensure that they play an important role through their participation.
- To incorporate restorative justice approaches which may include a discussion about the offending with the young person and their family, the making of an apology, compensation for damage caused, the completion of learning assignments, or the imposition of a community sentence.

The HALT official, the child, his or her parents and, if they agree, the victim of the crime are involved in the process, and the responsibility for the intervention lies with the prosecution. The process involves discussion between the parties involved, and an agreement to make reparation

to the victim or an apology. It may also consist of learning assignments, and sometimes the imposition of a community sentence. Increasingly more severe cases are now being referred to HALT.

Evaluation and assessment

The HALT system has been evaluated twice, in 2006 and 2013. As a result of these evaluations, HALT has been continued and amendments to the process have been considered. The results of these evaluations have allowed amendments to be made to the HALT procedure in order to ensure that the desired results are achieved with particular target groups of young people. It has been renewed following these evaluations, and at present additional attention is being given to the implementation of restorative justice approaches within this intervention.

CONCLUSION

The good practice examples discussed demonstrate the variety of restorative approaches which can be utilised in responding to offending behaviour by young people. The examples, drawn from Italy, Northern Ireland, and the Netherlands, demonstrate the use made of restorative measures in different legal frameworks. In particular, it can be seen that a systematic approach to restorative practices, with the involvement of trained and skilled practitioners, is key to the successful implementation of restorative measures. A particular benefit of restorative processes is that it often involves the victim of the young person’s offending. Not only does this have clear benefits for the victim of the crime, by bringing them into the heart of the process, it also has benefits from the point of view of the young person, particularly in relation to encouraging accountability, taking responsibility for his or her actions, and coming to a greater understanding of the consequences of his or her behaviour. The drawing up of a plan for the young person as part of such restorative processes allows for a structured and considered follow-up to the initial restorative conference or event. This ensures that some apology or reparation can be made to the victim, as well as allowing the scope to address other issues which may be considered to be contributing to offending behaviour.

3.3.5 Pre-trial detention supports

While a number of the alternative measures already discussed can be implemented at the pre-trial stage as well as the conviction stage, another important type of alternative is those which specifically target the reduction of pre-trial detention on remand by providing bail support programmes. These types of interventions are particularly important where a court feels that the young person should be remanded in custody pending trial for one reason or another. These types of bail support programmes and other interventions provide an important alternative so that detention will only be used where absolutely necessary. These types of intervention are also particularly important in light of the high numbers of young people detained on remand across Europe.
A number of examples of this type of practice exist across Europe, however, two particular examples of good practice, which take different approaches to the issue have been identified, and are set out in detail below. These include:

- YJA Bail Support Scheme – Northern Ireland.
- Forensic foster care – the Netherlands.

**YJA BAIL SUPPORT SCHEME – NORTHERN IRELAND**

Bail Support Schemes aim to provide important support to young people in meeting their bail conditions, and therefore avoid being remanded in custody as a consequence of breaching these conditions. This is particularly important given that bail is only supposed to be refused in the most serious cases, and in light of concerns that the Woodlands Juvenile Justice Centre is being used increasingly as a centre for young being who are detained on remand. The aims of the Bail Support Scheme include:

- To provide services to young people awaiting trial or sentence which are designed to help them to complete their bail successfully in the community and to help them comply with their bail conditions.
- To provide supports and services matched to the circumstances of the young person, the alleged offence and the grounds for refusal of bail.
- To offer credible alternatives to remand of the young person in custody by addressing any objections to bail.
- To reduce the length of time young people spend remanded in custody.
- To prevent re-offending on bail.
- To help the young person to attend court dates as required.

The scheme aims to provide individualized programmes to young people at risk of having their bail denied. The team which administers this scheme is also engaged in undertaking bail assessments and presenting reports to the court as required. There are four stages to the scheme. The first is Bail Assessment, where it is established if a bail support programme is appropriate, and where any objections of the court will have to be addressed. The second stage of the scheme is centred on Court Work. A report is prepared for the court, which outlines the conditions.

