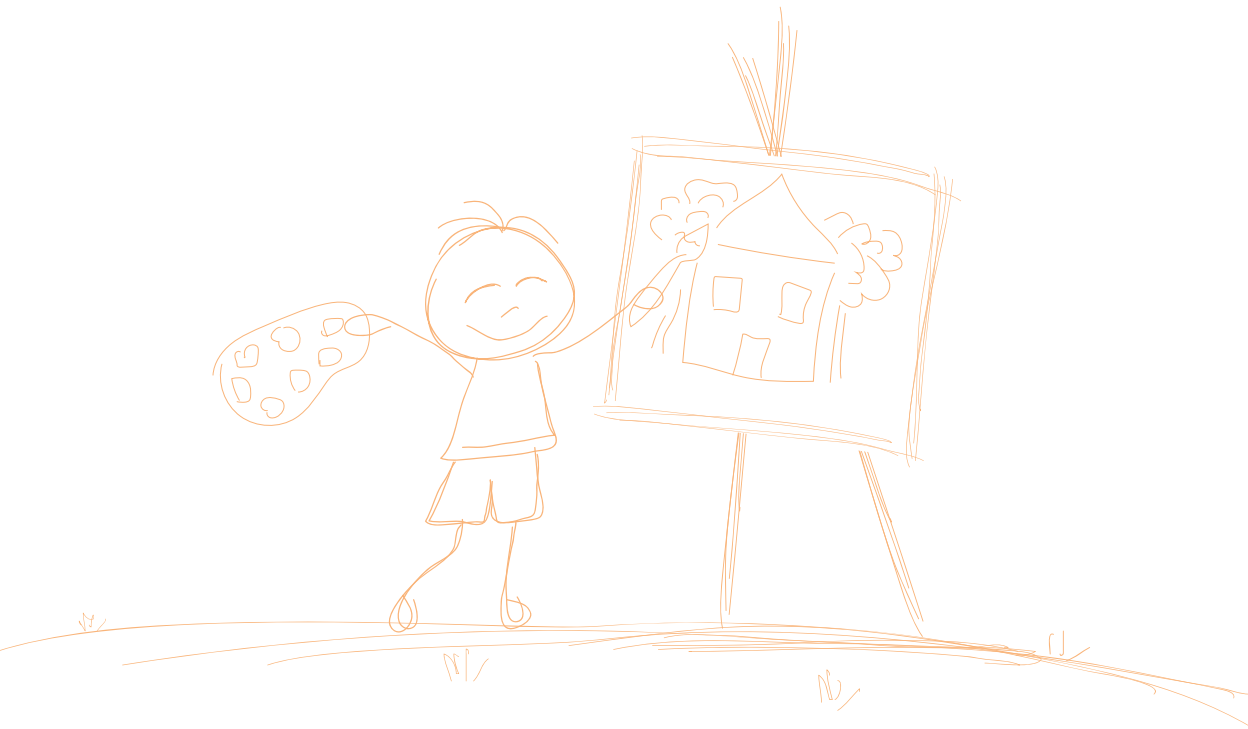


With Opportunities, Without Bars

Handbook for Applying Non-Custodial Measures in Jordan



Model of Action on Alternative to Detention Measures for Children in Conflict with the Law



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Acknowledgements

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Acronyms

A2D	Alternative(s) to Detention
ARDD	Arab Renaissance for Democracy and Development
CSO	Civil Society Organization
JC	Judicial Council
JJ	Juvenile Justice
JPD	Juvenile Police Department
NCFA	National Council of Family Affairs
NCM(s)	Non-Custodial Measures
MoJ	Ministry of Justice
MoSD	Ministry of Social Development
UNICEF	United Nations International Children’s Education Fund

Introduction

Modern criminal policies are based on the provision of an effective and protective environment for children in conflict with the law. They mainly rely on the provision of restorative justice components to children, including the provision of proper response and intervention to those children, the establishment of a justice system that includes suitable non-custodial measures (NCMs), and a referral system to refer children to stakeholders other than to the judicial system. These policies aim to remove the punishment approach from the penalty itself and to replace it with the term measure. This in turn makes the approach restorative rather than merely correctional.

The Hashemite Kingdom of Jordan has taken several steps to adopt this modern policy through the adoption of the Jordanian Juvenile Law No. 32 of 2014, which includes several NCMs at different stages of the judicial procedures. The NCMs avoid the detention of children in conflict with the law and reduce its negative effects on them. They also offer them with measures intended to increase their sense of responsibility, repair the damage caused from the act they committed and progressively reintegrate them safely to the society. In addition, the application of NCMs contributes to assessing the behavior of children in conflict with the law serving such measures. Indeed, the NCMs adopt the principle of individualizing the measure. The application of these measures allow for the development of a child specific plan that considers the child's circumstances and conditions at the individual, family and social levels. Which is in turn aligned with the child's level of maturity, awareness and sense of responsibility. These measures are also highly flexible, as the legislator gives the prosecutors and the judges enough room to choose the measure that is better serving the best interests of the child according to the restorative and child-friendly justice approaches.

The first of its kind in Jordan, this handbook introduces and provides clarity on the NCMs (also named, alternative measures for detention) within the Jordanian domestic law and applicable with international regulations and standards. It highlights the importance of alternative measures to ensure that more children deprived of liberty, or who would otherwise be deprived of liberty, are offered non-judicial chances to allow effective reintegration. This model can be used

as the basis for further policy documents, manuals and training program/s in this field under the umbrella of the concerned governmental institutions in Jordan.

It is advised that this Model of Action is read alongside with all child justice documents such as the "Situation Analysis of the Juvenile Justice" developed by NCFA and UNICEF, and Sa'ed handbook for community service alternative measure developed by Duret Al-Manal company for trainings and development .

Finally, this handbook has been developed within the framework of Tdh Access to Justice Program in Jordan, which combines axes on operations, policy, advocacy and research as well as quality and accountability, with the aim of creating lasting and meaningful changes in the lives of children and youth in conflict and in contact with the law. Child-friendly justice is the key cornerstone of the Tdh Program focused on contributing to develop and improve, together with the key national stakeholders, justice systems adapted to children, the restorative approach and promoting the access and effective implementation of NCMs, among others.

Who can Benefit from this Handbook?

This handbook was prepared as a procedural guideline and a practical tool for the different stakeholders in the Juvenile Justice System in Jordan who are involved in the application of NCMs at different stages of the proceedings:

1. Juvenile Police
2. Juvenile Prosecutors
3. Sentencing judges
4. Executive judges
5. Behavioral monitors
6. Civil society organizations
7. Professional Associations
8. Juvenile Lawyers

Rationale

The NCMs for children in conflict with the law are identified as a set of legal alternatives that replace deprivation of liberty/custody judicial decisions. They are issued by prosecutors at the pre-trial stage and by judges at the trial stage. Despite the numerous benefits of their application for the child offenders, the victims and the community as a whole, their application in Jordan is not yet completed due to the need of law enforcement agencies, juvenile and child protection actors, to have available specific standards that facilitate and organize the different steps according to the law (This includes specifying what is the suitable measure for a specific case? What are the elements of decision-making that need to be considered? What are the clear roles of the actors involved in the application of the measures? What is the concrete infrastructure required to properly implement the NCMs and properly monitor them?).

The handbook has been developed in coordination with all the key stakeholders in the country to bring clear procedural pathways that can significantly enhance the application of NCMs for children in conflict with the law. It also aims towards achieving restorative and child-friendly justice goals.

Goals

This handbook has been developed with the following objectives:

- To clarify the selection criteria and application of NCMs at the pre-trial, trial and post-trial stages, in accordance with the provisions of the Jordanian Law;
- To activate the principle of the child's best interests within the process of applying NCMs at different judicial stages;
- **To structure in detail the different stages in which NCMs can be applied, bridging the gap resulting from legislative shortcomings in some cases;**

- To specify the roles and tasks legally assigned to each law enforcement agency and service provider towards activating participatory and interdisciplinary approaches between them;
- To present a number of good practices applied in other countries in the region to be used as a reference in Jordan.

Methodology

Within the development of the handbook, the following methods have been applied:

- Literature desk review on NCMs including: international conventions, standards and specialized research, as well as revision of the Jordanian legislations relating to juvenile justice system, NCMs, and child protection legal instruments, including different laws and secondary legislations. Section 2 contains a summary of the most relevant ones for this handbook.
- Several meetings/interviews with relevant stakeholders were held: MoSD (Director of the Juveniles' Directorate and the behavioral monitor), the MoJ (Juvenile Prosecutors, Juveniles Judges) and NCFA.
- A joint technical workshop gathering all relevant key stakeholders in the country, (UNICEF, MoSD, JC, MoJ, JPD, Questscope, CSOs, ARDD and Duret Al Manal Company). The feedback received was thoroughly incorporated to the handbook that was then completed and launched in a national event.

