

Child justice in Europe: trends and challenges



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Child justice overview in the EU

- The current trend of juvenile crime in the EU.
- The evolution of child justice system in the EU

Trends in Juvenile Crime in the EU

- The structure of juvenile crime has **not** witnessed **major substantial changes** despite the increase in the number of officially recorded violent crimes. (F. Duenkel 1973-2002)
- The most common crimes – confirmed by international comparisons– are still **property** related **offences**.
- The **youngest age** groups primarily commit **petty offences**.
- Studies in Germany of repeat/persistent offenders (Mecklenburg-Western Pomerania – see F. Duenkel) made **no** indication of a development in “**criminal life course**” towards more serious crime.

Trends in Juvenile Crime in the EU

- From a **juvenile-criminological standpoint**, there is no reason to stray from the well-established principles of child justice policy,
- It is important to hold on to a system of child justice policy that is geared towards **resocialisation and education**.
- **Diversion strategies** (non-prosecution with or without educational conditions), **restorative justice** and the prioritization of **community** rather than custodial **sanctions** have proven to be **worthwhile** and are superior to more repressive measures, especially imprisonment and detention.
- However, juvenile criminal justice does not necessarily develop on a rational basis, but rather is influenced by more or less reasonable currents in different political phases, sometimes by “**moral panics**”.
- Juvenile crime is to be responded to in a collected, calm and cautious manner!

The evolution of juvenile justice system in the EU

The 1960s and 1970s: it was mainly influenced by the four D's

- Diversion,
- Decriminalization,
- Deinstitutionalization (particularly of status offenders)
- Due process

The 1980s and 1990s: it was mainly influenced by the four R's

- responsibility/responsibilities (no more excuses, including also the parents of the juvenile offender)
- restitution (reparation)
- restorative justice
- retribution (e.g. from community treatment to community punishment)

The evolution of juvenile justice system in the EU

Typology of Juvenile Justice Systems

By James Dignan

- **Welfare model:** provide appropriate help or treatment for offenders, rather than punishment, and the primary emphasis is on the 'needs' and 'best interests' of the child rather than the 'deeds' they may have committed.
- **Justice model:** considered to be responsible for their actions, it is felt acceptable for them to be held accountable in law for what they have done, which means that the **primary focus is on the 'deeds'** of the child rather than their welfare 'needs'.
- **Minimum Intervention Model:** this approach is characterised by a concern that official responses to crime may frequently promote 'secondary deviance' on the part of young offenders, thereby fuelling the 'deviancy amplification spiral' that they are ostensibly designed to prevent crime / diversion

The evolution of juvenile justice system in the EU

Typology of Juvenile Justice Systems

By James Dignan

- **Restorative Justice Model:** based on a radically different set of assumptions about the concept of crime itself, the relationship between offenders, victims, citizens and the state, and also about the most appropriate ways of responding to crime : solution focused.
- **Neo-correctionalist Model:** resembles the justice model in as much as both adopt an uncompromisingly punishment-oriented approach, but in other respects they are very different. Under this model, the **prevention of offending** by young people is accorded primacy, and all other aims are subordinated to it.

European Union Directive on procedural safeguards for children

- What is EU Directive on procedural safeguards for children?
- Objectives and scope of EU Directive
- Safeguards for children who are suspects or accused persons in criminal proceedings

The evolution of juvenile justice system in the EU

Current trend of juvenile justice system in the EU: The new way of child justice system in the EU

The Council of Europe's Recommendation 2003 (20) contents a mixture of welfare, justice, restorative justice, minimum interventionist and neo-liberal philosophies in the child justice system

2003 - 2020: from a prevention of juvenile crime to a children right approach

What is EU Directive on procedural safeguards for children?

Directive (EU) 2016/800 on procedural safeguards for children

- Adoption on **11 May 2016**
- Entry into application on **11 June 2019**
- **Binding EU-wide (minimum)** rules on procedural rights for children
- Based on **international standards**, such as the UN CRC and **the Guidelines of the Council of Europe on child-friendly justice** ('give a place and voice to the child in justice at all stages of the procedures'.)

What is EU Directive on procedural safeguards for children?

