



Child Protection Law and Policy

Argentina • Armenia • Australia • Brazil • Canada
China • Egypt • England • France • Germany
India • Israel • Japan • Kenya
Mexico • Sweden

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Comparative Summary

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This report by the foreign law research staff of the Law Library of Congress's Global Legal Research Directorate includes surveys of sixteen foreign jurisdictions on laws and policies on protecting children from abuse and neglect. This introductory summary briefly describes domestic federal law before turning to foreign law.

I. United States Law

In the United States, while child welfare is traditionally a matter of a state law, there are multiple federal laws and programs affecting child welfare.¹ With respect to child abuse and neglect specifically, the primary federal law is the Child Abuse Prevention and Treatment Act (CAPTA).² CAPTA was first enacted in 1974, and has been reauthorized and amended many times since.³

CAPTA requires states to implement specified federal policies in exchange for federal funding for child abuse and neglect programs. Federal funding and corresponding requirements for states under CAPTA include the following:

State grants for improvement of child protective services agencies. CAPTA provides for grants to states for improving state and local child protective services agencies in ways set out in the statute. Funds are available for improvements on, among other things, the processing and investigation of reports of child abuse or neglect, legal preparation and representation, case management, risk and safety assessment tools and protocols, technology systems, training; recruitment and retention of caseworkers, community-based programs, and interagency collaboration.⁴

In exchange for these federal funds, states must demonstrate to the Secretary of Health and Human Services (HHS) that they meet a number of federal requirements. States must show that they have established statewide laws or programs relating to the receipt and processing of reports of child abuse and neglect; mandatory reporting by certain persons; protection of infants with prenatal drug or alcohol exposure; screening, assessment, and investigation of abuse or neglect; state immunity for persons who in good faith report suspected abuse or neglect; confidentiality; the sharing of information with appropriate agencies; appointments of guardians ad litem to

¹ A detailed description of these many laws and programs appears in EMILIE STOLTZFUS, CONGRESSIONAL RESEARCH SERVICE, CHILD WELFARE: AN OVERVIEW OF FEDERAL PROGRAMS AND THEIR CURRENT FUNDING (Jan. 2, 2018), <https://crsreports.congress.gov/product/pdf/R/R43458>, archived at <https://perma.cc/4LVL-LVIE>.

² Child Abuse Prevention and Treatment Act, *as amended*, 42 U.S.C. §§ 5101-5116i, <http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter67&edition=prelim> (reflecting amendments through May 10, 2019), archived at <https://perma.cc/6T5A-2CBA>.

³ CHILDREN'S BUREAU, ADMINISTRATION FOR CHILDREN & FAMILIES, US DEPARTMENT OF HEALTH AND HUMAN SERVICES, FACTSHEET: ABOUT CAPTA: A LEGISLATIVE HISTORY (2019), <https://www.childwelfare.gov/pubpdfs/about.pdf>, archived at <https://perma.cc/WMA7-PMP7>.

⁴ 42 U.S.C. § 5106a(a).

represent children in judicial proceedings; expedited termination of parental rights in certain circumstances; citizen review panels; et cetera.⁵

In addition, states must annually submit reports to the Secretary of HHS providing statistics on reported incidents of abuse and neglect, associated provisions of state services, and other specified data.⁶ These data are compiled into the National Child Abuse and Neglect Data System.⁷ The HHS is obligated to prepare an annual report based on such state information.⁸ The most recent report, *Child Maltreatment 2017*, published in January 2019, is the twenty-eighth annual report in this series.⁹

Community-Based Grants for Prevention of Abuse and Neglect. A second category of federal funding is targeted at state programs to prevent child abuse and neglect.¹⁰ The statute requires states to establish a lead agency responsible for developing community-based, prevention-focused programs to provide support and assistance to families to promote parenting skills, family stability, respite care services, and the like.¹¹ The states' grant applications must identify how the community-based programs will operate, and must meet detailed statutory requirements.¹² Community-based organizations that receive grants from the state lead agency must also meet particular statutory requirements.¹³

Children's Justice Act Grants. CAPTA also provides for federal funding to enable states to improve the investigation and prosecution of abuse and neglect cases.¹⁴ To be eligible, each state must, among other things, establish a multidisciplinary task force that will review how the state handles administrative, civil, and criminal abuse and neglect cases and make recommendations for improvements and reform, which recommendations, subject to limited exceptions, the states must adopt.¹⁵

Apart from CAPTA, a section within the Social Security Act requires the HHS to conduct a national study based on random samples of children who were identified by child protective

⁵ 42 U.S.C. § 5106a(b) & (c).

⁶ 42 U.S.C. § 5106a(d).

⁷ NCANDS, CHILDREN'S BUREAU, ADMINISTRATION FOR CHILDREN & FAMILIES, US DEPARTMENT OF HEALTH AND HUMAN SERVICES (July 11, 2017), <https://www.acf.hhs.gov/cb/research-data-technology/reporting-systems/ncands>, archived at <https://perma.cc/7FYE-EG6H>.

⁸ 42 U.S.C. § 5106a(e).

⁹ CHILDREN'S BUREAU, ADMINISTRATION FOR CHILDREN & FAMILIES, US DEPARTMENT OF HEALTH AND HUMAN SERVICES, CHILD MALTREATMENT 2017 (2019), <https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf>, archived at <https://perma.cc/N7K4-PSNV>.

¹⁰ 42 U.S.C. §§ 5116-5116i.

¹¹ 42 U.S.C. § 5116(b).

¹² 42 U.S.C. § 5116d.

¹³ 42 U.S.C. § 5116e.

¹⁴ 42 U.S.C. § 5106c.

¹⁵ 42 U.S.C. § 5106c(c)-(e).

services agencies as at risk of abuse or neglect, or having been the victim of abuse or neglect.¹⁶ The resulting study, known as the National Survey of Child and Adolescent Well-Being (NSCAW),

makes available data drawn from first-hand reports from children, parents, and other caregivers, as well as reports from caseworkers, teachers, and data from administrative records. NSCAW examines child and family well-being outcomes in detail and seeks to relate those outcomes to experience with the child welfare system and to family characteristics, community environment, and other factors.¹⁷

The NSCAW has gathered longitudinal data on two cohorts of children, covering the years 1997 to 2014 and 2015 to 2022. Data-gathering began on a third cohort in 2018.¹⁸

II. Comparative Analysis

The individual country surveys in this report describe the law of each jurisdiction on protecting children from abuse and neglect. They also describe practices respecting data gathering and the publication of statistics, as applicable in each country.

Most of the surveyed countries have multiple sources providing legal authority to address child abuse. Many of the surveyed countries provide for the protection of children in their constitutions, including Armenia, Argentina, Brazil, and India. All of the surveyed countries (indeed all countries in the world other than the United States) are members of the Convention on the Rights of the Child, which obligates State Parties to take appropriate measures to protect children “from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”¹⁹ Many of the surveyed countries have broad children’s rights laws to implement the Convention that address child abuse and neglect. All of the countries surveyed here have criminal provisions allowing for prosecution of certain types of abuse or neglect, which complement civil and administrative mechanisms that provide for the protection of children.

Countries surveyed here that have federal systems, including Argentina, Australia, Brazil, Canada, India, and Mexico, have national laws or policies that coordinate, direct, or provide guidance for addressing child abuse at the state or territorial level. For example, Australia’s *National Framework for Protecting Australia’s Children 2009-2020* sets forth a national agenda for the management of child protection, and seeks to address discrepancies that exist across the

¹⁶ Social Security Act § 429, codified at 42 U.S.C. § 628b, <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section628b&num=0&edition=prelim> (reflecting amendments through May 10, 2019), archived at <https://perma.cc/7UUR-A3JD>.

¹⁷ *National Survey of Child and Adolescent Well-Being (NSCAW), 1997-2014 and 2015-2022, Project Overview*, OFFICE OF PLANNING, RESEARCH & EVALUATION, ADMINISTRATION FOR CHILDREN & FAMILIES, US DEPARTMENT OF HEALTH AND HUMAN SERVICES, <https://www.acf.hhs.gov/opre/research/project/national-survey-of-child-and-adolescent-well-being-nscaw> (last visited May 20, 2019), archived at <https://perma.cc/EY2L-MD4L>.

¹⁸ *Id.*

¹⁹ Convention on the Rights of the Child, art. 19(1), Nov. 20, 1989, 1577 U.N.T.S. 3, <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>, archived at <http://perma.cc/9QA9-ZRSG>.

legislation of the states and territories. Similarly, in Mexico, the General Law on the Rights of Children and Adolescents sets forth legal and operational measures that both the national and state governments must take to address child abuse, and provides that state legislatures are to enact statutes in their respective jurisdictions to bring their laws into conformity with the national law.

Many of the country surveys indicate that it is mandatory for members of certain specified occupations, such as health care professionals, teachers, police officers, and social workers, to report instances of child abuse and neglect of which they become aware. Countries surveyed in this report with such mandatory reporting requirements include Australia, China, Canada, Israel, Japan, and Sweden. England has thus far declined to imposing mandatory reporting requirements except for cases involving female genital mutilation. In a recent year, however, England's reporting of cases was slightly higher on a per capita basis than in countries with a mandatory reporting duty.

With respect to the gathering, analysis, and reporting of national statistical data, the surveyed countries vary significantly. Some countries make strong efforts to collect and make available relevant data, such as Canada, which collects data nationally on the incidence of reported child maltreatment and the characteristics of the children and families investigated by child welfare authorities, and makes it available to researchers to enable comparative study of changes in child maltreatment investigations across the country. In Australia, data on children who come into contact with state and territory child protection departments are collected and published annually by the government. France, Germany, Israel, and other surveyed countries have national agencies that gather and publish data on child protection matters. In contrast, the surveys on Armenia, Argentina, Brazil, China, and Egypt indicate these countries do not collect or publish data on the nationwide incidence of child abuse or neglect.

Argentina

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SUMMARY Law 26061/2005 on the Comprehensive Protection of the Rights of Children and Adolescents sets forth the legal framework for the comprehensive protection of children and adolescents in Argentina. In securing the rights of children to their dignity and physical, sexual, psychological, and moral integrity, the law requires that any person with knowledge of situations of mistreatment or actions that may pose a risk to the integrity of a child, whether physical or emotional, must report it to the authorities. Those who violate this duty are subject to criminal sanctions under the Criminal Code. Criminal sanctions are also imposed on parents and guardians who do not provide for their children's support and care. The Support Program for Youth with no Parental Care, under Law 27364/2017, provides comprehensive support for children between the ages of thirteen and twenty-one who have no parental care. According to a UNICEF report, official statistics and reporting on matters of child neglect and abuse have been problematic in Argentina and lack uniformity among the provinces.

I. Introduction

Argentina ratified the United Nations Convention on the Rights of the Child¹ (CRC) in 1990 and since 1994 this Convention has been part of the National Constitution.² In 2005, Congress adopted Law 26061 on the Comprehensive Protection of the Rights of Children and Adolescents (Ley de Protección Integral de los Derechos de las Ninas, Ninos y Adolescentes, LPIDNNA) adopting a legal framework for the comprehensive protection of children and adolescents.³ The LPIDNNA guarantees the full exercise and enjoyment of the rights granted under the national legal system as well as by the international treaties to which the country is a party, which rights include education, health, culture, recreation, safety, etc.⁴

The LPIDNNA is the first comprehensive statute for the protection of children, providing a clear definition of the responsibilities of the family, society, and government with regard to the

¹ Ley 23849 Apruébase la Convención sobre los Derechos del Niño [Law 23849 adopting the U.N. Convention on the Rights of the Child], of Sept. 27, 1990, BOLETIN OFICIAL [B.O.], Oct. 10, 1990, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/249/norma.htm>, archived at <https://perma.cc/4KKF-KSP7>.

² CONSTITUCIÓN DE LA NACIÓN ARGENTINA art. 75, para. 22, B.O., Jan 3, 1995, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>, archived at <https://perma.cc/4ND7-WDDW>.

³ Ley 26061 de Protección Integral de los Derechos de las Ninas, Ninos y Adolescentes [Law 26061 on the Integral Protection of Girls, Boys and Adolescents], B.O., Oct. 29, 2005, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/110000-114999/110778/norma.htm>, archived at <https://perma.cc/8IVS-9GCL>.

⁴ *Id.* art. 1.

universal rights of children as provided under the CRC.⁵ Law 26061 is regulated by Decree 415/2006.⁶

II. National Policy and Legislation on Child Abuse and Neglect

The LPIDNNA considers the superior interest of the child or adolescent as the most important factor in determining policies and measures, while recognizing that the family is primarily responsible for assuring that children and adolescents enjoy the full and effective exercise of their rights and guarantees.⁷

Regarding the right to health, the LPIDNNA requires that the government and its entities provide

- access to health services while respecting cultural and family standards recognized by the family and society, provided they do not pose a threat to their health and safety;
- comprehensive health, rehabilitation, and integration programs;
- assistance and orientation programs for children and families;
- adequate education; and
- informational campaigns to promote children's rights through social media etc.⁸

In securing the rights of children to their dignity and physical, sexual, psychological, and moral integrity, the law requires that any person with knowledge of situations of mistreatment or actions that may pose a risk to the integrity of a child, whether physical or emotional, must report it to the authorities.⁹

The LPIDNNA also creates the National System of Comprehensive Protection of the Rights of Girls, Boys, and Adolescents (Sistema de Protección Integral de los Derechos de las Niñas, Niños y Adolescentes, SPIDNNA) to coordinate all agencies, entities, and services at the national, provincial, and municipal levels related to the promotion, prevention, assistance, protection, and restoration of the rights of children.¹⁰ Implementation of the SPIDNNA is carried out at the national and provincial levels.¹¹

⁵ *Id.*

⁶ Decreto 415/2006 Apruebase la Reglamentación de la Ley 26061 [Decree 415/2006 Approves the Regulation of Law 26061], B.O., Apr. 18, 2006, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/115000-119999/115526/norma.htm>, archived at <https://perma.cc/TL4A-CM3L>.

⁷ Law 26061, art. 4.

⁸ *Id.* art. 14.

⁹ *Id.* art. 9.

¹⁰ *Id.* art. 32.

¹¹ *Id.* art. 42.

The SPIDNNA is in charge of adopting protective measures in cases of violation or threats to the rights of children.¹² Protective measures are primarily aimed at preserving and strengthening family ties, including financial assistance measures.¹³ Only in exceptional circumstances when the superior interest of the child prevails will the child be assigned to alternative family accommodations for a limited time and as a measure of last resort.¹⁴

The LPIDNNA also creates the Federal Council on Children, Adolescents and Family (Consejo Federal de la Niñez, Adolescencia y Familia), which is headed by the National Secretary on Children, Adolescents and Family representing the National Executive Power with representatives who are in charge of implementing children protection policies from each of the provinces.¹⁵ The Federal Council is the enforcement authority on the protection polices and carries out the supervision and control of public and private institutions in charge of the protection of children's rights.¹⁶

The LPIDNNA also creates the Ombudsman of the Rights of Girls, Boys and Adolescents (Defensor de los Derechos de las Niñas, Niños y Adolescentes) with authorities operating at the national and provincial level.¹⁷ Its main responsibility is the legal representation and counseling of children and adolescents in reference to their rights.¹⁸ It also has the authority to seek the imposition of sanctions for violations of children's rights.¹⁹

The Ombudsman is required to submit yearly and periodic reports to Congress on the work and actions taken on the protection of children and adolescents.²⁰ The reporting must include the number of cases reported and the status and results of the investigations.²¹

The LPIDNNA also provides that the national government will equitably distribute funding from the general national budget to provincial governments in order to secure the rendering of necessary services required under the law.²²

The Support Program for Youth with No Parental Care (Programa de Acompañamiento para el Egreso de Jóvenes sin Cuidados Parentales) was enacted by Law 27364, providing comprehensive

¹² *Id.* art. 33.

¹³ *Id.* art. 35.

¹⁴ *Id.* arts. 39-41.

¹⁵ *Id.* art. 45.

¹⁶ *Id.* art. 46.

¹⁷ *Id.* arts. 47-48.

¹⁸ *Id.* art. 55.

¹⁹ *Id.* art. 55.d.

²⁰ *Id.* art. 56.

²¹ *Id.* arts. 57, 64.

²² *Id.* arts. 69-72.

support for children between the ages of thirteen and twenty-one who lack parental care.²³ The program aims at full social inclusion and the children and adolescents' personal and social development.²⁴ As they become more independent, the support provided under the law lessens.²⁵ The program is strictly voluntary and may only be implemented with the child or adolescent's consent.²⁶

The program has two modules: one for personal support and the other a financial support system.²⁷ Personal support includes education, housing, health care, leisure activities, family planning, training and employment, human rights and citizenship education, family and social networks, skills for independent living, and financial planning and money management guidance.²⁸ Financial support consists of a monthly allowance equal to 80% of the official minimum wage adjusted by inflation, which the adolescents and youth receive when they leave formal care arrangements.²⁹

III. Criminal Code

The Criminal Code (CC)³⁰ provides that anyone who endangers the life or health of another by placing a person in an abandonment situation or by abandoning an incapacitated person under his or her care or protection, is subject to imprisonment for two to six years.³¹ The minimum and maximum penalties are increased by one-third if the crime is perpetrated by a parent against his or her child.³²

If the abandonment results in serious harm to the body or health of the victim the sanction is imprisonment from three to ten years.³³ In the case of death, the sanction is increased to imprisonment for five to fifteen years.³⁴

Anyone who finds a child under ten years of age who is lost or unprotected, incapacitated, or threatened and does not provide him or her with the necessary help, or does not immediately

²³ Ley 27364 Programa de Acompañamiento para el Egreso de Jóvenes sin Cuidados Parentales [Law 27364 Support Program for Youth with No Parental Care] art. 2, B.O., June 26, 2017, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/275000-279999/276156/norma.htm>, archived at <https://perma.cc/EX95-RC6V>.

²⁴ *Id.* art. 1.

²⁵ *Id.* art. 3.b.

²⁶ *Id.* art. 4.

²⁷ *Id.* arts. 11, 21-22.

²⁸ *Id.* arts. 11-20.

²⁹ *Id.* arts. 21-22.

³⁰ CÓDIGO PENAL, B.O., Nov. 3, 1921, 1984 revised text available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#15>, archived at <https://perma.cc/2FXQ-SVCE>.

³¹ *Id.* art. 106, para. 1.

³² *Id.* art. 107.

³³ *Id.* art. 102, para. 2.

³⁴ *Id.* art. 106, last para.

report the situation to the competent authorities, is punishable with a fine of 750 to 12,500 pesos (approx. US\$18 to US\$288).³⁵

Law 13944 of 1949 also penalizes the crime of noncompliance with the duties of family assistance.³⁶ It sanctions with imprisonment of one month to two years and a fine of 750 to 25,000 pesos (approx. US\$18 to \$581) parents who do not provide the necessary means of subsistence for their child aged eighteen years or younger, or if the child is incapacitated.³⁷ The same sanctions apply to the children of incapacitated parents, adopting parents and children, and tutors and guardians.³⁸

IV. Statistics and Analysis

Research undertaken for UNICEF Argentina found that official statistics and reporting on the matter of child neglect and abuse has been problematic and lacks uniformity among the provinces. The report notes significant differences among the jurisdictions, with those having more economic resources providing more information while poorer jurisdictions have less or no reporting.³⁹

³⁵ *Id.* art. 108.

³⁶ Ley 13944 Incumplimiento de los Deberes de Asistencia Familiar [Law 13944 Noncompliance with the Duties of Family Assistance] art. 1, B.O., Nov. 3, 1950, updated version dated Dec. 12, 1993, available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/125000-129999/129755/texact.htm>, archived at <https://perma.cc/H45N-TS8L>.

³⁷ *Id.*

³⁸ *Id.* art. 2.

³⁹ UNICEF, ESTADO DE LA SITUACIÓN DE LA NINEZ Y LA ADOLESCENCIA EN ARGENTINA [STATUS OF THE SITUATION OF CHILDREN AND ADOLESCENCE IN ARGENTINA], Resumen Ejecutivo [Executive Summary] 37 (Mar. 2017), <https://www.unicef.org/argentina/sites/unicef.org/argentina/files/2018-04/SITAN-RE.pdf>, archived at <https://perma.cc/8V8R-XZ8W>.

Armenia

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SUMMARY Armenian legislation contains several provisions protecting the rights of children and prohibiting their abuse and neglect. Special protection for motherhood and childhood, prohibitions on inhuman and degrading treatment or punishment, and guarantees of the rights of children are found in the Constitution of Armenia. The Criminal Code of Armenia contains provisions prohibiting the neglect and abuse of children and minors, and prescribes punishments for crimes against the personal safety and well-being of children. The Criminal Code also stipulates the punishments applicable to minors implicated in committing crimes.

Armenia ratified the UN Convention on the Rights of the Child in 1993 with two optional protocols. Subsequent to ratification, Armenia also adopted the Law on the Rights of the Child. The Law provides a foundation for the protection of children's rights. Additionally, the Law on the Social Protection of Children Left without Parental Care and the Law on Domestic Violence provide a legal foundation for the protection of abandoned and orphaned children as well as for victims of domestic violence.

Government policies and priorities in the area of children's rights can be found in the 2017-2021 Strategic Program for the Protection of the Rights of the Child. Several government agencies are responsible for implementing Armenian legislation in the area of children's rights.

I. Legislative Framework

Armenian legislation contains provisions protecting the rights of children and prohibiting their abuse and neglect. Article 16 of the Armenian Constitution provides special protection for motherhood and childhood.¹ Article 26 of the Constitution states that "no one may be subjected to torture, inhuman or degrading treatment or punishment."² Article 37 of the Constitution states as follows:

1. A child shall have the right to freely express his or her opinion which, in accordance with the age and maturity of the child, shall be taken into consideration in matters concerning him or her.
2. In matters concerning the child, primary attention must be given to the interests of the child.

¹ CONSTITUTION OF THE REPUBLIC OF ARMENIA, 2015, art. 16, <https://www.president.am/en/constitution-2015/>, archived at <https://perma.cc/2JYC-H6LT>.

² *Id.* art. 26, § 1.

3. Every child shall have the right to maintain regular personal relations and direct contacts with his or her parents, except for the cases where pursuant to a court decision it is against the interests of the child. Details shall be prescribed by law.
4. Children left without parental care shall be under the care and protection of the State.³

Additionally, article 87 states that, among others, a main objective of the state policy should be creating favorable conditions for the full and comprehensive development of individuality in children.⁴

The Criminal Code of Armenia contains articles prohibiting the neglect and abuse of children and minors, and prescribing punishments for crimes against the personal safety and well-being of children. The Criminal Code also stipulates the punishments applicable to minors implicated in committing crimes.⁵

Armenia ratified the UN Convention on the Rights of the Child in 1993.⁶ By ratifying the Convention, Armenia undertook a responsibility to bring its legislation into conformity with the covenants of the Convention. In order to do so, in 1996 Armenia adopted the Law on the Rights of the Child.⁷ The Law provided a legal foundation for the protection of children's rights. In 2003, Armenia also signed the two optional protocols to the UN Convention on the Rights of the Child.⁸

In 2002 Armenia adopted the Law on Social Protection of Children Left without Parental Care, which provided the legal basis for the protection of orphaned or abandoned children's welfare and social protection.⁹

In 2017, Armenia passed the Law on the Prevention of Domestic Violence. The aim of the Law was to provide protection for the victims of domestic violence, as well as to prevent and punish

³ *Id.* art. 37.

⁴ *Id.* art. 87, § 6.

⁵ HAYASTANI HANRAPETUTJAN QREAKAN ORENSGIRQ [CRIMINAL CODE OF THE REPUBLIC OF ARMENIA], Apr. 18, 2003, *as amended*, <https://www.arlis.am/documentview.aspx?docid=69646>, archived at <https://perma.cc/8468-6KMX>.

⁶ Convention on the Rights of the Child [CRC], Nov. 20, 1989, 1577 U.N.T.S. 3, <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>, archived at <http://perma.cc/9QA9-ZRSG>.

⁷ Hayastani Hanrapetutian Orenqe Yerekhaji Iravunqneri Masin [Law of the Republic of Armenia on the Rights of the Child], 1996, <https://www.arlis.am/documentview.aspx?docID=69115>, archived at <https://perma.cc/C9N4-FSGW>.

⁸ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, 2173 U.N.T.S. 236, <https://www.ohchr.org/en/professionalinterest/pages/opaccrc.aspx>, archived at <https://perma.cc/F598-BQGE>; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2171 U.N.T.S. 247, <https://www.ohchr.org/en/professionalinterest/pages/opscrcr.aspx>, archived at <https://perma.cc/KCW8-URTP>.

⁹ Hajastani Hanrapetutyanyan Orenqe Arants Tsnoghakan Khnamqi Mnatsats Yerekhaneri Sotsialakan Pashpanutyanyan Masin [Law of the Republic of Armenia on Social Protection of Children Left without Parental Care], 2002, <https://www.arlis.am/DocumentView.aspx?docid=51820>, archived at <https://perma.cc/WJK6-66FS>.

offenders. The law was supported by many nongovernmental organizations working in the area of gender equality and the prevention of domestic violence.¹⁰ The Domestic Violence Law contains provisions specifying special care for children involved in circumstances of domestic violence.

In 2017 the government of Armenia adopted the Strategic Program for the Protection of the Rights of the Child for 2017-2021.¹¹ The goal of the program is to provide for the protection of children living in the most difficult life circumstances.

Specific details of each legislative and regulatory act are discussed in the relevant sections below.

II. Law on the Rights of the Child

Article 1 of the Law on the Rights of the Child declares that children are under the protection of the state.¹² Special protection is granted by the state to orphaned or abandoned children. In this case the state makes sure to provide for a child's physical, emotional, and material well-being (including in adoption, education, and choice of care).¹³ The state establishes standards of care and education for children held in orphanages.¹⁴

Article 5 of the Law guarantees the right to life to every child.¹⁵ The Law provides for the child's adequate living conditions (including those necessary for mental, spiritual, and physical development), requiring parents or legal guardians to maintain such conditions.¹⁶ The Law states that the protection of the child's rights is one of the main responsibilities of a child's parents or legal guardians.¹⁷ Article 9 of the Law provides for full protection of the child from any form of abuse (physical, psychological, and other types). Subjecting a child to abuse or other degrading treatment is prohibited. The state and its authorized bodies enforce these protections.¹⁸

¹⁰ Hajastani Hanrapetutjan Orenqe Entaniquim Brnutjan Kankhargelman, Entaniquim Brnutjan Entarkvats Andzants Pashtpanutjan ev Entanquim Hamerashkhutjan Verakangnman Masin [Law of the Republic of Armenia on Prevention of Domestic Violence, Protection of Persons Subjected to Domestic Violence, and Restoration of Peace in the Family], 2017, <https://www.arlis.am/documentview.aspx?docID=118672>, archived at <https://perma.cc/T3PW-9CLR>.

¹¹ Hajastani Hanrapetutyunum Yerekhayi Iravunqneri Patspanutyun 2017-2021 tvakanneri tsragir [Strategic Program for the Protection of the Rights of the Child in the Republic of Armenia for 2017-2021] (July 31, 2017), https://www.e-gov.am/u_files/file/decrees/30-1_1ardz_voroshum.pdf, archived at <https://perma.cc/V2MD-3Z74>.

¹² Law on the Rights of the Child art. 1.

¹³ *Id.* art. 24.

¹⁴ *Id.* art. 26.

¹⁵ *Id.* art. 5.

¹⁶ *Id.* art. 8.

¹⁷ *Id.* art. 14.

¹⁸ *Id.* art. 9.

The Law prohibits involving children in the production, use, or sale of alcoholic beverages, narcotic drugs, psychotropic substances, tobacco, and books or visual productions containing explicit and violent content, as well as in activities that may endanger their health, endanger their physical and mental development, or obstruct their education.¹⁹ The Law provides for the protection of the honor and dignity of children.²⁰ The state is the guarantor of the safety and security of children, including by preventing the illegal transport or kidnapping of, or trade in, children.²¹

The state gives special protection to children in emergency situations. Article 28 of the Law requires the state to take all necessary measures to remove the child from dangerous zones and to reunite him or her with the family.²²

The Law prohibits involving a child (fifteen years old or younger) in military operations. In the case of military confrontations the state provides appropriate protection to the child.²³

III. Criminal Code

A. Criminal Liability of Minors

The Criminal Code distinguishes between the following types of criminal liability assigned to minors: fees, public works, detention, and arrest.²⁴ There are less stringent punishments envisaged for implicated minors, especially for crimes that are punishable by detention or any sort of deprivation of freedom. The Criminal Code sets a seven-year maximum term of detention for implicated minors up to sixteen years of age, while for minors between the ages of sixteen and eighteen the term of detention cannot exceed ten years.²⁵

B. Criminal Code Provisions Applicable to Minors

The following felonies listed in the Criminal Code of Armenia have some specifics related to the treatment of minors:

1. Deprivation of Life

In general the Criminal Code prescribes that offenses resulting in the death of another are punishable by a term of imprisonment of eight to fifteen years, depending on the circumstances.²⁶ However, according to article 106, if a newborn is murdered either during the delivery or shortly

¹⁹ *Id.* art. 19.

²⁰ *Id.* art. 22.

²¹ *Id.* art. 23.

²² *Id.* art. 28.

²³ *Id.* art. 29.

²⁴ CRIMINAL CODE OF THE REPUBLIC OF ARMENIA ch. 5, art. 86.

²⁵ *Id.* art. 90.

²⁶ *Id.* art. 104.

after by the mother, who might be in an exacerbating psychological state, the prison term of the mother cannot exceed five years.²⁷

2. *Trafficking in Minors*

The Criminal Code prescribes a prison term of seven to ten years for trafficking in minors, purposefully subjecting them to exploitation, and limiting their mobility.²⁸

3. *Sexual Crimes against Minors*

According to article 141 of the Criminal Code, the age of consent is sixteen years old. The same article prescribes that engaging in sexual activity with a person who is visibly younger than sixteen years of age is subject to a fine in the amount of 100 to 215 times the minimum monthly wage (approximately US\$1,130–\$28,250) or to imprisonment for up to two years.

Article 166 prohibits involving minors in prostitution and distributing materials of a pornographic nature to them. Article 166 envisages fines and imprisonment for committing these crimes. Stricter punishments are provided if the same acts are committed by parents or educators.²⁹

4. *Inducing a Minor to Commit a Crime*

According to article 165, inducing a minor to commit a crime is punishable with imprisonment. The Criminal Code provides for longer terms of imprisonment if these crimes are committed by the parent or educator. In certain cases, the Criminal Code also bans persons implicated in inciting criminal activity by a minor (educators or other persons engaged in childcare) from occupying certain positions.³⁰

According to article 166.1, engaging minors in the consumption of alcoholic beverages, controlled substances, and narcotics, as well as inducing minors to engage in begging and homelessness, is punishable with fines or imprisonment depending on the severity, conditions of the crimes committed, and persons who committed such crimes with harsher penalties for parents and educators.³¹

5. *Illegal Separation of the Child from Parents*

Article 167 prohibits separating children from their parents without the parents' consent unless prescribed by law. Violations of this provision are subject to fines and/or imprisonment terms

²⁷ *Id.* art. 106.

²⁸ *Id.* art. 132.

²⁹ *Id.* art. 166.

³⁰ *Id.* art. 165.

³¹ *Id.* art. 166.1.

based on the circumstances and purpose of the crime and the persons implicated in committing it.³²

6. *Engaging in the Sale or Purchase of a Child*

The Criminal Code prescribes various terms of imprisonment for engaging in selling or purchasing a child. The severity of the punishment depends on the circumstances and persons implicated in committing the crime.³³

7. *Evasion of Duty of Care and Neglect*

The Criminal Code prescribes several punishments for evading the duty of care. Article 170 stipulates fees and prison terms for parents or educators who evade their duty of care. Stricter punishments are envisaged if the act of evading the duty of care is carried out with cruelty towards the child.³⁴ Should a parent engage in the premeditated evasion of the duty of care or in providing for appropriate living conditions for a minor for more than three months, he or she is liable to fines.

Inflicting damage on a child's life or health by educators or health care professionals is subject to fines, if the damage is moderate. If the same crime is committed by a government official the punishment is a term of imprisonment of up to three years.³⁵

IV. Law on Domestic Violence

As stated in article 2, the guiding principle of the Law on Domestic Violence is, *inter alia*, to act in the best interest of the child.³⁶ The Law defines "domestic violence" as a violent act of a physical, sexual, physiological, or economic nature, or ignoring such an act that was perpetrated against a family member.³⁷ According to article 3 of the Law, wrongfully neglecting to provide for minimal living conditions for the child constitutes domestic violence when perpetrated by the parents or legal guardians.³⁸ The Law envisages a warning, immediate intervention, and protection as remedies for victims of domestic violence.³⁹

Article 7 states that should it be necessary to resort to immediate intervention when a single person living in the family with children is implicated in domestic violence, authorized bodies must promptly (within twenty-four hours) organize guardianship and care of the affected

³² *Id.* art. 167.

³³ *Id.* art. 168.

³⁴ *Id.* art. 170.

³⁵ *Id.* art. 171.

³⁶ Law on Domestic Violence art. 2.

³⁷ *Id.* art. 3.

³⁸ *Id.*

³⁹ *Id.* art. 5.

children.⁴⁰ Article 8 establishes that a person implicated in domestic violence must be responsible for half of the children's expenses with the other parent.⁴¹ The authorized bodies may prohibit child visitation or impose a no-contact order where necessary.⁴² The Law stipulates for protective measures in the case of domestic violence, including acts that involve minors. The initial duration of protective measures is six months with the possibly of up to two extensions for three months each.⁴³

V. The Law on Social Protection of Children Left Without Parental Care

One of the main tasks of the Law on Social Protection of Children Left without Parental Care is to establish foundations for the legal protection of children who lack parental care.⁴⁴ The Law specifies the following social protections and educational privileges for such children:

- Priority placement for children in competitive specialized middle and higher educational institutions;
- Provision of free medical care and nutrition, based on the established minimum nutritional standards;
- Social assistance, as well as measures of socio-psychological rehabilitation;
- Provision of housing in accordance with Armenian law;
- Provision of free legal aid.⁴⁵

VI. Government Policies

A. 2017–2021 Strategic Program

The main goal of the 2017-2021 Strategic Program for Protection of the Rights of the Child is to protect the rights of children who are in the most difficult life circumstances. The Program outlined the following priorities in achieving protection:

- Overall improvement of the system of protection of the rights of the child;
- Provision of accessible and inclusive education;
- Protection of the right to health care;
- Early detection of minors implicated in committing crimes, those who suffered from violence, and (or) those exhibiting anti-social behavior. Prevention of violence against minors;
- Facilitation for the participation of children in cultural life;
- Enabling access to justice.⁴⁶

⁴⁰ *Id.* art. 7.

⁴¹ *Id.* art. 7, § 5.

⁴² *Id.* art. 8 § 6.

⁴³ *Id.* art. 8.

⁴⁴ Law on Social Protection of Children Left without Parental Care art. 4, § 3.

⁴⁵ *Id.* art. 6 (translation by author).

⁴⁶ Strategic Program for the Protection of the Rights of the Child, *supra* note 11, ch. II, § 9 (translation by author).

As noted in the Program, Armenia lacks a centralized body and approach in the protection of the rights of the child. Numerous agencies and government bodies provide services and policy guidelines in a fragmented manner.⁴⁷ This approach often leads to overlooking the rights of the child, and not involving affected children in the decision making process, contrary to the provisions of article 37 of the Constitution.⁴⁸ The Program indicates that Armenia also lacks a system of regular monitoring, observation, and reporting of the rights the child.⁴⁹

The goals of the Program in the social protection and access to justice areas are as follows:

- 50% reduction in the number of children living apart from their families;
- Outsourcing to the nongovernmental sector at least 35% of social services provided to minors. Creation of 30 centers for the provision of alternative services to children;
- Appropriate supervision of guardians and foster-care providers;
- Improved system of data collection and monitoring of the rights of children;
- Establishment of a targeted system for the collection and dissemination of data concerning violence against children. A functioning system of monitoring and assessing children's rights;
- Training of professionals working in the area of juvenile justice;
- Increase by 20% the effectiveness of services provided to minors dealing with the criminal justice system (as perpetrators, witnesses, and victims);
- Provision of educational and cultural services to incarcerated minors, with an aim to reach 80% participation;
- Development of at least 2 programs and 6 events concerning the reintegration of minors who are under probation.⁵⁰

B. Government Bodies Supporting Child Protection

As noted above, Armenia lacks a centralized governmental body to conduct policy development and provide monitoring and data collection in the area of children's rights. The work of government bodies is fragmented and decentralized with weak coordination and no unified policy implementation. One of the government bodies engaged in the prevention of neglect and abuse of children is the Office of the Human Rights Defender. The office has a separate unit dealing with children's rights, which conducts fact-finding missions as well as ongoing monitoring in the area of protection of children's rights.⁵¹

Another government agency working in the field of child protection is the National Commission for the Protection of Children's Rights, which works under the auspices of the Ministry of Labor

⁴⁷ *Id.* ch. III, § 12.

⁴⁸ CONSTITUTION OF THE REPUBLIC OF ARMENIA art. 37.

⁴⁹ Strategic Program for the Protection of the Rights of the Child, *supra* note 11, ch. III.

⁵⁰ *Id.* ch. IV, § 14(1), (5) (translation by author).

⁵¹ HUMAN RIGHTS DEFENDER OF THE REPUBLIC OF ARMENIA, <http://www.ombuds.am/en/staff/staff1/structure.html> (last visited Apr. 24, 2019), archived at <https://perma.cc/7LU2-6HNZ>.

and Social Development. The Commission is a consultative body with an aim to provide unified state policy in the area of children's rights.⁵²

The National Council for Juvenile Justice was established in 2015 and works under the auspices of the Ministry of Justice. In its 2018 annual meeting the Council committed to establishing a centralized statistical database (from all law enforcement and criminal justice bodies) in 2019, which will also reflect child abuse and neglect cases.⁵³ No information about the implementation of this plan could be located.

VII. Main Issues of Concern

Major concerns in the area of protection of children's rights expressed by the UN Committee on the Rights of the Child in its 2013 concluding observations on the combined third and fourth periodic reports of Armenia,⁵⁴ were as follows:

- Lack of financial resources for the implementation of legislation in the area of protection of children's rights.
- Lack of policy coordination. The Committee noted that the National Commission for the Protection of Children's Rights does not effectively perform its functions of coordination between various government bodies, mainly because of insufficient funding.⁵⁵
- Lack of independent monitoring and data collection. This issue was reiterated in the 2018 annual Human Rights Report prepared by the Department of State, where it was noted that "the lack of official, unified data on violence against children limited the government's ability to design adequate national responses and preventive measures."⁵⁶
- Mistreatment and violence against children, especially those held in institutions. The wide application of corporal punishment was also a cause for alarm noted in the report.⁵⁷

⁵² National Commission for the Protection of Children's Rights, REPUBLIC OF ARMENIA, MINISTRY OF LABOR AND SOCIAL ISSUES, http://www.mlsa.am/?page_id=2845 (last visited Apr. 25, 2019), archived at <https://perma.cc/3FDA-65D4>.

⁵³ 2018 Annual Meeting of Council of Juvenile Justice Took Place, MOJ (Dec. 12, 2018), <http://www.moj.am/article/2221>, archived at <https://perma.cc/9QBG-QCSY>.

⁵⁴ Committee on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Armenia, Adopted by the Committee at Its Sixty-third Session (27 May–14 June 2013), U.N. Doc. CRC/C/ARM/CO/3-4 (July 8, 2013), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhss81IekIDkCEQp5QbmiMKNYjXgYjBn4OPPmKOYuTRq%2fHzT43YOgm11GBKxjsYdsTMzcbjXyywlhwVqOdWRb3V%2blS2c7rfvOvlpmjzjHHeqMZX>, archived at <https://perma.cc/6D6S-HCWG>.

⁵⁵ *Id.*

⁵⁶ U.S. DEPARTMENT OF STATE, ARMENIA 2018 HUMAN RIGHTS REPORT, <https://www.state.gov/documents/organization/289345.pdf>, archived at <https://perma.cc/R8Q6-MPNN>.

⁵⁷ *Id.*

- Deprivation of a family environment for children with insufficient foster care. This issue was also emphasized by Human Rights Watch. In its 2017 observation, Human Rights Watch called upon the government to close orphanages and “provide community-based services and quality, inclusive education so that all children, including children with disabilities, can grow up in a family.”⁵⁸

These issues, noted in 2013, apparently still remain a matter of concern today.

⁵⁸ *Armenia: Children Isolated, Needlessly Separated from Families*, HUMAN RIGHTS WATCH (Feb. 12, 2017), <https://www.hrw.org/news/2017/02/22/armenia-children-isolated-needlessly-separated-families>, archived at <https://perma.cc/VQ9D-7TTN>.

Australia

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SUMMARY Child protection legislation and services fall under the jurisdiction of Australia's states and territories, although guiding principles can also be found in key national laws and in the United Nations Convention on the Rights of the Child. Each state and territory has its own legislation specifically related to the care and protection of children, in addition to relevant provisions in various other statutes related to criminal law, juvenile justice, child employment, adoption, and family violence. While each child protection system is different, they have several principles in common. The primary principle is the best interests of the child, with other key principles being early intervention, participation of children and young people in decision making, out-of-home care as a last resort, and culturally specific responses to Aboriginal and Torres Strait Islander people. There are also broadly similar statutory processes, although individual aspects of these processes differ. In addition, in all jurisdictions, physical abuse, emotional abuse (including exposure to family violence), neglect, and sexual abuse are considered grounds for "when a child is in need of protection," and mandatory reporting requirements apply to specific occupational groups in relation to some or all of these types of abuse.

There have been significant reforms to child protection systems and legislation across Australia in recent years, mainly in response to issues identified in various independent reviews. These include changes across the different phases of child protection services, reforms to the structure of relevant government agencies, the strengthening of models of family group conferences, changes to court processes and to care and protection orders, and the introduction or development of therapeutic care frameworks and care models.

At the national level, the *National Framework for Protecting Australia's Children 2009–2020* involves all state and territory governments, as well as nongovernment entities, and contains high level and other supporting outcomes and actions that are being delivered through a series of three-year action plans. It aims to deliver "a substantial and sustained reduction in levels of child abuse and neglect over time." Among the actions are, for example, those related to improving outcomes for Aboriginal and Torres Strait Islander children at risk of entering or in contact with child protection systems, and the establishment and implementation of National Standards for Out-of-Home Care.

In terms of data collection, the Child Protection National Minimum Data Set has been implemented across Australia since 2012-13. The annual collection contains data on children who come into contact with state and territory agencies responsible for child protection, with information extracted from administrative data sets in accordance with nationally agreed definitions and technical specifications.

I. Legal Framework

A. International and National Instruments

In Australia, the governments of the six states and two mainland territories are responsible for child protection legislation and services. However, guiding principles can be found in the United Nations Convention on the Rights of the Child, to which Australia is a signatory, and in key Commonwealth (i.e., federal) legislation,¹ particularly the Family Law Act 1975 (Cth)² and Australian Human Rights Commission Act 1986 (Cth).³ The latter establishes the role and functions of the National Children's Commissioner, which include the following:

- Advocating nationally for the rights and interests of children and young people – this includes all children and young people up to eighteen years of age
- Promoting children's participation in decisions that impact on them
- Providing national leadership and coordination on child rights issues
- Promoting awareness of and respect for the rights of children and young people in Australia
- Undertaking research about children's rights
- Looking at laws, policies and programs to ensure they protect and uphold the rights of children and young people.⁴

A 2011 paper published by the Australian Institute of Family Studies (AIFS) notes that

[c]hild protection concerns are dealt with by state and territory systems that are authorised to intervene when children are at risk of harm in the care of their families. However, allegations about safety, abuse and neglect are also commonly raised in the context of disputes between separated parents about the care of their children. Such disputes are dealt with in the federal family law system and are private law disputes for which the parents are responsible. When allegations of child abuse and/or neglect are raised in cases where the parents are separated, it is possible for both the child protection system and the federal family law system to become involved.⁵

¹ Australian Institute of Family Studies (AIFS), Australian Child Protection Legislation (Child Family Community Australia (CFCA) Resource Sheet, Mar. 2018), <https://aifs.gov.au/cfca/publications/australian-child-protection-legislation>, archived at <https://perma.cc/U8ML-MXC3>.

² Family Law Act 1975 (Cth), <https://www.legislation.gov.au/Details/C2019C00101>, archived at <https://perma.cc/T5DH-W3ZB>.

³ Australian Human Rights Commission Act 1986 (Cth), <https://www.legislation.gov.au/Details/C2019C00030>, archived at <https://perma.cc/4DYP-63PD>.

⁴ *About Children's Rights*, AUSTRALIAN HUMAN RIGHTS COMMISSION, <https://www.humanrights.gov.au/our-work/childrens-rights/about-childrens-rights> (last visited Apr. 18, 2019), archived at <https://perma.cc/3UM4-V6MZ>. See also Australian Human Rights Commission Act 1986 (Cth) s. 46MB. For background information on children's rights in Australia see LISA WHITE, CHILDREN'S RIGHTS: AUSTRALIA (Law Library of Congress, Aug. 2007), <https://www.loc.gov/law/help/child-rights/australia.php>.

⁵ Daryl Higgins & Rae Kaspiew, *Child Protection and Family Law . . . Joining the Dots*, 34 NCPC ISSUES 1 (2011), <https://aifs.gov.au/cfca/sites/default/files/publication-documents/issues34.pdf>, archived at <https://perma.cc/3UE8-M3EN>.

Furthermore, although the major responsibility for responding to child protection issues falls on the states and territories, “the Commonwealth also plays an important role through its provision of universal services for families and children, targeted services for vulnerable families, and through the family law system.”⁶

Part VII of the Family Law Act 1975 (Cth), which specifically relates to children, sets out the following objectives and underlying principles:

- (1) The objects of this Part are to ensure that the best interests of children are met by:
 - (a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and
 - (b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
 - (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
 - (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- (2) The principles underlying these objects are that (except when it is or would be contrary to a child’s best interests):
 - (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
 - (b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and
 - (c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
 - (d) parents should agree about the future parenting of their children; and
 - (e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).
- (3) For the purposes of subparagraph (2)(e), an Aboriginal child’s or Torres Strait Islander child’s right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

⁶ *Id.* at 4.

- (a) to maintain a connection with that culture; and
 - (b) to have the support, opportunity and encouragement necessary:
 - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
 - (ii) to develop a positive appreciation of that culture.
- (4) An additional object of this Part is to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.⁷

The child protection systems in Australian states and territories are also guided by the *National Framework for Protecting Australia's Children 2009-2020*, which was endorsed by the Council of Australian Governments in April 2009.⁸ AIFS explains that “the National Framework is a cooperative document that aims to provide a shared, national agenda for change in the way Australia manages child protection issues.”⁹ This includes “work at a policy and practice level” to address discrepancies that exist across the legislation of the states and territories.¹⁰ Further information about the National Framework is provided in Part II, below.

In the context of data collection regarding child abuse and neglect, the Child Protection National Minimum Data Set was first implemented in the 2012-13 reporting year, with “state and territory departments responsible for protecting children now collect[ing] and report[ing] data according to a set of agreed technical specifications.”¹¹ Information regarding the data collection system is provided in part III, below.

⁷ Family Law Act 1975 (Cth) s 60B.

⁸ PROTECTING CHILDREN IS EVERYONE'S BUSINESS: NATIONAL FRAMEWORK FOR PROTECTING AUSTRALIA'S CHILDREN 2009-2020 (2009) (NATIONAL FRAMEWORK), https://www.dss.gov.au/sites/default/files/documents/child_protection_framework.pdf, archived at <https://perma.cc/W3WG-PNUC>.

⁹ Australian Child Protection Legislation, *supra* note 1.

¹⁰ *Id.*

¹¹ AIFS, Child Abuse and Neglect Statistics (CFCA Resource Sheet, June 2017), <https://aifs.gov.au/cfca/publications/child-abuse-and-neglect-statistics>, archived at <https://perma.cc/TX77-MLVH>.

B. State and Territory Legislation

The following table lists the primary child protection laws and responsible agencies¹² in each state and territory:

Jurisdiction	Principal Legislation	Responsible Agency
Australian Capital Territory	Children and Young People Act 2008 (ACT) ¹³	Child and Youth Protection Service ¹⁴
New South Wales	Children and Young Persons (Care and Protection) Act 1998 (NSW) ¹⁵	Family and Community Services ¹⁶
Northern Territory	Care and Protection of Children Act 2007 (NT) ¹⁷	Territory Families ¹⁸
Queensland	<i>Child Protection Act 1999 (Qld)</i> ¹⁹	Department of Child Safety, Youth and Women ²⁰

¹² See AIFS, Reporting Child Abuse and Neglect: Information for Service Providers (CFCA Resource Sheet, Oct. 2018), <https://aifs.gov.au/cfca/publications/cfca-resource-sheet/reporting-child-abuse-and-neglect>, archived at <https://perma.cc/4GWT-S7FB>.

¹³ Children and Young People Act 2008 (ACT), <https://www.legislation.act.gov.au/View/a/2008-19/current/PDF/2008-19.PDF>, archived at <https://perma.cc/GV4C-SW99>.

¹⁴ *Child and Youth Protection Services*, ACT GOVERNMENT, COMMUNITY SERVICES, <https://www.communityservices.act.gov.au/ocyfs/children/child-and-youth-protection-services> (last visited Apr. 18, 2019), archived at <https://perma.cc/9UU7-A9FX>.

¹⁵ Children and Young Persons (Care and Protection) Act 1998 (NSW), <https://www.legislation.nsw.gov.au/#/view/act/1998/157/whole>, archived at <https://perma.cc/6CSM-4HXK>.

¹⁶ *FACS Services that Keep Children Safe*, FAMILY AND COMMUNITY SERVICES, <https://www.facs.nsw.gov.au/families/Protecting-kids/keeping-children-safe/child-protection-services> (last updated Oct. 10, 2017), archived at <https://perma.cc/4GMJ-3DD7>.

¹⁷ Care and Protection of Children Act 2007 (NT), <https://legislation.nt.gov.au/Legislation/CARE-AND-PROTECTION-OF-CHILDREN-ACT-2007>, archived at <https://perma.cc/SP4V-6KFY>.

¹⁸ *Child Protection and Out of Home Care Policies*, TERRITORY FAMILIES, <https://territoryfamilies.nt.gov.au/about/publications-and-policies/child-protection-and-out-of-home-care-policies> (last updated Mar. 15, 2019), archived at <https://perma.cc/P2RW-CA9V>.

¹⁹ Child Protection Act 1999 (Qld), <https://www.legislation.qld.gov.au/view/html/inforce/2018-12-01/act-1999-010>, archived at <https://perma.cc/8PFN-PX4T>.

²⁰ *About Child Protection*, DEPARTMENT OF CHILD SAFETY, YOUTH AND WOMEN, <https://www.csyw.qld.gov.au/child-family/protecting-children/about-child-protection> (last updated June 6, 2018), archived at <https://perma.cc/4UGV-6CD2>.

Jurisdiction	Principal Legislation	Responsible Agency
South Australia	Children and Young People (Safety) Act 2017 (SA) ²¹	Department for Child Protection ²²
Tasmania	<i>Children, Young Persons and their Families Act 1997 (Tas)</i> ²³	Child Safety Service (part of the Department of Health and Human Services) ²⁴
Victoria	<i>Children, Youth and Families Act 2005 (Vic)</i> ²⁵	Child Protection Service (part of the Department of Health and Human Services) ²⁶
Western Australia	<i>Children and Community Services Act 2004 (WA)</i> ²⁷	Child Protection and Family Support (part of the Department of Communities) ²⁸

In addition to the principal child protection legislation listed above, provisions relevant to child protection systems are also contained in state and territory legislation focused on, for example, adoption, family and domestic violence, police powers and responsibilities, youth justice, child employment, and child sex offenders.²⁹ An analysis of these provisions is beyond the scope of this report.

²¹ Children and Young People (Safety) Act 2017 (SA), [https://www.legislation.sa.gov.au/LZ/C/A/CHILDREN_AND_YOUNG_PEOPLE_\(SAFETY\)_ACT_2017/CURRENT/2017.25.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/A/CHILDREN_AND_YOUNG_PEOPLE_(SAFETY)_ACT_2017/CURRENT/2017.25.AUTH.PDF), archived at <https://perma.cc/5U9W-CYCV>.

²² Homepage, SOUTH AUSTRALIA DEPARTMENT FOR CHILD PROTECTION, <https://www.childprotection.sa.gov.au/> (last visited Apr. 18, 2019), archived at <https://perma.cc/FUP8-E836>.

²³ Children, Young Persons and Their Families Act 1997 (Tas), <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-028>, archived at <https://perma.cc/Q448-BPWL>.

²⁴ Child Safety, DEPARTMENT OF HEALTH AND HUMAN SERVICES, <https://www.dhhs.tas.gov.au/children/child-protection-services> (last visited Apr. 18, 2019), archived at <https://perma.cc/8CPN-9B8M>.

²⁵ Child, Youth and Families Act 2005 (Vic), [http://www.legislation.vic.gov.au/domino/web_notes/LDMS/LTObject_Store/ltobjst10.nsf/DDE300B846EED9C7CA257616000A3571/B371BB20CD88689DCA2583CB007F1E2E/\\$FILE/05-96aa108%20authorised.pdf](http://www.legislation.vic.gov.au/domino/web_notes/LDMS/LTObject_Store/ltobjst10.nsf/DDE300B846EED9C7CA257616000A3571/B371BB20CD88689DCA2583CB007F1E2E/$FILE/05-96aa108%20authorised.pdf), archived at <https://perma.cc/DXW3-6EFW>.