Key Concepts and Legal Terms

The following are key concepts and legal terms used throughout the handbook:

- 1. The Law:** The Juvenile Law No. 32 of 2014.
- 2. Child:** any person who is younger than eighteen years of age.

3. Adolescent: anyone older than twelve and younger than fifteen.

4. Boy/Girl: anyone older than fifteen and younger than eighteen.

5. Juvenile¹: A child in conflict with the law or in need of protection and care, as included in the provisions of the Jordanian Juvenile Law.

6. Child in Conflict with the Law: any child who comes in contact with the justice system as a result of being suspected, accused of committing an offence or being an alleged offender, in contravention of the provisions of the Jordanian Penal Code, the juvenile behavioral monitoring law or any other punitive articles.

7. Children in need for protection and care: any child who suffers from social conditions that affect their upbringing and life, place him/her at risk or with strong evidence that pushes him/her to commit a crime without necessarily having criminal behavior, according to what's stipulated in article 33 of the Jordanian Juvenile Law.

8. Age of criminal responsibility: the minimum age when the child must bear the consequences of violating the law whereby, s/he will be subjected to the appropriate formal criminal proceedings as stipulated by the law. Each person other than the guardian shall provide care for the juvenile or monitor him/her in accordance with the legislations in force.

9. Contravention: an unlawful act punishable by imprisonment for a duration ranging from twenty-four hours to one week, or a fine between five and thirty Jordanian Dinars.

10. Misdemeanor: an unlawful act punishable by imprisonment for a period

¹ The Jordanian legislator used the term juvenile as a word for children wherever mentioned in the law, as the Juvenile Law defines the juvenile any person who is under eighteen years old, in reference to the age stage not for the purposes of giving the child a breach of the law. The recommendations of the Committee on the Rights of the Child in its General Comment No. 24 of 2019, which urges States not to use phrases or designations that designate the child as a violation of the law, which requires the amendment of the name of the law and the definitions contained in it to replace the term juvenile that was socially associated with the violation of the word child, Light Mode The current Jordanian juvenile law will be used wherever mentioned in the Guide in the same sense as the law.

between one week to three years, or for a fine between thirty and two hundred Jordanian Dinars.

11. Felony: a punishable crime punishable by law where the penalty is one of the following: death penalty, life in prison with hard labor, life in prison, temporary hard labor, or temporary imprisonment.

12. Detention: depriving the child liberty during the pre- trial and trial stage at juvenile centers in accordance with a judicial decision issued by the competent body.

13. The Non-Custodial Measure(s): a set of measures that replace deprivation of liberty of the children who are formally proceeding through the justice system, during both the pre-trial stage before the juvenile prosecutor according to Code Panel Procedures and the trial stage before the sentencing judge according to the Juvenile Law, Throughout this handbook and according to the Juvenile Law, the NCM(s) term is used interchangeably with A2D.

14. Juveniles Education Center: the established or adopted center for arrested children who are allegedly in conflict with the law during the pre and trial stage, to provide psychological, social and education services, to reintegrate them within their societies.

15. Juvenile Rehabilitation Center: the established or adopted center for sentenced children in conflict with the law to provide psychological, social and education services, to reintegrate them in their societies.

16. Juvenile Care Center: the established or adopted center for accommodating children in need of protection or care. Training and education are provided to the children in the care centers, and for training and educating them.

17. Juvenile Police: the specialized for Juvenile affairs which falls under the Public Security Directorate.

18. Behavioral monitor: MoSD's employee who is responsible for monitoring the behavior of children in conflict with the law in accordance with the Jordanian Juvenile Law and the relevant regulations during the trial and post-trial legal procedures.

19. Executive Judge: the judge who supervises the enforcement of the final decision issued by the competent Juvenile Courts.

20. Juvenile's Custodian: any person who has been entrusted with the juvenile's care order according to a court verdict, which includes the custodial and the guardian.

21. Alternative Family or Foster Family: any suitable family other than the child's biological family, vested by MoSD or the competent court with the responsibility of caring for any child under the age of eighteen who needs temporary or permanent protection or care for a limited or unlimited period².

22. Rehabilitation: refers to a broad array of psychological programs and educative services that are designed to assist offenders in addressing a range of needs related to their behavior and achieving a more productive and satisfying lifestyle. *Rehabilitation is part of reintegration*, but concepts are not the same and should not be used interchangeably. Rehabilitation happens while judicial proceedings are still ongoing (pre-trial detention) and/or after sentencing (imprisonment, A2D).

23. Reintegration: refers to the process of reentry into society or community by children in contact with the law. *Reintegration may occur immediately or gradually at the final part of rehabilitation*; it could be while exercising an A2D measure or once the sentence is completed.

²United Nations Standard Minimum Rules for non-custodial measures (The Tokyo Rules)

First: The Framework of Non-Custodial Measures for Children in Conflict with the Law

According to international standards, NCMs are “any decision taken by a competent authority to subject a suspect, accused or convicted person in a crime to a set of conditions and commitments that do not include imprisonment. Such a decision can be taken at any stage of the criminal justice process.”³

1. The International framework of non-custodial measures

The international community sought to include NCMs in different international standards due to the effects of imprisonment resulting from excluding children in conflict with the law from their natural social and living environment. These factors could cause the children’s inability to adapt in their communities and, thus, potentially exacerbating the risk of recidivism. Such international standards include:

A. The United Nations Convention on the Rights of the Child adopted in 1989, which established four key principles upon which the rights of the child in the convention were based, including the rights of children in conflict with the law: (1) the right to life, growth and survival (2) the right to equality and non-discrimination (3) the best interests of the child (4) respecting the opinions of the child.

B. The United Nations Guiding Principles (Tokyo Rules) of 1990, which called for the use of A2D measures. These rules have regulated the scope of implementation of the A2D measures, the legal guarantees related to them and the rules of their implementation in terms of supervision and judicial review.

C. The United Nations Standards Minimum Rules for the Administration of Juvenile Justice (Beijing) of 1985, which are considered a constitution for children in conflict with the law’s judiciary. They stress on the importance of having a special judicial system for children in conflict with the law. These rules are divided into six parts as follows: general principles, interrogation and

³ United Nations Standard Minimum Rules for non-custodial measures (The Tokyo Rules)

prosecution, prosecution and closing cases, treatment outside correctional/rehabilitation institutions, treatment inside correctional/rehabilitation institutions, research and planning and developing reforming policies.

D. The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) of 1990, which set standards for preventing the delinquency of children in conflict with the law, including measures for the protection of those abandoned, neglected and mistreated, living in dire conditions, or subject to social risk.

E. Guidelines for Action On Children In The Criminal Justice System (The Vienna Guideline) of 1997, the aim of the guideline is to implement the Convention on the Rights of the Child and to pursue the goals set forth in the Convention with regard to children in the context of the administration of juvenile justice, as well as to use and apply the United Nations standards and norms in juvenile justice and other related instruments, and to facilitate the provision of assistance to States parties for the effective implementation of the Convention on the Rights of the Child and related instruments.

F. UN Committee on the Rights of the Child's General Comment No. 24 (2019) on children's rights in the child justice system, which urges states not to use phrases or designations that designate the child as a violation of the law, which requires the amendment of the name of the law and the definitions contained in it to replace the term juvenile that was socially associated with the violation of the word child. The current Jordanian juvenile law wherever mentioned, will be referred to as "the law" in the handbook.

G. UN Committee on the Rights of the Child's General Comment No 12 (2009) the right of the child to be heard: which states that parties shall assure to the child, who is capable of forming his/her own views, the right to express those views freely in all matters affecting the child, and to be provided the opportunity to be heard in any administrative, judicial proceedings affecting the child.

H. UN Committee on the Rights of the Child's General Comment No 14 (2013) the right of the child to have the child's best interests taken as a primary consideration: defines the requirements for considering the child's best interests, in

judicial and administrative decisions as well as all other actions concerning the child, and provides a framework for assessing and determining the child's best interests.

2. The Jordanian Legislative Framework on non-custodial measures

The regulations on the Application of non-custodial Penalties of 2015, defined non-custodian penalty as: "any measure that does not involve deprivation of liberty decided by the competent court to the juveniles, in accordance with the juvenile law."

The Jordanian Constitution mandates the state to protect childhood in all forms and obligates it to protect the children from any abuse or exploitation. In addition, a number of Jordanian legislations regulate the NCMs aiming to change the punitive mindset. Such legislations include:

A. The Jordanian Juvenile Law No. 32 of 2014: the law stipulates on the best interests of the child and the importance of considering it in all non-judicial and judicial procedures in which they participate/are subject to. The law also includes provisions on the application of NCMs on children in conflict with the law and those in need of protection or care.