Directive (EU) 2016/800 on procedural safeguards for children: International standard

- **Article 37, UN CRC:** deprivation of liberty of children may only be used as a last resort and for the shortest appropriate period of time, including securing humane and child-specific treatment, and the right to access to justice.
- **Article 40, UNCRC:** ensure that children in conflict with the law are treated in a manner that recognises their young age, lack of full maturity, lesser culpability, and human dignity, and reintegrate each child into society
- **General Comment no.10 /24 (CRC committee):** build more firmly on **'new knowledge about child and adolescent development'** and **'evidence of effective practices'**, including establishing a minimum age of criminal responsibility

Objectives and scope of EU Directive

Objectives of the EU Directive

- Comprehensive protection of **children at all stages of criminal proceedings until final conviction** (not for execution phase)
- Particular attention to be given to **preserve the child's potential for development and re-integration into society** (Recital 9)
- The **child's best interests** must always be a primary consideration (Art.24(2) of EU Charter)

Objectives and scope of EU Directive

Scopes of the EU Directive

The Directive applies only to criminal proceedings and children subject to European arrest warrant proceedings.

The Directive does not apply to other types of proceedings, in particular proceedings which are specially designed for children and which could lead to protective, corrective or educative measures (See Recital 17)

Child – “**a person below the age of 18**” (Article 3), where appropriate, persons who turn 18 during proceedings (Article 2(3)/ Recital 11)

Young adults - Where criminal offence was committed when person was a child (Recital 12)

Safeguards for children who are suspects or accused persons in criminal proceedings

Effective participation of a child

- **Right to information:**

child and parent(s) or another appropriate adult to be informed promptly about procedural rights and general aspects of proceedings, including right to receive information, and right to accompany child in court and during other stages of the proceedings.

- **Access to a lawyer/Assistance by a lawyer:**

mandatory assistance for children in detention or when a decision on detention is taken and in serious and complex cases

- **Legal aid:**

The effective exercise of the assistance by a lawyer to be ensured

- **Individual needsAssessment:**

Specific needs of children concerning protection, education and social integration to be taken into account, including multidisciplinary approach, informing adaptations to procedure, decisions re-precautionary measures and sentence.

Safeguards for children who are suspects or accused persons in criminal proceedings

Deprivation of liberty = last resort

Deprivation of liberty should be a **measure of last resort and limited to the shortest appropriate period of time.**

Alternative measures

All **measures alternative to detention** should be taken by the competent authorities where possible

E.g.

- Obligation to reside in a specific place/obligation to avoid certain places
- Reporting obligations to the competent authorities
- Restrictions concerning contacts with specific persons
- Participation in therapeutic or addiction programmes (alcohol or drug addicts)

Safeguards for children who are suspects or accused persons in criminal proceedings

Specific Safeguards in case of deprivation of liberty

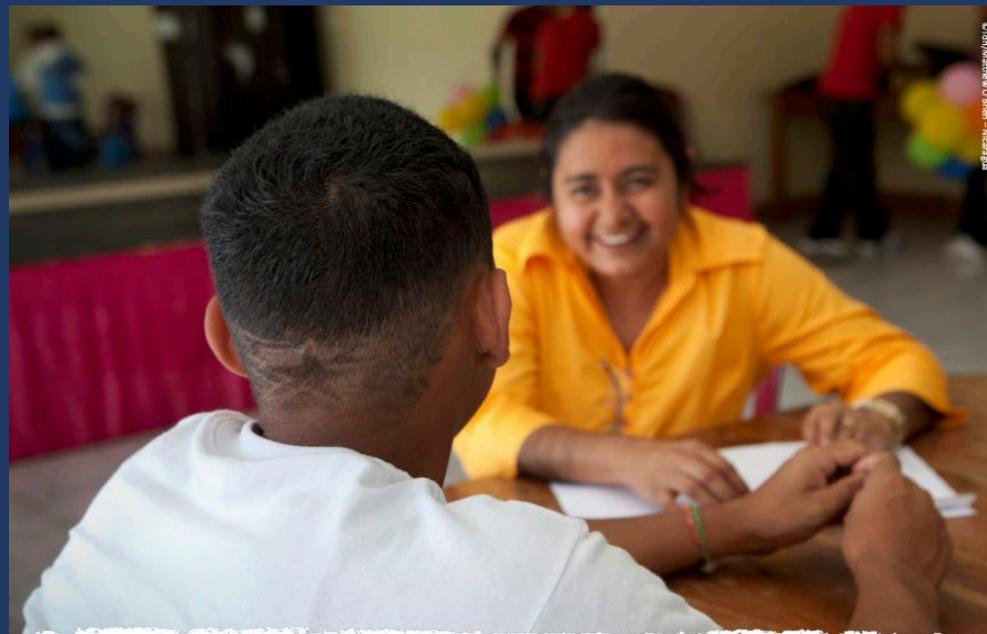
- **Separation children-adults** (unless it is considered to be in the child's best interests not to do so)
- Police custody and pre-trial detention as last resort
- When a child turns 18, possible to continue separate detention "where warranted"
- Detention of children with "young adults", unless this is contrary to the child's best interest
- Assessment of vulnerability: Medical examination
- Number of other safeguards, such as **access to education and training, right to family life etc.**