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young person’s suitability for inclusion in the scheme, and the programme of supports to be offered. Staff must also be available to the court to answer any questions and the young person must have the implications of non-compliance with the programme explained to them. The third stage is Entry to the programme. If the court agrees to place the young person on the Bail Support Scheme, an initial contract meeting is held with the young person and his or her parent or carer where the programme, including the consequences of non-compliance, are explained by staff, and the young person and his or her parent or carer are required to sign an agreement with the worker. The fourth stage of the scheme is Contact with the young person. There will be a minimum of three contacts per week with the young person. The programme for the young person may include access to training, education and employment, social skills programmes, or health and substance abuse interventions. Home visits or contact with a residential care home take place on a regular basis. The young person and his or her parent or carer may also receive reminders about court appearances if non-attendance is a risk.

**Evaluations and assessment**

An evaluation of the Bail Support Scheme in 2006 indicated that it has been successful, with 98% of cases resulting in acceptance of bail proposals by the court. It also resulted in an increased likelihood of young people on remand being released on bail. Only 6% of participants in the scheme went on to receive a custodial sentence.

**FORENSIC FOSTER CARE – THE NETHERLANDS**

Forensic foster care is an alternative measure which has been run in the Netherlands on a pilot basis since 2014. The project has been continued in 2015 and 2016. It aims to provide an alternative to pre-trial detention and can be imposed by a judge on a young person for up to three months. It can be imposed as a condition of suspension of a custodial sentence in circumstances where a vulnerable young person cannot go home immediately because of problems at home. The young person is placed with a specially trained foster family for a specified period of time. The measure is implemented by the organisation Spirit, in co-operation with youth custodial institutions. This project has been continued during 2015 and 2016. Some of the key aims of this intervention include:

- To prevent a young person from becoming involved in further criminal behaviour.
- To reduce the risk of recidivism.
- To engage a foster care family and social worker in helping the young person to change behaviour.

• To include the young person’s family and to support parents through strengthening their ability to raise their child.

• To provide an alternative placement outside of youth custodial institutions within a foster care setting.

• To return the young person home to their family.

During the young person’s placement with the foster family, the young person attends school and is supervised by an individual coach. When the young person is not in school during holidays, a day programme is organised and implemented. They may also receive therapy during this time. Work is also carried out with the young person’s family during this time. They may receive treatment, if required, or receive guidance on raising their children and preventing them from becoming involved in crime. Forensic foster care offers an individual approach to working with young people, and is carried out in co-operation with the young person’s family and school. It also aims to provide a young person with positive ways of spending their free time together with “positive friends”, as an alternative to negative peer group influence. It ultimately aims to return the young person involved to their own home and family.

Evaluation and assessment

This measure was run as a pilot programme during 2014 and 2015. However, after initial research done on the intervention by the University of Amsterdam, positive preliminary results have been found and as a consequence, the Ministry of Safety and Justice have confirmed that the project will be continued after 2015. The research done by the University of Amsterdam have indicated that the motivation of young people to receive help has improved and less problem behaviour is exhibited. Also, it was found that the parents of the young people involved experienced less stress.

In evaluations, it has been found that the programme relevance, efficiency and impact are all satisfactory. Programme transferability and translating evaluation finding into statements of good practices were ranked as average. Programme sustainability, however, was found to be unsatisfactory.

CONCLUSION

The clear benefit of pre-trial detention supports, such as bail support in Northern Ireland, and forensic foster care in the Netherlands is that it allows a final opportunity for the young person to avoid detention on remand. This is particularly important, in light of the consideration that pre-trial detention levels remain an issue of concern across virtually all European jurisdictions. In particular, it allows a judge an important alternative and an avenue to avoid detaining the young person, wherever possible. It can be seen from the good practice examples discussed above that very different approaches are possible to address this common problem. It is an issue which can be addressed either through the provision of structured, intensive supervision in the community, or can involve a placement in foster care, with a specially supported family.
who can also offer intensive support. These types of intensive support arrangements, whatever form they take, can provide a valuable opportunity to the young person to avoid detention at the pre-trial stage, where this would otherwise be considered necessary.
CHAPTER IV

ALTERNATIVES TO DETENTION AND ADVOCACY

4.1 Introduction

The practices highlighted in Part II represent some key examples of the practical use and implementation of alternatives to detention in various jurisdictions across Europe. However, in order to successfully increase the number and types of alternatives to detention in each jurisdiction, advocacy is needed. Advocacy is needed not only to establish these types of alternatives, but also to promote their use to the greatest extent possible.

