



# Operational Recommendations for Legal Professionals

June 2020



**Baker  
McKenzie.**



**Terre des hommes**  
Helping children worldwide.



BUREAU  
INTERNATIONAL  
DES DROITS DES ENFANTS  
INTERNATIONAL  
BUREAU  
FOR CHILDREN'S RIGHTS  
OFICINA  
INTERNACIONAL  
DE LOS DERECHOS DEL NIÑO  
المكتب الدولي لحقوق الطفل



**AIMJF**  
International Association of Youth and Family Judges and Magistrates  
L'Association internationale des magistrats de la jeunesse et de la famille  
Asociación Internacional de Magistrados de la Juventud y de la Familia





**Baker  
McKenzie.**



**Terre des hommes**  
Helping children worldwide.



BUREAU  
INTERNATIONAL  
DES DROITS DES ENFANTS  
INTERNATIONAL  
BUREAU  
FOR CHILDREN'S RIGHTS  
OFICINA  
INTERNACIONAL  
DE LOS DERECHOS DEL NIÑO  
المكتب الدولي لحقوق الطفل



**AIMjF**  
International Association of Youth and Family Judges and Magistrates  
Asociación Internacional de Magistrados de la Juventud y de la Familia  
Associação Internacional de Magistrados de Juventude e de la Família



# PROS IN CRISIS: Operational Recommendations for Legal Professionals in Relation to Children Deprived of Liberty During the COVID-19 Pandemic

## Protect the Rights of Children Deprived of Liberty during the Time of Pandemic

Detained children are at high risk of losing certain essential rights during the COVID-19 pandemic. In order to guarantee that these children's rights are protected and preserved, governments and applicable authorities should immediately release children to a safe environment with their families or appropriate caretaker. Realistically, there are certain circumstances in the COVID-19 context, such as reduced social services or the implications of national emergency status, which may complicate the release, but they do not change the fundamental need to assure that no child is deprived of liberty under circumstances that are a danger to their health and welfare, and to ensure their detention is not arbitrary and that they are detained for the shortest appropriate period of time. This guide provides practical considerations and arguments for legal professionals responsible for advocating on behalf of detained children during the pandemic and those who may have the opportunity to decide how those children's rights are upheld. The primary role of the legal professional should be to advocate for and/or facilitate releasing detained children in the majority of circumstances, with particular consideration given to factors affecting the health and safety of children through reintegration into their communities and reunification with their caregivers.

<b>Legal Professionals</b>	For purposes of these guidelines, the term "legal professional" covers all individuals who have the legal obligation to advocate for, or recommend actions that will ensure the fundamental rights of the child are considered. Included within the scope of the term "legal professional" are advocates/attorneys in common law systems, prosecutors in civil law systems, heads of child and family welfare courts, magistrates, investigative judges, executive judges, and persons with similar roles. While the precise titles may vary depending on the specific legal system at issue, in all instances, the same basic principles outlined below should apply.
<b>Essential principles of action</b>	<ul style="list-style-type: none"><li>- Essential Principle One: Child's Right to Participate<ul style="list-style-type: none"><li>▪ Children have the right to participate in their own proceedings if they want to be present and/or be heard.<sup>1</sup></li></ul></li></ul> <p>Every child has a right to be heard. Even in the circumstances of a pandemic, an in-person meeting should be strongly preferred to safeguard the rights of the child in criminal proceedings.<sup>2</sup> However, in the time of</p>

<sup>1</sup> See United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Art. IV, Sec. M; [Safeguarding the Right to a Fair Trial During the Coronavirus Pandemic: Remote Criminal Justice Proceedings](#) Fair Trials, p. 6, and Convention on the Rights of the Child ("CRC"), art. 12.

<sup>2</sup> *Id.* at 4-6

social distancing or due to the rules in certain jurisdictions, the child's right to be heard may not involve an in-court appearance from the child. Consider alternative means such as teleconference to ensure the child has a voice in this process.