Safeguards for children who are suspects or accused persons in criminal proceedings

Other safeguards

- **Audio-visual recording** of questioning by police (proportionality test);
- **Protection of privacy** (court hearings may be held in the absence of public);
- **Presence at court hearings** (right to appear and participate in trial) / challenge covid19;
- **Training:** mandatory for law enforcement authorities and staff working in detention facilities; judges and prosecutors shall have specific competences or access to specific training.

Children in contact with the law in Europe: overview

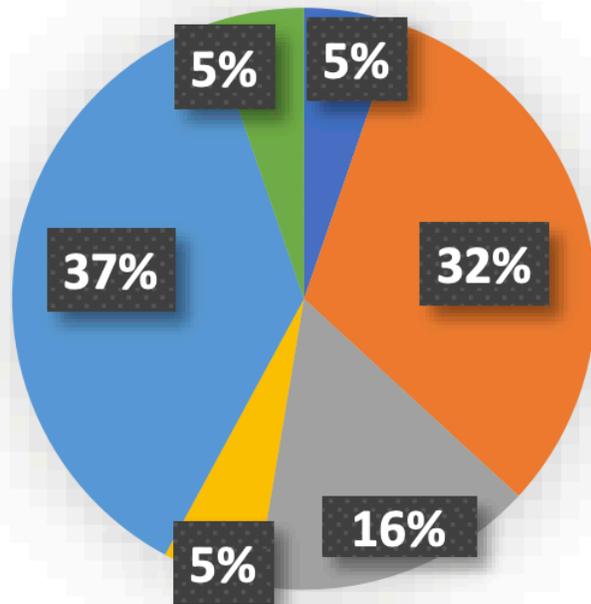


Children in contact with the law in Europe:

