



CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY IN THE UNITED STATES OF AMERICA - CALIFORNIA: MEASURES, RIGHTS, PROCEDURE, PARTICIPATION

National Report for AIMJF's Comparative and Collaborative Research.

Niños por debajo de la edad de responsabilidad penal en los Estados Unidos de América - California: medidas, derechos, procedimiento, participación

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

Enfants n'ayant pas atteint l'âge de la responsabilité pénale aux États-Unies - Californie: mesures, droits, procédure, participation

Rapport national pour la recherche comparative et collaborative de l'AIMJF

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Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on children below the age of criminal responsibility. The article explains the applicable measures and the procedure adopted, the child's rights and his or her participation in the Protective and Justice System in the USA-California.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre niños por debajo de la edad de responsabilidad penal. El artículo explica las medidas aplicables, el procedimiento adoptado, los derechos del niño y su participación en el sistema de protección y de justicia en los Estados Unidos - California.

Résumé: Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur les enfants n'ayant pas atteint l'âge de la responsabilité pénale. L'article explique les mesures passibles d'application et la procédure adoptée, les droits des enfants et leur participation dans le système de protection et de justice aux États-Unis – Californie.

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational

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judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of measures, procedure, rights and participation of children below the minimum age of criminal responsibility.

This national report is based on a questionnaire prepared by AIMJF.

QUESTIONNAIRE:

1. California Law

1.1. What is the minimum age of criminal responsibility in your country (the **age of criminal responsibility** is the age below which a child is deemed incapable of having committed a criminal offense, it can



also be referred as age of accountability, **age of responsibility**, and **age of liability for children and it is different of the age when a person becomes an adult**)?

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1.2. Is there more than one minimum age of criminal responsibility? Which one? Is it possible to apply the ‘doli incapax rule’ in your country (possibility of demonstration that the child is sufficiently mature and capable to understand that the behavior was an offense and therefore could be criminally responsible)?

A child under 14 cannot be prosecuted in California unless it is proven that he knew that his act was wrongful.



2. age assessment

2.1. In case of application of the ‘doli incapax rule’, how is this assessment made? Is there a specific methodology for this evaluation? A protocol on how to evaluate? Who assesses the child? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?

The prosecution will put on witnesses to prove that the child knew the difference between right and wrong when he committed the act.

2.2. In case of necessity of age assessment (due to a lack of birth registration), how is this assessment made? Is there a procedure? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?

The child always has an attorney in juvenile court proceedings.

3. police intervention

3.1. In case a child under the minimum age of criminal responsibility commits an act considered as a crime, is he/she brought to a police station? Is it mandatory to do so? If not, in which situations is it necessary to be brought to the police station?

The child will usually be brought to the police station for formal procedure. He will then be released to a responsible parent.

3.2. In case the child is brought to the police station, what is expected from the police to do? What are the legal guarantees for the child in this context? Is it possible, in any circumstance, that the child be imprisoned, even for a very short time? In this case, how long is it possible for the child to be deprived of liberty?

The child will not be imprisoned.

4. measures

4.1. In case a child below the minimum age of criminal responsibility has committed an act considered as a crime, is it possible to impose any kind of measure? Which one?

The child may be petitioned in court as a dependent child of the court.



4.2. Is it possible to impose an out-of-home placement (such as alternative care, in institution or foster family; in health facilities, for instance)? in which circumstances? For how long?

Yes - if the parents are found to be incapable of caring for him. Services for the family will be instituted to help the family become ready to receive the child again

5. procedure

5.1. Who imposes such measures?

The judge.

5.2. Is there a legal procedure for the determination of these measures? What is the nature of these procedures? Can you describe it succinctly?

The procedures are similar to those in a child abuse case where the parents are found to have neglected the child.

5.3. Is it possible to adopt alternative resolution mechanisms in these situations, such as mediation or restorative justice?

Yes.

6. assessment

6.1. Is there any kind of assessment of the child for the imposition of such measures (on vulnerabilities, risk, rights violations)? Who assesses the child? Is there a protocol or guideline on how to assess the child? Can you please share it?

The child welfare agency will assess the child or refer to experts for the assessment

7. legal and procedural guarantees

7.1. What are the rights of the child in this procedure (legal and procedural guarantees)?

The child will be appointed an attorney for all of the procedures.

7.2. Does the child have the right to refuse any of these measures? Or to challenge in court any of these measures?

Yes, but through his attorney.



7.3. What happens if the child does not fulfill the obligations inherent to these measures?

The case will return to court and the judge will decide the next steps

8. the role of the justice system

8.1. Is it possible in your country that the justice system gets involved in these situations? In which situation (eg. to impose the measure or to review it, in case of resistance by the child or his/her family, or to impose some child protection order)? For what purpose? Which branch of the justice system is involved (youth court, family court, child protection court, criminal court...)?

The juvenile court will hear these matters.

8.2.. In case of involvement of the justice system, can you briefly describe the procedure?

There will be a petition filed on behalf of the child alleging that he needs the protection of the court because of his



behavior. The parents will be in court and often will be offered services to address the problems their child is experiencing.

8.3.. What are the rights of the child in this procedure? Does the child have the right to legal assistance? The right to appeal against any kind of decision?

Yes. The child will have an attorney and there is a right to an appeal to a higher court.

9. assistance or support

9.1. Besides the measures imposed to children, are there other kind of assistance available on a voluntary basis (social, psychological, medical)?

Whatever the child needs, it will be provided.

10. child participation

10.1. Is the child heard in this procedure? By whom? At which stage of the procedure?



Often the child will speak to the court.

10.2. Is the child heard more than once in this procedure? How many times? Every time the child is in court, he has the opportunity to speak. 10.3. Is there a protocol or guideline on how to hear the child in this situation? Can you please share it?

No protocol. The judge will enquire whether the child knows the difference between right and wrong and whether the child will speak truthfully.

11. legal implications

11.1. Is there any record of legal infringement committed by children below the age of criminal responsibility? When the child reaches the age of criminal responsibility, are these records taken into consideration?

In California the records of these proceedings are confidential and will be automatically sealed when the proceedings are concluded.

11.2. In case of damages, what kind of rights and remedies does the victim have regarding the child and the family? Besides financial reparation, does the victim have the possibility to have a say on the measures applied to the child?

If the child is young, the victims may have legal recourse against the parent. The child may be held financially liable, but the court will take into consideration the age and ability of the child to pay for damages.

12. reforms in progress

12.1. Are there ongoing reforms on this subject?

The restitution issue is pending before the legislature now. One idea is to have a restitution fund available for victims of crimes committed by young children.