

QUALITY STANDARDS FOR LEGAL ASSISTANCE FOR CHILDREN SUSPECTED AND/OR ACCUSED

A STEP-BY-STEP GUIDE





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ACKNOWLEDGEMENTS

The present document was prepared in the framework of the CLEAR-Rights project. The project is led by Terre des hommes Regional Hub in Hungary and implemented in partnership with Terre des hommes Romania, PILnet, Alliance of Lawyers for Human Rights (France), Defence for Children International (Belgium), Defence for Children The Netherlands.

The Quality standards and Step-by-step Guide were prepared by **Lea Hungerbühler (LEXIMPACT) & Peace of Mind Afghanistan** recruited as consultants for the CLEAR-Rights project and directed by Defence for Children International Belgium.

Within partner organisations, the development of this document has particularly involved Eva Gangneux (DCI Belgium), Zoé Duthuillé (DCI Belgium), Laurent Beauthier (DCI Belgium), Marcos de Barros (Tdh Hungary), Mariama Diallo (Tdh Hungary), Zsuzsanna Vég (former member of Tdh Hungary), Silvia Randazzo (Tdh Hungary), Zsuzsanna Rutai (consultant for PILnet), Giulia Patanè (PILnet), Lily Coisman (former member of the AADH), Noanne Tennesson (AADH), Mihai Enache (Tdh Romania), Sharon Detrick (DCI ECPAT NL), Eva Huls (DCI ECPAT NL), Marije Jeltjes (consultant for DCI ECPAT NL).

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KEY POINTS ABOUT



WHY CLEAR-RIGHTS

For many children in Europe, criminal justice remains unjust. CLEAR-Rights aims to ensure that free, specialised legal aid is accessible to every child accused or suspected of crime.

WHO WE INVOLVE

CLEAR-Rights supports practitioners from legal aid and pro bono systems, child justice stakeholders and children in conflict with the law.

WHAT WE DO

We train legal practitioners on child-friendly legal assistance and strengthen collaboration among child-justice professionals. Child advisory boards evaluate and shape quality assessment tools, and lead advocacy events on children's procedural rights.

WHERE

The project focuses on Hungary, Romania, Belgium, France and The Netherlands. Its tools and materials will be disseminated across Europe.

CLEAR-Rights is led by Terre des hommes Regional Hub in Hungary in partnership with Terre des hommes Romania, PILnet, Alliance of Layers for Human Rights (France), Defence for Children International Belgium and Defence for Children The Netherlands.

For more information, scan the QR code or contact: Marcos de Barros marcos.debarros@tdh.ch



FOREWORD

We know how important it is for a person suspected, accused, or convicted of an offence to have a lawyer on his or her side, providing quality legal assistance and effective representation all along the proceedings. Such assistance is so fundamental to ensuring the respect of human rights that it should be available to all whether or not they can afford to pay for such services.

When a minor is suspected or accused of an offence, there has been a tendency to consider that they are small people and hence have “small cases” and ultimately have only “small rights” to defend. However, when it comes to a child, we must remember that there are no such things as small or simple cases. Even in cases where the charges against the minor could be considered as not very severe, this experience of justice at such an important moment in his or her development can have lasting consequences and leave an indelible mark on the child he or she is and the adult he or she will become.

This is why having specific quality standards in place when representing a child is so necessary. However, representing a minor well is still a huge challenge and we hope that this guide will help you to accomplish this important mission.

The team of the CLEAR-Rights project

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	1
FOREWORD	3
BACKGROUND	6
1. The Context	6
2. The CLEAR-Rights Project	6
3. The Purpose	7

PART 1 QUALITY STANDARDS FOR LEGAL ASSISTANCE OF CHILDREN IN CONFLICT WITH THE LAW **9**

1. Quality	10
2. Reliable and Responsive	11
3. Duty oriented	11
4. Holistic	12
5. Child rights centred	12
6. Participatory	13
7. Focused on the best interest of the child	14
8. Attentive to child-friendly communication	14
9. Safe and Protective	15
10. Trustful	15
11. Sensitive to vulnerabilities	15
12. Collaborative	16
13. Attentive to the information and preparation of the child	17
14. Oriented to non-custodial and restorative measures	17

PART 2 STEP-BY-STEP GUIDE FOR IMPLEMENTATION OF THE QUALITY STANDARDS **19**

1. What if I have never worked with children before?	20
2. Intake: Accepting a case involving a child in conflict with the law	20
3. At the police station	22
4. First meeting with your client	24
5. Effective Client Communication	26

6. Assessment of mental health and vulnerabilities	28
a. Preventing retraumatization	32
b. Trauma-informed lawyering	33
c. Promoting child-centred & rights-based approaches	34
d. Mental health and psychosocial support exercises for you & the child	36
7. Coordination and Confidentiality: Inter-agency cooperation & referrals	38
8. Communicating with the child's parents / legal guardians	40
9. Preparing for & representing a child at legal proceedings	41
10. Dealing with conflicts about your representation	43
11. A child in conflict with the law & also a victim?	44
12. Supporting a child in detention	45
Case-study: Solitary confinement and acute suicidality	47
Case-study: Recommended actions	47
13. Providing continuous and comprehensive support	48

ANNEXES ADDITIONAL RESOURCES FOR ASSISTING YOUR CHILD CLIENT 49

Annex A: Tools for dealing with a child feeling worried	50
Annex B: Tools for dealing with a child in distress	51
Annex C: Tools for dealing with a sense of powerlessness	53
Annex D: Tools to help a child client help themselves	54
Annex E: Tools for Active Listenin	55
Annex F: Case Study - Assessment of the solitary confinement from a mental health perspective	56

REFERENCES	58
NOTES	61

BACKGROUND

1. The Context

Children in conflict with the law are entitled to quality legal assistance. However, for many of them in Europe, it remains difficult to have access to it. Gaps in terms of availability, accessibility, acceptability, and adaptability of legal assistance have been identified during the review of the situation led in Belgium, France, Hungary, Romania, and The Netherlands during the first phase of the CLEAR-Rights project¹. Knowledge of children's rights and child justice by lawyers, can still be improved. In addition, the lack of interdisciplinary knowledge is still an important obstacle for lawyers to understand the specific situation of each child and, therefore, to suggest relevant and appropriate measures. In most countries, lawyers recognise they need to gain more knowledge on child-friendly communication and a child-sensitive approach. This limits lawyers' capacity to understand the child and carry his or her voice during the procedures. Several initiatives and capacity building projects exist, but the costs of the training and the work overload are still an important obstacle. Several quality standards have been identified and covers inter alia the availability of the lawyer at each step of the proceeding and the appropriate and effective role of the lawyer. These standards are essential to ensure that the child benefit from the assistant he or she needs. However, official quality standards (endorsed by public institutions or bars) on legal aid for children are often not in place.

2. The CLEAR-Rights Project

In order to respond to these gaps, the 'CLEAR-Rights: enhancing legal assistance for children in conflict with the law in Europe' project ("CLEAR-Rights Project") has been established with funding from the Justice Programme of the EU. The CLEAR-Rights project is coordinated by the Regional Office of Terre des hommes in Europe and is implemented in partnership with the Alliance of Lawyers for Human Rights (AADH) in France, Defence for Children International (DCI) - Belgium, Defence for Children the Netherlands (DCI NL), PILnet and Terre des hommes Romania. The overall aim is to improve the standard of legal assistance available for children in conflict with the law. The CLEAR-Rights Project partners contracted the organisation **Peace of Mind Afghanistan** (POMA) and **Lea Hungerbühler** as consultants to establish guidelines and quality standards for legal assistance to children in conflict with the law, in an effort to increase access and quality of child-specific legal assistance in Europe.

¹ European review of practices and gaps in legal aid systems for children in Belgium, France, Hungary, Romania & The Netherlands, CLEAR-Rights project, Produced by Dr. Laurene Graziani, international consultant, Specialist in children's rights in collaboration with Zoë Duthuille, Eva Gangneux, Noémie Saidi-Cottier, Kathleen Taleb, Sharon Detrick, Eva Huls, Zsuzsanna Rutai, and Elena Trifan, May-August 2021.

The project is being implemented in the legal and regulatory context of the European Union and particularly strive to contribute to strengthen access to quality and specialized legal assistance in line with Articles 6 and 18 of Directive 2016/800/EU - procedural safeguards for children who are suspects or accused persons in criminal proceedings.

The present Guide is based on observations made by the European review of practices and gaps in legal aid systems for children, a report written in the framework of the CLEAR-Rights project based on five national reviews (Belgium, The Netherlands, France, Hungary and Romania). Feedback from Child Advisory Boards (CABs) in France, Hungary and Romania was also included. CABs are groups of children who advise the project partners with regard to child-friendliness of legal representation. Members of the CABs will also be trained on children's rights and advocacy to develop child-led awareness-raising materials and, in addition to that, will co-design a digital legal assistance assessment tool to make sure the voices of children are heard in legal proceedings. The authors developed several questions about the children's previous experience with lawyers and what they expect from a lawyer, the answers received were included in the present document. Notably, the topics of sufficient resources, listening to the child and fully representing their view, standing up for the child's rights and regular visits for children in detention were mentioned as crucial by the CABs.

3. The Purpose

This document shall serve as a knowledge base to legal professionals. It contains:

1. **14 Quality Standards**, listing core principles (i.e., participatory, child-centred, safe and protective etc.). Measuring indicators for the Standards are proposed, which mirror the key values, requirements and standards relevant when a lawyer represents or gives advice to a child in conflict with the law.
2. a **Step-by-step Guide** with precise instructions for lawyers to follow on how to provide legal assistance to children. The Guide is designed as a tool that can be used short notice and that will guide a lawyer through the relevant phases of representing a child in conflict with the law. The Step-by-step guide also provides information about recognizing risks and making appropriate referrals to other professionals as needed; especially if the child is experiencing mental health challenges.

The information in this Guide is chronologically organized, as well as classified by themes and common situations, starting with the first encounter of a professional with a child, through interaction with police, prosecution, etc.

This document is to be read in conjunction with the Accreditation Criteria designed by DCI Netherlands and Marije Jeltens LL.M MSc, children's rights advisor. These Criteria designate the key criteria or requirements (education, work experience, etc.) that a lawyer should comply with for accreditation to provide legal assistance to children in conflict with the law in Europe.