However, a number of challenges and barriers exist to the utilising these types of alternative measures to the greatest extent possible in the community. This part will therefore consider, in brief, some of the key challenges to implementing alternatives to detention, and will suggest some advocacy strategies which may be important in helping to overcome this.

4.2 Advocating for Alternatives to Detention

4.2.1 Challenges in promoting the implementation of alternative measures

Despite the wide range of alternative sanctions available, challenges still remain in encouraging the maximum possible use of these sanctions. This necessitates strong advocacy for the increased use of alternative measures as well as clear positive steps to be taken at a domestic level in all jurisdictions to ensure that the principle of detention as a last resort can be effectively realised. One key challenge which must be addressed is that of encouraging both members of the judiciary and other authorities with decision-making power within national juvenile justice systems to make use of alternative measures to the greatest extent possible. In many countries, detention is still seen as a central sanction for young people, even for minor offending, and reliance is still placed on the retributive tools of traditional criminal offences. Therefore, any lack of confidence on the part of the judiciary or other decision-makers can present a real challenge to the realisation of the principle that detention should only be used as a last resort.

This challenge highlights the need for a strong evidence-base which supports the use of alternative measures. In order to persuade decision-makers of the effectiveness of alternative measures, a strong evidence base is needed which demonstrates the benefits of these types of intervention. Therefore, the current lack of a strong evidence base in this area is a further key challenge which must be addressed going forward. In order to address this more fully, research into the use of alternative measures should be encouraged at a national level. In addition, the lack of strong systems of data collection is a further hurdle which must be overcome in many
jurisdictions. There is a need, therefore, to put in place robust systems of data collection which will make evaluation possible and meaningful. Improving data collection should therefore be a priority within national juvenile justice systems if the use of alternative measures is to be maximised to the greatest extent possible. When a new alternative measure is developed, it should be subject to review and evaluation to assess its impact for young people. It is equally important to keep existing alternative measures under regular review and evaluation to assess their effectiveness. Methods of evaluation need to be equally rigorously considered. As well as considering statistical data on outcomes based on recidivism, evaluations to assess compliance with international standards and guidelines, for example, should also be carried out.

The issue of ensuring that alternative measures have adequate resourcing to allow them to be properly implemented may also present a challenge. Judicial confidence in a measure will be seriously weakened if a particular sanction is not properly resourced. Inadequate or insufficient resourcing may make an alternative, no matter how potentially positive, impossible to implement effectively in practice. Therefore, advocacy needs to focus on ensuring that sufficient resources are allocated within juvenile justice systems to these alternative measures.

Related to the issue of resourcing is the issue of accessibility to these alternative measures. In order for an alternative measure to be implemented, it must be available to all young people. This may present a particular issue for young people who are living outside of major urban centres. A community-based sanction cannot be imposed if it cannot be reasonably accessed by the young person in question. Therefore, particular attention needs to be paid in the development of alternative measures to ensuring that they can be accessed by all young people who may benefit for them, and are not only accessible to those in major urban centres.

Another challenge which needs to be addressed when thinking about how to increase the use of alternative measures is the perception by the public and policy-makers, as well as potentially by judges and decision-makers, that these non-custodial options are a “soft touch”. This perception needs to be addressed directly. One way of combating this may be by maximising the use of restorative processes. Although this will only be possible with the co-operation of both the young person and the victim, this method of reconciliation may have potential to rectify this perception. The requirements of community based sanctioning may be much more onerous, in fact, than a sentence of detention, and can have potentially more far-reaching effects on a child’s life, continuing for a longer period of time. It has been noted that the requirements of alternative measures vary widely across Europe, with particularly large differences being evident in the maximum number of hours required to fulfil a sentence from 30 hours in Belgium up to 240 hours in Northern Ireland. These factors alone need to be brought to light to challenge the perception that non-custodial measures are “soft” and are not really a punishment.

