

Eastern Caribbean Supreme Court (ECSC)
Judicial Education Institute (JEI)

BIENNIAL MAGISTRATES' CONFERENCE

THE EVOLVING MAGISTRACY OF THE OECS

Garraway Hotel, Dominica
November 26-27, 2007.

CHALLENGES of the YOUTHFUL OFFENDER



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CHALLENGES OF THE YOUTHFUL OFFENDER

- WHAT IS REQUIRED of MAGISTRATES DEALING WITH YOUTH OFFENDER IN JUVENILE COURT ?
- Compliance With Umbrella Principles of the Convention On The Rights Of The Child (CRC);
- Observance of Specific Principles of the CRC relating to Juvenile Justice ; and the
- Standards and Norms of Juvenile Justice, in particular, UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules);
- CONSTRAINTS : Scarce Resources.

The Umbrella Principles of the CRC



Non-discrimination: Art. 2

Best Interests of the Child: Art. 3

*Child's Right to Life, Survival and
Development: Art. 6*

Right to be Heard: Art. 12

CRC AND JUVENILE JUSTICE: ARTICLE 37

- No torture, cruel, inhuman or degrading treatment or punishment, capital punishment or indeterminate life sentence for juveniles;
- Arrest, detention or imprisonment must be legal, must be a **measure of last resort** and for the **shortest appropriate period of time**;
- Child has right to be treated with humanity and respect, to have age taken into account; to be separated from adults, unless not in child's best interests; family contact through correspondence and visits; to promptly access legal and other appropriate assistance to challenge legality of detention before court or other body and to prompt decision on any such action.

CRC AND JUVENILE JUSTICE: ARTICLE 40

- Child in conflict with law to be treated in accord with child's sense of dignity and worth, consistent with age and with view to reintegration into society;
- Guarantees fair trial: no retroactive juvenile justice, presumption of innocence, informed promptly and directly of charges, legal or other appropriate assistance, early trial in presence of parents, right to silence, to examine and call witnesses, appeal, to services of an interpreter, privacy at all stages;
- Special laws, procedures , authorities and institutions; diversion measures to avoid court;
- Variety of dispositions to ensure treatment appropriate to child's well-being and proportionate to child's circumstances and the offence.

BEIJING RULES (1985)

- **Juvenile offender** : child or young person alleged to have committed, or found to have committed crime -dealt with differently in law – also status offenders.
- Age of criminal responsibility – should not be too low;
- **Twin Objectives of Juvenile Justice:**
- Well-being of juvenile, proportionality- offender and offence;
- Availability of discretion, sufficient accountability all stages .
Right to fair trial, protection of privacy at all stages;
- Juvenile's parents to be notified immediately on arrest ;
- Use of early release, diversion; social enquiry reports;
- Variety of dispositions should be available ; least use of institutionalization, delay avoided, records kept confidential;
- Need for professionalism and training for all personnel;
- Frequent use of conditional release at earliest possible time;
- Provision of semi –institutions: half –way house, day centres,
- Detained juveniles to be separated from adults, unless not in child's best interests, to receive care and needed assistance.

CHALLENGES IN BALANCING THE SCALES OF JUSTICE FOR JUVENILES

WELFARE vs. DUE PROCESS

CHILD'S RIGHT TO BE HEARD
WHEN LEGAL REPRESENTATION
UNAFFORDABLE

DIVERSION AND ALTERNATIVES
TO DETENTION

SCARCE RESOURCES.



RIGHT TO BE HEARD

- Probation officer – officer of court, not counsel for the child; consider alternatives such as -
- Duty counsel - Attorney- General's Office;
- Office of Children's Counsel / Child Advocate;
- Pro-bono work as condition for renewal of practising certificate - specified number of cases;
- Create child-friendly atmosphere in court to avoid , intimidation, humiliation and distress, promote effective participation; informal, less severe dress code for court personnel, no police uniforms, seating arrangements all at one level, parents next to child; frequent breaks – consider attention span.

See: Practice Direction Lord Chief Justice of England and Wales: Trial of Children and Young Persons In Crown Court .Feb. 2000

RESTORATIVE JUSTICE:

DIVERSION / ALTERNATIVE TO DETENTION.

- **Retributive justice** asks: How do we punish this offender? **Restorative justice** asks: How do we restore the well-being of the victim, the community and the offender?
- **Restorative justice** is the process whereby parties with a stake in a criminal offence(the offender, victim and communities of each) collectively resolve how to deal with the aftermath of the criminal act with an emphasis on repairing the harm from the act –to victim, community and offender him/herself.

RESTORATIVE JUSTICE:

Responsibility, Rehabilitation and Restoration*

“ Restorative justice focuses first on the victim and the community harmed by the crime rather than on the dominant, state vs. perpetrator mode. This shift in focus affirms the hurt and loss of the victim, as well as the harm and fear of the community and insists that offenders come to grips with the consequences of their actions. These approaches are not “soft on crime” because they specifically call the offenders to face the victims and the communities. This experience offers victims a much greater sense of peace and accountability. Offenders who are willing to face the consequences of their actions are more ready to accept responsibility, make reparation and rebuild their lives.”

* Pastoral letter of US Catholic bishops; extracted from: Restore. Newsletter of Restorative Justice Network. Issue No 17 March 2001.

RESTORATIVE JUSTICE:

6 Basic Questions to which victims need to find answers for healing and peace for closure:*

1. What happened?
2. Why did it happen to me?
3. Why did I act as I did at the time?
4. Why have I acted as I have since that time?
5. What if it happens again?
6. What does this mean for me and for my outlook(my faith, my vision of the world, my future)?

* Dr. Howard Zehr, seminal advocate of Restorative Justice who in the early 1980's developed the first Victim/Offender Reconciliation Programme in the US.

RESTORATIVE JUSTICE

- To experience remorse , the offender needs to understand:
 1. What is it like to have one's house broken into, or car stolen?
 2. What is it like to experience fear and questions about who did this and why, and whether they are coming back?
 3. What is it like to believe one was going to die or be seriously harmed?
 4. What is it like to be seriously injured?

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RESTORATIVE JUSTICE: THE PROCESS

- Restorative justice: voluntary process, only possible when wrong-doer admits guilt;
- Offender, victim, come together in conference;
- In presence of : offender's family, victim support group;
- Facilitator guides process, outlines ground rules: parties speak truthfully, no interruptions;
- Object: facilitate exchange between parties in environment of healing, for each to learn about the other, move on from offence;
- Dialogue and negotiate about issues of conflict
- Decide on the way forward.

RESTORATIVE JUSTICE: THE ALTERNATIVE

- Diversion measure before charges, or as means of disposition of case;
- Can take place in any safe environment;
- Saves the expense and time of court proceedings;
- Reduces judicial workload;
- Involves the community who can be trained as facilitators or act as victim or offender support group;
- Promotes healing and rehabilitation;
- Offender does not have a conviction;
- Can be used for minor offences and violent crimes;
- Restorative justice can be separate from justice system, parallel system or integrated with justice system.

See New Zealand : Children, Young Persons, and their Families Act 1989

- South Africa: Child Justice Bill

THANK YOU.