In common law systems, lawyers are obligated to make it possible for children to be "present" in whatever way (live or virtual) is possible in a legal proceeding.

In any proceeding (live or virtual) regarding a child's welfare or behavior, decision-makers should be informed as to whether the child has been given the opportunity to be present, be heard or to share information.

Systems should not allow children to languish in detention without knowing why they are there or whether the detention is just. Instead, detention of children should be considered as a last resort. The COVID-19 crisis makes that an even more essential and immediate need.<sup>3</sup>

Children deprived of their liberty have the right to free legal representation.<sup>4</sup> Children's access to legal representation should be maintained in this period of distancing, including by use of technologies.

– Essential Principle Two: Communication

- Communication between legal professionals and family members (or other appropriate guardian) can educate justice system actors about important bases for successful release, alternative detention, etc. Having an open line of communication with a child's family (with appropriate permission from the child) can be a valuable tool.
- Children benefit from increased communication between all actors in the system – social workers, security forces, legal professionals, physical and mental health resources and others. The more the team can share about the life circumstances of the child, the better a multi-disciplinary team will understand and address the child's needs and help prevent unnecessary detention.
- Children have the right to have access to a lawyer/legal representation. If it is not possible for the lawyer to visit the child due to health risks, the authorities have to compensate for this by providing regular communication via telephone and/or video, free of charge.

– Essential Principle Three: Confidentiality

- While facilitating communication between all actors, lawyers for children will have a unique role in the child justice system because the child enjoys a privilege of confidentiality with his or her lawyer as any adult client would enjoy. Assuming the child is competent to direct counsel, that relationship with counsel guarantees the right to confidential communications with his or her lawyer.

<sup>3</sup> See CRC art. 40 2 (b) (iii) and General Comment No 24 on Children's Rights in the Child Justice System (2019) CRC/C/GC/24 ("GC 24"), para. 85-91.

<sup>4</sup> See CRC art. 40 2 (b) (iii) and 37 (d) and GC 24, para. 51.

- A lawyer may not violate that confidentiality by sharing information from the child that is provided in confidence with any other person (the court, parents, caretakers, counselors, etc.) without express permission from the child client. These guidelines assume preservation of this vital relationship between a lawyer and a child client under even the most unusual circumstances, such as the health dangers under the current pandemic.
- Fundamental rights, such as the right to representation of counsel when liberty is at stake, are inalienable.<sup>5</sup>
- Essential Principle Four: Prioritize Access to Justice
  - Ensure that cases involving a child victim, child witness or child in conflict with the law are handled in priority over any other types of cases.
  - Remain flexible to digitized court processes and keep courts open for at least some time during court days to allow access by counsel/advocates. At the same time, consider "streamlining" access for cases involving children (through opening emergency courts or otherwise), while postponing "non-priority" categories of cases (e.g., civil matters, business disputes).
  - In general, a child, or her/his advocate should be informed of any changes to a jurisdiction's court procedure and management of the judiciary due to COVID-19 that negatively affect the normal processing of a child's case or opportunities for regular review of detention. Legal action that challenges any arbitrary, unreasonable or disproportionate measures should be considered, either for individuals or for groups/categories of child detainees.
  - Encourage and facilitate the ability of court officials to go to the centers where children are detained and hold hearings there.
- Essential Principle Five: Advocate for the Release of all Children in all Circumstances.
  - Detention should only be used as a **last resort**. Where a child cannot be released, facility conditions must be sufficient to meet relevant minimum international standards with respect to child/staff ratios, access to necessary services, etc.<sup>6</sup>
  - Systems should limit the use of detention at all stages (pre-trial, during trial, and post-trial) and prioritize the use of alternative measures wherever possible to ensure the mental and physical health of the child and his or her general welfare in a time of crisis. No child who commits non-violent or administrative offenses should be held in detention under the current health crisis unless it is absolutely necessary as a measure of last resort. Security forces and prosecutors should choose diversion, alternatives to pre-trial detention, or simply connect children to whatever social services are needed to address the issues that caused them to come in conflict with the law. Non-custodial measures will have the corresponding benefit of protecting public health and safety by reducing the number of people in detention facilities.