Trends & Opportunities

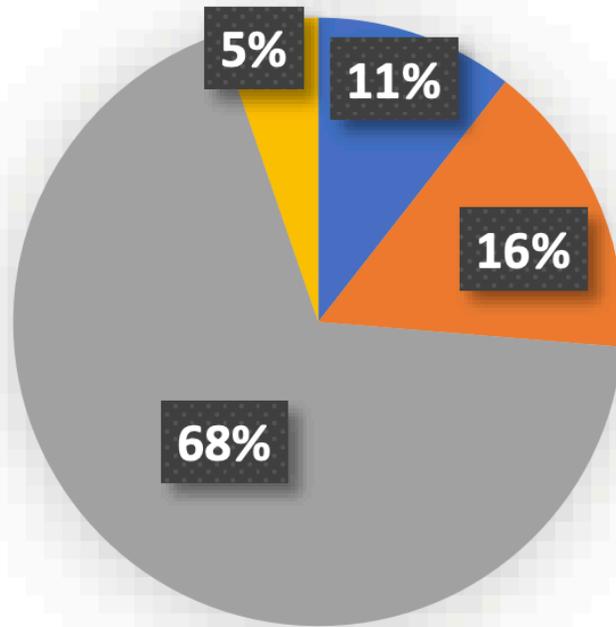
by Terre des hommes – Europe Region

AGE: Legal minimum ages of criminal responsibility



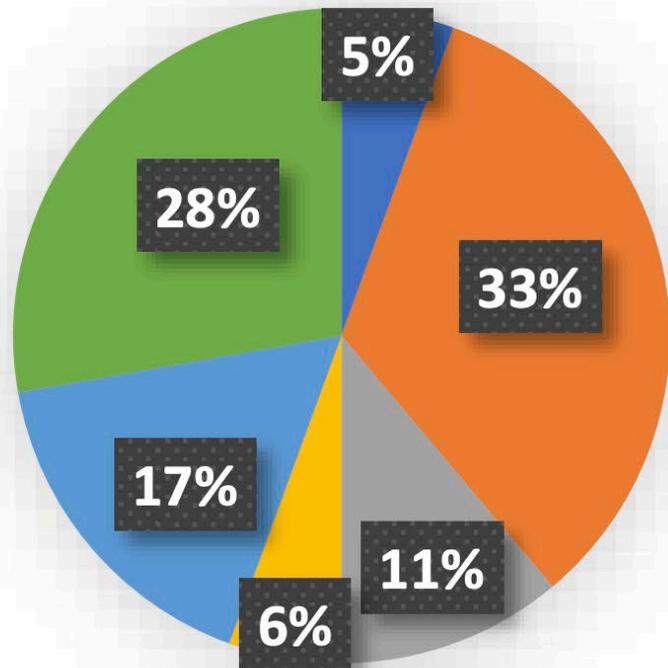
- 12 years old
- 14 years old
- 15 years old
- 18 years old
- There is more than one minimum age
- No MACR

What does national legislation state about children above the MACR alleged to have committed an offence while below MACR



- Nothing
- They can be prosecuted for the offence
- They cannot be prosecuted for the offence
- Other

Minimum age of imprisonment



■ 13 years old

■ 14 years old

■ 15 years old

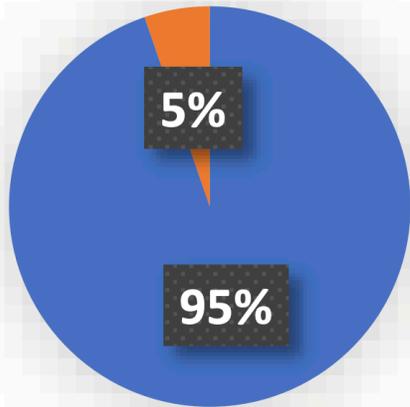
■ 16 years old

■ 18 years old

■ There is more than one minimum age

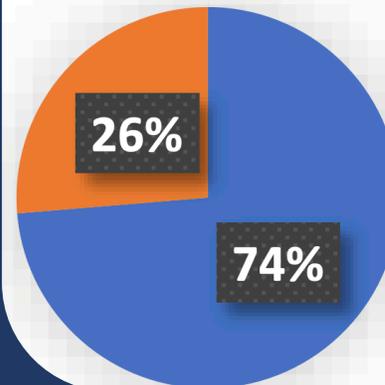
Specialized?: Countries with child specific legislation and constitutional dispositions