B. Legislations issued in accordance with the Juvenile Law: many instructions were issued following the promulgation of the abovementioned law in order to clarify some key aspects that must be applied in child protection and juvenile justice in general. Other instructions were issued to clarify the methodology through which NCMs are applied, such as:

- *The Regulations on the Application of non-custodial Penalties of 2015.*
- *The Regulations on Identifying the Requirements and Information that must be available in the behavioral monitor's report of 2015.*
- *The Regulations on the Rehabilitation Programs for the Parents of the Juvenile in Need of Protection or Care of 2015.*

C. The Code of Penal Procedures No. 9 of 1961 and its amendments: the law includes some NCMs that could be applied for children in conflict with the law

at the pre-trial stage, including: house arrest or restriction to a certain geographical area decided by the prosecutor or the court.

D. The Vocational Training Institution Law No. 11 of 1985: the law can be applied regarding the A2D measure foreseen in Article 23 of the Juvenile Law: Vocation Training. It clarifies vocational training procedures and conditions.

E. The Childhood Care from Birth to the Age of Eighteen Regulation No 34 of 1972: the regulations include the conditions and procedures for foster families, and the institutions to which the child in conflict with the law is referred to.

F. The Protection from Domestic Violence Law No. 15 of 2017: the law includes provisions on the acts that are considered domestic violence, which are crimes committed against natural persons by a family member. Such crimes are not within the competence of the criminal court. A child subject to violence and abuse in accordance with this law is a child in need of protection and care in accordance with the juveniles law.

G. The Juvenile Behavioral Monitor Law No. 37 of 2006: which determines the acts that are considered as crimes if they are committed by a child such as, buying tobacco or drinking alcohol, while they are not considered as crimes when committed by adults.

Second: Non-Custodial Measures and their Application during the Pre-trial Stage (before the Juvenile Prosecutor)

The main objective of applying non-custodial measures law articles during the different judicial stages, either before the prosecutor or the sentencing judge, is to gradually transform the penal ideology based on the application of legal provisions that stipulate on custodial measures and their negative impact on the exclusion of the children in conflict with the law from their natural environment. Justice professionals are key to appropriately apply these measures and to transform its approach for the benefit of the reintegration of the child in conflict with the law.

1. The roles and responsibilities legally assigned to each governmental and non-governmental institutions for the application of NCMs at the pre-trial stage

Juvenile Prosecutor: although the Jordanian legislator does not give the prosecutor in the Juvenile Law any jurisdiction to apply the NCMs during the pre-trial stage directly, Article (43) of the Juvenile Law refers to the provisions of the Code of Penal Procedures in cases that are not addressed in it. Accordingly, Article (114/repeated) of the Code of Penal Procedures is applicable to children that are alleged offenders and may be activated as an alternative to pre-trial detention before the juvenile prosecutor, being that *resorting to arrest is an exceptional measure and may not be used unless in the following cases:*

- *If detention is the only mean to maintain evidence or the physical features of the crime.*
- *To prevent coercing witnesses or victims.*
- *To prevent the defendant from making contact with accomplices or instigators in the crime.*
- *If the detention is mandated to protect the defendant.*
- *To prevent the defendant from fleeing.*
- *To avoid any disruption to public order resulting from the crime.*

Behavioral Monitor: submit a detailed written report to the juvenile prosecutor before proceeding with the interrogation of the child. The report must include all the information relating to the children's domestic conditions, the environment he/she was raised in, their education status, and surrounding social and financial conditions, including the effect of arresting or releasing the child on his/her education.

Juvenile Police Officers: supervising the extent of the commitment of the child to the alternative measure which is restricted to a certain geographical area for a certain period of time, as decided by the juvenile prosecutor. This shall be done after a warrant is sent by the juvenile prosecutor to the juvenile police which includes the following information: (1) the decided measure, (2) the duration of the measure and (3) the child's address. After the duration of the measure lapses, a letter is sent to the juvenile prosecutor by the juvenile police clarifying the commitment of the child to implement the measure.

2. The NCMs at the pre-trial stage

Deciding on which NCMs is to be applied at the pre-trial stage is particularly important since: (i) children have not been sentenced yet and thus are only alleged offenders, (ii) they cannot be referred at this stage to juvenile rehabilitation or education centers and (iii) it is essential to consider that the detention of children should only be used as a last resort measure and only in exceptional cases depending on the act allegedly committed and the justified circumstances that led to it.

Article (114/repeated) from the Code of Penal Procedures stipulated a number of NCMs that juvenile prosecutor may rule in certain conditions to replace detention during the pre- trial stage with one of the followings:

- Electronic monitoring.
- Travel ban.
- **House arrest or restriction to a certain geographical area decided by the prosecutor or the court and assigning the police to verify compliance.**
- Depositing a certain amount of money or submitting bail, where the

amount of each is decided by the juvenile prosecutor or the court.

- Prohibiting the defendant from attending to certain locations.

*It is important to note that some of these alternatives may not be suitable to be applied to alleged children offenders. For instance; the deposit of a certain amount of money is not only forbidden according to the international standards, but also is discriminatory towards children whose families do not have the financial means to pay these amounts. Other measures, such as electronic monitoring requires technology that is not in place in all cases. **Hence, the measures of house arrest and the restriction to a certain geographical area are the ones applied by the juvenile prosecutor for most cases concerning children.***

Conditions

- ✓ The criminal act should not be repeated, meaning that the defendant must not have violated the law previously (for this to be his/her first case).
- ✓ The committed act should be a misdemeanor.



Good Practice: In Algeria

The judicial control system is applied as an alternative to precautionary pre-trial detention. The investigation judge may order judicial control over the accused if the charges may lead to incarceration, provided that the accused is committed to a number of terms that ensure his appearance before the judiciary. The Algerian law also includes other alternatives to pre-trial or during trial detention, for instance the acknowledgement to appear before the court. Although the application of the abovementioned alternatives in the Algerian law is left to the discretion of judges, they are indeed considered the due process by practice. The Algerian legislator obligates judges to a number of restrictions in the application of detention, being the most important to reason their decision for pre-trial precautionary detention.

Supervision, Follow-up and Implementation Mechanisms

- ✓ The juvenile police officers will supervise the child through home visits, to ensure the child's commitment, according to the warrant sent from the juvenile prosecutor that states the period for implementing the house arrest and the restriction to a certain geographical area measure.
- ✓ The juvenile police officer will send a warrant to the juvenile prosecutor to notify that the child completed implementing the measure, the juvenile prosecutor will then issue a verdict that the measure is implemented and will keep the child released.
- ✓ The arrest provisions and appeal procedures are applied during the pre-trial for the arrest and the NCMs, accordingly, if the investigation procedures require the continuation of the house arrest measure the juvenile prosecutor is subjected to the provisions or renewal, extension and detention arrest period as stipulated in the Juvenile Law.
- ✓ The juvenile prosecutor or the juvenile court may automatically or upon the request of the juvenile prosecutor or the accused terminate, add or amend at least one of the measures.



Violating the Implementation of Pre-Trial NCMs

If the child violates the house arrest measure or the restriction to a certain geographical area as decided by the juvenile prosecutor or the court, or violates any other measure as stipulated in the same article, the Code of Penal Procedures law allows the juvenile prosecutor or the court to arrest the child until the trial is organized.

Third: Non-Custodial Measures and their Application during the Trial and Post-Trial Stage (Judicial Decision at the Court Level)

The main objective of applying the NCMs during the trial stage for the children in conflict with law is to keep them away from the judicial apparatus and more concretely out from deprivation of liberty in order to offer a child-friendly pathway for reintegration that can include rehabilitation when needed. It is also a way to strengthen their sense of responsibility towards the act committed. To ensure the success of the process, joint coordination efforts between the different professional parties involved is needed, including at the post-trial stage when the non-custodial measure sentence by the judge is applied.

1. The roles and responsibilities legally assigned to each governmental and non-governmental institution for the application of non-custodial measures at the trial and post-trial stages

Sentencing Judge: has the authority to hear and decide the court cases, accordingly the Jordanian legislator gives the juvenile's sentencing judges broad authority in selecting the NCM as an enforcement of the principle of freedom in decision making and the principle of individualizing the penalty. In addition, the Jordanian Juvenile Law and the Code of Penal Procedures set forth the following criteria for the sentencing of a NCM at the trial stage (see p.21).