²⁶ Child Protection, DEPARTMENT OF HEALTH AND HUMAN SERVICES, <https://services.dhhs.vic.gov.au/child-protection> (last updated Feb. 27, 2019), archived at <https://perma.cc/N3KE-YJ3W>.

²⁷ Children and Community Services Act 2004 (WA), https://www.legislation.wa.gov.au/legislation/statutes.nsf/RedirectURL?OpenAgent&query=mrdoc_41834.pdf, archived at <https://perma.cc/G46X-SQYT>.

²⁸ Homepage, DEPARTMENT OF COMMUNITIES, CHILD PROTECTION AND FAMILY SUPPORT, <https://www.dcp.wa.gov.au/Pages/Home.aspx> (last visited Apr. 19, 2019), archived at <https://perma.cc/EV6T-TNPA>.

²⁹ See Australian Child Protection Legislation, *supra* note 1.

State and territory criminal laws are also relevant in the context of child protection. AIFS notes that

[i]n all Australian jurisdictions, civil child protection legislation exists to protect children and young people from physical abuse. As previously stated, this civil legislation does not focus on the innocence or guilt of the alleged perpetrator, instead it focuses on the safety – particularly the future safety – of the child.

Jurisdictional criminal laws in Australia deal with severe cases of child physical abuse (such as those resulting in permanent or fatal injury) as offences of violence. The specific wording of these laws varies across jurisdictions (ALRC, 2010).³⁰

C. General Features of Child Protection Systems

1. Key Principles

AIFS states that while “[c]hild protection legislation in each state and territory differs according to local needs,” legislation across all jurisdictions has “similar guiding principles in several key areas.”³¹ These include the following:

- The primary principle is the best interests of the child
- Early intervention
- Participation of children and young people in decision making
- Out-of-home care as a last resort
- Culturally specific responses to Aboriginal and Torres Strait Islander people³²

2. Statutory Processes

In terms of the general features of Australia’s child protection systems, the Australian Institute of Health and Welfare (AIHW) lists and summarizes the following statutory processes in a recent report:

- Notifications, investigations, and substantiations. Notifications “are assessed to determine whether an investigation is required, or whether referral to support services is more appropriate.”³³ Investigations aim to determine whether a notification is “substantiated” or “not substantiated.” Where a notification is substantiated, indicating that there is sufficient reason to believe the child is being, or is likely to be, abused or neglected, the relevant

³⁰ AIFS, What Is Child Abuse and Neglect? (CFCA Resource Sheet, Sept. 2018), <https://aifs.gov.au/cfca/publications/what-child-abuse-and-neglect>, archived at <https://perma.cc/KP2W-6A8C>.

³¹ Australian Child Protection Legislation, *supra* note 1.

³² *Id.*

³³ AUSTRALIAN INSTITUTE OF HEALTH AND WELFARE (AIHW), CHILD PROTECTION AUSTRALIA 2017-18, at 3 (Child Welfare Series No. 70, 2019), <https://www.aihw.gov.au/getmedia/e551a2bc-9149-4625-83c0-7bf1523c3793/aihw-cws-65.pdf.aspx?inline=true>, archived at <https://perma.cc/CPJ3-URA6>.

department “will then attempt to ensure the safety of the child or children through an appropriate level of continued involvement.”³⁴

- Care and protection orders. AIHW notes that “[c]ourt is usually a last resort—for example, where the family is unable to provide safe care, where other avenues for resolving the situation have been exhausted, or where the extended family is unable to provide safe alternatives for care of children.”³⁵
- Out-of-home care. AIHW states that “[o]ut-of-home care is considered an intervention of last resort, with the current emphasis being to keep children with their families wherever possible.”³⁶ Furthermore, when children are placed in out-of-home care, “an attempt is made to subsequently reunite children with their families.”³⁷
- Family support services. AIHW states that such services “may be used instead of, or as a complementary service to, a statutory child protection response, and might include developing parenting and household skills, therapeutic care, and family reunification services.”³⁸

Child protection cases are heard in specialized state and territory Children’s Courts, which also handle juvenile justice matters.³⁹

3. Mandatory Reporting

All states and territories have enacted provisions on mandatory reporting of suspected child abuse and neglect by select groups of people. However, AIFS notes that

the laws are not the same across all jurisdictions. The main differences concern who has to report and what types of abuse and neglect have to be reported. There are also other

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ See, e.g., *Homepage*, CHILDREN’S COURT OF NEW SOUTH WALES, <http://www.childrenscourt.justice.nsw.gov.au/> (last updated Mar. 20, 2019), archived at <https://perma.cc/RV4J-7DU6>; *Youth Court of South Australia*, COURTS ADMINISTRATION AUTHORITY OF SOUTH AUSTRALIA, <http://www.courts.sa.gov.au/OurCourts/YouthCourt/Pages/default.aspx> (last visited Apr. 22, 2019), archived at <https://perma.cc/C8CL-QTDK>; *Children’s Court*, MAGISTRATES COURT OF TASMANIA, https://www.magistratescourt.tas.gov.au/about_us/childrens_division (last visited Apr. 22, 2019), archived at <https://perma.cc/7MAR-8P2A>; *Homepage*, CHILDREN’S COURT OF VICTORIA, <https://www.childrenscourt.vic.gov.au/> (last visited Apr. 22, 2019), archived at <https://perma.cc/WD7K-ACD3>; *Homepage*, CHILDREN’S COURT OF WESTERN AUSTRALIA, <https://www.childrenscourt.wa.gov.au/> (last visited Apr. 22, 2019), archived at <https://perma.cc/P6NJ-422L>.

differences, such as the “state of mind” that activates the reporting duty (i.e., having a concern, suspicion or belief on reasonable grounds . . .) and the destination of the report.⁴⁰

With regard to the groups covered by mandatory reporting, a recent book chapter on Australia’s child protection systems states that

[a]lthough the groups required to report differ between the states and territories, they generally now include members of four occupations who work regularly with children; teachers, doctors, police and nurses. Some states include dentists. Only South Australia includes members of the clergy, although this does not apply to suspicions about abuse revealed in the confessional. Other states have added to the groups required to report as the extent of abuse became better known e.g. in NSW teachers were only added once the extent of sexual abuse became known.

As well as mandated reporters, any citizen may make a report and as long as it is in good faith, the reporter is protected under the same legislation as mandated reporters. Only the Northern Territory has made all citizens mandated reporters.⁴¹

In terms of the types of abuse and neglect that must be reported, AIFS states that

[i]n addition to differences describing who is a mandated reporter across jurisdictions, there are differences in the types of abuse and neglect that must be reported. In some jurisdictions it is mandatory to report suspicions of each of the four classical types of abuse and neglect abuse (i.e., physical abuse, sexual abuse, emotional abuse and neglect). In other jurisdictions it is mandatory to report only some of the abuse types (e.g., Vic., ACT). Some jurisdictions also require reports of exposure of children to domestic violence (e.g., NSW, Tas.).

It is important to note that in most jurisdictions the legislation generally specifies that except for sexual abuse (where all suspicions must be reported), it is only cases of significant abuse and neglect that must be reported. . . . Reflecting the original intention of the laws, the duty does not apply to any instance of “abuse” or “neglect” but only to cases that are of sufficiently significant harm to the child’s health or wellbeing to warrant intervention or service provision. However, reflecting the qualitative differences presented by sexual abuse as opposed to other forms of abuse and neglect, five jurisdictions apply the reporting duty to all suspected cases of sexual abuse without requiring the reporter to exercise any discretion about the extent of harm that may have been caused or that may be likely (ACT, NT, SA, Tas., WA).

In the other three jurisdictions (NSW, Qld, Vic.), the practical application of the duty to report sexual abuse would still result in reports of all suspected sexual abuse being required, as sexual abuse should always create a suspicion of significant harm. Suspicions of less severe child abuse and neglect may be referred to child and family welfare agencies,

⁴⁰ AIFS, *Mandatory Reporting of Child Abuse and Neglect* (CFCA Resource Sheet, Sept. 2017), <https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect>, archived at <https://perma.cc/B93P-ZABT>.

⁴¹ Kim Oates, *Child Protection Systems in Australia*, in NATIONAL SYSTEMS OF CHILD PROTECTION: UNDERSTANDING THE INTERNATIONAL VARIABILITY AND CONTEXT FOR DEVELOPING POLICY AND PRACTICE 7, 10 (Lisa Merkel-Holguin et al. eds., 2019).

especially where jurisdictions have made more extensive provision for this (e.g., Vic., NSW, Tas.). It is important to note that the duty to report also applies to suspicions that significant abuse or neglect is likely to occur in the future, not only suspected cases of significant abuse or neglect that have already happened.⁴²

In addition to state and territory laws, the Family Law Act 1975 (Cth) includes a mandatory reporting duty on personnel from the Family Court of Australia, the Federal Circuit Court of Australia, and the Family Court of Western Australia.⁴³

4. *Types of Abuse and Neglect*

Another AIFS information sheet explains the different subtypes of child abuse and neglect and states that

- civil child protection legislation in all Australian jurisdictions protects children and young people from physical abuse;
- in all jurisdictions, emotional abuse is also grounds for “when a child is in need of protection”;
- in all jurisdictions, neglect is a ground for “when a child is in need of protection”;
- in many jurisdictions, although the laws are drafted differently, “it is a criminal offence for those with parental responsibility to fail to provide a child with basic needs such as accommodation, food, education and health care”;
- in all jurisdictions, sexual abuse is a ground for “when a child is in need of protection” and various jurisdictions “have civil child protection legislation that provides for specific types of sexual abuse,” in addition to criminal provisions;
- in all jurisdictions, exposure to family violence is grounds for “when a child is in need of protection.” This is “normally dealt with under the category of emotional and psychological abuse. However, in some jurisdictions (e.g. NSW and Tasmania) there is specific mention of family violence as grounds for protection.”⁴⁴

D. Reforms

A 2017 AIFS report stated that

[c]onsiderable changes to systems for protecting children are planned or underway right across Australia. These are being designed and implemented mainly in response to shortcomings identified in independent reviews. They aim to reduce the number of children involved in statutory child protection and out-of-home care (OOHC) and achieve greater permanence and improved outcomes for children who enter OOHC. Addressing the over-representation of Aboriginal children and families in all areas of the statutory

⁴² Mandatory Reporting of Child Abuse and Neglect, *supra* note 40.

⁴³ Family Law Act 1975 (Cth) ss 4 & 67ZA.

⁴⁴ What Is Child Abuse and Neglect?, *supra* note 30. See also *Child Protection Legislation by Jurisdiction*, AIHW, <https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/child-protection-legislation-by-jurisdiction> (last updated Feb. 8, 2019), archived at <https://perma.cc/4PBY-MI9D>.

child protection system, particularly the high number of Aboriginal children entering OOHC, is an area of particular focus for reform.⁴⁵

The key messages in the report included the following points:

- Systems for child protection in Australia today are facing significant challenges including insufficient capacity to meet the quantity and complexity of cases into statutory child protection and out-of-home care (OOHC), failure to improve outcomes for children in OOHC and the over-representation of Aboriginal children in statutory child protection and OOHC.
- There has been a remarkable degree of reform and change in child protection systems across Australia in recent times.
- While strategies have been adopted in response to specific concerns and the unique context of service delivery in each jurisdiction, there are many parallels between jurisdictions.
- Several jurisdictions are establishing new approaches to build a more robust and coordinated community service system, reconfiguring their OOHC and leaving care systems and investing in Aboriginal service organisations, Aboriginal service practices and Aboriginal workforce capacity.⁴⁶

Major reviews and inquiries related to child protection systems conducted in recent years at the state and national levels have included the following:⁴⁷

- Royal Commission into Institutional Responses to Child Sexual Abuse (completed 2017)
- Royal Commission into the Protection and Detention of Children in Northern Territory (completed 2016)
- Queensland Child Protection Commission of Inquiry (completed 2013)
- Protecting Victoria's Vulnerable Children Inquiry (completed 2012)
- Child Protection Systems Royal Commission (South Australia) (completed 2016)
- Children in State Care Commission of Inquiry (South Australia) (completed 2008)
- Special Commission of Inquiry into Child Protection Services in New South Wales (completed 2008)

⁴⁵ SARAH WISE, DEVELOPMENTS TO STRENGTHEN SYSTEMS FOR CHILD PROTECTION ACROSS AUSTRALIA (CFCA Paper No. 44, AIFS, 2017), https://aifs.gov.au/cfca/sites/default/files/publication-documents/44_child_protection_reforms.pdf, archived at <https://perma.cc/QC3T-LKD2>. See also AIHW, CHILD PROTECTION AUSTRALIA 2017-18: APPENDIXES C TO E, at 19-35 (Appendix D: Recent State and Territory Policy Changes), <https://www.aihw.gov.au/getmedia/af454795-fea6-4d98-9347-1322a95c4e38/aihw-cws-65-appendixes.pdf.aspx>, archived at <https://perma.cc/4CCT-27F3>; NATIONAL FRAMEWORK, *supra* note 8, at 42-64 (covering reforms during the period 2000-2009).

⁴⁶ WISE, *supra* note 45, at 1.

⁴⁷ *Id.* at 30-31. See also CHILD PROTECTION AUSTRALIA 2017-18: APPENDIXES C TO E, *supra* note 45, at 36-37 (Appendix E: Inquiries into Child Protection Services).

Multiple other reports and studies have also been published by government, nonprofit, and academic institutions that examine aspects of, and issues within, Australia's child protection systems.⁴⁸

In terms of recent reforms, the AIHW report referred to above states that, in relation to statutory child protection, "[j]urisdictions have made several changes across the reporting, intake, investigation/assessment, case planning and case management phases of child protection services."⁴⁹ This includes changes to broaden the occupational groups designated under the mandatory reporting rules in Western Australia, the ACT, Queensland, and Victoria; clarification of the mandatory reporting guidelines in New South Wales and Queensland; the introduction of a reportable conduct scheme in the ACT; and a new definition of emotional abuse in Western Australia that includes psychological abuse and exposure to domestic violence.⁵⁰

There have also been reforms to the way relevant government agencies are structured and operated: "Western Australia (metropolitan district offices) and the Northern Territory have moved to a central child protection intake model, with the Northern Territory providing a 24-hours a day, seven-days a week response. In Victoria, eight business-hour regional intake services have been replaced by four business-hour divisional services."⁵¹ Furthermore, "several jurisdictions are moving to a more multidisciplinary approach to the statutory child protection investigation process."⁵²

In terms of ongoing interventions, "models of family group conferences/meetings have also been introduced or are being strengthened at various points in the child protection process (e.g., prior to court proceedings and/or during case planning) to empower families, enhance partnerships with parents involved with statutory child protection and avoid contested court hearings."⁵³ In addition, the ACT has introduced independent advocacy support for families of children at risk of, or who have entered, the care system.⁵⁴

Changes have also been made to court processes and to care and protection orders. Furthermore, across Australia, "there has been the widespread introduction and/or development of therapeutic care frameworks and care models."⁵⁵

⁴⁸ For examples of publications see *Publications*, AIFS, CFCA, <https://aifs.gov.au/cfca/publications> (last visited Apr. 18, 2019), archived at <https://perma.cc/7L99-Y378>; *Child Protection, ANALYSIS AND POLICY OBSERVATORY*, <https://apo.org.au/collections/child-protection> (last visited Apr. 18, 2019), archived at <https://perma.cc/VS2F-5UL5>.

⁴⁹ CHILD PROTECTION AUSTRALIA 2017-18, *supra* note 33, at 8.

⁵⁰ *Id.* at 9.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

II. Policy and Practice

In addition to legislative reforms, AIHW notes that

[c]hild protection policies and practices are under continual development in each jurisdiction. There has been an increasing national focus on early intervention and family support services to help prevent families entering or re-entering the child protection system, and minimise the need for more intrusive interventions.

Most jurisdictions have enacted strategies that try to help families in a more holistic way, by coordinating service delivery, and providing better access to different types of child and family services.⁵⁶

It further explains some important differences in child protection policies and practices, including in relation to mandatory reporting of child abuse and neglect, policies for assessing child protection notifications, the various activities that are categorized as investigations, and the thresholds for what is considered a substantiated notification.⁵⁷ There are also differences in policies and definitions regarding out-of-home care.⁵⁸ AIHW states that these differences across jurisdictions, in addition to the variations in legislative provisions, “should be taken into account when making cross-jurisdiction comparisons” in the context of national statistics related to child protection.⁵⁹

A. National Framework for Protecting Australia’s Children 2009-2020

The Commonwealth Department of Social Services states that the National Framework

is an ambitious, long-term approach to ensuring the safety and wellbeing of Australia’s children and aims to deliver a substantial and sustained reduction in levels of child abuse and neglect over time.

The National Framework represents the highest level of collaboration between Commonwealth, State and Territory governments and non-government organisations, through the Coalition of Organisations Committed to the Safety and Wellbeing of Australia’s Children, to ensure Australia’s children and young people are safe and well. It includes high level and other supporting outcomes and actions which are being delivered through a series of three-year action plans.⁶⁰

⁵⁶ *Id.* at 4 (citations in original omitted).

⁵⁷ *Id.*

⁵⁸ *Id.* at 5.

⁵⁹ *Id.* at 4.

⁶⁰ *National Framework for Protecting Australia’s Children 2009–2020*, DEPARTMENT OF SOCIAL SERVICES, <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business> (last updated Apr. 27, 2018), archived at <https://perma.cc/ASK3-8Q7E>. Action plans and annual reports related to the implementation of the National Framework are available at *Protecting Australia’s Children*, DEPARTMENT OF SOCIAL SERVICES, <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/protecting-australias-children> (last updated Jan. 30, 2019), archived at <https://perma.cc/8PHR-LTXM>. For background information on the establishment of the National Framework

The National Framework “looks in detail at the need for Commonwealth, State and Territory governments and non-government organisations to work together to protect Australia’s children.”⁶¹ It sets out a high-level outcome (“Australia’s children and young people are safe and well”) and six supporting outcomes, and states how each will be achieved. The six supporting outcomes are as follows:

- Children live in safe and supportive families and communities
- Children and families access adequate support to promote safety and intervene early
- Risk factors for child abuse and neglect are addressed
- Children who have been abused or neglected receive the support and care they need for their safety and wellbeing
- Indigenous children are supported and safe in their families and communities
- Child sexual abuse and exploitation is prevented and survivors receive adequate support.⁶²

The National Framework focuses on shifting to a public health model that seeks to promote the safety and wellbeing of children, rather than seeing protecting children as “merely a response to abuse and neglect.”⁶³ Under this model,

priority is placed on having universal supports available for all families (for example, health and education). More intensive (secondary) prevention interventions are provided to those families that need additional assistance with a focus on early intervention. Tertiary child protection services are a last resort, and the least desirable option for families and governments.⁶⁴

In addition, the Framework states that it is underpinned by the principles derived from the UN Convention on the Rights of the Child.⁶⁵

The Fourth Action Plan under the National Framework, agreed in December 2018 and covering the period 2018–2020, contains the following key priorities:

- Improving outcomes for Aboriginal and Torres Strait Islander Children at risk of entering, or in contact with child protection systems.
- Improving prevention and early intervention through joint service planning and investment.

see Brian Babington, *National Framework for Protecting Australia’s Children: Perspectives on Progress and Challenges*, 89 FAMILY MATTERS (Dec. 2011), <https://aifs.gov.au/publications/family-matters/issue-89/national-framework-protecting-australias-children>, archived at <https://perma.cc/59R4-9RSE>.

⁶¹ *National Framework for Protecting Australia’s Children 2009–2020*, *supra* note 60.

⁶² NATIONAL FRAMEWORK, *supra* note 8, at 11.

⁶³ *Id.* at 7.

⁶⁴ *Id.*

⁶⁵ *Id.* at 12.

- Improving outcomes for children in out-of-home care by enhancing placement stability through reunification and other permanent care options.
- Improving organisations' ability to keep children and young people safe from abuse.⁶⁶

B. National Standards for Out-of-Home Care

The National Standards for Out-of-Home Care is a priority project under the National Framework. The National Standards "seek to drive improvements in the quality of care so that children and young people in out-of-home care have the same opportunities as other children and young people to reach their potential in life wherever they live in Australia."⁶⁷ The thirteen National Standards, which are accompanied by twenty-two measures, are as follows:

- (1) Children and young people will be provided with stability and security during their time in care.
- (2) Children and young people participate in decisions that have an impact on their lives.
- (3) Aboriginal and Torres Strait Islander communities participate in decisions concerning the care and placement of their children and young people.
- (4) Each child and young person has an individualised plan that details their health, education and other needs.
- (5) Children and young people have their physical, developmental, psychosocial and mental health needs assessed and attended to in a timely way.
- (6) Children and young people in care access and participate in education and early childhood services to maximize their educational outcomes.
- (7) Children and young people up to at least 18 years are supported to be engaged in appropriate education, training and/or employment.
- (8) Children and young people in care are supported to participate in social and/or recreational activities of their choice, such as sporting, cultural or community activity.
- (9) Children and young people are supported to safely and appropriately maintain connection with family, be they birth parents, siblings or other family members.
- (10) Children and young people in care are supported to develop their identity, safely and appropriately, through contact with their families, friends, culture, spiritual sources and communities and have their life history recorded as they grow up.
- (11) Children and young people in care are supported to safely and appropriately identify and stay in touch, with at least one other person who cares about their future, who they can turn to for support and advice.
- (12) Carers are assessed and receive relevant ongoing training, development and support, in order to provide quality care.

⁶⁶ *Protecting Australia's Children*, *supra* note 60.

⁶⁷ DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS & NATIONAL FRAMEWORK IMPLEMENTATION WORKING GROUP, AN OUTLINE OF NATIONAL STANDARDS FOR OUT-OF-HOME CARE: A PRIORITY PROJECT UNDER THE NATIONAL FRAMEWORK FOR PROTECTING AUSTRALIA'S CHILDREN 2009-2020, at 4 (July 2011), https://www.dss.gov.au/sites/default/files/documents/pac_national_standard.pdf, archived at <https://perma.cc/39K9-7RNC>.

- (13) Children and young people have a transition from care plan commencing at 15 years old which details support to be provided after leaving care.⁶⁸

C. Indigenous Children

In a January 2019 information sheet, based on the AIHW child protection data report for 2016-17, AIFS states that

Aboriginal and Torres Strait Islander children are over-represented in child protection and out-of-home care services compared to non-Indigenous children. The reasons for this are complex and are connected to past policies and the legacy of colonisation. Poverty, assimilation policies, intergenerational trauma and discrimination, and forced child removals have all contributed to the over-representation of Aboriginal and Torres Strait Islander children in care, as have cultural differences in child-rearing practices and family structure.

...

Between 1 July 2016 and 30 June 2017, the rate of substantiations of abuse, neglect or risk of harm was 46 per 1,000 Aboriginal and Torres Strait Islander children in Australia. This means that Aboriginal and Torres Strait Islander children were almost seven times more likely than non-Indigenous children to be the subject of substantiated reports of harm/risk of harm.⁶⁹

The “Aboriginal and Torres Strait Islander Child Placement Principle,” which seeks to “enhance and preserve Aboriginal and Torres Strait Islander children’s connection to family and community, and sense of identity and culture,” is reflected in the legislation and policy of all Australian jurisdictions.⁷⁰ According to a 2015 AIFS paper,

[t]he Principle is often conceptualised as the “placement hierarchy”, in which placement choices for Aboriginal and Torres Strait Islander children start with family and kin networks, then Indigenous non-related carers in the child’s community, then carers in another Aboriginal or Torres Strait Islander community. If no other suitable placement with Aboriginal and/or Torres Strait Islander carers can be sought, children are placed with non-Indigenous carers as a last resort, provided they are able to maintain the child’s connections to their family, community and cultural identity.

However, the aims of the Principle are much broader and include: (1) recognition and protection of the rights of Aboriginal and Torres Strait Islander children, family members and communities in child welfare matters; (2) self-determination for Aboriginal and Torres Strait Islander people in child welfare matters; and (3) reduction in the disproportionate

⁶⁸ *Id.* at 7.

⁶⁹ AIFS, Child Protection and Aboriginal and Torres Strait Islander Children (CFCA Resource Sheet, Jan. 2019), <https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children>, archived at <https://perma.cc/G4J7-AC9Z>.

⁷⁰ Fiona Arney et al., *Enhancing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle*, at 1 (CFCA Paper No. 34, 2015), <https://aifs.gov.au/cfca/sites/default/files/cfca34.pdf>, archived at <https://perma.cc/KZ35-83GY>.

representation of Aboriginal and Torres Strait Islander children in the child protection system.⁷¹

The paper states that implementation of the Principle “varies between and within jurisdictions, and concerns have been raised about the implementation of the Principle in terms of the physical, emotional and cultural safety of children.”⁷² However, improved implementation of the Principle “has become the focus of national attention and action,” including as part of the National Framework and other relevant national projects, including the National Standard for Out-of-Home Care.⁷³ The Department of Social Services states that a key achievement under the Fourth Action Plan of the National Framework, outlined above, has been the holding of workshops with state and territory child protection practitioners and policy makers based on a new guidance document that seeks to improve understanding and implementation of the Principle.⁷⁴

III. Data Collection and Analysis

The Child Protection National Minimum Data Set (CP NMDS), which was first implemented in 2012–13,⁷⁵

is an annual collection of information on child protection in Australia. It contains data on children who come into contact with state and territory departments responsible for child protection including: notifications, investigations and substantiations; care and protection orders; funded out-of-home care; and data for reporting on the National Standards for Out-of-Home Care. Data relating to carer households are also collected.⁷⁶

AIHW states that

[t]he state and territory departments and the AIHW jointly fund the annual collation, analysis and publication of child protection data. . . . The CP NMDS consists of several unit record (child-level) files, extracted from state and territory child protection administrative data sets according to nationally agreed definitions and technical specifications.

. . .

⁷¹ *Id.* at 1–2.

⁷² *Id.* at 2.

⁷³ *Id.* at 6.

⁷⁴ *Protecting Australia’s Children*, *supra* note 60; *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle*, SNAICC – NATIONAL VOICE FOR OUR CHILDREN (June 30, 2017), <https://www.snaicc.org.au/understanding-applying-aboriginal-torres-strait-islander-child-placement-principle/>, archived at <https://perma.cc/US46-C3PW>.

⁷⁵ See AIHW, A NEW APPROACH TO NATIONAL CHILD PROTECTION DATA: IMPLEMENTATION OF THE CHILD PROTECTION NATIONAL MINIMUM DATA SET (Child Welfare Series No. 59, 2014), <https://www.aihw.gov.au/getmedia/2e0bedbb-d5b0-4484-922b-a666f0326147/18012.pdf.aspx?inline=true>, archived at <https://perma.cc/EA65-329L>.

⁷⁶ *Child Protection National Minimum Data Set (CP NMDS)*, AIHW, <https://www.aihw.gov.au/about-our-data/our-data-collections/child-protection-national-minimum-data-set> (last updated Jan. 9, 2019), archived at <https://perma.cc/XPC7-A4JC>.

Data for these components are based on unit record-level data for all jurisdictions except New South Wales (where data are based on aggregate data, using the method predating the CP NMDS). Other jurisdictions also supplied data in aggregate format for tables where unit record data were not available. This includes all data about the use of intensive family support services for all jurisdictions.⁷⁷

Data from the CP NMDS is published annually by AIHW. The most recent publication of the statistics, *Child Protection Australia 2017-18*, was released in March 2019. Data is also published in annual reports of the Council of Australian Governments on progress in implementing the National Framework and in the Productivity Commission's reports on government services.⁷⁸ Source data tables are also published by AIHW.⁷⁹

In the 2017-18 report, AIHW notes various data limitations arising from legislative and policy changes in the different jurisdictions and states that, as a result, the data presented should not be compared directly with previous versions of the report.⁸⁰ An appendix to the report explains the policy and practice differences in the states and territories relevant to data collection.⁸¹

⁷⁷ CHILD PROTECTION AUSTRALIA 2017-18, *supra* note 33, at 6-7.

⁷⁸ *Id.* at 7.

⁷⁹ *Child Protection: Data*, AIHW, <https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/data> (last updated Aug. 10, 2017), archived at <https://perma.cc/854N-SRM8>.

⁸⁰ CHILD PROTECTION AUSTRALIA 2017-18, *supra* note 33, at 8.

⁸¹ CHILD PROTECTION AUSTRALIA 2017-18: APPENDIXES C TO E, *supra* note 45, at 1-18 (Appendix C: Policy and Practice Differences in States and Territories).

Brazil

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SUMMARY The Constitution provides the principles to be followed for the protection of children and adolescents in Brazil. The Child and Adolescent Statute provides for their full protection, including the right to life and health; the right to freedom, respect, and dignity; and the criminalization of several types of conduct that is harmful to them. The Penal Code criminalizes conduct involving abuse and sexual offenses against minors, among other relevant offenses. Labor laws protect and prevent minors from labor exploitation. A federal council is in charge of the preparation of policies geared towards the defense of the rights of children and adolescents. There is no centralized national database that collects statistics on child abuse.

I. Constitutional Principles

Article 6 of the Brazilian Constitution determines that education, health, nutrition, labor, housing, transportation, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights in accordance with the Constitution.¹

Nocturnal, dangerous, or unhealthy work for those under eighteen years of age is prohibited. Persons under fourteen years of age cannot work. Work as an apprentice is allowed for persons older than fourteen years of age.²

The Constitution further declares that social assistance must be rendered to whomever may need it, regardless of their contribution to social welfare. The objectives include the protection of the family, maternity, childhood, and adolescence, and assistance to needy children and adolescents.³

Article 227 establishes that it is the duty of the family, the society, and the government to assure, for children, adolescents, and youths (*jovens*), with absolute priority, the protection of the rights to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, liberty and family and community harmony, in addition to safeguarding them against all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.⁴

¹ CONSTITUIÇÃO FEDERAL [C.F.], art. 6, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm, archived at <https://perma.cc/2EYU-GKMJ>.

² *Id.* art. 7(XXXIII).

³ *Id.* art. 203.

⁴ *Id.* art. 227. The Youth Statute, which was enacted by Law No. 12,852 of August 5, 2013 (ESTATUTO DA JUVENTUDE, Lei No. 12.852, de 5 de Agosto de 2013, https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12852.htm, archived at <https://perma.cc/4D86-JVHP>), defines youths as persons aged between 15 and 29 years (*id.* art. 1(§ 1)). However, the dispositions of the Child and Adolescent Statute (ESTATUTO DA CRIANÇA E DO ADOLESCENTE [E.C.A.], Lei No. 8.069, de 13 de Julho de 1990, http://www.planalto.gov.br/CCIVIL_03/LEIS/L8069.htm, archived at <https://perma.cc/J4WC-ITZI>) are applicable to adolescents aged between 15 and 18 years, and, exceptionally, the

The government must promote full health assistance programs for children, adolescents, and youths, permitting participation by nongovernmental entities, through specific policies and obeying the following precepts:

- I - allocation of a percentage of public health funds to assist mothers and infants;
- II - creation of preventative and specialized care programs for the physically or mentally handicapped (sensorial or mental), as well as programs of social integration for handicapped adolescents or youths, through job training and community living, and facilitation of access to public facilities and services by elimination of architectural obstacles and all forms of discrimination.⁵

The right to special protection must encompass the following aspects:

- I – a minimum age of fourteen years to be allowed to work, observing the provisions of art. 7(XXXIII) of the Constitution that prohibits night, dangerous, or unhealthy work for minors under eighteen years of age as well as any work for minors under fourteen years of age, except as an apprentice;
- II – guarantee of social security and labor rights;
- III – guarantee of access to school for the adolescent and youth worker;
- IV – guarantee of full and formal understanding of the charges of an infraction, equality with respect to the procedural phase and technical defenses by qualified professionals, according to the provisions of specific protective legislation;
- V – compliance with the principles of brevity, exceptionality and respect for the particular condition of being a developing individual when applying any liberty-depriving measure;
- VI – Government encouragement, through legal assistance, fiscal incentives and subsidies, as provided by law, for protection through guardianship of orphaned or abandoned children or adolescents;
- VII – prevention and specialized treatment programs for children, adolescents and youths addicted to narcotics and related drugs.⁶

Article 227(§ 4) further determines that the law must severely punish abuse of, violence towards, and sexual exploitation of children and adolescents.⁷ Children born inside or outside wedlock or who have been adopted must have the same rights and qualifications and any discriminatory designation of their filiation is forbidden.⁸

Youth Statute, when it does not conflict with the norms of full protection of adolescents set forth by the Child and Adolescent Statute (*id.* art. 1(§ 2)). An unofficial English translation of the ECA without amendments is available on the website of the US Executive Office for Immigration Review, at <https://www.justice.gov/sites/default/files/eoir/legacy/2014/09/29/Statute%20of%20the%20Child%20and%20Adolescent.pdf>, archived at <https://perma.cc/K7HW-QKSI>.

⁵ C.F. art. 227(§ 1).

⁶ *Id.* art. 227(§ 3).

⁷ *Id.* art. 227(§ 4).

⁸ *Id.* art. 227(§ 6).

Article 228 of the Constitution specifies that minors under eighteen years of age may not be held criminally liable and must be subject to the rules of special legislation for minors.⁹

In addition, article 229 of the Constitution dictates that it is the duty of the parents to assist, raise, and educate their underage children.¹⁰

II. Child and Adolescent Statute

On July 13, 1990, Brazil enacted the Child and Adolescent Statute through Law No. 8,069, which provides for the full protection of children and adolescents.¹¹ For the purposes of the law, a child is considered to be a person less than twelve years of age and an adolescent is a person between twelve and eighteen years of age.¹² In some exceptional cases foreseen in the statute, it also applies to persons between the ages of eighteen and twenty-one years.

Children and adolescents enjoy all the fundamental rights inherent to the human person, without prejudice to the integral protection referred to in Law No. 8,069, ensuring, by law or by other means, all the opportunities and facilities, in order to provide them with physical, mental, moral, spiritual and social development, in conditions of freedom and dignity.¹³

In accordance with articles 6 and 227 of the Constitution, the Statute establishes that the family, the community, the society in general, and the government have the duty to guarantee, with absolute priority, the enforcement of the right to life, health, food, education, sports, leisure, professionalization, culture, dignity, respect, freedom, and close family and community association.¹⁴

Pursuant to article 5 of the Statute, no child or adolescent may be subjected to any form of negligence, discrimination, exploitation, violence, cruelty, and oppression, and any attack, by action or omission, on their fundamental rights is punishable.¹⁵

A. Right to Life and Health

Article 7 of the Statute proclaims that children and adolescents have the right to protection of life and health through the implementation of social public policies that enable satisfactory conditions for births and for the health and harmonious development of children.¹⁶

⁹ *Id.* art. 228,

¹⁰ *Id.* art. 229

¹¹ E.C.A. art. 1.

¹² *Id.* art. 2.

¹³ *Id.* art. 3.

¹⁴ *Id.* art. 4.

¹⁵ *Id.* art. 5.

¹⁶ *Id.* art. 7.

Cases of suspected or confirmed physical punishment, cruel or degrading treatment, and ill-treatment against children or adolescents must be reported to the Guardianship Council (*Conselho Tutelar*) of the respective locality, without prejudice to other legal provisions.¹⁷

The health services, social assistance services, the Specialized Reference Center for Social Assistance (*Centro de Referência Especializado de Assistência Social, Creas*) and other organs of the System of Guarantee of Rights of the Child and the Adolescent (*Sistema de Garantia de Direitos da Criança e do Adolescente*) must give highest priority to the care of children in the early childhood age group where there is suspected or confirmed violence of any nature, and must prepare a unique therapeutic project that includes network intervention and, if necessary, home monitoring.¹⁸

B. Right to Freedom, Respect, and Dignity

Children and adolescents have the right to freedom, respect, and dignity as human persons in the process of development and as subjects of civil, human, and social rights guaranteed by the Constitution and laws.¹⁹ The right to respect consists in the inviolability of the physical, psychological, and moral integrity of the child and the adolescent, including the preservation of the image, identity, autonomy, values, ideas and beliefs, personal spaces, and objects.²⁰ It is the duty of all to ensure the dignity of the child and the adolescent by safeguarding them from any inhuman, violent, terrifying, vexatious, or embarrassing treatment.²¹

Children and adolescents have the right to be educated and cared for without the use of physical punishment or cruel or degrading treatment as a form of correction, discipline, education or any other pretext, by parents, extended family members, those responsible for them, by public agents carrying out socio-educational measures, or by any person in charge of taking care of them, treating them, educating them, or protecting them.²²

The following definitions apply for the purposes of the Statute:

I - corporal punishment: action of a disciplinary or punitive nature applied with the use of physical force on the child or adolescent that results in:

- a) physical suffering; or
- b) injury;

¹⁷ *Id.* art. 13.

¹⁸ *Id.* art. 13(§ 2). Law No. 13,257 of March 8, 2016, provides for public policies for early childhood. For the purposes of Law No. 13, 257, early childhood is considered to be the period that covers the first six full years or 72 months of a child's life. (Lei No. 13.257, de 8 de Março de 2016, art. 2, https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/l13257.htm, archived at <https://perma.cc/4Y39-DUWD>.)

¹⁹ E.C.A. art. 15.

²⁰ *Id.* art. 17.

²¹ *Id.* art. 18.

²² *Id.* art. 18-A.

II - cruel or degrading treatment: conduct or cruel form of treatment in relation to the child or adolescent that:

- a) humiliates; or
- b) threatens seriously; or
- c) ridicule.²³

Any of the persons referred to above that use physical punishment or cruel or degrading measures as a form of correction, discipline, education, or any other pretext are subject, without prejudice to other appropriate sanctions, to the following measures, which must be applied according to the gravity of the case:

- I - referral to an official or community program of family protection;
- II - referral to psychological or psychiatric treatment;
- III - referral to courses or orientation programs;
- IV - obligation to refer the child to specialized treatment;
- V - a warning.²⁴

The Guardianship Council must apply such measures without prejudice to other legal steps.²⁵

C. Child Labor and Exploitation

Based on principles elaborated in the Constitution, the Child and Adolescent Statute prohibits any work for minors less than fourteen years of age, except as apprentices,²⁶ and dictates that the protection of the work of adolescents is regulated by special legislation.²⁷

Article 62 defines apprenticeship as technical-professional education administered according to the directives and on the basis of the education legislation in force.²⁸ Article 63 lays out the principles to be followed in technical-professional education.²⁹ The statute also assures labor and social security rights for apprentice adolescents older than fourteen years³⁰ and protected work for handicapped adolescents.³¹

²³ *Id.* art. 18-A (sole para.).

²⁴ *Id.* art. 18-B.

²⁵ *Id.* art. 18-B (sole para.).

²⁶ *Id.* art. 60.

²⁷ *Id.* art. 61.

²⁸ *Id.* art. 62.

²⁹ *Id.* art. 63.

³⁰ *Id.* art. 65.

³¹ *Id.* art. 66.

An adolescent who is an employee, apprentice, technical school student, or who is assisted by a governmental or nongovernmental entity must not undertake the following types of work:

- I - nocturnal, carried out between 10:00 PM and 5:00 AM;
- II - dangerous, unhealthy or distressing;
- III - carried out in places prejudicial to the adolescent formation and to his or her physical, psychological, moral and social development;
- IV - held at times and places that do not allow attendance at school.³²

In addition, the Statute establishes that the adolescent worker has the right to acquire a profession and protection at work, which must respect the peculiar conditions of a developing person and equip them with adequate professional qualifications for the job market.³³

D. Prevention

Article 70 of the Statute proclaims that it is the duty of all to prevent the occurrence of a threat or violation of the rights of children and adolescents.³⁴

The Union, the states, the Federal District and the municipalities must act in an articulated manner in the elaboration of public policies and in the execution of actions aimed at curbing the use of physical punishment or cruel or degrading treatment and to spread non-violent forms of education of children and adolescents, with the following main actions:

- I - the promotion of permanent educational campaigns to publicize the right of the child and the adolescent to be educated and cared for without the use of physical punishment or cruel or degrading treatment and instruments for the protection of human rights;
- II - integration with the organs of the Judiciary, the Public Prosecutor's Office and the Public Defender's Office, the Guardianship Council, the Councils for the Rights of Children and Adolescents, and non-governmental entities involved in the promotion, protection and defense of rights of the child and adolescent;
- III - the continuing education and training of health, education and social assistance professionals and other agents who work to promote, protect and defend the rights of children and adolescents to develop the skills necessary for prevention, identification of evidence, diagnosis and coping with all forms of violence against children and adolescents;
- IV - support and encouragement of practices for the peaceful resolution of conflicts involving violence against children and adolescents;
- V - the inclusion, in public policies, of actions aimed at guaranteeing the rights of the child and the adolescent, from prenatal care, and activities with parents and guardians with the objective of promoting information, reflection, debate and guidance on alternatives to the use of physical punishment or cruel or degrading treatment in the educational process;

³² *Id.* art. 67.

³³ *Id.* art. 69.

³⁴ *Id.* art. 70.

VI - the promotion of local inter-sectoral spaces for the articulation of actions and the elaboration of joint action plans focused on families in situations of violence, with the participation of health professionals, social assistance and education, and promotion, protection and defense of the rights of children and adolescents.³⁵

Families with children and adolescents with disabilities must have priority of care in actions and public policies involving prevention and protection.³⁶

E. Enforcement Policy

According to article 86 of the Statute, the policy to enforce the rights of children and adolescents will be implemented through an articulated set of governmental and nongovernmental actions, of the Union, the states, the Federal District and the municipalities.³⁷

Article 87 establishes, *inter alia*, that special services for the prevention and medical and psychosocial care of victims of neglect, ill-treatment, exploitation, abuse, cruelty, and oppression must be one of the lines of action of the enforcement policy.³⁸ Article 88 establishes guidelines for the enforcement policy.³⁹

F. Measures Related to Parents or Guardians

In the event that abuse, oppression or sexual abuse by parents or guardians has been verified, the judicial authority may order, as a precautionary measure, the removal of the aggressor from the common dwelling.⁴⁰ The precautionary measure will also include the provisional fixation of alimony needed by a child or adolescent who is dependent of the aggressor.⁴¹

G. Guardianship Council

According to article 131 of the Statute, the Guardianship Council is a permanent and autonomous, nonjurisdictional body responsible for ensuring the fulfillment of the rights of children and adolescents, as defined in the Statute.⁴²

In each municipality and in each administrative region of the Federal District, there must be at least one Guardianship Council as an organ of the local public administration, composed of five members, elected by the local population for a term of office of 4 four years, allowed one renewal,

³⁵ *Id.* art. 70-A.

³⁶ *Id.* art. 70-A (sole para.).

³⁷ *Id.* art. 86.

³⁸ *Id.* art. 87(III).

³⁹ *Id.* art. 88.

⁴⁰ *Id.* art. 130.

⁴¹ *Id.* art. 130 (sole para.).

⁴² *Id.* art. 131.

through a new election.⁴³ Article 136 of the Statute lists the duties of the Guardianship Council.⁴⁴ Decisions of the Guardianship Council can only be reviewed by the judicial authority at the request of those who have a legitimate interest.⁴⁵

H. Access to Justice

The Statute guarantees to all children and adolescents access to the Public Defender's Office (*Defensoria Pública*), the Public Prosecutor's Office (*Ministério Público*), and all organs of the judiciary.⁴⁶ Judicial assistance is free and will be provided to those who need it through a Public Defender or a nominated lawyer.⁴⁷ The judicial actions under the jurisdiction of the Childhood and Youth Courts (*Justiça da Infância e da Juventude*) are free of charge, except in the case of bad faith.⁴⁸

In judicial proceedings, a minor of less than sixteen years of age is represented and a minor aged between sixteen twenty-one years is assisted by his parents, tutors, or guardian, according to the Civil Code and the Civil Procedure Code.⁴⁹ The judicial authority will nominate a special guardian for the child or adolescent every time there is a conflict between the child's interests and his parents' or guardians' interests or if the child lacks the due legal assistance.⁵⁰ The Statute also prohibits the disclosure of the judicial, police, and administrative acts involving an infraction committed by a minor.⁵¹ Any news regarding the act cannot identify the child or adolescent by photograph, name, filiation, kinship, or residence.⁵²

The Statute authorizes the states and the Federal District to create specialized and exclusive courts for children and youth.⁵³ Such courts are competent, *inter alia*, to receive representations initiated by the Public Prosecutor's Office for the verification of acts of infraction carried out by an adolescent and the application of the pertinent punishment,⁵⁴ to grant remission as a form of suspension or extinction of the judicial procedure,⁵⁵ to receive adoption requests and related matters,⁵⁶ to apply

⁴³ *Id.* art. 132.

⁴⁴ *Id.* art. 136.

⁴⁵ *Id.* art. 137.

⁴⁶ *Id.* art. 141.

⁴⁷ *Id.* art. 141(§ 1).

⁴⁸ *Id.* art. 141(§ 2).

⁴⁹ *Id.* art. 142.

⁵⁰ *Id.* art. 142 (sole para.).

⁵¹ *Id.* art. 143.

⁵² *Id.* art. 143 (sole para.).

⁵³ *Id.* art. 145.

⁵⁴ *Id.* art. 148(I).

⁵⁵ *Id.* art. 148(II).

⁵⁶ *Id.* art. 148(III).

administrative punishments in cases involving a breach of a rule for the protection of a child or adolescent;⁵⁷ and to hear cases involving requests for child custody and guardianship in general.⁵⁸

I. Crimes

1. *Deprivation of Freedom*

The Statute determines that it is illegal to deprive a child or adolescent of his or her freedom without a written order from the competent judicial authority, unless he or she is discovered committing an offense *in flagrante delicto*; such deprivation is punishable with detention from six months to two years.⁵⁹

2. *Vexation or Embarrassment*

Submitting a child or adolescent under a person's authority, guard, or care to vexation or embarrassment is punishable with detention from six months to two years.⁶⁰

3. *Delivery for Payment or Reward*

Promising to deliver a child or pupil to a third party for payment or reward is punishable with imprisonment of one to four years, and fine.⁶¹ The same punishment is imposed on whoever offers or makes the payment or reward.⁶²

4. *Sending Abroad*

The Statute punishes with up to six years in prison whoever promotes or helps in the process of sending a child or adolescent abroad without observing the legal requirements or with the purpose of obtaining profit.⁶³ If violence, a serious threat, or fraud is used, the punishment increases to up to eight years in prison plus the corresponding punishment for the violent acts.⁶⁴

⁵⁷ *Id.* art. 148(VI).

⁵⁸ *Id.* art. 148 (sole para.)(a).

⁵⁹ *Id.* art. 230.

⁶⁰ *Id.* art. 232.

⁶¹ *Id.* art. 238.

⁶² *Id.* art. 238 (sole para.).

⁶³ *Id.* art. 239.

⁶⁴ *Id.* art. 239 (sole para.).

5. Child Pornography

On November 25, 2008, Law No. 11,829⁶⁵ was promulgated to improve the fight against child pornography and to criminalize pedophilia on the internet. It amended articles 240 and 241, included a definition of child pornography, and added articles 241-A, 241-B, 241-C, 241-D e 241-E to the Statute.

According to the amended article 240, producing, reproducing, directing, photographing, filming, or registering, by any means, an explicit sex or pornographic scene involving a child or adolescent is punishable upon conviction with four to eight years in prison and a fine.⁶⁶ The same punishment also applies to recruiting, coercing, or otherwise facilitating the participation of a child or adolescent in such scenes.⁶⁷ The punishment is increased by one-third in certain circumstances, such as when the crime is committed during the exercise of public functions or where the criminal is related to the minor by blood, adoption, guardianship or employment.⁶⁸

Article 241 punishes the sale of such child pornography with up to eight years in prison and a fine.⁶⁹ Article 241-A punishes offering, distributing, or publishing such child pornography with up to six years in prison, including providing the means or services for its storage, or access by computer network.⁷⁰ Article 241-B, punishes with up to four years in prison and a fine the acquisition, possession or storage of such child pornography,⁷¹ subject to certain exceptions.⁷²

Simulating the participation of child or adolescent in a pornographic scene is punishable with up to three years in prison and a fine. The same punishment is applicable to selling, distributing, publishing, owning, or storing such material.⁷³

Enticing or instigating, by any means of communication, a child to engage in lustful acts is punishable with up to three years in prison and a fine. The same punishment is applied to facilitating access of a child to pornography with the purpose of practicing lustful acts with the child, or enticing a child to expose herself in a pornographic or sexually explicit way.⁷⁴

Article 241-E determines that, for the purpose of the crimes described in the Statute, the expression “an explicit sex or pornographic scene” encompasses any situation that involves a

⁶⁵ Lei No. 11.829, de 25 de Novembro de 2008, http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2008/Lei/L11829.htm, archived at <https://perma.cc/6QGL-UKHZ>

⁶⁶ E.C.A. art. 240.

⁶⁷ *Id.* art. 240(§ 1).

⁶⁸ *Id.* art. 240(§ 2).

⁶⁹ *Id.* art. 241.

⁷⁰ *Id.* art. 241-A.

⁷¹ *Id.* art. 241-B.

⁷² *Id.* art. 241-B(§ 2).

⁷³ *Id.* art. 241-C.

⁷⁴ *Id.* art. 241-D.

child or adolescent in explicit sexual activities, real or simulated, or the exhibition of the sexual organs of a child or adolescent for sexual purposes.⁷⁵

6. *Child Prostitution*

The Statute also provides that subjecting a child or adolescent to prostitution or sexual exploitation is punishable with up to ten years in prison and a fine, in addition to the loss of assets and values used in the criminal practice in favor of the Fund for the Rights of the Child and Adolescent (*Fundo dos Direitos da Criança e do Adolescente*) of the federal unit (state or Federal District) in which the crime was committed, except for the right of a third party in good faith.⁷⁶ The same punishment also applies to the owner, manager, or person in charge of a location at which a child or an adolescent is prostituted or sexually exploited.⁷⁷ Such conviction also results in the loss of the license of the location and operation of the establishment.⁷⁸

7. *Firearms*

Selling, providing, or delivering, in any way, a weapon, ammunition, or explosive to a child or adolescent is punishable with up to six years in prison.⁷⁹

8. *Alcohol*

Selling, supplying, serving, providing or delivering, alcoholic beverages or, without just cause, other products whose components may cause physical or psychological dependence to a child or adolescent is punished with up to four years in prison and fine, if the fact does not constitute a more serious crime.⁸⁰

9. *Corruption of Minors*

Corrupting or facilitating the corruption of a person under the age of eighteen years, practicing with him or her a criminal offense or inducing him or her to practice it, is punishable with up to four years in prison.⁸¹ The same punishment also applies to whoever uses any electronic means, including chat rooms on the internet, for such practices.⁸² The punishment is increased by one-

⁷⁵ *Id.* art. 241-E.

⁷⁶ *Id.* art. 244-A.

⁷⁷ *Id.* art. 244-A(§ 1).

⁷⁸ *Id.* art. 244-A(§ 2).

⁷⁹ *Id.* art. 242.

⁸⁰ *Id.* art. 243.

⁸¹ *Id.* art. 244-B.

⁸² *Id.* art. 244-B(§ 1).

third where the offense committed or induced is listed in article 1 of Law No. 8,072 of July 25, 1990, which provides for heinous crimes.⁸³

J. Administrative Offenses

A medical doctor, teacher, or caretaker responsible for health care and elementary education, preschool, or day care who fails to communicate to the competent authority cases of which he or she has knowledge involving suspicion or confirmation of abuse against a child or adolescent is subject to a fine.⁸⁴

A person who unlawfully or illegally disobeys the duties inherent to the family power (*pátrio poder*) or arising from guardianship or custody, as well as from a determination of the judicial authority or the Guardianship Council, is subject to a fine.⁸⁵

III. Civil Code

Article 5 of the Brazilian Civil Code determines that minority ceases at the completion of eighteen years of age.⁸⁶ Paragraph 1 of article 5 further establishes that a minor's incapacity may also cease by the concession of the parents, or one of them in the absence of the other, through a public instrument, independently of judicial sanction or judicial decision of a sixteen year-old minor;⁸⁷ by marriage;⁸⁸ by the effective exercise of public employment;⁸⁹ by graduation from an institution of higher education;⁹⁰ or by the existence of an employment relationship that provides a sixteen-year-old minor with economic support.⁹¹

⁸³ *Id.* art. 244-B(§ 2). Lei No. 8.072, de 25 de Julho de 1990, http://www.planalto.gov.br/ccivil_03/LEIS/L8072compilada.htm, archived at <https://perma.cc/SA4L-PUG5>.

⁸⁴ E.C.A. art. 245.

⁸⁵ *Id.* art. 249.

⁸⁶ CÓDIGO CIVIL, Lei No. 10.406 de 10 de Janeiro de 2002, art. 5, http://www.planalto.gov.br/ccivil_03/LEIS/2002/L10406.htm, archived at <https://perma.cc/Q6DK-EYNX>.

⁸⁷ *Id.* art. 5(§ 1)(I).

⁸⁸ *Id.* art. 5(§ 1)(II).

⁸⁹ *Id.* art. 5(§ 1)(III).

⁹⁰ *Id.* art. 5(§ 1)(IV).

⁹¹ *Id.* art. 5(§ 1)(V).

IV. Penal Code

A. Criminal Liability

For criminal purposes, the Brazilian Penal Code dictates that minors under eighteen years of age are not criminally chargeable and are subject to rules established in special legislation.⁹² The Penal Code also determines that if the perpetrator of a crime is less than twenty-one years of age, the punishment for the crime is attenuated.⁹³ In addition, a guardian (*curador*) is nominated if the person being indicted⁹⁴ or accused⁹⁵ of a crime is a minor.