There is a huge challenge involved in developing effective systems for the implementation of alternative measures, and ensuring effective co-operation between the different professionals, agencies, and voluntary groups involved. Linked to this is the need to ensure increased specialisation and training of youth justice professionals in the availability and implementation of alternative sanctions. Not only do decision-makers need to be made aware of the availability of alternative measures, but properly trained staff need to be available to implement and to

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carry out the interventions effectively and successfully. Increased use of multi-disciplinary approaches presents a way of addressing these challenges, but achieving this and creating proper systems to make full use of the potential of this approach also presents a further challenge in and of itself. In addition, maintaining and encouraging the use of volunteers, and harnessing other available community resources will be important in an effective system of alternative measures.

4.2.2 Promoting the greater use of alternative measures

There is a need to raise awareness among law and policy makers nationally about the types of measures that are used in other countries to keep children out of detention and to promote more effective measures to their offending behaviour, particularly those which can be proven to result in a reduction in recidivism. The challenges identified in the previous part must be addressed if the use of such measures is to increase. In addition, advocacy is important to promote their use. This section sets out a number of strategies to address this challenge.

A STRONG LEGISLATIVE BASIS FOR THE USE OF ALTERNATIVES

At a basic level, there is a need for each jurisdiction to ensure that the use of alternatives to detention is embedded in law. This requires, firstly, that a range of different types of alternative measure should be placed on statutory footing. North American Council for Juvenile Justice highlighted the necessity of this in its Paper on Making Deprivation of Liberty a Measure of Last Resort: Promoting Alternatives in North America, emphasising that there is not only a need to provide a range of alternative measures, but also to ensure that they are available to everyone. In particular, they highlighted that the use of provisions which allow older child offenders, in particular, to be treated as adults when they commit serious offending, may have the effect of cutting these young people off from the possibility eligibility for alternative interventions, and recommend that any such legislative provisions should be changed to allow children to be treated as children and benefit from the possibility of alternatives to detention.\footnote{North American Council for Juvenile Justice, NACJJ Paper on Making Deprivation of Liberty a Measure of Last Resort: Promoting Alternatives in North America (North American Council for Juvenile Justice & International Juvenile Justice Observatory) at p. 2-3.}

While alternative measures are already included in the legislation of many jurisdictions, it may be the case that legislative change will be required to ensure that these are available to the greatest extent possible. Therefore, a range of alternative measures should be provided for within legislation, and consideration should be given to changing any laws which limit the access of children under eighteen to these measures. In addition, the inclusion of an explicit requirement that detention should only be use as a last resort, or of an explicit requirement for decision-makers to consider the appropriateness of alternative measures before imposing a sentence of detention, would help to strengthen the position of alternative measures within the legislative scheme.
DEVELOPING NEW ALTERNATIVES TO DETENTION

There is also a need to develop new alternatives to detention. The process of developing a more widespread use of alternative measures in any jurisdiction is dependent on the availability and establishment of new types of alternative measures. The availability of a variety of types of alternative measure is particularly important in order to encourage decision-makers to make use of these interventions and to give them the ability to take into account the suitability of these measures for the individual needs of the young person. In designing alternatives to detention, it is important to encourage the development of new ideas. In particular the Committee on the Rights of the Child, in General Comment No. 10, encourages the adaptation and development of alternative measures to detention to suit the culture and tradition of the particular State. It is particularly important to draw from practice in other jurisdictions as it becomes available, especially those interventions which have undergone successful evaluations. However, it must be noted that national context will often play a significant role in the success or failure of any particular intervention, and therefore evaluations of the effectiveness of transplanted measure will also need to be carried out in the new jurisdiction. The need for individualised assessment and planning in alternatives, which take into account the needs and characteristics of the young people in question have also been noted by a commentators.

There is also special need to take into account particular categories of young people, including girls, ethnic minority groups or migrants. The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, otherwise known as the Bangkok Rules, require gender-sensitivity in the implementation of such measures (Part III, Rule 57). In particular, these rules recognise the need for alternatives to address common problems leading to women’s contact with the criminal justice system, which may be different to men’s (Part III, Rule 60), and allows sentencing authorities to consider mitigating factors in light of any caretaking responsibilities and typical backgrounds (Part III, Rule 61).