Percentage of countries with child specific legislation



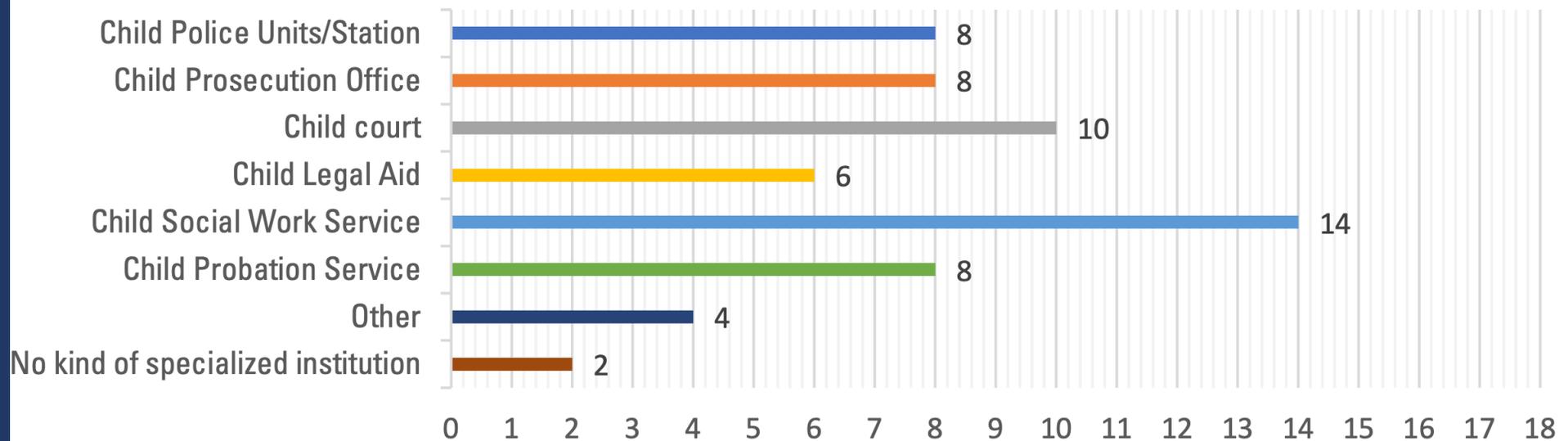
- Are child specific
- Are not child specific

Percentage of countries with child specific constitutional dispositions



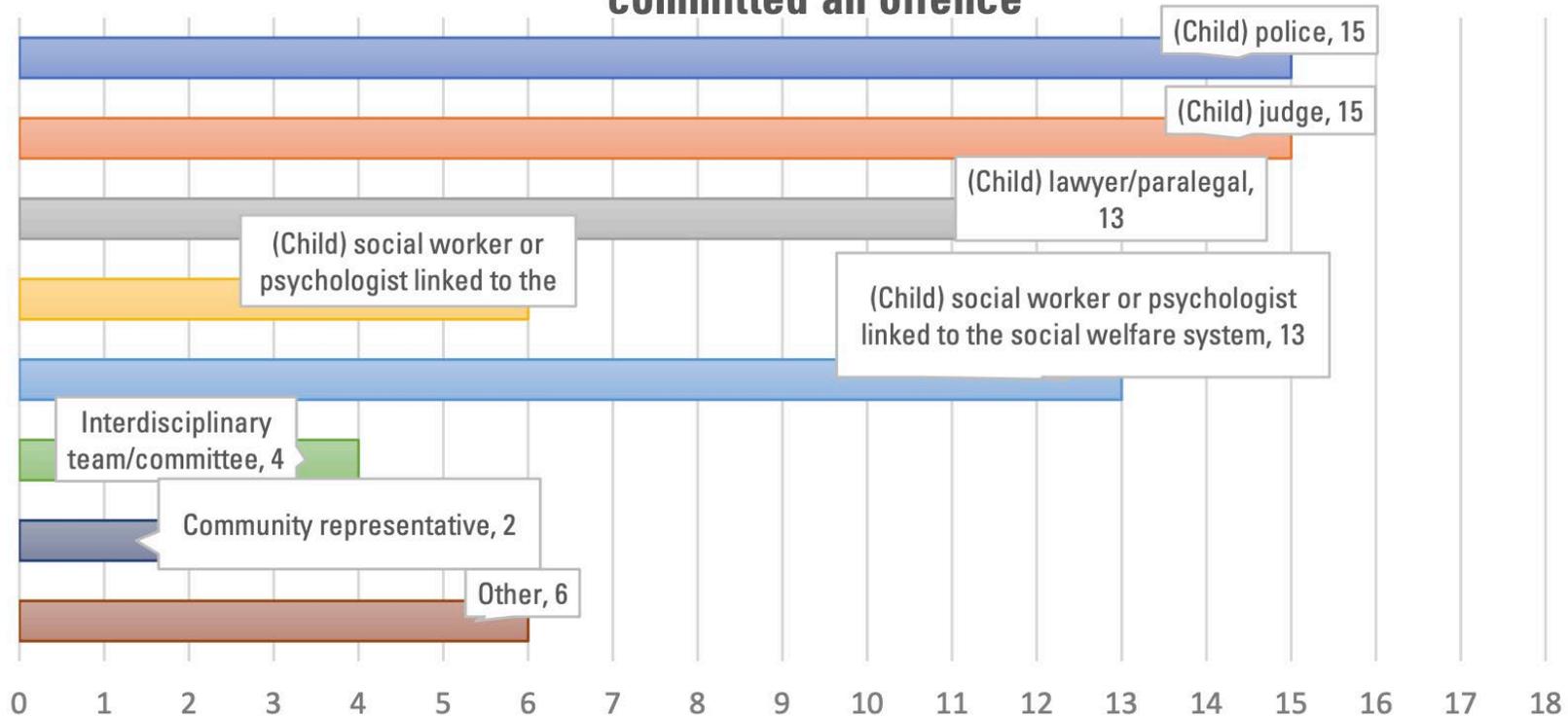
- Are child specific
- Are not child specific