Behavioral Monitor: prepares reports on the situation of the child at different stages of the sentencing period and the application of the non-custodial measure as the following:

- Submit a detailed written report to the juvenile prosecutor at the beginning of the investigation that includes information on the status of the children in conflict with the law and his/her family as well as his/her surrounding conditions (financial, social, educational, etc.). The behavioral monitor also submits reports to the sentencing judge on a needs' basis.

Criteria for the sentencing of a NCM at the trial stage according to the Jordanian Juvenile Law and the Code of Penal Procedures

Age Group	Committed Act	Original Penalty	Suitable Measure
Boy / Girl	Misdemeanors that require imprisonment	Placement in a juvenile home for a period that does not exceed one third of the period stipulated in the Penal Code.	If the mitigating circumstances are taken into account, the court may decide on any measure stipulated in article (24) of the Juvenile Law
Boy / Girl	Contravention	–	Reprimand
Adolescent	A felony that is penalized by temporary hard labor or imprisonment for at least one year and a maximum of three years	Placement at a juvenile home for at least one year and a maximum of three years.	If the mitigating circumstances are taken into account, the court may decide on any measure stipulated in article (24) of the Juvenile Law
Adolescent	Misdemeanors	–	The court is bound to issue one of the measures stipulated in article (24) of the Juvenile Law
Adolescent	Contravention	–	Reprimand

- Liaise between the Juvenile Court and Juvenile Rehabilitation and Education Centers.
- Attend interrogation sessions with the children in conflict with the law before the juvenile prosecutor and the sentencing judge.
- **To realize the best interests of the children in conflict with the law, there must be constant communication between the juvenile prosecutor, the sentencing judge and behavioral monitor.**
- Advise the sentencing judge on the best measures for the child through the recommendations/reports submitted.
- Organize the child care plan of the decided alternative measure between the judge, the children in conflict with the law or his/her parents, caregivers or guardian and the organization/association where the measure is to be implemented.
- Supervise the children in conflict with the law throughout the implementation of the measure through assignment by the executive judge and submit the necessary follow-up reports to him/her.
- Coordinate with the liaison officer of the organization or association where the measure is implemented regarding all implementation procedures.
- **Submit a request to replace the organization or association where the measure is implemented to the executive judge in case the children in conflict with the law's place of residence changed, the child was subject to abuse or exploitation during the implementation of the measure or if the organization changes its program.**
- Submit the follow-up reports that include all observations and recommendations to the executive judge during and at the end of the measure's implementation. Abide by the instructions that identify the requirements and information that need to be available in the behavioral monitor reports, such as field visits to the children in conflict with the law's family.

Types of reports prepared from the behavioral monitor

Comprehensive reports: these reports are submitted regarding children in conflict with the law and children in need of protection or care. They include the personal information of children and their place of residence, as well as information on the environment they are raised in, their domestic conditions, their surrounding economic and social conditions, their health status, their education and the school they go to if any. *They are submitted to the juvenile prosecutor and the sentencing judge assigned to the case.*

Follow-up reports: these reports are submitted during the implementation of the non-custodial measure of the child in question. They include information on the commitment, progress and attitude of the child during the implementing of the measure, on the referral of the child released from the Juvenile Rehabilitation Center to the Juvenile Care Home, etc. *The requirements of such reports are based on request from the juvenile prosecutor or the sentencing judge at stake.*

Key factors to be considered when the behavioral monitor prepares reports, in order to ensure the selection of a suitable non-custodial measure for the children in conflict with the law:

- The child must be of the age group that may be sentenced with the measure.
- The unlawful act committed must be one of the acts where NCMs apply.



Good Practice: In Morocco

The Moroccan law stipulated that the role of the sentencing judge does not end after s/he issues his final verdict applying one of the measures. S/he also has a follow up role to ensure the rehabilitation of the child within his community. In addition, the broad power given to the sentencing judges enables him/her to choose the right measure and to change the measure according to the best interests for the child and his/her circumstance.

- The personal conditions of the child in terms of gender, health and educational conditions, family background/current situation, etc. must be considered.
- The children in conflict with the law's confession to the crime attributed to him/her.
- The existence of mitigating circumstances, such as the relinquishment of personal right, the minority of the damage resulting from the crime, the child's efforts to remedy the damage and the child's contribution in committing the unlawful act.

The Executive Judge: supervise the enforcement of the final verdict on the NCM issued by the sentencing judge. Based on the Jordanian Juvenile Law and the regulations on the Application of non-custodial Penalties of 2015, executive judge's tasks include:

- Monitor the implementation of any measure the child in conflict with the law is sentenced to.
- **Organize a program between the child offender, his/her guardian, parent or caregiver with the behavioral monitor and the organization/ association concerned. The program identifies the nature of the measure and the implementation mechanism, including the time for implementing the measure when required (e.g. community service and/or enrollment in rehabilitation programs).**
- Continuously verify that the children in conflict with the law comply with the conditions of implementing the decision by assigning the behavioral monitor to supervise him/her and submit the necessary follow-up reports.
- Replacement of the behavioral monitor in case he/she is not committed to the performance of the supervision duties assigned.
- Replacement of the organization where the measure is implemented upon the request of the children in conflict with the law or the behavioral monitor.

- Extend the duration for the implementation of the measure if the children in conflict with the law reach the age of eighteen before the duration of the measure ends.
- Extend the placement of the sentenced children in conflict with the law who reach the **age of eighteen** at the Juvenile Rehabilitation Center until they reach the age of twenty in order to complete educative, vocational training or rehabilitative measures upon a written request from MoSD.

A distinction must be made between the role of the sentencing judge and the executive judge during issuing and implementing the alternative measure



Sentencing Judge

The sentencing judge determines the organization/ institution in which the measure will be implemented.

Executive Judge

Identifies the period for implementing the alternative measures, according to the implementation hours issued from the sentencing judge.

The Civil Society Organizations/ Associations: which are assigned to take in children in conflict with the law to implement the NCMs verdicts:

- A Memoranda of Understanding to be signed with the MoSD which determines the roles, responsibilities and concrete NCMs' programs for each organization.
- Assignment of a focal point inside each organization to supervise the implementation of the NCMs.
- Opening a file for each child including a copy of the judicial documentation including the conditions set for the implementation of the NCM sentenced.

- Submitting regular follow up reports to the behavioural monitoring officers regarding the implementation of the measures, as well as any challenges and/or achievements. A final report should be submitted as well, once the measure is completed.

The conditions for the organizations/associations where NCMs' sentenced are to be implemented



- To be legally licensed at the competent authorities (accreditation).
- To be engaged in the provision of service for public benefit.
- To provide a safe and child friendly environment for children.
- To have suitable programs for children in conflict with the law, aligned with their education.
- To have trained staff to accompany and supervise children in conflict with the law.

Juveniles Lawyers/ Legal Aid: Children in conflict with the law should be provided with child-friendly specialized legal aid to guarantee all their rights since their arrest and until a final decision is made.

Accordingly, article 17 of the Juvenile Law stipulates that *“the trial of juveniles shall be confidential, otherwise it would be null. Only the behavior monitoring office, the lawyer and parents, guardian or caregivers may attend the trial based on the need, and whomever has direct relation to the case and the court decides to have present.”* In addition, article 21/a of the same law stipulates that *“the court shall appoint a lawyer for the juvenile in **criminal cases** if a lawyer is not present or the juvenile is unable to appoint one, the lawyer remunerations shall be paid from the state treasury in accordance with the Code of Penal Procedures.”* Paragraph b of the same legal provision states that *“the lawyer representing the juvenile shall attend all investigation and trial phases.”*

Finally, Article 22 clarifies that the children in conflict with the law cannot not be tried without the presence of his/her lawyer, who, among others, shall assist in clarifying the circumstances of the child and the reasons behind him/her

committing the crime; those may reflect on the court's decision in selecting the most suitable NCM for him/her.

The legal aid to be provided by the lawyer to the children in conflict with the law must at least include the following information:

- Clarifying the legal effects of implementing the NCMs to the child and his/her parents.
- Inform the child and his/her parent of his/her rights, such as the right to be heard and for his/her opinion to be taken into account and considered, his/her right to privacy and confidentiality, his/her right to appeal judicial decisions and his/her right to defend him/herself if there is a decision to nullify the non-custodial measure and implement a penalty of imprisonment instead.
- Assist the children in conflict with the law in filing a complaint in case any of his/her rights are violated during the implementation of the measure and assist him/her in defending him/herself if there is a hearing to nullify the measure and implement a penalty of imprisonment instead.
- File judicial appeals before the competent bodies regarding the imprisonment decision against the NCM or in case there is rejection to end or replace the NCM.
- Continuously coordinate with the behavioral monitor, including advising on the legal elements to be reflected in the behavioral monitor's follow-up and final reports.