MEASURING THE EFFECTIVENESS OF ALTERNATIVE MEASURES

A particular challenge which has already been identified is that of convincing the judiciary and other decision-makers that the use of alternative measures provides a viable and effective alternative to the use of custodial sanctions. One particular issue which needs to be addressed as a matter of priority as a part of this is improving the evaluation mechanisms and the dissemination of information about the use of alternative measures in various jurisdictions. A major problem in this regard is the lack of adequate data collection systems about juvenile justice systems generally across Europe. The European Council for Juvenile Justice White Paper recently highlighted the insufficient data collection systems in place in many European

43 Committee on the Rights of the Child’s General Comment No. 10 (2007) on children’s rights in juvenile justice at para. 73.
countries, characterising it as “totally deficient” in many states."

Some guidance at an international level is, however, available to help in addressing this issue. UNICEF and the UNODC have published a Manual for the measurement of juvenile indicators, which provides a list of fifteen indicators along with detailed information on each of these indicators to help measure progress in the juvenile justice system on a domestic level. These include both qualitative indicators and policy indicators. While there is no indicator within this document which specifically addresses the use of alternative measures, indicators tracking the use of detention figures and a comparison of these with the total overall of children sentenced to any measure would provide a good idea of how many children were being sentenced to alternatives. There is a need to set concrete goals for the reduction of the number of children in detention, and this type of quantitative indicator may help in this.

However, there is also a need for more specific, robust evaluations to be done of different types of alternative measure being used. It has been commented that, at the moment:

> “Substantial improvements need to occur in many Member States with regard to the collection, dissemination and analysis of data on the operation of the juvenile justice system and its impact on young people. There is particularly limited information available on the positive examples or best practices at work in the juvenile justice and criminal justice systems of many EU states...The failure to ensure that the mechanisms and measures that are in place are properly evaluated and the outcomes of interventions widely disseminated means that those countries who have enjoyed success keep it largely to themselves.”

As it stands, there is a clear need to use evidence from other countries showing the effectiveness of alternatives to detention in addressing offending behaviour in advocating for their greater use. This data then needs to be used at a national and an international level to promote the concept of detention as a last resort and to improve understanding as to how to make this a reality.

**ADDRESSING PUBLIC PERCEPTIONS OF ALTERNATIVE MEASURES**

There has also been a need identified to change public perceptions that alternative, community-based, measures are a “soft option”. It has been noted by commentators that there is a need to sensitize the public to the various benefits of alternatives to detention, and to raise awareness about alternative measures generally. Therefore efforts should be made to disseminate

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information about how alternatives work on a practical level to the public, as well as about their benefits. In particular, evidence which demonstrates that alternatives have a positive effect on rates of recidivism amongst young offenders, and evidence in relation to the cost-effectiveness of community-based alternative measures as opposed to custodial sanctions, should be highlighted.

It has also been suggested that promoting the greater use of measures which take a restorative approach, in particular, may be useful. This is particularly the case as restorative measures provide a venue for the victim to have a voice and a role in the process, and provide the opportunity for the young person to apologise and make some sort of reparation for the damage caused by his or her offending. It has also been shown that positive results and greater levels of satisfaction for both the offender and for the victim can be achieved through the use of restorative processes.  

**IMPLEMENTATION OF ALTERNATIVES TO DETENTION**

Ensuring the effective implementation of alternative measures is clearly an essential part of the process of encouraging their widest possible use for young offenders also. A number of issues arise in ensuring that alternative measures are implemented effectively.

To begin with, there is a need to advocate for a strong political commitment to the use of alternative measures, and to the development of criminal justice policy for young people which has these types of alternative interventions at their heart. In order to fully promote the greatest possible use of alternatives to detention, there is a further need to highlight the success of alternative measures, where they occur, and particularly to highlight the cost-effectiveness of such measures.