This Guide is largely based on legal requirements under European Union (EU) law - but children have specific needs when they are in contact with the law all around the world and therefore the Quality Standards and Step-by-Step Guide will likely be helpful for lawyers outside of Europe as well.

Is this Guide for me?

This Guide is written for anyone who is in the process of **legally representing or advising a child in conflict with the law** - and for anyone who plans to do so in the future and wants to be well informed.

PART 1

QUALITY STANDARDS FOR LEGAL ASSISTANCE OF CHILDREN IN CONFLICT WITH THE LAW

The following 14 standards, combined with the relevant questions and indicators, are designed to help you think through your course of action with the child. There are specific requirements for child welfare and protection which you should take into account in your work with a child. For each standard, you will find a question that you might ask yourself and subsequently some indicators that may confirm or indicate that the standard was met or partially met in the case at hand.

1. Quality



You have specific procedures in place and you have received specialised training that is sufficient and relevant to working with children in conflict with the law.

Do you have sufficient training and/or experience regarding children’s rights to accept a case? Alternatively, do you have sufficient support, coaching and/or supervision available to you?

- You are trained on children’s rights.
- You have experience with cases involving children in conflict with the law and you receive supervision by experienced child lawyers.
- You attend training and seminars, ideally interdisciplinary, in order to stay up to date with the best practices in the field.
- You have effective organisational safeguarding policies, procedures and systems in place.
- You conduct child safety reviews. This includes evaluating whether or not:
 - You have appropriately engaged children in the process, including children with special needs.
 - You ensure the child is not at risk of further victimization during the criminal proceeding and you intervene to prevent that risk.
 - You treat all children equally and use special attention and care for children with specific vulnerabilities.
 - Discrimination is not tolerated; you are vigilant on that aspect and you speak out against any discriminatory treatment.
 - You recognize that identity is fundamental to a child’s safety and wellbeing and you take this into consideration in your work with them.
 - You conduct assessments of the child’s safety and wellbeing with the support of appropriate/required other professionals.
 - You always work with the best interest of the child as primary consideration.
 - You regularly check on children to make sure they feel safe and you ask what suggestions they have to enable a safer environment.
- You create opportunities for children to participate and provide feedback.
- You conduct self-assessments of child-friendliness of your services and practices while representing children or seek external assessments by an NGO.
- You have undertaken capacity building exercises (such as training) focused on improving child-safe policies and practices.

- You are trained in trauma-informed policies and practices.
- You are trained in psychological first aid (PFA).
- You seek out counselling, supervision, and guidance in order to exchange ideas with other lawyers, psychologists, and social workers to learn how to deal with challenges, share successes, and address emotional strain or burnout.

2. Reliable and Responsive



You allocate the required and necessary resources.

Do you allocate the required resources (e.g. time) to the child's case?

- You abide by all deadlines (without extensions) and do not cause unnecessary delays in the procedure.
- You attend all examinations, interrogations, hearings or other actions from beginning until the end and meet with your young client before each of these events.
- You are available when your young client reaches out to you.

3. Duty oriented



You know the general principles of a lawyer's duty and abide by them.

Do you know and do you fully abide by the general principles of a lawyer's duty - i.e. loyalty, independence, integrity, diligence, dignity, professional secrecy?

Confidentiality is always ensured.

- You are able to balance the benefits of communicating with other agencies versus professional confidentiality.
- You convey the voice of the child at all times, and you do not disassociate yourself from their word in front of other professionals.
- You understand a child's rights and you are independent from their parents/legal guardians.

4. Holistic



You provide comprehensive legal services including continuity of care throughout the entire case. This means that you have an understanding of community resources to refer your child client to.

Are you able to provide comprehensive legal assistance to the child?

- You assess at an early stage whether assistance in other areas of the law is necessary and if so, you professionally cover such other areas of the law (e.g. family law, immigration law). Alternatively, you coordinate with a respective specialised lawyer.
- You are able to assist the child from the beginning until the end of all relevant legal procedures. Ideally, you also represent the child in any subsequent proceedings.
- You are aware of all services that your client might need, and community resources available to meet those needs. This includes, but is not limited to, services for clothes, food, medicine, and shelter. You connect and coordinate these services with the child in an appropriate manner.
- You are aware of community restorative services and make use of it to the extent needed.

5. Child rights centred



The rights of the child are safeguarded.

Are you able to safeguard the child's special rights during the proceedings? To what extent are children's rights respected? Do you take all necessary actions so that they are implemented or when they are not?

- Authorities involved are trained in trauma, social work, psychology, child development or a similar field.
- The child is treated in a manner which is fair, appropriate and not harmful during the procedure, or if not, you report it. The child does not experience physical or psychological violence from the authorities. Should this occur, you inform your client of possible remedies and make use of them where appropriate.
- Physical restraint is not applied (or kept to an appropriate level), if not, you report it and you inform your client of possible remedies and make use of them where appropriate.

- Child-friendly language is used and in high-quality. Interpretation is available if needed and the translation is child friendly. If your young client has been deprived of the interpretation they need, you take the necessary actions to protect their rights.
- Period breaks are made during appointments and/or breaks are granted whenever requested by the child. You ask for these breaks when needed.
- The setting is child friendly. When this is not the case and the situation allows it, you propose to go to a suitable place.
- The pace of the procedure is adapted to the child and their best interest, and you (and/or another lawyer) are present at every hearing.
- In case of detention, the child is not detained together with adults, detention conditions are in accordance with the law and no solitary confinement is ordered.
- You visit the child in detention in the very beginning and, in case of longer periods of detention, periodically afterwards and you make sure the child has no difficulty to contact you.

6. Participatory



You respect the child's voice and ensure their right to be heard.

Do you respect and stand up for the child's right to be heard?

- The child is present at all times when examinations, hearings, interrogations or other procedural actions are taken.
- The child participates in their case decision making.
- The child has the opportunity to express their wishes at all times.
- You always act as a spokesperson for the child without compromising.
- You make sure the authorities consider the child's wishes and explain any deviations from them.
- You point out and potentially challenge violations of the child's right to be heard and/or their right to remain silent.

7. Focused on the best interest of the child



The best interests of the child is upheld at all times.

Do you make sure that the child's best interests is upheld at all times?

- The child's wishes are considered and given due weight.
- Any deviations from or disagreements about the child's wishes are clearly communicated and explained to the child.
- You always act as a spokesperson for the child - regardless of deviating views of parents, legal guardians, other people involved or yourself.
- The child has access to a separate justice system from adults.

8. Attentive to child-friendly communication



You communicate effectively with the child and in a way, they understand, you use age-appropriate language.

Do you effectively communicate with the child?

- You have standard procedures in place in order to conduct initial assessments of whether a child understands their rights and is able to exercise an effective voice.
- You explain in a way that the child understands (and you check for understanding) all relevant aspects around the procedure, the different roles and responsibilities, the charges, (interim) decisions, and their own role, including their rights and duties as well as the potential future consequences (i.e. sanctions) and options (i.e. challenging a decision).
- You and the child agree on and follow the same defence strategy.
- You follow the principles of effective communication and active listening when communicating with the child, you use child-friendly language, make use of visuals and adapt your communication to the child's characteristics and the situation.
- You use the communication channels agreed upon with the child.
- If required, you work with a trusted and trained translator to facilitate communication.

9. Safe and Protective



The child feels as comfortable as possible during the proceedings thanks to a conducive environment.

Do you manage to make the child feel at ease during the proceedings?

- A child-friendly environment is offered at all times / to the extent feasible.²
- You are always well prepared and on time and therefore give the child a feeling of security and stability.
- The child has access to a safe environment.

10. Trustful



You establish and maintain a trusting relationship with the child.

Does the child trust you?

- The child opens up to you about personal issues.
- The child turns to you in case of questions or concerns.

11. Sensitive to vulnerabilities



You ensure any mental health needs and/or vulnerabilities are addressed.

Do you assess and consider the child's mental health and potential vulnerabilities or special needs?

- You conduct a standardised risk assessment.³
- You proceed appropriately based on the outcome of the risk assessment.

² In Hungary, members of the Child Advisory Board described a "safe environment" as: calm, comforting, bright, clean, positive, colourful and safe.

³ For a model of risk assessment, see the Step-by-step guide, 6. Assessment of mental health and vulnerabilities, page 28.).

- You have a network of specialists and you refer to them to the extent needed and appropriate.
- The child has access to medical/psychological care if needed.
- You apply techniques to prevent re-traumatisation (trauma-informed lawyering).
- You promote child-centred and rights-based approaches.
- You make referrals to the extent asked for by the child or required based on your assessment (e.g. substance abuse treatment, child psychologist, foster care, paediatricians, etc.).
- You make use of tools for managing and mapping of stress and emotions if needed.
- In case of respective indicia, you address issues such as domestic violence in a child-friendly way and you arrange for the required follow-up to protect the child.
- The child feels safe from harm.
- The child has access to (alternative) education (i.e., schooling, skills training programs, social and emotional learning, online learning, etc.).

12. Collaborative



You communicate with all stakeholders in a manner that is relevant and sufficient.

Can you properly handle the communication with other stakeholders?

- The communication flow with parents/legal guardians is constantly possible and executed in accordance with the child's wishes.
- You duly consider special situations (e.g. foster care, single parents) and adapt your communication accordingly.
- Information exchanged with other agencies, medical staff, child services etc. is well organised, always in accordance with the child's best interests, and confidentiality is maintained.

13. Attentive to the information and preparation of the child



You effectively prepared the child for what will happen throughout the legal process.

Do you duly prepare the child for the proceedings?

- You conduct a structured preparatory interview with the child in a child-friendly manner and you address relevant questions.
- You adequately inform the child about the subsequent steps of the proceedings.

14. Oriented to non-custodial and restorative measures



You ensure that detention is prevented or kept to a minimum.

Is detention of the child prevented or kept to a minimum?

- The child is not detained. If so, other alternative measures have been considered prior to the decision of detention and detention is of short duration and only lasts as long as it is justified.
- Detention orders and conditions are (periodically) reviewed by a court.