Good Practice: In Egypt

The Egyptian Law on the Child stipulates that legal aid must be provided in both the investigation and trial stages regardless whether the crime committed by the children in conflict with the law is a felony or misdemeanor.

Children in Conflict with the Law's parents/guardians/caregivers: article (5/1) of the regulations on the Application of non-custodial Penalties of 2015 stipulates that *"the parents, the children in conflict with the law, their guardians or caregivers should acknowledge implementing the NCMs decided by the sentencing judge and build a relation of communication and respect with professionals working with the child such as the sentencing judges, prosecutors, behavioral monitor and lawyers."*

The family has a key role in the implementation of the NCMs through encouraging, accompanying and monitoring the children in conflict with the law. In order to activate the family's role in this regard, they need to attend before the competent court and acknowledge before the judge to implement the monitoring mechanisms ordered by the judge.

The involvement of the biological or alternative/foster family is important in two aspects: first, it increases their responsibility towards their child who violated the law in terms of accompanying and monitoring him/her after the measure is decided, thus avoiding repetition of the unlawful act, or providing him/her with other rights, such as education and health care. Second, the family could also be a source of positive support for the child in some cases, provided that they implement their responsibilities and cooperate with different justice and child protection institutions to be actively involved in the child's reintegration, including their rehabilitation. However, they might have a negative impact at times, and such instances, they should be excluded from the implementation plan of the NCMs by the judges.

2. The criteria for selecting non-custodial measures at the trial stage, and the guarantees that need to be considered

The Jordanian Juvenile Sentencing Judges have broad discretion in the selection of the type and duration of the NCMs at the trial stage, as the principle of existential conviction prevails within the scope of the law. However, such discretion is not absolute; it is conditioned by criteria that the judges and different governmental and non-governmental institutions/organizations specialized in applying NCMs must consider. This includes the following legal guarantees for the children in

conflict with the law in accordance with the Jordanian Juvenile Law and the Instructions on the Application of NCMs approved in 2015:

- **Assessment of the children in conflict with the law:** the competent court may not issue its decision until the background and living conditions of the child are examined, as well as the circumstances in which the crime was committed. Such an assessment must be conducted promptly after the arrest of the child. Should the competent court have reasonable justifications to believe that the child suffers from physical disease or mental disorder, psychological disorder, emotional disorder, learning difficulties or mental disabilities, if the child is a repeat offender, and/or in case the child commits a serious violent crime, additional and more specialized assessments by qualified professionals/experts should be conducted.
- **Confidentiality:** it refers to the duty of an individual to refrain from sharing private information with others, **unless consent of the other party is granted, given an imminent and serious risk may take place.** There are rules and regulations which place restrictions on the circumstances in which a professional, such as a doctor or attorney, may divulge information about a client or patient, and other situations may be deemed confidential by the use of a contract.
- **Proportionality:** the NCM issued in the case must be proportional with the damage caused, severity of the crime, the children in conflict with the law's liability, the victim's needs and in alignment with the public safety/ social peace.
- **Identifying the severity of the crime/unlawful act and the children in conflict with the law's liability:** the competent court must take into account the damage caused to the victims and whether it was intentional or reasonably anticipated, to what extent has the child participated in the crime, as well as any other mitigating or aggravating circumstances related to the child offender or the unlawful act. **The court must also take into account any effort made by the children in conflict with the law towards the reparation of the damage caused to the victim or the society.**

- **Repetition of the unlawful act:** the conviction of children in conflict with the law in previous offences must not be taken into account. **Children are not considered repeat offenders in the legal sense**, and repetition of the crime must not be considered an aggravating circumstance. However, this does not prevent the competent court from taking the previous unlawful actions of the child into account in identifying the suitable measure that is proportionate with the gravity of the repeated crime.
- **Meeting legal conditions:** the issued decision must meet the conditions stipulated in article (182) of the Code of Penal Procedures, in terms of including sufficient reasoning, the legal article that applies to the act and whether the decision can be appealed or not.
- **Taking legal provisions into account:** the aforementioned criteria are limited to the case where the law grants judges the discretion in the selection of the NCMs. In some cases, the Jordanian legislator granted judges the discretion in choosing between a penalty and a NCM on one hand and selecting the NCMs on the other hand.
- **Taking the children in conflict with the law's dignity into account:** the parties of the Juvenile Justice System must treat children humanely and without any degradation, insult or humiliation. They must be treated with dignity; this principle must be protected throughout any contact with child offenders.
- **The principle of legitimacy:** NCMs must be clearly stipulated, defined and identified in a law in force.
- **Individualization of the measure:** the judge must take into account while selecting the measure the personal circumstances of the child: gender, health conditions, maturity, domestic and environmental conditions, age, their understanding of the crime they committed, etc.
- **The principle of legality:** the restrictions imposed on juveniles may not exceed what is allowed by law or what is included in the competent court's decision.

- **The best interests of the child:** in each case where the competent court takes a decision, the decision-making process must take into account the positive and negative possible effects of the decision on the child him/herself. These effects must be taken into account when weighing the different interests of the parties in the case. Accordingly, the competent court is obligated to take into consideration the child in the decision it makes, by considering his/her needs and development level when possible, and the decision must be responsive to the needs of children with special needs.

- **Respecting the children in conflict with the law's and his family's right to privacy:** no arbitrary or unlawful interference with the child's privacy, family or home, nor any unlawful attack on their honor or reputation are admissible.

- **Respecting all rights of children in conflict with the law, including health and education:** all parties of the Juvenile Justice System must take into account the child mental and physical health conditions when applying the non-custodial measures. Moreover, the competent court's decision must not overlap with the children's education and enrollment at school.

- **Engaging children in conflict with the law and taking their opinion:** children must have the right to be heard in issues relating to sentencing them to the non-custodial measures. Providing suitable legal and social assistance to children contributes to promoting their ability to form an opinion. This can be done through informing them of their rights and commitments based on the decision against them by using a simple and child-friendly language they will understand. This leads to engaging the child in an informed manner. All means possible must be used, including the assistance of persons or any other reasonable facilitating arrangements to ensure children with disabilities enjoy their right to be heard and guarantee that they express their views to the relevant party in order to comprehensively and effectively enjoy this right.

- **Equality and non-discrimination:** equality between all children in conflict with the law must be guaranteed, regardless of the race, gender, language,

religion political or other opinion of the child, his/her parents or legal guardians, or their national, ethnic or social origin, their wealth, disability, place of birth or any other status.

- **Growth and survival:** the child's need for growth and survival is realized by avoiding detention of children as much as possible; which in effect might lead to impeding their growth cycle and proper development. Therefore, the measure must consider maintaining the children in conflict with the law in his natural environment and integrating him/her in his social surrounding.

3. The types of non-custodial measures when issuing the court decision

Article 24 of the Jordanian Juvenile Law of 2014 stipulates a number of NCMs that the sentencing judge may rule, within the criteria previously mentioned and within the judge's jurisdiction of choosing the alternative measures according to the previously mentioned table.

Measure One: Reprimand

Concept: a verbal measure that includes clarifying the wrong doing committed by the children in conflict with the law and reprimanding him/her for this act, as well as warning them not to repeat it. The law defines it as: "The court blames and reprimands the juvenile for his acts and warns him/her not to repeat this behavior, provided that it is not in a degrading manner⁴:"

Conditions

- ✓ Not in a degrading manner for the children in conflict with the law
- ✓ Can be exercised only in case of contraventions.

Supervision, follow-up and implementation mechanism

- ✓ It is an immediate effective measure that is not subject to any supervision or follow-up. Nevertheless, it is subjected to the appeal procedures as the rest of the measures.

⁴ The Jordanian Juvenile Law No. 32 of 2014

Measure Two: Handover

Concept: handing over the children in conflict with the law, based on the acknowledgement, to a trusted family capable of protecting, directing and raising him/her.

Conditions

- ✓ The child in conflict with the law shall be handed over to a parent or a guardian provided that they are capable to raise him/her, taking in account the age, health and the family ncome .
- ✓ If neither the parent nor the guardian is capable to supervise and raise him/her, she/he shall be handed over to another trustworthy family member, starting with close relatives to extended relatives, in order to ensure that the child remains with his/her biological family as best possible, in accordance with his/her best interests.
- ✓ Should there be no qualified family member to raise him/her, s/he shall be handed over to a trustworthy person or alternative/foster family, provided that the alternative/foster family gives consent and commitment. The court must take into account the provisions of articles 4 and 5 of the Childhood Care Regulation, which stipulate that a comprehensive examination of the alternative/foster family must be conducted, where the court believes that the family may perform its duties sufficiently towards their children and children placed in their care.
- ✓ There is no specific duration for this measure if the handover was for a parent or a guardian. This duration shall not exceed one year if the handover of the child in conflict with the law was to another party.

