

**CHILDREN IN CARE/CUSTODY IN
THE CARIBBEAN
-THE JAMAICAN PERSPECTIVE**

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How Children Come to be in Care/Custody

- **Without a Court Order** (eg. A child placed at a Private Children's Home at the request of a member of the community, or a child detained by the Police at a Place of Safety or at a Police station for a maximum 48 hours before being brought before the Court)

- **Via Court Order**

: made in the Family Court or the Children's Court in one of their three categories of cases (Child in need of Care and Protection) (Child deemed Uncontrollable) (Children in conflict with the Law and charged for allegedly committing Criminal offences)

Or

: A Child Witness/Victim/Complainant)

in the Resident Magistrate's or High Court

who is placed in care for his or her safety and protection.

NOTES: A Child is a person below the age of 18 years

: The age of Criminal Responsibility is 12 years

WHO IS RESPONSIBLE?

Where is the child kept and by whom

Welfare Sphere –The Child Development Agency (Place of Safety/Children’s Homes)

Criminal Sphere – Department of Correctional Services (Remand Centres/Correctional Centres)

STATISTICAL DATA – at the end of the third quarter of the 2013/2014 period the Child Development Agency had approximately 2200 children in the traditional child care sector.

NOTES: Please visit the websites of the abovestated agencies for detailed information on their roles and responsibilities in the Jamaican Child Justice Sector.

REGULATORY STANDARDS AND ACCOUNTABILITY

- **Welfare Sphere/Child Development Agency** : under the Child Care and Protection Act, 2004 (CCPA) and the Child Care and Protection (Children's Home) Regulations , 2005 provisions are made for licensing of the private Children's Homes and Places of Safety; inspection of both public and private facilities; and guaranteeing the rights of children placed in these institutions to prescribed minimum standards of care and protection such as the right to food, clothing, health care, reasonable privacy, freedom from corporal punishment, social and recreational activities and religious education.
- **Criminal Sphere/Department of Correctional Services**: under the CCPA and the Department of Correctional Services Regulations provisions are made for separation of children from adults at police stations and the courts.
- **Role of the Office of the Children's Advocate (OCA)**: This Commission of Parliament is the

Ombudsperson for children serving as a “Watchdog” to ensure that the rights of children are not breached by state entities and having the power to initiate or intervene in civil suits or recommend disciplinary action or criminal prosecution if there is a breach.

OCA Publications include

2009 “Experiences of Children in State Care Who Appear Before the Courts”

2011 “A Study on the Profile of Children in Conflict With the Law in Jamaica”

2013 “Focusing on the Uncontrollable Child- Recommendations to the Houses of Parliament”

2014 “Child Justice Guidelines”

- **Role of Civil Society** : Non Governmental Organizations (NGOs) have been very strident over the years in their advocacy for the conditions of children in care/custody to be improved or for sanctions to be imposed for a breach of the rights of such children. Eg. Hear the Children’s Cry and Jamaicans for Justice which has made complaints to the Inter American Commission for Human Rights for alleged breaches by the Jamaican state.

**POST “CARE/CUSTODY”
COMMUNITY REINTEGRATION
(before/after age 18)**

FROM THE WELFARE SYSTEM

Children may be returned to their immediate or extended families after varying time periods and for various reasons: the Court may make a final order for the child to be returned to community placement and be supervised by a Children’s Officer ; a final order for a child placed in the welfare system may be varied or revoked if circumstances change.

The child who becomes a Ward of the State after a Fit Person Order is made may be eligible for Foster Care placement or local or overseas Adoption.

The child who attains majority or “ages out” while in care should receive the state’s assistance (financial and/or educational or vocational training) in preparation for

independent living.

**FROM MAXIMUM 48 HOURS POLICE STATION
PLACEMENT / THE DEPARTMENT OF
CORRECTIONAL SERVICES FACILITY**

The child charged for a crime may be released on bail with or without conditions.

The child placed on remand awaiting completion of his/her criminal case may receive a non-custodial or community based final order or “sentence” such as a Probation Order , Supervision Order, Curfew Order, Community Service Order , Mediation or the parent/guardian may be ordered to pay a Fine or Damages or enter into a Recognizance Bond for the child’s good behaviour.

Even the child serving a Correctional Order after a criminal conviction may leave the system for community placement under the Early Release or Licence arrangement.

CHALLENGES AFFECTING THE SAFETY AND PROTECTION OF CHILDREN IN CARE/CUSTODY

- **Qualification & Capacity of Personnel:** Both the welfare and correctional systems face a daily struggle to ensure that their facilities are staffed and served by properly trained and sensitized workers and consultants in sufficient numbers who will provide the level of care, protection, supervision, assessment/evaluation and even continued education that is the right of a child who is in care/custody Eg. Superintendents and other Caregivers such as House Mothers ; Teachers, Counsellors and Social Workers; experts such as Child Psychologists and Psychiatrists.
- **Resource Constraints** (Human resources discussed above; financial resources; physical plant and equipment; lack of graded facilities catering to children with different needs rather than a “one size fits all” approach; lack of a child mental health facility; limited programmes for academic and vocational training, play/leisure/exercise).
- **Tragedies affecting Children in Care/Custody :**
Jamaica has had several recent unfortunate incidents

of children suffering serious abuse and injury at the hands of other children or adult caregivers; running away from a child care facility and becoming part of the growing statistic of missing children (and at least one was found dead thereafter); attempting (and one committing) suicide and several dying during a fire while in care/custody).

LESSONS LEARNED

-AS FAR AS POSSIBLE, CHILDREN SHOULD REMAIN IN THE CARE/CUSTODY OF THEIR FAMILIES! (CCPA S2(3)(b) The Family is the preferred environment for the care and upbringing of children.....).

All stakeholders, such as the state, the educational sector, the Church and non-governmental institutions (NGOs), must strengthen the capacity of parents and guardians in this regard.

Eg. This is one of the roles of Jamaica's recently established National Parenting Support Commission.

-CHILD DIVERSION IS BEING IMPLEMENTED whereby children accused of committing relatively minor and certain other specified offences will be diverted from the formal Court system, by specially trained police personnel at the community level, provided that the child and his/her parents and/or guardians undergo a formal course of intervention to include counselling.

-APPLICATION OF INTERNATIONAL PRINCIPLES (UNITED NATIONS CONVENTION

ON THE RIGHTS OF THE CHILD) (OPTIONAL PROTOCOLS - BEIJING RULES & RIYADH GUIDELINES) IS MANDATORY!

These recommend institutionalization as a last resort even when a crime is alleged to have been committed and dictate a minimum standard for the treatment of children in care/custody.

-THE ARMADALE REPORT prepared by retired Justice of Appeal Paul Harrison in 2010 following the Armadale Enquiry into the 2009 fire that caused the injury and death of several female wards at a state Correctional facility, contains several recommendations that all members of Jamaica's Child Justice sector have been endeavouring to integrate into their daily roles to ensure a higher standard of care and protection for the children who unavoidably become institutionalized.

NOTES: Please visit the website of The National Parenting Support Commission, and search internet sources for Jamaica's National Plan of Action for Child Justice including The Child Diversion Policy and the full text of the Armadale Report and its Recommendations.

**THANK YOU FOR READING THIS PAPER! PLEASE EMAIL ME YOUR
QUESTIONS/COMMENTS**

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