PART 2

STEP-BY-STEP GUIDE FOR IMPLEMENTATION OF THE QUALITY STANDARDS



1. What if I have never worked with children before?

If it is your first case of this nature, it is suggested that you seek out external support from an experienced lawyer as well as consult relevant literature⁴ and case law before you start working on the issue. Ideally, you will have attended some specific child law training sessions (i.e., the Council of Europe's online training on Child-Friendly Justice⁵, or other training offered in your country) before accepting a case in this area, and you received some practical training by an experienced child lawyer.



Practical advice to get started with your first case of a child in conflict with the law

- Attend specific training in and collect literature about children's rights as early as possible - like this you will be ready once a case is on your table.
- Stay in touch with colleagues who focus on children's rights and reach out to them if you have questions. For sure all of them will be supportive and they are also interested in ensuring the best quality of children's legal representation - so don't worry to bother them!

2. Intake: Accepting a case involving a child in conflict with the law

Taking on a case of a child in conflict with the law requires initial preparation and reflections to make sure you act in the best interests of the child. Given the time pressure you might face in such situations, or given your specific country context, these suggested actions are not always possible. In these situations, ideally you can refer the case to another specialized lawyer. If this is not an option, please keep in mind that it is imperative to always follow the principle of the best interest of the child in the entire procedure - also when deciding on questions about representation. The principle of the best interest of the child is taken from Article 3(1) of the Convention on the Rights of the Child which clearly states the best interest of the child should be the primary consideration in every setting from social welfare institutions, courts of law, and administrative/legislative bodies. It is sometimes difficult to assess it, for difficult cases you might want to ask help and advice from colleagues or other professionals who work with children in conflict with the law.

Due to the various areas of law that might be relevant when representing a child in conflict with the law, it is advisable to get an overview of other open issues at the very beginning

⁴ This literature can include resources on child rights, child development, and international handbooks such as the Routledge International Handbook of Children's Rights Studies, edited by Wouter Vandenhoele, Ellen Desmet, Didier Reynaert, and Sara Lembrechts or the Practical Guide for Lawyers – How to defend a child in conflict with the law? (<https://lachild.eu/wp-content/uploads/2016/05/PRACTICAL-GUIDE-FOR-LAWYERS.pdf>) Directed by Defence for Children International (DCI) Belgium

⁵ The HELP (Human Rights Education for Legal Professionals) Onlines courses are e-learnings developed by the Council of Europe and freely accessible online: <http://help.elearning.ext.coe.int/>

- notably family law, social security law, or immigration law - which might play a role as well. If there is overlap, assess whether you can cover these areas as well in a professional manner; and if not, seek the relevant support by specialized lawyers but make sure that you as a reference lawyer have the overview of all ongoing legal actions and proceedings.



Your checklist for client intake

➤ ***Do you have the time resources to take on the case?***

- If not, make sure the child gets other appropriate representation in time. If no referral is possible, balance the open options regarding legal representation with a view to the best interest of the child.
- Ensure to have sufficient resources for the case and avoid undue delays (e.g. caused by request for extension of a deadline).
- Make sure you can support the client in the long run to avoid a change of lawyer during the proceedings and possibly also for potential future proceedings.

➤ ***Do you have the required knowledge and experience for this case (duty of competence and responsibility, requirement of appropriate expertise)?***

- If not, reach out to an experienced colleague or legal assistance centers for support or consider to refer the case to a more experienced colleague. Consult relevant literature and case law as early as possible.

➤ ***Do you have your general duties on your radar?***

- Abide with general requirements any lawyer has, such as loyalty, independence, integrity, diligence, dignity and professional secrecy with a special view to the child's needs.
- Ensure you are mentally prepared to take on the case.

➤ ***Have you gotten an overview of the entire situation of the child?***

- Check whether other areas of the law are relevant as well - e.g. family law, social security law, immigration law. Evaluate whether you can cover all relevant aspects of the law in a professional manner; and if not, seek the relevant support by specialized lawyers. In any event make sure that you remain the lawyer of reference and point of contact for the child and the other lawyer(s) involved.

➤ ***What is the role of the parents/guardians?***

- Consider the role of any parents/guardians and ensure there is no conflict between parties. Children have the right to their own attorney.

3. At the police station

Many matters with children in conflict with the law begin at the police station. In these situations, children have specific procedural rights, which are, unfortunately, often disregarded in practice and/or children do not know about these rights or do not have a good understanding of the situation they face. As a legal representative, you are the one to stand up against such (potential) violations on behalf of your child client.



Your checklist at the police station

➤ **Do you understand what is going on?**

- Don't worry - it's normal not to understand, these situations are often chaotic. Try to find the person responsible for your case. Ask them what happened before, where your client currently is, and what the next steps are.
- Make sure that you can be present from the very beginning of the procedure; challenge actions made without your presence.

➤ **Could you meet the client and explain the basics of the proceedings?**

- Ask for a meeting with your client alone before any further actions are taken.
- Stand up for this right if it is not being granted.
- Follow the guidelines of the next chapter to conduct the meeting, in particular make sure that the client understands their rights - explain these in a child-friendly manner with simple language.

➤ **Are the police considering an interrogation or arrest?**

- Develop and prioritise alternatives to arrest and questioning by the police, if possible. A child-friendly approach should be developed, avoiding police custody. The use of custody and detention should always be a measure of last resort, and should only be used if there are no other options that are available or appropriate. Any detention should be for a short, specific period of time and children should not be detained together with adults.
- In any event strongly advocate against a child being put into solitary confinement.

➤ **Who is in charge of questioning your client?**

- Children in conflict with the law should primarily engage with individuals trained in trauma, social work, psychology, child development and other relevant sciences, with engagements to be conducted in child-friendly spaces rather than police stations whenever possible. Try to find a way to implement this with the person in charge.

➔ **How is your client being treated?**

- The concept of child-friendly policing refers to practices that ensure that when children come into contact with the police and the justice system they are treated in a manner which is fair, appropriate and not harmful. If this is not the case, immediately ask for the respective improvement and try to have the violations documented.
- Ensure physical restraint is strictly limited to situations where it is necessary (i.e., a child poses an imminent and serious threat of injury to themselves or others).
- Enforce the child's special rights during the proceedings (e.g. child-friendly language, breaks, child-friendly setting, consideration of gender, religion, disabilities, etc.). This can be done for advocating for these rights should they not be followed.
- Work to ensure an expeditious and efficient procedure and use a tailored approach that takes into consideration each child's situation.
- Ensure parents or legal guardians have been contacted.

➔ **Is your client being informed, heard, and do they have the right to participate?**

- If the right to be heard is being disregarded, enforce the child's right to be heard and ensure child participation.
- If such an attempt remains unsuccessful, make sure the facts and your intervention is adequately documented or registered.



Practical advice in case of children's rights violations at the police station

- ➔ Ask the person in charge to document the violation. During an interrogation, for example, you may add a respective comment at the end and ask for it to be recorded or written down.
- ➔ If available as an option, seek immediate remedy for the situation through contacting the prosecutor, or other authority figure, on the case.
- ➔ If such documentation is denied, write a letter about the violations right after they happened. Describe in detail what happened and how this violates the child's rights and/or contradicts the child's best interest.
- ➔ Make use of legal remedies available (e.g. compensation, liability, opposition) against such children's rights violations.

4. First meeting with your client

When meeting your child client for the very first time, you might face particular challenges which you might not encounter with other clients. Be it child-friendly language, the required relationship of trust, or the consideration of particular family constellations - there are many things to keep in mind at the very first client meeting.



Your checklist for the first client meeting

➤ **Where should you hold the meeting with the child?**

- Create a child-friendly environment (to the extent possible) - for example, offer some water and possibly some food, have them seated in a comfortable way. If possible, hold the meeting in a neutral space away from the courthouse. Keep in mind that you may need to go to your client if public transportation is not readily available.
- If the meeting is not in the context of an arrest and can take place anywhere, choose a spot with a child-friendly environment adapted to the child's age.⁶ Make sure the place is easily accessible for the child, e.g. by public transport; ensure privacy and consider small factors such as having the child welcomed and greeted by friendly staff and ensure a short wait time before the meeting.
- If the meeting is at the authorities' or any other place where you have to go, make sure you are in time and you can prepare the place with a view to make the child feel safe. The level of insecurity of a child confronted with legal proceedings cannot be overestimated - you as a lawyer are the person most suitable to reduce this anxiety by ensuring a safe, secure and calm environment.

➤ **How should you start the conversation?**

- Always start with introducing yourself and explaining your role as a lawyer.
- Ask the child how they are. Depending on the situation, also ask what they worry about most at the moment - and try to respond by showing solution approaches for the worrying situations.

➤ **You should be considered as the child's person of trust - but how?**

- Introduce yourself to the child. Include your role and how you can support them.
- Describe your role and duties as a lawyer - notably your confidentiality and loyalty duties.
- Listen to them and take them seriously. Grant some time for trust to be established.

⁶ In Hungary, members of the Child Advisory Board described a "safe environment" as: calm, comforting, bright, clean, positive, colourful and safe.

➔ **What should you definitely communicate in the very beginning?**

- Provide all relevant information about the proceedings, including the child's role in such proceedings (including rights and duties), remedies, and access to free legal assistance.
- Explain everything orally and double-check with open questions whether the child understood what you said. Do not only provide written information.
- Clarify that you are subject to professional secrecy and that everything the child tells you will remain between you, unless in order to protect the child you need to break this secrecy, but this will only be in the child's best interests and it is very rare.
- Make sure the child understands the immediate next steps as well as the long-term implications of the proceedings.
- Consider the child's age and ability level to determine the best method of communicating with them. Ensure you are using language they can understand.

➔ **Which information do you need from the child?**

- Ask the child whether they have access to basic needs (clean clothes, toilet, shower, food, water, etc.), particularly in a context of arrest and detention.
- Assess whether other areas of the law play a role as well (e.g. family law, social security law, immigration law).
- Try to understand the family situation and check which persons can and shall be informed about the ongoing proceedings, getting informed consent for such disclosure.
- Consider your communication tools and check with your client what is best for them. Depending on the circumstances, personal meetings, phone calls, mail, email, social media or messenger services such as Whatsapp might be the most appropriate tools. Take into account issues such as illiteracy, confidentiality and language barriers. Note that e.g. parents might read letters or messages sent to their child - render the client aware of this.
- Depending on your national context and if needed, evaluate the financial situation in order to apply for free legal assistance at an early stage of the proceedings.