Supervision, follow-up and implementation mechanism

- ✓ The sentencing judge assigns the behavioral monitor to follow up with the child and his family during a specific period of time, if the handover was for a parent of a guardian.
- ✓ The executive judge organizes a child care plan and a program between the child and the trusted family member or between the child and the alternative/foster family, whom the child was handed over to. This is done to rehabilitate him/her and to ensure that the child does not repeat the unlawful act.
- ✓ The executive judge assigns a behavioral monitor to supervise and follow up with the child after the handover to ensure that s/he is receiving the needed care

according to the signed acknowledgement, through submitting the follow-up reports to the executive judge.

✓ After the executive judge receives the final follow-up report from the behavioural monitor, which includes the status of the child, if s/he is satisfied or not, and if the duration of the handover is completed, the executive judge issues his/her verdict confirming that the measure is implemented and that the file is to be closed.

Negligence from the recipient of their duties in caring for the children in conflict with the law: If the negligence from the recipient in caring for the child results in a new legal violation or risk to him/her, the acknowledgement by the recipient shall be revisited. The competent judge is supposed to have included in the acknowledgement the consequences of negligence from the recipient of their duties towards the child and the penalty for violating such an acknowledgement. Without disregarding the general rules in the Jordanian Penal Law that penalize negligence in caring for minors if there are endangered or if their health is neglected. Article (290) of the Jordanian Penal Code and its amendments stipulates: *“The following shall be punished by imprisonment from one month to one year:*

1. Any person, being the parent or guardian or any other person who has the lawful care or charge of any child of tender years, who is unable to provide for himself/herself, or refuses or neglects (being able to do so) to provide sufficient food, clothes, bedding and other necessities for such child, thereby injures the health of such child.

2. Any person, being the parent or guardian or any other person who has the lawful care or charge of any child under the age of twelve years, who willingly abandons – without any reasonable justification - such child, despite the fact that this person is able to provide for the child yet left him/her without any means of living.”



Good Practice: In Iraq

The Iraqi legislator stipulated that the party that receives the children in conflict with the law must deposit a financial guarantee that is decided by the court. If the receiving party violates its duties towards the children in conflict with the law, they shall pay the guarantee amount in full or partially as decided by the court.

Measure Three: Commitment to Community Service in a Public Facility or a Voluntary Civil Society Organization:

Concept: sentencing the children in conflict with the law to perform an activity in the benefit of a commission, organization or public association for no return and for a legally set period as decided by the court. The child will perform social and/or humanitarian tasks. Community service assists the development of the children experiencing judicial processes towards a better behavior, commitment/engagement with their society, as well as developing a sense of responsibility and a positive feeling of belonging to their communities.

Conditions

- ✓ The tasks must not be degrading, exhausting or dangerous, and must not cause any mental or physical harm.
- ✓ The tasks must promote the child's self-respect, sense of belonging to the society and responsibility for the committed act.
- ✓ The duration of the measure must not exceed one year and for a total of 20-100 actual hours (to be estimated by the sentencing judge).
- ✓ The tasks must not overlap with the children's education if they are enrolled at school.
- ✓ The tasks must be suitable with the personal characteristics of the children in conflict with the law in terms of gender, health status, maturity level, social and environmental conditions.
- ✓ The tasks must be in line with the act committed in terms of dedicated hours and type of community services.

Supervision, follow-up and implementation mechanism

- ✓ The executive judge organizes a program between the child, his/her family and the association in which the community service tasks will take place, including the time, supervision and any other relevant condition.
- ✓ The accredited organizations by the MoSD will determine the type of activities the child in conflict with the law will implement under the decided measure, aligning with the child's rights and their best interests.
- ✓ The executive judge assigns a behavioral monitor to supervise and follow up the child in conflict with the law to verify to which extent s/he is committed to the implementation of the community service, in coordination with the association's focal point who supervises the children in conflict with the law.
- ✓ Behavioral monitor submits the follow-up reports to the executive judge with the correspondent considerations and recommendations.
- ✓ After the executive judge receives the final follow-up report from the behavioural monitor, s/he issues his/her verdict confirming that the measure is implemented and that the file is to be closed.



Abstention from Implementing the NCM

If a report is received from the behavioral monitor indicating that the child in conflict with the law abstains from implementing the measure as sentenced by the court, the executive judge shall summon the child to understand the reasons behind his/her abstention. If the judge finds that the child abstains from implementing the measure without justification, she/he shall refer him/her to the Juvenile Court, as the child offender would have violated article 473 of the Penal Law regarding abstention from implementing a judicial decision.

Measure Four: Enrolment in Rehabilitation Programs

Concept: the children in conflict with the law are sentenced to attend certain meetings that contribute to directing them to the right path, such as programs for anger management and positive behavior, psychosocial support sessions, life skills, workshops on decision making and time management, etc. The objective of this measure is to address the causes that might have led the child to commit the unlawful act.

Conditions

Children in conflict with the law should be enrolled in rehabilitation programs of the following institutions:

- ✓ MoSD.
- ✓ CSOs accredited by MoSD.
- ✓ Any other organizations created by MoSD Minister for this purpose.
- ✓ The duration of the measure must not exceed one year and for a total of 20-100 actual hours (to be estimated by the sentencing judge).

Supervision, follow-up and implementation mechanism

- ✓ The executive judge organizes a plan between the child, his/her family and the association in which the rehabilitation activity tasks will take place, including the time, supervision and any other relevant condition.
- ✓ The accredited organizations by the MoSD will determine the type of activities the child in conflict with the law will implement under the decided measure, aligning with the child's rights and their best interests.
- ✓ The executive judge assigns behavioral monitor to supervise and follow up the child in conflict with the law to verify to which extent s/he is committed to the implementation of the community service, in coordination with the association's focal point who supervises the children in conflict with the law.
- ✓ The behavioral monitor submits the follow-up reports to the executive judge with the correspondent considerations and recommendations.
- ✓ After the executive judge receives the final follow-up report from the behavioural monitor, s/he issues his/her verdict confirming that the measure is implemented and that the file is to be closed.



Replacement of the Organization

The behavioral monitor may request from the executive judge to replace the organization change its program, the child is subjected to abuse or exploitation in the implementation of the measure or for any other abuse or exploitation at the organization where the measure is implemented, the child, his/her representative or behavioral monitor shall file a complaint to the executive judge to take the necessary action.

Measure Five: Enrolment in Vocational Training at a Specialized Center

Concept: enrolment of the children in conflict with the law in a specialized center to prepare them for a career suitable to be able to make an honest living. The Law no 11 of 1985 on Vocational Training Institutions applies to this measure, article (4) of the law stipulates that the vocational training institution provides vocational training opportunities to prepare technical labor force and build their capacity in different non-academic specializations and vocational training levels.

Conditions

- ✓ The training must be held at a specialized center accredited by the MoSD for this purpose.
- ✓ The duration must not exceed one year.
- ✓ The decision must be in accordance with the provisions on vocational training and the employment of children in conflict with the law set forth in the Jordanian Labor Law.
- ✓ The training must not impede the child's elementary education.
- ✓ The judge may consider the child in conflict with the law's vocational preferences in order to enroll him/her in a preferred training program by listening to the child and taking his/her opinion into account.

Supervision, follow-up and implementation mechanism

- ✓ The executive judge organizes the vocational training program between the child and the specialized centers.

- ✓ The behavioral monitor would then monitor the child's vocational training through visits to the vocational training center/headquarters where the child is enrolled, and would ensure the child is committed to the training during the hours agreed, etc.
- ✓ The behavioral monitor submits the follow-up reports to the executive judge during the implementation of the vocational training measure including any relevant recommendations.
- ✓ After the executive judge receives the final follow up report from the behavioural monitor, s/he issues his/her verdict confirming that the measure is implemented and that the file is to be closed.

Measure Six: Performance of Certain Duties or Refraining from Certain Actions

Concept: restricting the freedom of children in conflict with the law by preventing them from going to certain locations or committing certain acts as those stipulated in the juvenile behavioral monitor Law.⁵ The duties that the judge mandates the child to do include: attending some guidance meetings, which reinforce moral and social values, or attending at certain times before persons or commissions/organizations to guide them. This measure aims at reforming the children in conflict with the law, adjusting his/her behavior and reinforcing his/her social and moral values.

Conditions:

- ✓ The measure is linked to the determination of the nature of the causes leading to the children in conflict with the law committing the unlawful act according to the behavioral monitor assessment report.
- ✓ The duration should not exceed one year, with a total number of hours ranging between 20 and 100 hours for the measure.