<sup>5</sup> See Rule 7, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*.

<sup>6</sup> See also GC 24, para. 92-95.

	<ul style="list-style-type: none"> <li>▪ The release recommendation applies to all children regardless of health status—in other words, children testing positive for COVID-19, children with COVID-19 symptoms, asymptomatic children, and children who have tested negative for COVID-19, should all be subject to the same release advocacy recommendations.</li> <li>▪ Request COVID-19 testing for children upon release, in order to inform the family as to their health situation.</li> <li>▪ A child's deprivation of liberty starts with arrest or apprehension, which is considered to be a form of deprivation of liberty in some jurisdictions. Minor infringements of the law, including special provisions relating to public emergency, should not result in arrest. If children are to be charged, they may be given written notices, directed towards diversion programs or summoned to appear at court at a later date.</li> <li>▪ Children awaiting trial should be prioritized for release given that they have not been found guilty. Pretrial detention should be completely avoided where possible. If pretrial detention is required, it should be subject to regular review and its duration limited by law.<sup>7</sup></li> <li>▪ Populations of children given sentences should be candidates considered for early release.</li> <li>▪ For children serving indeterminate sentences, consideration should be given to approaching the court or public official for consideration of early release due to the crisis.</li> <li>▪ Children should only be detained for the shortest appropriate period of time, and reviews should take place on a regular basis to determine whether detention is still appropriate.<sup>8</sup></li> </ul>
<p><b>General Considerations when Preparing for a Child's Case</b></p>	<ul style="list-style-type: none"> <li>- Accomplish the objective of releasing children through petitions, motions, letters for release to Ministry, and similar submissions. Advocate for expansive use of technology to keep cases moving while preserving due process.</li> <li>- It is critical to assess whether the relevant jurisdiction has resorted to derogation of a child's rights during the current pandemic. No rights of children can be derogated unless a state of emergency has been declared. Even if a state of emergency has been declared, any derogation must be in accordance with the Human Rights Committee's "Statement on derogations from the Covenant in connection with the COVID-19 pandemic." Even if rights are limited, it should be done in a manner that is reasonable, justifiable and proportionate. Certain rights are non-derogable.</li> <li>- Where necessary, a child should have someone to advocate, orally or in writing/digitally, for them before courts or other system actors to urge them to take the steps necessary "for the prevention, treatment and control of epidemic,</li> </ul>

<sup>7</sup> See GC 24, para. 98.

<sup>8</sup> See CRC art. 37(b).

endemic, occupational and other diseases," and most importantly, for the child's right not to be arbitrarily detained.<sup>9</sup>

- The argument against arbitrary detainment is very important for children in pre-trial detention. Detainment of a child should be the last resort, and it is not a mandatory step in the law. Once a child is being held longer than the relevant legal time period, or is not being brought to court because courts are not functioning, then his or her detention becomes arbitrary.
- Advocates, prosecutors, defenders, and other legal professionals should establish a collaborative plan to advocate for swiftly reducing the numbers of children in detention centers. For example, advocates should provide a list of pre-trial detention cases and offer an argument for non-custodial measures to replace detention. Next, they should turn to the remaining group of cases and advocate for amnesty, early parole and/or commuting sanctions with community service programs as an alternative.<sup>10</sup>
- In all cases, decision-makers should be open to arguments based on local law as well as international human rights principles derived from treaties and conventions to which the state is a party with the UN. Preparing a general collaborative strategy will improve efficiency; however, legal professionals should remain open to different arguments for children in different circumstances.
- Considerations made and arguments presented should focus on children's rights. Where a "legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen."<sup>11</sup> For example, if there is an executive order for release of adults in detention, it may be a reasonable interpretation of that order that it should apply equally to children in detention.
- During this time, no actions taken by law enforcement should punish or harm children that do not or cannot abide by COVID-related government orders.<sup>12</sup>
- Legal services, security forces and social services should be concerned with redirecting children, finding children emergency care and services, and ensuring their basic needs are met.
- Where helpful and if applicable, legal professionals should utilize templates to organize arguments.<sup>13</sup>