B. Abuse

A person who exposes to harm the life or health of a person under his or her authority, custody, or supervision for the purpose of education, teaching, treatment, or custody, either by depriving the person of essential food or care, or by subjecting the person to excessive or inappropriate work, or by abusing the means of correction or discipline is punished with up to one year in prison or a fine.⁹⁶ If serious bodily injury occurs, the punishment is increased to up to four years in prison.⁹⁷ If death occurs, the punishment is increased to up to twelve years in prison.⁹⁸ If the crime is committed against a person under fourteen years of age the punishment is increased by one third.⁹⁹

Abusing, for a person's own benefit or the benefit of others, the need or inexperience of a minor, or inducing a minor to act that may cause a legal effect to their own detriment or detriment of a third party is punished with up to six years in prison and a fine.¹⁰⁰

C. Sexual Crimes

While forcing an adult through violence or serious threat to have sex (*conjunção carnal*) or other libidinous act is punished with up to ten years in prison,¹⁰¹ if the victim is between fourteen and

⁹² CÓDIGO PENAL [C.P.], Decreto-Lei No. 2.848 de 7 de Dezembro de 1940, art. 27, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848compilado.htm, archived at <https://perma.cc/7XXU-UKWB>.

⁹³ *Id.* art. 65(l).

⁹⁴ CÓDIGO DE PROCESSO PENAL, Decreto-Lei No. 3.689 de 3 de Outubro de 1941, art. 15, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del3689Compilado.htm, archived at <https://perma.cc/QXU8-ZQDC>.

⁹⁵ *Id.* art. 262.

⁹⁶ C.P. art. 136.

⁹⁷ *Id.* art. 136(§ 1).

⁹⁸ *Id.* art. 136(§ 2).

⁹⁹ *Id.* art. 136(§ 3).

¹⁰⁰ *Id.* art. 173.

¹⁰¹ *Id.* art. 213.

eighteen years of age the punishment is up to twelve years in prison.¹⁰² Having sex or practicing other libidinous acts with a person under the age of fourteen is punished with up to fifteen years in prison.¹⁰³ If the conduct results in serious bodily injury the punishment is up to twenty years in prison.¹⁰⁴ If death occurs, the punishment is up to thirty years in prison.¹⁰⁵ The punishments are applicable regardless of the consent of the victim or the fact that the victim had had sex prior to the crime.¹⁰⁶

Inducing someone under the age of fourteen years to satisfy the lewdness of another is punished with up to five years in prison.¹⁰⁷ Practicing in the presence of a person under the age of fourteen years, or inducing the person to witness, sex or other libidinous acts, in order to satisfy his own or another person's lust is punished with up to four years in prison.¹⁰⁸

Inducing a victim between fourteen and eighteen years of age to satisfy the lewdness of another is punishable with up to five years in prison.¹⁰⁹ The same penalty applies if the agent is the victim's ascendant, guardian (*tutor ou curador*), or person to whom the victim is entrusted for the purpose of education, treatment, or custody.¹¹⁰

D. Prostitution

Inducing someone under the age of eighteen to engage in prostitution or other sexual exploitation is punished with up to fifteen years in prison.¹¹¹

It is a crime to benefit or profit from the prostitution of a third party, which is punished with up to four years in prison and a fine,¹¹² and if the victim is older than fourteen and less than eighteen years of age, or if the perpetrator is the victim's ancestor, tutor, guardian, or a person responsible for the minor's education, treatment, or custody, the punishment is increased to up to six years in prison and a fine.¹¹³ If violence or a serious threat is used, the punishment increases to up to eight years and a fine, plus the corresponding punishment for the violent acts.¹¹⁴

¹⁰² *Id.* art. 213(§ 1).

¹⁰³ *Id.* art. 217-A.

¹⁰⁴ *Id.* art. 217-A(§ 3).

¹⁰⁵ *Id.* art. 217-A(§ 4).

¹⁰⁶ *Id.* art. 217-A(§ 5).

¹⁰⁷ *Id.* art. 218.

¹⁰⁸ *Id.* art. 218-A.

¹⁰⁹ *Id.* art. 227(§ 1).

¹¹⁰ *Id.*

¹¹¹ *Id.* art. 218-B.

¹¹² *Id.* art. 230.

¹¹³ *Id.* art. 230(§ 1).

¹¹⁴ *Id.* art. 230(§ 2).

E. Crimes against Family Assistance

Failing, without just cause, to provide for the subsistence of a spouse, or a child less than eighteen years old or unfit for work, by not giving them the resources necessary or not paying the agreed alimony, is punished with up to four years in prison and a fine.¹¹⁵

Additionally, a parent's entrusting of a child to a person in whose company the parent knows, or should know, the minor is morally or materially in danger is punishable with up to two years in prison.¹¹⁶ If the perpetrator carries out the offense to obtain profit or if the minor is sent abroad, the punishment is increased to up to four years in prison.¹¹⁷ Assisting in the sending of a minor abroad for profit is also punished with up to four years in prison, even if there is no moral or material danger.¹¹⁸

A person to whom someone under eighteen years is entrusted may be punished with up to three months in prison or a fine for allowing the minor to attend gambling houses or houses with a bad reputation (*mal-afamada*); live with a vicious or bad person; attend a spectacle capable of perverting him or her or offending his or her decency (*pudor*); participate in a representation of the same nature; reside or work in a house of prostitution; or beg or serve the beggar by exciting public sympathy.¹¹⁹

F. Crimes Against Family Power

Inducing someone under eighteen to flee from the place where he or she is living by virtue of a law or judicial order; entrusting someone under eighteen to someone else without an order from the parent or guardian (*tutor ou curador*); or failing, without just cause, to deliver someone to a person with a legitimate claim is punished with up to one year in prison or a fine.¹²⁰

V. Labor Laws

A. Decree No. 3,597 of September 12, 2000

On December 14, 1999, the Brazilian Congress issued Legislative Decree No. 178, which approved the texts of Convention 182 and Recommendation 190 of the International Labor Organization on the prohibition of and immediate action for the elimination of the worst forms of child labor.¹²¹ Subsequently, Decree No. 3,597 of September 12, 2000, promulgated Convention 182 and

¹¹⁵ *Id.* art. 244.

¹¹⁶ *Id.* art. 245.

¹¹⁷ *Id.* art. 245(§ 1).

¹¹⁸ *Id.* art. 245(§ 2).

¹¹⁹ *Id.* art. 247.

¹²⁰ *Id.* art. 248.

¹²¹ Decreto Legislativo No, 178, de 1999, art. 1, <https://www2.camara.leg.br/legin/fed/decleg/1999/decretolegislativo-178-14-dezembro-1999-370760-convencao-1-pl.html>, archived at <https://perma.cc/8G5A-4XNX>.

Recommendation 190.¹²² Article 3 of Convention 182 states that the term “the worst forms of child labor” encompasses

- a) all forms of slavery or practices analogous to slavery, such as the sale and trafficking of children, bondage and servitude, and forced or compulsory labor, including forced or compulsory recruitment of children to be used in armed conflicts;
- b) the use, recruitment or offering of children for prostitution, the production of pornography or pornographic performances;
- c) the use, recruitment or supply of children to carry out illicit activities, in particular the production and trafficking of drugs, as defined in relevant international treaties; and,
- d) work which, by its nature or the conditions under which it is carried out, is liable to prejudice the health, safety or morals of children.¹²³

Article 4(1) prescribes that the types of work referred to in article 3(d) (above) must be determined by national law or by the competent authority, after consulting employers’ and workers’ organizations concerned and taking into account relevant international standards.¹²⁴

B. Decree No. 6,481 of June 12, 2008

Decree No. 6,481 of June 12, 2008, approved the List of Worst Forms of Child Labor (TIP List), as set out in the Annex of the decree, in accordance with the provisions of articles 3(d) and 4 of Convention 182.¹²⁵ The employment of a person under eighteen years of age in the activities described in the TIP List is prohibited, except in the hypotheses foreseen in Decree No. 6,481.¹²⁶

C. Law No. 10,097 of December 19, 2000

On December 19, 2000, the government enacted Law No. 10,097¹²⁷ to supplement the part of the Consolidation of Labor Laws¹²⁸ that regulates the protection of the work of minors in order to conform that part to both the Constitution and the Statute.

¹²² Decreto No. 3.597, de 12 de Setembro de 2000, http://www.planalto.gov.br/ccivil_03/decreto/D3597.htm, archived at <https://perma.cc/59PS-6WYY>.

¹²³ *Id.* Convenção 182, art. 3.

¹²⁴ *Id.* art. 4(1).

¹²⁵ Decreto No. 6.481, de 12 de Junho de 2008, art. 1, http://www.planalto.gov.br/ccivil_03/ato2007-2010/2008/decreto/d6481.htm, archived at <https://perma.cc/94Q5-QMH9>.

¹²⁶ *Id.* art. 2.

¹²⁷ Lei No. 10.097 de 19 de Dezembro de 2000, art. 1, http://www.planalto.gov.br/ccivil_03/Leis/L10097.htm, archived at <https://perma.cc/3X8J-7LXF>.

¹²⁸ CONSOLIDAÇÃO DAS LEIS DO TRABALHO, Decreto-Lei No. 5.452 de 1 de Maio de 1943, arts. 402, 403, 428, 429, 430, 431, 432 and 433, https://www.planalto.gov.br/ccivil_03/decreto-lei/Del5452.htm, archived at <https://perma.cc/4P54-4QEW>.

VI. Consolidation of Normative Acts

Decree No. 9,579 of November 22, 2018, consolidates normative acts enacted by the federal executive branch pertaining to, among other things, the protection of children and adolescents. It sets out the responsibilities and organization of the National Council for the Rights of Children and Adolescents, establishes the principles of the National Fund for Children and Adolescents, and establishes federal programs for the child and adolescent.¹²⁹

A. Advertising Control

Article 29 of Decree No. 9,579 determines that advertising is considered abusive to children when it takes advantage of children's lack of judgment or inexperience, and especially when it

- I - incites any form of violence;
- II - exploits fear or superstition;
- III - disregards environmental values;
- IV - is capable of inducing the child to behave in a manner harmful or dangerous to his or her health or safety; or
- V - infringes the provisions of specific legislation that control advertising.¹³⁰

If it is necessary to prove the non-abusiveness of the advertising, the burden of proof lies with its sponsor.¹³¹

B. Reduction of Violence against Children and Adolescents

Decree No. 9,579 created the Commitment for the Reduction of Violence against Children and Adolescents (Compromisso pela Redução da Violência contra Crianças e Adolescentes) with the objective of combining the efforts of the Union, states, Federal District, and the municipalities to promote and defend the rights of children and adolescents.¹³² To comply with Commitment, the federative unities participating in it will act in collaboration with

- I - public or private entities, national or foreign;
- II - civil society organizations, especially those aimed at the interests of children and adolescents;
- III - religious institutions;

¹²⁹ Decreto No. 9.579, de 22 de Novembro de 2018, art. 1, http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2018/Decreto/D9579.htm, archived at <https://perma.cc/EW2M-P8CG>.

¹³⁰ *Id.* art. 29.

¹³¹ *Id.* art. 29(sole para.).

¹³² *Id.* art. 30.

IV - local communities; and

V - families.¹³³

The Union, directly or in collaboration with other federal units and entities participating in the Commitment, will implement the following projects aimed at preventing and reducing violence against children and adolescents:

I - Like Me (*bem-me-quer*), which contemplates children and adolescents at risk, in order to promote the organization of public policies in areas of serious vulnerability to violence, to facilitate the promotion of actions for the integral development of children and adolescents and to strengthen the System for Guaranteeing the Rights of Children and Adolescents (*Sistema de Garantia dos Direitos da Criança e do Adolescente*);

II - Back Home (*Caminho “pra” Casa*), which contemplates the physical reorganization and the qualification of the shelter network and the support to the families to propitiate the return to the sheltered children's home;

III - The Right Measure (*Na Medida Certa*), which contemplates the development of actions for the implementation of the National Socio-Educational Assistance System (*Sistema Nacional de Atendimento Socioeducativo*), with a view to prioritizing the implementation of socio-educational measures and ensuring full respect for the rights of adolescents in conflict with the law; and

IV - National Observatory on the Rights of Children and Adolescents, which includes the monitoring and evaluation of the actions of the Commitment, as well as generating information to support the monitoring of violations of the rights of children and adolescents.¹³⁴

C. National Council for the Rights of the Child and the Adolescent

In 1991, Brazil created the National Council for the Rights of the Child and the Adolescent (*Conselho Nacional dos Direitos da Criança e do Adolescente*, CONANDA).¹³⁵ The CONANDA is responsible, *inter alia*, for the preparation of the general norms of the national policy on the rights of children and adolescents and the inspection of the execution of actions established in the directives contained in articles 87 and 88 (discussed above) of the Statute.¹³⁶

Decree No. 9,579 further details the purpose, competence, organization, and functioning of the CONANDA.¹³⁷

¹³³ *Id.* art. 30 (sole para.).

¹³⁴ *Id.* art. 31.

¹³⁵ Lei No. 8.242 de 12 de Outubro de 1991, art. 1, http://www.planalto.gov.br/ccivil_03/LEIS/L8242.htm, archived at <https://perma.cc/2WUW-AJ7V>.

¹³⁶ *Id.* art. 2.

¹³⁷ Decreto No. 9.579, de 22 de Novembro de 2018, arts. 76–89.

D. National Fund for Children and Adolescents

The National Fund for Children and Adolescents was established by article 6 of Law No. 8,242 of 1991, and has the following principles:

- I - the participation of public and private entities, from the planning to the control of policies and programs aimed at children and adolescents;
- II - the political and administrative decentralization of governmental actions;
- III - the coordination with the obligatory and permanent actions of responsibility of the Public Power; and
- IV - flexibility and agility in the movement of resources, without prejudice to the full visibility of the respective actions.¹³⁸

E. Federal Programs

1. *Happy Child Program*

Article 96 of Decree No. 9,579 created the “Happy Child” Program. The Program has an inter-sectoral character and is set up to promote the integral development of children in early childhood, considering their family and their life context, in accordance with Law No. 13,257 of March 8, 2016, which provides for public policies for early childhood.¹³⁹ For the purposes of article 96, early childhood is considered to be the period that covers the first six full years of a child’s life.¹⁴⁰

2. *Protection Program for Children and Adolescents Threatened with Death*

The Protection Program for Children and Adolescents Threatened with Death was created¹⁴¹ for protecting, in accordance with the provisions of the Statute, children and adolescents exposed to a grave and imminent threat of death, when conventional means are exhausted, by preventing or repressing the threat.¹⁴² The actions of the program may be extended to young people up to twenty-one years old, if they have left the socio-educational system.¹⁴³

The National Secretariat for the Rights of the Child and Adolescent of the Ministry of Human Rights (*Secretaria Nacional dos Direitos da Criança e do Adolescente do Ministério dos Direitos Humanos, SNDCA*) is in charge of the coordination of the program.¹⁴⁴

¹³⁸ *Id.* art. 90.

¹³⁹ *Id.* art. 96.

¹⁴⁰ *Id.* art. 97.

¹⁴¹ *Id.* art. 109.

¹⁴² *Id.* art. 111.

¹⁴³ *Id.* art. 111(§ 1).

¹⁴⁴ *Id.* art. 110.

VII. Data Collection and Analysis

Although cases of child abuse are reported to the local Guardianship Councils,¹⁴⁵ our research found no indication that a centralized national database on the subject is maintained.

The SNDCA is responsible for conducting the national policy for the promotion, protection and defense of the rights of children and adolescents. The primary function of SNDCA is to support inter-sectoral, inter-institutional and inter-departmental actions, and to promote the work of various organs and civil society.¹⁴⁶ The SNDCA coordinates, among other things, the production, systematization and dissemination of child and adolescent information, managing the information systems under its responsibility.¹⁴⁷

In 2018, the Ministry of Human Rights and the SNDCA published a study on violence against children and adolescents with the analysis of scenarios in which such violence occurs and the presentation of public policy proposals.¹⁴⁸ The study's objective was to elaborate strategies, subsidies and necessary inputs to formulate and implement a network of integral protection, and a methodology of care for children and adolescents in situations of high vulnerability.¹⁴⁹

The study brings data collected from the public health system (*Sistema Unico de Saúde*) involving medical care provided to persons with ages between one and nineteen years related to violence.¹⁵⁰ The study also refers to the Index of Homicide in Adolescence (*Índice de Homicídios na Adolescência*, IHA), which was developed in 2009 to measure the impact of lethal violence against this population. According to the study, with IHA it is possible to estimate the risk of homicide mortality in adolescence, more specifically in the 12 to 18 age group.¹⁵¹

This study shows that data is being collected at the national level by the public health system on medical care related to violence against children and adolescents, and on adolescent homicides. However, with respect to child abuse and neglect, data appears not to be collected at the national level.

¹⁴⁵ E.C.A. art. 13.

¹⁴⁶ Secretaria Nacional dos Direitos da Criança e do Adolescente, MINISTÉRIO DA MULHER, DA FAMÍLIA E DOS DIREITOS HUMANOS, <https://www.mdh.gov.br/informacao-ao-cidadao/acoes-e-programas/secretaria-nacional-dos-direitos-da-crianca-e-do-adolescente>, archived at <https://perma.cc/336U-JS2T>.

¹⁴⁷ *Id.*

¹⁴⁸ *Violência contra Crianças e Adolescentes: Análise de Cenários e Propostas de Políticas Públicas*, MINISTÉRIO DOS DIREITOS HUMANOS, 2, <https://www.mdh.gov.br/biblioteca/consultorias/conada/violencia-contras-criancas-e-adolescentes-analise-de-cenarios-e-propostas-de-politicas-publicas.pdf>, archived at <https://perma.cc/FRH8-TH6K>.

¹⁴⁹ *Id.* at 8.

¹⁵⁰ *Id.* at 28-31.

¹⁵¹ *Id.* at 32. The study mentions that the IHA for 2012 was prepared based on data contained in the census of the years 2000 and 2010 (Census IBGE), which served to estimate the number of inhabitants in each municipality within each age group, and on the data on the Mortality Information System (Sistema de Informações sobre Mortalidade) of the Ministry of Health, which is based on death certificates. *Id.*

Canada

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SUMMARY Canada’s Federal Criminal Code describes general criminal offenses such as criminal negligence, assault, and homicide, that are applicable to violent acts against children. It also describes a number of offenses that are specific to children. These include failure to provide the necessities of life, child abandonment, and a wide-ranging number of child-specific sexual offenses. In Canada each province and territory has its own child protection legislation and institutional structures, which are intended to protect children from harm, abuse, or neglect.

I. Introduction

Sections 91 and 92 of the Constitution Act, 1867¹ articulate the jurisdictional division of responsibilities between the federal and provincial governments in Canada. Matters related to civil rights or “of a merely local or private Nature” in the provinces fall within the jurisdiction of the provinces.² Children are not specifically mentioned in the list of subjects, but child welfare appears to be in the provincial and territorial domain, as confirmed by a report prepared by DLA Piper for the National Society for the Prevention of Cruelty to Children (NSPCC), which states that this assignment of power to the provinces is based specifically on section 92(13) of the Constitution Act.³

Additionally, section 7 of the Canadian Charter of Rights and Freedoms stipulates that “[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”⁴ The Supreme Court of Canada has “recognized that child protection proceedings engage not only a parent, but the child’s [section] 7 interests under the Charter. Interference in the parent-child relationship may only be justified if it is in accordance with the principles of fundamental justice.”⁵

¹ Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), <https://laws-lois.justice.gc.ca/eng/Const/FullText.html>, archived at <https://perma.cc/EU7S-N58M>.

² *Id.* § 92.

³ DLA PIPER, CHILD PROTECTION SYSTEMS 15 (Oct. 2015), <https://www.dlapiper.com/~media/files/insights/publications/2015/05/nspccchildprotectionreportoctober2015.pdf>, archived at <https://perma.cc/46FV-UWYR>.

⁴ Canadian Charter of Rights and Freedoms, Constitution Act, 1982, Part 1, § 7. <https://laws-lois.justice.gc.ca/eng/const/page-15.html>, archived at <https://perma.cc/TM58-2844>.

⁵ *Child Protection*, CANADIAN BAR ASSOCIATION, <http://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit/legalAreas/Child-Protection> (last visited Apr. 19, 2019), archived at <https://perma.cc/4NJ7-ZUL6>.

Canada is a party to the Convention on the Rights of the Child, which it signed on May 28, 1990, and ratified on December 13, 1991.⁶ It has also ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict,⁷ and signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography.⁸

II. Federal Laws and Programs

A. Criminal Code

Canada's Criminal Code⁹ contains general criminal offenses, including criminal negligence, assault, and homicide, that are applicable to violent acts against children. There are also a number of child-specific offenses in the Code, including the failure to provide life necessities, child abandonment, and a number of child-specific sexual offenses.¹⁰ According to Canada's Department of Justice, relevant offenses related to the use of physical and sexual violence may include the following:

- assault (causing bodily harm, with a weapon and aggravated assault) (ss. 265-268)
- kidnapping & forcible confinement (s. 279)
- trafficking in persons (ss. 279.01)
- abduction of a young person (ss. 280-283)
- homicide – murder, attempted murder, infanticide and manslaughter (ss. 229-231 and 235)
- sexual assault (causing bodily harm, with a weapon and aggravated sexual assault) (ss. 271-273)
- sexual offences against children and youth (ss. 151, 152, 153, 155 and 170-172)
- child pornography (s. 163.1)¹¹

⁶ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, <https://treaties.un.org/doc/Publication/UNTS/Volume%201577/v1577.pdf>, archived at <https://perma.cc/6XXQ-6FDE>.

⁷ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, 2173 U.N.T.S. 222, https://treaties.un.org/doc/Treaties/2000/05/20000525%2003-37%20AM/Ch_IV_11_bp.pdf, archived at <https://perma.cc/X566-48R4>.

⁸ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, May 25, 2000, 2171 U.N.T.S. 227, https://treaties.un.org/doc/Treaties/2000/05/20000525%2003-16%20AM/Ch_IV_11_cp.pdf, archived at <https://perma.cc/Q5F2-6HUD>.

⁹ Criminal Code, R.S.C., 1985, c. C-46, <https://laws-lois.justice.gc.ca/eng/acts/c-46/FullText.html>, archived at <https://perma.cc/PXZ7-HGUC>.

¹⁰ *Family Violence Laws*, DEPARTMENT OF JUSTICE, <https://www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html#ptcpl> (last updated Aug. 3, 2017), archived at <https://perma.cc/NN3Y-425U>.

¹¹ *Id.*

Relevant offenses related to neglect within the family may include the following:

- failure to provide necessities of life (s. 215)
- abandoning child (ss. 218)
- criminal negligence (including negligence causing bodily harm and death) (ss. 219-221)¹²

Section 215(1)(a) of the Criminal Code of Canada stipulates that a parent is under a legal duty to provide the “necessaries of life” for a child under the age of sixteen years. The section goes on to stipulate as follows:

(2) Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies on him, to perform that duty, if

(a) with respect to a duty imposed by paragraph (1)(a) or (b),

(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

(ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently;

(b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

Punishment

(3) Every one who commits an offence under subsection (2)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.¹³

B. First Nations

Apart from applicable provisions of the federal Criminal Code, the Canadian federal government has no “direct funding nor policy-making jurisdiction in child welfare” except with regard to First Nations children and families living on reserves.¹⁴ At the federal level, Indigenous Services Canada’s (ISC’s) First Nations Child and Family Services program “funds prevention and protection services to support the safety and well-being of First Nations children and families

¹² *Id.*

¹³ Criminal Code, R.S.C., 1985, § 215.

¹⁴ Nico Trocmé et al., *Child Welfare Services in Canada*, in NATIONAL SYSTEMS OF CHILD PROTECTION 27, 37 (Lisa Merkel-Holguin et al. eds., 2019).

living on reserve.”¹⁵ The ISC provides funding to First Nations child and family services agencies, “which are established, managed and controlled by First Nations and delegated by provincial authorities to provide prevention and protection services.”¹⁶ Provincial and territorial child welfare legislation “applies to all child and family service agencies in Canada, both on and off reserve. First Nations agencies, even though funded federally, are not exempted from provincial and territorial legislation since the federal government ‘has never enhanced [its own] child welfare legislation’ and prior to the opening of the First Nations Child and Family Service agencies, they went into agreements with the provinces to deliver child welfare services on reserve.”¹⁷

III. Provincial Laws

A. Structure of Child Welfare

In Canada each province and territory has its own child protection legislation that is “intended to safeguard children from harm, abuse, or neglect.” Approaches to child protection vary somewhat as “each province and territory [has] its own governing legislation and distinctive institutional structures and policies.”¹⁸ Many of the provincial-level child protection laws share some basic features,

. . . including mandatory reporting of suspected child abuse and neglect; child maltreatment investigations and risk and safety assessments as a primary framework for determining service eligibility; the option to use court orders to enforce services; and the placement of children and youth in a range of out-of-home care settings, from kinship care to foster homes to group homes to residential treatment facilities.¹⁹

However, “there is significant variation in the structure and organization of services and in the statutes defining investigation procedures and intervention mandates.”²⁰ In Ontario, for example, “child welfare services are provided by 48 delegated community-run welfare agencies, [and these] agencies provide a broad spectrum of services, ranging from the core investigative function to providing on-going supervision, counselling and some out-of-home care services.” In most other provinces and territories, “services are provided through government offices with varying

¹⁵ *First Nations Child and Family Services*, INDIGENOUS SERVICES CANADA, <https://www.sac-isc.gc.ca/eng/1100100035204/1533307858805> (last updated Feb. 28, 2019), archived at <https://perma.cc/FM6N-GAHA>.

¹⁶ *Id.*

¹⁷ THE NATIONAL COLLABORATING CENTRE FOR ABORIGINAL HEALTH (NCCA), INDIGENOUS CHILDREN AND THE CHILD WELFARE SYSTEM IN CANADA 4 (2017), <https://www.ccnca-nccah.ca/docs/health/FS-ChildWelfareCanada-EN.pdf>, archived at <https://perma.cc/DX2M-5N5E> (quoting *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, Closing Submissions from the Canadian Human Rights Commission, T1340/7008 (2014)).

¹⁸ Nicholas Bala & Kate Kehoe, *Concurrent Legal Proceedings in Cases of Family Violence: The Child Protection Perspective* 5-6 (2017), https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/fv-vf/child_protection.pdf, archived at <https://perma.cc/JK9F-Q2Y4>.

¹⁹ Tocme et al., *supra* note 14, at 27.

²⁰ *Id.*

levels of local independence and of service contracted with non-government organizations.”²¹ According to a paper by Nicholas Bala and Kate Kehoe,

[i]n most provinces and territories, child protection is the responsibility of a government department with local offices that deal exclusively [with] child welfare matters. In Quebec, however, child protection services are provided through regionalized Youth Centres that also provide family counselling, services for families with custody disputes and services to young offenders. In Ontario, children’s aid societies are regionally based non-profit organizations; they are subject to provincial regulation and funding, but have a significant degree of operating autonomy. For historical reasons, in Ontario there are agencies for Catholic and Jewish families in a few large cities. Relatively recently a number of Aboriginal communities across the country have established Aboriginal child protection agencies, a process known as devolution.²²

Each province and territory’s child protection legislation sets an “age range for protective services, called the ‘age of protection’ which varies from one province and territory to another.”²³ According to a 2019 academic paper on child protection in Canada,

[t]he age range for investigating maltreatment covered by each jurisdiction varies, with some jurisdictions limiting child protection mandates to children and youth under 16 (for example, Saskatchewan and Newfoundland), others under 18 (for example, Quebec and Alberta), while British Columbia extend its legislation to youth under 19 (Gough et al. 2009). Ontario’s coverage was limited to children and youth under the age of 16, but will be revised to 18 in 2018. Similarly, in terms of service provided to youth in long-term care, age and conditions for provision of ongoing services varies considerably, with extending care and maintenance being conditionally up to the ages of 18-21 depending on the province.²⁴

All statutes “share a common legislative history” and as a result share many features including, for instance, provisions that “identify both child safety and child well-being as the paramount principles of their legislation.”²⁵ The following provincial and territorial child protection laws “provide for state intervention where a child is in need of protection”:²⁶

²¹ *Id.* at 37.

²² Bala & Kehoe, *supra* note 18, at 6.

²³ *Frequently Asked Questions (FAQs)*, CANADIAN CHILD WELFARE RESEARCH PORTAL (2011), <http://cwrp.ca/faqs>, <https://perma.cc/6FAW-EMEW>.

²⁴ Tocme et al., *supra* note 14, at 39 (citations in original omitted).

²⁵ *Id.* at 38.

²⁶ *Family Violence Laws*, *supra* note 10.

- Alberta: Child, Youth and Family Enhancement Act²⁷
- British Columbia: Child, Family and Community Service Act²⁸
- Manitoba: Child and Family Services Act²⁹
- New Brunswick: Family Services Act³⁰
- Newfoundland and Labrador: Children and Youth Care and Protection Act³¹
- Northwest Territories: Child and Family Services Act³²
- Nova Scotia: Children and Family Services Act³³
- Nunavut: Child and Family Services Act³⁴
- Ontario: Child, Youth and Family Services Act³⁵
- Prince Edward Island: Child Protection Act³⁶
- Quebec: Youth Protection Act³⁷

²⁷ Child, Youth and Family Enhancement Act, RSA 2000, c. C-12, <http://www.qp.alberta.ca/documents/Acts/c12.pdf>, archived at <https://perma.cc/Z7R4-QNC2>.

²⁸ Child, Family and Community Service Act, RSBC 1996, c. 46, http://www.bclaws.ca/civix/document/id/complete/statreg/96046_01, archived at <https://perma.cc/KQ3P-7V79>; see also THE B.C. HANDBOOK FOR ACTION ON CHILD ABUSE AND NEGLECT FOR SERVICE PROVIDERS (June 2017), <https://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/public-safety/protecting-children/childabusepreventionhandbook-serviceprovider.pdf>, archived at <https://perma.cc/RXK7-J6XS>.

²⁹ Child and Family Services Act, CCSM c. C80, <https://web2.gov.mb.ca/laws/statutes/ccsm/c080e.php>, archived at <https://perma.cc/Q3VD-B7GA>.

³⁰ Family Services Act, SNB 1980, c. F-2.2, <https://www.canlii.org/en/nb/laws/stat/snb-1980-c-f-2.2/latest/snb-1980-c-f-2.2.html>, archived at <https://perma.cc/2EVN-BG38>.

³¹ Children and Youth Care and Protection Act, c. C-12.2, <https://www.assembly.nl.ca/Legislation/sr/statutes/c12-2.htm>, archived at <https://perma.cc/3L9L-6KVS>.

³² Child and Family Services Act, SNWT 1997, c. 13, <https://www.justice.gov.nt.ca/en/files/legislation/child-family-services/child-family-services.a.pdf>, archived at <https://perma.cc/F8FA-MVNZ>.

³³ Children and Family Services Act, SNS 1990, c. 5, <https://nslegislature.ca/sites/default/files/legc/statutes/children%20and%20family%20services.pdf>, archived at <https://perma.cc/W7DZ-B7H4>.

³⁴ Child and Family Services Act, SNWT (Nu) 1997, c. 13, https://gov.nu.ca/sites/default/files/child_and_family_services_act.pdf, archived at <https://perma.cc/XRS3-2SRQ>.

³⁵ Child, Youth and Family Services Act, 2017, S.O. 2017, c. 14, Sched. 1, <https://www.ontario.ca/laws/statute/17c14>, archived at <https://perma.cc/4YZR-6XPX>.

³⁶ Child Protection Act, RSPEI 1988, c. C-5.1, https://www.princeedwardisland.ca/sites/default/files/legislation/c-05-1-child_protection_act.pdf, archived at <https://perma.cc/6SVY-IT34>.

³⁷ Youth Protection Act, P-34.1, <http://legisquebec.gouv.qc.ca/en/pdf/cs/P-34.1.pdf>, archived at <https://perma.cc/9QLM-6MXP>.

- Saskatchewan: Child and Family Services Act³⁸
- Yukon: Child and Family Services Act³⁹

B. Child Protection and Removal

According to a DLA Piper report, “[b]roadly speaking, a child can be removed from his or her parents where the child is in need of intervention or protection. The bases upon which a child may be in need of intervention are generally the same throughout the provinces.”⁴⁰ All child protection statutes “define child maltreatment in relatively broad terms, including physical abuse, sexual abuse, neglect and emotional maltreatment.”⁴¹ In British Columbia, for example, “[w]here there is reason to believe a child has been abused or neglected, or is otherwise in need of protection, child protection social workers have the delegated authority to investigate and take appropriate action to ensure that child’s safety.”⁴² Section 13 (1) of B.C.’s Child, Family and Community Service Act stipulates the circumstance under which a child would require protection:

- 13 (1) A child needs protection in the following circumstances:
- (a) if the child has been, or is likely to be, physically harmed by the child's parent;
 - (b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;
 - (c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;
 - (d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;
 - (e) if the child is emotionally harmed by
 - (i) the parent's conduct, or
 - (ii) living in a situation where there is domestic violence by or towards a person with whom the child resides;
 - (f) if the child is deprived of necessary health care;
 - (g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
 - (h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;

³⁸ Child and Family Services Act, SS 1989-90, c. C-7.2, <http://www.publications.gov.sk.ca/freelaw/documents/english/statutes/statutes/C7-2.PDF>, archived at <https://perma.cc/S7ZD-XHVX>.

³⁹ Child and Family Services Act, SY 2008, c. 1, http://www.gov.yk.ca/legislation/acts/chfase_c.pdf, archived at <https://perma.cc/VJ42-5UH5>.

⁴⁰ DLA PIPER, *supra* note 3, at 15.

⁴¹ Tocme et al., *supra* note 14, at 38.

⁴² *Child Protection Services in BC*, BRITISH COLUMBIA GOVERNMENT, <https://www2.gov.bc.ca/gov/content/safety/public-safety/protecting-children> (last visited Mar. 25, 2019), archived at <https://perma.cc/E9US-X8AJ>.

- (i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;
- (j) if the child's parent is dead and adequate provision has not been made for the child's care;
- (k) if the child has been abandoned and adequate provision has not been made for the child's care;
- (l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.⁴³

Provincial and territorial child protection laws provide statutory authority “to investigate reports of a child suspected of being in need of intervention, and the power to decide to take action with respect to that child.”⁴⁴ According to the DLA Piper report on child protection in Canada,

[c]hild protection authorities can obtain a warrant for the apprehension of a child where there are reasonable and probable grounds to believe that the child is in need of intervention or protection, as discussed above. If necessary, this can generally be done on an emergency and/or ex parte basis. However, in special circumstances, a child protection worker can also apprehend a child without a warrant. In Ontario, where a child protection worker believes on reasonable and probable grounds that a child is in need of protection and there would be a substantial risk to the child’s health or safety during the time necessary to bring the matter on for a hearing, the worker may without a warrant bring the child to a place of safety. Similarly, in Alberta and B.C., if a child protection worker has reasonable and probable grounds to believe that the life or health of the child would be seriously and imminently endangered as a result of the time required to obtain an order, they can apprehend the child without order. The statutory authorities and/or police may use force and enter a dwelling house if necessary to apprehend a child.⁴⁵

C. Duty to Report

All provincial and territorial child protection laws include mandatory reporting requirement that apply to professionals working with children, and often apply more broadly to the general public.⁴⁶ In each of the provinces except Quebec, “all persons with information that leads the person reasonably to believe that a child is or might be in need of protection or intervention have a duty to report, with the possible exception of solicitor-client privileged information.”⁴⁷ The duty is not limited to certain professions or persons:

In Ontario and Nova Scotia, this duty to report applies even where the information comes by way of a confidential relationship, such as solicitors, doctors and therapists. Other provinces, such as B.C., Alberta, Manitoba, Saskatchewan, New Brunswick and Newfoundland, exclude a duty to report where the information is privy to solicitor-client

⁴³ Child, Family and Community Service Act, § 13(1) (B.C.).

⁴⁴ DLA PIPER, *supra* note 3, at 16.

⁴⁵ *Id.*

⁴⁶ Tocme et al., *supra* note 14, at 38.

⁴⁷ *Id.*

or Crown privilege. In Quebec, there is no general duty to report all cases of abuse or neglect. There are, however, duties on certain professions to report.⁴⁸

IV. Data Collection

The Canadian Incidence Study of Reported Child Abuse and Neglect (CIS), available on the Public Health Agency's Child Maltreatment portal,⁴⁹ is a "national initiative to collect data on children who come to the attention of a child welfare authority due to alleged or suspected abuse and/or neglect."⁵⁰ Core funding for the studies are provided by the Public Health Agency of Canada (PHAC) and "it is currently one of the key child health surveillance activities" of the PHAC. The CIS is "directed from within the Family Violence Surveillance Section, a part of the Surveillance and Epidemiology Division, Centre for Disease Prevention, Health Promotion and Chronic Disease Prevention Branch of PHAC."⁵¹ Additional "financial and/or in kind support has been provided by Provincial and Territorial child welfare authorities, Aboriginal child welfare organizations, as well as participating universities and research funding organizations."⁵²

The CIS "examines the incidence of reported child maltreatment and the characteristics of the children and families investigated by child welfare authorities in the year the study is conducted."⁵³ According to the government of Canada,

[t]he CIS is a multi-cycle child-welfare-based study that examines reports of child maltreatment (physical abuse, sexual abuse, emotional maltreatment, neglect, and exposure to intimate-partner violence) or risk thereof, explores key characteristics of children and their families in which maltreatment or maltreatment risk has been reported, and monitors short-term outcomes of investigations (e.g., placement in kinship foster care). Under the terms of agreements between PHAC and provincial and territorial authorities, CIS data are provided by child protection workers with regard to their recently-opened investigations. Databases from previous CIS cycles are housed at the Government of Canada, which reviews data-use applications and makes data available to qualified individuals and organizations, free of charge.⁵⁴

⁴⁸ DLA PIPER, *supra* note 3, at 18.

⁴⁹ *Child Maltreatment*, PUBLIC HEALTH AGENCY OF CANADA (hereinafter Child Maltreatment Portal), <https://www.canada.ca/en/public-health/services/health-promotion/injury-child-maltreatment-section/child-maltreatment.html>, archived at <https://perma.cc/JLH5-NUE8> (portal overview) & <https://perma.cc/A45C-9C5X> (2008 Incidence Study).

⁵⁰ *CIS Overview*, CANADIAN CHILD WELFARE RESEARCH PORTAL, <http://cwrp.ca/overview> (last visited Apr. 19, 2019), archived at <https://perma.cc/9VKU-Y9AM>.

⁵¹ *Canadian Incidence Study of Reported Child Abuse and Neglect (CIS)*, herein referred to as CIS-2018 (1000184730), PUBLIC WORKS AND GOVERNMENT SERVICES CANADA, <https://buyandsell.gc.ca/procurement-data/tender-notice/PW-16-00759231>, archived at <https://perma.cc/BS9T-8C78>.

⁵² Child Maltreatment Portal, *supra* note 49.

⁵³ *Id.*

⁵⁴ PUBLIC WORKS AND GOVERNMENT SERVICES CANADA, *supra* note 50.

According to the Canadian Child Welfare Research Portal,

[t]he first reported child abuse and neglect incidence study conducted in Canada was the 1993 Ontario Incidence Study. The first national cycle of the CIS was completed in 1998 and subsequent studies were conducted in 2003 and 2008. The CIS datasets provide a unique opportunity to compare changes in child maltreatment investigations across Canada over the last decade. The 2008 cycle also includes a number of province-specific studies in British-Columbia, Alberta, Ontario and Quebec, as well as a national First Nations component. In 2013, province specific studies were conducted in Ontario and Quebec, and in 2014, a province specific study was conducted in Alberta. The next cycle of the CIS is planned for 2018.⁵⁵

⁵⁵ Child Maltreatment Portal, *supra* note 49.

China

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SUMMARY The Chinese Constitution prohibits the maltreatment of children and declares that children are protected by the state. The 1991 Law on Protection of Minors forbids maltreatment or abandonment of minors in general. “Minors” under the Law refers to citizens under eighteen years of age.

Abusing a family member may constitute a crime punishable by up to seven years’ imprisonment. A 2015 amendment to the Criminal Law extends the scope of application of the crime of abuse to caregivers and legal guardians in institutions and other facilities.

Under the civil law, parents are guardians of their minor children. The 2017 General Rules of Civil Law specify the circumstances in which guardianship may be terminated, including where a guardian seriously damages the physical or mental health of the ward, or where the guardian’s negligence in performing his/her duties causes difficulties for and danger to the ward.

The 2015 Anti-Domestic Violence Law requires educators, health providers, social workers, and community committee members to report domestic violence against children. The Law also addresses the temporary resettlement of children who have suffered domestic violence and the termination of guardianships of domestic violence perpetrators.

I. Introduction

The Constitution of the People’s Republic of China (PRC or China) prohibits the maltreatment of children and declares that children are protected by the state. According to article 49 of the Constitution, “[m]arriage, family, mothers, and children are protected by the state.”¹ The same article states that “[p]arents have the duty to rear and educate their children who are minors, and children who have come of age have the duty to support and assist their parents. ... Maltreatment of old people, women, and children is prohibited.”²

¹ XIANFA (Dec. 4, 1982, last revised Mar. 11, 2018) art. 49, http://www.npc.gov.cn/npc/xinwen/2018-03/22/content_2052489.htm (in Chinese), archived at <https://perma.cc/QF3J-FVU8>, English translation of the 2004 version available at http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm, archived at <https://perma.cc/S24S-9GVT>.

² *Id.*

As early as 1991, China passed the Law on the Protection of Minors aiming to protect the physical and mental health of minors and safeguard their lawful rights and interests.³ Although the Law forbids the maltreatment or abandonment of minors in general,⁴ it lacks detailed provisions concerning the mechanisms for responding to child abuse and neglect.

China's child protection laws appear to have rapidly developed over the past several years in response to media exposure of prominent incidents of child abuse and neglect, which brought the urgency of child protection issues to the public's attention.⁵ The most significant development in this area includes the Ninth Amendment to the Criminal Law of 2015, which revised several articles of the Criminal Law concerning crimes against children.⁶ Also in 2015, China introduced its first Anti-Domestic Violence Law, which vows to provide special protection to children against family violence.⁷

II. Law on the Protection of Minors

The PRC Law on the Protection of Minors was first passed in 1991 and revised in 2006.⁸ The Law sets forth responsibilities of families, schools, and the state with regard to the protection of minors, and addresses judicial procedures applicable to cases involving minors.⁹ "Minors" under the Law refers to citizens under eighteen years of age.¹⁰

The Law on Protection of Minors forbids domestic violence against minors, maltreatment or abandonment of minors, or infanticide:

³ Law on the Protection of Minors of the People's Republic of China (PRC) (adopted by the National People's Congress (NPC) Standing Committee on Sept. 4, 1991, effective Jan. 1, 1992) art. 1, http://www.gov.cn/banshi/2005-05/26/content_982.htm (in Chinese), archived at <https://perma.cc/U46B-Y773>.

⁴ *Id.* art. 8.

⁵ Fang Zhao et al., *Child Protection in China: Changing Policies and Reactions from the Field of Social Work*, 27(2) INT'L J. SOC. WELFARE 329 (Sept. 2017), available at https://www.researchgate.net/publication/320017127_Responding_to_child_maltreatment_Comparison_between_the_USA_and_China, archived at <https://perma.cc/T5JS-REMG>.

⁶ Ninth Amendment to the PRC Criminal Law (adopted by the NPC Standing Committee on Aug. 29, 2015, effective Nov. 1, 2015) (Ninth Amendment), http://www.npc.gov.cn/npc/xinwen/2015-08/31/content_1945587.htm (in Chinese), archived at <https://perma.cc/JZL6-XV2K>, English translation available at Westlaw China (by subscription).

⁷ PRC Anti-Domestic Violence Law (adopted by the NPC Standing Committee on Dec. 27, 2015, effective Mar. 1, 2016), http://www.npc.gov.cn/npc/xinwen/2015-12/28/content_1957457.htm (in Chinese), archived at <https://perma.cc/V8VL-H5QR>.

⁸ PRC Law on the Protection of Minors (adopted by the National People's Congress (NPC) Standing Committee on Sept. 4, 1991, revised Dec. 29, 2006, amended Oct. 26, 2012), http://www.npc.gov.cn/npc/zfjc/zfjcelys/2014-05/08/content_1862530.htm (in Chinese), archived at <https://perma.cc/75PD-3MBQ>, English translation of the 2006 version available at http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383869.htm, archived at <https://perma.cc/K7S6-BFCM>.

⁹ *Id.* chpts. 2-5.

¹⁰ *Id.* art. 2.

Article 10 The parents or other guardians of minors shall create a good and harmonious home environment and, according to law, fulfill their responsibility of guardianship and their obligations to bring up the minors.

Domestic violence against minors is prohibited. Maltreating or forsaking of minors is prohibited. Infanticide by drowning, brutally injuring or killing of infants is prohibited. No female or handicapped minors may be discriminated against.¹¹

The Law requires parents or other guardians of minors to “pay close attention to the minors’ physiological and psychological conditions and their behavioral habits.”¹² Parents and other guardians must guide minors to participate in activities that are conducive to their physical and mental health and prevent them from smoking, drinking, using drugs, gambling, etc.¹³

Where parents work in other places and thus cannot perform their duty of guardianship with respect to their children, the parents must entrust other adults who have the ability to act as guardians with such duty.¹⁴

III. Child Crimes under Criminal Law

A. Crime of Abuse

According to article 260 of the PRC Criminal Law, abusing a family member is punishable by imprisonment for up to two years, criminal detention, or public surveillance, when the circumstances are serious. Abusing a family member causing serious injury or death to the victim is punishable by imprisonment for no less than two years and up to seven years.¹⁵

For the crime of abuse, article 260 previously provided that this offense was “to be handled only upon complaint.”¹⁶ The Ninth Amendment of the Criminal Law adds to this provision that the offense was to be handled upon complaint “unless the victim is not capable of or unable to bring a complaint due to coercion or intimidation.”¹⁷ The previous provision created an obstacle for children and other vulnerable victims seeking redress. With such an amendment, it is now possible for perpetrators of abuse against children to be prosecuted without the victim filing a complaint.¹⁸

¹¹ *Id.* art. 10.

¹² *Id.* art. 11.

¹³ *Id.*

¹⁴ *Id.* art. 16.

¹⁵ PRC Criminal Law (promulgated July 1, 1979, revised Mar. 14, 1997, effective Oct. 1, 1997, as amended Feb. 25, 2011) (Criminal Law) art. 260, SERIES OF STATUTE OF THE PEOPLE’S REPUBLIC OF CHINA IN ENGLISH 2–219 (2015).

¹⁶ *Id.*

¹⁷ Ninth Amendment para. 18.

¹⁸ Su Wenying, *How the Ninth Amendment to the Penal Code Affects Child Protection in China*, UNICEF CHINA (Sept. 23, 2015), <https://www.unicef.org/china/en/stories/how-ninth-amendment-penal-code-affects-child-protection-china>, archived at <https://perma.cc/BGA7-RKT5>.

In addition, the Ninth Amendment adds a sub-article as article 260a, which extends the scope of application of the crime of abuse to caregivers and legal guardians in institutions and other facilities. Under the new article 260a, any person who is responsible for the guardianship or care of minors, the elderly, persons with illness, or persons with disabilities is punishable by imprisonment for up to three years or criminal detention for abusing such persons.¹⁹

B. Child Sexual Abuse

There is no “umbrella” category of child sexual abuse in the PRC Criminal Law. Instead, the Criminal Law prescribes relevant offenses, such as rape and indecent assault against a child, under different articles.²⁰

Article 236 puts the minimum age of sexual consent at fourteen years. Under this article, having sex with a girl younger than fourteen is considered rape regardless of whether the victim consented. Whoever commits this offense will be given a heavier punishment within the range of punishments for rape.²¹

Prior to the Ninth Amendment, the crime of “indecent assault” under article 237 included “indecent assault or insult against a woman” and “indecent assault against a child.”²² The Ninth Amendment expands the offense to include “indecent assault against others, or insult against a woman” and “indecent assault against a child.”²³ The criminal intent of the crime of indecent assault under article 237 is for sexual gratification in various forms, excluding sexual intercourse. The previous provision only covered women and children younger than fourteen, while with this revision, indecent assault against boys aged fourteen to eighteen is now considered a crime.²⁴

IV. General Rules of Civil Law

The General Rules of Civil Law (GRCL) set forth provisions concerning the basic rules of China’s civil law system. The GRCL was passed on March 15, 2017, and took effect on October 1, 2017.²⁵

¹⁹ Ninth Amendment para. 19.

²⁰ Su, *supra* note 18.

²¹ Criminal Law art. 236 para. 2.

²² *Id.* art. 237.

²³ Ninth Amendment para. 13.

²⁴ Su, *supra* note 18.

²⁵ PRC General Rules of the Civil Law (promulgate Mar. 15, 2017, effective Oct. 1, 2017), http://www.npc.gov.cn/npc/xinwen/2017-03/15/content_2018907.htm (in Chinese), archived at <https://perma.cc/LRH7-WVNW>, English translation available at <https://www.dimt.it/images/pdf/GeneralRules.pdf>, archived at <https://perma.cc/AY65-LA2N>.

A. Children and Capacity for Civil Conduct

Eighteen is the age of majority under Chinese civil law. According to the GRCL, a natural person aged eighteen or over is an adult; a natural person under the age of eighteen is a minor.²⁶ An adult has full capacity for civil conduct under Chinese law.²⁷ A minor whose main source of income is his or her job is deemed to be a person of full capacity for civil conduct.²⁸

Minors aged eight to eighteen have limited capacity for civil conduct and may only independently perform limited civil acts.²⁹ Minors under eight years old have no civil capacity and must be represented by guardians when performing any civil acts.³⁰

B. Guardians

The GRCL provides that parents are obligated to foster, educate, and protect their minor children.³¹ According to the GRCL, parents are guardians of their minor children. If both parents of a minor are deceased or are not competent to provide guardianship, the role of guardian may be filled by any of the following persons who have guardianship competence, in descending order of preference:

(1) grandparents;

(2) older brothers or sisters;

(3) any other individual or organization that is willing to act as the guardian of the minor, subject to the consent of the residents committee, the villagers committee, or the civil affairs authority at the place of the minors' domicile.³²

C. Termination of Guardianship

Article 36 of the GRCL specifies circumstances in which guardianship may be terminated, including where a guardian seriously damages the physical or mental health of the ward or the guardian's negligence in performing duties causes difficulties and danger to the ward. According to this article, under any of the following circumstances, the court may, upon the application of an individual or organization concerned, disqualify a guardian, take necessary measures for temporary guardianship, and appoint another guardian under the principle of benefiting the ward to the greatest extent:

²⁶ *Id.* art. 17.

²⁷ *Id.* art. 18.

²⁸ *Id.*

²⁹ *Id.* art. 19.

³⁰ *Id.* art. 20.

³¹ *Id.* art. 26.

³² *Id.* art. 27.

- (1) Perform acts that seriously damage the physical or mental health of the ward;
- (2) Be indifferent in the performance of duties of guardianship, or unable to perform duties of guardianship, and refuse to delegate part or all of the guardianship duties to others, causing difficulties or danger for the ward; and
- (3) Perform other acts that seriously infringe upon the legitimate rights and interest of the ward.³³

The GRCL prescribes a wide range of individuals or organizations that may initiate the process for disqualifying a guardian, including other persons legally qualified for guardianship in accordance with the law, residents' committees, villagers' committees, schools, medical institutions, women's federations, associations of persons with disabilities, minors protection organizations, elderly organizations, and the government civil affairs authority.³⁴

Parents who have been disqualified from guardianship will continue to be obligated to pay child support.³⁵ The guardianship may be reinstated if a parent who has been disqualified from guardianship shows true repentance, unless the parent has committed a deliberate criminal offense against the child.³⁶

V. Anti-Domestic Violence Law

China's first Anti-Domestic Violence Law was passed on December 27, 2015, and took effect on March 1, 2016.³⁷ The Law vows to provide special protections to minors, the elderly, persons with disabilities, pregnant women, nursing mothers, and persons with serious illnesses.³⁸

The Law defines "domestic violence" to include physical, psychological, and other infractions committed between and among family members in the form of beatings, restraint, mutilation, restrictions of personal freedom, or regular verbal abuse or intimidation.³⁹

A. Mandatory Reporting

The Anti-Domestic Violence Law formally addresses the mandatory reporting of child abuse and neglect cases, requiring educators, health providers, social workers, and community committee members to report domestic violence against children. According to article 14 of the Law, schools, kindergartens, medical institutions, residents' committees, villagers' committees, social service agencies, aid management agencies, welfare agencies, and their staff members must promptly report cases to public security organs if they find, during the course of their work, that persons

³³ *Id.* art. 36.

³⁴ *Id.*

³⁵ *Id.* art. 37.

³⁶ *Id.* art. 38.

³⁷ PRC Anti-Domestic Violence Law (promulgated Dec. 27, 2015, effective Mar. 1, 2016), http://www.npc.gov.cn/npc/xinwen/2015-12/28/content_1957457.htm (in Chinese), archived at <https://perma.cc/V8VL-H5QR>.

³⁸ *Id.* art. 5.