Supervision, follow-up and implementation mechanism:

- ✓ The executive judge organizes a child plan between the child and his/her family.
- ✓ The executive judge assigns a behavioral monitor to coordinate with the child, his/her family and other relevant parties to appropriately supervise the implementation of the measure.

⁵ The Juvenile Behavioral Monitor Law No. 37 of 2006

- ✓ The behavioral monitor submits the follow-up reports to the executive judge during the implementation of the vocational training measure, including any relevant recommendations.
- ✓ After the executive judge receives the final follow-up report from the behavioural monitor, s/he issues his/her verdict confirming that the measure is implemented and that the file is to be closed.



Good Practice: In Algeria and Tunisia

The Algerian and Tunisian laws allow for the application of the behavior monitoring system on all cases of children in conflict with the law, regardless of the nature and gravity of the crime.

Measure Seven: Judicial Supervision

Concept: placing the children in conflict with the law in his/her natural environment under direction and supervision while taking into account the duties decided by the court. This measure aims at reintegrating the child through imposing commitments on him/her and subjecting him/her to the supervision of the behavioral monitor.

Conditions

- ✓ The court decides the duties that the child should commit to throughout the duration of the measure. Such duties are determined based on the factors that led the child to commit the unlawful act and aim to redefining his/her lifestyle to free him/her from the effects of such factors.
- ✓ The court determines the duration for implementing the measure that in all cases should not exceed one year.

Supervision, follow-up and implementation mechanism

- ✓ The court appoints a behavioral monitor to supervise the child throughout the duration of the measure, and if the judicial supervision was ordered on a female child, the behavioral monitor assigned with supervision must be a female.

- ✓ If the behavioral monitor fails to perform his/her duties, the executive judge is to assign another behavioral monitor to conduct the supervision.
- ✓ The competent court shall determine the number of reports required from the behavioral monitor on the status of the measure's implementation and the development of the child him/herself.
- ✓ Amend the supervision upon the request of the behavioral monitor, the children in conflict with the law or his/her guardian after reviewing the behavioral monitor's report.



Nullifying the Judicial Supervision Order

The Jordanian legislator addresses the procedure of nullifying supervision orders only to judicial supervision measure. The law does not mention such procedure for other measures. The court may nullify judicial supervision orders in the following cases:

- ✓ If the children in conflict with the law is convicted with a crime during the implementation of the order, unless the penalty of the original act is a fine.
- ✓ Upon the request of the behavioral monitor, the children in conflict with the law or his/her guardian after reviewing the behavioral monitor's report.

Annexes

Annex 1: Alternative Measures for Children in Need of Protection or Care in the Jordanian Legislation

Although the child in need of protection or care is not a child in conflict with the law per se, due to the absence of a child law within the Jordanian Kingdom's legislation, those children were included within the provisions of the Juvenile Law with the aim of providing the necessary legal protection for the children who grow up in circumstances that endanger his/her life and/or may put them in.

A. The cases for the children in need for protection and care

Article (33) of the Jordanian Juvenile Law stipulated the following cases:

- If they are under the care of a person who is unfit to look after him/her by reason of habitual criminal behavior, alcoholism, addiction to narcotics or psychotropic substances, or moral degeneracy, or convicted with indecent act with his/her children or persons in his care.
- If they conduct any work relating to prostitution, immoral actions, gambling or illegitimate work; serve persons who conduct such actions; mingles with persons known to be of bad reputation; or exploits them, including in acts of begging.
- If they do not have a stable home or usually stay on the streets.
- If they do not have an honest source of income, or if they do not have a trustworthy provider and his/her parents or one of them is deceased, incarcerated or absent.
- If they are known to misconduct and out of the control of their parent , guardian, custodian or if the guardian is deceased, absent or unfit.
- If they are begging, even if they try to hide it by any means possible.

- If they are street vendors or garbage collectors.
- If they are subject to intentional harm from their parents or one of them in a manner that exceeds the limits of discipline allowed by law and norms.
- If they are subject to grave danger should they stay with their family.
- If they are under the age of twelve and committed a felony or misdemeanor.
- If the child was working in violation of existing laws.

B. The Legal Procedures regarding Protection Measures for Children in Need of Protection and Care

- The Magistrate Court is competent for reviewing cases of children in need of protection or care in accordance with article 15 of the Juvenile Law upon a complaint that states the child is in one of the conditions provided for in article 33 above. **The complaint is submitted by the child him/herself, one of his/her parents, guardian, caregiver, the police or the behavioral monitor** conditioned with the approval of MoSD director of the directorate.
- The behavioral monitor and any person working in health, education or social fields have the right to inform the juvenile police or the nearest police station if they find a child in need of protection or care during the performance of their duties. A complaint is then filed before the Magistrate Court.
- The complaint is registered at the Magistrate Court which can request from the behavioral monitor **to prepare a report on the conditions of the children in conflict with the law, the circumstances surrounding him/her and his/her family, social environment, and health conditions to demonstrate why s/he is considered to be in need of protection or care** in accordance with the instructions on the information and requirements that need to be available in the reports.

- The courts listen to the children in need of protection and care, one or both of his/her parents, guardian, custodian or caretaker.
- It should be noted that the behavioral monitor may use the assistance of judicial police in order to ensure the child's attendance before the court.
- After the child is referred to the court, a decision may be made to place him/her in a Juvenile Care Center until a decision is made regarding the case, **particularly in cases where there is danger on the child's health and safety.**
- The court may impose a temporary measure for the child's best interests until procedures are finalized, and it must clarify the reasons that called for taking such measures promptly.
- After the court verifies the conditions of the child and his/her protection or care needs through the behavioral monitor's report, it may summon any person whose testimony on the child and his/her conditions is necessary. The court shall make its decision to implement any of the measures provided for in article 37 of the Juvenile Law, taking in account the conditions of the children and the reason that caused him/her to be in need of protection or care in order to decide on a suitable measure and ensure removing the concerned child from any circumstance that constitutes danger for his/her life, health or physical safety or hinders his/her education and development. Accordingly, the measures taken to protect the child either include removing him/her from his/her family and surrounding risk factors and conditions, which are (alternative/foster family and care organizations) or keeping the child with his/her family when there is no risk.

The Measures are:

1. Order the child's parent, guardian, custodian or caregiver to properly care for him/her and sign an acknowledgement to provide such care.
2. Refer him/her to a Juvenile Care Center or any similar institution, provided that such an institution approves it, for a period that does not exceed two years. The

behavioral monitor must submit a detailed report to the executive judge every three months to review the decision.

3. Place him/her in the care of a suitable person or a foster family for the period decided by the court, provided that they accept it, taking into consideration the right of the child's parent, guardian, or caregiver to return the child if the circumstances that necessitated his placement in a fostered family or with a capable person change, and the magistrate court may approve to return the child to his/her parent, guardian or caregiver without any restriction or condition, or with adding some conditions if it is convinced that the circumstances of the parent, guardian have been changed, which justifies such return.

4. Place the child in need of protection or care under the supervision of the behavioral monitor for at least one year and a maximum of five years, whether the supervision decision was accompanied with an alternative measure or not.

- A detailed report must be submitted by the behavioral monitor to the executive judge every three months to review the decision and monitor the status and development of the child placed there. The report must include improvement in the juvenile's family conditions during their stay at the home, and the juvenile's improvement and responsiveness to the program.
- The executive judge must visit the Juvenile Care Homes every three months and submit a report to the Chief Justice and a copy to MoSD.
- All decisions issued by the sentencing judge in cases of children in need of protection or care may be appealed in accordance with appeal procedures stipulated in the Magistrate law and the Code of Penal Procedures.



Good Practice: In Palestine

The Palestinian Child Law gives child protection counselors (behavioral monitor) the power of judicial police, hence they can intervene directly with the family and assess the conditions of the child in need of protection or care. It also gives them the power to raise the issue with the competent judge in order to take away the child if there are danger indicators in accordance with the law and place him/her at a Child Protection Home.

C. Legal procedures regarding the extension of the measure

If the duration of the measure decided for the protection of the child in need of care ends, and his/her conditions still pose risk if s/he is released, the Juvenile Law allows the behavioral monitor, after the approval of MoSD director of the directorate, to request from the executive judge the extension of the duration of the measure until the child reaches the age of eighteen. The executive judge issues his/her decision to extend the measure in any of the following cases:

- The lack of any person to care for the child, or his/her inability to care for him/herself.
- One of his/her parents, guardian, custodian or caregivers lacks morals, are addicted to substance or convicted criminals.
- The executive judge may extend the child stay at the institution if s/he has not finished the vocational training s/he started until s/he finishes it or reaches the age of twenty, provided that any person who reaches the age of eighteen should give his/her consent.