### General Assessment and Arguments

- Legal professionals advancing or receiving arguments for the release of children should note the injunction of Article 37(b) of the CRC lawfully and arbitrarily, which may easily occur under a health crisis where courts are not functioning properly. Children's detention should also always be the last resort, and then for the shortest appropriate period of time. Children may never be lawfully detained for longer than

<sup>9</sup> See Article 12(2)(c) of the International Covenant on Economic, Social and Cultural Rights; CRC at Article 37.

<sup>10</sup> See also UNICEF, "Protection of Children during the Coronavirus Disease (COVID-19) Pandemic: Technical Note" (

<sup>11</sup> Alliance for Child Protection in Humanitarian Action, *Minimum standards for child protection in humanitarian action*, p. 41.

<sup>12</sup> See "COVID-19 and street connected children's rights," published by the Consortium for Street Children (Mar. 24, 2020).

<sup>13</sup> See *COVID19 crisis: Template application for the urgent release from pre-trial detention*, Legal Experts Advisory Panel, Apr. 2, 2020.

the legally stipulated time period merely for the state's convenience – to do so renders an initially lawful detention unlawful due to its arbitrariness.

- Arguments by the state that such measures are in the best interests of children should also be countered as it will rarely be in the best interests of a child to be detained, and arbitrary detention is clearly a violation of rights that cannot be justified by a reference to best interests.
- Public defenders and prosecutors should ensure communication and visitation rights of the child are established or preserved. A goal of the child justice system is to support the safe rehabilitation and reintegration of youth into society. Detention without adequate communication, resources, and health and safety measures during this pandemic could jeopardize this objective. If family cannot visit a child, or if isolative measures are the only mechanism to ensure health and safety in detention, detention cannot be a proper condition for children.
- At diversion stage:
  - In systems where diversion is an option, this should be the presumptive approach even before a child has been accused of a criminal offense.<sup>14</sup>
  - "A child is diverted when he or she is alleged as or accused of having infringed the penal law but the case is dealt with without resorting to formal trial by the competent authority."<sup>15</sup>
  - Prioritizing diversion at all stages of the system is especially important during the pandemic. Where detention of children can be prevented through diversionary measures, it should be. Some diversion programs may be offered by digital means if the child population affected have the hardware and software to participate. Alternatively, diversion programs may be deferred until after the immediate crisis when they may be resumed with the required health and safety measures in place.
- At pre-trial stage:
  - Under the CRC, children are entitled to a presumption of innocence until proven guilty.<sup>16</sup> Thus, children should not be detained as a general practice, and those who must be prior to trial should be urgently considered for release.
  - Legal professionals should advocate for children to be prioritized for any executive orders for the release of prisoners. Any such executive orders for sentenced prisoners should be matched by similar measures for the release of awaiting trial prisoners, with children once again being prioritized. See also "Application of Public Orders" below.
  - All parties should consider immediate pre-trial release even if there is no executive order or if the order doesn't specifically enunciate application to children.<sup>17</sup>

<sup>14</sup> See GC 24, para. 15, 16; United Nations Office of the Special Representative of the Secretary General on Violence Against Children: "Promoting restorative justice The Special Representative of the Secretary-General on Violence against Children for children". See art. 40 (3) (b) and GC No 24 par. 13-18.

<sup>15</sup> *Id.*

<sup>16</sup> CRC Article 40(2)(b)(i).

<sup>17</sup> See *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Art. III.