➔ **What else should you always keep in mind?**

- Protect the best interests of the child as their legal representative (self-determination); ensure the child's wishes are considered and incorporated into decision making.
- Avoid any kind of discrimination based on gender, migration status, age or socio-economic background.
- If required, apply for free legal assistance generally as early as possible in the proceedings.

5. Effective Client Communication

How you present yourself in your interactions (i.e., tone of voice, posture, introductions) with the child, can affect how the client:

1. Sees you, and whether they trust you or not.
2. Responds to you - whether they follow your advice, become aggressive, are calm, and/or open up to you for support.
3. Recovers - the more supported the child feels, the better their physical and emotional recovery will be.

Therefore, effective communication is key for high quality legal assistance, and in particular, to build a relationship of trust with the client.



Practical advice for effective communication with the child:

DO	DON'T
Be honest and trustworthy	Don't exploit your relationship as a helper.
Respect children's right to make their own decisions.	Don't ask the child for any favours for helping them.
Beware of and set aside your own biases and prejudices.	Don't make false promises or give false information.
Make it clear to affected people that even if they refuse help now, they can still access help in the future.	Don't exaggerate your skills.
Respect privacy and keep the person's story confidential.	Don't force help on children and don't be intrusive or pushy.
Behave appropriately by considering the person's culture, age and gender.	Don't pressure children to tell you their stories.
Confirm that they are comfortable speaking with you. Ask if there is something you can do to make them more comfortable, eg. "Would you prefer to speak to a woman?"	Don't share the child's story with others.
	Don't judge the child for their actions or feelings.

When representing a child in conflict with the law, **active listening** is crucial to build up a relationship of trust and prevent retraumatization.



Practical advice for active listening

- ✦ Give the child your undivided attention.
- ✦ Demonstrate that you truly hear their concerns.
- ✦ Show respect, care and empathy.
- ✦ Use supportive phrases, “I understand what you are saying,” “I am sorry to hear that.”
- ✦ Employ positive body language; this includes your facial expressions, eye contact, gestures and posture.

Particularly when representing children in conflict with the law, the quality standard of communication depends on the means of communication as well as on the content. Only a combination of both will lead to the result sought - namely a client who understands the situation, the basics of the legal proceedings, their own role and rights as well as your function.



Your checklist for effective communication with the client

➤ **How should you communicate?**

- Use child-friendly language - simple vocabulary, no complex expressions. Keep in mind that children normally do not have the same capacity to understand the legal system as adults do. Depending on the age and cognitive development of the child, legal terms may be difficult for them to understand. You should avoid jargon and adapt your language appropriately.
- Children may need visuals and diagrams /pictures to understand, legal complexities are a lot - try to use creative ways to not only explain how but also why something is happening.
- Adapt your communication based on the child’s age, maturity, command of language, education, previous experience and emotional state.ce.

➤ **What should you communicate?**

- Inform the child about the ongoing proceedings, including the reason for it (charges), the duration, (interim) decisions and the next steps. Balance the child’s right to full information with the fact that too much information might be overwhelming.
- Explain the child’s role in such proceedings, including their rights (in particular the right to be silent) and duties as well as the consequences that they might face.

- Describe the roles of the different players involved (e.g. judge, prosecutor, police, school, lawyer, social worker, psychologist, probation officer, etc.) and the differences between their functions and perspectives.
- Provide information about (possible) remedies.
- If appropriate, explain the possibilities for access to free legal assistance.

6. Assessment of mental health and vulnerabilities

With a view to the overarching principle of ensuring the best interest of the child, it is advisable to conduct a basic assessment of the child's mental health and vulnerabilities as early as possible in the proceedings. Even though as a lawyer you will not be the specialist in this area, some basic knowledge is essential in order to effectively represent children in conflict with the law - who often suffer from mental health issues or other vulnerabilities. This tool is not to make you an expert, but rather something to use to make an assessment when referrals to other professionals and services might be needed.



Practical advice to conduct a risk assessment

- Using the following scale, rate each of the items listed below by writing the relevant number in the "rating" column. Then indicate if any actions have been identified or taken and any additional notes or comments.

0 = No Evidence of Need/No Risk Identified. This rating indicates that there is no reason to believe that a particular need or risk exists.

1 = Watchful Waiting/Prevention. This level of rating indicates that you need to be observant in this area and/or consider preventive actions.

2 = Action Needed. This level of rating indicates that something must be done to address the identified risk/need. The risk/need is sufficiently problematic that it is interfering in the child or family's life in a notable way.

3 = Immediate/Intensive Action. This level rating indicates a risk/need that requires immediate or intensive effort to address. Dangerous or disabling levels of risks/needs are rated with this level.

If any 2's or 3's are indicated on the chart below, bring in a social worker, mental health, or other health professional immediately for a referral.

Risk	Rating	Action Taken?	Notes / Comments
Previous suicide attempts			
Expressing suicidal ideas and or plans			
Family history of suicide			
Self-injury (or self-harming behaviour)			
Inability to discuss and explore the future			
Major psychiatric diagnosis			
Feel loss of control			
Expressing high level of distress			
Helplessness/Hopelessness			
Isolation			
Recent significant life events			
Misuse of drugs/alcohol			
Previous use of violent methods			
Major physical illness/disability			
Lack of access to prescribed medications and/or treatment			
Previous use of weapons			

Expressing intent to harm others			
Previous dangerous impulsive acts			
Paranoid delusions about others			
Signs of anger/frustration			
Sexually inappropriate behaviour			
Preoccupation of violent fantasy			
Family history of violence			
Denial of previous dangerous acts			
Abuse/assault by family member (physical, verbal, emotional, sexual)			
Abuse/assault by non-family member (physical, verbal, emotional, sexual)			
Previous history of neglect, abandonment, separation from family			
Harassment/threats by others			
Lack of positive social contacts			
Difficulty maintaining physical health or hygiene			
Difficulty expressing needs			
Living in inadequate accommodations			
Lack of access to school/vocational training			

The following scale may further help you to evaluate the situation and to react in an appropriate manner, within a reasonable timeframe. Note that you may always want to reach out to a mental health professional in case of any insecurities - and it is always better to do so sooner rather than later.

Risk Level	Description	Timeframe
High risk	<p>Child needs urgent medical attention, is likely to be seriously harmed or injured, or subjected to immediate and on-going sexual abuse, or be permanently disabled, trafficked or die if left in his/her present circumstances without protective intervention.</p> <p>Examples: sexual abuse and exploitation, physical violence and maltreatment, hazardous child labor, children associated with armed forces and armed groups (CAAFAG), children orphaned by the death of family members with lack of an appropriate care arrangement, unaccompanied/separated children who have no care and/or abusive care, children in abusive or neglectful residential care facilities, child-headed households, early/forced marriage, children with disabilities experiencing abuse or neglect, child is a threat to his/herself or others, previous suicide attempts, significant misuse of drugs/alcohol, severe psychiatric disorders, etc.</p>	Referral to a higher level of care immediately.
Medium risk	<p>A child is likely to suffer some degree of harm without an effective protective intervention plan. However, there is no evidence that the child is at risk of immediate serious injury or death.</p> <p>Examples: non-hazardous child labor, harsh physical punishment, non-life-threatening emotional abuse, suicidal ideation, misuse of drugs/alcohol, poverty, etc.</p>	Contact a social worker (or mental health professional) to gain input on the situation.
Low risk	<p>The child is safe. However, there are concerns about the potential for a child to be at risk if services are not provided to prevent the need for protective intervention.</p> <p>Examples: separated children who are in appropriate care arrangements, caregivers/children in need of documentation, permissible light work, school dropout, etc.</p>	Monitor closely and bring in interdisciplinary professionals as needed.



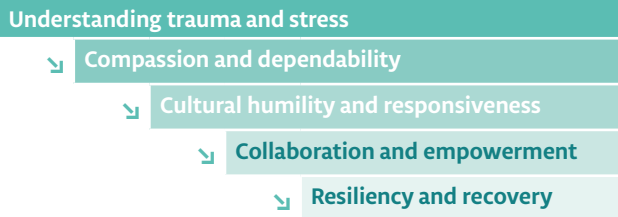
Practical advice on when to seek additional support regarding mental health

- ✦ If you notice prolonged periods of the following signs of trauma in a child, please refer them to higher levels of care:
 - Inability to form healthy relationships
 - Eating disturbance
 - Trouble sleeping
 - Separation anxiety
 - Feelings of helplessness

A. PREVENTING RETRAUMATIZATION

Talking about how one came to be in conflict with the law can be triggering - even if your client has not experienced acute trauma - and therefore, particular care must be taken. Retraumatization is an unconscious or conscious reminder of a past trauma or adverse experience that leads to a survivor re-experiencing the initial stressful event. It could be triggered by a particular situation, an interaction, or by an environment, such as a courtroom, that might replicate the dynamics of the initial traumatic event (i.e., loss of power/safety). When a person is triggered, they will go into either hyper-arousal (fight or flight) or hypo-arousal (freeze or fawn). Ideally, we want to help them stay inside their window of tolerance in order to protect the physical, psychological, and emotional safety for both the client and provider.⁷ *See the scheme on the next page.*

In global best practice focusing on Trauma-Informed service provision, there are five core principles to be aware of:



In order to prevent retraumatization, legal practitioners providing services to children in conflict with the law must have the above principles in mind when dealing with clients. Having a solid understanding of the trauma your client has undergone along with the impact of stress and trauma on the brain and brain development is crucial.⁸