There is also a need to emphasise multi-agency working. This type of multi-agency approach allows for the most effective use of resources, and for the confidence of decision-makers to be enhanced. The use of volunteers and other community resources should also be maximised to the greatest extent possible. However, there is also a need to ensure that all those working in the juvenile justice system receive adequate training:

"All those working in the criminal justice system for children – including lawyers, judges, the police, the probation service, prison service and social services – should receive regular,


ongoing specialised training."

The issue of effective evaluation and data collection also arises when thinking about how resources are to be allocated. Not only do resources have to be made available, but there is a need for these resources to be targeted in the right direction. This can only be done effectively if the information is available to support this.

The final point is that there is an ongoing need to support research into the use of alternative measures at a variety of levels in order to provide a strong evidence base. This includes not only carrying out evaluations and reviews into the operation of specific interventions, but also lies in supporting research into child development, including neuroscientific research on brain development.

4.3 Conclusions and Ways Forward

Throughout this document, we have set out the key international standards relating to the use of alternative to detention, have provided details of the types of alternatives which are available and examples of how they operate in various jurisdictions, and strategies for advocacy aimed at promoting the greatest possible use of alternatives to detention, and means of overcoming various challenges in relation to this. A couple of final points are relevant in concluding.

The first is that the issue of alternatives to detention is a children’s rights issue. The provision of alternatives to custodial sanctioning in national legislation and policy, and the effective implementation of these alternatives in practice is a key aspect of fulfilling the obligations imposed on states under international guidelines. In particular, the requirement that detention only be used as a last resort, under Article 37 of the UNCRC, and the explicit emphasis on the provision of alternative dispositions under Article 40, emphasise that this issue is a key one in the practical realisation of children’s rights in the juvenile justice area. This is emphasised and supported by other key international guidelines both at the UN and at the Council of Europe level.

Secondly, the need to develop alternative measures in as wide a manner as possible is essential for a number of reasons. The first is to ensure that a wide variety of alternatives are available so that one can be chosen which suits the particular needs and circumstances of individual young people. There is also a need to develop alternatives which may be suitable for young people who have committed more serious offending. There is a tendency for alternative measures to only be seen as suitable for less serious types of offending, however, there is also a need to develop alternative measures which can be implemented and which will be effective for serious offending, also.


It is also especially useful to look at examples of promising practice in implementing alternative measures from other jurisdictions, and to consider whether they may be suitable for adaptation or implementation in a new national context. A number of examples of practice in various European jurisdictions are highlighted in this Manual. A number of particularly promising practices have also been highlighted by commentators. These include the use of foster care as an alternative measure within the juvenile justice context, which may provide young people with the opportunity to benefit from a tailored support system which can be particularly responsive to individual needs, and which may provide the support to build a more healthy connection to the community, and to re-engage in education and training. Further promise has also been identified in the development of restorative practices in particular across Europe, with commentators highlighting particularly promising examples of restorative practice in action in countries such as Finland, Belgium and Northern Ireland. Commentators have also highlighted many benefits of restorative approaches, including positive effects on recidivism, and greater satisfaction with the process overall on the part of both victims and of offenders. Investigating promising possibilities such as these may provide a promising way forward for the development of alternative interventions across jurisdictions.

There is, of course, a need for active advocacy to convince decision-makers and the public that non-custodial alternative measures provide a realistic and effective form of intervention. The promotion of research which is relevant will be a key part of this, as will ensuring that the information and results of this research are disseminated effectively.

Finally, there is a need to ensure that the rights of young people are respected in the implementation of alternative measures. In particular, there is a need to ensure that the rights of the young person to participate fully and to have his or her voice heard are recognised in line with Article 12 of the UNCRC. In addition, the best interests of the child, under Article 3 of the Convention, should also be taken into account in the implementation of these alternative measures. Ensuring full respect for the rights of the child in this way should form an essential part of evaluation mechanisms.

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States’ responses to juvenile offending may take a variety of forms. While the model of juvenile justice adopted, the legislative framework, and the social context may vary from country to country, there is a body of international standards which sets out the key principles and minimum standards to be reached by each State in implementing their juvenile justice system. Particular emphasis is placed within these international standards on the promotion of the use of community-based sanctions and measures, as an alternative to custodial sentencing.

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