D. Protection or follow-up mechanisms for children in need of protection or care at the Juvenile Care Centers

During their stay at the Juvenile Care Centers, children in need of protection and care have the right to enjoy their basic rights in accordance with articles 37, 38, 39 of the Juvenile Law as follows:

- The right to be enrolled in educational or vocational programs.
- The director of the Juvenile Care center may allow the child to visit his/her family on holidays and special occasions, unless that contradicts with his/her interests and/or risks his/her return to the home.
- The director of the Directorate, after the court's approval, may allow whomever s/he deems suitable to host a child in need of protection or care on special occasions and holidays.

Annex 2: Recommendations

The Jordanian legislator has proven that he is committed to heading towards the provision of a child-friendly and restorative justice system that is based on providing care and rehabilitating children in conflict with the law. This is evident through stipulating on non-custodial measures, the provision of a set of protection measures for children in need of protection or care and the provision of detailed legislations, including specialized regulations and instructions to better clarify the mechanisms of applying NCMs . To support the Jordanian legislator's efforts and apply appropriately the NCMs at pre-trial, trial and post-trial stages, and based on the meetings conducted for the development of the handbook hereby, the following recommendations are raised:

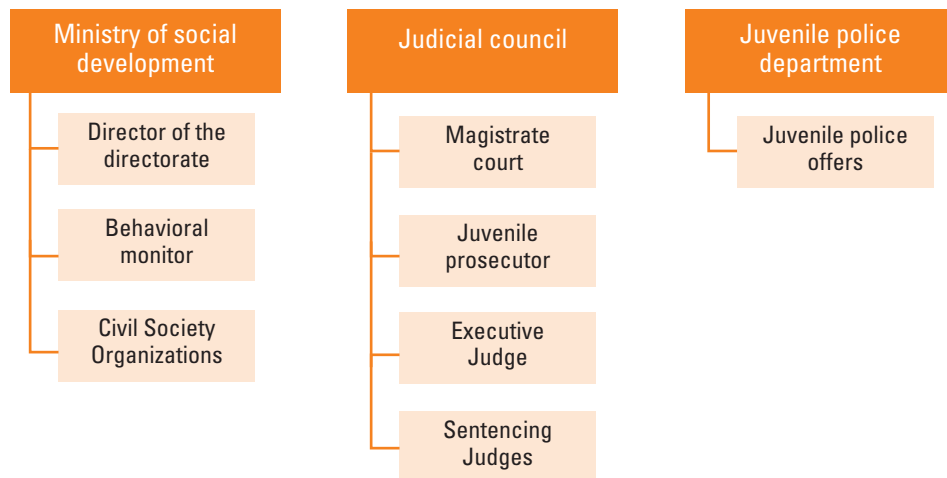
- **Amend** the Instructions on Standards for the Application of to include clearer and more detailed provisions with relation to the application and implementation mechanisms for NCMs, the durations of the measures and how to address non-compliance in the implementation of NCMs in accordance with the relevant international standards.
- **Bridge** the legislative gap for nullifying the NCMs before completing the implementation period, as it is stipulated only for the judicial supervision measure.
- Hold awareness raising campaigns through the MoSD, MoJ and CSOs on the application of NCMs for children in conflict with the law in the society under a child-friendly and restorative justice umbrella to be embraced by the community members.
- Hold continuous trainings for the different stakeholder) involved with the application of such measures in order to guarantee unified application of legal procedures and child safeguarding.
- Create a monitoring and evaluation system between the different organizations/associations responsible for implementing the NCMs on the effectiveness of NCMs in reducing repeated delinquency of juveniles who violate the law, through the Judicial Council, MoJ and MoSD.

- Consider specific institutions that can provide treatments for addictions to substances complementary to the NCMs for children in conflict with the law.

- Study the possibility of expanding the official institutions that could take an effective role in the application and implementation of NCMs for children in conflict with the law and those in need of protection, particularly if:
 - The nature of work of such official institutions includes youth, voluntary, and sports activities; services; and training and rehabilitation programs, such as the Jordanian Ministry of Youth, local councils and city councils.
 - The Ministry of Health can have a role in providing physical or psychological health care for juveniles, particularly since the Jordanian Ministry of Health included psychological health services in the primary health care services. Consider regulating specific provisions pertaining children in contact with the law (victims and witnesses) to overcome the existing legal gap and accordingly the lack of services and specialized justice measures for them.

- Consider regulating specific provisions pertaining children in contact with the law (victims and witnesses) to overcome the existing legal gap and accordingly the lack of services and specialized justice measures for them.

Annex 3: Organigram of government ministries and institutions associated with implementing the NCMs.



Annex 4: Residence warrant issued from the juvenile prosecutor.

**Ministry of Justice
Residence Warrant
Residence Warrant Issued by the Juveniles
Public Prosecution Department in Amman**



Detainee Name	National Number	Mother's Name	Date of Birth	Profession	Nationality	Current Address

Height	Face	Hair	Eyes	Distinctive Marks

Personal Details

Case Number, Type and Connected Cases	Charge	Legal Article	Starting Date of Residency	Residency Duration	No. of Police Letter	Police Station	Notes

It was decided to place the abovementioned person for 10 renewables under house arrest for the abovementioned charge. Accordingly, armed officers are legally assigned to arrest him in accordance with this warrant

Issued On: Prosecutor Name

Signature:

Annex 5: Final Verdict issued applying one of the NCMs

Hashemite Kingdom of Jordan

Ministry of Justice

Decision

Judge

Who has the power to conduct the trial and issue the sentence in the name of the great king of the Hashemite Kingdom of Jordan

The juvenile defendant: _____, Nationality: _____,

National Number: _____,

student, age: 17 years and 10 months, resident of Amman, phone number:

Charged with: driving without license in violation of article 26/b/6 of the Traffic Law

Summary of the facts of the complaint as in the investigation file: on / /2019, the defendant was driving a vehicle with registration no. () despite not having a driver's license that allows him to drive a vehicle. Whereas he was arrested by the police. A report was prepared and a complaint was filed, and he was duly prosecuted.

In the confidential trial: in attendance of the defendant and his guardian, his brother _____, and in presense of the behavioral monitor _____, letter no. / /675, dated _____ was received from the police station and saved. The defendant was informed of the charge and asked about it, where he admitted guilt and requested the court's mercy. The report of the behavioral monitor _____ was received and saved in the casefile. The court decided to show the letter from the police given the number n/1 and the case was closed.

In reviewing the papers and evidence presented in the case, the court finds that the asserted facts of the case are that on / /2019, the defendant was driving a vehicle with registration no. () despite not having a driver's license that allows him to drive a vehicle. Whereas he was arrested by the police and a report was prepared.

These facts were proven to the court by:

- 1) The defendants admission to guilt in page one of the court minutes.
- 2) The letter from the police given number n/1.

In the law:

- Article 26/b/6 of the Traffic Law stipulates: “any person who commits the following crimes shall be imprisoned for a period of at least one month and a maximum of three months, or a fine at least 250 Jordanian Dinars and a maximum of 500 Jordanian Dinars or both penalties: - driving a vehicle without a driver’s license.”
- Article 25/d of the Juveniles Law stipulates: “if the child commits a misdemeanor that is penalized by imprisonment, he shall be placed at a juveniles rehabilitation center for a period that does not exceed one third of the penalty stipulated in the law.”
- Paragraph e of the same article stipulates: “if there are mitigating excuses, the court may replace any penalty stipulated in paragraph d of this article with any measure provided for in article 24 of this law.”
- Article 24/c of the same law stipulates: “without prejudice to the provisions of articles 25 and 26 of this law, the court may implement any of the following non-custodial measures: c) order community service at any public facility or civil society organization for a period that does not exceed one year.”

In application of the law on the facts of the complaint, the court finds that all the elements of the charge apply to the act committed by the defendant, which is driving a vehicle without a license.

Accordingly and based on the above, the court decides, in accordance with article 177 of the Code of Penal Procedures, to convict the defendant with the crime of violating the traffic law by driving a vehicle without a driver’s license in violation of article 26/b/6 of the Traffic Law, and sentences him, in accordance with the provisions of the same article, to one week at the juveniles rehabilitation home.

Considering the clear and explicit admission of the defendant _____, which is considered a mitigating excuse by the court, the court decides, in accordance with articles 25/e and 24/c of the Juveniles Law, to replace the imprisonment with

obligating the defendant to 15 hours of community service at Sanabel Cheritable Society/ Amman.

A decision issued in presence of the defendant and may be appealed. The decision was issued and announced in the name of His Majesty King Abdullah the Second Son of Hussein on /2019

Model of Action on Alternative to Detention Measures for Children in Conflict with the Law



وزارة التنمية الإجتماعية



وزارة العدل