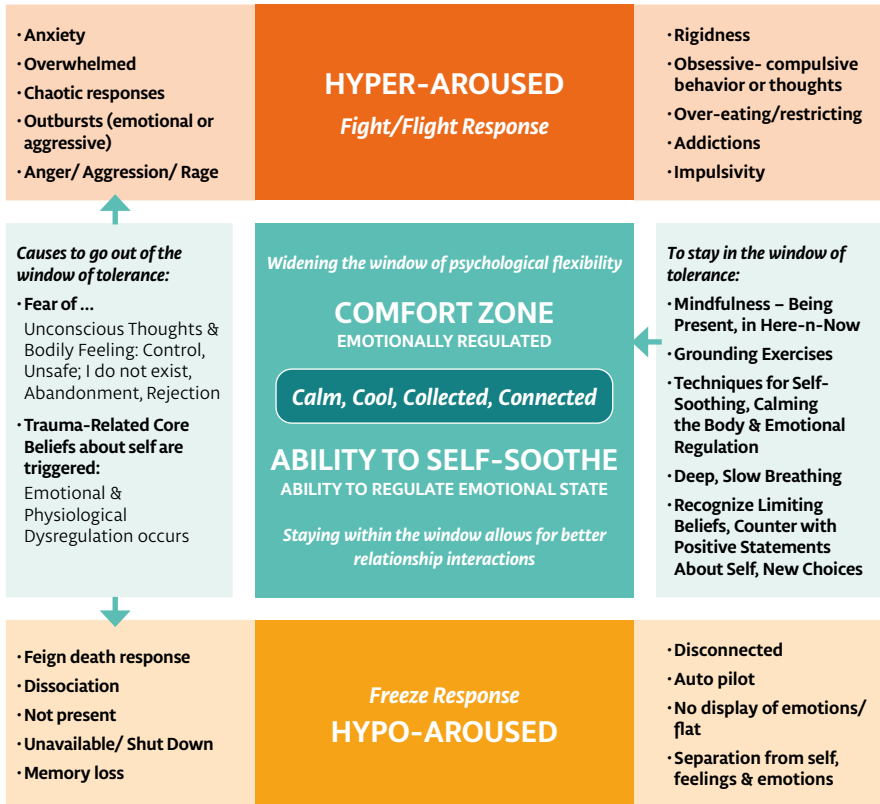
⁷ Dezellie, 2013; Siegal, 1999

⁸ More information can be found at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3181836/>

The ability to meet your client where they are at, mentally, is also important in trauma-informed care. Treating your client with compassion, cultural humility, and collaboration will lead to a greater responsiveness from the client. This will also help the client to feel more empowered leading towards resiliency and recovery. A prerequisite for each of these core principles is always effective communication and listening.

WINDOW OF TOLERANCE – TRAUMA/ANXIETY RELATED RESPONSES

Widening the Comfort Zone for Increased Flexibility



Source: Marie S. Dezelic, PhD, c 2013

B. TRAUMA-INFORMED LAWYERING

Trauma-informed practice is a best practice approach to the delivery of social and human services, therapeutic services, as well as legal services. Trauma-informed services place an emphasis on being more supportive of the client rather than on controlling them, or being punitive. This approach helps to avoid re-traumatization and punishment.

Trauma-informed lawyering is a practice specific to the lawyer-client relationship and aims to reduce retraumatization, recognize the role of trauma, and is measured by the following four “hallmarks”⁹:



Your checklist for trauma-informed lawyering

➤ ***Have you identified trauma?***

- Recognise that a child client has experienced trauma, either by their descriptions or behaviour, and work to gain a better understanding of their maladaptive coping strategies (i.e., hyperarousal or dissociation).

➤ ***Have you adjusted the lawyer-client relationship accordingly?***

- A child’s trauma history can make it difficult to build trust and actively involve them in their legal case. Trust and relationship building is therefore paramount. For instance, helping withdrawn or agitated children feel safe enough to share their stories by incorporating a dynamic of transparency, predictability, reliability, patience, empathy, and non-judgement.

➤ ***Have you adapted the appropriate legal strategy?***

- For instance, help the child practice testifying to become accustomed to the difficulty of telling their story in court. Empowering the child to own their story and not be ashamed will give them a sense of power back.

➤ ***Have you taken measures to prevent vicarious trauma?***

- Much of the retraumatization is the result of differing expectations between traumatized children and those making decisions in the court system. Client-centred approaches to providing legal services help bridge this gap and increase the sense that children feel seen and heard. When they share their stories do not force them to share more unless required because it can trigger further traumatization.

C. PROMOTING CHILD-CENTRED & RIGHTS-BASED APPROACHES

A **child-centred approach** places the person, in this case a child in conflict with the law, at the centre of the service interaction, with emphasis on treating them as a person first and foremost, rather than treating them as a casefile.

Support should therefore focus on fulfilling the child’s wishes, to the extent that it is appropriate or possible within the context of the European legal framework, and be tailored to their needs and unique circumstances.

⁹ Katz and Haldar, “The Pedagogy of Trauma-informed Lawyering.”



Practical advice to take into account for a child-centered approach

- ✦ Support the child, at the center of the services, to be involved in making decisions about their own life.
- ✦ Include the child's support networks (for example community members, interpreters) as partners.
- ✦ Provide flexibility of services and support to suit the individual child's wishes and priorities.
- ✦ Takes into account the individual child's age, maturity, culture, gender, language and beliefs.
- ✦ Focus on the child's strengths, recognizing that they are experts regarding their life and their needs.

A **rights-based approach** focuses on transforming rights from abstract, purely legal instruments into effective policies and practices.



Your checklist for rights-based approach

- ➔ ***Have you ensured participation of the child?***¹⁰
 - The child has the right to participate in decisions which affect their human rights. Their participation in activities such as legal proceedings or mental health interventions must be voluntary, active and meaningful, paying attention to issues of accessibility, including access to information in a form and language which can be readily understood.
 - Ensure the child has all of the information needed to make informed decisions that could affect their future.
- ➔ ***Are you holding the authorities accountable?***
 - This requires effective monitoring of compliance with human rights standards and any organizational human rights goals, as well as the taking of effective remedies for breaches of a child's human rights.
- ➔ ***Do you prevent discrimination?***
 - A human rights approach to service provision for children in conflict with the law requires that all forms of discrimination in accessing rights must be prohibited, prevented and eliminated. This also means that the most vulnerable and marginalized children who face the most significant barriers to realising their rights should be granted specific protection and assistance.

¹⁰ Looking for further resources on child participation? The UNCRC has established 9 golden rules on the participation of children. They can be found by following this link: <https://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc-c-gc-12.pdf>.

➤ **Do you sufficiently empower your client?**

- Each child in conflict with the law is entitled to claim and exercise their rights and freedoms. Each child should therefore be able to understand their rights and to participate fully in the development of policy and practices which affect their lives. For this reason, service providers should incorporate feedback mechanisms into their practices.

➤ **Do you consider the concept of legality?**

- A human rights based approach requires that the law recognizes human rights and freedoms as legally enforceable entitlements, and that the law itself is consistent with human rights principles. In this regard, by promoting the enhancement of legal assistance for children in conflict with the law in Europe, you are operating in line with Articles 6 and 18 of Directive (EU) 2016/800.

D. MENTAL HEALTH AND PSYCHOSOCIAL SUPPORT EXERCISES FOR YOU & THE CHILD

Given the stressful situations you and your client will likely face during the legal proceedings, some exercises might help you to deal with this.

A first set of tools will help you and/or the child to better manage stress and emotions¹¹:



Tools for managing stress and emotions

- **Butterfly tap:** Cross your arms and tap alternately with open palms 25 times on your upper arms, take a deep breath, and repeat until feeling calmer. This restores the natural flow between the left and right hemispheres of the brain.
- **Grounding:** Place your feet firmly on the ground, allowing yourself to feel the support of the earth. Look around and count ten objects you can see around you. This exercise restores our orienting capacity and thinking function of the brain.
- **Self soothing and regulation:** Place one hand over your chest and the other on your stomach. Focus on your breath. This will help stabilize your breath, bringing a sense of calm.
- **Discharge:** Focus on the sensations you feel in your body, noticing one at a time, without judgement. Eventually the feeling will release naturally, do not try to force it. Ask the sensation: what does it want to say or what does it need?
- **Resources:** Think of the thing(s) that make you feel good or happy. It could be a person, activity, place, or item. Notice the effect this brings to you.

¹¹ Emotion Aid.

The following tool helps you to better understand and label the emotions and/or sensations in the body of the child. This might be particularly helpful in a situation in which you cannot understand and assess the behaviour or emotions of the child.



Tools for emotion and sensation mapping

- Have the child draw their body outline and then, using different colours, draw the sensations and emotions they feel in different parts of their body. Have them describe what they drew and what they're feeling with you if they feel comfortable doing so.

The tools in the box below, finally, can help the child understand that cognitive distortions are normal. A cognitive distortion is a repeated pattern of unrealistic thinking. By helping the child to point out his/her negative thinking patterns and begin to become aware of them, you can begin to help them shift their thinking, leading to more productive and rational discussions. If you notice that cognitive distortions may be getting in the way of your ability to work with a child, contact a social worker or refer the child to higher care. See [Annex A](#) for a worksheet to use with your client on addressing the following cognitive distortions:



Common types of cognitive distortions

- **All-or-nothing thinking** (i.e., if I make a mistake, I'm a bad person)
- **Catastrophizing**: blowing something out of proportion
- **Personalization**: making things about you when they are not
- **Fortune-telling**: predicting something is going to turn out in a negative way
- **Mind reading**: assuming you know/understand what someone else is thinking

It is also important for you to recognize that these cognitive distortions can happen in lawyers as well. Having an understanding of these distortions and how they can affect your ability to represent your client is crucial. If you feel your judgement is not impartial, consult with a supervisor or other trained attorney to make the best decisions for yourself and your client.

See [annexes](#) for more tools on how to support children who are dealing with extreme stress.

7. Coordination and Confidentiality: Inter-agency cooperation & referrals

Once you begin to understand the living circumstances of the child, their environment and the challenges they face, you will also have a clearer understanding of particular vulnerabilities, in particular mental health problems. Even though as a lawyer you will not be the specialist to address these problems, you should be able to facilitate and enable access to therapeutic services.

In order to build a good legal representation, a lawyer needs to have connections with other professionals, such as teachers, doctors or social workers, who might be involved in the life of the child. For instance, in order to assess medical care or to find housing for the child, the lawyer will need to collaborate with other professionals. The necessity of global care must come with the respect of the status and missions of the different professionals. If this is not correctly separated, then the presumption of innocence and the medical confidentiality are at risk of being violated. Those principles are protective safeguards that should be kept in mind.