Number of countries with specialised justice institutions by kind of institutions



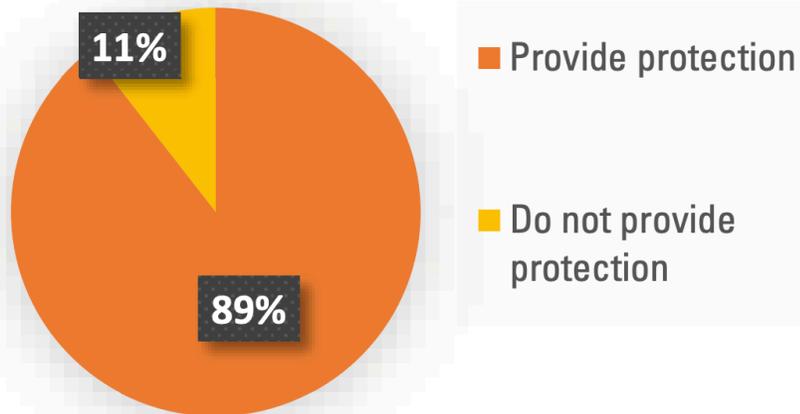
The first contact of children (for both victims and suspects/accused) with a professional

With whom do children come in contact when they have allegedly committed an offence

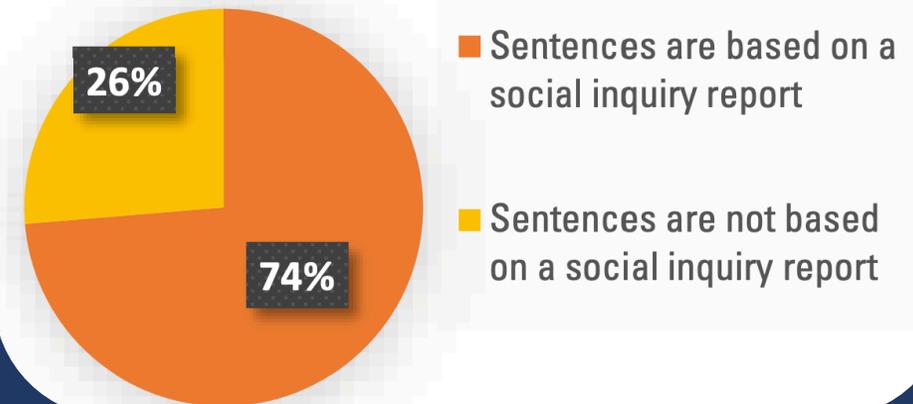


Provisions of the Procedural Rights Directive (2016/800/EU) had been transposed into national law