- The argument for **pre-trial** release of children during the COVID-19 crisis is especially strong, based on the conditions under which children are detained, clothed, fed, have access to hygiene, access to health care, access to mental health care and have the opportunity to interact with their family, visitors and other children. In some jurisdictions, COVID-19 conditions which bar access to education can be a basis of argument that detention is a violation of rights and contrary to the child's best interest.<sup>18</sup>
- At trial stage:
  - Lawyers should argue that their client should be present during all court proceedings to ensure the right to a fair trial and discuss with their client whether presence via telephone or video can substitute the right to be present at trial.<sup>19</sup> During trial, in any form, confidential communication, including discussion on health status, between the lawyer and the child must be guaranteed.
- At post-trial stage:
  - Focus on the child's rights for any "failure to protect confined youth from a likely COVID-19 outbreak."<sup>20</sup> "Children should be provided with a physical environment and accommodation conducive to the reintegrative aims of residential placement."<sup>21</sup> If the COVID-19 crisis conditions do not allow for any rehabilitative procedures, it cannot be fulfilling its purpose or meeting the best interest of children. If the COVID-19 conditions do not allow for rehabilitative procedures, then the children detained in such conditions are experiencing a limitation of their rights in terms of CRC Article 37(c) which requires that they are dealt with in a manner that takes into account the needs of persons of their age.
- At all stages:
  - Diversion should be considered at any stage prior to or during criminal proceedings, and non-custodial measures should be considered as an alternative to detention at every stage of the process.
  - When considering alternatives to pre-trial children, options may include commuting sanctions into a community service program, house arrest, electronic monitoring, probation check-in or other restrictions on freedom of movement that are not full deprivations of liberty.<sup>22</sup> During the pandemic, there may not be as many alternative care arrangements available, and some professionals who assist with these arrangements may not be available in person. It will be especially important to work with other disciplines (e.g., social work) to determine how to best place a child in the community until regular resources are available. See section below on multi-disciplinary engagement for additional details.

<sup>18</sup> See CRC art. 3 & 28 &.

<sup>19</sup> CRC art. 40 (2) (b) (iii)

<sup>20</sup> See *generally*, United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

<sup>21</sup> GC 24, para. 95(b)

<sup>22</sup> See CRC Art. 40 (4); GC 24, para. 19.

## Application of Public Orders

- It is critical for advocates/defenders to understand whether public orders for release or alternative/at-home custody apply to children. Although the nature of the pandemic places older prisoners and those with co-morbid conditions at heightened risk, arguments can be made regarding the mental health risks for children, and the clear priority that international law accords them.<sup>23</sup>
  - If orders are silent on application to children, consider whether those orders should be extended to children. An important objective of child justice systems is to support rehabilitation. Rehabilitation and restorative justice are still possible while COVID-19 protective measures are in place, through the use of online interaction and other technologies. Where this is not possible, deferment of diversion measures can be arranged.<sup>24</sup>

The rationale for release or home-based custodial arrangements is especially applicable to children.<sup>25</sup>
  - When one of the primary objectives during a pandemic is to lower detention center population, early release for children who have served partial sentences can be a viable solution.
  - Broad pardons, amnesties, and general mass release orders should be considered by decision-makers.
  - Courts and other decision-makers should have a duty to carefully review general release orders and determine whether they are required, or authorized, to release children from detention facilities.
  - Courts and other decision-makers should be open to hearing all arguments and evidence that alternative/at-home custody arrangements are in the best interest of the child, and examine how these arguments are bolstered when, not only fundamental liberties are at risk, but also, when incarceration would heighten the risk that a child would become ill from COVID-19.
- Understand and discuss with clients whether public orders for release apply to children in child welfare facilities (e.g., group homes, orphanages, etc.).
  - Depending on circumstances, sometimes there should be consideration of when a child should be released from a child welfare facility under the same rationale of a release order directed at other detention facilities (dependent on alternative arrangements being available, e.g., with family).
  - Social distancing measures should apply within all facilities to protect the health of children. Where those measures are not implemented, public orders interpreted in the best interest of the child, may require releasing children from the welfare facility.
- Understand whether public orders for release create a permanent or temporary resolution.

<sup>23</sup> See GC 24, para. 82.