³⁹ *Id.* art. 2.

with no civil capacity or persons with limited civil capacity have suffered, or are suspected of suffering, domestic violence. Public security organs are required to keep confidential the identity of the reporters.⁴⁰

B. Temporary Resettlement

The Law prescribes temporary resettlement for children who have suffered domestic violence. According to article 15 of the Law, where a person with no civil capacity or a person with limited civil capacity has suffered serious bodily harm due to domestic violence, is facing personal safety threats, or is in a dangerous state of being unattended due to domestic violence, the relevant public security organ must notify the civil affairs authority and assist the latter in placing the victim in a temporary shelter, aid management agency, or welfare agency.⁴¹

Local governments are required by the Law to build or designate specific places to provide shelter and temporary aid to victims of domestic violence.⁴²

C. Termination of Guardianship Due to Domestic Violence

The Anti-Domestic Violence Law addresses termination of guardianship of domestic violence perpetrators. According to the Law, for guardians who seriously infringe upon the rights and interests of children by committing domestic violence, the courts may, upon application of relevant parties, terminate the guardianship and appoint other guardians for such children. A perpetrator who has been disqualified from guardianship must continue to pay the appropriate amount of child support.⁴³

VI. Guide on Infringement by Guardians

In 2014, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Civil Affairs jointly issued the Opinions on Several Issues Concerning the Handling in Accordance with the Law of the Infringement upon the Rights and Interests of Minors by Their Guardians. The Opinions provide a practical guide in terms of reporting and handling of cases where minors are harmed by parents or other guardians, temporary resettlement of the victims, personal safety protection orders, termination of guardianship, etc.⁴⁴

⁴⁰ *Id.* art. 14.

⁴¹ *Id.* art. 15.

⁴² *Id.* art. 18.

⁴³ *Id.* art. 21.

⁴⁴ Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Civil Affairs, Opinions on Several Issues Concerning the Handling in Accordance with the Law of the Infringement upon the Rights and Interests of Minors by Their Guardians (Dec. 18, 2014), <http://cccwa.mca.gov.cn/article/fgzc/zcwj/201504/20150400799675.shtml> (in Chinese), archived at <https://perma.cc/97UK-57ZR>, English translation available at Westlaw China (by subscription).

The Opinions define the term “infringement by guardians” to include sexually assaulting, selling, abandoning, abusing, or violently injuring minors; instigating or making use of minors to violate laws or commit criminal offenses; coercing or inducing minors to go begging on the streets; or failing to perform guardianship responsibilities and thereby seriously harming the physical and psychological health of minors.⁴⁵

The Opinions provide detailed rules on the circumstances in which the court may terminate guardianship, including for

- (i) Sexually assaulting, selling, abandoning, abusing or injuring through violence minors, thus seriously harming the physical and psychological health of minors, etc.;
- (ii) Leaving the minor unguarded and unattended, thus causing the minor to be in danger of death or serious harm and refusing to make correction after education;
- (iii) Refusing to perform the guardianship responsibility for more than six months, thus causing the minor to become destitute and homeless;
- (iv) Being unable to properly perform guardianship responsibilities due to drug abuse, gambling, long-term alcohol abuse or any other bad habit, or being unable to perform guardianship responsibilities due to reasons such as serving a sentence and refusing to entrust the guardianship responsibilities in full or in part to other persons, thus causing the minor to be in a difficult situation or dangerous state;
- (v) Coercing or inducing, or making use of, minors to go begging and refusing to correct this behavior for more than three times after criticism and education by the public security organ, minor rescue and protection institution, or other departments, thus seriously affecting the normal life and study of the minor;
- (vi) Instigating or making use of minors to commit violations of laws or criminal offenses with grave circumstances; and
- (vii) Committing other acts of seriously harming the lawful rights and interests of the minor.⁴⁶

VII. National Database

China does not appear to have in place a national database tracking child abuse and neglect information. There is a national DNA database to track missing and abducted children, the National Anti-abduction DNA Database, which was set up by the Ministry of Public Security in 2009.⁴⁷ The official Xinhua news agency reported that by the end of 2015, more than 4,000 missing children had found their biological parents through the database.⁴⁸

⁴⁵ *Id.* para. 1.

⁴⁶ *Id.* para. 35.

⁴⁷ Zhang Jingyong, *Ministry of Public Security Sets up National “Anti-abduction” DNA Database Searching Abducted Children*, XINHUA (Apr. 30, 2009), available at http://www.npc.gov.cn/npc/xinwen/fztd/fzsh/2009-04/30/content_1500536.htm (in Chinese), archived at <https://perma.cc/2DYF-NNDM>.

⁴⁸ *Graphics: Over 4,000 Missing Chinese Children Found Biological Parents Through National Anti-abduction DNA Database*, XINHUA (June 14, 2016), available at http://www.gov.cn/xinwen/2016-06/14/content_5082102.htm (in Chinese), archived at <https://perma.cc/WU88-UPS6>.

Egypt

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SUMMARY Two legal instruments govern the issue of child neglect and abuse in Egypt: Law No. 126 of 2008 on Child Rights and Law No. 58 of 1937 and its amendments to the Penal Code. The National Council of Childhood (a government organization) and Safe the Children: Egypt (a non-government organization) are the main organizations active in the field of children's rights. Two of the most recent infamous cases of child abuse and endangerment ended up with the detention of the mothers of the children. In the first case, the mother may face the death penalty for causing the death of her three children when she left them at home without adult supervision. A fire erupted at the house and no adult was available to keep them safe. In the second case, a mother tried to push her child off of a balcony.

I. Legal Framework

Two legal instruments govern the issue of child neglect and abuse in Egypt: Law No. 126 of 2008 on Child Rights¹ and Law No. 58 of 1937 and its amendments to the Penal Code.²

A. Law No. 126 of 2008 on Child Rights

Article 1 of the Child Rights Law requires the state to be responsible for the welfare of children and to guarantee the rights afforded to them in international conventions. Article 2 of the Law defines a "child" as a person under the age of eighteen.³ Article 3 ensures a child's right to life, survival, and development in a supportive family environment and to be protected from all forms of violence and injury; physical, mental, and sexual abuse; and negligence and exploitation.⁴ Article 3(b) stipulates that children must be protected from all forms of discrimination based on their birthplace, parents, sex, religion, race, disability, or any other status, and must be guaranteed equality of opportunity among children.⁵

Article 7 asserts the right of children to access health care and social services, and to be treated for any illness. It requires the state to adopt necessary measures to ensure that all children enjoy

¹ Law No. 126 of 2008, Amending Law No. 12 of 1996, *Al Jariddah Al-Rasmyiah*, vol. 24 bis, 15 June 2008.

² Law No. 58 of 1937 (Penal Code), *as amended by* Law No. 95 of 2003, Vol. 25, *Al Jariddah Al-Rasmyiah*, 19 June 2003.

³ Law No. 126 of 2008, art. 2.

⁴ *Id.* art. 3.

⁵ *Id.* art. 3(b).

the highest level of health care. Article 7(bis)(a) guarantees the protection of children's welfare from any physical or emotional abuse by their parents.⁶

Article 31 addresses the social welfare of the child, providing that nurseries for children under four years of age must be subject to the supervision and control of the Ministry of Social Welfare.⁷ Article 53(5) requires children to be taught the principles of equality of individuals and nondiscrimination on the basis of religion, sex, ethnicity, race, social origin, or disability.⁸ Article 67 regulates child labor for children under the age of sixteen.⁹

Article 75 mandates the protection of the welfare of children with disabilities, stipulating that the state must ensure the protection of the child from any future disability that may be caused by manual labor.¹⁰ Article 76 focuses on the integration of children with disabilities into society. It states that a disabled child must have the right to enjoy special social, physical, and mental care that promotes self-reliance and facilitates the child's integration and participation in the society.¹¹

The Child Law imposes sanctions on adults who are charged with child negligence or fail to protect children's rights. For instance, article 96 stipulates that any person putting a child at risk must be imprisoned for a period of not less than six months and/or pay a fine of not less than 2,000 Egyptian pounds (about US\$114) and not exceeding 5,000 Egyptian pounds (about US\$285).¹² Under article 113, an adult who neglects to look after a child, thereby placing the child at risk, is punishable by a fine.¹³ Also, under article 114, a child's guardian whose negligence in carrying out his or her duties toward the child compromises the child's safety or morals is punishable by a fine or imprisonment for three months to one year.¹⁴ Moreover, article 116 punishes an adult who induces a child to commit a misdemeanor, or assists or facilitates in the commission of one, with imprisonment for one to seven years.¹⁵

B. Law No. 58 of 1937 and Its Amendments to the Penal Code

Articles 285, 286, and 287 of the Penal Code punish an adult who exposes a child to danger with a term of imprisonment not exceeding two years and a fine. For example, article 285 punishes any adult person who exposes a child to danger by leaving the child in a deserted place with a term of imprisonment not exceeding two years.¹⁶ Article 286 imposes the penalty of imprisonment on

⁶ *Id.* art. 7(bis)(a).

⁷ *Id.* art. 31.

⁸ *Id.* art. 53.

⁹ *Id.* art. 67.

¹⁰ *Id.* art. 75.

¹¹ *Id.* art. 76.

¹² *Id.* art. 96.

¹³ *Id.* art. 113.

¹⁴ *Id.* art. 114.

¹⁵ *Id.* art. 116.

¹⁶ Law No. 58 of 1937, art. 285.

an adult who inflicts an injury on a child. If such injury causes the child's death, the adult would receive the same punishment applicable to murder.¹⁷ Finally, article 287 imposes the penalty of imprisonment not exceeding six months on an adult who loses a child in a crowded place.¹⁸

II. National Children's Rights Organizations

A. The National Council of Childhood

One of the main organizations working in the field of children's rights in Egypt is the National Council of Childhood. The Council, established in 1988, works under the supervision of the Ministry of Population. It is in charge of policymaking, planning, coordinating, monitoring, and evaluating activities in the areas of the protection and development of children. The Council operates through a strong network of nongovernmental organizations (NGOs), students, volunteers, community leaders, academia, youth centers, and schools, and in partnership with a large number of donors.¹⁹

The mission of the Council is to protect and promote the rights of all Egyptian children and ensure that they are raised in safe and caring environments. Since its establishment in 1988, the National Council of Childhood has been considered to be the mechanism for the supervision and coordination of activities relating to the implementation of the Convention on the Rights of the Child in Egypt. It has led many developmental programs and projects that are spearheading change at the national level.²⁰ The programs and projects vary in their specified objectives, covering the following areas:

- Adolescent health
- Creating capacity building programs for NGOs working with street children
- The Child Abuse Helpline
- Identifying and helping children at risk
- Working on developing programs targeting children with disabilities
- Combating violence against women and children
- Early childhood development

¹⁷ *Id.* art. 286.

¹⁸ *Id.* art. 287.

¹⁹ *About NCC*, THE NATIONAL COUNCIL OF CHILDHOOD, http://www.nccm-egypt.org/e3/index_eng.html (last visited Mar. 1, 2019), archived at <https://perma.cc/9TEJ-KEE2>.

²⁰ *Mission*, THE NATIONAL COUNCIL OF CHILDHOOD, http://www.nccm-egypt.org/e3/e1310/index_eng.html (last visited Mar. 1, 2019), archived at <https://perma.cc/7GD7-EBHQ>.

- Empowerment of young girls and the eradication of their illiteracy
- Family justice: combating domestic violence
- The National Program for Protecting Youth from Tobacco and Drugs²¹

B. Save the Children: Egypt

Save the Children: Egypt is an NGO that depends on receiving donations to fund its activities. The organization receives funds from a wide variety of sources including USAID, the European Union, Global Affairs Canada, the Italian Ministry of Foreign Affairs, the German government, UNHCR, UNICEF, and private donors.²²

Save the Children's main goal is to protect boys and girls from abuse, neglect, exploitation, and violence. Members of the organization also work to ensure that children who are not receiving appropriate, continuous, and quality care from family members or caregivers are able to live in a protective environment. The organization works in conjunction with the National Council of Childhood to develop stronger national policies and standards to protect children at risk and to provide safe alternative care. The organization supports local Egyptian communities, teachers, and parents to provide better protection for unprotected children. Members of the organization refer children at risk to special child protective services.²³

III. Reporting System and Collection of Data

The Egypt National Child Rights Observatory (ENCRO) is the entity responsible for collecting and reporting data pertaining to children's rights. ENCRO is an initiative between the Information and Decision Support Center (IDSC) of the Cabinet, the National Council on Childhood and Motherhood (NCCM), and the United Nations Children's Fund (UNICEF). The main responsibility of ENCRO is to conduct research and issue scientific reports about the protection of children's rights. The NCCM uses those reports as a tool to monitor and evaluate efforts to protect children's rights in Egypt. Policy makers also use those reports to formulate new policies that enhance the protection of children's rights.²⁴

²¹ *Programs*, THE NATIONAL COUNCIL OF CHILDHOOD, http://www.nccm-egypt.org/e11/index_eng.html (last visited Mar. 1, 2019), archived at <https://perma.cc/6SLF-6ZTA>.

²² *Our Finances*, SAVE THE CHILDREN: EGYPT, <https://egypt.savethechildren.net/about-us/our-finances> (last visited Mar. 1, 2019), archived at <https://perma.cc/N5UZ-R63C>.

²³ *What We Do*, SAVE THE CHILDREN: EGYPT, <https://egypt.savethechildren.net/what-we-do> (last visited Mar. 1, 2019), archived at <https://perma.cc/C2JW-I35U>.

²⁴ *ENCRO – Child Observatory*, THE NATIONAL COUNCIL OF CHILDHOOD, http://www.nccm-egypt.org/e11/e3416/index_eng.html (last visited May 3, 2019), archived at <https://perma.cc/D8SG-V6AV>.

IV. Recent Infamous Cases of Child Abuse

A. The Case of “Maryoutiah”

In July 2018, the General Prosecution ordered the detention of a mother and referred her to the criminal court after accusing her of child negligence that caused the death of her three children. The mother left her three young children alone in their house without adult supervision. While she was away, the children accidentally caused a fire. They ended up dying from smoke inhalation. No adult was in the house at the time of the fire to save them.²⁵

The General Prosecution charged the woman with inflicting an injury on a child under article 286 of the Penal Code, which carries the penalty of imprisonment. If such injury caused the child’s death, the adult receives the same punishment as for murder, meaning that the mother in this case could face the death penalty if she is found guilty by the criminal court.²⁶

B. The Case of the “Al-Balkouna” Incident

The General Prosecution arrested a woman and charged her with endangering her a child after the woman forced her child to stand in an apartment window to sneak into a nearby balcony after she lost the key to her apartment. She was seen by neighbors pushing the child out of the window of a third-floor apartment to climb up to the sixth floor to get the house keys as the child was screaming and crying and the neighbors were yelling that he was going to fall.²⁷

The incident was reported through the Child Helpline 16000, and the Child Welfare Department of the National Council for Childhood submitted a report on the incident to the General Prosecution. As a result, the General Prosecution has issued an arrest warrant against the women and charged her with violating article 96 of Law No. 126 of 2008, which stipulates that any person putting a child at risk must be imprisoned for a period of not less than six months and/or pay a fine of not less than 2,000 Egyptian pounds (about US\$114), and not exceeding 5,000 Egyptian pounds (about US\$285). Later, the woman was released on bail after the case was referred to the criminal court.²⁸

²⁵ *What Is the Punishment of the Defendants in the Case of “Maryoutiah”*, SOUT AL-OMMA (July 18, 2016), <http://www.soutalomma.com/Article/821268/> (in Arabic), «أطفال-المر يوطية-حادث»-عقوبة-المتهمين-في-حادث-«أطفال-المر يوطية», archived at <https://perma.cc/BUL8-DZ63>.

²⁶ *Id.*

²⁷ *Woman Pushing Child Out of 3rd Floor Window Arrested*, EGYPTIAN STREETS (Jan. 26, 2019), <https://egyptianstreets.com/2019/01/26/woman-pushing-child-out-of-3rd-floor-window-arrested/>, archived at <https://perma.cc/M3LE-Z9RD>.

²⁸ Law No. 126 of 2008, art. 96.

England

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SUMMARY England has a robust legislative framework that aims to ensure professionals that interact with children are aware of the risk signs of child abuse and neglect and share this information with an appropriate body to investigate further. It is actively building closer working relationships between organizations involved in the care of children to ensure clear lines of communication between these bodies. Reporting of suspected abuse or neglect is not mandatory. National databases have been established for the collecting and sharing of information on abuse and neglect. Statistics on abuse and neglect are maintained by the Office of National Statistics. Extensive criminal provisions that aim to deter individuals from committing offenses involving children cover, among other things, child exploitation, pornography, abuse, neglect, trafficking and female genital mutilation.

I. Introduction

Legislation in England relating to the protection of children has been significantly influenced by international treaties and European law.¹ These sources impose minimum obligations that the signatories must meet in relation to the rights and treatment of children. In addition to being influenced by international law, failures in child welfare cases domestically have also proven to drive legislation. For example, the tragic case of Victoria Climbié, a girl who was tortured and murdered by her guardians, led to a government inquiry and the enactment of the Children Act 2004.²

The common law in England provides that the responsibility for the care and protection of children is with their parents “as guardians by the law of nature, and on the Crown as *parens patriae*,”³ with the powers of a child’s parents somewhat limited in certain areas by law. The overriding principle is that “the welfare of children is paramount and that they are best looked after within their families, with their parents playing a full part in their lives, unless compulsory

¹ The most significant treaty includes the Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf>, archived at <https://perma.cc/SU9V-FWRJ>.

² See, e.g., SECRETARY OF STATE FOR HEALTH AND THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, THE VICTORIA CLIMBIÉ INQUIRY, Cm 5730 (2002-3) at 370, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/273183/5730.pdf, archived at <https://perma.cc/F78P-2S5Y>; Children Act 2004, c. 31, <https://www.legislation.gov.uk/ukpga/2004/31/data.pdf>, archived at <https://perma.cc/5P3B-QB6F>.

³ PRINCIPLES OF MEDICAL LAW ¶ 4.39 (Andrew Grubb and Judith Laing eds., 2d ed. 2004) “The Crown as *parens patriae* is empowered and obliged ‘to protect the person and property of ... those unable to look after themselves, including infants.’ The Sovereign, as *parens patriae*, has a duty to protect those of his subjects who are unable to protect themselves, particularly children ... the powers of the Crown as *parens patriae* are exercised by the [courts].” *Id.* ¶ 4.42.

intervention in family life is necessary.”⁴ Several pieces of legislation that apply to children and the promotion of their welfare in a number of different areas. The most substantive piece affecting children and their basic rights to a secure and safe environment is the Children Act 1989. This Act introduces the term “parental responsibility” rather than the common law concept of custody. Parental responsibility is defined as “all the rights, duties, powers, responsibilities and authority which by law a parent has in relation to the child and his property.”⁵

England has a Children’s Commissioner to promote and protect children’s rights. The Children’s Commissioner is independent of both the government and Parliament and “has unique powers to help bring about long-term change and improvements for all children, particularly the most vulnerable.”⁶ The powers include gathering evidence, conducting research, and compiling information on issues that affect the lives of children. The position of Children’s Commissioner was established by the Children Act 2004, which aimed to “maximise opportunities and minimise risks for all children and young people, focusing services more effectively around the needs of children, young people and families.”

II. Protection from Abuse and Neglect

A. Definitions

The government notes that there are four types of neglect:

- Physical neglect, which occurs where a child’s basic needs for food, clothing, shelter and adequate supervision are not provided.

⁴ HM Government, Working Together to Safeguard Children: A Guide to Inter-agency Working to Safeguard and Promote the Welfare of Children (2018) ¶ 11, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779401/Working_Together_to_Safeguard_Children.pdf, archived at <https://perma.cc/7JLH-PU6K>.

⁵ Children Act 1989, c. 41, § 3(1), <https://www.legislation.gov.uk/ukpga/1989/41/data.pdf>, archived at <https://perma.cc/K6T4-M3R5>.

⁶ *About Us*, THE CHILDREN’S COMMISSIONER FOR ENGLAND, <https://www.childrenscommissioner.gov.uk/about-us/the-childrens-commissioner-for-england/> (last visited May 7, 2019), archived at <https://perma.cc/6K65-IPXQ>.

- Educational neglect arises when parents fail to ensure a child receives education.
- Emotional neglect occurs when a parent fails “to meet a child’s needs for nurture and stimulation, perhaps by ignoring, humiliating, intimidating or isolating them [and is] often the most difficult to prove.”
- Medical neglect involves failing “to provide appropriate health care, including dental care and refusal of care or ignoring medical recommendations.”⁷

Apart from neglect, there are various forms of abuse. Sexual abuse, for example, involves forcing or enticing a child to engage in sexual activities, while child sexual exploitation involves individuals or groups coercing, manipulating or deceiving a child to engage in sexual activity.⁸

In addition to these types of neglect and abuse, certain authorities also have the duty to, in the exercise of their functions, ensure that individuals, including children, are not drawn into terrorism.⁹

The focus in English legislation and practice is on safeguarding and promoting the welfare of children, which is defined to include

- a. protecting children from maltreatment
- b. preventing impairment of children's health or development
- c. ensuring that children are growing up in circumstances consistent with the provision of safe and effective care
- d. taking action to enable all children to have the best outcomes.¹⁰

There is no single piece of legislation that ensures the welfare and protection of children, reflecting the complex multi-agency system in place.¹¹ The two main pieces of legislation that provide for the protection of child are the Children Act 2004 and the Children Act 1989. These acts require local authorities to put in place arrangements to promote cooperation between each other and their partners,¹² and places a duty on local authorities to promote and protect the welfare of children in their area who are in need.¹³

⁷ Neglect, NSPCC, <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/neglect/> (last visited May 7, 2019), archived at <https://perma.cc/594N-6FQN>.

⁸ HM Government, Working Together to Safeguard Children, *supra* note 4, at 103.

⁹ Counter-Terrorism and Security Act 2015, c. 6, Part 5, <http://www.legislation.gov.uk/ukpga/2015/6/enacted/data.pdf>, archived at <https://perma.cc/6AM3-H2CM>.

¹⁰ HM Government, Working Together to Safeguard Children, *supra* note 4, at 105.

¹¹ *Id.* at 81, ¶ 1.

¹² Children Act 2004, § 10.

¹³ Children Act 1989, c. 41, Part V.

B. Investigating Allegations of Abuse

Many professionals, agencies, and authorities that interact with children have a duty to investigate allegations of abuse. Section 47 of the Children Act 1989¹⁴ places a duty on local authorities to lead investigations into allegations of abuse, which may be triggered where there is reasonable cause to suspect that a child may be suffering from, or at risk of suffering from, significant harm. The duty is also triggered if a local authority is informed that a child who resides or is located within the area is the subject of an emergency protection order or in police protection.

The standard to start an investigation is quite low – “it is not necessary to establish facts on a balance of probabilities[,] but there must still be objectively reasonable grounds and not simply what the decision-maker thinks reasonable.”¹⁵ The local authority must investigate this to the extent “necessary to enable them to decide whether they should take any action to safeguard or promote the child’s welfare.”¹⁶ Local authorities are assisted in these investigations by medical professionals, teachers and school staff, the police, and others.¹⁷

If a local authority conducts an investigation and determines that it is necessary to take action to safeguard and promote the welfare of the child investigated, “it is obligated to take that action insofar as it is within its power to do so and is reasonably practicable.”¹⁸ Upon accepting a referral, in order to ensure timeliness, the social worker is required to acknowledge receipt of the referral and determine the type of response it should undertake, which includes, but is not limited to, making an assessment to determine if the child is in need, conducting an investigation, providing immediate protection or action, or obtaining specialist assessments.¹⁹

The Children Acts provide local authorities with the power to apply to the court for an emergency protection order where

- there are reasonable grounds to believe that the child will suffer from significant harm if he or she is not removed to accommodation provided by the local authority,
- the local authority is making enquiries that are being frustrated because access to the child is being refused, or
- inquiries are being made and access is being unreasonably refused and there is reasonable cause to suspect that a child is suffering or likely to suffer significant harm.²⁰

¹⁴ Children Act 2004, § 47.

¹⁵ ALASTAIR McDONALD QC, *THE RIGHTS OF THE CHILD: LAW AND PRACTICE* ¶ 15.223 (2011).

¹⁶ Children Act 1989, c. 41 § 47(1).

¹⁷ HM Government, *Working Together to Safeguard Children*, *supra* note 4, at 42.

¹⁸ McDONALD QC, *supra* note 15, ¶ 15.225; Children Act 1989, c. 41, § 47.

¹⁹ HM Government, *Working Together to Safeguard Children*, *supra* note 4, ¶ 71 & Flow Chart 1.

²⁰ Children Act 1989, c. 41, § 44; *see also* HM Government, *Working Together to Safeguard Children*, *supra* note 4, Flow Chart 2.

Emergency protection orders may be granted by the courts for up to eight days and have the effect of giving the local authority the power to remove the child from the home or prevent the child from being removed from a hospital or state accommodation; it also gives the local authority limited parental responsibility for the child.²¹

In exceptional emergency situations where there is not enough time to obtain an emergency protection order and there is reasonable cause to believe that a child is likely to suffer significant harm, local authorities, the NSPCC, or the police²² may remove the child and hold him or her in suitable accommodations, or take reasonable steps to ensure that removing the child from a hospital or any other place the child is being accommodated is prevented.²³ Children may be held in police protection for up to seventy-two hours.²⁴ The statutory guidance notes that police powers should only be used in emergency situations when necessary, and that it is preferable that “the decision to remove a child from a parent or carer should be made by a court.”²⁵

C. Reporting Requirements

Other than known cases of female genital mutilation (FGM), discussed below, there are currently no mandatory reporting requirements *per se* for professional individuals or organizations to report child abuse or domestic violence to authorities.²⁶ In responses to a recent government report, over two thirds were concerned that a mandatory reporting system would have an adverse impact on the child protection system and that while the majority agreed that it would result in an increase in the number of child abuse and neglect reports, there were concerns that it would divert attention from serious child abuse and neglect cases.²⁷ In almost every high-profile case involving serious child abuse and neglect, nonexistent or poor information sharing between authorities has been reported,²⁸ and the government has concluded that “missed opportunities to

²¹ Children Act 1989, c. 41, § 44.

²² Chief Constables are accountable to the Police and Crime Commissioner for the exercise of their functions to safeguard children under sections 10 and 11 of the Children Act 1989. Police Reform and Social Responsibility Act 2011, c. 13, § 1(8), <http://www.legislation.gov.uk/ukpga/2011/13/enacted/data.pdf>, archived at <https://perma.cc/GTZ9-LZPY>.

²³ HM Government, Working Together to Safeguard Children, *supra* note 4, at 33.

²⁴ Children Act 1989, c. 41 § 46.

²⁵ HM Government, Working Together to Safeguard Children, *supra* note 4

²⁶ HM GOVERNMENT, REPORTING AND ACTING ON CHILD ABUSE AND NEGLECT GOVERNMENT CONSULTATION (July 2016), ¶ 6, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/539642/Reporting_and_acting_on_child_abuse_and_neglect_-_consultation_document_web_.pdf, archived at <https://perma.cc/SYN9-24RG>; HM GOVERNMENT, REPORTING AND ACTING ON CHILD ABUSE AND NEGLECT SUMMARY OF CONSULTATION RESPONSES AND GOVERNMENT ACTION (Mar. 5, 2018) ¶¶ 73-75, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685465/Reporting_and_acting_on_child_abuse_and_neglect_-_response_to_consultati....pdf, archived at <https://perma.cc/Z3V3-4FYT>.

²⁷ HM GOVERNMENT, REPORTING AND ACTING ON CHILD ABUSE AND NEGLECT GOVERNMENT CONSULTATION, *supra* note 26, ¶ 13.

²⁸ HM Government, Information Sharing Advice for Practitioners Providing Safeguarding Services to Children, Young People, Parents and Carers (July 2018) at 63, ¶ 28, available at <https://assets.publishing>.

record, understand the significance of and share information in a timely manner can have severe consequences for the safety and welfare of children.”²⁹ Thus, the focus of reporting child abuse and domestic violence in England is on sharing information among appropriate agencies and bodies, with the government stating that “children and families are best supported and protected when there is a coordinated response from all relevant agencies.”³⁰

Bodies, professionals, and government authorities have a number of broad duties to cooperate, share information, and ensure that arrangements are in place to safeguard and protect the welfare of children.³¹ Additionally, professionals have a duty of care to act for the children that they are treating.

A significant effort has been made to educate professionals and individuals who are likely to interact with children on the signs and warnings of abuse and neglect and how to respond in an appropriate and effective manner when the signs are observed.³² In 2016-17 there were almost 650,000 referrals of children to local authorities, and the reporting per capita is slightly higher than countries where there is a mandatory duty to report child abuse and neglect.³³

1. Duty of Care on Authorities to Share Information to Safeguard and Promote the Welfare of Children

The Children Act 1989 places a duty of care on local authorities to safeguard and promote the welfare of children who are in need and allows those authorities to take action to safeguard a child’s welfare if they have reasonable cause to suspect the child is suffering, or is likely to suffer from, significant harm.³⁴

service.gov.uk/government/uploads/system/uploads/attachment_data/file/721581/Information_sharing_advice_practitioners_safeguarding_services.pdf, archived at <https://perma.cc/C8QT-9H4P>.

²⁹ HM Government, Working Together to Safeguard Children, *supra* note 4, ¶ 23.

³⁰ *Id.* ¶ 3.

³¹ The statutory framework containing these duties is summarized in HM Government, Working Together to Safeguard Children Statutory Framework: Legislation Relevant to Safeguarding and Promoting the Welfare of Children (July 2018), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722307/Working_Together_to_Safeguard_Children_Statutory_framework.pdf, archived at <https://perma.cc/2F6T-4U2H>.

³² See, e.g., HM GOVERNMENT, WHAT TO DO IF YOU’RE WORRIED A CHILD IS BEING ABUSED: ADVICE FOR PRACTITIONERS (Mar. 2015), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/419604/What_to_do_if_you_re_worried_a_child_is_being_abused.pdf, archived at <https://perma.cc/XPY4-ZCQM>.

³³ HM GOVERNMENT, REPORTING AND ACTING ON CHILD ABUSE AND NEGLECT SUMMARY OF CONSULTATION RESPONSES AND GOVERNMENT ACTION, *supra* note 26, ¶¶ 1 & 19 (noting: “even compared to countries which have mandatory reporting systems, the rate of referrals is comparable or already higher here: 54.8 per 1,000 children in England (2016/17), compared to 53.2 per 1,000 children in the USA (2015), and 42.0 per 1,000 children in Australia (2015/16).”).

³⁴ Children Act 1989, c. 41 §§ 17 and 47.

The Children Act 2004 places a duty on specified authorities and professionals³⁵ to cooperate to protect children from harm and neglect, and to ensure their social and economic well being.³⁶ The 2004 Act requires a number of bodies to put clear arrangements in place to ensure that they “discharge their functions having regard to the need to safeguard and promote the welfare of children.”³⁷ Details of what the authorities are expected to include in these arrangements are contained in statutory guidance, and cover clear lines of accountability within the authorities, designated senior-level individuals with appropriate education to take the lead in cases, whistleblowing procedures, a process to escalate cases if staff believe their concerns are not being adequately addressed, clear arrangements for sharing information, and appropriate supervision and support for staff.³⁸

This provision mirrors that of the Education Act 2002, which places a duty on local education authorities (LEAs) and governing bodies of public schools to ensure arrangements are in place to safeguard and promote the welfare of children.³⁹ Local authorities also have a duty to “safeguard and promote the welfare of children within their area who are in need” under the Children Act 1989.⁴⁰

An arrangement known as “safeguarding partners” was recently introduced, which provides for the coordination of safeguarding services between local authorities, clinical commission groups, and the chief officers of police. These “safeguarding partners” should also act as a strategic leadership group and implement a local and national educational program to consider lessons learned from serious child incidents.⁴¹ The safeguarding partners must submit annual reports of the arrangements that they have agreed will safeguard children, and these are scrutinized by an independent body.⁴²

³⁵ The authorities are: “local authority in England; (b) a district council which is not such an authority; (ba) the National Health Service Commissioning Board; (bb) a clinical commissioning group; (c) (repealed) (d) a Special Health Authority, so far as exercising functions in relation to England, designated by order made by the Secretary of State for the purposes of this section; (e) (repealed) (f) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England; (g) an NHS foundation trust; (h) the local policing body and chief officer of police for a police area in England; (i) the British Transport Police Authority, so far as exercising functions in relation to England; (ia) the National Crime Agency; (j) a local probation board for an area in England; (ja) the Secretary of State in relation to his functions under sections 2 and 3 of the Offender Management Act 2007, so far as they are exercisable in relation to England; (k) a youth offending team for an area in England; (l) the governor of a prison or secure training centre in England (or, in the case of a contracted out prison or secure training centre, its director); (la) the principal of a secure college in England; (m) any person to the extent that he is providing services in pursuance of section 74 of the Education and Skills Act 2008.” Children Act 2004, c. 31, § 11.

³⁶ *Id.* c. 31, § 10.

³⁷ *Id.* c. 31, § 11 (2).

³⁸ HM Government, Working Together to Safeguard Children, *supra* note 4, at 54-55.

³⁹ Education Act 2002, c. 32, § 175, <http://www.legislation.gov.uk/ukpga/2002/32/data.pdf>, archived at <https://perma.cc/FZ7N-5BFI>.

⁴⁰ Children Act 1989, c. 41, § 17.

⁴¹ HM Government, Working Together to Safeguard Children, *supra* note 4, at 72.

⁴² *Id.* at 78, ¶ 38.

2. Government Guidance

The government has produced statutory guidance on a number of items that professionals should consider before sharing information about suspected cases of child abuse.⁴³ Prior to sharing information about an identifiable individual, professionals should consider whether

- there is a legitimate purpose for sharing the information;
- the information is confidential;
- there has been consent to share the information;
- the information identifies an individual; and
- there is a lawful reason to share the information without consent.⁴⁴

Once these issues have been considered, the authorities must ensure that the information shared is necessary and proportionate to the aim that is being sought, relevant to the case, adequate, accurate, timely, and shared in a secure manner. All decisions to share information should be recorded.⁴⁵ The government has stated that the European Union's General Data Protection Regulation and the Data Protection Act 2018⁴⁶

are not barriers to justified information sharing, but provide a framework to ensure that personal information about living individuals is shared appropriately ... The GDPR and Data Protection Act 2018 do not prevent, or limit, the sharing of information for the purposes of keeping children and young people safe.⁴⁷

While there is a common law duty of confidence, the guidance notes that this must be balanced "against the effect on children or individuals at risk, if they do not share the information."⁴⁸

3. Medical Professionals

Entities within the National Health Service, the UK's primary provider of medical services, have an explicit duty of cooperation. This duty covers Strategic Health Authorities, Health Authorities, Special Health Authorities, Primary Care Trusts, and NHS trusts and requires these bodies to cooperate to advance the health and welfare of the people of England.⁴⁹

⁴³ *Id.*

⁴⁴ HM Government, Information Sharing Advice for Practitioners, *supra* note 28, at 11.

⁴⁵ *Id.* at 9-10.

⁴⁶ Data Protection Act 2018, c. 12, <http://www.legislation.gov.uk/ukpga/2018/12/data.pdf>, archived at <https://perma.cc/AP6P-TQDZ>.

⁴⁷ HM Government, Information Sharing Advice for Practitioners, *supra* note 28, at 5 & 10.

⁴⁸ *Id.* at 13.

⁴⁹ National Health Service Act 1977, c. 49 § 22, <http://www.legislation.gov.uk/ukpga/1977/49/data.pdf>, archived at <https://perma.cc/G5HV-BVMP>.

Medical practitioners and their patients have a common law duty of confidentiality in England. However, this duty may be overridden if disclosure of information is in the public interest.⁵⁰ This may occur where disclosure “is necessary to protect the child or young person, or someone else, from risk of death or serious harm.”⁵¹ This means that doctors may disclose information to appropriate bodies if they have reasonable cause to believe that an adult patient they are treating poses a risk to any child.⁵² Case law provides that medical professionals owe their first duty to the child they are treating and that there is no competing duty of care to the child’s parents or guardians to not make negligent allegations of child abuse.⁵³ The court has held that “in principle the appropriate level of protection for a parent suspected of abusing a child is that clinical and other investigations must be conducted in good faith.”⁵⁴

Guidelines from the General Medical Council (GMC) place a duty on all doctors to protect and promote the health and well-being of all patients.⁵⁵ If a doctor believes a patient is a victim of neglect or physical, sexual, or emotional abuse, he or she should disclose information promptly to an appropriate agency, such as local authorities, the NSPCC, or the police.⁵⁶ The patient’s consent is not required if the disclosure is necessary to protect the patient from the risk of death or serious harm.⁵⁷ Guidance from the General Medical Council provides examples where disclosure without the patient’s consent is justified, to include situations where

- (a) a child or young person is at risk of neglect or sexual, physical or emotional abuse ... [or]
- (b) the information would help in the prevention, detection or prosecution of serious crime, usually crime against the person.⁵⁸

4. No Receiving Authority Specified

There is no authority specified in statute to which reports of suspected child abuse should be made. Generally, information concerning the abuse of children is reported to local authorities,

⁵⁰ X v. Y [1998] 2 All ER 648.

⁵¹ General Medical Council, *0–18 Years: Guidance for All Doctors* ¶ 49, https://www.gmc-uk.org/-/media/documents/0_18_years_english_0418pdf_48903188.pdf (last updated Apr. 8, 2018), archived at <https://perma.cc/KFP7-TZWF>.

⁵² General Medical Council, *Protecting Children and Young People: The Responsibilities of All Doctors* ¶ 2, https://www.gmc-uk.org/-/media/documents/protecting-children-and-young-people---english-1015_pdf-48978248.pdf (last updated May 25, 2018), archived at <https://perma.cc/3XNT-FZA9>.

⁵³ D v. East Berkshire Community Health NHS Trust; MAK v. Dewsbury Healthcare NHS Trust; RK v. Oldham NHS Trust [2005] UKHL 23, ¶ 90, available at <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050421/east-1.htm>, archived at <https://perma.cc/GHJ5-J3NJ>.

⁵⁴ *Id.*

⁵⁵ General Medical Council, *Good Medical Practice*, Foreword, available at https://www.gmc-uk.org/-/media/documents/good-medical-practice---english-1215_pdf-51527435.pdf (last updated Apr. 29, 2019), archived at <https://perma.cc/8YKQ-75VB>.

⁵⁶ General Medical Council, *Protecting Children and Young People*, *supra* note 52, ¶ 32.

⁵⁷ General Medical Council, *0–18 Years: Guidance for All Doctors*, *supra* note 51, ¶ 49.

⁵⁸ *Id.*

the NSPCC, or the police, who can then investigate the allegations and, where appropriate, take action to safeguard and protect the welfare of the child.⁵⁹ As noted above, once local authorities are notified of a child that is suffering, or is likely to suffer, significant harm, they have a duty to make all enquiries that are “necessary to enable them to decide whether they should take any action to safeguard or promote the child’s welfare.”⁶⁰

5. Immunity from Liability

Professionals do not receive blanket immunity for sharing information about child abuse or domestic violence.⁶¹ At the same time, however, no duty of care is owed to parents who are subject to an investigation by child protection professionals.⁶²

Whenever a professional wishes to report a case of suspected child abuse, he or she must consider any restrictions on disclosing information. The main restrictions are currently the common law duty of confidence, the Human Rights Act 1998, and the Data Protection Acts.⁶³ There is extensive guidance to aid professionals in determining when a report should be made.⁶⁴

Thus, if professionals act within the limits of their profession and the law, in good faith, and with reasonable care and skill, they should be safe in any negligence proceedings brought against them.

The GMC states that doctors owe a duty of care to the children they are treating. In one case, the court held as follows:

A doctor is obliged to act in the best interests of his patient. In these cases the child is his patient. The doctor is charged with the protection of the child, not with the protection of the parent. The best interests of a child and his parent normally march hand-in-hand. But when considering whether something does not feel ‘quite right’ a doctor must be able to act single-mindedly in the interests of the child. He ought not to have at the back of his mind an awareness that if his doubts about intentional injury or sexual abuse prove unfounded he may be exposed to claims by a distressed parent The well-being of innumerable children up and down the land depends crucially on doctors and social

⁵⁹ General Medical Council, *Protecting Children and Young People*, *supra* note 52, ¶ 32.

⁶⁰ Children Act 1989, c. 41 § 47.

⁶¹ HM GOVERNMENT, REPORTING AND ACTING ON CHILD ABUSE AND NEGLECT GOVERNMENT CONSULTATION: SUPPORTING ANNEXES (2016), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/539615/Reporting_and_acting_on_child_abuse_and_neglect_-_annexes_web_.pdf, archived at <https://perma.cc/34DD-H3YR>.

⁶² JD (FC) v. East Berkshire Community Health NHS Trust et al. [2005] UKHL 23, available at <http://www.bailii.org/uk/cases/UKHL/2005/23.html>, archived at <https://perma.cc/23PU-AE9H>.

⁶³ Data Protection Act 1998, c. 29, <http://www.legislation.gov.uk/ukpga/1998/29/data.pdf>, archived at <https://perma.cc/N4P5-7YDE>; Data Protection Act 2018, c. 12, <http://www.legislation.gov.uk/ukpga/2018/12/data.pdf>, archived at <https://perma.cc/V767-ZH2U>.

⁶⁴ HM GOVERNMENT, WHAT TO DO IF YOU’RE WORRIED A CHILD IS BEING ABUSED: ADVICE FOR PRACTITIONERS, *supra* note 32.

workers concerned with their safety being subjected by the law to but a single duty: that of safeguarding the child's own welfare.⁶⁵

Thus, medical professionals can disclose information that would otherwise be confidential if it is in the public interest, such as in cases where it will "assist in the prevention, detection or prosecution of a serious crime."⁶⁶

6. Penalties for Failing to Report Abuse

As there are no mandatory reporting requirements, there are no specific penalties for failing to report suspected incidents of child abuse or domestic violence. Guidelines provided by the GMC state that if a medical professional believes that a patient is a victim of domestic abuse and does not feel that disclosing the information is appropriate, the medical professional must be prepared to justify his/her decision.⁶⁷ Doctors may be "struck off" the GMC register if their fitness to practice is impaired, which could be due to criteria including misconduct, a criminal conviction, or because of deficient performance.⁶⁸ An example of sanctions from the GMC can be seen in a recent case. In 2008 a pediatric doctor's license was suspended by the GMC for failing to notice injuries in a seventeen-month-old toddler that included a broken back and eight broken ribs during a medical appointment two days before the boy was killed.⁶⁹ The suspension means that the doctor can no longer practice medicine and is pending a complete investigation by the GMC.

It is an offense under the Criminal Justice and Courts Act 2015 for certain healthcare⁷⁰ providers⁷¹ that are paid to care for another individual (or their employers) to willfully neglect that person,

⁶⁵ D v. East Berkshire Community Health NHS Trust; MAK v. Dewsbury Healthcare NHS Trust; RK v. Oldham NHS Trust [2005] UKHL 23, ¶¶ 85 & 138, available at <https://publications.parliament.uk/pa/ld200405/ldjudgmt/jd050421/east-1.htm>, archived at <https://perma.cc/4XV4-H4XS>.

⁶⁶ General Medical Council, *Confidentiality: Good Practice in Handling Patient Information* ¶ 70 (Apr. 2017), available at https://www.gmc-uk.org/-/media/documents/confidentiality-good-practice-in-handling-patient-information---english-0417_pdf-70080105.pdf, archived at <https://perma.cc/3YE7-W42P>.

⁶⁷ *Id.*

⁶⁸ General Medical Council, *Deciding to Investigate a Concern*, <https://www.gmc-uk.org/concerns/information-for-doctors-under-investigation/how-we-investigate-concerns/deciding-to-investigate-a-complaint-or-concern> (last visited May 8, 2019), archived at <https://perma.cc/IQE2-XRB7>.

⁶⁹ *Doctor Suspended in Baby P Probe*, BBC NEWS (Nov. 28, 2008), <http://news.bbc.co.uk/1/hi/england/london/7752231.stm>, archived at <https://perma.cc/ZSQ5-GQ7N>; see also *List of Registered Medical Practitioners*, GMC, <http://www.gmc-uk.org/register/search/index.asp#> (last visited May 8, 2019), archived at <https://perma.cc/T6J4-LGUZ>.

⁷⁰ "Health care" is defined in section 20(5) of the Criminal Justice and Courts Act 2015, c. 2, <http://www.legislation.gov.uk/ukpga/2015/2/enacted/data.pdf>, archived at <https://perma.cc/665M-BF4G>, as "(a) all forms of health care provided for individuals, including health care relating to physical health or mental health and health care provided for or in connection with the protection or improvement of public health, and (b) procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition."

⁷¹ Schedule 4 of the Criminal Justice and Courts Act 2015 excludes certain health care providers, including "health care provided on the premises of an educational institution listed in paragraph 3, subject to subparagraph (2); (b) health care provided at accommodation provided by an educational institution listed in paragraph 3 for an individual being educated at the institution, other than accommodation provided in

punishable with a fine and/or up to five years' imprisonment.⁷² This offense was introduced "to help prevent failures in administering direct care in institutional settings."⁷³ This Act primarily applies to adults, as the government considers "there already exist sufficient safeguards in respect of children in these services and settings so that adequate protections are in place."⁷⁴

III. National Databases

A £235 million (approximately US\$300 million) database, known as ContactPoint,⁷⁵ was created by the Children Act 2004 following the Victoria Climbié inquiry.⁷⁶ ContactPoint held basic identifying information on children, including names, parents names and addresses and contact details for professionals providing services to each child, such as their teacher, doctor and anyone providing specialist services to children. ContactPoint was key element of the government's Every Child Matters policy and aimed to create a single source of information about children across England and facilitate the exchange of this information. The intent was to

transform children's services, by supporting more effective prevention and early intervention, to ensure that children get the additional services they need as early as possible ... It will enable practitioners across education, health, social care, youth justice and the voluntary sector to find out who else is working with a child or young person so that they can, where appropriate, work together to deliver better coordinated support.⁷⁷

ContactPoint was ultimately dismantled in 2010, amid privacy, security, and cost concerns, with the cost of the database estimated to be £41 million (approximately US\$53 million) annually.⁷⁸ When shutting down the database, the government stated the system was disproportionate to the problem and that:

connection with a residential trip away from the institution; (c)health care provided at a children's home or a residential family centre in respect of which a person is registered under Part 2 of the Care Standards Act 2000; (d)health care provided on a part of other premises at a time when the part is being used entirely or mainly for an education or childcare purpose." *Id.* Sched. 4, ¶ 1(1).

⁷² Criminal Justice and Courts Act 2015, c. 2, § 20,

⁷³ Criminal Justice and Courts Act 2015, *Explanatory Notes*, <http://www.legislation.gov.uk/ukpga/2015/2/notes/division/3/1/12>, archived at <https://perma.cc/BJ5F-D28D>, archived at <https://perma.cc/BJ5F-D28D>.

⁷⁴ *Id.* ¶ 224.

⁷⁵ Children Act 2004 Information Database (England) Regulations 2007, SI 2007/2182, <http://www.legislation.gov.uk/uksi/2007/2182/made/data.pdf>, archived at <https://perma.cc/TC4U-3PMF>.

⁷⁶ SECRETARY OF STATE FOR HEALTH AND THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, *supra* note 2.

⁷⁷ Explanatory Memorandum to the Children Act 2004 Information Database (England Regulations 2007, SI 2007/2182, ¶ 7.2, http://www.legislation.gov.uk/uksi/2007/2182/pdfs/uksiem_20072182_en.pdf, archived at <https://perma.cc/JXS2-S338>.

⁷⁸ *Child Protection Database to be Switched off*, BBC NEWS (Aug. 6, 2010), <https://www.bbc.com/news/education-10887082>, archived at <https://perma.cc/3C6N-Q2Y8>.

We need a better child protection system in this country, but at the end of the day it's not a computer system that will save vulnerable children ... It's the performance of the professionals at the sharp end, who need to be properly trained and resourced.⁷⁹

ContactPoint was replaced by the Child Protection Information Sharing Project (CP-IS). CP-IS is operated across England and links the IT systems of local authorities' child social care services and NHS emergency department systems.⁸⁰ Information on children on protection plans are shared in a secure manner, and if the child attends an emergency room or minor injury unit the health team is made aware that the child is on such a plan, has access to the child's social care workers' contact details, and is able to view the child's last twenty five visits to emergency departments or minor injury units.⁸¹

IV. Statistics of Child Abuse and Neglect

Statistics on child abuse and neglect are gathered by the Office of National Statistics. In the year ending December 2018, there were 2,574 offences of cruelty to children young persons. In the year ending March 2018, the police flagged 55,061 offences that involved the sexual abuse of children and 15,045 that involved the sexual exploitation of children. These comprised 22% of all sexual offences reported to the police.⁸²

In the year ending March 2018 there were 655,630 referrals for children's social services, with 53.2% of children referred as a result of concerns over abuse or neglect.⁸³ The majority of these referrals were from the police, then schools, health services and other local authority services.⁸⁴ Local authorities conducted 631,090 assessments of children in the period ending March 2018, and the median time that an assessment took was 31 working days.⁸⁵ 404,710 of these children were considered to be in need of services and there was an additional 198,090 investigations into children that were a result of section 47 of the Children Act 1989.⁸⁶

53,790 children were subject to a child protection plan in the year ending March 2018. 25,820 of these children were subject to a plan due to neglect, 4,120 due to physical abuse, 2,180 due to sexual abuse, 18,860 due to emotional abuse and 2,820 were due to a combination of these

⁷⁹ *Id.*

⁸⁰ *Child Protection - Information Sharing Project*, NHS DIGITAL, <https://digital.nhs.uk/services/child-protection-information-sharing-project> (last visited May 15, 2019), archived at <https://perma.cc/5TJK-GYSA>.

⁸¹ *Id.*

⁸² *Crime in England and Wales: Year Ending December 2018*, OFFICE FOR NATIONAL STATISTICS (April 25, 2019), <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingdecember2018>, archived at <https://perma.cc/38RH-P27L>.

⁸³ *Id.* at 6.

⁸⁴ *Id.* at 8.

⁸⁵ *Id.* at 9.

⁸⁶ *Id.* at 11.

factors.⁸⁷ 90.5% of children under such a plan were covered by the plan for three or more months.⁸⁸

V. Criminal Offenses

While legislation in England is aimed at the protection of children and preventing instances of child abuse and neglect from occurring, it is not always successful in this aim. In cases where individuals do abuse children, there are a significant number of criminal offenses that specifically apply to criminal acts on children. Some offenses, such as the abandonment of children under two years of age that endanger the health of the child, date back to 1861,⁸⁹ and other offenses, such as FGM, are contained in modern legislation. A comprehensive review of all offenses applying to children is beyond the scope of this report, but selected criminal offenses that contain elements of child abuse and neglect are summarized below.

A. Abandonment and Cruelty Offenses

Abandoning a child under the age of two years old and causing the child to be endangered, or causing injury to the child's health, is an offense punishable with up to five years' imprisonment.⁹⁰ Assaulting, neglecting, abandoning, or exposing a child under the age of sixteen in a way that will likely cause unnecessary suffering or physical or psychological injury, or causing these acts to occur, is an offense under the Children and Young Persons Act 1933.⁹¹ "Neglect" in a manner likely to cause injury to a child's health is deemed to have occurred when the parent or guardian acts ""fail[s] to provide adequate food, clothing, medical aid or lodging for [the child], or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, [fails] to take steps to procure it to be provided."⁹² If a person responsible for a child under the age of three suffocates the child, either by sleeping in bed or on any furniture alongside the child, this is deemed neglect if the parent was under the influence of alcohol or prohibited drugs at the time they went to sleep.⁹³ An offense under this Act is punishable by up to ten years' imprisonment.

⁸⁷ *Characteristics of Children in Need: 2017 to 2018*, DEPARTMENT FOR EDUCATION (Oct. 25, 2018), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762527/Characteristics_of_children_in_need_2017-18.pdf, archived at <https://perma.cc/R8NU-X3T6>.

⁸⁸ *Id.* at 13.

⁸⁹ Offences Against the Person Act 1861, 24 & 25 Vict. c. 100, § 27, <https://www.legislation.gov.uk/ukpga/Vict/24-25/100/data.pdf>, archived at <https://perma.cc/99K7-WBVA>.

⁹⁰ *Id.*

⁹¹ Children and Young Persons Act 1933, 23 & 24 Geo. 5, c. 12, § 1, <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12/data.pdf>, archived at <https://perma.cc/L4JB-Z9W8>.

⁹² *Id.* § 1(2)(a).

⁹³ *Id.* § 1(2)(b).

B. Sexual Offenses Involving Children

A significant number of criminal offenses relate to acts involving children. The most substantive piece of legislation that contains these offenses is the Sexual Offences Act 2003, which Act contains the following offenses and applies to children under the age of eighteen:

- Section 9 – engaging in sexual activity with a child, punishable with up to fourteen years’ imprisonment;
- Section 10 – causing or inciting a child to engage in sexual activity, punishable with up to fourteen years’ imprisonment;
- Section 11 – engaging in sexual activity in front of a child, punishable with up to ten years’ imprisonment;
- Section 12 – causing a child to watch a sexual act, punishable with up to ten years’ imprisonment;
- Section 14 – the offense of arranging or facilitating the commission of a child sex offense, punishable with up to fourteen years’ imprisonment
- Section 15 – meeting, or traveling with the intention to meet, a child following sexual grooming, punishable with up to ten years’ imprisonment;
- Section 15A – communicating with a child for the purpose of obtaining sexual gratification, punishable with up to two years’ imprisonment;
- Sections 16 – abusing a position of trust⁹⁴ and engaging in sexual activity with a child, punishable with up to five years’ imprisonment;
- Section 17 – abusing a position of trust and causing or inciting a child to engage in sexual activity, punishable with up to five years’ imprisonment;
- Section 18 – abusing a position of trust and engaging in sexual activity in front of a child, punishable with up to five years’ imprisonment;
- Section 19 – abusing a position of trust and causing a child to watch a sexual act, punishable with up to five years’ imprisonment;
- Section 25 – engaging in sexual activities with a child family member, punishable with up to fourteen years’ imprisonment;
- Section 26 – inciting a child family member to engage in sexual activity, punishable with up to fourteen years’ imprisonment;
- Section 47 – paying for the sexual services of a child, punishable with up to seven years’ imprisonment;
- Section 48 – intentionally causing or inciting the sexual exploitation of a child, punishable with up to fourteen years’ imprisonment;
- Section 50 – arranging or facilitating the sexual exploitation of a child, punishable with up to fourteen years’ imprisonment.