Globally, the lawyer must have a clear vision of the situation without violating the code of ethics inherent to each profession. While a lawyer might need to know the basics about the client's (mental) health situation in order to include these aspects in the legal representation if appropriate, the limits of confidentiality must be clear - to the client and to the professionals involved.



Your checklist for coordination and confidentiality

➤ *To whom can you refer a child at all?*

- Ideally, you - or the government - have a referral system in place or you have a mapping of the related services providers readily available (e.g. child psychologists, trauma counsellors, paediatricians, foster care and shelter agencies). If there is nothing in place, consult another attorney who has experience in this area.
- Know who to refer the child to and explain to the child why they are being brought in, and ensure confidentiality while also ensuring the child's voice is heard.

➤ *What information will the other agency need?*

- Assess - with the help of the child - what challenge the child is facing, since when and to what extent. Also check whether any other agencies are involved already to avoid the set-up of parallel support structures.

➔ Have you checked whether potentially substance abuse might an issue?

- If this might be the case, try to facilitate access to treatment by coordinating assistance.

➔ Is the child in distress or requests medical attention?

- If yes, ensure a medical assessment by specialized staff.

➔ Who else needs to be involved or informed?

- Cooperation with other stakeholders (e.g. social workers, teachers, doctors, psychologists, etc.) is important to ensure that information is shared and that all concerns are taken into account to ensure the best outcome for the child.
- Organizing inter-agency meetings is a good way for building intra-institutional support and optimizing support.

➔ How to balance the need for information and confidentiality?

- Keep in mind that it is a delicate question of balancing of interests between information exchange and confidentiality/child protection concerns.
- Ask your client for a written confidentiality waiver to speak with other stakeholders. Explain to your client why exactly you need such a waiver and how you will make use of it. Inform your client of conversations with other practitioners.
- Ensure that your client understands confidentiality, and the instances where confidentiality can be broken (i.e.: if the client has a serious intent to harm themselves or others).
- Encourage the other players involved to do the same - most of them will have confidentiality duties, and they should clarify with the client what information they may share.

8. Communicating with the child's parents / legal guardians

A particular and special feature of representing a child is the fact that in one or another way the parents and/or legal guardians are always involved as well. On the one hand, such communication might be needed and helpful, on the other hand it might also cause additional challenges or even conflicts.



Your checklist for the communication with parents and / or legal guardians

➤ **What does the child want you to communicate?**

- Once the child told you about their family, assess with them when and how the legal proceedings will be communicated to the parents and / or legal guardians. Ensure you understand who the legal representative of the child is, and whether there are any restrictions on the parent/guardian (i.e.: even if they are a parent, has the child been removed from their care and assigned a separate guardian?)
- Consider the communication requirements and restraints foreseen by law.
- Even though generally parents and / or legal guardians have a right to participate in interviews, you may request an exclusion upon the explicit wish of the child or if the child's best interest might be harmed otherwise. This may be country dependent, and it may be in the best interest of your client to meet with them privately.

➤ **How can you communicate with the parents and / or legal guardians?**

- Assess what ways of communication (personal meeting, phone call, mail, email, etc.) are most appropriate for the addressees. Consider special concerns such as illiteracy.
- In case of language barriers, work with a trusted translator.
- Note that you are the child's spokesperson and in case of conflicts of interest you always represent the child's best interests and their voice, not the one of the family members.

➤ **Did you consider special situations in a child's family?**

- Be aware of special situations such as single or separated parents and the impact this might have on the child and how they react in certain situations.
- If you have any indicia for the child being a victim of domestic violence, try to address the issue if possible; make sure to set up the required safeguards to protect the child.
- Be aware of the potential risk of manipulation of the child by parents or other family members in case of diverging interests. It is always the child's interests that must prevail, and you might have to diligently identify them.

9. Preparing for & representing a child at legal proceedings

The actual core task of you as a lawyer is to properly prepare and represent the child during the legal proceedings, including before the court. For the child to understand what is going on, it is crucial that you inform them constantly about the next steps of the legal process as well as about the big picture - meaning what to expect in terms of outcome and consequences (in particular regarding a potential sanction). Furthermore, your function as a lawyer includes the role of a supervisor who intervenes whenever children's rights are violated or at risk to be violated. As a spokesperson for the child you are expected to stand up against violations of children's rights and for the child's best interest.



Your checklist for child-specific rights in legal proceedings

➔ **How can you best prepare yourself and the child during preparatory interviews with them?**

- If possible, prepare a structured interview where you bring up all the relevant topics with a view to understand and assess the situation.
- Always start with general, positive topics - e.g. the child's friends, hobbies or favourite music. Then slowly move towards the relevant topic of the proceedings.
- Do not interrupt the flow of speaking, but ask very specific questions (who, where, when, how,...) once they came to a natural stop.
- Avoid leading questions, multiple questions at once or complex questions and use child-friendly vocabulary.
- Again, make sure the child feels at ease - therefore, do not show any negative reactions with your facial expression, stay on eye-level with the child and show your genuine interest.
- Do not ask too many questions and prolong the interview unnecessarily, but also do not interrupt the child or stop before they have told you everything they felt like (unless due to external constraints).
- End the preparatory interview again on a positive note - e.g. by asking what they are planning for the next weekend or what days their parents will visit.

➔ **Is the child's right to be heard being respected?**

- If not, insist on your client's right to be heard to be enforced. This right also includes the right to participate in the proceedings.

➤ **How are the examinations, interrogations, and/or interviews conducted?**

- Special practices should be in place in accordance with the Barnahus model which enables child-friendly justice.¹²
- The people in charge of interrogations should be specialized and trained staff.
- Special requirements during the proceedings, such as translation, breaks, child-friendly setting, consideration of gender, religion, disabilities, etc., shall be met.
- The pace of the proceedings should be adapted to the child. Undue delays should be prevented, but also any rush which causes further stress to the child should be avoided.
- Any proceedings should be conducted in a comfortable location, where the child feels safe and where privacy is ensured.
- General and child-specific rights of defendants must be respected and questions must be adapted to child's age, gender, development and cultural background. No misleading questions must be asked.
- Audio-visual recordings should be employed where possible, informing the child up-front about what the process will involve.
- If an interpreter is needed, they must be introduced and their role must be clear to the child. Intervene immediately if you feel like the child does not understand the translator or vice versa.
- Proceedings should be conducted by the same interviewer in case of several interviews, and the number and duration of the interviews should be kept to a minimum.

➤ **What should you do once a decision is taken?**

- Evaluate whether the child's best interests have been assessed and duly taken into account once a decision is taken.
- Explain the decision to the child and answer their questions about it.
- Assess together with the child whether the decision shall be challenged before a higher court or not.

In order to promote the safety, wellbeing and development of children in the legal system, it is important that children understand their rights and be able to exercise an effective voice. Rights need to be explained to children in a way that is appropriate to their age, cognitive and linguistic capacities. Ensuring an effective voice means advocacy on a child's behalf to achieve their wishes. To determine whether a child is capable of expressing their views on their own during a judicial proceeding, an

¹² The Barnahus model is a model for assessing the needs of a child, and any follow up. This is often done through a forensic interview. More information can be found here: <https://www.barnahus.eu/en/about-barnahus/>.

individual assessment of the child, taking into account not only the child's age but also other personal characteristics, should be conducted. According to the EU Directive 2016/800, the child has a right to an individual assessment to determine his/her ability to comprehend his/her rights and taking into account any intellectual disabilities, and EU member states must provide them with equal educational opportunities that account for their disability.¹³ Similarly, according to the COE Guidelines on Child-Friendly Justice, especially vulnerable children such as refugees, religious minorities, or children with disabilities should be given increased protection by member states to ensure protection from discrimination.¹⁴

10. Dealing with conflicts about your representation

Legal service providers may encounter conflict or resistance on the part of the child. It is important to have standard operating procedures in place in the event that there is conflict around representation of a child.

Different constellations may occur:

Child does not feel well represented

Child does not / no longer want to be represented by you

Compassion and dependability

Waiving any assistance of a lawyer is, depending on the accusation and national legislation applicable, not permitted in many situations. This again could therefore create a conflict around the issue of the child's right to self-determination. Therefore, you should be aware of such legal and ethical concerns and create contingencies. If you have been appointed by the child's parents or legal guardians, but the child does not wish to be represented, it is incumbent on you to continue to represent the child. If the differences are insurmountable, it is important to explain to the child if it is possible to change lawyers and to strike a balance with the requirement for continuity. If it is possible and necessary to do so, then it is important for you to assist children in the process of changing lawyers. The same holds true for the situation where you have to step back from the mandate for any reason - in this situation you should explain the decision to the child and hand over the matter diligently to your successor.

¹³ LA CHILD: Legal aid for children in conflict with the law in international and European Instruments (2021).¹⁴ Council of Europe: Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010)

¹⁴ Council of Europe: Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010).

Additionally, it is important to create contingency plans and procedures for how best to respond if a child does not follow your legal guidance (instructions). To prevent such a situation, it is helpful to explain to the child from the very beginning what the defence strategy looks like and for what reason. Ideally you make sure to align the strategies at the outset of the proceedings to reduce the risk of later disagreements. Nevertheless, disagreements may happen and cannot be fully prevented. A change of strategy by the child is, moreover, also an expression of the child's self-determination which shall not be undermined or overruled by you as legal representative: The child's expressed wish is what you have to follow and represent - even though you might not understand their decision for some reason.



Practical advice for contradicting defence strategies

- ✦ Ask the child to explain why they think their strategy is better. Ask questions and show your true interest in the child's thoughts and considerations.
- ✦ Explain to the child why you think your strategy is in their best interest.
- ✦ Elaborate on why you think the child's strategy might be harmful for them.
- ✦ Agree with the child on a way forward - do not stick with your strategy against the child's clear and explicit wish, even if you think it may bring negative consequences.