<sup>24</sup> See "Restorative justice and COVID-19: responding restoratively during/to the crisis," European Forum for Restorative Justice.

<sup>25</sup> See GC 24, para. 82.

	<ul style="list-style-type: none"> <li>▪ Sometimes release should be permanent, because a temporary release that will result in re-incarceration may be more harmful to the child in the long-run.</li> <li>▪ Failure to abide by orders should not be grounds for re-incarceration, especially for street connected children.</li> </ul> <p>– Public orders aim to re-integrate children into society and implement alternative measures to re-incarceration. Thus, a public order should not be read to have the effect of re-detaining children or detaining new children.</p> <ul style="list-style-type: none"> <li>▪ Temporary orders that results in re-incarceration at some unknown time in the future may be more harmful to the physical and mental health of children.</li> </ul>
<p><b>Application of region or facility-specific measures and arguments</b></p>	<p>– The release of the child should always be done in a way which ensures his or her safety and health. It is the responsibility of authorities and States to ensure that these conditions are met. Region-specific measures enacted during the pandemic should consider how to safely release the child, and only in the most extreme circumstances should release be delayed during the pandemic.</p> <ul style="list-style-type: none"> <li>▪ Prosecutors, advocates and judicial officers should first consider fundamental children's rights principles that guarantee against deprivation of liberty. If, for example, children can cause harm to themselves or to others, then limited timebound detention can be considered as a last resort.</li> </ul> <p>– If release is not possible or would endanger the child more than detention due to regional or local situations, all legal and judicial officers should ensure increased health/safety measures (sanitation, distancing, etc.) for those who must remain in custody. Ensure the child's right to the highest attainable standard of health per the CRC, and that facilities are equipped with proper healthcare resources and safety measures to protect detained children.<sup>26</sup></p> <ul style="list-style-type: none"> <li>▪ All facilities housing children should meet this standard by addressing both physical and mental wellbeing.</li> <li>▪ Review guidelines from relevant health authorities and ensure facilities meet these requirements at a minimum. Guidelines from relevant health authorities may not be stringent enough to provide the highest attainable standard of health for detained children in particular locations. Children with pre-existing conditions (asthma, respiratory illness, etc.) are more likely to become seriously ill or die from COVID-19. If some children in the juvenile justice system in your jurisdiction are from poorer communities, they are more likely to have chronic illnesses such as asthma and diabetes and may be more at risk of serious illness from COVID-19.</li> <li>▪ Social distancing mandates are meant to protect all citizens in the wake of COVID-19, and courts should have a duty to monitor such facilities and make individual orders as necessary to protect the safety and health of children inside these facilities. While general visitation may have to be limited due to the pandemic, courts and facilities should prioritize establishing safe methods for children to visit and/or maintain contact with their families.<sup>27</sup></li> </ul>

<sup>26</sup> See "Interim Guidance: COVID-19: Focus on Persons Deprived of Liberty," Inter-Agency Standing Committee, March 2020.

<sup>27</sup> See CRC Article 37(c).