⁹⁴ What constitutes a position of trust is defined in section 21 of the Sexual Offences Act 2003.

Section 1 of the Protection of Children Act⁹⁵ provides that it is an offense to take, or provide permission to take, distribute, display, possess, publish, or cause to be published indecent photographs of children.⁹⁶ This offense is punishable with up to ten years' imprisonment and/or a fine.⁹⁷ Possession, meaning custody and control,⁹⁸ of an indecent photograph of a child is also an offense under section 160 of the Criminal Justice Act 1988, and is punishable with up to five years' imprisonment and/or a fine.⁹⁹ Possession of prohibited images of children, which covers both moving and still images produced and stored by any means, is an offense under section 62 of the Coroners and Justice Act 2009 and is punishable with up to three years' imprisonment and/or a fine.¹⁰⁰

C. Child Trafficking

The prohibition of trafficking in children is primarily addressed through the Modern Slavery Act 2015.¹⁰¹ This Act consolidated and clarified the offenses of human trafficking and increased the maximum penalty for trafficking offenses.¹⁰² It contains the specific offense of trafficking, and provides this occurs when a person arranges or facilitates the person's transportation within or out of any country for the purposes of exploitation.¹⁰³ In order to be an offense, the perpetrator must arrange or facilitate the victim's transportation with the intention of exploiting the victim, or the perpetrator must know "or ought to know that any other person is likely to exploit [the victim]. It is irrelevant where in the world that exploitation might take place."¹⁰⁴ The term "exploitation" is very broad, and includes slavery; servitude; securing services from children by force, threats, or deception; and forced and compulsory labor.¹⁰⁵ Sexual exploitation includes any sexual offense contained in Part 1 of the Sexual Offences Act, which include rape, prostitution,

⁹⁵ Protection of Children Act 1978, c. 37, <https://www.legislation.gov.uk/ukpga/1978/37/data.pdf>, archived at <https://perma.cc/P78X-4ZPU>.

⁹⁶ *Id.* § 3.

⁹⁷ *Id.* § 6.

⁹⁸ ARCHBOLD CRIMINAL PLEADING, EVIDENCE AND PRACTICE ¶ 31-118 (P.J. Richardson ed., 2018 ed.).

⁹⁹ Criminal Justice Act 1988, c. 33, <https://www.legislation.gov.uk/ukpga/1988/33/data.pdf>, archived at <https://perma.cc/V82Q-AUNP>.

¹⁰⁰ Coroners and Justice Act 2009, c. 25, <https://www.legislation.gov.uk/ukpga/2009/25/data.pdf>, archived at <https://perma.cc/B2FN-WVCK>.

¹⁰¹ Modern Slavery Act 2015, c. 30, <https://www.legislation.gov.uk/ukpga/2015/30/data.pdf>, archived at <https://perma.cc/F9L7-NUGM>.

¹⁰² Modern Slavery Act 2015, *Explanatory Notes*, ¶ 3, <https://www.legislation.gov.uk/ukpga/2015/30/notes>, archived at <https://perma.cc/BJ5F-D28D>.

¹⁰³ Modern Slavery Act 2015 § 2.

¹⁰⁴ Modern Slavery Act 2015, *Explanatory Notes*, *supra* note 88, ¶ 3.

¹⁰⁵ Modern Slavery Act 2015 § 3.

child pornography, and sexual assault, or in section 1 of the Protection of Children Act,¹⁰⁶ which involves the taking, or providing permission to take, indecent photographs of children.¹⁰⁷

The trafficking offense has extraterritorial application, making it possible to prosecute any UK national that conducts the trafficking activity specified in the Act in any country in the world without the need for an equivalent offense in that country.¹⁰⁸

The maximum penalty for trafficking for the purposes of sexual exploitation is life imprisonment.¹⁰⁹ Intending to commit the offense of trafficking is punishable with up to ten years' imprisonment, unless this involved kidnapping or false imprisonment, when it is punishable with up to life imprisonment.¹¹⁰

The Modern Slavery Act provides for a system of slavery and trafficking prevention orders that prevents the defendant from committing specified acts contained in the order. The court may make such an order if a defendant has been convicted of a slavery or human trafficking offense, there is a risk that the defendant may commit another slavery or human trafficking offense, and the order is necessary to protect either people generally or particular people from physical or psychological harm that would arise if the defendant were to commit another offense.¹¹¹ The order may include restrictions on foreign travel, but may only prohibit acts that are necessary to protect people from harm that would be caused if the defendant committed a further slavery or human trafficking offense.¹¹²

D. Female Genital Mutilation

FGM has been a crime in England since 1985¹¹³ and it has been reported that there are over 6,000 instances of this crime annually.¹¹⁴ This crime is prevalent in England in immigrant communities

¹⁰⁶ Protection of Children Act 1978, c. 37, <https://www.legislation.gov.uk/ukpga/1978/37/data.pdf>, archived at <https://perma.cc/P78X-4ZPU>.

¹⁰⁷ *Id.* § 3.

¹⁰⁸ Modern Slavery Act 2015 § 2(6).

¹⁰⁹ *Id.* § 5(1).

¹¹⁰ *Id.* § 5(2).

¹¹¹ *Id.* § 14.

¹¹² *Id.* § 17(2).

¹¹³ Prohibition of Female Circumcision Act 1985 (repealed and replaced), Female Genital Mutilation Act 2003, c. 31, <https://www.legislation.gov.uk/ukpga/2003/31/data.pdf><https://www.legislation.gov.uk/ukpga/2003/31/contents>, archived at <https://perma.cc/896H-M8F4>.

¹¹⁴ *Female Genital Mutilation (FGM) – April 2017 to March 2018, Annual Report, Experimental Statistics Report*, NHS DIGITAL (July 5, 2018), <https://digital.nhs.uk/data-and-information/publications/statistical/female-genital-mutilation/female-genital-mutilation-fgm---annual-report-2017-18>, archived at <https://perma.cc/TV2V-VQEQ>. See also 635 PARL. DEB. (5th ser.) (2018) 1634, available at <https://hansard.parliament.uk/Commons/2018-02-08/debates/70A9662C-8EB9-4ED7-91F5-795FEDE3C76B/FemaleGenitalMutilationProsecutionRates>, archived at <https://perma.cc/69BZ-QMZ8>.

of countries where FGM is routinely practiced. The practice of FGM is punishable with up to fourteen years imprisonment and/or an unlimited fine. Failing to protect a girl from FGM is also punishable with up to seven years' imprisonment and/or an unlimited fine. The main purpose of the Female Genital Mutilation Act 2003 is to give the provisions extraterritorial effect and close the loophole in the 1985 Act, which permitted parents to legally take their daughters overseas for the procedure. The extraterritorial scope of the Act allows individuals to be prosecuted if they perform, aid, abet, counsel, or procure a person to perform FGM on a girl, or assist a girl to perform FGM on herself outside of the United Kingdom.¹¹⁵

The Female Genital Mutilation Act 2003 was amended in 2015 by the Serious Crime Act 2015,¹¹⁶ which aimed to extend the scope of FGM offenses and protect girls that are at risk of FGM. The amendments

- extended the scope of extraterritorial offenses to all FGM offenses committed outside the UK by UK residents;
- granted victims of FGM lifelong anonymity;
- introduced FGM Protection Orders to protect girls that might be subject to, or have been subject to, FGM; and
- introduced a new offense of failing to protect a girl from the risk of FGM.

The amendments also created mandatory duty for healthcare workers, teachers, and social workers to report FGM on girls under the age of eighteen to the police after it was determined

[e]xisting disciplinary procedures for professionals who ignore the duty on mandatory reporting are insufficient and ineffective and it is unacceptable that some clinicians appear to refuse to accept it as their responsibility. The duty to report must not be seen as optional. A decision not to report puts children's lives at risk and is complicit in a crime being committed. We repeat our predecessor Committee's recommendation that the Government introduce stronger sanctions for failure to meet the mandatory reporting responsibility, beyond the relevant professions' own general disciplinary procedures.¹¹⁷

FGM cases are investigated by the police, who act in response to information that is reported to them. After the investigation, the police make a determination whether or not to refer the case to the Crown Prosecution Service (CPS), an independent body that prosecutes criminal cases.¹¹⁸ If the case is referred, the CPS then makes final decision on whether or not to prosecute. When

¹¹⁵ Female Genital Mutilation Act 2003, c. 31, §§ 3-4.

¹¹⁶ Serious Crime Act 2015, c. 9, <https://www.legislation.gov.uk/ukpga/2015/9/data.pdf>, archived at <https://perma.cc/V24T-WLJL>.

¹¹⁷ HOUSE OF COMMONS HOME AFFAIRS COMMITTEE, FEMALE GENITAL MUTILATION: ABUSE UNCHECKED HC 390 (2016-17) ¶ 45, available at <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/390/390.pdf>, archived at <https://perma.cc/F9YC-CKF6>.

¹¹⁸ About CPS, CROWN PROSECUTION SERVICE, <https://www.cps.gov.uk/about-cps> (last visited May 8, 2019), archived at <https://perma.cc/7XVC-MSME>.

making this determination, the CPS must be fair, objective, and independent, and follow the Code for Crown Prosecutors along with the prosecution guidance written for FGM cases.¹¹⁹

Despite an extra £35 million (approximately US\$46.2 million) in funding to eradicate FGM, and even though a number of cases are being brought before the courts, the majority of FGM cases have ended with acquittals and there has currently been only one successful prosecution under the Act.¹²⁰ A government review of the law found that, “[i]n the absence of successful prosecutions, FGM remains a national scandal that is continuing to result in the preventable mutilation of thousands of girls.”¹²¹

The report found that the main issues preventing successful prosecutions is obtaining testimony from victims. Despite the law providing for their anonymity,¹²² victims are typically reluctant to implicate family members or close family friends, and are generally unaware that FGM is illegal.¹²³ The absence of collaboration across the health, social care, education, and law enforcement sectors is also a factor impeding the detection and prosecution of FGM. While a multi-agency approach is in existence, a central authority to coordinate efforts is lacking.¹²⁴

There is some concern that police forces are not investigating and bringing these cases to the CPS¹²⁵ to determine whether or not a prosecution should be undertaken. To help counter this, the CPS is establishing protocols, training police and other prosecutors across the country, and providing early investigative advice.¹²⁶ It has also recently introduced measures to improve how it handles these cases, such as appointing a lead prosecutor to pursue cases that involve FGM

¹¹⁹ Crown Prosecution Service, *The Code for Crown Prosecutors*, Jan. 2013, available at https://www.cps.gov.uk/sites/default/files/documents/publications/code_2013_accessible_english.pdf, archived at <https://perma.cc/Y8MR-XRBX>; *Female Genital Mutilation Prosecution Guidance*, CPS, <https://www.cps.gov.uk/legal-guidance/female-genital-mutilation-prosecution-guidance> (last visited May 1, 2019), archived at <https://perma.cc/J3DB-U77Q>.

¹²⁰ HOUSE OF COMMONS, *FEMALE GENITAL MUTILATION: ABUSE UNCHECKED*, 2016-17, H.C. 390 ¶ 56, available at <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/390/390.pdf>, archived at <https://perma.cc/ZL2L-KV3T>. *NHS Doctor Cleared in Less Than 30 Minutes in First FGM Case*, TELEGRAPH (London) (Feb. 4, 2015), <https://www.telegraph.co.uk/news/uknews/law-and-order/11390629/NHS-doctor-cleared-of-performing-FGM-amid-claims-he-was-used-as-a-scapegoat.html>, archived at <https://perma.cc/M4GU-FJCE>; Stewart Paterson, *Britain's Third FGM Prosecution Failure: African Lawyer, 50, Who Was Accused of Cutting His Nine-Year-Old Daughter as a Punishment Is Cleared after Telling Jurors 'I'm Catholic, I Don't Believe in It'*, DAILY MAIL (London) (Mar. 22, 2018), <http://www.dailymail.co.uk/news/article-5532839/Britains-FGM-prosecution-failure.html>, archived at <https://perma.cc/9C5L-FTL5>.

¹²¹ *Id.*

¹²² Female Genital Mutilation Act 2003, c. 31, § 4A.

¹²³ HOUSE OF COMMONS HOME AFFAIRS COMMITTEE, *supra* note 103, ¶ 52.

¹²⁴ *Id.* ¶ 27.

¹²⁵ Harry Yorke, *FGM Should Not be Prosecuted, Police Force Says as It Claims Best Course of Action Is to 'Educate Parents'*, TELEGRAPH (London) (Feb. 27, 2017), <https://www.telegraph.co.uk/news/2017/02/27/fgm-should-not-prosecuted-police-force-says-claims-best-course/>, archived at <https://perma.cc/8MM5-J3D4>.

¹²⁶ 635 PARL. DEB. (5th ser.) (2018) 1634, available at <https://hansard.parliament.uk/Commons/2018-02-08/debates/70A9662C-8EB9-4ED7-91F5-795FEDE3C76B/FemaleGenitalMutilationProsecutionRates>, archived at <https://perma.cc/69BZ-QMZ8>.

in each of its areas, and has introduced further support measures for victims to assist them in testifying. Other measures include increasing training for the Border Force to identify girls at risk of FGM being taken out of the country, and increasing funding and resources to all communities where FGM is practiced.

The UK recently started to collect data on instances of FGM to determine “the prevalence of FGM in England.”¹²⁷ Since July 1, 2015, it has been mandatory for all NHS acute healthcare trusts to report and submit information to the FGM Enhanced Dataset, and these reports are published online.

E. Corporal Punishment in Schools

Parents retain the right to administer corporal punishment. However, teachers and any member of school staff may no longer administer corporal punishment to pupils because it is considered that “it cannot be justified in any proceedings.”¹²⁸

¹²⁷ *Female Genital Mutilation (FGM) – April 2017 to March 2018, Annual Report, Experimental Statistics Report*, NHS DIGITAL (July 5, 2018), <https://digital.nhs.uk/data-and-information/publications/statistical/female-genital-mutilation/female-genital-mutilation-fgm---annual-report-2017-18>, archived at <https://perma.cc/TV2V-VQEQ>.

¹²⁸ 15(1) HALSBURY’S LAWS OF ENGLAND ¶ 577 (Lord Mackay of Clashfern ed., 4th ed. Reissue 2006); Education Act 1996, c. 56, § 548.

France

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SUMMARY France started adopting legislation to protect children in the late nineteenth century. Acts of violence and other abuse against children are punished by the Penal Code. In some cases, such as manslaughter, assault, and rape, the fact that the crime was committed against a child of fifteen years old or younger, or against a direct descendant of the perpetrator, is considered an aggravating factor leading to a harsher sentence. In other cases, the fact that the victim was a child is a defining element of the crime itself. For example, “habitual violence against a minor” is considered a separate crime, as is child neglect on the part of a parent. There are also civil and administrative measures to protect children from abuse and neglect. The Civil Code defines the duties of parents to ensure their children’s security, health, moral development, and education. The Civil Code also allows victims of domestic violence, including children, to petition a judge for a restraining order. The Code of Families and Social Action defines the broad societal goal of child protection, and establishes the administrative framework to implement child protection and welfare policies. This framework is principally built around an “agency for social assistance to children” that every French *département* is supposed to have. Additionally, a national agency was formed to systematically gather and analyze data on child protection and welfare. This agency, called ONPE, gathers data from the national child abuse hotline and from other government agencies at both the local and national level. It provides an annual report to the government and the Parliament, which is made public. The latest report, published in April 2019, analyzes data from 2017.

I. Introduction

France started adopting legislation to protect children from the late nineteenth century, in particular with the adoption of the Law of 24 July 1889 Regarding the Protection of Abused or Morally Abandoned Children, and later of the Law of 19 April 1898 on the Suppression of Violence, Assault, Acts of Cruelty, and Indecency Committed Against Children.¹ The legislative arsenal against child abuse and neglect has kept expanding ever since, with the most recent development being the adoption of a new law on the protection of children in 2016.²

The protection of children is addressed in the Penal Code, which aims to punish acts of violence and other abuse against children, and by civil and administrative measures that aim to detect

¹ *La protection de l'enfance* [Protection of Childhood], *Historique* [History], OBSERVATOIRE NATIONAL DE LA PROTECTION DE L'ENFANCE (ONPE), <https://www.onpe.gouv.fr/historique> (last visited May 3, 2019), archived at <https://perma.cc/VG9Q-58KC>.

² *Id.*; Loi n° 2016-297 du 14 mars 2016 relative à la protection de l'enfant [Law No. 2016-297 of 14 March 2016 Regarding the Protection of Children], <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032205234&categorieLien=id>, archived at <https://perma.cc/YLF6-4KF6>.

instances of abuse or neglect, and to prevent dangerous situations. In order to better evaluate the effectiveness of its efforts to fight child abuse and neglect, the French government has been gathering and analyzing data on these and related issues systematically for the past thirteen years.

II. Criminal Law Aspects

Committing violent crimes against a minor, or against one's child or grandchild (regardless of the child's age), is considered an aggravating factor leading to stricter punishments. For example, carrying out "torture or barbaric acts" against a person is ordinarily punishable by fifteen years or prison, but this is increased to twenty years of prison if the victim was fifteen years of age or younger, or if the victim was a direct descendant (such as a child, grandchild, or great-grandchild) of the perpetrator.³ When a perpetrator, through acts of violence, kills a person without intention to do so (i.e., commits manslaughter), he/she should normally be sentenced to fifteen years in prison, but this is increased to twenty years if the act was committed against a person fifteen years old or younger, or against a direct descendant of the perpetrator.⁴ An act of violence that causes a permanent mutilation or infirmity is normally punishable by ten years in prison and a fine of 150,000 Euros (approximately US\$167,900), but the prison term is increased to fifteen years if the victim was fifteen years old or younger, or if the victim was a direct descendant of the perpetrator.⁵ An act of violence that caused enough injury that the victim was unable to work for eight days or more is normally punishable by three years in prison and a fine of 45,000 Euros (about US\$50,400), but these are increased to five years in prison and a fine of 75,000 Euros (about US\$83,900) if the victim was fifteen or younger, or was a direct descendant of the perpetrator.⁶ The applicable sentence is similarly enhanced for other types of assault.⁷ Similarly, rape without other aggravating circumstances is normally punishable by fifteen years of prison, but is punishable by twenty years of prison if the victim was fifteen or younger, or was a descendant of the perpetrator.⁸

Some provisions of the Penal Code apply to crimes against children specifically. Acts of "habitual violence against a minor" of fifteen or younger constitute a separate crime, as is the act of abandoning a child fifteen years old or younger.⁹ It is also a criminal offense for a person to withhold food and/or care from a child of fifteen or younger over whom he/she has any relationship of authority.¹⁰ Similarly, it is a criminal offense for a parent to avoid his/her obligations towards a child when that will compromise the child's health, security, morality, or

³ CODE PENAL [PENAL CODE], arts. 222-1, 222-3, <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719&dateTexte=20190430>, archived at <https://perma.cc/L5FP-KEGT>.

⁴ *Id.* arts. 222-7, 222-8.

⁵ *Id.* arts. 222-9, 222-10.

⁶ *Id.* arts. 222-11, 222-12.

⁷ *Id.* art. 222-13.

⁸ *Id.* arts. 222-23, 222-24.

⁹ *Id.* arts. 222-14, 227-1, 227-2.

¹⁰ *Id.* arts. 227-15, 227-16.

education.¹¹ It is also illegal to encourage a child to use, transport, keep, sell or transfer drugs, or to consume excessive amounts of alcohol, or to commit a criminal offense.¹² Finally, several provisions of the Penal Code address exposing a child to indecent sexual or violent images, sexual solicitation of a child, making, distributing, acquiring or possessing child pornography, and other similar criminal offenses.¹³

III. Civil and Administrative Measures

While the Penal Code protects children through the punishment and deterrence of criminal acts, French law also includes measures aimed at other aspects of child protection.

A. Provisions of the Civil Code

The Civil Code defines the duties that children and parents have towards each other.¹⁴ These include the duty on the part of parents “to protect [the child] in his/her security, health and morality, to ensure his/her education and allow his/her development, with the respect owed to his/her person.”¹⁵ Additionally, the Civil Code allows victims of domestic abuse, including children, to obtain an *ordonnance de protection*, the French equivalent of a restraining order.¹⁶ This is a relatively recent development, introduced in 2010.¹⁷

B. Provisions of the Code of Families and Social Action

The other principal source of provisions on the protection of children is the Code of Families and Social Action.¹⁸ This Code defines the protection of children broadly: “The protection of children aims to guarantee that the child’s fundamental needs will be taken into account, to support her/his physical, emotional, intellectual and social development, and to preserve her/his health, security, morality and education, all while respecting her/his rights.”¹⁹ Guided by this definition,

¹¹ *Id.* art. 227-17.

¹² *Id.* arts. 227-18 to 227-21.

¹³ *Id.* arts. 227-22 to 227-28-3.

¹⁴ CODE CIVIL [CIVIL CODE], arts. 371 to 387-6, <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721>, archived at <https://perma.cc/FFF6-F8MQ>.

¹⁵ *Id.* art. 371-1.

¹⁶ CODE CIVIL [CIVIL CODE], arts. 515-9 to 515-13.

¹⁷ Loi No. 2010-769 du 9 juillet 2010 relative aux violences faites spécifiquement aux femmes, aux violences au sein des couples et aux incidences de ces dernières sur les enfants [Law No. 2010-769 of 9 July 2010 Regarding Violence Committed Specifically Against Women, Violence Within Couples, and the Impact of the Latter on Children], https://www.legifrance.gouv.fr/affichTexte.do?sessionId=A17B956CD819B31F0C4C095CF607E9CD.tplgfr35s_2?cidTexte=JORFTEXT000022454032&dateTexte=20100710, archived at <https://perma.cc/SEH3-A8QU>.

¹⁸ CODE DE L’ ACTION SOCIALE ET DES FAMILLES (C.A.S.F.) [CODE OF FAMILIES AND SOCIAL ACTION], <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074069&dateTexte=20190508>, archived at <https://perma.cc/H7BU-RVD7>.

¹⁹ *Id.* art. L112-3.

the French government's policies aim to prevent situations where a child would be endangered, and to detect dangerous or risky situations.²⁰ The implementation of these policies is largely the responsibility of the *conseil départemental* (departmental council) governing each *département* (one of the main territorial subdivisions of France).²¹ To that effect, each *département* has an agency called *service de l'aide sociale à l'enfance* (agency for social assistance to children), which has the following missions:²²

1. Provide material, educational, and psychological support to minors and their parents or guardian when they are faced with difficulties that may endanger the minors' health, security, or morality, or that may compromise their education or physical, emotional, intellectual, and social development;
2. Organize collective actions to help prevent marginalization, or to facilitate the social reinsertion of marginalized youth and their families;
3. Act to protect at-risk youth;
4. Provide for children that are placed under its authority (such as wards of the state or children that were removed from a dangerous situation);
5. Prevent situations where children might be in danger, by, for example, gathering information and alerting judicial and/or law enforcement authorities when signs of abuse are detected;
6. Identify minors who are victims of or threatened with sexual violence, including genital mutilation, and refer them to the proper authorities;
7. Ensure that ties built by a child with persons other than his/her parents are maintained or developed in the child's best interest;
8. Ensure that children placed under the agency's authority are cared for in a stable and adapted manner;
9. Ensure that a child's ties to his/her siblings are maintained in the child's best interest.

IV. Data Collection and Analysis

In order to gather better information regarding the protection of children, in 2004 French legislators created the *Observatoire national de l'enfance en danger* (ONED) (National Observatory on Endangered Children), which was later renamed *Observatoire national de la protection de l'enfance* (ONPE) (National Observatory on the Protection of Children).²³ Since 2007, to assist the

²⁰ MINISTÈRE DES SOLIDARITÉS ET DE LA SANTÉ [MINISTRY OF SOLIDARITY AND HEALTH], LES DISPOSITIFS DE L'AIDE SOCIALE À L'ENFANCE [THE SYSTEM OF SOCIAL ASSISTANCE TO CHILDREN] 130 (2018), <https://drees.solidarites-sante.gouv.fr/IMG/pdf/21-10.pdf>, archived at <https://perma.cc/8XJZ-BXWC>.

²¹ *Id.*

²² C.A.S.F., art. L221-1.

²³ *Les missions de l'ONPE* [The Missions of ONPE], ONPE, <https://www.onpe.gouv.fr/missions-lonpe> (last visited May 8, 2019), archived at <https://perma.cc/NF5C-S2FS>; Loi n° 2004-1 du 2 janvier 2004 relative à l'accueil et à la protection de l'enfance [Law No. 2004-1 of 2 January 2004 Regarding the Sheltering and Protection of Children], arts. 9, 10, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000431282&dateTexte=&categorieLien=id>, archived at <https://perma.cc/9G98-8A5H>; Loi n° 2016-297 du 14 mars 2016 relative à la protection de l'enfant [Law No. 2016-297 of 14 March 2016 Regarding the Protection of

ONPE in its data-gathering mission, each *département* of France is supposed to have an *observatoire départemental de la protection de l'enfance* (ODPE) (Departmental Observatory on the Protection of Children), which is to gather data on endangered children within that *département* and report it to the ONPE.²⁴ In addition to the data gathered by the ODPEs, the ONPE can rely on data provided to it by a national telephone hotline for endangered children, which was created by the same 2004 law that established the ONPE.²⁵ Finally, the ONPE obtains data from several other relevant governmental agencies, such as the *Direction de la recherche, des études, de l'évaluation et des statistiques* (DREES) (Directorate for Research, Studies, Evaluations and Statistics) and the *Direction de la protection judiciaire de la jeunesse* (DPJJ) (Directorate for the Judicial Protection of Youth).²⁶

The ONPE is legally required to submit an annual report to the government and to Parliament, and to make that report public.²⁷ The latest report was published in April 2019.²⁸ This report is based on statistics gathered during the year 2017 and shows the following:²⁹

- There were 100 child homicide victims in 2017, including 67 killed by a family relative;³⁰
- There were 22,000 underage victims of sexual violence, including 8,070 rapes; approximately three out of ten were victimized by a family relative. Overall, 1.6 per 1,000 minors in continental France declared having suffered some form of sexual violence in 2017;³¹
- 59,255 children were victims of physical violence; a family relative was the perpetrator in about four out of ten cases;³²
- There were 2,778 wards of the state as of December 31, 2017, up 5.8% from the previous year; 34% of these children were in the process of being adopted by their current foster parents;³³
- 1,260 children were newly admitted as wards of the state in 2017, including 610 who were born of anonymous parents, and 385 who were judicially declared as having been abandoned.³⁴

Children], art. 6, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032205234&categorieLien=id%22>, archived at <https://perma.cc/78WT-FWGD>.

²⁴ C.A.S.F., art. L226-3-1.

²⁵ ONPE, TREIZIÈME RAPPORT AU GOUVERNEMENT ET AU PARLEMENT [THIRTEENTH REPORT TO THE GOVERNMENT AND THE PARLIAMENT] 7-8 (Apr. 2019), https://onpe.gouv.fr/system/files/publication/13e_ragp_complet_web_0.pdf, archived at <https://perma.cc/VF4V-7UWC>.

²⁶ *Id.* at 9.

²⁷ C.A.S.F., art. L226-6.

²⁸ ONPE, *supra* note 25.

²⁹ *Id.* at 23.

³⁰ *Id.* at 24.

³¹ *Id.* at 29-30.

³² *Id.* at 30.

³³ *Id.* at 32-33.

³⁴ *Id.* at 33.

Germany

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SUMMARY The German Basic Law, the country's constitution, as well as various statutory laws contain provisions whose objective is to prevent the abuse and neglect of children and adolescents. Furthermore, Germany has ratified the Convention on the Rights of the Child. Statistics are collected on child sexual abuse and on the number of risk assessments for the welfare of the child. An Independent Commissioner for Child Sexual Abuse Issues and the National Center Early Prevention analyze child abuse and neglect information.

I. Introduction

The German Basic Law, the country's constitution, contains two articles that focus specifically on children: article 6 on marriage, family, and children, and article 7 on the school system.¹ Article 5 on freedom of expression, art, and science also explicitly mentions the protection of young people as a limit to the exercise of these rights. In addition, children enjoy all the constitutional protections that are awarded to all persons, in particular the rights codified in articles 1 to 3 (human dignity, personal freedoms, and equality before the law).

The Federal Constitutional Court has held that article 2, paragraph 1 (right to free development of personality) in conjunction with article 6, paragraph 2 (parental rights and duties) of the Basic Law obligates the state to enforce the right of the child to parental care and education.² Furthermore, it reiterated that children, who enjoy an independent right to the free development of their personalities, are subject to special protection by the state.³ The Court stated that it is established case law that children require protection and assistance in order to develop into independent members of society.⁴ The right of the child to free development of his/her personality obligates the legislature to ensure the living conditions of the child that are necessary

¹ GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW], May 23, 1949, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 1, <http://www.gesetze-im-internet.de/gg/GG.pdf>, archived at <http://perma.cc/YB5A-3ANT>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.pdf (English version updated through Dec. 23, 2014), archived at <http://perma.cc/7RRW-K8NG>.

² BUNDESVERFASSUNGSGERICHT [BVERFG] [FEDERAL CONSTITUTIONAL COURT], Feb. 19, 2013, docket no. 1 BvL 1/11, para. 41, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2013/02/ls20130219_1bv1000111.html, archived at <http://perma.cc/J2QC-FGZG>, abridged English translation available at http://www.bverfg.de/e/ls20130219_1bv1000111en.html, archived at <http://perma.cc/6HU3-ML97>.

³ *Id.* para. 42, citing BVerfG, July 14, 1981, docket no. 28/77, para. 92, available at <https://openjur.de/u/188346.html>, archived at <http://perma.cc/V82B-4NHP>.

⁴ *Id.*, citing BVerfG, Apr. 1, 2008, docket no. 1 BvR 1620/04, para. 62, http://www.bverfg.de/e/rs20080401_1bvr162004en.html, archived at <http://perma.cc/XU7J-FEH9>.

for a healthy upbringing, meaning it must prevent abuse or neglect.⁵ The Court said that even though the parents are primarily responsible for the development of the child's personality, the state has a constitutional duty to control and ensure that parents live up to that obligation and to support and complement the parental duties.⁶

However, despite these guarantees in the Basic Law and the interpretation of the Court, discussions have been ongoing for more than thirty years as to whether to codify explicit children's rights in the Basic Law.⁷ The current coalition agreement of the governing parties CDU, CSU, and SPD contains a provision in that regard.⁸ A federal-state working group was convened for the first time on June 6, 2018, and is tasked with presenting a proposal for a constitutional amendment by the end of 2019.⁹

In addition, Germany signed the Convention on the Rights of the Child (CRC)¹⁰ on January 26, 1990, and ratified it on March 6, 1992.¹¹ Within the German legal system, it has the rank of a statutory law.¹² In 2010, Germany withdrew its reservations to the CRC.¹³ The CRC obligates the States Parties, among other things, to take the best interests of the child into account in all state

⁵ *Id.*, citing BVerfG, July 29, 1968, docket no. 1 BvL 20/63 et al., para. 61, <https://opiniojuris.de/entscheidung/1563>, archived at <http://perma.cc/H5VJ-WR59>; BVerfG, July 14, 1981, *supra* note 3, para. 94.

⁶ *Id.* (citing BVerfG, Nov. 27, 1990, docket no. 1 BvR 402/87 ("Josephine Mutzenbacher decision"), para. 41, <https://openjur.de/u/180505.html>, archived at <http://perma.cc/5AYQ-EW8V>, unofficial English translation available at <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=628>, archived at <http://perma.cc/3LNQ-K5MJ>), BVerfG, BVerfG, Dec. 15, 1999, docket no. 1 BvR 653/96, paras. 83, 84, http://www.bverfg.de/e/rs19991215_1bvr065396en.html, archived at <http://perma.cc/MK49-AHS3>, and BVerfG, *supra* note 4, para. 74).

⁷ *Kinderrechte ins Grundgesetz* [Children's Rights in the Basic Law], BUNDESMINISTERIUM FÜR FAMILIE, SENIOREN, FRAUEN UND JUGEND [FEDERAL MINISTRY FOR FAMILY AFFAIRS, SENIOR CITIZENS, WOMEN AND YOUTH] (Feb. 13, 2019), <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinderrechte/kinderrechte-ins-grundgesetz/115436>, archived at <http://perma.cc/F4PS-G76X>.

⁸ EIN NEUER AUFBRUCH FÜR EUROPA. EINE NEUE DYNAMIK FÜR DEUTSCHLAND. EIN NEUER ZUSAMMENHALT FÜR UNSER LAND [A NEW DEPARTURE FOR EUROPE. A NEW DYNAMIC FOR GERMANY. A NEW SOLIDARITY FOR OUR COUNTRY], KOALITIONSVERTRAG ZWISCHEN CDU, CSU UND SPD [COALITION AGREEMENT BETWEEN CDU, CSU, AND SPD], 19. LEGISLATURPERIODE [19TH LEGISLATIVE PERIOD], at 21, https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1, archived at <http://perma.cc/J63C-3ZCW>.

⁹ *Kinderrechte ins Grundgesetz*, *supra* note 7.

¹⁰ Convention on the Rights of the Child [CRC], Nov. 20, 1989, 1577 U.N.T.S. 3, <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>, archived at <http://perma.cc/9QA9-ZRSG>.

¹¹ *Convention on the Rights of the Child. Status as at Apr. 8, 2019*, UNITED NATIONS TREATY COLLECTION [UNTS], https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#top, archived at <http://perma.cc/C9E9-R7ER>.

¹² Basic Law, art. 25.

¹³ FÜNFTER UND SECHSTER STAATENBERICHT DER BUNDESREPUBLIK DEUTSCHLAND ZU DEM ÜBEREINKOMMEN DER VEREINTEN NATIONEN ÜBER DIE RECHTE DES KINDES [FIFTH AND SIX PERIODIC REPORT OF THE FEDERAL REPUBLIC OF GERMANY ON THE CONVENTION ON THE RIGHTS OF THE CHILD] (Apr. 2019), at 3, <https://www.bmfsfj.de/blob/133732/ed197a973db3136fa577d444dafa80e2/20190212-fuenfter-und-sechster-staatenbericht-data.pdf>, archived at <https://perma.cc/W5LJ-JAWL>.

actions concerning children.¹⁴ In general, the federal government is responsible for implementing and monitoring the CRC. Article 44 of the CRC obligates States Parties to submit to the Committee on the Rights of the Child (Committee) periodic country reports on the measures adopted to give effect to the rights in the CRC. In April 2019, Germany submitted its fifth/sixth country report to the Committee.¹⁵ In addition, in 2015, the federal government established an independent monitoring mechanism for implementation of the CRC at the German Institute for Human Rights.¹⁶

II. Legal Framework

The constitutional provisions and the obligations undertaken under the CRC are further defined in statutory law, in particular in the Criminal Code, the Civil Code, the Social Code, the Youth Protection Act, the Youth Labor Protection Act, and the Federal Act on the Protection of Children.

A. Criminal Code

The German Criminal Code contains several provisions that criminalize abuse and neglect of children, in particular the abuse of a position of trust with regard to minors, the sexual exploitation of children, child and youth pornography, and child trafficking.¹⁷

1. Abuse of a Position of Trust

The German Criminal Code makes it a criminal offense for anyone to torture, seriously abuse, or neglect a minor who

- is in his or her care or custody;
- belongs to his or her household;
- has been placed under his or her control by the person obliged to provide care; or
- is subordinated to him or her within a relationship of employment.¹⁸

The crime is punishable by a term of imprisonment of six months to ten years. In aggravated cases, meaning when there is a risk of death, serious injury, or a substantial impairment of the physical or mental development of the minor, the penalty is imprisonment for no less than one year.¹⁹

¹⁴ *Id.* art. 3, para. 1.

¹⁵ FÜNFTER UND SECHSTER STAATENBERICHT, *supra* note 13.

¹⁶ *Id.* at 8; *National CRC Monitoring Mechanism*, GERMAN INSTITUTE FOR HUMAN RIGHTS, <https://www.institut-fuer-menschenrechte.de/en/national-crc-monitoring-mechanism/>, archived at <https://perma.cc/YT23-4XCR>.

¹⁷ STRAFGESETZBUCH [STGB] [CRIMINAL CODE], Nov. 13, 1998, BGBL. I at 3322, as amended, <http://www.gesetze-im-internet.de/stgb/StGB.pdf>, archived at <https://perma.cc/Q7BY-ZRMB>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.pdf (English version updated through Oct. 10, 2013), archived at <https://perma.cc/JTC9-UVFJ>.

¹⁸ *Id.* § 225.

¹⁹ *Id.* § 225, para. 3.

2. *Evading a Domestic Support Obligation*

Article 170 of the Criminal Code makes it a crime to evade a statutory domestic support obligation if it results in endangering the basic subsistence of the person entitled to support, or would result in endangerment without the assistance of others. It is punishable by a term of imprisonment of up to three years or a fine. The Federal Constitutional Court held in 1979 that the provision does not violate article 3 of German Basic Law on equality before the law.²⁰ In that case, the child, who was entitled to support, was placed in a foster home to avoid neglect. The mother, who had custody of the child, was not able to care for and feed the child, because of the nonpayment of child support.²¹

3. *Violation of the Duty of Care or Education*

Anyone who grossly neglects his or her duty to provide care or education to a person under the age of sixteen and by that gross neglect creates a risk of damaging that person's physical or mental development, or that the person will engage in crime or in prostitution, is subject to a fine or a term of imprisonment for not more than three years.²² Examples of cases in which the courts have found "gross neglect" are giving large quantities of alcohol to a minor, preventing a minor from going to school, encouraging a minor to go begging, frequently beating or locking a child up, or leaving small children unattended for numerous days or nights, among others.²³

4. *Offenses Against Sexual Self-Determination*

There are several criminal law provisions that punish the sexual exploitation of children. Section 174 criminalizes the commission of sexual acts with minors who are in the custody or care of the perpetrator, who are subordinate to him or her in an employment or work relationship, or who are the adopted or biological children of the perpetrator.²⁴ The crime is punishable by a term of imprisonment of three months to five years.

Section 176 makes it a crime to engage in sexual acts with persons below the age of fourteen (children) or to induce children to commit sexual acts with a third person. The crime is punishable with imprisonment of six months to ten years.²⁵ Less serious cases, such as the commission of sexual acts in front of a child, carry a sentence of imprisonment of three months to five years.²⁶ Aggravated cases are punishable by a term of imprisonment of not less than one year for repeat offenders or not less than two years for acts of penetration, acts committed by more than one

²⁰ BVERFG, Jan. 17, 1979, docket no. 1 BvL 25/77, <https://openjur.de/u/198960.html>, archived at <https://perma.cc/BB2V-JM34>.

²¹ *Id.* at 45.

²² CRIMINAL CODE, § 171.

²³ THOMAS FISCHER, STRAFGESETZBUCH MIT NEBENGESETZEN (65th ed. 2018), § 171, para. 6 (providing more examples).

²⁴ CRIMINAL CODE, § 174, para. 1.

²⁵ *Id.* § 176, paras. 1, 2.

²⁶ *Id.* § 176, para 4.

person, and acts that put the child at risk of serious injury or substantial impairment of his or her physical or emotional development.²⁷ If any of these acts cause the death of the child, the punishment is life imprisonment or a term of imprisonment of not less than ten years.²⁸

Anyone who as an intermediary or by creating an opportunity abets a person under sixteen years of age to engage in sexual acts with a third person or in front of a third person, or abets sexual acts of a third person with a person under sixteen years of age, is subject to a term of imprisonment of up to three years or a fine.²⁹ If the person is under eighteen years of age and the sexual acts are subject to payment, the punishment is a term of imprisonment not exceeding five years or a fine.³⁰ If the perpetrator is in a position of trust with regard to the minor, the punishment is a term of imprisonment not exceeding five years or a fine.³¹ Section 182 makes it a crime punishable with a term of imprisonment of up to five years or a fine to sexually exploit the plight of minors. Finally, section 232 penalizes human trafficking for the purpose of sexual exploitation of children with a sentence of not less than one year of imprisonment.³²

5. *Child and Youth Pornography*

The distribution, purchase, or possession of child or youth pornography is punishable by a term of imprisonment of three months to five years or up to three years, respectively.³³ “Child pornography” is defined as pornography that shows either sexual acts of, with, or in front of persons under fourteen years, completely or nearly naked children in a sexual pose, or the unclothed genitalia of children in a sexually provocative way.³⁴ “Youth pornography” is defined as pornography that shows either sexual acts of, with, or in front of a person between the ages of fourteen and eighteen or such a person in an unnatural sexually suggestive position.³⁵

6. *Female Genital Mutilation*

Female genital mutilation (FGM) is punishable by a term of imprisonment of not less than one year.³⁶

²⁷ *Id.* § 176a.

²⁸ *Id.* § 176b.

²⁹ *Id.* § 180, para. 1.

³⁰ *Id.* § 180, para. 2.

³¹ *Id.* § 180, para. 3.

³² *Id.* § 232, para. 3, no. 1.

³³ *Id.* §§ 184b, 184c.

³⁴ *Id.* § 184b, para. 1.

³⁵ *Id.* § 184c, para. 1.

³⁶ *Id.* § 226a.

7. Child Trafficking

Trafficking of one's own child, ward, or foster child under the age of eighteen for remuneration or with the intent to enrich a third person is punishable with a term of imprisonment of up to five years or a fine.³⁷ The same punishment applies to a person who "buys" the child, ward, or foster child.³⁸

B. Civil Code

In 1979, the Act on the Revision of the Law on Parental Care introduced the term "parental care" into the German Civil Code.³⁹ It replaced the former designation of "parental authority" in order to put an emphasis on the responsibility of the parents to take into account the age, development, and capabilities of the child when making decisions. The new terminology was also designed to avoid the misconception that corporal punishment formed a necessary part of raising children.⁴⁰ "Parental care" as understood in German law encompasses physical and legal custody of the child, but puts a particular emphasis on the duty of care that parents owe their children.⁴¹ In addition, the amending law introduced section 1626, paragraph 2 into the German Civil Code, which for the first time emphasized that children have a legal say in parental decisions that affect them.

In 1998, the German Parliament enacted the Act to Reform the Laws on Children, which, among other things, eliminated remaining legal differences between legitimate and illegitimate children with regard to joint custody and visitation rights.⁴² It also gave children the right to have a guardian ad litem appointed in custody proceedings.⁴³ In 2000, the Civil Code was amended to

³⁷ *Id.* § 236, para. 1.

³⁸ *Id.*

³⁹ Gesetz zur Neuregelung des Rechts der elterlichen Sorge Act on the Revision of the Law on Parental Care], July 18, 1979, BUNDESGESETZBLATT [BGBL.] [FEDERAL LAW GAZETTE] I at 1081, art. 1, no. 2, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGB&jumpTo=bgbl179s1061.pdf, archived at <http://perma.cc/ZPU6-TCHL>.

⁴⁰ DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT-DRS.] 8/2788, at 36, <http://dip21.bundestag.de/dip21/btd/08/027/0802788.pdf>, archived at <http://perma.cc/5243-LNPW>.

⁴¹ BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE], Jan. 2, 2002, BGBL. I at 42, 2909; corrected in BGBL. 2003 I at 738, as amended, § 1626, para. 1, § 1629, para. 1, <http://www.gesetze-im-internet.de/bgb/BGB.pdf>, archived at <https://perma.cc/SC7N-DXBB>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf (English version updated through Oct. 1, 2013), archived at <https://perma.cc/HT3X-U658>.

⁴² Gesetz zur Reform des Kindschaftsrechts [Kindschaftsrechtsreformgesetz [KindRG] [Act to Reform the Laws on Children], Dec. 16, 1997, BGBL. I at 2942, art. 1, nos. 9, 10, 24, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGB&jumpTo=bgbl197s2942.pdf, archived at <http://perma.cc/FK4V-XQD8>.

⁴³ Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit [FamFG] [Act on Proceedings in Family Matters and in Matters of Noncontentious Jurisdiction], Dec. 17, 2008, BGBL. I at 2586, 2587, as amended, § 158, <http://www.gesetze-im-internet.de/famfg/FamFG.pdf>, archived at <https://perma.cc/V6N5-6WML> (English version updated through Apr. 20, 2013), unofficial English translation available at http://www.gesetze-im-internet.de/englisch_famfg/englisch_famfg.pdf, archived at <https://perma.cc/W23Y-577G>.

prohibit corporal punishment of children.⁴⁴ Section 1631, paragraph 2 now states that “[c]hildren have a right to a non-violent upbringing. Physical punishments, psychological injuries, and other degrading measures are inadmissible.”

Section 1666 states that, “[w]here the physical, mental or psychological best interests of the child or its property are endangered and the parents do not wish or are not able to avert the danger, the family court must take the measures necessary to avert the danger.”⁴⁵ The section provides a nonexhaustive list of several measures that the court can take, including

- requiring the parents to seek public assistance, such as benefits of child and youth welfare and healthcare;
- requiring them to ensure that the obligation to attend school is complied with;
- a prohibition on using the family home or another dwelling temporarily or for an indefinite period, to be within a certain radius of the home, or to visit certain other places where the child regularly spends time;
- a prohibition on establishing contact with the child or on meeting with the child;
- the substitution of declarations of the person having parental care; and
- the partial or complete removal of parental care.⁴⁶

Measures can also be taken against third parties.⁴⁷ However, separating the child from its parents or preventing a parent from using the family home must only be used as a measure of last resort when the danger cannot be countered in any other way.⁴⁸

C. Federal Act on the Protection of Children

In 2012, the Federal Act on the Protection of Children entered into force.⁴⁹ It is an omnibus act that introduced the Act on Cooperation and Information in Matters of Child Protection and amended several other laws, in particular the Social Code. The objective of the Act on Cooperation and Information in Matters of Child Protection is “to protect children and adolescents and to foster their physical, psychological, and mental development.”⁵⁰ The Act obligates the state to support parents when they exercise their parental right and duty to direct

⁴⁴ Gesetz zur Ächtung der Gewalt in der Erziehung und zur Änderung des Kindesunterhaltsrechts [Act to Condemn Violence in the Upbringing of Children and to Amend the Laws on Child Support], Nov. 2, 2000, BGBl. I at 1479, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl100s1479.pdf, archived at <https://perma.cc/3XL9-PXEX>.

⁴⁵ CIVIL CODE, § 1666, para. 1.

⁴⁶ *Id.* § 1666, para. 3.

⁴⁷ *Id.* §1666, para. 4.

⁴⁸ *Id.* § 1666a, para. 1.

⁴⁹ Bundeskinderschutzgesetz [BKSchG] [Federal Act on the Protection of Children], Dec. 22, 2011, BGBl. I at 2975, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl111s2975.pdf, archived at <http://perma.cc/S6C4-NHUD>.

⁵⁰ Gesetz zur Kooperation und Information im Kinderschutz [KKG] [Act on Cooperation and Information in Matters of Child Protection], Dec. 22, 2011, BGBl. I at 2975, as amended, § 1, para. 1, <http://www.gesetze-im-internet.de/kkg/KKG.pdf>, archived at <http://perma.cc/85LY-QGSA>.

the education and upbringing of their children in order to help them better fulfill this obligation, to detect risks for the development of children early on, and to prevent the initial or further endangerment of the child.⁵¹ For that purpose, the Act proposes information, counseling, and assistance (early intervention).⁵²

Parents as well as parents-to-be should be informed of counseling and assistance services in their area with regard to pregnancy, birth, and the development of the child during its first years.⁵³ The competent state authorities are authorized to offer parents a face-to-face conversation. This conversation can also take place in the home of the parents, if they wish.⁵⁴

In addition, the Act obligates the states to establish a network in which the different institutions that are involved in child protection can work together, exchange practices, and coordinate procedures.⁵⁵ Furthermore, the Act provides a legal basis for the continuous financing of early prevention networks, in particular through family nurses, and services that provide psychological support to families.⁵⁶ Since January 2018, the networks have been financed with €51 million (about US\$57.4 million) annually by the “Federal Foundation Early Intervention” (Bundesstiftung Frühe Hilfen).⁵⁷

Finally, the Act codifies the right of several occupational groups that are subject to professional secrecy to consult a specialist and provide pseudonymized data to determine whether the well-being of a child or young person is at risk.⁵⁸ The occupational groups are doctors, midwives, and other health-care professionals; psychologists; marriage, family, education, and youth counselors; addiction counselors; members of recognized centers for counseling according to the Pregnancy Conflict Act; social workers; and teachers at public and private schools.⁵⁹ If they have strong reasons to believe that the well-being of a child or adolescent is at risk, they must talk to the minor and the person who has custody and, if necessary, urge the person who has custody to accept assistance, provided that it will not endanger the minor.⁶⁰ If the risk cannot be averted or if the actions taken fail, they are authorized to inform the Youth Welfare Offices and provide them with the necessary data.⁶¹

⁵¹ *Id.* § 1, para. 3.

⁵² *Id.* § 1, para. 4.

⁵³ *Id.* § 2, para. 1.

⁵⁴ *Id.* § 2, para. 2.

⁵⁵ *Id.* § 3, paras. 1-3.

⁵⁶ *Id.* § 3, para. 4.

⁵⁷ *Id.* § 3, para. 4, sentence 3; *Verwaltungsvereinbarung Fonds Frühe Hilfen über die Bundesstiftung Frühe Hilfen* [Administrative Agreement Funds Early Intervention on the Federal Foundation Early Intervention], (2017), https://www.fruehehilfen.de/fileadmin/user_upload/fruehehilfen.de/pdf/Verwaltungsvereinbarung-Bundesstiftung-Fruehe-Hilfen.pdf, archived at <https://perma.cc/J6M6-YKXC>.

⁵⁸ Act on Cooperation and Information in Matters of Child Protection, § 4, para. 2.

⁵⁹ *Id.* § 4, para. 1.

⁶⁰ *Id.*

⁶¹ *Id.* § 4, para. 3.

D. Social Code

Since 1990, the Social Code explicitly recognizes children and adolescents as having rights of their own.⁶² Section 1 codifies the right of young people to “receive support for their development and upbringing in order to become an independent and socially competent person.” In order to implement that right, the Youth Welfare Offices must, among others things, protect the well-being of minors from harm.⁶³ This obligation of the Youth Welfare Offices further defines the constitutional obligation of the state as outlined above.⁶⁴

Depending on their developmental stage, children have to be involved in decisions of the public Youth Welfare Offices that concern them.⁶⁵ They have to be informed of their rights in administrative procedures, in family court, and in administrative court.⁶⁶ In addition, they have a right to contact the Youth Welfare Offices in all matters of upbringing and development.⁶⁷ In particular, in crisis and conflict situations, they have a right to counseling without the notification of the person that has custody of the child, if the notification would defeat the purpose of the counseling.⁶⁸

If the Youth Welfare Offices have credible information indicating a risk to the welfare of a child or adolescent, they must assess the risk in cooperation with professional staff.⁶⁹ As long as it does not endanger the safety of the minor, the guardian as well as the minor have to be involved in the assessment. If necessary according to the professional assessment, the Youth Welfare Offices must make a home visit to see the minor and inspect his/her surroundings. If the Youth Welfare Offices consider assistance appropriate and necessary to prevent harm, they must offer it to the guardians. If the guardians are unable or unwilling to participate in the risk assessment or if the Youth Welfare Offices consider it necessary to involve the family court, they must bring proceedings before the court.⁷⁰ If there is an imminent danger and they cannot wait for the decision of the court, the Youth Welfare Offices must take the minor into custody.⁷¹ Where immediate action is necessary and the guardians do not cooperate, the Youth Welfare Office may involve other agencies, such as Health Services or the police.⁷²

⁶² Sozialgesetzbuch (SGB) – Achstes Buch (VIII) – Kinder- und Jugendhilfe [SGB VIII] [Social Code – Eighth Book – Child and Youth Welfare [Social Code VIII], Sept. 11, 2012, BGBL. I at 2022, as amended, http://www.gesetze-im-internet.de/sgb_8/SGB_8.pdf, archived at <https://perma.cc/S8BL-JR7L>.

⁶³ *Id.* § 1, para. 3, no. 3.

⁶⁴ Basic Law, art. 6, para. 3. See Part I, “Introduction,” above.

⁶⁵ SOCIAL CODE VIII, § 8, para. 1, sentence 1.

⁶⁶ *Id.* § 8, para. 1, sentence 2.

⁶⁷ *Id.* § 8, para. 2.

⁶⁸ *Id.* § 8, para. 3.

⁶⁹ *Id.* § 8a, para. 1.

⁷⁰ *Id.* § 8a, para. 2.

⁷¹ *Id.*

⁷² *Id.* § 8a, para. 3.