Percentage of countries providing protection from discrimination

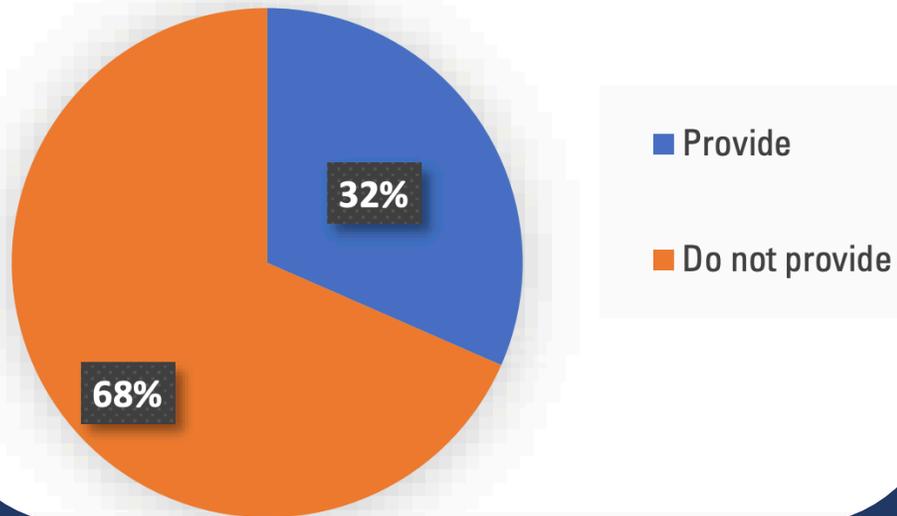


Percentage of countries where sentences are based on a social inquiry report/pre-sentencing report

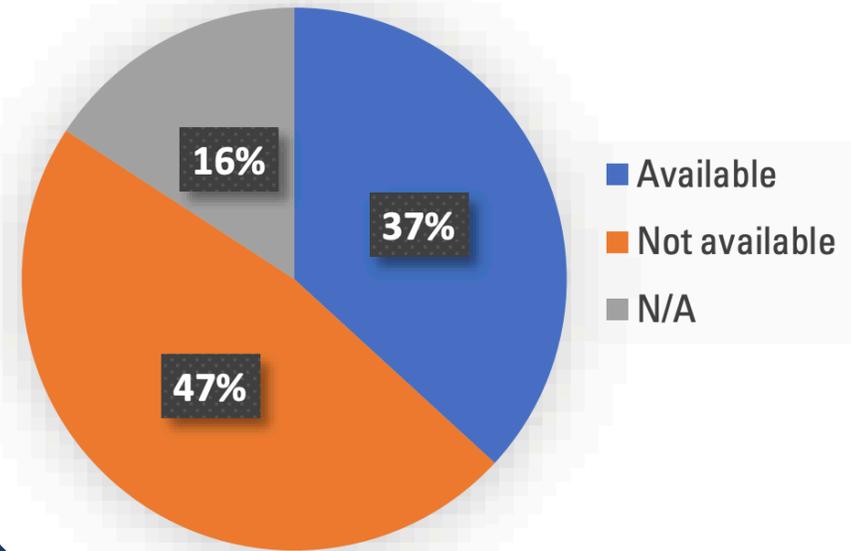


Other measures to enhance safeguards for children in contact with the law

Percentage of countries where national bar associations provide training and capacity-building to ensure the availability of child-friendly lawyers