11. A child in conflict with the law & also a victim?

Providers of legal services should be mindful of the fact that children in conflict with the law are regularly also victims of various negative circumstances themselves. It is not an easy task to identify a victim - notably victims of sexual abuse, violence, bullying, etc. Communicating with and identifying victims requires special communication skills, some basic rules are the following:



Practical advice for communication and interaction with (potential) victims

- ✦ Create a comfortable and safe place.
- ✦ Build trust - listen, ask questions and do not judge.
- ✦ Ensure confidentiality and privacy.

Children are often coerced into action or inaction by adults. Therefore, they may not feel comfortable telling their story for fear of retaliation. Child victims and witnesses of crime may be at risk of intimidation, reprisals, secondary victimization or, at worst, their lives may be threatened. This risk can be heightened in cases of sexual abuse, and cases in which a child involved is young, has been trafficked or has disabilities, or if the alleged perpetrator is close to the child. Another typical situation is peer violence in child care institutions, it is important to recognize such situation because if the child is sent back there or if there is a tension – this can be the source of further conflicts and procedures which will make the situation of the child even more difficult.



Practical advice when representing (potential) victims

- ✦ Depending on the situation, restraining orders against perpetrators may be necessary - note that as a lawyer representing the child you ought to be aware of this possibility and make use of it if appropriate.

12. Supporting a child in detention

Representing and assisting children who are detained pose particular challenges for you as a lawyer. Not only is communication mostly hampered by the fact that a child is detained, but also the child's mental health state is often negatively impacted by the detention - and finally the situation might be mentally challenging for you as a lawyer yourself as well.



Practical advice when communicating with clients in detention

- ✦ Check whether confidentiality of communication is ensured - oftentimes, phones are located in the hallway of detention centers, meaning that other inmates might overhear the conversation.
- ✦ Ensure the client has contact with their family, and the right to regularly meet with their lawyer is observed.



Your checklist for children in detention

➤ **Can you challenge a detention order?**

- By law, detaining children must be a measure of last resort. As a child's lawyer, you should insist on this principle in all proceedings and make sure that it is enforced.
- If detention is ordered nevertheless, assess whether such a decision might be challenged, and in any event ask for a periodical review of detention orders.
- Whenever the basic needs of the child are not being met (see next question), you may challenge the detention order and / or the detention conditions. Generally, indemnity is owed by the state in case of unlawful detention or detention conditions.

➤ **Are the detention conditions adequate?**

- Check the following: Is access to medical and mental health care provided? Are children separated from adults? Do they have access to education and reintegration programs? Is a suitable therapy accessible for children with substance use and addiction disorders?
- If such conditions are not met, make sure to intervene immediately.

➤ **Should you visit the child in detention?**

- In order to get a full picture of the situation of the child in detention, meaning the detention conditions and the constitution of the child, it is necessary to visit the child in detention as early as possible.
- If the child is detained for a longer period of time, periodical visits are recommended, not only for monitoring the situation, but also to establish and maintain a relationship of trust between the child and yourself.
- Oftentimes, communication with children in detention is difficult and highly restricted - therefore, personal visits are indispensable anyway in order to uphold the communication with the child.



CASE-STUDY: SOLITARY CONFINEMENT AND ACUTE SUICIDALITY

Your child client traveled from Afghanistan to Greece as an unaccompanied minor, and then moved to a third country, Switzerland, to be with his sibling. Falling under the Dublin Convention, he was asked to leave Switzerland and return to Greece. Since he refused to return, he was charged with the crime of illegal stay and placed in detention where he became psychologically unwell. His physical symptoms included vomiting blood and back pain. Later, it was determined that he was a suicide risk. He had reportedly stated that: *“I might kill myself tomorrow or today, I don’t know, in any case I am tired of life”*. He was told by the doctor that patients at suicide risk must be placed in isolation, to which he responded (summarized by his translator), *“He could not say it any other way, it was quite possible that he would commit suicide today or tomorrow”*.

Mental health professionals who had dealt with his case believe that he did not receive a thorough and sufficient enough assessment. The child was then placed into isolation, left alone and denied psychological support. He spent nearly three days in isolation, had neither contact with a doctor nor any other support during this time. He was in fear and felt that he could not communicate his psychological needs, and as a result, was further traumatized by this event.

As his lawyer, what would you do?



CASE-STUDY: RECOMMENDED ACTIONS

- Speak and listen to the client to gather all appropriate information.
- Refer the child to psychological care, or when in doubt ask for input from a mental health professional. If the authorities do not allow or arrange for this, consider to take legal action.
- Document in detail and continue to follow up.
- If possible, ask a psychologist to make an assessment of the situation (see below).
- Assess options of judicial review of the measure (e.g. declaratory action under administrative law, potential criminal liability for threat to health and life, state liability claims).
- Take such legal action if appropriate and explain it to your client.
- Alternatively, consider to talk to the players involved (e.g. inter-agency meeting, round table) to avoid such incidents in the future.

This situation can also be analysed from a mental health perspective, find the assessment of the situation made by a psychologist in Annex F: Case Study - Assessment of the solitary confinement from a mental health perspective.

13. Providing continuous and comprehensive support

Consistent and continuous legal support is important in order to ensure the best interest of children in conflict with the law is guaranteed to the utmost extent. In light of this, the following should be considered:



Your checklist to provide continuous and holistic legal assistance

➤ **May you resign from your mandate if the fees are no longer covered?**

- Even if your local law allows you to do so, such a resignation will in many instances stand in contrast to the child's best interest and should therefore be prevented. Try to find another solution to have your fees covered - maybe a foundation, a non-profit organization or any other agency might jump in.

➤ **Is your mandate over once the decision is final and enforceable?**

- National law regulates the scope of a mandate, in particular in cases of free legal assistance. Considering the best interest of the child, resigning at this point in time is inadequate - the child might still need your legal support regarding post-trial issues such as the execution of the sanction, requests for court fee waivers, etc. Therefore, it does not seem adequate to step back at this moment.

➤ **Are you responsible for legal matters outside of the actual (criminal) proceedings in question?**

- Certain children may face other legal challenges, e.g. migrant children with foreigner's law, cases of foster care or other family law issues, questions around access to social security entitlements, etc. Generally, it is considered as in the best interest of the child to have one trusted lawyer who is dealing with - or at least coordinating - the different legal proceedings as a reference lawyer.
- Free legal assistance is not always available in all these areas of the law. If this prevents you from assisting in these areas, you might consider to find other ways to cover your fees (e.g. foundations, non-profit organizations) or to offer certain services on a pro-bono basis.
- If you do not feel competent enough to assist in other areas of the law, you might consider to cooperate with another lawyer who is specialized in this matter - which would still allow you to be the main person of contact for the child.
- Follow the principle of continuity. Ensure you represent your client through different (criminal) procedures they may face.

ANNEXES

ADDITIONAL RESOURCES FOR ASSISTING YOUR CHILD CLIENT

Annex A Tools for dealing with a child feeling worried

Annex B Tools for dealing with a child in distress

Annex C Tools for dealing with a sense of powerlessness

Annex D Tools to help a child client help themselves

Annex E Tools for Active Listening

Annex F Case Study - Assessment of the solitary confinement
from a mental health perspective

Annex A

Tools for dealing with a child feeling worried

WHAT COULD HAPPEN VS. WHAT WILL HAPPEN

When you are worried about something, it's easy to imagine the worst thing that could possibly happen. In reality, these worries may never come true. What could happen isn't the same as what will happen.



What is something you are worried about?

Thinking about what will happen, instead of what could happen, can help you worry less. Whenever you start to worry, answer these questions:



What are some clues that your worry will not come true?



If your worry does not come true, what will probably happen instead?



If your worry does come true, how will you handle it? Will you eventually be okay?



After answering these questions, how has your worry changed?

Source: Therapist Aid: Worry Exploration Questions, © 2020 Therapist Aid LLC, Provided by [TherapistAid.com](https://www.therapistaid.com)

Annex B

Tools for dealing with a child in distress

WHEN SOMEONE IS EXPERIENCING SERIOUS DISTRESS

The signs of stress described above are natural and may fluctuate over time. Some people may have longer-lasting and more intense reactions. When this happens, they might be seriously distressed. Feeling serious distress is a normal reaction to extraordinary circumstances, but it can stop people being able to function. In a situation like this, it is likely that you will need to refer the person on to specialized support. Signs that someone is experiencing serious distress include if they are:

So upset they cannot take care of themselves or others

Being very anxious
and fearful

Talking about
wanting to hurt
or kill themselves

Shaking

Crying

Being angry

Not knowing their name,
where they are from,
what is happening

Threatening to hurt others

Shouting

Being very withdrawn

Feeling disoriented or “unreal”

WHAT TO DO WHEN YOU ENCOUNTER SOMEONE IN SERIOUS DISTRESS

1. Safety first! Make sure that you, the person and others are safe from harm. If you feel unsafe, leave and get help. If you think the person may hurt themselves, get help (ask a colleague, call emergency services, etc.). Take preventative measures against Covid-19 infection (e.g. physical distancing). Do NOT put yourself at risk.

2. Let them know who you are: Introduce yourself clearly and respectfully – your name and your role, and that you are there to help. Ask them for their name so that you can address them.

3. Keep calm: Don't shout at the person or physically restrain them.

4. Listen: Use your communication skills, as described in Module 2. Do not pressure the person to talk. Be patient and reassure them that you are there to help and to listen.

Annex B

5. Offer practical comfort and information: If possible, offer the person a quiet place to talk; a non-alcoholic drink or a blanket. These gestures of comfort will help them feel safe. Ask them what they need – don't assume that you know.

6. Help people regain control:

- a. If the person is anxious, support them to breathe slowly
- b. If the person is out of touch with their surroundings, remind them where they are, the day of the week and who you are. Ask them to notice things in their immediate environment (e.g. "Name one thing you see or hear").
- c. Help them to use their own good coping strategies and to reach out to supportive people in their lives.

7. Provide clear information: Give reliable information to help the person understand the situation and what help is available. Make sure that you use words they can understand (not complicated words). Keep the message simple and repeat it or write it down if needed. Ask them if they understand or have any questions.

8. Stay with the person: Try not to leave the person alone. If you can't stay with them, find a safe person (a colleague, a friend) to be with them until you find help or they feel calmer.