Furthermore, children have a right and Youth Welfare Offices are obligated to take children into their custody when

- children ask for it;
- there is an imminent danger to the well-being of the child and the person having custody does not object or when a family court decision cannot be obtained in a timely manner; or
- a foreign unaccompanied minor enters Germany and no person having custody or a guardian is present.⁷³

In 2012, as mentioned above, the Federal Act on the Protection of Children entered into force and amended the Social Code. Among other things, it required group homes for minors to obtain an authorization.⁷⁴ Such an authorization will only be issued when the well-being of the minors is ensured.⁷⁵ Among other things, the service providers must provide proof that their personnel is qualified and submit detailed criminal records.⁷⁶ Persons with criminal records who have committed certain enumerated crimes, such as sexual abuse of children, may not run day care centers, be employed by Youth Welfare Offices, or be used as foster parents.⁷⁷

The amendment also added the risk assessments for the welfare of the minor to the list of things that need to be statistically documented.⁷⁸

E. Youth Protection Act

The Youth Protection Act contains various provisions that aim to protect young people from exposure to alcohol, tobacco, and sex and violence in the media.⁷⁹ In addition, there is a catch-all-clause that states that if certain public events or establishments, such as paintball or laser tag establishments, endanger children and adolescents, the competent authority may order them not to admit minors. Such an order may include age restrictions, time restrictions, or other conditions that will prevent or mitigate the danger.⁸⁰ Furthermore, if a minor is present in a place where there is an immediate danger to his or her physical, psychological, or mental health, the competent authorities may take measures to avert the danger. In particular, they may encourage the child or adolescent to leave, take the minor to his/her guardian, or, if no guardian is available, entrust the minor to the care of the Youth Welfare Offices.⁸¹

⁷³ *Id.* § 42, para. 1.

⁷⁴ *Id.* § 45, para. 1.

⁷⁵ *Id.* § 45, para. 2.

⁷⁶ *Id.* § 45, para. 3.

⁷⁷ *Id.* § 43, para. 2, § 44, para. 2, § 72a.

⁷⁸ *Id.* § 98, para. 1, no. 13, § 99, para. 1, no. 1j, § 99, paras. 6, 6b.

⁷⁹ Jugendschutzgesetz [JuSchG] [Youth Protection Act], July 23, 2002, BGBL. I at 2730, as amended, <http://www.gesetze-im-internet.de/juschg/juschg.pdf>, archived at <https://perma.cc/3L76-C7MU>.

⁸⁰ *Id.* § 7.

⁸¹ *Id.* § 9.

F. Youth Labor Protection Act

The Youth Labor Protection Act provides that employing children below the age of fifteen is generally prohibited.⁸² Exempt from the scope of the Act are minor jobs such as babysitting, helping out neighbors, and volunteer work in youth groups or charitable organizations.⁸³ Exceptions may also be granted for theater and music performances, for advertising, and for radio and TV productions.⁸⁴ However, exceptions will only be granted under certain conditions, such as that the guardians agreed in writing, the work does not interfere with the child's attendance at school, or that all necessary measures are taken to protect the child and to avoid risks to his/her life, health, and physical and mental development.⁸⁵ Certain dangerous occupations are prohibited for children, such as work that exceeds their physical or psychological capacity or work that would expose them to moral dangers, among others.⁸⁶

Persons that have committed certain crimes, such as sexual offenses or violent crimes, are prohibited from employing minors.⁸⁷ Anyone who employs minors is not allowed to use corporal punishment, must prevent others from using corporal punishment, from abusing the minor, and from subjecting him or her to moral danger, and must not give the minor tobacco or alcohol.⁸⁸

Violations of the protective labor provisions are punishable by administrative fines or imprisonment for up to six months.⁸⁹

III. Statistics and Analysis

In 2007, the German government created the "National Center Early Prevention" (Nationales Zentrum Frühe Hilfen, NZFH). One of the tasks of the NZFH is the promotion of quality development in child protection. Among other things, the NZFH analyzes child protection cases, evaluates early prevention tools, organizes seminars, and connects different actors.⁹⁰

⁸² Jugendarbeitsschutzgesetz [JArbSchG] [Youth Labor Protection Act], Apr. 12, 1976, BGBl. I at 965, as amended, § 5, para. 1, <http://www.gesetze-im-internet.de/jarbschg/1ArbSchG.pdf>, archived at <https://perma.cc/RC5R-GRNY>.

⁸³ *Id.* § 1, para. 2; Friedrich Ambs, *JArbSchG*, § 1, paras. 14-21, in GEORG ERBS & MAX KOHLHAAS, KOMMENTAR. STRAFRECHTLICHE NEBENGESETZE (222 ed. Dec. /2018) (providing further examples).

⁸⁴ Youth Labor Protection Act, § 6, para. 1.

⁸⁵ *Id.*

⁸⁶ *Id.* § 22.

⁸⁷ *Id.* § 25.

⁸⁸ *Id.* § 31.

⁸⁹ *Id.* §§ 58, 59.

⁹⁰ *Aufgaben des NZFH* [Tasks of the NZFH], NZFH, <https://www.fruehehilfen.de/das-nzfh/ziele-und-aufgaben/aufgaben-des-nzfh/?count=20> (last visited Apr. 11, 2019), archived at <https://perma.cc/ZSX2-VPWF>.

Since 2010, there has been an Independent Commissioner for Child Sexual Abuse Issues (Commissioner).⁹¹ The current Commissioner is Johannes-Wilhelm Rörig.⁹² Even though the office is located within the Federal Ministry for Family, Seniors, Women and Youth, the Commissioner operates independently.⁹³ His responsibilities include

- Helping ensure that the interests of victims and survivors of sexual violence in childhood receive due consideration;
- Supporting the implementation of the recommendations of the Round Table for “Child Sexual Abuse”;
- Monitoring of the recommendations of the Round Table and in particular observing the implementation and further development of protection concepts in organisations and institutions;
- Further development and nationwide distribution of the Initiative “No Room for Abuse”;
- Supporting an independent and systematic inquiry of child sexual abuse in Germany;
- Operation and further development of the Sexual Abuse Helpline and the help portal on sexual abuse;
- Initiation of scientific studies in the context of child sexual abuse; and
- Raising public awareness and public relations.⁹⁴

From 2015–2018, the Commissioner conducted a nationwide monitoring to assess the situation with regard to the prevention of sexualized violence against children and adolescents in Germany.⁹⁵ The study used qualitative surveys, such as case studies, group interviews, and focus groups; quantitative studies, such as random sampling with standardized questionnaires; and self-evaluation tools for institutions and organizations.⁹⁶ From the results of the surveys, the Commissioner develops recommendations for practice, politics, and research.⁹⁷ In addition, on the basis of the studies, he formulates perspectives for the further development of child protection services and to safeguard the rights of children and minors in group homes.⁹⁸

As mentioned above, risk assessments for the welfare of minors have to be statistically documented. In 2017, the German Youth Welfare Offices conducted around 143,300 procedures to assess the risk to the welfare of children. This number is 4.6% higher than the previous year.

⁹¹ *The Office*, INDEPENDENT COMMISSIONER FOR CHILD SEXUAL ABUSE ISSUES, <https://dev.beauftragter-missbrauch.de/en/the-commissioner/the-office> (last visited Apr. 11, 2019), archived at <https://perma.cc/V2HK-G34S>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Nationwide Monitoring to Assess the Situation with Regard to the Prevention of Sexualized Violence Against Children and Adolescents in Germany*, INDEPENDENT COMMISSIONER FOR CHILD SEXUAL ABUSE ISSUES, https://beauftragter-missbrauch.de/praevention/schutzkonzepte/instrumente/monitoring#section_bildung (last visited Apr. 11, 2019), archived at <https://perma.cc/XGX8-XKC2>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

However, even though more risk assessment were conducted, less cases of actual child welfare endangerment were determined to have taken place compared to the previous year.⁹⁹

Child sexual abuse cases are also reported in the annual crime statistics.¹⁰⁰ The organization German Child Aid (Deutsche Kinderhilfe) generally presents the numbers together with a representative from the Federal Criminal Police Office, the Commissioner, and doctors/psychiatrists specialized in child abuse at a press conference in the middle of the year.¹⁰¹ At the 2018 press conference, they reported that 143 children had been killed in 2017.¹⁰² Around 78% were younger than six years of age at the time of their death. Child abuse numbers remained high at 4,208, with 43% of these children younger than six years. With regard to sexual abuse, the numbers were 3.64% lower than in the previous year, but remained high with 13,539 children total.¹⁰³ A comparison of the numbers of child sexual abuse cases between the individual German states is also produced.¹⁰⁴

⁹⁹ Press Release, Jugendämter haben 2017 häufiger geprüft, aber weniger Kindeswohlgefährdungen festgestellt [Youth Welfare Office Has Investigated More Often, But Has Found Less Child Welfare Endangerment] (Sept. 13, 2018), https://www.destatis.de/DE/Presse/Pressemitteilungen/2018/09/PD18_344_225.html, archived at <https://perma.cc/WF53-HPFE>; Destatis, Detaillierte Angaben zu Gefährdungseinschätzungen nach § 8a Absatz 1 SGB VIII [Detailed Information on Risk Assessments According to § 8a, paragraph 1 of SGB VIII], Sept. 13, 2018, <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Soziales/Kinderhilfe-Jugendhilfe/Publicationen/Downloads-Kinder-und-Jugendhilfe/gefahrdungseinschaetzungen-5225123177005.xls?blob=publicationFile&v=4>, archived at <https://perma.cc/5GCB-5SAR>.

¹⁰⁰ BUNDESKRIMINALAMT [BKA] [FEDERAL CRIMINAL POLICE OFFICE], POLIZEILICHE KRIMINALSTATISTIK 2018. AUSGEWÄHLTE ZAHLEN IM ÜBERBLICK [POLICE CRIME STATISTICS 2018. AN OVERVIEW OF SELECTED NUMBERS] (Apr. 2019), <https://www.bka.de/SharedDocs/Downloads/DE/Publicationen/PolizeilicheKriminalstatistik/2018/pks2018ImkBericht.pdf?blob=publicationFile&v=5>, archived at <https://perma.cc/EEK9-AFSJ>.

¹⁰¹ Press Release, Deutsche Kinderhilfe, Zahlen der Polizeilichen Kriminalstatistik zeichnen ein trauriges Bild [Numbers of Poice Crime Statistics Paint a Sad Picture] (June 5, 2018), https://beauftragter-missbrauch.de/fileadmin/Content/pdf/Pressemitteilungen/2018/Juni/05/Pressemitteilung_PKS_2017_20180506.pdf, archived at <https://perma.cc/Y6QY-APJL>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Auszug aus der Polizeilichen Kriminalstatistik 2017. Ländervergleich sexuelle Gewalt an Minderjährigen [Extract from the Poice Crime Statistics 2017. Comparison Between the States on Sexual Abuse of Minors], https://beauftragter-missbrauch.de/fileadmin/Content/pdf/Pressemitteilungen/2018/Juni/05/PKS_2017_Laendervergleich_20180506.pdf, archived at <https://perma.cc/E7V2-URP3>.

India

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SUMMARY In India the primary child protection provisions are found in the Juvenile Justice (Care and Protection of Children) Act, 2015. Chapter VI of the Act lays out the procedure in relation to a child in need of care and protection and Chapter IX describes certain offenses against children, including cruelty. The Protection of Children from Sexual Offences Act, 2012 contains provisions protecting children from sexual assault, sexual harassment, and pornography, and provides for the establishment of special courts for the trial of such offenses. The National Commission for Protection of Child Rights was established in March 2007 under the authority of the Commissions for Protection of Child Rights Act, 2005, to periodically review laws, policies, and programs to ensure that they are compatible with child rights as enshrined in the Constitution of India and the UN Convention on the Rights of the Child, to which India is a party.

I. Introduction

A. Legal and Policy Framework

The Constitution of India provides that the state, as a directive principle of state policy, must seek to ensure “that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”¹ The rights to equality, to protection of life, to personal liberty, and against exploitation are enshrined in articles 14–17, 21, 23, and 24 of the Constitution. Article 15, which protects against discrimination on various grounds, contains an important proviso that “[n]othing in this article shall prevent the State from making any special provision for women and children.”²

In addition to the above domestic laws, the government of India ratified the United Nations (UN) Convention on the Rights of the Child on November 12, 1992.³

¹ CONSTITUTION OF INDIA art. 39(f), https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf, archived at <https://perma.cc/X8SN-BCSK>.

² *Id.* art. 15(3).

³ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, <https://treaties.un.org/doc/Publication/UNTS/Volume%201577/v1577.pdf>, archived at <https://perma.cc/6XXQ-6FDE>.

On April 26, 2013, the government of India adopted a new National Policy for Children, 2013,⁴ which replaced the 1974 child policy.⁵ The new policy lays down the guiding principles that must be respected by national, state, and local governments in their actions and initiatives affecting children.⁶ The National Policy states that the “safety and security of all children is integral to their well-being and children are to be protected from all forms of harm, abuse, neglect, violence, maltreatment and exploitation in all settings including care institutions, schools, hospitals, crèches, families and communities.”⁷

The Policy also provides that

4.9 The State shall protect all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, deprivation, exploitation including economic exploitation and sexual exploitation, abandonment, separation, abduction, sale or trafficking for any purpose or in any form, pornography, alcohol and substance abuse, or any other activity that takes undue advantage of them, or harms their personhood or affects their development.

...

4.12 The State shall promote child friendly jurisprudence, enact progressive legislation, build a preventive and responsive child protection system, including emergency outreach services, and promote effective enforcement of punitive legislative and administrative measures against all forms of child abuse and neglect to comprehensively address issues related to child protection.⁸

B. Administrative Responsibility

The government of India has “assigned focal responsibility for child rights and protection to the Ministry of Women and Child Development (MWCD),”⁹ and has given it key responsibility for overseeing implementation of the National Policy.¹⁰ Pursuant to principles in the National Policy,

⁴ NATIONAL POLICY FOR CHILDREN, 2013, EXTRACT FROM GAZETTE OF INDIA, Part I Sec. 1 (May 11, 2013), http://wcd.nic.in/sites/default/files/npcenglish08072013_0.pdf, archived at <https://perma.cc/R9MD-BJE7>.

⁵ GOVERNMENT OF INDIA, DEPARTMENT OF SOCIAL WELFARE, NATIONAL POLICY FOR CHILDREN 1974, http://childlineindia.org.in/CP-CR-Downloads/national_policy_for_children.pdf, archived at <https://perma.cc/5HPR-367U>.

⁶ Press Release, Government of India, Ministry of Women and Child Development, The National Policy for Children, 2012 (Apr. 18, 2013), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=94792>, archived at <https://perma.cc/48XK-6786>.

⁷ NATIONAL POLICY FOR CHILDREN, 2013, *supra* note 5, at 4.

⁸ *Id.* at 9-10.

⁹ Dr. Rajeev Seth, *Child Abuse and Neglect in India*, 82(8) INDIAN J. PEDIATRICS 707, 711 (Aug. 2015), <https://link.springer.com/content/pdf/10.1007%2Fs12098-014-1620-3.pdf> (subscription only), archived at <https://perma.cc/FV56-FHNM>.

¹⁰ Press Release, Government of India, Ministry of Women and Child Development, *supra* note 6.

the Ministry developed and released a National Plan of Action for Children (NPAC)¹¹ on January 24, 2017.¹² One of the key priority areas in the Plan is “protection” and the objective is to “[p]rotect all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, deprivation, exploitation including economic exploitation and sexual exploitation, abandonment, separation, abduction, sale or trafficking.”¹³

II. Federal Laws

A. Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015,¹⁴ which received presidential assent on December 31, 2015, repealed and replaced a 2000 Act by the same name. In September 2016, the government issued the Juvenile Justice (Care and Protection of Children) Model Rules, 2016,¹⁵ which set out some of the procedures for implementing the Act.

The passing of the law was prompted by the public outcry surrounding the release of a minor involved in a gang rape after completion of a three-year term in a juvenile home.¹⁶ The law deals with two categories of children: “those who are in conflict with the law (CICL), and those who need care and protection (CNCP).”¹⁷ The law was

enacted to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established here under.¹⁸

¹¹ GOVERNMENT OF INDIA, MINISTRY OF WOMEN AND CHILD DEVELOPMENT, NATIONAL PLAN OF ACTION FOR CHILDREN (NPAC), 2016: SAFE CHILDREN – HAPPY CHILDREN (Dec. 2016), <http://wcd.nic.in/sites/default/files/National%20Plan%20of%20Action%202016.pdf>, archived at <https://perma.cc/LRW2-DTVL>.

¹² Press Release, Government of India, Ministry of Women and Child Development, National Plan of Action for Children, 2016 Developed through a Consultative Process (Mar. 10, 2017), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=159142>, archived at <https://perma.cc/5U63-MRBD>.

¹³ NPAC 2016, *supra* note 11, at 44.

¹⁴ Juvenile Justice (Care and Protection of Children) Act 2015, No. 2 of 2016, <http://cara.nic.in/PDF/JJ%20act%202015.pdf>, archived at <https://perma.cc/L3LT-L3TE>.

¹⁵ Juvenile Justice (Care and Protection of Children) Model Rules, 2016, https://upload.indiacode.nic.in/showfile?actid=AC_CEN_13_14_000010_201602_1517807328168&type=rule&filename=english%20model%20rule.pdf, archived at <https://perma.cc/BM45-CQ8M>

¹⁶ ASHA BAJPAI, CHILD RIGHTS IN INDIA: LAW, POLICY, AND PRACTICE 581 (Oxford University Press, 2017).

¹⁷ Asha Bajpai, *The Juvenile Justice (Care and Protection of Children) Act 2015: An Analysis*, 2(2) INDIAN L. REV., 191, 194 (2018), <https://www.tandfonline.com/doi/pdf/10.1080/24730580.2018.1552233?needAccess=true>, archived at <https://perma.cc/K7BF-CHVG>.

¹⁸ *The Juvenile Justice (Care and Protection of Children) Act, 2015*, SCC ONLINE BLOG (Jan. 13, 2016), <https://blog.scconline.com/post/2016/01/13/the-juvenile-justice-care-and-protection-of-children-act-2015/>, archived at <https://perma.cc/D94B-EB29>.

Section 2 enumerates definitions of the terms “child,” “juvenile,” “child in need of care and protection,” etc. A “child” is defined under the act as “a person who has not completed eighteen years of age.”¹⁹ A “child in need of care and protection” is defined as

(14) . . . a child –

- (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
- (iii) who resides with a person (whether a guardian of the child or not) and such person –

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage[.]²⁰

Section 3 lists sixteen general principles to be followed in the administration of the Act, including the following:

- (ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.

¹⁹ Juvenile Justice (Care and Protection of Children) Act 2015, § 2(12).

²⁰ *Id.* § 2(14).

...

(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

...

(xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.²¹

Chapter 5 of the Act covers the role, functions, and responsibilities of Child Welfare Committees (CWCs), which are to be established in each district. They are to consist of “a chairperson and four other members who have experience in dealing with children. One of the four members must be a women.”²² Each CWC is to function as a Bench and must have the powers conferred on a Metropolitan Magistrate or a Judicial Magistrate of First Class.²³ Section 29(1) of the Act stipulates that CWCs “shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.”²⁴

The functions and responsibilities of the CWCs are stipulated under section 30 of the Act. Chapter VI lays out the procedure in relation to a child in the need of care and protection, which is further enumerated under Chapter V of the Rules. A child may be brought before a CWC by a police officer, any public servant, Childline Services (a project of Ministry of Women and Child Development), or any nongovernmental organization recognized by a state government, child welfare officer, or probation officer; any social worker or public spirited citizen; any nurse, doctor, or the management of a nursing home, hospital, or maternity ward; or by the child him/herself.²⁵

²¹ *Id.* § 3.

²² BAJPAI, *supra* note 16, at 195.

²³ Juvenile Justice (Care and Protection of Children) Act 2015, § 27(9).

²⁴ *Id.* § 29(1).

²⁵ *Id.* § 31(1).

The Chapter also includes provisions on mandatory reporting regarding a child found separated from a guardian, the procedure applicable to a CWC inquiry, and orders that can be issued by the CWCs with regard to a child in need of care and protection.²⁶

While the Act sets forth an ambitious agenda, one article from 2017 notes that the local CWCs “are plagued by low attendance, poor infrastructure, [and] political interference.”²⁷

The Juvenile Justice Act requires every state government to establish a State Child Protection Society and District Child Protection Units with officers and employees appointed by the government, “to take up matters relating to children with a view to ensure the implementation of this Act.”²⁸ Additionally, in every police station, at least one officer, not below the rank of assistant sub-inspector, is to be designated as the child welfare police officer to “exclusively deal with children either as victims or perpetrators, in co-ordination with the police, voluntary and non-governmental organisations.”²⁹

The Act also establishes a Special Juvenile Police Unit (SJPU) for police officers to “coordinate and function as a watch-dog for providing legal protection against all kinds of cruelty, abuse and exploitation of children or juveniles.”³⁰ SJPUs are supposed to be constituted in each district and city.³¹ Each SJPU is to be headed by a police officer not below the rank of a Deputy Superintendent of Police or above and consist of a child welfare police officer and two social workers who have experience working in the field of child welfare, of whom one shall be a woman.³² The District Child Protection Unit of the State Government provides the services of its two social workers to the Special Juvenile Police Unit.

Chapter IX of the Act includes certain offenses against children, including cruelty against a child, offering a narcotic substance to a child, and abducting or selling a child. The punishment for cruelty to a child is provided for by section 75 of the Act:

75. Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such

²⁶ For more information on implementation of the Juvenile Justice Act, 2015, see NCPCR, A GUIDE FOR DISTRICT ADMINISTRATION FOR IMPLEMENTATION OF JUVENILE JUSTICE ACT, 2015 AND POCSO ACT, 2012 (2018), <http://ncpcr.gov.in/showfile.php?lang=1&level=2&&sublinkid=1293&lid=1517>, archived at <https://perma.cc/JG8Y-5X4C>.

²⁷ *Set Up under the Juvenile Justice Law, Child Welfare Committees Are in Need of Saving Themselves*, SCROLL.IN (Jan. 26, 2017), <https://scroll.in/article/826978/set-up-under-the-juvenile-justice-law-child-welfare-committees-are-in-need-of-saving-themselves>, archived at <https://perma.cc/XQH7-52JE>.

²⁸ Juvenile Justice (Care and Protection of Children) Act 2015, § 106.

²⁹ *Id.* § 107(1).

³⁰ Lina Acca Mathew, *A Multidisciplinary Approach to Child Protection for Sexual Abuse in India: The Law*, in CHILD SAFETY, WELFARE AND WELL-BEING (Deb S. eds., New Delhi, 2016), https://link.springer.com/chapter/10.1007/978-81-322-2425-9_25#citeas (subscription only).

³¹ Juvenile Justice (Care and Protection of Children) Act 2015, § 107(2).

³² *Id.*

child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.³³

In 2009 the government of India launched the Integrated Child Protection Scheme (ICPS), “a centrally sponsored scheme aimed at building a protective environment for children in difficult circumstances, as well as other vulnerable children, through Government-Civil Society Partnership.”³⁴ The objectives of the scheme are

to contribute to the improvements in the well being of children in difficult circumstances, as well as to the reduction of vulnerabilities to situations and actions that lead to abuse, neglect, exploitation, abandonment and separation of children. These will be achieved by: (i) improved access to and quality of child protection services; (ii) raised public awareness about the reality of child rights, situation and protection in India; (iii) clearly articulated responsibilities and enforced accountability for child protection (iv) established and functioning structures at all government levels for delivery of statutory and support services to children in difficult circumstances; (v) introduced and operational evidence based monitoring and evaluation.³⁵

The ICPS is administered and implemented by states through child protection committees and societies and at the district level through district or village child protection societies.³⁶

³³ *Id.* § 27(9).

³⁴ *Integrated Child Protection Scheme (ICPS)*, MINISTRY OF WOMEN & CHILD DEVELOPMENT, <http://wcd-icps.nic.in/> (last visited Apr. 29, 2019), archived at <https://perma.cc/4H7C-FWQ8>.

³⁵ MINISTRY OF WOMEN AND CHILD DEVELOPMENT, THE INTEGRATED CHILD PROTECTION SCHEME (ICPS) – A CENTRALLY SPONSORED SCHEME OF GOVERNMENT – CIVIL SOCIETY PARTNERSHIP 8, <http://childlineindia.org.in/CP-CR-Downloads/ICPS.pdf> (last visited Apr. 8, 2019), archived at <https://perma.cc/V74Q-Y8ZM>.

³⁶ *Integrated Child Protection Scheme (ICPS)*, CHILDLINE INDIA FOUNDATION, <http://childlineindia.org.in/Integrated-Child-Protection-Scheme-ICPS.htm> (last visited Apr. 8, 2019), archived at <https://perma.cc/K2HU-LCGD>.

B. Commissions for Protection of Child Rights (CPCR) Act, 2005

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005.³⁷ The NCPCR, which is under the Ministry of Women and Child Development, has the mandate to ensure that all “[l]aws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group.”³⁸ It also “enquires, investigates, and recommends action against perpetrators of child abuse and neglect.”³⁹

More specifically, the National Commission has the following functions and powers:

- Examine and review the legal safeguards provided by or under any law for the protection of child rights and recommend measures for their effective implementation
- Prepare and present annual and periodic reports upon the working of these safeguards
- Inquire into violation of child rights and recommend initiation of proceedings in such cases
- Undertake periodic review of policies, programmes and other activities related to child rights in reference to the treaties and other international instruments
- Spread awareness about child rights among various sections of society
- Examine and recommend appropriate remedial measures for all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence/riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution
- Undertake and promote research in the field of child rights
- Inspect institutions meant for juvenile/children
- Inquire into complaints of deprivation and violation of child rights, non-implementation of laws and non-compliance policy decisions, guidelines or instructions
- Undertake other necessary functions for the promotion of child rights. The Commission has the power of a civil court and all criminal cases brought to the same has to be forwarded to a concerned Magistrate who has jurisdiction to try the same.⁴⁰

³⁷ Commissions for Protection of Child Rights (CPCR) Act, 2005, No. 4 of 2006, <https://indiacode.nic.in/bitstream/123456789/2056/1/200604.pdf#search=>, archived at <https://perma.cc/9VUY-X3WY>.

³⁸ *Welcome to National Commission for Protection of Child Rights*, NCPCR, <http://ncpcr.gov.in/> (last visited), archived at <https://perma.cc/7R3D-Z3EP>.

³⁹ Seth, *supra* note 9, at 711.

⁴⁰ *Commission for Protection of Child Rights*, UNICEF INDIA, <http://unicef.in/Story/786/Commission-for-Protection-of-Child-Rights> (last visited April 3, 2019), archived at <https://perma.cc/AQR5-X43U>.

C. Protection of Children from Sexual Offences Act (POCSO), 2012

The Protection of Children from Sexual Offences Act (POCSO), 2012,⁴¹ and the rules framed under the Act⁴² establish specific offenses to protect children from sexual assault, sexual harassment, and pornography, and provide for the establishment of special courts for the trial of such offenses. The Act seeks to safeguard the interest of the child “at every stage of the judicial process, by incorporating child friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences” through the special courts.⁴³ The NCPCR is “mandated to monitor the implementation of the Act” by Section 44 of the POCSO and Rule 6 of POCSO Rules.

Section 19 of the POCSO Act makes it mandatory for any person, including the child him/herself, to report that an offense is likely to be committed or has been committed. Section 21 of the Act makes the failure to report punishable, except that the child victim cannot be punished for such failure. According to one article,

[u]nder this act, various child friendly procedures are put in place at various stages of the judicial process. Also, the Special Court is to complete the trial within a period of one year, as far as possible. Disclosing the name of the child in the media is a punishable offence, punishable by up to one year. The law provides for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or to the local police. Immediate & adequate care and protection (such as admitting the child into a shelter home or to the nearest hospital within twenty-four hours of the report) are provided. The Child Welfare Committee (CWC) is also required to be notified within 24 hours of recording the complaint.⁴⁴

However, a 2017 journal article notes that,

even after 5 years of its inception, this act has faced unforeseen challenges in its complete implementation, the chief being failure to set up special POCSO courts in all the districts of the country. Setting up of these courts was an essential mandate of the POCSO act, the lack of which has resulted in considerable delay in the disposal and pendency of the cases registered under the act.⁴⁵

⁴¹ Protection of Children from Sexual Offences Act (POCSO), No. 32 of 2012, <https://indiacode.nic.in/bitstream/123456789/2079/4/A2012-32.pdf#search=Protection%20of%20Children>, archived at <https://perma.cc/L9GV-PHPK>.

⁴² Protection of Children from Sexual Offences Rules, 2012, [https://upload.indiacode.nic.in/showfile?actid=AC_CEN_13_14_00005_201232_1517807323686&type=rule&filename=POCSO%20Rules,%202012%2014-Nov-2012%20\(2\).pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_13_14_00005_201232_1517807323686&type=rule&filename=POCSO%20Rules,%202012%2014-Nov-2012%20(2).pdf), archived at <https://perma.cc/7UU6-EHPU>.

⁴³ NCPCR, USER HANDBOOK FOR IMPLEMENTATION OF THE POCSO ACT (Sept. 2017), <http://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=1289&lid=1514>, archived at <https://perma.cc/6CB3-CQE5>.

⁴⁴ Rajeev Seth, *Protection of Children From Abuse and Neglect in India*, 56(5) JMAJ (Sept./Oct. 2013), https://www.med.or.jp/english/journal/pdf/2013_05/292_297.pdf, archived at <https://perma.cc/XA83-LCTL>.

⁴⁵ Deepak Juyal et al., *Lack of Special Courts under Protection of Children from Sexual Offences Act: A Structural Deficit*, 6(4) J. FAM. MED. PRIM. CARE 881-82 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5848421/>, archived at <https://perma.cc/WJ2W-WKGI>.

III. Data Collection

The National Crime Records Bureau (NCRB) is the government agency at the Union level with the mandate for collecting and analyzing crime data, but “is only one available source of data that regularly monitors and tracks crimes against children.”⁴⁶ A handbook by the NCPCR on ending violence in India notes that

[t]his data is gathered by the National Crime Records Bureau (NCRB) in their annual publication called Crime in India. The NCRB reports on the number of registered crimes against children in India, as defined under various laws such as the IPC and the Protection of Children against Sexual Offences (POCSO) Act, 2012. The publication also tries to disaggregate the data for a few crimes by the age and gender of the victim, type of offender, place of residence (state and city) and disposal of such cases by the police and courts. However, and for reasons noted above, it may not give a true sense of the scale of the problem because registered crimes may be a gross underestimate of actual acts of violence against children.

The other data sources available are the National Family Health Surveys and the India Human Development Surveys both of which report on physical and sexual violence against adolescent girls. However, these are periodic and sample based surveys and cover only one form of violence. Childline India collects self-reported data on all forms of violence experienced by children through its helplines, but it is constrained by children’s capacity and willingness to report such acts. There is only one comprehensive report available on the extent of child abuse in India by the Ministry of Women and Child Development, that involved a primary survey with children across India, but that is dated (published in 2007).⁴⁷

⁴⁶ NCPCR, HANDBOOK FOR ENDING VIOLENCE AGAINST CHILDREN: I – SITUATIONAL ANALYSIS OF INDIA 30 (2018) (citations in original omitted), <http://ncpcr.gov.in/showfile.php?lang=1&level=2&sublinkid=1679&lid=1682>, archived at <https://perma.cc/4DLJ-HQ6H>.

⁴⁷ *Id.*

Israel

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SUMMARY Israel's Penal Law establishes duties of care for parents and other persons with responsibility for minors. The Law lists a number of offenses involving child abuse and neglect and imposes criminal penalties on offenders. The Youth (Care and Supervision) Law provides a system of care for minors in need of protection, including the ability for social workers to obtain court orders related to the care or supervision of a minor.

360° - The National Program for Children and Youth at Risk (NPCANI) is an interministerial program led by the Ministry of Welfare together with the Ministry of Education, the Ministry of Health, the Ministry of Immigration and Absorption, the Ministry of Public Security, and additional nongovernmental bodies. A special locality information system was developed in 2011 to enable decision-making based on data collection related to the implementation of NPCANI's objectives.

A special agency, the National Headquarters for Protection of Children in the Internet (NHPCI), was established by the Israeli government in January 2016. Among its other duties, the NHPCI implements enforcement and policing activities to combat crime against minors in the online space.

I. Legal Requirements for Protection of Children from Abuse and Neglect

The Penal Law, 5737-1977, contains the main rules on duties of care and child protection in Israel.¹ The Law imposes a higher level of responsibility on certain professionals and "a person who is responsible for a minor." Such persons include a minor's parent or a person responsible for the minor's livelihood, health, education, or welfare. Additional responsible persons include a minor's parent's spouse, grandfather or grandmother, brother or sister, a foster parent, and a person with whom the minor resides permanently and with whom the minor has a relationship of dependence or authority.²

The Law requires a parent or a person "responsible for a minor" who is a member of the minor's household, to provide the minor with living necessities, ensure the minor's health, and prevent abuse, bodily harm, or other harm to the minor's well-being and health.³

¹ Penal Law, 5737-1977, SEFER HAHUKIM (SH, Book of Laws, official gazette) 5737 No. 864 p. 226, as amended.

² *Id.* § 368A.

³ *Id.* § 323.

The Law lists a number of offenses involving victimization of children. It further imposes reporting requirements on parents and others who have a reasonable ground to suspect that a minor was the subject of offenses under the Law.⁴

A. Offenses

1. Assault

A person who attacks and causes substantial harm to a minor is liable to imprisonment for a term of five years, or nine if the assailant was a responsible person.⁵ Where the attack causes serious injury to a minor the penalty will increase to seven years imprisonment or nine if the perpetrator was a responsible person.⁶ For the purpose of the Law, the harm caused includes physical, emotional, or sexual harm.⁷

2. Abuse

A person who commits an act of physical, mental, or sexual abuse on a minor is liable to imprisonment for a term of seven years, or nine if the abuser was a responsible person.⁸

3. Leaving a Child Unattended or Intending to Abandon a Child

The leaving of a child under the age of six without proper supervision, thereby endangering the child's life, harming or likely causing serious harm to the child's wellbeing or health is a criminal offense punishable by imprisonment for a term of three years. A one-year term of imprisonment will be imposed if the act was committed negligently, and five if it was done with the intention to abandon the child.⁹

The refusal of a parent of a child to accept the child from a person who is not obligated or who has not agreed to take care of the child's life needs is punishable by imprisonment for three to six months in case of abandonment.¹⁰

4. Child Neglect

A parent of a minor aged under sixteen years, or who cannot take care of his/her life needs, who does not provide the minor with food, clothing, accommodation, and other vital necessities to the extent necessary is liable to imprisonment for a term of three years. Proof that the parent has

⁴ *Id.* § 368D.

⁵ *Id.* § 368B(a).

⁶ *Id.* § 368B(b).

⁷ *Id.* § 368B(c).

⁸ *Id.* § 368C.

⁹ *Id.* § 361.

¹⁰ *Id.* § 363.

taken all reasonable measures necessary to satisfy the minor's needs, however, would constitute a defense from conviction under the Law.¹¹

Neglect by a person who is obligated by law or by agreement to care for the needs of a minor is punishable by three years imprisonment unless the person proves that he/she has taken reasonable measures according to the circumstances necessary to provide such needs and was unsuccessful.¹²

5. Giving Possession of a Child for a Fee

The Law imposes a penalty of three years' imprisonment on any person who offers or pays a fee, monetary or otherwise, for possession of a minor under the age of fourteen years.¹³

6. Renunciation of Rights and Duties Towards Minors

A parent or guardian of a minor under the age of fourteen years who submits or allows the minor to be delivered to a person who is not the minor's parent or guardian, while renouncing duties or rights towards the minor, is liable to imprisonment for a term of two years. Doing so for the purpose of adoption, foster care, or for a temporary period under relevant laws serves as a defense for this offense.¹⁴

7. Child Theft

A person who intentionally removes or detracts, forcibly or seductively, a minor under the age of fourteen years, or knowingly accepts or hides him or her knowing that the minor has been unlawfully detained, is liable to imprisonment for seven years, unless he/she has proven a good faith claim to a right to hold the minor.¹⁵

8. Prevention of Danger

The Law imposes a general duty on any person to avoid leaving anything that may reasonably harm children's health or endanger their lives in a place accessible to them, in the absence of taking reasonable precautions against such danger. Violation of this requirement is punishable by one year of imprisonment.¹⁶

¹¹ *Id.* § 362 (A-B).

¹² *Id.* § 362(c).

¹³ *Id.* § 364.

¹⁴ *Id.* § 365.

¹⁵ *Id.* § 368.

¹⁶ *Id.* § 340.

B. Reporting Requirements

The Penal Law requires any person who has reasonable grounds to believe that a crime has recently been committed on a minor by a responsible person to report it as soon as possible to a lawfully registered social worker or to the police. The Law imposes a penalty of three months' imprisonment for violating this requirement.¹⁷

An omission by a person who because of their occupation or responsibility had a reasonable suspicion that an offense was committed on a minor by a responsible person to report that offense to a social worker appointed under the Law or to the police is punishable by six months' imprisonment. Such persons (hereinafter "professionals") include physicians, nurses, social workers, welfare service workers, police officers, psychologists, criminologists, and paramedics, as well as managers or staff members in a home or institution in which a minor is placed.¹⁸ A responsible person who neglects to report a reasonable suspicion that the minor was the subject of an offense committed by another responsible person may similarly be sentenced to six months' imprisonment.¹⁹

An omission to report a reasonable suspicion that a sex offense was committed on a minor by a family member under the age of 18 years is punishable by imprisonment for three months.²⁰ An omission to report by professionals or by a responsible person under such circumstances is punishable by six months' imprisonment.²¹

C. Child Protection System

The Youth (Care and Supervision) Law, 5720-1960, provides a system of care for "minors in need of protection."²² The Law provides as follows:

A minor is in need of protection if -

- (1) There is no person responsible for him; or
- (2) The person responsible for him is not capable of taking care of him or supervising him or neglects such care or supervision; or
- (3) He has done an act which is a criminal offence and has not been brought to trial; or
- (4) He has been found vagrant or begging or hawking in contravention of the Youth Labour Law, 5713-1953; or

¹⁷ *Id.* § 368D(a). The practice of social work in Israel is regulated under the Social Workers Law, 5756-1996, SH 5756 No. 1574 p. 152, as amended.

¹⁸ Penal Law, 5737-1977, § 368D(b).

¹⁹ *Id.* § 368D(c).

²⁰ *Id.* § 368 D(c1).

²¹ *Id.* § 368 D(c2).

²² Youth (Care and Supervision) Law, 5720-1960, SH 5720 No. 311 p. 52, as amended. An authorized translation of the original text from Hebrew by the Ministry of Justice is contained in 14 LAWS OF THE STATE OF ISRAEL (LSI) 44 (5720-1960).

- (5) He is exposed to any bad influence or lives in a place regularly used for illicit purposes;
- (6) His physical or psychological well-being is impaired or likely to become impaired from any other cause.²³

The Law authorizes a social worker who believes that a minor is in need of protection to request a judicial order in the interests of the care and supervision of the minor if there is no consent of the person responsible for the minor, or when there is such consent but the minor does not comply.²⁴

The court may give any order it deems necessary for the care or supervision of the minor, including his/her studies, education, and mental rehabilitation. The court may appoint a friend to the minor who will also serve as an advisor to the person responsible for the minor. The court may also place the minor under the supervision of a social worker or under certain circumstances remove the minor from the custody of the person responsible for the minor.²⁵

II. National Data Collection and Analysis Programs for Child Abuse and Neglect Information

A. National Data Collection of Children and Youth at Risk

360°- The National Program for Children and Youth at Risk (NPCANI) is an interministerial program led by the Ministry of Welfare together with the Ministry of Education, the Ministry of Health, the Ministry of Immigration and Absorption, the Ministry of Public Security, and additional nongovernmental bodies. According to its website,

[t]he program aims to reduce the number of children and youth living in situations that endanger them in their family and environment. Because of these situations, their ability to exercise their rights under the International Convention on the Rights of the Child is violated in seven areas of life: physical existence, health and development, family affiliation, learning and skills acquisition, mental health and wellbeing and social protection. The government defined 13 goals aimed at improving the situation of children and their parents, and 13 goals aimed at changing and upgrading the existing services for them.²⁶

A special locality information system (TMI) was developed in 2011 to enable decision-making based on data collection. TMI was also intended to ensure transparency and create a shared

²³ *Id.* § 2.

²⁴ Youth (Care and Supervision) Law, 5720-1960, § 3, as amended.

²⁵ *Id.* § 3(1-4). Additional information on the child protection system in Israel is provided in Ruth Gottfried & Asher Ben-Arieh, *The Israeli Child Protection System*, in NATIONAL SYSTEMS OF CHILD PROTECTION: UNDERSTANDING THE INTERNATIONAL VARIABILITY AND CONTEXT FOR DEVELOPING POLICY AND PRACTICE 139 (Lisa Merkel-Holguin et al. eds., 2019).

²⁶ 360° - *The National Program for Children and Youth at Risk*, MINISTRY OF LABOR, WELFARE AND SOCIAL SERVICES, <https://www.molsa.gov.il/ProjectShmid/Pages/ProjectHome.aspx> (in Hebrew, translated by author, R.L.) (last visited Apr. 8, 2019), archived at <https://perma.cc/69RL-VEXS>.

database that would serve as a basis for implementing the joint responsibility of all participating parties, from the level of localities to districts and government ministries.²⁷

The data in the system is based on administrative reports filled out by designated local authorities and transmitted digitally. The system generates reports on the implementation of NPCANI's programs based on age group and groups of population. The reports are studied by NPCANI's headquarters and by government ministries and further analyzed by the Brookdale Institute.²⁸

Noting that TMI had become a significant data source for both management and learning purposes, a 2015 evaluation report stated that the system

[i]s perceived as a significant resource, especially in communities lacking information systems infrastructures, especially in the Arab sector and in the ultra-Orthodox sector. The system contributes to the transparency of the program's management and supports the division of authority among the program's levels.²⁹

However, the report recommended instilling TMI's use among district officials and office headquarters, as it appeared that only a small percentage of the capabilities of the TMI system was utilized at these levels for the period evaluated.³⁰

A 2017 report by the Brookdale Institute, which was involved in the development of the system and training local program managers in TMI,³¹ recognized that

[t]he implementation of the National Program for Children and Youth at Risk . . . [which] began in 2008, enabled the receipt of a more complete and comprehensive assessment of the number of children and youth at risk in Israel, their characteristics and needs. . . . The program is being led by the Ministry of Social Affairs and is currently operating in 180 municipalities of the low and middle socio-economic clusters in which close to two-thirds of Israeli children and youth live.³²

The Brookdale report analyzed the scope, characteristics, and needs of children and youth at risk based on data collected by TMI and other sources. It concluded that cooperation and data sharing among different services' professionals promote a nationwide process for identifying children and youth at risk, understanding their needs, and providing responses for their needs. According to the report, the data has shown that professionals can relate to the domains of the lives of

²⁷ CENTER FOR EDUCATIONAL TECHNOLOGY, EVALUATION OF 360° - THE NATIONAL PROGRAM FOR CHILDREN AND YOUTH AT RISK: FINAL REPORT 2011-2015, at 15 (June 2015), [https://www.molsa.gov.il/CommunityInfo/ResearchAndEvaluation/tb_ResearchesAndPublications/דו"ח-הערכה-מסכם](https://www.molsa.gov.il/CommunityInfo/ResearchAndEvaluation/tb_ResearchesAndPublications/דו) (in Hebrew, translated by author, R.L.), archived at <https://perma.cc/J8AW-VTTX>.

²⁸ *Id.*

²⁹ *Id.* at 16.

³⁰ *Id.* at 26.

³¹ *Id.* at 30.

³² RACHEL SABO LAL, CHILDREN AND YOUTH AT RISK IN ISRAEL i (Myers-JDC-Brookdale Institute, June 2017), https://brookdale.jdc.org.il/wp-content/uploads/2017/12/RR-748-17_Hebrew_report.pdf (in Hebrew, translated by author, R.L.), archived at <https://perma.cc/CK9N-6ZNH>.

children that are not necessarily included in the classic definition of their role. The report calls for continuing to develop ways for integrating different perspectives to enable a comprehensive view of the needs of children and youth at risk.³³

B. National Headquarters for the Protection of Children in the Internet

The National Headquarters for Protection of Children in the Internet (NHPCI) was established by the Israeli government in January 2016. The NHPCI serves as a police-civilian headquarters

[t]o prevent violence and crime against children and youth on the Internet. The National Headquarters includes a professional staff, a national focal point and a dedicated police unit to combat crime against minors in the online space. The National Headquarters works to reduce the phenomenon of violence and crime in cyberspace, among other things by means of public information campaigns to raise awareness of safe surfing, enforcement and policing activities, while increasing deterrence against cybercrime, activating online volunteer shifts to create a secure virtual environment and operating a national focal point for reporting and reporting around the clock.

...

This is a unique civil-police system in Israel, which combines legal enforcement with the educational and educational level in order to ensure the safety of the network's users, especially minors. The Ministry of Public Security, the Israel Police, the Ministry of Education, the Ministry of Health, the Ministry of Labor, Welfare and Social Services and the Ministry of Justice are working together to create a safe environment for children and youth in the online space, including social networks.³⁴

³³ *Id.* at 33.

³⁴ *National Headquarters for the Protection of Children in the Internet*, ISRAEL GOVERNMENT PORTAL, https://www.gov.il/he/departments/about/about_the_bureau (in Hebrew, translation by author, R.L.) (last updated Dec. 3, 2018), archived at <https://perma.cc/PH2J-BPES>.

Japan

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SUMMARY Japan's Child Welfare Act covers matters of child welfare, including child abuse. As people became more aware of the issues of child abuse, the Child Abuse Prevention Act was enacted in 2000 to supplement the Child Welfare Act and strengthen child abuse prevention measures. Under both Acts, notification of possible child abuse is required. The welfare office or the child guidance center that receives the notification should promptly check the situation of the child. Depending on the situation, various measures may be taken to assist an abused child. The governor may place an abused child in foster or institutional care against the custodian's will with the permission of a family court. The Child Welfare Act penalizes acts of abuse committed against children. The government runs various child abuse awareness programs. A bill that would prohibit corporal punishment and initiate other protective measures to assist abused children is currently under consideration. The Ministry of Health, Labour and Welfare gathers statistics on the number of reported child abuse cases; analyzes cases that resulted in children's deaths; and researches the whereabouts of children whose health, educational, and welfare records are missing. Protection of children from sexual abuse, including child prostitution and child pornography, is regulated by a special act.

I. Overview

A. Child Welfare Act as Basic Law

The Child Welfare Act addresses matters of child welfare, including child abuse, in Japan. The Child Welfare Act states that all children must be properly nurtured, be afforded a guaranteed quality of life, be loved, be protected, have healthy growth and development of the mind and body, and be able to be independent.¹ The Child Welfare Act sets the roles and responsibilities of the national and local governments as follows:

- Municipalities must properly provide support in immediate communities, as the basic unit of the local government.
- Prefectures must give necessary advice and appropriate assistance to municipalities and properly perform tasks that require specialized knowledge and techniques, and broad responses.
- The national government must take all necessary measures, such as the formulation of policies that ensure the setting up of structures where children can be provided with proper care, provision of advice to municipalities and prefectures, and provision of information.²

¹ 児童福祉法 [Child Welfare Act], Act No. 164 of 1947, as amended by Act No 69 of 2017, art. 1.

² *Id.* art. 3-3.

B. Child Abuse Prevention Act as Special Act

As people became more aware of the issues related to child abuse, a new law that supplements the Child Welfare Act and strengthens the measures to prevent child abuse was enacted in 2000.³ The Act on the Prevention, etc. of Child Abuse (Child Abuse Prevention Act) obligates the national and local governments to develop systems necessary for the prevention of child abuse and to support abused children, such as by strengthening collaboration among the relevant ministries and government agencies as well as other relevant organs and private bodies, providing support to private bodies, developing a system for providing medical care, and the like.⁴ The Act states that “no person shall abuse a child,”⁵ and particularly obligates teachers, officials and staff of schools, child welfare institutions and hospitals, medical practitioners, attorneys, and other persons involved in child welfare in the course of their duties to endeavor to detect child abuse at an early stage.⁶

The term “child abuse” is defined in the Child Abuse Prevention Act as the following acts committed by a custodian against a person who is under eighteen years of age (child) and is under his/her custody:

- Assault the child in a manner that will cause or is likely to cause external injury on the body of the child;
- Engage in indecency against the child or cause the child to engage in indecency;
- Materially fail to perform the duty of custody as a custodian, for example,
 - a. Substantially reduce the amount of food for the child,
 - b. Abandon and neglect the child for a long period of time in a manner that may interfere with normal development of the child mentally or physically, and
 - c. Take no action in response to the listed acts by a noncustodian who lives with the custodian and child; or
- Use significantly violent language or take an extreme attitude of rejection against the child, use physical and/or verbal violence upon one’s spouse or partner at home where the child is living, or otherwise speak or behave in a manner that would be significantly traumatic to the child.⁷

³ Japan Federation of Bar Associations, 児童虐待防止法制における子どもの人権保障と法的介入に関する意見書 [Opinion Letter Concerning Protection of Children’s Rights and Legal Involvements in the Legal System for Child Abuse Prevention], at 1 (May 30, 2003), https://www.nichibenren.or.jp/library/ja/opinion/report/data/2003_26.pdf, archived at <https://perma.cc/9YFA-3GP3>.

⁴ 児童虐待の防止等に関する法律 [Child Abuse Prevention Act], Act No. 82 of 2000, as amended by Act No. 69 of 2017, art. 4.

⁵ *Id.* art. 3.

⁶ *Id.* art. 5.

⁷ *Id.* art. 2.

A “custodian” means a person who exercises parental authority, the guardian of a minor, or another person who is currently exercising custody over a child.⁸

Many measures against child abuse also apply to persons who are eighteen and nineteen years old.⁹

C. Parental Authority

The Child Abuse Prevention Act states the following regarding parental authority:

- (1) A person who exercises parental authority over his/her child shall give due consideration to the appropriate exercise of such authority in disciplining the child.
- (2) No person who exercises parental authority over his/her child shall be exempt from punishment for assault, bodily injury, or other criminal offense related to child abuse on the ground that he/she is the one who exercises parental authority over the child.¹⁰

The family law section of the Civil Code has a provision authorizing the loss and suspension of parental authority when a parent abuses his/her child:

Article 834. If a father or mother has abused his/her child or abandoned the child in bad faith, or a child’s interests are extremely harmed due to considerable difficulty or inappropriateness in the exercise of parental authority by his/her father or mother, the family court may, at the request of the child, any relative of the child, a guardian of a minor, a supervisor of a guardian of a minor, or a public prosecutor, make a ruling of loss of parental authority with regard to the father or mother; provided, however, that this shall not apply if the cause thereof is expected to cease to exist within two years.

Article 834-2. If a child’s interests are harmed due to difficulty or inappropriateness in the exercise of parental authority by his/her father or mother, the family court may, at the request of the child, any relative of the child, a guardian of a minor, a supervisor of a guardian of a minor, or a public prosecutor, make a ruling of suspension of parental authority with regard to the father or mother.¹¹

The Child Welfare Act added a director of a child guidance center to the above list of persons who may request the loss and suspension of parental authority before a family court.¹²

⁸ *Id.*

⁹ *Id.* art. 16.

¹⁰ *Id.* art. 14.

¹¹ CIVIL CODE, Parts IV & V, Act No. 9 of 1898, as amended by Act No. 72 of 2018, tentative translation as amended by Act No. 94 of 2013 available at <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=2&re=02&dn=1&yo=civil+code&ia=03&ph=&x=0&y=0&ky=&page=5&vm=02>, archived at <https://perma.cc/ES2H-IJ8E>.

¹² Child Welfare Act art. 33-7.

II. Child Welfare Act

A. Support of Aid-Requiring Child

Under the Child Welfare Act, a child without a guardian or with an inappropriate guardian is regarded as an “aid-requiring child.”¹³ An abused child is also regarded as an aid-requiring child. A person who discovers an aid-requiring child must give notification, directly or through a commissioned child welfare volunteer, to the municipal government, a welfare office, or a child guidance center established by the prefectural government.¹⁴ Rules of confidentiality do not apply to a person who makes such report.¹⁵

The welfare office or the child guidance center that received the notification must check the situation of the child promptly, if necessary.¹⁶ A municipal government must accurately determine whether any support was implemented for an aid-requiring child and, after receiving notification, must

- refer the case to the child guidance center when the prefecture’s action, such as guidance, is required or when medical, mental or social evaluation is required;
- notify the prefectural governor when it decides the child needs self-reliance supports; or
- notify the child guidance center or the governor when a child abuse investigation or temporary custody of the child is deemed necessary.¹⁷

The welfare office must take similar action after it receives notification of an aid-requiring child.¹⁸ The child guidance center may make the custodian subject to the instruction of a commissioned child welfare volunteer or child welfare officer, provide counseling and assistance, refer the custodian to other offices, or report the case to the governor when it is deemed that the governor’s action is required.¹⁹

The governor may provide an admonition to the guardian, require him or her to submit a written pledge, or require the guardian to be guided by a child welfare officer or other person.²⁰ The child guidance center and the governor may provide temporary custody of the child, if necessary.²¹ The governor may also entrust the child to a foster parent or admit the child into an infant home, a foster home, a short-term therapeutic institution for emotionally disturbed

¹³ *Id.* art. 6-3, para. 8.

¹⁴ *Id.* art. 25, para. 1.

¹⁵ *Id.* art. 25, para. 2.

¹⁶ *Id.* art. 25-6.

¹⁷ *Id.* art. 25-7.

¹⁸ *Id.* art. 25-8.

¹⁹ *Id.* art. 26.

²⁰ *Id.* art. 27, para. 1, item 1 & 2.