	<ul style="list-style-type: none"> <li>▪ Children require the provision of equal and timely access to basic preventive health services and education about COVID-19.</li> <li>▪ Children deserve regular screening programs and access to essential medications. At a minimum, it should be guaranteed that "the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."<sup>28</sup></li> <li>▪ A child always has the right to be free from discrimination.<sup>29</sup></li> <li>▪ The child's right to control one's health and body, including sexual and reproductive freedom to make responsible choices, must be maintained.</li> <li>- In extreme circumstances where juvenile detention facilities do not have an accurate accounting of the identities of every child in their care, emergency measures must be taken to advocate for the release of any child arrested or detained for non-violent offenses and "lost" in facilities, or children who have stayed longer than the complete sentence for the maximum crime for which they were detained.<sup>30</sup></li> </ul>
<p><b>Education and Multidisciplinary Engagement for Released Children</b></p>	<ul style="list-style-type: none"> <li>- Many children benefit from reintegration plans that protect the health and safety of any vulnerable population of children. Review jurisdiction-specific laws and inform the child of his or her rights upon re-entry. <ul style="list-style-type: none"> <li>▪ Inform the child of any laws related to his or her ability to find employment or housing.</li> <li>▪ Explain the conditions of release and what the child must do in education, probation, community service, restricted movement, etc.</li> <li>▪ Explain the child's obligations to the court out of custody and obligation to report to court/probation check-ins.</li> </ul> </li> <li>- Request that considerations of the child's release are understandable by giving directions orally and in writing (digital/internet communication rather than paper). <ul style="list-style-type: none"> <li>▪ Establish a written plan at the outset of the release, which will establish regular milestones and check-ins to ensure that re-integration of the child is successful.</li> <li>▪ With the child's permission, share it with the caretaker and/or family.</li> </ul> </li> <li>- Work together with other disciplines (social work, security forces, etc.) to ensure the child has access to all resources needed to establish successful re-integration. <ul style="list-style-type: none"> <li>▪ Evidence of the child's best interest may come from social workers, caseworkers, etc. Where children are in non-custodial care or with new</li> </ul> </li> </ul>

<sup>28</sup> CRC art. 3.

<sup>29</sup> CRC art. 2; *see also* United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Art. I, Sec. 4.

<sup>30</sup> *See* United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Art. IV, Sec. D; CRC art. 3(3); *The Standard Minimum Rules for the Protection of Prisoners*, Rule 13.

---

caregivers, ensure the shelter meets all relevant health and safety requirements.

- Homeless and street-dependent children, despite their unique circumstances, should never be discriminated against and unnecessarily detained only because they lack services. The greatest needs must be addressed with the greatest services. Child protection services, NGOs, and civil society organizations may be helpful to secure shelter for these children.
  - Public education is critical. It is helpful to all children to educate communities and deliver information about the needs, challenges and successful methods to address children reintegrating into society.
  - Post-release obligations on children and youth can be carried out through remote means. For example, "supervision of fulfilment of obligations set by a court (installation of electronic monitoring (EM) devices, alcohol and drug testing) [may be] carried out during home visits instead of at the office and probation staff wear personal protections."<sup>31</sup>
- 

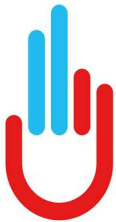
---

<sup>31</sup> See Council of Europe, *COVID-19 Related Statement by the Members of the Council For Penological Co-Operation Working Group* (Apr. 17, 2020).

# Baker McKenzie.



BUREAU  
INTERNATIONAL  
DES DROITS DES ENFANTS  
INTERNATIONAL  
BUREAU  
FOR CHILDREN'S RIGHTS  
OFICINA  
INTERNACIONAL  
DE LOS DERECHOS DEL NIÑO  
المكتب الدولي لحقوق الطفل



**AIMJF**

International Association of Youth and Family Judges and Magistrates  
L'Association Internationale des Magistrats de la Jeunesse et de la Famille  
Asociación Internacional de Magistrados de la Juventud y de la Familia



The materials and content provided on this report are for general information only and are not intended as legal advice. Although we strive to provide accurate and up to date legal information, we cannot promise it is error free or that it is suitable for your specific concerns. Therefore, you should contact an attorney to obtain legal advice for any issue specific to your situation. If you use the materials and information provided on this report or links to other websites, it does not create an attorney-client relationship between us or any providers of information you find on this report, and we take no responsibility for any information linked to this report.

The materials and content are provided as-is with no warranty of any kind. We disclaim all express and implied warranties, including the implied warranties of merchantability, fitness for particular purpose. Under no circumstances will we or our contributors be liable for any consequential, indirect, incidental, special or punitive damages or lost profits, whether foreseeable or unforeseeable, under any legal theory. Some states do not allow the exclusion of implied warranties or the limitation of incidental or consequential damages, so the above limitation and exclusions may not apply to you.

Baker McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

© 2020 Baker & McKenzie LLP and Terre des Hommes  
All rights reserved.