9. Refer to specialized support: Do not go beyond the limits of what you know. Let others with more specialized skills, such as doctors, nurses, counsellors and mental health professionals, take over. Link the person directly with support, or make sure that they have contact information and clear instructions for getting further help.



If you are talking on the phone, try to stay on the line with the person until they calm down and/or you are able to contact emergency services to go and help directly. Check that they are comfortable and able to talk.

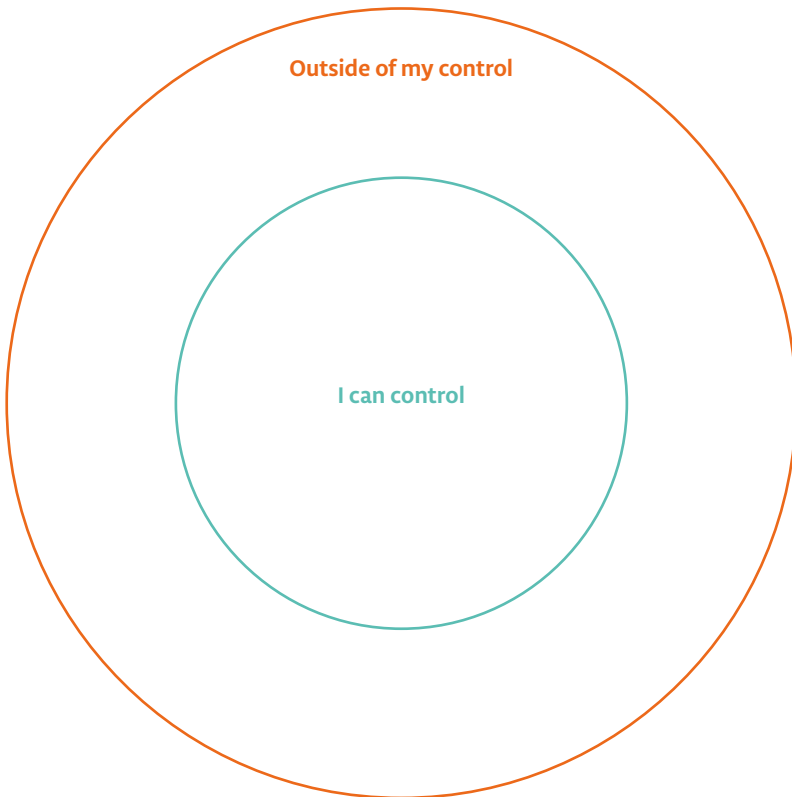
Source: IASC, *Basic Psychosocial Skills – A Guide for COVID-19 Responders*, p.16 (2020), available online: <https://interagencystandingcommittee.org/system/files/2020-05/Basic+Psychosocial+Skills+-+A+Guide+for+COVID-19+Responders.pdf>
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Annex C

Tools for dealing with a sense of powerlessness

CIRCLES OF CONTROL

If you are feeling powerless to help others, it can be helpful to identify those problems you can do something about and those you cannot. Forgive and be gentle with yourself if you are unable to help in a particular situation.



Source: IASC, **Basic Psychosocial Skills - A Guide for COVID-19 Responders**, p.22 (2020), available online: <https://interagencystandingcommittee.org/system/files/2020-05/Basic+Psychosocial+Skills+-+A+Guide+for+COVID-19+Responders.pdf>
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Tools to help a child client help themselves

HELPING OTHERS TO HELP THEMSELVES

For people to recover well, they often need to feel that they have some control in their lives. The best way to support others is to help them to help themselves. This will also give you more energy and time to help others.

The **STOP-THINK-GO** method can be used to support others to manage their own problems.



STOP Help the person to take a pause, and consider what problems are most urgent. Help the person to use the circles of control to identify and choose a problem which they can do something about.



THINK Encourage the person to think of ways to manage that problem.

- The following questions may help:
- What have you done in the past to overcome problems like this?
- What have you already tried doing?
- Is there someone who can help with managing this problem (e.g. friends, loved ones or organizations)?
- Do other people you know have similar problems? How have they managed?



GO Help the person to choose a way to manage that problem and try it out. If it doesn't work, encourage the person to try another solution.

Source: IASC, **Basic Psychosocial Skills - A Guide for COVID-19 Responders**, p.13 (2020), available online: <https://interagencystandingcommittee.org/system/files/2020-05/Basic+Psychosocial+Skills-+A+Guide+for+COVID-19+Responders.pdf>
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Tools for Active Listening

Active listening is a technique to help you listen well and communicate supportively. It involves 3 steps:

Listen attentively



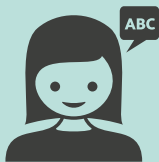
- Really try to understand the person's point of view and feelings.
- Let them talk; remain quiet until they have finished.
- Block out distractions - is it noisy around? Can you go somewhere quieter? Can you calm your mind and focus on the person and what they are saying?
- Be warm, open and relaxed in the way you present yourself.

Repeat



- Repeat messages and key words the person has said, e.g. *"You say looking after your children while working can be overwhelming."*
- Ask for clarification if there is something you didn't understand, e.g. *"I didn't quite understand what you said just then, could you please explain again?"*

Summarize at the end what you have understood



- Identify and reflect key points you heard the person say, so that they know you have heard them and to be sure you have understood them correctly, e.g. *"From what you have just said, I understand that you are mainly worried about [summarize main concerns they have expressed], is that correct?"*
- Describe what you have heard, rather than interpreting how they feel about the situation (e.g. don't say: *"You must feel horrible/devastated"*). Don't judge them or their situation.

Source: IASC, **Basic Psychosocial Skills - A Guide for COVID-19 Responders**, p.11 (2020), available online: <https://interagencystandingcommittee.org/system/files/2020-05/Basic+Psychosocial+Skills+-+A+Guide+for+COVID-19+Responders.pdf>
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Case Study - Assessment of the solitary confinement from a mental health perspective

The assessment of the situation presented in the Case Study by a psychologist might look like this:

[Objective description of the facts]

RECOMMENDED ACTIONS

The following steps should have been taken:

- Place the person in a secure and supportive environment at a health facility
- Do not leave the person alone - supervise them at all times
- Medically treat any injury or poisoning
- If hospitalization is needed, continue to monitor the person closely to prevent suicide
- Offer and activate psychosocial support
- Offer carers support
- Consult a mental health specialist
- Maintain regular contact and follow-up

DEFICIENCIES OF THE ACTIONS TAKEN

Accordingly, there are several guidelines that were not followed by authorities after determining the client was at risk of self-harm. Specifically:

1. He was left alone.
2. He was not put in a supportive environment.
3. His mental state and emotional distress was not recognized/addressed.
4. Psychosocial support was not offered, and a mental health specialist was not consulted.
5. He did not receive regular contact during his three days of isolation, or sufficient follow-up care to treat the trauma he experienced due to this time in isolation.

Furthermore, adequate information covering the benefits of taking prescribed medication, the expected side-effects, the importance of consistently taking medication (even when conditions/symptoms lessen/appear to improve), and the recommended time frame for each medication was not provided.

The client's inability to communicate his needs, due to language barriers, and the severity of the situation were taken into account, and we do not believe that health professionals took the cultural context of his Afghan-background into account, including using a trauma-informed approach.

Annex F

Furthermore, health professionals did not provide a space whereby he had the opportunity to express his concerns over medications or his treatment in general. Also, the client was not monitored sufficiently over his two days in isolation, which increased the risk of overdose, and left him vulnerable to experiencing a manic episode or other side effects without immediate and/or necessary treatment.

ALTERNATIVES TO ISOLATION

Alternatives to isolation that would have better met the client's needs, and were more appropriate to manage the psychological state were not considered. Stabilization of - and providing psychological support to - the client should have been the priority, in order to better understand the leading cause of his ideation.

REQUIRED PSYCHOLOGICAL SUPPORT

Sufficient psychological support would include:

- Explore reasons and ways to stay alive.
- Focus on the person's strengths by encouraging them to talk of how earlier problems have been resolved.
- Consider problem-solving therapy to help people with acts of self-harm within the last year, if sufficient human resources are available.
- Mobilize family, friends, concerned individuals and other available resources to ensure close monitoring of the person as long as the risk of self-harm/suicide persists.
- Advise the person and carers to restrict access to means of self-harm/suicide (e.g. pesticides/toxic substances, prescription medications, firearms, etc.) when the person has thoughts or plans of self-harm/suicide.
- Optimize social support from available community resources. These include informal resources, such as relatives, friends, acquaintances, colleagues and religious leaders or formal community resources, if available, such as crisis centres, and local mental health centres.

The client was not given such care; he was not offered appropriate psychological help, in particular, the reasoning behind his considering self-harm was not explored and solutions offered, and his family, friends and community were not mobilized to further support.

IN CONCLUSION, the reaction by authorities was inappropriate and could have had a detrimental effect on the client.

As a legal representative, you might want to try to get input similar to this report provided by a psychologist. Based on this, authorities should be made aware of such deficiencies, be it by legal actions or by holding a round table or inter-agency meeting to address the topic.

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<https://www.barnahus.eu/en/publication/standards/>

<https://childrenatrisk.cbss.org/publications/the-promise-barnahus-quality-standards/>

NOTES

A series of horizontal dotted lines for writing notes.

Lined writing area consisting of 20 horizontal dotted lines.

A series of 21 horizontal dotted lines spanning the width of the page, providing a template for writing or drawing.

This Guide is written for anyone who is in the process of legally representing or advising a child in conflict with the law - and for anyone who plans to do so in the future and wants to be well informed.

This document shall serve as a knowledge base to legal professionals. It contains:

- **14 Quality Standards**, listing core principles (i.e., participatory, child-centred, safe and protective etc.). Measuring indicators for the Standards are proposed, which mirror the key values, requirements and standards relevant when a lawyer represents or gives advice to a child in conflict with the law.
- **a Step-by-step Guide** with precise instructions for lawyers to follow on how to provide legal assistance to children. The Guide is designed as a tool that can be used short notice and that will guide a lawyer through the relevant phases of representing a child in conflict with the law. The Step-by-step guide also provides information about recognizing risks and making appropriate referrals to other professionals as needed; especially if the child is experiencing mental health challenges.



PROJECT PARTNERS :



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