²¹ *Id.* art. 33, paras. 1 & 2.

children (“residential care”), or a children’s self-reliance support facility unless the person who has parental authority over the child or the child’s guardian opposes the measure.²² The Child Abuse Prevention Act also enables the governor to place a child who has suffered child abuse in temporary care when the guardian refuses to be guided by a child welfare officer or other person.²³

Measures aimed at protecting an aid-requiring child provided by the Child Welfare Act were strengthened by supplementing provisions of the Child Abuse Prevention Act. Under the Child Abuse Prevention Act, when an abused child is under residential care, including temporary care, the director of a child guidance center or the head of the institution where the abused child is placed may restrict the custodian’s visitation and communication, if necessary.²⁴ In addition, the director of the child guidance center may not inform the custodian of the location of the child.²⁵ The Child Abuse Prevention Act also authorizes the prefectural governor to issue a restraining order prohibiting a custodian who abused the child and whose visitation to and communication with the child is restricted to follow the child at school, residence, or other places for the period of up to six months.²⁶ The governor must hold a hearing before issuing the order.²⁷ The six-months period is renewable.²⁸

Under the Child Welfare Act, in cases where the guardian’s exercise of custody extremely harms the welfare of the child, such as in cases of physical or mental abuse, or extreme neglect cases, the governor may entrust the child to residential care by obtaining permission from a family court against the parent or guardian’s wishes.²⁹ If necessary for obtaining permission, the governor may send a child welfare officer to the residence of the child to conduct an investigation.³⁰

B. Person Living with Children Outside of Extended Family

The law requires that individuals with no parental or guardianship authority inform prefectural governors through municipality mayors about instances when they provide an abode to children other than within the fourth degree of kinship for an extended period of time. Persons to whom children are entrusted pursuant to the law and persons who merely provide lodging to children are not subject to this obligation.³¹

²² *Id.* art. 27, para. 1, item 3 & para. 4.

²³ Child Abuse Prevention Act art. 11.

²⁴ *Id.* art. 12, para. 1.

²⁵ *Id.* art. 12, para. 3.

²⁶ *Id.* art. 12-4, para. 1.

²⁷ *Id.* art. 12-4, para. 3.

²⁸ *Id.* art. 12-4, para. 2.

²⁹ Child Welfare Act art. 28.

³⁰ *Id.* art. 29.

³¹ *Id.* art. 30.

C. Child Abuse at Welfare Facilities

A 2008 amendment added provisions regarding child abuse at welfare facilities.³² Physical, mental, and sexual abuses; neglect of care; and taking no action against abuse toward a child by other children are listed as abuses against children under protection.³³ Anyone who discovers such abuse must promptly notify the municipal or prefectural government, child welfare office, or child guidance center.³⁴ The governor must take measures quickly when the notification is sent or forwarded to him/her.³⁵

D. Child Abuse Subject to Criminal Sanction

The Child Welfare Act also prohibits the following acts and imposes criminal sanctions for violators of the following:

- Causing a child to commit an obscene act;
- Placing a child with physical disabilities or morphological abnormalities on public show;
- Causing a child to act as a beggar, or beg by exploiting a child;
- Causing a child under fifteen years of age to perform acrobatics or stunt-horse riding for the purpose of public entertainment;
- Causing a child under fifteen years of age to engage in such money-earning acts as singing, dancing, tricks, and other performances from house to house or on the road, or in other equivalent places;
- Causing a child to engage in such money-earning acts as the sale, distribution, exhibition, or collection of goods or provision of services, from 10:00 p.m. to 3:00 a.m., from house to house or on the road, or in other equivalent places;
- Causing a child under fifteen years of age who engages in the sale of goods or provision of services or other business activities from house to house or on the road to conduct the child's work at hostess/host bars, store-based sex-related amusement special businesses, or store-based telephonic dating agency businesses;
- Causing a child under fifteen years of age to engage in such money-earning acts as entertaining at an alcoholic party;
- Delivering a child knowingly to a person who is likely to commit any of the acts listed in the preceding items or to commit any other criminal act toward a child, or delivering a child knowingly to other person who will deliver the child to a person who is likely to commit any of the acts as listed above;

³² Act to Amend Child Welfare Act and Other Acts, Act No. 85 of 2008, http://www.shugiin.go.jp/internet/itdb_housei.nsf/html/housei/17020081203085.htm, archived at <https://perma.cc/CV58-EY76>.

³³ Child Welfare Act, art. 33-10.

³⁴ *Id.* art. 33-12.

³⁵ *Id.* art. 33-14.

- Arranging foster care of a child for the purpose of profit; or
- Keeping a child under one's control with the intent of causing the child to commit an act that has a mentally and physically harmful impact on the child.³⁶

A person who commits the first act above is punishable by imprisonment for not more than ten years and/or a fine of not more than 3,000,000 yen (approximately US\$27,000).³⁷ A person who commits any of the other listed acts is punishable by imprisonment for not more than three years and/or a fine of not more than 1,000,000 yen (approximately US\$9,000).³⁸

III. Child Abuse Prevention Act

The notification of child abuse and subsequent responses are strengthened in the Child Abuse Prevention Act. Under the Act, a person who has detected a child who appears to have suffered child abuse must promptly give notification, directly or through a commissioned child welfare volunteer, to the municipality, welfare office, or child guidance center.³⁹ This notification has the same effect as the notification of an aid-requiring child under the Child Welfare Act.⁴⁰

In addition to the measures under the Child Welfare Act, when a municipality or a prefecture welfare office receives the notification of child abuse, the mayor of the municipality or the director of the welfare office must "take measures to confirm the safety of the relevant child, such as an interview with the child, while obtaining cooperation of the residents of neighboring communities, teachers, and other staff workers of his/her school, officials of child welfare institutions and other persons as necessary."⁴¹ The mayor or the director of the welfare office must also, as necessary,

- refer the child to a child guidance center; or
- notify the prefectural governor or the director of child guidance center when further action, such as questioning and temporary custody, is required.⁴²

When a child guidance center receives notification or a referral from a municipality or a prefecture welfare office, the director of the child guidance center must take measures to confirm the safety of the child, for example, by conducting an interview with the child, while obtaining the cooperation of the residents of neighboring communities, teachers, and other staff of his/her school, as well as officials of child welfare institutions and other persons as necessary. The

³⁶ *Id.* art. 34, para. 1.

³⁷ *Id.* art. 34, para. 1, item 6 & art. 60, para. 1.

³⁸ *Id.* art. 60, para. 2.

³⁹ *Id.* art. 6, para. 1.

⁴⁰ *Id.* art. 6, para. 2.

⁴¹ *Id.* art. 8, para. 1.

⁴² *Id.*

director also may take temporary custody of the child or provide other assistance.⁴³ If necessary, the director may request the assistance of the police.⁴⁴

When a prefectural governor becomes aware of suspected child abuse, the governor may request that the custodian of the child make an appearance along with the child, and cause a commissioned child welfare volunteer or an official engaged in child welfare to conduct the necessary investigations or questioning.⁴⁵ In such cases, the governor must give written notice to the custodian with the particulars of the facts that constitute grounds for requesting the appearance.⁴⁶ Alternatively, a governor may cause a commissioned child welfare volunteer or a child welfare official to enter the residence of the child and conduct necessary investigations or questioning.⁴⁷ If necessary, the governor may request the assistance of the police.⁴⁸ A governor may also dispatch a volunteer or an official when the custodian fails to follow the request for appearance.⁴⁹

If the custodian fails to appear or avoids or refuses to cooperate with the investigation without justifiable reasons, the governor may again ask the custodian to make an appearance with the child,⁵⁰ or a child welfare official to inspect the residence of the child, or search for the child to ensure his/her safety upon permission of a judge.⁵¹

When a prefectural governor cancels residential care for an abused child implemented under the Child Welfare Act, including temporary care, the governor must examine various factors, such as the opinions of the child welfare officer or other person in charge of giving guidance to the custodian of the child, the effect of guidance given to the custodian, and the effect of precautionary measures against future abuse of the child, among other things.⁵² The prefecture government coordinates with the municipal government and child welfare facilities, continuously visiting the family of the abused child to confirm the child's safety, and provides necessary support, such as guidance.⁵³

Municipal governments and certain child care facilities must pay special attention when abused children use or apply for enrollment in child care facilities. The national and local governments must take measures to ensure that abused children receive a proper education, and must also take

⁴³ *Id.* art. 8, para. 2.

⁴⁴ *Id.* art. 10.

⁴⁵ *Id.* art. 8-2, para. 1.

⁴⁶ *Id.* art. 8-2, para. 2.

⁴⁷ *Id.* art. 9, para. 1.

⁴⁸ *Id.* art. 10.

⁴⁹ *Id.* art. 8-2, para. 3.

⁵⁰ *Id.* art. 9-2.

⁵¹ *Id.* art. 9-3.

⁵² *Id.* art. 13, para. 1.

⁵³ *Id.* art. 13-2.

measures to secure a place to live for abused children and support their higher education and employment.⁵⁴

When the mayor of a municipality, director of a welfare office, or director of a child guidance center so requests, local government organs, hospitals and clinics, child welfare facilities and schools, medical doctors, dentists, nurses, staff of child welfare facilities and schools, school teachers, and other persons who are involved in child welfare, health, or education may provide materials or information on the mental or physical condition and surroundings of an abused child or the child's custodian and other materials or information related to the child abuse, as those materials and information are necessary for the prevention of child abuse. However, where the provision of the materials or information is likely to violate the rights and interests of the child, his/her custodian, or other persons in an unreasonable manner, they do not have to be provided.⁵⁵

IV. Measures Taken by the Government

The Child Abuse Prevention Act obligates the government to establish systems to collaborate with the relevant ministries and government agencies as well as other relevant organs and private bodies, provide support to the relevant private bodies, and improve medical and related care.⁵⁶ In addition, the national government and local governments must endeavor to conduct necessary public relations and other awareness-building activities regarding the human rights of children, the effect of child abuse on children, and the obligation to report child abuse.⁵⁷ The discussion below provides examples of such activities by the indicated government agencies.

A. Ministry of Health, Labour and Welfare

The Ministry of Health, Labour and Welfare (MHLW) coordinates relevant ministries' and government agencies' measures against child abuse.⁵⁸ The MHLW manages the Coordination Conference of Relevant Ministries and Agencies Concerning Measures Against Child Abuse, which issued the Plan of Comprehensive Enhancement of Systems of Child Abuse Countermeasures on December 18, 2018.⁵⁹ Under the Plan, the number of child welfare workers and supervisors of child welfare workers at child guidance centers is increased. The number of child psychotherapists and health nurses is also increased. Expansions of and improvements to

⁵⁴ *Id.* art. 13-3.

⁵⁵ *Id.* art. 13-4.

⁵⁶ *Id.* art. 4, para. 1.

⁵⁷ *Id.* art. 4, para. 4.

⁵⁸ 児童虐待防止対策に関する業務の基本方針について [Regarding the Basic Policy on Management of Measures against Child Abuse Prevention], Cabinet Decision (Mar. 29, 2016), https://www.mhlw.go.jp/file/06-Seisakujouhou-11900000-Koyoukintoujidoukateikyoku/4_1.pdf, archived at <https://perma.cc/5ERF-PD6W>.

⁵⁹ 児童虐待防止対策体制総合強化プラン [Plan of Comprehensive Enhancement of Systems of Child Abuse Countermeasures], 児童虐待防止対策に関する関係府省庁連絡会議決定 [Decision of Coordination Conference of Relevant Ministries and Agencies Concerning Measures against Child Abuse] (Dec. 18, 2018), <https://www.mhlw.go.jp/content/11900000/000468583.pdf>, archived at <https://perma.cc/3APC-L2PQ>.

the quality of temporary shelters are also planned.⁶⁰ The MHLW also coordinates local governments, specifically by surveying municipal governments' responses to child abuse cases and hosting conferences among the child guidance centers.⁶¹

The MHLW established national child consultation call centers. In order to make the number easily remembered, it changed the phone number from a ten-digit one to three-digit one (189) in July 2015.⁶² The MHLW has also published a leaflet that calls for parents not to use corporal punishment.⁶³

The MHLW also supports pregnant women and child-rearing, so that pregnant women and parents will not be isolated and overly stressed.⁶⁴ Most notably, the MHLW manages the “hello baby” program under which municipal governments dispatch workers to every household that has a baby by the time the baby is four months of age.⁶⁵

To increase public awareness, the MHLW conducts promotional activities—for example, it promotes the Child Abuse Prevention Special Promotion Month every November. The MHLW also posts video programs on the government public relations website.⁶⁶

The MHLW also conducts research and studies concerning child abuse. An expert committee of the MHLW examines child abuse cases in which children died and suggests measures to improve actions by relevant parties.⁶⁷

B. Ministry of Justice

The Ministry of Justice (MOJ) has established hotlines, including one that has the slogan “Children’s Rights Dial 110.” Volunteers for children’s rights protection and officers of the regional Legal Affairs Bureaus answer the calls. The MOJ also distributes forms and envelopes to students in elementary and middle school, which encourage them to inform the volunteers and

⁶⁰ *Id.* at 2-4.

⁶¹ 児童虐待防止対策 [Measures for Prevention of Child Abuse], MHLW, https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/kodomo/kodomo_kosodate/dv/index.html (last visited Apr. 18, 2019), archived at <https://perma.cc/P869-YAZA>.

⁶² *Id.*

⁶³ 愛の鞭ゼロ作戦 [Zero Loving Smack Strategy], MHLW, <http://sukoyaka21.jp/ainomuchizero> (last visited Apr. 18, 2019), archived at <https://perma.cc/944R-RWHL>.

⁶⁴ *Measures for Prevention of Child Abuse*, *supra* note 61.

⁶⁵ 乳児家庭全戸訪問事業（こんにちは赤ちゃん事業）の概要 [Summary of Project of Visiting All Households with Infants (“Hello Baby” Project)], MHLW, <https://www.mhlw.go.jp/bunya/kodomo/kosodate12/01.html> (last visited Apr. 28, 2019), archived at <https://perma.cc/LT48-5C78>.

⁶⁶ *Measures for Prevention of Child Abuse*, *supra* note 61.

⁶⁷ *Id.*

officers of their concerns. These envelopes can be sent to the Legal Affairs Bureaus for free. In addition, the MOJ accepts “SOS-email” from children on its website.⁶⁸

C. Ministry of Education

The Ministry of Education, Culture, Sports, Science and Technology (MEXT) asks teachers to pay attentions to signs of child abuse and detect it early. The Ministry also requests that schools create a plan of response to child abuse when child abuse against one of their students is found and to collaborate with welfare and health organizations and the police on a regular basis.⁶⁹

V. Bill to Amend the Child Welfare Act and the Child Abuse Prevention Act

After two harrowing cases of deaths resulting from child abuse by parents attracted broad attention in Japan in 2018 and 2019, the Cabinet submitted a bill in March 2019 to amend the Child Welfare Act and the Child Abuse Prevention Act in order to strengthen measures to prevent child abuse.⁷⁰ The bill proposes a prohibition on corporal punishment by parents and placing professionals, such as psychiatric social workers in child counseling center, among other things.⁷¹

⁶⁸ 児童虐待防止に向けた人権擁護機関の主な取組 [Major Measures for Child Abuse Prevention by Human Rights Protection Offices], HUMAN RIGHTS BUREAU, MOJ (Nov. 22, 2017), <https://www.mhlw.go.jp/file/06-Seisakujouhou-11900000-Koyoukintoujidoukateikyoku/0000187612.pdf>, archived at <https://perma.cc/HLV3-TQWQ>.

⁶⁹ 文部科学省における児童虐待への対応について [Regarding Countermeasures against Child Abuse by MEXT], MEXT (Nov. 22, 2017), <https://www.mhlw.go.jp/file/06-Seisakujouhou-11900000-Koyoukintoujidoukateikyoku/0000187614.pdf>, archived at <https://perma.cc/6GQ7-9K47>.

⁷⁰ 児童虐待防止法改正案を閣議決定 「で体罰」禁止 [Cabinet Approved the Bill to Amend the Child Abuse Prevention Act, Prohibits “Corporal Punishment as Disciplinary”], NIKKEI (Mar. 19, 2019), <https://www.nikkei.com/article/DGXMZ042635980Z10C19A3CC0000/>, archived at <https://perma.cc/IRD5-AX2L>.

⁷¹ 児童虐待防止対策の強化を図るための児童福祉法等の一部を改正する法律案 [Bill to Amend Parts of the Child Welfare Act and Others in order to Strengthen Child Abuse Prevention Measures], Cabinet Bill No. 55, 198th Diet Session (2019), http://www.shugiin.go.jp/internet/itdb_gian.nsf/html/gian/honbun/g19809055.htm, archived at <https://perma.cc/Z4WG-X2ZZ>.

VI. Data Collecting System

The MHLW has gathered statistics on the number of suspected child abuse cases reported to child guidance centers,⁷² based on the Statistics Act,⁷³ since 1990.⁷⁴ In order to learn lessons and utilize them for the prevention of children's deaths in the future,⁷⁵ the Social Security Council of the MHLW established an expert committee to examine child abuse cases since 2004 that resulted in children's deaths.⁷⁶ After deaths of children whose whereabouts were not properly on the resident records and who were abused attracted public attention,⁷⁷ the MHLW in 2014 started to survey the measures that municipal governments take to locate children whose whereabouts were not known. These children were identified by their failure to use health and welfare services or attend school.⁷⁸

VII. Child Prostitution and Pornography Prohibition Act

The Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children protects children from sexual abuse. The Law imposes long terms of imprisonment and hefty fines on those who are found guilty of committing,

⁷² 児童虐待相談の対応件数及び虐待による死亡事例数の推移 [Changes of Numbers of Cases of Consultation of Child Abuse and Child Abuse Resulted in Children's Death], MHLW, <https://www.mhlw.go.jp/file/06-Seisakujouhou-11900000-Koyoukintoujidoukateikyoku/0000198495.pdf>, archived at <https://perma.cc/ST3P-SHVH>.

⁷³ Statistics Act, Act No. 53 of 2007, amended by Act No. 34 of 2018, art. 19. See also, 福祉行政報告例：調査の概要 [Welfare Administration Reports: Summary of Research], MHLW, <https://www.mhlw.go.jp/toukei/saikin/hw/gyousei/09/gaiyo.html#link03>, archived at <https://perma.cc/6HLS-5RND>.

⁷⁴ 平成29年度の児童虐待、過去最多の13万件超 27年連続増加 [Child Abuse in 2017, Highest Number of over 130,000, Increasing Continuously for 27 Years], SANKEI (Aug. 30, 2018), <https://www.sankei.com/life/news/180830/lif1808300028-n1.html>, archived at <https://perma.cc/QCG4-3EB6>.

⁷⁵ 児童虐待による死亡事例の検証結果等について [Regarding Results of Examinations of Child Abuse Cases that Resulted in Children's Deaths], Expert Committee Concerning Examination of Cases of Aid-Requiring Children, including Child Abuse Cases, First Report (Apr. 2005), <https://www.mhlw.go.jp/houdou/2005/04/h0428-2.html>, archived at <https://perma.cc/73A3-W9EA>. See also Child Abuse Prevention Act art. 4, para. 5.

⁷⁶ 社会保障審議会 (児童部会児童虐待等要保護事例の検証に関する専門委員会) [Social Security Council (Child Section, Expert Committee Concerning Examination of Cases of Aid-Requiring Children, including Child Abuse Cases)], MHLW, https://www.mhlw.go.jp/stf/shingi/shingi-hosho_126713.html (last visited May 6, 2019), archived at <https://perma.cc/6JXB-7RHJ>.

⁷⁷ 子どもはどこへ消えた [Where Children Went and Are Missing], Closeup Gendai No. 3359, NHK (June 5, 2013), <http://www.nhk.or.jp/gendai/articles/3359/1.html>, archived at <https://perma.cc/3BA7-6GGV>.

⁷⁸ Press Release, MHLW, 「居住実態が把握できない児童」に関する調査結果等の報告について [Report on Results of Research Concerning "Children Whose Whereabouts Are Unknown"] (Nov. 13, 2014), <https://www.mhlw.go.jp/stf/houdou/0000065289.html>, archived at <https://perma.cc/RCP4-DSKB>.

soliciting, or involving a child in prostitution as well as those who possess, produce, provide, transport, or display child pornography or commit other related acts. Trafficking in children for the purpose of child prostitution or producing child pornography is also outlawed and is punishable by imprisonment for a period of up to ten years. Attempts to commit these crimes are also prosecuted.⁷⁹

For the consideration of victims' mental health, the Act obligates those who participate in investigations or trials of child prostitution and pornography cases to "pay due consideration to the human rights and peculiarities of children and take care not to harm the reputation or dignity of the children in performance of their duties."⁸⁰ In addition, the Act obligates the MHLW, Ministry of Justice, prefectural police, child guidance centers, welfare offices, and other related offices

to cooperate with one another and take proper measures to provide sufficient protection, such as consultation, guidance, temporary guardianship and admission into an institution, with regard to a child who has suffered physical or mental damage as a result of having been a party to child prostitution or having been depicted in child pornography.⁸¹

⁷⁹ Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children, Act No. 52 of 1999, as amended by Act No. 79 of 2014, <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&id=2895&re=02&vm=02>, archived at <https://perma.cc/466J-75RJ>.

⁸⁰ *Id.* art. 12, para. 1.

⁸¹ *Id.* art. 15.

Kenya

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SUMMARY Kenya has ratified key international documents aimed at protecting children from abuse and neglect, mainly the 1989 Child Rights Convention and the 1990 African Charter on the Rights and Welfare of the Child. It sought to implement these documents through the enactment of the 2001 Children Act. In 2010 Kenya reformed its Constitution, which now includes express language mandating the protection of children from abuse and neglect. In addition, various Kenyan statutes include provisions that do the same, including the Prohibition against Female Genital Mutilation Act, the Employment Act, the Sexual Offences Act, the Trafficking in Persons Act, the Penal Code, the Marriage Act, the Domestic Violence Act, the Evidence Act, the Basic Education Act, the Alcohol Drinks Control Act, and the Refugee Act.

One of the most notable examples of the length Kenya has gone to ensure child protection can be found in the country's Evidence Act. The Act originally required corroboration of the evidence against an accused person. Due to the fact that most child sexual abuse occurs in private this made it difficult to convict persons accused of such crimes and most of them walked free. In 2006, Kenya amended the Act to allow courts to convict defendants in child sexual offense cases without corroboration if the court is satisfied that the child victim/witness is telling the truth.

However, Kenya appears to be a long way from providing an effective child protection system. A 2015 policy document, the National Plan of Action (NPA), notes that while the country has put in place a solid legal framework to protect them, children remain largely vulnerable. To rectify this challenge, the document has put in place fifty-four action points categorized into thirteen different groupings. Among them is the establishment and strengthening of "monitoring and evaluation systems in the child protection sector . . . to inform decision making at policy and program implementation levels."

In 2017 Kenya launched an online portal, the Child Protection Information Management System, to manage, track, and report on child protection activities. Among many other things, the system is designed to capture data on children affected by violence, abuse, neglect, and exploitation, as well as child marriage and teen pregnancy. In addition, Kenya runs a twenty-four-hour, toll-free emergency public helpline, Helpline 116, used for reporting cases involving children in need of care and protection. Data collected from Helpline 116 reportedly informs the formulation of child policies.

I. Introduction

Kenya is a young nation; more than 40% of the country's approximately 48 million population is under the age of fifteen.¹ A 2010 national survey found that by the time they reach eighteen years of age, 73% of boys and 66% of girls experience physical violence, and 18% of boys and 32% of girls experience sexual violence.² In addition, 32% of boys and about 26% of girls suffer emotional violence.³ Of these, 13% of girls and 9% of boys had experienced all three forms of violence.⁴ Of the women who fall victim to sexual violence as children, 30% become pregnant.⁵ The perpetrators of the violence vary depending on the form of violence. According to the survey,

[t]he most common perpetrators of sexual violence for females and males were found to be boyfriends/girlfriends/romantic partners comprising 47% and 43% respectively followed by neighbors, 27% and 21% respectively. Mothers and fathers were the most common perpetrator of physical violence by family members. For males, teachers followed by Police were the most common perpetrators of physical violence by an authority figure. Emotional violence for both females and males was most often inflicted by parents.⁶

Unfortunately, less than 10% of those who experienced physical, sexual, and/or emotional violence as children "actually received some form of professional help."⁷

II. Legal Framework

Kenya is a signatory to key international conventions that specifically aim to protect children from abuse and neglect. Kenya signed the 1989 Convention on the Rights of the Child (CRC) in January 1990 and ratified it in July of the same year.⁸ Among other things, the CRC states that

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for

¹ Kenya, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html> (last updated Apr. 23, 2019), archived at <https://perma.cc/XC3B-Q7BC>.

² UNICEF, VIOLENCE AGAINST CHILDREN IN KENYA: FINDINGS FROM A 2010 NATIONAL SURVEY 7 (2012), https://www.unicef.org/esaro/VAC_in_Kenya.pdf, archived at <https://perma.cc/2QL9-FPG8>.

³ *Id.* at 37.

⁴ *Id.* at 7.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Convention on the Rights of the Child: Status*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en (last visited Apr. 18, 2019), archived at <https://perma.cc/46LE-CYLP>.

identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.⁹

Kenya is also signatory to the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict (Sept. 2000) and the Optional Protocol to the Convention to the Rights of the Child on the Sale of Child Prostitution and Child Pornography.¹⁰

Kenya ratified the 1990 African Charter on the Rights and Welfare of the Child (ACRWC) in July, 2000.¹¹ Like the CRC, the Charter calls for member states to “take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.”¹²

In 2001 Kenya enacted the Children Act to implement its obligations under the CRC and ACRWC.¹³ This was followed by a constitutional reform in 2010, which was “a major milestone for the children of Kenya, as [the new Constitution] recognizes some fundamental human rights, in keeping with the UNCRC, the ACRWC and other international and regional treaties.”¹⁴ In addition, various other Kenyan laws include provisions aimed at advancing child rights and protecting children from abuse and neglect. These include the Prohibition against Female Genital Mutilation Act, the Employment Act, the Sexual Offences Act, the Trafficking in Persons Act, the Penal Code, the Marriage Act, the Domestic Violence Act, the Evidence Act, the Basic Education Act, the Alcohol Drinks Control Act, and the Refugee Act.

A. Constitution of Kenya

In addition to the general rights and privileges accorded to children as members of Kenyan society, the 2010 Kenyan Constitution includes specific language aimed at protecting them from abuse and neglect, stating “[e]very child has the right . . . to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and

⁹ Convention on the Rights of the Rights of the Child, art. 19, Sept. 2, 1990, <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>, archived at <https://perma.cc/8DFE-NSNR>.

¹⁰ *Ratification Status for Kenya*, UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN (last visited Apr. 29, 2019), archived at <https://perma.cc/2E4X-U3KP>.

¹¹ *Ratification Table: African Charter on the Rights and Welfare of the Child*, AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, <http://www.achpr.org/instruments/child/ratification/> (last visited Apr. 19, 2019), archived at <https://perma.cc/C2DW-Q4C6>.

¹² African Charter on the Rights and Welfare of the Child, art. 16, OAU Doc. CAB/LEG/24.9/49 (1990), <http://www.achpr.org/instruments/child/>, archived at <https://perma.cc/SR3C-MRQE>.

¹³ Children Act No. 8 of 2001, preamble (commencement, Mar. 1, 2002), available at <http://www.kenyalaw.org/lex//actview.xql?actid=No.8of2001>, archived at <https://perma.cc/P7D9-DP2Z>.

¹⁴ THE NATIONAL COUNCIL FOR CHILDREN'S SERVICES, NATIONAL PLAN OF ACTION FOR CHILDREN IN KENYA 2015-2022, i (2015), http://www.childrenscouncil.go.ke/images/documents/Policy_Documents/National-Plan-of-Action-for-Children-in-Kenya-2015.pdf, archived at <https://perma.cc/L2KK-487Q>.

hazardous or exploitative labour.”¹⁵ The Constitution also includes language requiring state institutions and government officials to “address the needs of vulnerable groups within society,” including children.¹⁶

B. Children Act

This Act includes numerous provisions designed to protect children from abuse and neglect. It defines the term “child abuse” to include “physical, sexual, psychological and mental injury.”¹⁷

1. Safeguards for the Rights and Welfare of Children

The Act makes the principle of the best interest of the child the primary driver of all decisions and actions involving children:

- (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- (2) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—
 - (a) safeguard and promote the rights and welfare of the child;
 - (b) conserve and promote the welfare of the child;
 - (c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.¹⁸

The Act accords children protection from child labor and involvement in armed conflict. It states that a child must be protected from “economic exploitation and any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”¹⁹ It bars the involvement or recruitment of children in armed conflicts.²⁰ Whenever children are victimized by an armed conflict, the act makes it the responsibility of the government “to provide protection, rehabilitation care, recovery and re-integration into normal social life.”²¹

The Act accords children protection from and treatment for abuse whenever they fall victim to it. It states that a child is “entitled to protection from physical and psychological abuse, neglect and

¹⁵ CONSTITUTION OF KENYA, 2010, § 53, available at <http://www.kenyalaw.org/lex//actview.xhtml?actid=Const2010>, archived at <https://perma.cc/2SP6-KSLR>.

¹⁶ *Id.* § 21.

¹⁷ Children Act § 2.

¹⁸ *Id.* § 4.

¹⁹ *Id.* § 10.

²⁰ *Id.*

²¹ *Id.*

any other form of exploitation including sale, trafficking or abduction by any person.”²² Whenever a child falls victim to any of these abuses, he or she must be “accorded appropriate treatment and rehabilitation.”²³

It protects children from harmful cultural practices and sexual exploitation, barring anyone from subjecting a child to “female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child’s life, health, social welfare, dignity or physical or psychological development.”²⁴ It also states that every child must be “protected from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials.”²⁵

The Act provides that children are “entitled to protection from the use of hallucinogens, narcotics, alcohol, tobacco products or psychotropic drugs and any other drugs that may be declared harmful by the Minister of Health and from being involved in their production, trafficking or distribution.”²⁶

In addition, the Act accords certain key protections to children suspected or convicted of a crime, stating that

- (1) No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty.
- (2) Notwithstanding the provisions of any other law, no child shall be subjected to capital punishment or to life imprisonment.
- (3) A child offender shall be separated from adults in custody.
- (4) A child who is arrested and detained shall be accorded legal and other assistance by the Government as well as contact with his family.²⁷

In addition to penalties that may be imposed under other laws, anyone who violates any of the above described provisions willfully or negligently commits a crime that, on conviction, is punishable by a custodial sentence not exceeding one year and/or a fine of up to 50,000 Kenya Shilling (KES) (about US\$493).²⁸

Further, the Act provides that “[n]o child offender shall be subject to corporal punishment.”²⁹

²² *Id.* § 13.

²³ *Id.*

²⁴ *Id.* § 14.

²⁵ *Id.* §15.

²⁶ *Id.* § 16.

²⁷ *Id.* § 18.

²⁸ *Id.* § 20.

²⁹ *Id.* § 191.

2. *Enforcement of Rights*

If anyone believes that any of the provisions discussed above “has been, is being or is likely to be contravened in relation to a child, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress on behalf of the child.”³⁰

3. *The National Council for Children’s Services*

In 2002 Kenya established the National Council for Children’s Services (NCCS) under the Children Act.³¹ This twenty-two member body consists of representatives of key stakeholders including representatives of different relevant government institutions, nongovernmental organizations, religious organizations, and the private sector.³² According to the Act, the object and purpose of the Council is “to exercise general supervision and control over the planning, financing and co-ordination of child rights and welfare activities and to advise the Government on all aspects thereof.”³³ The Act lists the Council’s various mandates, including its responsibility to

ensure the full implementation of Kenya’s international and regional obligations relating to children and facilitate the formulation of appropriate reports under such obligations; ... plan, supervise and co-ordinate public education programmes on the welfare of children; ... set criteria for the establishment of children’s institutions under this Act; ... establish Area Advisory Councils to specialise in various matters affecting the rights and welfare of children; ... [and] endeavour to create an enabling environment for the effective implementation of this Act.³⁴

Among other things, the Council has established area advisory councils whose role is to “co-ordinate and guide children activities in their areas of operation” in Kenya’s 49 counties and 229 sub-counties.³⁵

4. *Children in Need of Care and Protection*

The Act states that anyone who has reason to believe that a child is in need of care and protection may report it to the closest authorized officer, including police officer, administrative officer, or children’s officer.³⁶ A child is in need of care and protection is one

³⁰ *Id.* § 22.

³¹ *About the National Council for Children’s Services (NCCS)*, NATIONAL COUNCIL FOR CHILDREN’S SERVICES, <http://www.childrenscouncil.go.ke/about-us/about-nccs.html> (last visited Apr. 26, 2019), archived at <https://perma.cc/LE77-67FY>.

³² Children’s Act § 31.

³³ *Id.* § 32.

³⁴ *Id.*

³⁵ *About the National Council for Children’s Services*, *supra* note 31.

³⁶ Children Act §§ 2 & 120.

- (a) who has no parent or guardian, or has been abandoned by his parent or guardian, or is destitute; or
- (b) who is found begging or receiving alms; or
- (c) who has no parent or the parent has been imprisoned; or
- (d) whose parents or guardian find difficulty in parenting; or
- (e) whose parent or guardian does not, or is unable or unfit to exercise proper care and guardianship; or
- (f) who is truant or is falling into bad associations; or
- (g) who is prevented from receiving education; or
- (h) who, being a female, is subjected or is likely to be subjected to female circumcision or early marriage or to customs and practices prejudicial to the child's life, education and health; or
- (i) who is being kept in any premises which, in the opinion of a medical officer, are overcrowded, unsanitary or dangerous; or
- (j) who is exposed to domestic violence; or
- (k) who is pregnant; or
- (l) who is terminally ill, or whose parent is terminally ill; or
- (m) who is disabled and is being unlawfully confined or ill treated; or
- (n) who has been sexually abused or is likely to be exposed to sexual abuse and exploitation including prostitution and pornography; or
- (o) who is engaged in any work likely to harm his health, education, mental or moral development; or
- (p) who is displaced as a consequence of war, civil disturbances or natural disasters; or
- (q) who is exposed to any circumstances likely to interfere with his physical, mental and social development; or
- (r) if any of the offences mentioned in the Third Schedule to this Act has been committed against him or if he is a member of the same household as a child against whom any such offence has been committed, or is a member of the same household as a person who has been convicted of such an offence against a child; or
- (s) who is engaged in the use of, or trafficking of drugs or any other substance that may be declared harmful by the Minister responsible for health.³⁷

Any child in need of care and protection may take refuge in, or be taken by an authorized officer to, a place of safety, which is defined as "any institution, hospital or other suitable place the occupier of which is willing to accept the temporary care of a child."³⁸

Significantly, if an authorized officer has reasonable grounds for believing that a child is in need of care and protection, the officer is authorized to "apprehend him without warrant" and as soon as possible bring the child before a Children's Court.³⁹ A children's officer must bring before the court any child "who appears to such officer to be in need of care and protection unless proceedings are about to be taken by any other person."⁴⁰

³⁷ *Id.* § 119.

³⁸ *Id.* §§ 2 & 120.

³⁹ *Id.* § 120.

⁴⁰ *Id.*

Any person who has parental responsibility, custody, charge, or care of a child commits a crime and on conviction is subject to a fine of up to KES 200,000 (about US\$1,971) and/or a maximum custodial sentence of five years if he or she

- (a) wilfully assaults, ill-treats, abandons, or exposes, in any manner likely to cause him unnecessary suffering or injury to health (including injury or loss of sight, hearing, limb or organ of the body, and any mental derangement); or
- (b) by any act or omission, knowingly or wilfully causes that child to become, or contributes to his becoming, in need of care and protection.⁴¹

According to the Act, “a person having parental responsibility, custody, charge or care of a child shall be deemed to have neglected such child in a manner likely to cause injury to his health if the person concerned has failed to provide adequate food, clothing, education, immunization, shelter and medical care.”⁴²

If it believes the action or omission of the defendant is serious in nature, the court before which the case is brought may instruct that the person be charged under the Penal Code.⁴³

C. Prohibition of Female Genital Mutilation Act

Although the Children’s Act bans female genital mutilation (FGM), the Prohibition of Female Genital Mutilation Act provides broader coverage in that, in addition to criminalizing FGM and punishing those with intimate involvement, it holds accountable anyone who participates in any capacity. It criminalizes the performance of FGM on anyone, including children.⁴⁴ If the performance of an FGM procedure causes death, the person responsible is, on conviction, liable to life imprisonment.⁴⁵ Also criminalized under the Act are the following acts or omissions:

- Aiding and abetting FGM
- Procuring a person to perform FGM in a foreign country
- Allowing the use of ones premises for FGM
- Possession of FGM tools
- Failure to report FGM
- Use of derogatory or abusive language towards someone for not having undergone FGM⁴⁶

⁴¹ *Id.* § 127.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Prohibition of Female Genital Mutilation Act No. 32 of 2011, § 19 (commencement Oct. 4, 2011), available at <http://www.kenyalaw.org/lex//actview.xql?actid=No. 32 of 2011>, archived at <https://perma.cc/Z2XC-6XG9>.

⁴⁵ *Id.*

⁴⁶ *Id.* §§ 20-25.

A person who commits an offense under this Act is liable, on conviction, to a custodial sentence of at least three years and/or a fine of KES 200,000 (about US\$1,973).⁴⁷

D. Employment Act

The Employment Act prohibits the “worst forms of child labour.” It states that “[n]otwithstanding any provision of any written law, no person shall employ a child in any activity which constitutes [the] worst form of child labour.”⁴⁸ The term “worst form of child labour” includes

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; [or]
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child[.]⁴⁹

Violation of this provision is a crime punishable, on conviction, by a fine of up to KES 200,000 and/or a custodial sentence of up to one year.⁵⁰ If the child dies during his or her employment, the person responsible would also be subject to an additional fine of up to KES 500,000 (about US\$4,932), some or all of which may be used to compensate the child or the child’s family, and/or a custodial sentence of up to one year.⁵¹

E. Sexual Offences Act

An act “which cause penetration or indecent acts” or rape *in the presence of* a child is an offense under the Sexual Offences Act and on conviction is punishable by a minimum ten-year custodial sentence.⁵² An indecent act includes “an unlawful intentional act which causes ... any contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration [or] ... exposure or display of any pornographic material to any person against his or her will.”

⁴⁷ *Id.* § 29.

⁴⁸ Employment Act No. 11 of 2007, § 53 (commencement June 2, 2008), <http://www.kenyalaw.org/lex//actview.xql?actid=No.11of2007>, archived at <https://perma.cc/X9UC-X79Q>.

⁴⁹ *Id.* § 2.

⁵⁰ *Id.* § 64.

⁵¹ *Id.* § 65.

⁵² Sexual Offences Act No. 3 of 2006, § 7 (commencement July 21, 2006), <http://www.kenyalaw.org/lex//actview.xql?actid=No.3of2006>, archived at <https://perma.cc/SM6G-2SBE>.

An indecent act *with* a child is an offense punishable on conviction by a minimum ten-year custodial sentence.⁵³ However, it is a valid defense if the accused can prove that the “child deceived [him/her] into believing that such child was over the age of eighteen years at the time of the alleged commission of the offence, and [he/she] reasonably believed that the child was over the age of eighteen years.”⁵⁴ This defense does not apply to cases where the victim and the accused are related.⁵⁵

The Act also criminalizes defilement, “an act which causes penetration with a child.”⁵⁶ The punishment for this offense on conviction varies depending on the age of the victim, as follows:

- If the victim is under the age of eleven, the applicable punishment is a custodial sentence for life.
- If the victim is between the ages of twelve and fifteen, the punishment is at least a twenty-year custodial sentence.
- If the victim is between the age of sixteen and eighteen, the penalty is at least a fifteen-year custodial sentence.⁵⁷

However, as is the case with the crime of indecent acts, it is a valid defense if the victim “deceived the accused person into believing that he or she was over the age of eighteen years at the time of the alleged commission of the offence” and the accused person “reasonably believed” this to be the case.⁵⁸ This defense does not apply if the accused and the victim are related by affinity or consanguinity.⁵⁹

Attempted defilement is an offense punishable by at least ten years of a custodial sentence.⁶⁰ The above rules on a defense apply to this offense as well.⁶¹

Also criminalized under the Act are the promotion of sexual offenses with a child, child sex tourism, child prostitution, and child pornography.⁶²

In addition, it is a crime for a person to not disclose a sexual offenses conviction “when applying for employment which places him or her in a position of authority or care of children or ... when

⁵³ *Id.* § 11.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* § 8.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* § 9.

⁶¹ *Id.*

⁶² *Id.* §§ 12-16.

offering or agreeing to take care of or supervise children”⁶³ A person convicted of this offense is punishable by a custodial sentence of at least three years and/or a fine of at least KES 50,000 (about US\$494).⁶⁴

Further, the Act criminalizes what it calls “child pornography,” stating that

- 1) [a] person, including a juristic person, who knowingly –
 - (a) possesses an indecent photograph of a child;
 - (b) displays, shows, exposes or exhibits obscene images, words or sounds by means of print, audio-visual or any other media to a child with intention of encouraging or enabling a child to engage in a sexual act;
 - (c) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his or her possession an indecent photograph of a child;
 - (d) imports, exports or conveys any obscene object for any of the purposes specified in subsection (1), or knowingly or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation;
 - (e) takes part in or receives profits from any business in the course of which he or she knows or has reason to believe that obscene objects are, for any of the purposes specifically in this section, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation;
 - (f) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be produced from or through any person; or
 - (g) offers or attempts to do any act which is an offence under this section,

commits an offence and is liable upon conviction to imprisonment for a term of not less than six years or to a fine of not less than five hundred thousand shillings or to both and upon subsequent conviction, to imprisonment to a term of not less than seven years without the option of a fine.⁶⁵

It also criminalizes what it calls “sexual communication” with a child, stating that an adult person

who knowingly communicates with a child in ... a sexual manner ... or ... in a manner intended to encourage the child to communicate in a sexual manner commits an offence and is liable, on conviction, to a fine of not less than five hundred thousand shillings or imprisonment for a term of not less than five years, or to both.⁶⁶

⁶³ *Id.* § 30.

⁶⁴ *Id.*

⁶⁵ *Id.* § 16 (as amended by the Computer Misuse and Cybercrimes Act No. 5 of 2018).

⁶⁶ *Id.* § 16A.

F. Trafficking in Persons Act

This Act criminalizes trafficking in persons, which includes the acts of recruiting, transporting, transferring, harboring, or receiving a person for the purpose of exploitation through one of the following means:

- (a) threat or use of force or other forms of coercion;
- (b) abduction;
- (c) fraud;
- (d) deception;
- (e) abuse of power or of position of vulnerability;
- (f) giving payments or benefits to obtain the consent of the victim of trafficking in persons; or
- (g) giving or receiving payments or benefits to obtain the consent of a person having control over another person.⁶⁷

According to the Act, recruiting, transporting, transferring, harboring or receiving a child for the purpose of exploitation amounts to trafficking in persons regardless of whether it was accomplished through any of the above listed means.⁶⁸ The Act provides a nonexhaustive list of acts considered exploitative, which includes

- (a) keeping a person in a state of slavery;
- (b) subjecting a person to practices similar to slavery;
- (c) involuntary servitude;
- (d) forcible or fraudulent use of any human being for removal of organs or body parts;
- (e) forcible or fraudulent use of any human being to take part in armed conflict;
- (f) forced labour;
- (g) child labour;
- (h) sexual exploitation;
- (i) child marriage;
- (j) forced marriage.⁶⁹

A person convicted for this offense is subject to a custodial sentence of at least thirty years and/or a minimum fine of KES 30 million (about US\$296,109).⁷⁰ Recidivism is punishable by life in prison.⁷¹ Participation in this offense (by financing, controlling, or aiding or abetting the criminal) is also an offense subject to the same penalties on conviction.⁷²

In addition, the Act criminalizes what it calls the “promotion of child trafficking.” This includes procuring or attempting to procure a child for the purpose of trafficking in persons through

⁶⁷ Trafficking in Persons Act No. 8 of 2010, § 3 (commencement Oct. 1, 2012), available at <http://www.kenya.gov.ke/lex/actview.xhtml?actid=No.8of2010>, archived at <https://perma.cc/9BHU-JN52>.

⁶⁸ *Id.*

⁶⁹ *Id.* § 2.

⁷⁰ *Id.* § 3.

⁷¹ *Id.*

⁷² *Id.*

adoption, fosterage, or guardianship arrangements, or offering a child for adoption, fosterage, or guardianship for the same purpose.⁷³ A person convicted on this charge is subject to a custodial sentence of at least thirty years and/or a minimum fine of KES 20 million (about US\$197,408); a second conviction on the same charge is punishable with life imprisonment.⁷⁴

If a person convicted under any of the provisions of the Act had adopted, fostered, or had a child in guardianship, any such arrangement would be rescinded.⁷⁵

G. Penal Code

The Code criminalizes the act of supplying children with substances that can be harmful to their health and wellbeing:

- (1) Any person who supplies or offers to a child –
 - (a) any petroleum distillate, glue or other substance consisting of or containing matter having stupefying or hallucinogenic properties; or
 - (b) any substance which the Minister responsible for health has declared, by notice published in the Gazette, to be a substance to which this with intent that the child should inhale, consume or otherwise abuse the substance, or knowing or having reasonable cause to suspect that the child is likely to do so, is guilty of a misdemeanour and liable to imprisonment for three years.⁷⁶

The Code also criminalizes infanticide, stating that,

[w]here a woman by any willful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent on the birth of the child, then, notwithstanding that the circumstances were such that but for the provisions of this section the offence would have amounted to murder, she shall be guilty of a felony, to wit, infanticide, and may for that offence be dealt with and punished as if she had been guilty of manslaughter of the child.⁷⁷

The Code also makes it a crime to kill an unborn child, stating

[a]ny person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a felony and is liable to imprisonment for life.⁷⁸

⁷³ *Id.* § 4.

⁷⁴ *Id.*

⁷⁵ *Id.* § 26.

⁷⁶ PENAL CODE OF 1930, § 242A (commencement Aug. 1, 1930), available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2063>, archived at <https://perma.cc/RW39-AKUJ>.

⁷⁷ *Id.* § 210.

⁷⁸ *Id.* § 228.

In addition, the Code makes kidnapping or abducting a child of a certain age with the intent to steal from its person a crime, stating that “[a]ny person who kidnaps or abducts any child under the age of fourteen years with the intention of taking dishonestly any movable property from the person of such child is guilty of a felony and is liable to imprisonment for seven years.”⁷⁹

H. Marriage Act

The Marriage Act bars child marriages. The general provisions section of the Act, which is the part of the legislation applicable to all forms of marriage, including Islamic and customary marriages, states that “[a] person shall not marry unless that person has attained the age of eighteen years.”⁸⁰ Another provision, in the same section of the legislation makes a marriage in which one or both of the parties is under the age of eighteen void, stating that “[a] union is not a marriage if at the time of the making of the union ... either party is below the minimum age for marriage.”⁸¹ Significantly, the Act criminalizes marriage with an underage person; anyone convicted for this offense is liable to a custodial sentence of up to five years and/or a fine of up to KES 1 million (about US\$9,870).⁸²

I. Domestic Violence Act

According to the Domestic Violence Act, domestic violence “in relation to any person, means violence against that person, or threat of violence or of imminent danger to that person, by any other person with whom that person is, or has been, in a domestic relationship.”⁸³ Violence means abuse, which includes child marriage, FGM, virginity testing, defilement, economic abuse, and emotional or psychological abuse.⁸⁴ It is considered a psychological abuse of a child if anyone:

- (a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or
- (b) puts the child or allows the child to be put at risk of seeing or hearing the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship, but the person who suffers the abuse shall not be regarded as having caused or allowed the child to see or hear the abuse or as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.⁸⁵

⁷⁹ *Id.* § 262.

⁸⁰ Marriage Act No 4 of 2014, § 4 (commencement May 20, 2014), available at <http://www.kenyalaw.org/lex//actview.xql?actid=No.4of2014>, archived at <https://perma.cc/977Z-GDFJ>.

⁸¹ *Id.* § 11.

⁸² *Id.* § 87.

⁸³ Protection against Domestic Violence Act No. 2 of 2015, § 3 (commencement Jun. 4, 2015), available at http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ProtectionAgainstDomesticViolenceAct_2015.pdf, archived at <https://perma.cc/5R2U-4QZX>.

⁸⁴ *Id.*

⁸⁵ *Id.*

In situations of domestic violence in which children are victimized, courts may intervene to provide relief in the form of a protective order. The Act permits a child to apply for a protective order through the help of any of the following persons or institutions:

- (a) parent or guardian;
- (b) a children officer;
- (c) the Director of Children's Services;
- (d) a police officer;
- (e) a probation officer;
- (f) a conciliator;
- (g) any other person with the leave of the court;
- (h) social welfare officer;
- (i) a person acting on behalf of –
 - (i) a church or any other religious institution; or
 - (ii) a non-governmental organization concerned with the welfare of victims of domestic violence; or
- (j) a relative or neighbour.⁸⁶

J. Evidence Act

Although the Act requires that evidence given by children in criminal matters be corroborated, after a 2006 amendment, when the case in question involves a sexual offense in which the alleged victim of and the only witness to the offense is a child, “the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.”⁸⁷ This provisions reportedly goes a long way to protecting children from sexual abuse primarily because “[o]ften, violence and especially sexual offences against children happen in the private [sic] where, mostly, only the child victim and the perpetrator are present.”⁸⁸ Prior to the proviso’s introduction in 2006, “many [child sexual] offenders went scot-free on account of the corroboration requirement.”⁸⁹

K. Basic Education Act

The Act lists various values and principles that must be used as guides in the provision of basic education. Among the listed values and principles is the “elimination of gender discrimination, corporal punishment or any form of cruel and inhuman treatment or torture.”⁹⁰ Also included are the “protection of every child against discrimination within or by an education department or education or institution [sic] on any ground whatsoever” and “non-discrimination,

⁸⁶ *Id.* § 9.

⁸⁷ Evidence Act of 1963, § 124 (Dec. 10, 1963), available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2080>, archived at <https://perma.cc/GK2F-CRVZ>.

⁸⁸ AFRICAN NETWORK FOR THE PREVENTION AND PROTECTION AGAINST CHILD ABUSE AND NEGLECT, KENYAN STUDY REPORT ON VIOLENCE AGAINST CHILDREN 38 (2008).

⁸⁹ KYALO MBOBU, THE LAW AND PRACTICE OF EVIDENCE IN NIGERIA 321 (2011).

⁹⁰ Basic Education Act No. 14 of 2013, § 4 (Jan. 25, 2013), available at <https://africacheck.org/wp-content/uploads/2018/10/BasicEducationActNo14of2013.pdf>, archived at <https://perma.cc/SW6S-5GH5>.

encouragement and protection of the marginalised, persons with disabilities and those with special needs.”⁹¹

L. Alcoholic Drinks Control Act

One of the objects and purposes of the Alcoholic Drinks Control Act is to “protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks.”⁹² To that end, it bars anyone who has a license to manufacture, store, or consume alcoholic beverages from allowing anyone under the age of eighteen “to enter or gain access to the area in which the alcoholic drink is manufactured, stored or consumed.”⁹³ Anyone who commits an offense is punishable on conviction by a maximum fine of KES 500,000 (about US\$4,928) and/or a custodial sentence of up to three years.⁹⁴

M. Refugee Act

The Refugee Act provides that one of the functions of a refugee camp officer is to “protect and assist vulnerable groups, women and children.”⁹⁵ It states that the Commissioner for Refugee Affairs must make sure that “specific measures are taken to ensure the safety of refugee women and children in designated areas.”⁹⁶ It also states that the Commissioner must make certain that “a child who is in need of refugee status or who is considered a refugee shall, whether unaccompanied or accompanied by his parents or by any other person, receive appropriate protection and assistance.”⁹⁷ The Commissioner must assist an unaccompanied refugee child in tracing and reuniting with his or her parents or other family members.⁹⁸ If no family member is located, “the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family.”⁹⁹

⁹¹ *Id.* § 4(e), (s).

⁹² Alcoholic Drinks Control Act No. 4 of 2010, § 3 (Nov. 22, 2010), available at <http://www.kenyalaw.org/lex//actview.xql?actid=No. 4 of 2010>, archived at <https://perma.cc/7DL3-KDXG>.

⁹³ *Id.* § 24.

⁹⁴ *Id.* §§ 24 & 62.

⁹⁵ Refugee Act No. 13 of 2006, § 17 (commencement May 15, 2007), available at <http://www.kenyalaw.org/lex//actview.xql?actid=No. 13 of 2006>, archived at <https://perma.cc/E5FR-4RNU>.

⁹⁶ *Id.* § 23.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

III. Policy and Monitoring Mechanisms

A. National Plan of Action

In 2015 Kenya published the National Plan of Action for Children in Kenya (NPA) 2015-2022.¹⁰⁰ The NPA describes the process of its development and its goals as follows:

The development of this NPA was spearheaded by [the] NCCS through an inclusive, participatory and widely consultative process with representation of key stakeholders among them children, ministries, government departments and agencies, development partners, non-state actors, community and faith based organizations working with and for children.

The NPA 2015-2022 has been aligned to the Constitution of Kenya 2010 and been designed to contribute to the realization of the goals of Kenya Vision 2030. It has also taken into consideration the Sustainable Development Goals (SDGs), which will succeed the Millennium Development Goals (MDGs) that contain a wide range of proposed activities aimed at safeguarding children's rights to survival, development, protection and participation.