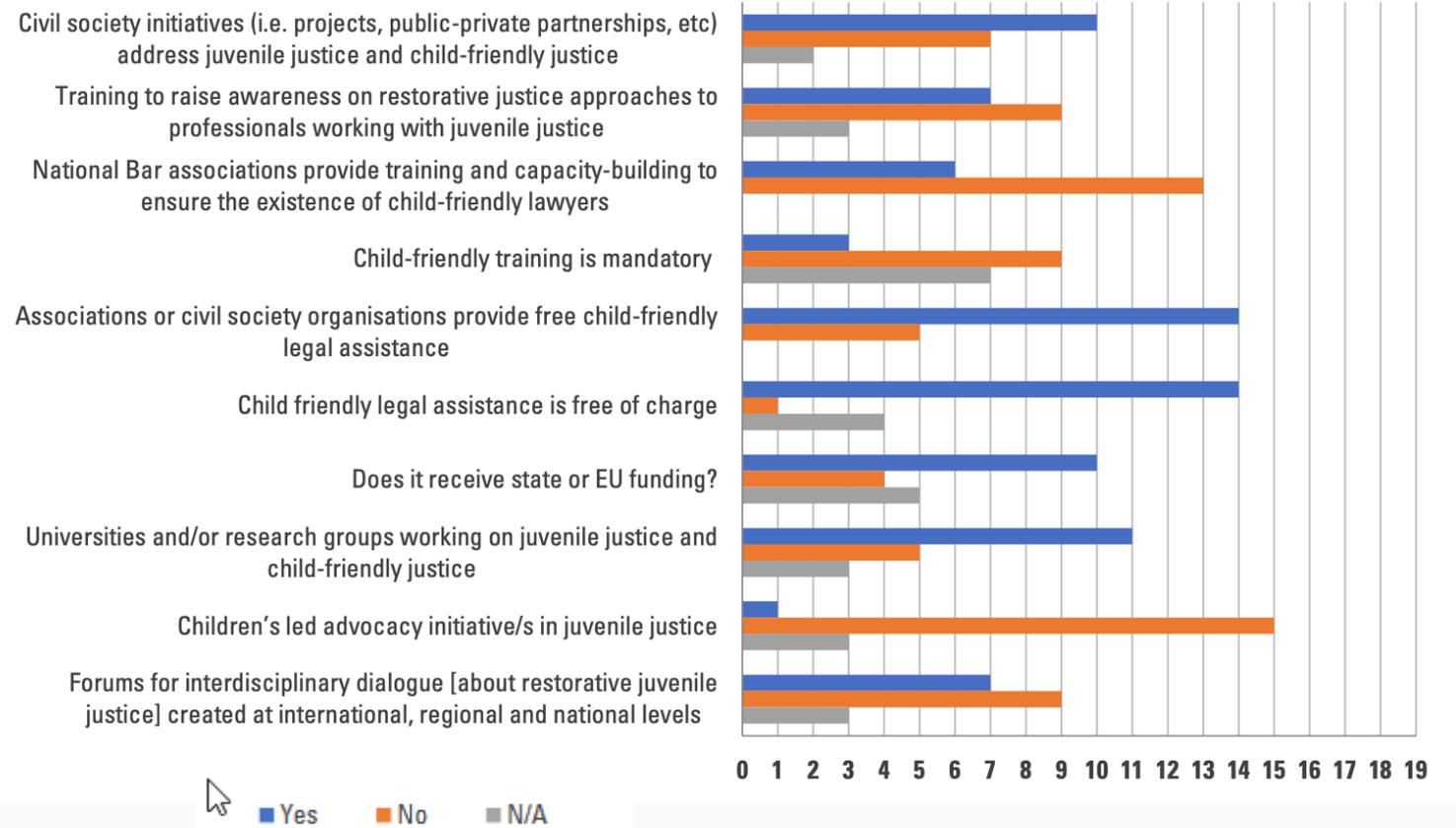


Percentage of countries where training to sensitize child justice professionals to restorative justice approaches is available



Training in child-friendly justice

Training in child-friendly justice



Emerging challenges: Justice in times of crises

Children have the right to be protected in the midst of crises: climate crisis, health crises, and during armed conflicts.



Digital Justice

Use of technologies in legal proceedings burst during COVID-19. Funding accelerate it. Important: be attentive to potential impacts and opportunity to avoid replicating current flaws.



Climate Justice

- Children's access to justice in environmental cases
 - How the climate crisis affects child justice systems.
- Focus on:** systemic child justice and child participation



Discrimination

- Lgbtq I +
- Gender Justice
- Child friendly police
- Child participation

Emerging challenges: Justice in times of crises

Table 1. The prevalence of neurodevelopmental disorders

Neurodevelopmental disorder	Reported prevalence rates amongst young people in the general population	Reported prevalence rates amongst young people in custody
Learning disabilities ³	2 - 4% ⁴	23 - 32% ⁵
Dyslexia	10% ⁶	43 - 57% ⁷
Communication disorders	5 - 7% ⁸	60 - 90% ⁹
Attention deficit hyperactive disorder	1.7 - 9% ¹⁰	12% ¹¹
Autistic spectrum disorder	0.6 - 1.2% ¹²	15% ¹³
Traumatic brain injury	24 - 31.6% ¹⁴	65.1 - 72.1% ¹⁵
Epilepsy	0.45 - 1% ¹⁶	0.7 - 0.8% ¹⁷
Foetal alcohol syndrome	0.1 - 5% ¹⁸	10.9 - 11.7% ¹⁹



Neurosciences and child justice

In the criminal justice system, children with Traumatic Brain Injury (TBI) are particularly over-represented- Raise awareness among child justice professionals.

Thank you.

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