The NPA provides an operational framework to guide stakeholders and partners in coordinating, planning, implementing and monitoring programmes for the child. In addition, it outlines priorities and interventions necessary for the progressive realization of children's rights in Kenya. These priorities and interventions are designed to address the specific gaps identified by stakeholders.¹⁰¹

The NPA noted that while Kenya has a solid legal framework for child protection, children remain "vulnerable to a wide range of risks including abandonment, violence, sexual abuse, trafficking, sexual exploitation, hazardous labour and harmful substances among others."¹⁰² This is largely due to gaps in the country's child protection system, which the NPA characterizes as follows:

Such gaps include an inadequate civil registration and vital statistics system which leaves many children unregistered and creates barriers for children to access services. Inadequate personnel, knowledge and limited child protection infrastructure also hamper the ability of service providers to respond to needs. Kenya has an elaborate legal and policy framework to protect children from all forms of abuse and exploitation. However, enforcement and delayed justice remain a major challenge.¹⁰³

The NPA includes fifty-four action points categorized into thirteen different groupings for the realization of effective child protection in Kenya. Included in the cross-cutting action points, one of the thirteen categories, are the following:

¹⁰⁰ NATIONAL COUNCIL FOR CHILDREN'S SERVICES, *supra* note 14.

¹⁰¹ *Id.* at 2.

¹⁰² *Id.* at 23.

¹⁰³ *Id.*

1. Strengthen the legal and policy frameworks including coordination for child protection in all areas.
2. Enforcement of the provisions of the child protection system at all levels (national, county, sub county up to community and household level.
3. Establish and strengthen institutional structures that provide child protection services and welfare.
4. Establish and strengthen monitoring and evaluation systems in the child protection sector (including the disaggregated information) to inform decision making at policy and program implementation levels.
5. Improve financial and technical capacity of duty bearers.
6. Develop parenting guidelines.
7. Strengthen inter-sectoral coordination in child protection issues for the juvenile justice system (police, probation, prison, judiciary and the Children's Department) education, health and social system.
8. Promote community-based economic empowerment and social protection programs.
9. Promote social enterprise initiatives.
10. Advocate for government budgetary allocation for specific child protection programs such as the children with disability[.]
11. Provide child-friendly information, education and communication materials on diverse child abuse and exploitation issues.
12. Popularize and disseminate the NPA, study on violence against children and the response plan.
13. Provide psychosocial care and support to children who have gone through child abuse.
14. Create awareness on the provision of psychosocial care and support.¹⁰⁴

B. Monitoring

In 2017 Kenya launched a web portal for the management, tracking, and reporting of child protection activities, the Child Protection Information Management System (CPIMS).¹⁰⁵ According to the National Council for Children's Services, the CPIMS is a child-centered system intended to

- Facilitate monitoring and evaluation of child protection interventions in Kenya, inform policy and evidence based decision making.
- Provide access to accurate, timely and reliable aggregate-level child protection data.
- Facilitate record keeping and information management on individual cases of child protection.
- Track vulnerable children longitudinally and geographically to ensure continuity of care and protection, including children in institutional care.

¹⁰⁴ *Id.* at 34.

¹⁰⁵ Lillian Mutavi, *Portal on Child Protection Launched*, DAILY NATION (May 9, 2017), <https://www.nation.co.ke/news/Portal-on-child-protection-launched/1056-3920600-vww1no/index.html>, archived at <https://perma.cc/PY27-GV74>.

- Facilitate appropriate information sharing between stakeholders and service providers in the best interest of the child.
- Be flexible and extensible over time to cater for emerging needs in the children sector.¹⁰⁶

The CPIMS is designed to capture data concerning children in different situations that expose or make them vulnerable to abuse and neglect, including

- Children separated from or [who] lack adult family guardians (e.g. abandoned, street living children, trafficked, lost, orphans without family care, children with parents in prison, child headed households)
- Children in residential institutions (statutory or charitable)
- Children affected by VANE: Violence, Abuse, Neglect and Exploitation – (physical abuse, sexual exploitation, sexual assault, defilement, incest, emotional abuse, neglect, female genital mutilation and other retrogressive cultural practices)
- Those that [h]ave experienced trauma emanating from emergency situations e.g. man-made and natural disasters
- Living in risky family settings e.g. drug and substance abuse in the family, previous history of abuse or harmful practices in family
- Children in vulnerable families – living with chronically sick caregiver(s), or caregivers who are elderly or disabled to an extent that affects care of children
- Children in conflict with law, child offenders
- Children with severe health or disability issues (disability (mental, physical, albinism), living with HIV/AIDS, drug user)
- Child marriage, pregnancy, children who have given birth
- Child labour (domestic, agricultural, industrial, fishing, mining, street work)
- Children out of school due to truancy or delinquency
- Children subject to custody disputes, maintenance disputes, paternity disputes
- Children in need of social assistance to fulfil legal rights – birth registration, medical insurance, inheritance.¹⁰⁷

The CPIMS includes a feature for the tracking of the different forms of interventions in response to the above situations that children face, including

- Rescue from harm and placement in place of safety
- Alternative family care (adoption, foster care, guardianship, kinship, kafaala)
- Family reintegration, reunification
- Tracking and supporting children in conflict with law through the child justice system, legal and rehabilitation processes
- Arbitration
- Supervision (with or without court orders), parental bonds, written promise, joint parental agreements
- Support services (counselling, family support).¹⁰⁸

¹⁰⁶ *Frequently Asked Questions*, NATIONAL COUNCIL FOR CHILDREN'S SERVICES, <http://www.childrenscouncil.go.ke/faqs.html> (last visited Apr. 26, 2019), archived at <https://perma.cc/94HW-UJDF>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

The Department of Children’s Services of the Ministry of Gender, Children and Social Development runs a twenty-four-hour, toll-free emergency public helpline, Helpline 116, which is used for reporting situations involving children in need of care and protection.¹⁰⁹ The Helpline maintains a national database on calls made, provides counseling and referral services available in their area to vulnerable and abused children, and assists parents experiencing difficulties with their children, among other things.¹¹⁰ The types of cases reported to the Helpline include “child neglect, physical abuse, sexual abuse, school-related [challenges], custody and maintenance, FGM, early/forced marriages, child labor, child prostitution, [and] child trafficking.”¹¹¹ The Department of Children Services noted that it uses Helpline data “to influence policy formulation in the best interest of the child.”¹¹²

¹⁰⁹ *Child Help Line 116*, NATIONAL COUNCIL FOR CHILDREN’S SERVICES, <http://www.childrenscouncil.go.ke/child-help-line.html?showall=&start=1> (last visited Apr. 26, 2019), archived at <https://perma.cc/BA2Q-76SJ>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

Mexico

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SUMMARY Mexico's General Law on the Rights of Children and Adolescents provides that federal and state authorities must take necessary legal and operational measures in their respective jurisdictions to prevent, address, and punish cases in which children are affected by neglect and abuse. This law also provides for a national information system aimed at collecting data to allow monitoring of compliance with children's rights measures. This system is publicly available online and provides access to a wide variety of data on children's issues, including information on cases of violence against children.

I. Legislative Framework

Mexico is a federal republic comprising thirty-one states and Mexico City (the nation's capital). Each of these jurisdictions and the federal government has its own laws concerning children's issues.

The most salient law at the national level is the General Law on the Rights of Children and Adolescents, as it provides that federal and state authorities must take necessary legal and operational measures in their respective jurisdictions to prevent, address, and punish cases in which children are affected by neglect and abuse, be it physical, psychological, or sexual.¹ These authorities must also take pertinent measures to help children recover physically and psychologically when necessary, in an environment that fosters their well-being and dignity.²

Relevant features of this law were summarized by UNICEF as follows:

A 'General Law on Children and Adolescents' Rights' . . . passed in December 2014 (and) was revised . . . with strong UNICEF technical assistance to ensure that it met international standards. . . .

The law creates child rights governance and coordination mechanisms within a National Integrated Child Rights Protection System, to redress fragmentation of policies and responsibilities for children's rights. The President will preside over the system, with an Executive Secretariat to follow-up on decisions and obligations to children across all sectors and levels of government. Innovations in the law include child rights information systems at all levels, the independent monitoring of social policies for children and explicit reference to budget obligations to implement the law. The law strengthens much-needed mechanisms to protect children against violence, abuse and exploitation, with the creation of Children's Defenders at federal, state and municipal levels responsible for channeling

¹ Ley General de los Derechos de Niñas, Niños y Adolescentes [General Law on the Rights of Children and Adolescents] art. 47-I, DIARIO OFICIAL DE LA FEDERACIÓN [D.O.F], Dec. 4, 2014, available as amended through 2018 on the website of Mexico's House of Representatives, at http://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA_200618.pdf, archived at <https://perma.cc/BLR4-6PX3>.

² *Id.* art. 48.

child protection cases and directly defending children's interests in court. The General Law sets normative standards for children applicable across the whole of Mexico, redressing the previous heterogeneous approach of many different state laws.³

As summarized above, the law provides for protective services offices at the state level that must collaborate as necessary with other relevant authorities, such as those from health, welfare, and education agencies, in order to protect and restore the rights of children.⁴ These offices have broad powers, including denouncing crimes committed against children and executing temporary emergency measures in cases where children's lives are in imminent danger.⁵ Such measures are to be analyzed and confirmed by judicial authorities when appropriate and include immediate medical attention and referring children for admission to social assistance centers.⁶

The General Law on the Rights of Children and Adolescents provides that state legislative bodies are to enact statutory measures in their respective jurisdictions in order to bring their laws into conformity with the General Law.⁷ Accordingly, all of the Mexican states have enacted statutes on the rights of children.⁸

II. National Data Collection and Analysis

The General Law on the Rights of Children and Adolescents provides for a national information system aimed at collecting data that allows monitoring of compliance with children's rights measures.⁹ Its regulation further indicates that such system aims at using the information collected to design enforcement strategies and policies as necessary.¹⁰ The relevant national and state authorities provide the data, which must be made publicly available.¹¹ Accordingly, the National Information System on Children and Adolescents is publicly available online.¹² It

³ UNICEF, ANNUAL REPORT 2014: MEXICO 1, 20, https://www.unicef.org/about/annualreport/files/Mexico_Annual_Report_2014.pdf, archived at <https://perma.cc/C36J-5MTL>.

⁴ Ley General de los Derechos de Niñas, Niños y Adolescentes art. 121.

⁵ *Id.* art. 122(VI), (VII).

⁶ *Id.*

⁷ *Id.* art. segundo transitorio.

⁸ SISTEMA NACIONAL DE PROTECCIÓN INTEGRAL DE NIÑAS, NIÑOS Y ADOLESCENTES [NATIONAL SYSTEM FOR THE PROTECTION OF CHILDREN AND ADOLESCENTS], Fortalecimiento institucional [Institutional Development], <https://www.gob.mx/sipinna/articulos/enterate-de-cuatro-acciones-clave-para-garantizar-los-derechos-de-ninez-y-adolescencia-en-su-vida-diaria?idiom=es>, archived at <https://perma.cc/S35C-X6A4>.

⁹ Ley General de los Derechos de Niñas, Niños y Adolescentes, art. 125-XV.

¹⁰ Reglamento de la Ley General de los Derechos de Niñas, Niños y Adolescentes [General Law on the Rights of Children and Adolescents Regulation] art. 34, D.O.F, Dec. 2, 2015, available as originally enacted on the website of Mexico's House of Representatives, at http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LGDNNA.pdf, archived at <https://perma.cc/EFZ9-53VX>.

¹¹ *Id.* arts. 34, 37.

¹² SISTEMA NACIONAL DE INFORMACIÓN DE NIÑAS, NIÑOS Y ADOLESCENTES [NATIONAL INFORMATION SYSTEM ON CHILDREN AND ADOLESCENTS], <https://www.infosipinna.org/> (last visited on Apr. 15, 2019), archived at <https://perma.cc/S7SW-3JHV>.

provides access to a wide variety of data on children's issues, including information on cases of violence against them.¹³ The system allows users to review the data at the national level or by state.¹⁴ Data can also be selected by the type of abuse (i.e., sexual, physical, emotional),¹⁵ and by the place in which it occurred.¹⁶

¹³ *Id.*, Ninos y adolescentes victimas de algun tipo de violencia [Children who have experienced some type of violence], <https://www.infosipinna.org/#armar-consulta>, archived at <https://perma.cc/7QWP-6RMQ>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*, Numero de ninos y adolescentes de 10 a 19 anos que han sufrido algun tipo de violencia segun su entorno [Children who have experienced some type of violence arranged by place of occurrence].

Sweden

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SUMMARY Sweden has had specialized child protection laws since the early 1900s. It also has international obligations to protect the wellbeing of children, including under the United Nations Convention on the Rights of the Child. Protections are contained in a number of domestic laws, such as the Parental Code, the School Act, the Criminal Code, and the Act with Special Provisions on Care of Youth. National law obligates municipalities to set up local and regional committees that are responsible for enforcing legislation that protects children. Swedish law also mandates professionals, such as teachers and doctors, to report suspected physical or mental abuse of children.

Sweden does not allow physical disciplinary violence against children and was the first country in the world to specifically prohibit such violence in the home.

Sweden collects and monitors statistics on violence against children through different state agencies, including the National Council for Crime Prevention, a national ombudsman for children, the Children's Welfare Association, as well as municipal agencies.

Private organizations also monitor assaults against children and gather statistics.

I. Legal Framework for Child Protection

A. Overview

Sweden has had specialized child protection laws in place since the early 1900s.¹ The primary legislation on children is currently the Parental Code.² In addition, there are special child protection provisions in the Criminal Code, the Education Act, and child-related legislation such

¹ Three laws are commonly jointly referred to as the first Swedish child protection legislation: LAG ANGÅENDE MINDERÅRIGA FÖRBRYTARE (Svensk författningssamling [SFS] 1902:72), LAG OM UPPFOSTRAN ÅT VANARTADE OCH I SEDLIGT AVSEENDE FÖRSUMMADE BARN (SFS 1902:67), and LAG OM FOSTERBARNNS VÅRD (SFS 190:63). For discussion, see STATENS OFFENTLIGA UTREDNINGAR [SOU] 2009:99 VANVÅRD I SOCIAL BARNAVÅRD UNDER 1900-TALET [GOVERNMENT OFFICIAL REPORT 2009:99 MALTREATMENT IN PUBLIC CHILD CARE DURING THE 1900s] 54-55 (2009), <https://www.regeringen.se/49b6a6/contentassets/df5378e6513b4bc9b9cc3d16b4007461/vanvard-i-social-barnavard-under-1900-talet-del-1-av-2-forord-och-kapitel-1-6-sou-200999>, archived at <https://perma.cc/GG8M-FEX3>. See also EMIL SUNDBERG, LAGSTIFTNINGEN OM BARNAVÅRD – DE NYA LAGARNA OM VÅRDEN AF FOSTERBARN, UPPFOSTRAN ÅT VANARTADE OCH I SEDLIGT AFSEENDE FÖRSUMMADE BARN SAMT BEHANDLIGEN AF MINDERÅRIGA FÖRBRYTARE (1903).

² FÖRÄLDRABALK (FB) [PARENTAL CODE] (SFS 1949:381), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/foraldrabalk-1949381_sfs-1949-381, archived at <https://perma.cc/E24Z-RYRG>.

as the Act with Special Provisions on Care of Youth (LVU).³ The LVU allows the government to take protective custody of a child against the wishes of the parents, when the care of the child so requires.⁴ Provisions on child protection measures are also found in the Social Welfare Act (SoL). These include general protections, such as a duty to consider the best interest of the child in all dealings, as well as specific protections, such as a duty to provide public measures and assistance that meet the needs of the child and his/her legal guardian.⁵

Sweden also has a number of international obligations in relation to the protection of children. Sweden is a signatory to the United Nations Convention on the Rights of the Child, which is scheduled to become Swedish law through ratification on January 1, 2020, following a vote to that effect in the Swedish Parliament.⁶ It is also a signatory to the European Convention on Human Rights.⁷

The central focus in the Swedish legislation related to children is the best interest of the child (*barnets bästa*), which is meant to protect the child in all dealings.⁸ This longstanding focus is also reflected in the language of the UN Convention on the Rights of the Child.⁹

³ 3 kap. 5 § BROTTSBALKEN (BRB) [CRIMINAL CODE] (SFS 1962:700), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700, archived at <https://perma.cc/E8DC-XPXU>; SKÖLLAG [EDUCATION ACT] (SFS 2010:800), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/skollag-2010800_sfs-2010-800, archived at <https://perma.cc/3ZMY-HTEH>; LAG MED SÄRSKILDA BESTÄMMELSER OM VÅRD AV UNGA (LVU) [ACT WITH SPECIAL PROVISIONS ON CARE OF YOUTH] (SFS 1990:52), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-199052-med-sarskilda-bestammelser-om-varld_sfs-1990-52, archived at <https://perma.cc/9CMR-N269>.

⁴ 1 § 2 st LVU; 6 § SOCIALTJÄNSTLAG (SoL) (SFS 2001:453), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453_sfs-2001-453, archived at <https://perma.cc/TMZ7-CVU4>.

⁵ 1 kap. 2 §, 3 kap. 6a § SoL.

⁶ *Barnkonventionens väg mot svensk lag*, REGERINGSKANSLIET, <https://www.regeringen.se/regeringens-politik/barnkonventionens-vag-mot-svensk-lag/> (last visited Apr. 24, 2019), archived at <https://perma.cc/TQ5G-35HA>; Regeringens proposition [Prop.] 2018/19:71 Genomförande av barnrättsdirektivet och några andra straffprocessuella frågor [Government Bill 2018/19:71 on the Implementation of the Child Convention and Other Criminal Procedural Issues], http://www.riksdagen.se/sv/dokument-lagar/dokument/proposition/genomforandet-av-barnrattsdirektivet-och-nagra_H60371, archived at <https://perma.cc/48JQ-HJG6>; SOU 2009:68 LAG OM STÖD OCH SKYDD FÖR BARN OCH UNGA [GOVERNMENT OFFICIAL REPORT 2009:68. ACT ON SUPPORT AND PROTECTION FOR CHILDREN AND YOUTH], available at <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2009/07/sou-200968/>, archived at <https://perma.cc/D7FT-EJS8>.

⁷ For example, the right to respect for private and family life is contained in article 8 of the European Convention on Human Rights, https://www.echr.coe.int/Documents/Convention_ENG.pdf, archived at <https://perma.cc/Y584-N9KT>.

⁸ See, e.g., 1 kap. 2 § SoL. See also ANNA SINGER, *BARNETS BÄSTA* (2012).

⁹ Convention on the Rights of the Child Adopted, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (Nov. 20, 1989), <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, archived at <https://perma.cc/72UX-XSZP>, also available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/44/25, archived at <https://perma.cc/8RNY-ATKC>. See Chapter 6 of SOU 1997:116 *BARNETS BÄSTA I FRÄMSTA RUMMET* [GOVERNMENT OFFICIAL REPORT 1997:116. THE BEST INTEREST OF THE CHILD PRIORITIZED FIRST], available at

European law also requires that Sweden protect the human rights of children.¹⁰

B. Parental Code

The Parental Code was first passed in 1949.¹¹ It stipulates a child's right to his/her heritage and parents, as well as establishing how legal maternity and paternity is determined.¹² In addition, the law protects children from physical and mental abuse by prohibiting "physical punishment or other offensive treatment" of the child.¹³

The explicit prohibition on physical punishment was included in an amendment to the Parental Code enacted on July 1, 1979.¹⁴ The inclusion of the prohibitory language made Sweden the first country in the world to explicitly prohibit disciplinary violence against children in a family setting.¹⁵ Violence against children in a school setting had previously been prohibited in Sweden in 1958.¹⁶ The legislation prohibiting disciplinary violence in schools was inspired by Norwegian legislation passed in 1936.¹⁷

Even though the law protecting children from physical punishment has been in force since 1979, a woman received a reduced penalty in 2018 after physically punishing her two children because

<https://www.regeringen.se/49b6c9/contentassets/5e7992b6793841ec9ed763055e88554c/del-2-t.o.m.-kap.-6>, archived at <https://perma.cc/5NCS-4QBK>.

¹⁰ For example, article 3(3) of the Treaty on European Union contains an objective for the EU to promote protection of the rights of the child; the Charter of Fundamental Rights of the EU guarantees the protection of the rights of the child by EU institutions and by EU countries when they implement EU law, with article 24 on the rights of the child and article 31 on the prohibition of child labor specifically covering children's rights. See generally *EU Action on the Rights of the Child*, EUROPEAN COMMISSION, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/eu-action-rights-child_en (last visited May 2, 2019), archived at <https://perma.cc/GCH9-328U>.

¹¹ FÖRÄLDRABALK (FB) [PARENTAL CODE] (SFS 1949:381); Prop. 1949:43 med förslag till föräldrabalk m.m. [Government Bill 1949:43 with Proposal for Parental Code etc.], <https://lagen.nu/prop/1949:93?attachment=index.pdf&repo=propkb&dir=downloaded#sid1-img>, archived at <https://perma.cc/6NHQ-SCYM>.

¹² 1 kap. 1-9 §§ FB.

¹³ 6 kap. 1 § FB (all translations by author).

¹⁴ LAG OM ÄNDRING I FÖRÄLDRABALKEN [ACT ON AMENDMENT TO THE PARENTAL CODE] (SFS 1979:122); Regeringens Proposition [Prop.] 1978/79:67 Förbud mot aga [Government Bill 1978/79:67 Prohibition on Disciplinary Spanking], <https://data.riksdagen.se/fil/3901ECD1-A936-4960-9E07-7C0A2E01DA63>, archived at <https://perma.cc/ME86-ZSZY>.

¹⁵ *Inget barn ska behöva ut-sättas för våld*, UNICEF (Jan. 2018), <https://unicef.se/fakta/vald-mot-barn>, archived at <https://perma.cc/F25N-8D63>.

¹⁶ KUNGL. MAJ:TS STADGA FÖR FOLKSKOLOR, FORTSÄTTNINGSSKOLOR OCH FÖRSÖKSSKOLOR (FOLKSKOLESTADGA) [ROYAL HIGHNESS CHARTER FOR PUBLIC SCHOOLS, CONTINUATION SCHOOLS, AND TRIAL SCHOOLS (PUBLIC SCHOOL CHARTER)] (SFS 1958:399). See also REGERINGSKANSLIET & RÄDDA BARNEN, ALDRIG VÅLD – 30 ÅR AV SVENSK LAGSTIFTNING MOT AGA (2009), <https://www.regeringen.se/49bbc4/contentassets/dae013d7402b4af28f0fb2518f45b68d/aldrig-vald---30-ar-av-svensk-lagstiftning-mot-aga>, archived at <https://perma.cc/ZAZ7-HVQ9>.

¹⁷ REGERINGSKANSLIET & RÄDDA BARNEN, *supra* note 16.

she did not know that the behavior was criminalized.¹⁸ The woman was an immigrant who had lived in Sweden for three years. The court found that, although she was required to know the law following such a long stay in Sweden, the real possibility of her determining the content of Swedish law was limited, mainly because she was illiterate and did not speak Swedish.¹⁹ The court also noted that the behavior was both legal and common in the country where the woman came from.²⁰

C. Criminal Code

Sweden criminalizes physical violence against anyone (child or adult) that leads to “physical injury, sickness or pain or places him or her in a powerless state or another similar condition,” which punishable with a sentence of imprisonment for two years, or if the crime is a minor offense, to a fine or imprisonment for up to six months.²¹ In addition, the Criminal Code contains a number of provisions directly related to children as victims.²² This includes, for example, kidnapping of children,²³ child rape,²⁴ and sexual exploitation of children.²⁵ Crimes against children typically have a longer statute of limitations. For instance, the statute of limitations for sexual crimes against children does not start to run until the child turns eighteen.²⁶

D. Act with Special Provisions on Care of Youth (LVU)

In addition to criminalizing conduct against children, Sweden also protects children by ensuring that the state can take action, including preventative measures, to protect children from being abused, or otherwise placed in a harmful environment. The Act with Special Provisions on Care of Youth (LVU) provides when a child can be taken into protective care by the state in order to care for his physical or psychological well-being.²⁷ Physical or mental abuse in the home is one of

¹⁸ A description of the case is contained in Erik Tagesson, *Mamma misshandlade sina barn - får straffrabatt eftersom hon inte visste att det var olagligt*, DAGENS JURIDIK (Feb. 8, 2019), <http://www.dagensjuridik.se/2019/02/mamma-misshandlade-sina-barn-far-straffrabatt-eftersom-hon-inte-visste-att-det-var-olagligt>, archived at <https://perma.cc/4CCU-7DNN>.

¹⁹ *Id.*

²⁰ *Id.*; Karl Henricsson, *Straff kortas: Mamma visste inte att barnaga var förbjudet i Sverige*, METRO (Feb. 6, 2019), <https://www.metro.se/artikel/straff-kortas-mamma-visste-inte-att-barnaga-var-f%C3%B6rbjudet-i-sverige>, archived at <https://perma.cc/2Y63-3PHS>.

²¹ 3 kap. 5 § BRB.

²² See e.g., 4 kap. 1 § & 6 kap. 4-5 §§ BRB

²³ 4 kap. 1 § BRB.

²⁴ *Id.* 6 kap. 4 §.

²⁵ *Id.* 6 kap. 5 §.

²⁶ *Id.* 35 kap. 4 §. See also Prop. 2017/2018:177 En ny sexualbrottslagstiftning byggd på frivillighet [Government Bill 2017/18:177 A New Legislation on Sexual Crimes Based on Voluntariness], <https://www.regeringen.se/4950e9/contentassets/20977a5e47ab41bd89e4ff609208bfa8/en-ny-sexualbrottslagstiftning-byggd-pa-frivillighet-prop.-201718177>, archived at <https://perma.cc/89N6-3ALT>.

²⁷ 2 § LVU (translation by author).

the grounds for protecting a person under the LVU.²⁸ Other parental practices deemed by the government to be shortcomings in providing for the child may also result in intervention by the state, if the government determines they amount to a risk that “the youth’s health or development is harmed.”²⁹ For example, a boy was placed in protective care under the LVU because of excessive online gaming that was deemed by the state to be detrimental to his health.³⁰ Certain dietary choices may also be grounds for intervention. A Swedish prosecutor has prosecuted a mother for assault for forcing her son to eat something very spicy that made him feel “like his mouth was burning.”³¹ Similarly, currently a case is being tried in court where parents are charged with assault (*vållande till kroppskada*) for providing their one and a half-year old child with a vegan diet.³² A child was removed from the home under questionable circumstances in a 2001 case where the local social welfare committee removed an infant from its parents because of the parents’ mental disabilities without following the necessary steps, including the duty to first determine if assistance to the parents, or a placement with the parents’ extended family, was possible.³³

A media survey, conducted by SVT, shows that protective custody of children is on the rise in Sweden, indicating a 27% rise over a five year period (2013 to 2017).³⁴ The survey also shows that a greater number of parents are appealing protective care decisions.³⁵

E. Education Act

Swedish law also provides for the protection of children from abuse in schools. The Swedish Education Act includes specific child protection provisions. Chapter six deals with measures against demeaning and/or offensive treatment (*kränkande behandling*), and includes a duty for all adults that work at the school to refrain from demeaning treatment of children,³⁶ and a duty to

²⁸ *Id.* 2 §.

²⁹ *Id.*

³⁰ Elin Hofverberg, *Sweden: Child in Protective Care Following Excessive Online Gaming*, GLOBAL LEGAL MONITOR (July 16, 2014), <https://loc.gov/law/foreign-news/article/sweden-child-in-protective-care-following-excessive-online-gaming/>, archived at <https://perma.cc/EH28-YPWX>; Förvaltningsrätten i Linköping [District Administrative Court], Unit 2, Decision No. 2042-14 (Apr. 11, 2014) (copy on file with author).

³¹ Rebecka Svensson, *Tvingade pojke att äta stark chili – åtalas för misshandel*, SVERIGES RADIO (Apr. 17, 2019), <https://sverigesradio.se/sida/artikel.aspx?programid=106&artikel=7200946>, archived at <https://perma.cc/D4EZ-WKCF>.

³² Marit Fahlander & Jakob Eidenskog, *Föräldrar misstänks ha svultit sitt barn – läkare i rätten: “Hon höll på att dö”*, SVT (May 2, 2019), <https://www.svt.se/nyheter/lokalt/vast/misstanks-ha-svultit-sitt-barn>, archived at <https://perma.cc/R4GW-JLDJ>.

³³ See Josefsson Säsong 1 - Karin & Lasse, SVT, <https://www.svtplay.se/video/22047418/josefsson/josefsson-sasong-1-karin-och-lasse?start=auto&tab=2019>, archived at <https://perma.cc/6YU7-K9EM>.

³⁴ *Antalet tvångsomhändertagna barn ökar: “Vi vet inte varför”*, SVT (June 17, 2018), <https://www.svt.se/nyheter/inrikes/antalet-barn-som-omhandertas-med-tvang-okar>, archived at <https://perma.cc/L9L7-LYK3>.

³⁵ *Id.*

³⁶ 6 kap. 9 § SKOLLAGEN.

report any such behavior against a student to the principal.³⁷ The school must also actively take measures to prevent demeaning and offensive treatment at the school.³⁸ Required measures include implementing action plans outlining how to combat demeaning behavior.³⁹ All activities in a school must be based on, and center around, the best interest of the child.⁴⁰

F. Duty to Report Maltreatment and Abuse

As provided for in the Act on Social Services (SoL), the public is encouraged to report abuse or suspicions of abuse to the authorities, but are not required, to do so.⁴¹ However, professionals such as health care providers, doctors, school staff, and social workers are required to report suspected abuse.⁴² Failure to report when subject to such a duty can lead to disciplinary action and legal action for professional misconduct (*tjänstefel*).⁴³

II. National Data Collection and Analysis Programs for Child Abuse and Neglect Information

A number of Swedish organizations collect and analyze statistics on child abuse and neglect.

A. Stiftelsen Allmänna Barnhuset

The *Stiftelsen Allmänna Barnhuset* (Children's Welfare Foundation), was created by the state in 1633 to care for orphans.⁴⁴ From its inception in the 1600s to the 1960s the foundation housed orphans, while in the later years it provided interim housing while children were awaiting placement in foster homes.⁴⁵ Today, its vision is to provide the same opportunities for children from difficult backgrounds as children from privileged backgrounds.⁴⁶ Its mission is to enhance awareness of matters related to the welfare of children through research and advocacy, including increasing the knowledge of child psychology by persons that meet and care for children in a

³⁷ *Id.* 6 kap. 10 §.

³⁸ *Id.* 6 kap. 6 §.

³⁹ *Id.* 6 kap. 8 §.

⁴⁰ *Id.* 1 kap. 10 §.

⁴¹ 14 kap. 1 § SoL.

⁴² *Id.* 14 kap. 1 § 2 st.

⁴³ 20 kap. 1 § BRB.

⁴⁴ *Historia*, ALLMÄNNA BARNHUSET, <http://www.allmannabarnhuset.se/om-oss/historiaslaktforskning/> (last visited May 1, 2019), archived at <https://perma.cc/3RNC-FM7V>; *Om oss*, ALLMÄNNA BARNHUSET, <http://www.allmannabarnhuset.se/om-oss/> (last visited May 1, 2019), archived at <https://perma.cc/PLH3-I4UL>.

⁴⁵ *Om oss*, ALLMÄNNA BARNHUSET, *supra* note 48. *Allmänna barnhuset*, STADSARKIVET (Feb. 12, 2015), <https://stadsarkivet.stockholm.se/hitta-i-arkiven/arkivartiklar/a-b/allmanna-barnhuset/>, archived at <https://perma.cc/3LMY-WR4P>.

⁴⁶ *Uppdrag och vision*, ALLMÄNNA BARNHUSET, <http://www.allmannabarnhuset.se/om-oss/uppdrag-och-vision/> (last visited May 1, 2019), archived at <https://perma.cc/AY25-42GF>.

professional setting.⁴⁷ In 2016, the foundation published a national survey on violence against children in Sweden.⁴⁸ In 2018, it published a school survey on violence and safety.⁴⁹ Its annual activity report from 2017 is available on its website and includes information on its activities.⁵⁰ The foundation receives annual funding from the government.⁵¹

B. Municipal Responsibilities

Sweden has a history of protecting children at the local level through national legislation. In 1924, local municipal children's boards (*barnavårdsnämnder*) were instituted through national legislation.⁵² Under the Children's Care Act of 1924, local municipalities were responsible for creating a local municipal children's board that was responsible for protecting children within the municipality to the full extent of the law.⁵³ Today, the same function is carried out by the municipal social welfare committees (*socialnämnd*).⁵⁴

A social welfare committee must⁵⁵

- familiarize itself with the living conditions in the municipality,
- participate in public planning and through cooperation with other public organs, organizations, associations, and individuals promote good environments in the municipality,
- through outreach activities, and in other ways, promote the conditions for good living conditions,
- provide for the care and services, information, advice, support, financial assistance, and other help to families and individuals that need it.⁵⁶

⁴⁷ *Id.*

⁴⁸ CAROLINA JERNBRO & STAFFAN JANSSON, VÅLD MOT BARN 2016 – EN NATIONELL KARTLÄGGNING, ALLMÄNNA BARNHUSET (2017), [http://www.allmannabarnhuset.se/wp-content/uploads/2017/08/Vald_mot_barn_2016-en-nationell_kartlaggning.pdf](http://www.allmannabarnhuset.se/wp-content/uploads/2017/08/Vald_mot_barn_2016-en-nationell-kartlaggning.pdf), archived at <https://perma.cc/U3E6-P3YJ>; CAROLINA JERNBRO & STAFFAN JANSSON, VIOLENCE AGAINST CHILDREN IN SWEDEN 2016 – A NATIONAL SURVEY, ALLMÄNNA BARNHUSET (2017), <http://www.allmannabarnhuset.se/wp-content/uploads/2018/03/A-national-survey-Violence-against-children-2016.pdf>, archived at <https://perma.cc/Q32R-P7TQ>.

⁴⁹ EMMA TENGWALL OCH RIKARD TORDÖN, SKOLFAM 2018 EN SAMMANSTÄLLNING AV RESULTAT-OCH KVALITETSENKÄTEN FÖR LÄSÅRET 2017/2018, ALLMÄNNA BARNHUSET (2018), <http://www.allmannabarnhuset.se/wp-content/uploads/2018/10/Skolfamrapport-2018.pdf>, archived at <https://perma.cc/X5BH-KS6G>.

⁵⁰ VERKSAMHETSBERÄTTELSE 2017, STIFTELSEN ALLMÄNNA BARNHUSET (2018), http://www.allmannabarnhuset.se/wp-content/uploads/2018/05/Verksamhetsberattelse_Stiftelsen_Allmänna_Barnhuset_2017.pdf, archived at <https://perma.cc/5EJH-QYZ8>.

⁵¹ *Id.*

⁵² 1 kap. 1 § BARNAVÅRDSLAG [CHILDREN'S CARE ACT] (SFS 1924:361).

⁵³ *Id.* 1 kap. 1 §.

⁵⁴ 3 kap. 3 § SOL.

⁵⁵ *Id.* 3 kap. 1 §.

⁵⁶ *Id.*

In addition, the social welfare committees are responsible for establishing “routines to prevent, discover, and address risks and problems” within the activities performed by the social services office that deals with children and youth.⁵⁷ They must also establish other services, such as counseling bureaus, and emergency services, such as on-call programs, for the social services office (*jours*).⁵⁸

Social welfare committees are also responsible for the implementation of child-specific provisions:⁵⁹ A social welfare committee must

1. work to ensure children and youth grow up under safe and beneficial conditions,
2. in close cooperation with the homes (*hemmen*) promote a wellrounded development of personality and prevent adverse physical and social development among children and youth,
3. conduct outreach activities and other preventive measures to prevent children and youth from being harmed,
4. actively work to prevent and counteract addiction among children and youth to alcoholic beverages, other intoxicants or addictive substance as well as performance enhancing substances,
5. actively work to prevent and counteract addictive use of games/money (gaming addiction) among children and youth,
6. together with public agencies, organizations and others affected, highlight and work toward [the goal] that children and youths not spend time in environments that are harmful to them,
7. with special attention follow the development of children and youth that have shown signs of adverse development,
8. in close cooperation with the homes (*hemmen*) ensure that the children and youth that risk adverse development receive the support and protection that they need and, if the child or youth’s best interest motivates it, care and upbringing outside the family home,
9. in its care for children and youth meet the special need for support and help that may exist in such cases or matters on custody, living arrangements, visiting rights, or adoption, and
10. in its care of children and youth meet the special need for support and help that may exist when care and upbringing outside the family home has ceased or following the enforcement of institutionalized youth care in accordance with the law (1998:603) on enforcement of institutionalized youth care has ceased.⁶⁰

When possible, a child should be placed with a relative.⁶¹ Children that are placed outside the home must continuously be monitored, including regular visits and separate conversations with

⁵⁷ *Id.* 3 kap. 3a §.

⁵⁸ *Id.* 3 kap. 6 §.

⁵⁹ *Id.* 5 kap. 1 §.

⁶⁰ *Id.*

⁶¹ *Id.* 6 kap. 5 §.

the child.⁶² In addition, care that takes place outside the home should be re-examined every six months.⁶³

The National Board on Health and Welfare has issued general guidelines (SOSFS 2014:6 Allmänna råd) that include provisions on how the social welfare committee should act in their relations with children.⁶⁴

C. Barnombudsmannen⁶⁵

In 1993, the Swedish Parliament introduced legislation that created a national *ombudsman* for children (*Barnombudsmannen*).⁶⁶ The Barnombudsman is a government agency under the Ministry of Health and Social Affairs, and receives funding from the government.⁶⁷ In 2018, the Barnombudsman received SEK 24.9 million (about US\$ 2.6 million) in funding from the government.⁶⁸ The role of the Barnombudsman is to protect the interests and rights of the child, including ensuring compliance with the UN Convention on the Rights of the Child by all Swedish agencies.⁶⁹ Municipalities and regions must report to the Barnombudsman to inform it of what actions the municipality or region has taken in the last year to ensure compliance with the Convention.⁷⁰ The Barnombudsman must present a report to the Swedish Parliament by April 1 of each year, detailing its activities in the past calendar year.⁷¹

⁶² *Id.* 6 kap. 7b §.

⁶³ *Id.* 6 kap. 8 §.

⁶⁴ Socialstyrelsen, SOSFS 2014:6 (S)Allmänna råd, Handläggning av ärenden som gäller barn och unga, [General Guidelines, Processing of Matters that Pertain to Children and Youth], <https://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/19454/2014-5-20.pdf>, archived at <https://perma.cc/D23V-SKGB>.

⁶⁵ BARNOMBUDSMANNEN, <https://www.barnombudsmannen.se/>, archived at <https://perma.cc/N8F9-Q79R>.

⁶⁶ LAG OM BARNOMBUDSMAN [ACT ON OMBUDSMAN FOR CHILDREN] (SFS 1999:335), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1993335-om-barnombudsman_sfs-1993-335, archived at <https://perma.cc/LLN7-RVKR>; Prop. 1992/93:173 om en barnombudsman m.m. [Government Bill 1992/93:173 on the Creation of a National Ombudsman for Children], <https://data.riksdagen.se/fil/149D1719-35C6-47C2-99B5-ACE1BB543C77>, archived at <https://perma.cc/J5WC-CQDK>.

⁶⁷ Förordning med instruktion för Barnombudsmannen [Instruction for the National Ombudsman for Children] (SFS 2007:1021), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20071021-med-instruktion-for_sfs-2007-1021, archived at <https://perma.cc/YN5C-946T>; Regeringen, Regleringsbrev [Appropriation Direction Letter] 2018 S2017/07302/RS (Dec. 18, 2017), https://www.barnombudsmannen.se/globalassets/dokument-for-nedladdning/regleringsbrev_2018_barnombudsmannen_socialdepartementet.pdf, archived at <https://perma.cc/6V58-JQWR>.

⁶⁸ Regeringen, Regleringsbrev 2018, *supra* note 71.

⁶⁹ 1 § LAG OM BARNOMBUDSMAN.

⁷⁰ *Id.* 5 §.

⁷¹ *Id.* 4 §.

The Barnombudsman must also collect and analyze statistics concerning the living conditions of children living in Sweden.⁷² The Barnombudsman currently makes these statistics available on its website.⁷³ For example, the Barnombudsman provides statistics on how many children have been the subject of a crime.⁷⁴ For 2015, the numbers, which only include Swedish ninth graders (i.e., fifteen year olds), show that almost 50% (47.2) of all children in this age group have been the victim of a crime.⁷⁵ The statistics provided also include statistics on the number of physical acts (abuse) that have led to institutionalized care (*sluten vård*) as a sub-category to children that have been subject to violence.⁷⁶ Other statistics show the number of children that are cared for outside the family home.⁷⁷ The number of children that were cared for outside the home as measured per 10,000 inhabitants were 105,7 in 2014, 104.1 in 2015, and 99.4 in 2016.⁷⁸ There were great discrepancies based on age of the child. The numbers of children aged zero to twelve years old who were cared for outside of the home were 9,019 (2014), 9,283 (2015), and 9,453 (2016).⁷⁹ Measured per 10,000 inhabitants those numbers were 61 (2014), 61.6 (2015), and 61.3 (2016).⁸⁰ The numbers for children aged thirteen to twenty were almost four times as great based on 10,000 inhabitants: 236.4 (2014), 227.9 (2015), and 209 (2016).⁸¹

D. Brottsförebyggande rådet⁸²

The Brottsförebyggande rådet (BRÅ) (National Council for Crime Prevention) is a Swedish government agency that was officially created in 1974 to analyze Swedish “crime level trends” (*brottsutveckling*).⁸³

⁷² *Id.* 3 § 4 p.

⁷³ *Statistik om barn och unga*, BARNOMBUDSMANNEN, <https://max18.barnombudsmannen.se/max18-statistik/> (last visited May 6, 2019), archived at <https://perma.cc/RQR6-W8BF>.

⁷⁴ *Barn som utsatts för brott*, BARNOMBUDSMANNEN, https://max18.barnombudsmannen.se/max18-statistik/statistik-per-amne/skydd/4_9_barn-som-utsatts-for-brott, archived at <https://perma.cc/AF4P-EC9A>.

⁷⁵ *Id.*

⁷⁶ *Id.*; *Skydd*, BARNOMBUDSMANNEN (June 28, 2018), <https://max18.barnombudsmannen.se/max18-statistik/statistik-per-amne/skydd/>, archived at <https://perma.cc/B77D-K9KC>.

⁷⁷ *Barn i vård med placering utanför det egna hemmet*, BARNOMBUDSMANNEN, https://max18.barnombudsmannen.se/max18-statistik/statistik-per-amne/familj/3_6_barn-i-var-d-med-placering-utanfor-det-egna-hemmet (last visited May 6, 2019), archived at <https://perma.cc/P9PU-AUYE>.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² BRÅ, BARNMISSHANDEL, EN KARTLÄGGNING AV POLISANMÄLD MISSHANDEL AV SMÅ BARN BRÅ-RAPPORT 2000:15 (2001), https://www.bra.se/download/18_cba82f7130f475a2f1800019450/1371914731838/2000_15_barnmisshandel.pdf, archived at <https://perma.cc/HP6G-6TP7>.

⁸³ *DsJu* 1973:6; ARNE WIKSTRÖM, BROTTSFÖREBYGGANDE RÅDET, SVJT (1975), <https://svjt.se/svjt/1975/453>, archived at <https://perma.cc/FBS4-RDDV>. BRÅ’s activities started in July of 1973 awaiting parliament’s official decision to make it an official agency. *SOU* 1973:35, available at https://weburn.kb.se/metadata/617/SOU_7257617.htm, archived at <https://perma.cc/LN27-QS53>.

The role of BRÅ is defined in the government instruction on its work.⁸⁴ Its duties include contributing to the development of knowledge of crime prevention and promoting crime prevention activities.⁸⁵ Specifically, at least every three years, BRÅ must conduct a school survey on crimes.⁸⁶ It must also include youth and child perspectives in all of its work.⁸⁷ Moreover, the agency is bound by a government appropriation direction (*regleringsbrev*).⁸⁸ Through this appropriation direction the agency's activities have been expanded to include a number of new areas.⁸⁹ None of the new areas specifically deal with violence against children.⁹⁰ BRÅ supplies a report on criminal acts in Sweden annually; however, that report does not include violence against children younger than sixteen years old.⁹¹ However, it supplies another specific statistical survey on violence against children.⁹² In total, 23,800 instances of assault against children were reported in 2018.⁹³

E. Socialstyrelsen

The National Board of Health and Welfare (*Socialstyrelsen*) is a government agency that oversees the municipal social welfare committees (*socialnämnder*).⁹⁴ The National Board of Health and Welfare is responsible for “coordinating the state measures within the areas of social services and health care relating to children and youth, as well as ensuring that any decision or other measure

⁸⁴ Förordning med instruktion för Brottsförebyggande rådet [Regulation with Instruction for the Swedish national Council for Crime Prevention] (SFS 2016:1201), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20161201-med-instruktion-for_sfs-2016-1201, archived at <https://perma.cc/CNP4-HUGA>

⁸⁵ *Id.* 1 §.

⁸⁶ *Id.* 2 §.

⁸⁷ *Id.* 6 §.

⁸⁸ Regleringsbrev för budgetåret 2019 avseende Brottsförebyggande rådet [Appropriation Direction Letter for the Budget Year 2019 for the Swedish National Council for Crime Prevention] (Ju2019/01031/KRIM) (Mar. 14, 2019), <https://www.esv.se/statsliggaren/regleringsbrev/?RBID=19894>, archived at <https://perma.cc/D4TZ-DXF7>.

⁸⁹ BRÅ, BUDGETUNDERLAG 2020-2022, https://www.bra.se/download/18.62c6cfa2166eca5d70e3ef5/1551353264976/2019_Budgetunderlag_2020-2022.pdf (last visited May 6, 2019), archived at <https://perma.cc/XY56-5EUS>.

⁹⁰ *Id.*

⁹¹ BRÅ, NATIONELLA TRYGGHETSUNDERSÖKNINGEN 2018 (2019), https://www.bra.se/download/18.62c6cfa2166eca5d70e22d3/1548248345315/2019_1_Nationella_trygghetsundersokningen_2018.pdf, archived at <https://perma.cc/8DTL-HQ23>.

⁹² *Barnmisshandel*, BRÅ (May 6, 2019), <https://www.bra.se/statistik/statistik-utifran-brottstyper/barnmisshandel.html>, archived at <https://perma.cc/L8QG-SVFI>.

⁹³ *Id.*

⁹⁴ Förordning med instruktion för Socialstyrelsen [Government Regulation with Instruction for the National Board of Health and Welfare] (SFS 2015:284), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2015284-med-instruktion-for_sfs-2015-284, archived at <https://perma.cc/YP9L-NQCB>.

that pertains to a child is first based in the best interest of the child.”⁹⁵ Moreover, the National Board of Health and Welfare is responsible for analyzing and reporting on the work of the local social service offices.⁹⁶ In connection with these duties, it collects statistics on intentional child abuse.⁹⁷ The published statistics only include children who died, were admitted to a hospital, or treated as out-patients at hospitals, as well as statistics from emergency rooms and jour centers.⁹⁸ As the National Board of Health and Welfare points out, the statistics are likely missing a great number of intentional incidents that have wrongfully been coded as accidents.⁹⁹ Therefore, as currently reported, statistics for intentional child abuse are only reported at a “minimum level.”¹⁰⁰ Thus, the true prevalence of abuse is believed to be much higher.¹⁰¹ In 2017, a total of fourteen persons aged zero to nineteen were killed because of force by another person.¹⁰² Other fatal incidents included suicide, drowning, and falling.¹⁰³

The National Board of Health and Welfare is supervised by the Health and Social Care Inspectorate (IVO), which may criticize the Board or local social welfare committees. It has criticized the local social welfare committees for lacking knowledge on violence against children in close relationships, as well for lengthy processing times of these cases.¹⁰⁴

F. Criticism of Government Authorities for Lack of Statistics

Despite a number of organizations collecting statistics and in other ways monitoring measures for the protection of children from abuse, UNICEF Sweden has criticized the current situation and called for better statistics.¹⁰⁵ Specifically, it has criticized the fact that no statistics are published by the social welfare committees on the number of reports of abuse they receive and

⁹⁵ *Id.* 2 § 1 st.

⁹⁶ *Id.* 4 § 6 p.

⁹⁷ *Statistik över avsiktligt våld mot barn*, SOCIALSTYRELSEN (Oct. 2004), https://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/10294/2004-107-12_200410712.pdf, archived at <https://perma.cc/8V53-PSQQ>.

⁹⁸ *Id.*

⁹⁹ *Id.* at 28.

¹⁰⁰ *Id.* at 29.

¹⁰¹ *Id.*

¹⁰² *Statistikdatabas för dödsorsaker [Database for Causes of Death]*, SOCIALSTYRELSEN, <https://www.socialstyrelsen.se/statistik/statistikdatabas/dodsorsaker> (last updated Apr. 10, 2019), archived at <https://perma.cc/D7ZF-29QA>.

¹⁰³ *Id.*

¹⁰⁴ *Ivo riktar kritik mot socialnämnder*, AFTONBLADET (Jan. 19, 2019), <https://www.aftonbladet.se/nyheter/a/Xwm26b/ivo-riktar-kritik-mot-socialnamnder>, archived at <https://perma.cc/XK58-PEZD>; IVO, GRANSKNING AV KOMMUNERS ARBETE MED VÅLD I NÄRA RELATIONER 2018 EN RAPPORT MED IVO:S IAKTTAGELSER FRÅN 14 KOMMUNERS ARBETE (Jan. 2019), <https://www.ivo.se/globalassets/dokument/publicerat/rapporter/rapporter-2019/rapport-ivo-granskning-av-vald-i-nara-relationer-2018.pdf>, archived at <https://perma.cc/257M-GB3P>.

¹⁰⁵ *Inget barn ska behöva utsättas för våld*, UNICEF, <https://unicef.se/fakta/vald-mot-barn> (last visited Apr. 24, 2019), archived at <https://perma.cc/5UGR-2CLU>.

how many they actually investigate.¹⁰⁶ UNICEF is also calling for amended legislation that would criminalize violence that does not result in a “physical injury, sickness or pain or places him or her in a powerless state or another similar condition.”¹⁰⁷ Currently, argues UNICEF, certain violent behavior falls outside of criminalized assault.¹⁰⁸ In addition, UNICEF wishes to see legislation that will grant children who witness violence with a status as an injured party (*målsägande*).¹⁰⁹

G. Private Organizations

In addition to the organizations with state connections, there are also other actors that protect children’s rights in Sweden. One of these is BRIS – Barnens Rätt i Samhället (Children’s Right in Society).¹¹⁰ It publishes a variety of reports connected to the right of the child.¹¹¹ For example, it has issued a report titled *How are the Children Doing (Hur har barnen det?)*.¹¹² The report includes several different wellness factors, including statistics on how many children that contacted BRIS because of violence and demeaning treatment, both of which had increased in 2018.¹¹³ In total, 26,746 children and 2,326 parents contacted BRIS in 2018.¹¹⁴ The most prevalent type of violence discussed during these telephone conversations between children and BRIS counselors is violence by adults that are close to the child, such as family members.¹¹⁵ BRIS has an information page specifically for violence against children.¹¹⁶

H. Government Studies

In addition to the organizations above, the Swedish government or Swedish Parliament may investigate the conditions of children on their own initiative. The Swedish government published a report in 2001 titled *Assault of Children*.¹¹⁷ It referenced available statistics and concluded that

¹⁰⁶ *Id.*

¹⁰⁷ Compare the requisites for assault under 3 kap. 5 § BRB (translation by author).

¹⁰⁸ *Inget barn ska behöva utsättas för våld*, UNICEF, *supra* note 109.

¹⁰⁹ *Id.*

¹¹⁰ *Om Bris*, BRIS, <https://www.bris.se/om-bris/aktuellt/> (last visited May 2, 2019), archived at <https://perma.cc/6XMW-G75G>.

¹¹¹ *Rapporter*, BRIS, <https://www.bris.se/om-bris/publikationer/rapporter/>, archived at <https://perma.cc/RUS9-22W7>.

¹¹² BRIS, HUR HAR BARN DET: BRIS ÅRSRAPPORT FÖR 2018 (2019), https://www.bris.se/globalassets/om-bris/bris-rapport-2019/bris_arsrapport2018_2019_1.pdf, archived at <https://perma.cc/8633-YV2D>.

¹¹³ *Id.* at 3.

¹¹⁴ *Id.* at 8.

¹¹⁵ *Id.* at 9.

¹¹⁶ *Om våld mot barn*, BRIS, <https://www.bris.se/for-vuxna-om-barn/vanliga-amnen/utsatta-situationer/om-vald-mot-barn/> (last visited May 2, 2019), archived at <https://perma.cc/HW4X-7XKS>.

¹¹⁷ SOU 2001:18 BARN OCH MISSHANDEL [GOVERNMENT OFFICIAL REPORT 2001:18 CHILDREN AND ASSAULT], <https://www.regeringen.se/49b6c2/contentassets/46731f4fb34a45bf8a1acaa0a67440d3/barn-och-misshandel>, archived at <https://perma.cc/P56H-ETD5>.

fewer than ten children younger than fifteen years of age were murdered annually.¹¹⁸ At that time, the most common type of child murder was an “expanded suicide,” i.e., when a parent killed the entire family.¹¹⁹ The study went on to cite statistics from BRÅ for the years 1981-1990 and 1991-1999 where the numbers of murdered children (less than fourteen years of age) were seventeen in the first period and twenty in the second period.¹²⁰ According to the report, between 1976 and 1990, no confirmed deaths were caused by repercussions from physical assault (i.e., physical violence that was not the result of an intentional murder).¹²¹ Also, according to the report, “a few children” died because of manslaughter during the 1990s. These statistics were based on information from the National Board of Health and Welfare.¹²²

¹¹⁸ *Id.* at 12.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 31.

¹²¹ *Id.*

¹²² *Id.*