



Balancing Punitive and Rehabilitative Approaches to Juvenile Justice

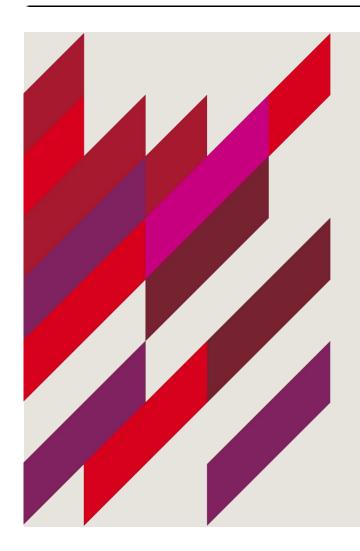
An Investigation into the Common Mechanisms used by Countries to Prosecute Young Offenders as Adults

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This presentation is based on the report titled, *Balancing Punitive and Rehabilitative Approaches to Juvenile Justice*, prepared by Kirsti Wright, Mia Roundtree, Emily Rich and Adam Muddle, senior law students from the Macquarie University's Law Department. The report provides insight and understanding on different approaches to juvenile justice in 15 countries, particularly in the light of international standards, increasing use of 'waivers' to try juveniles as adults and the use of psychological assessments.

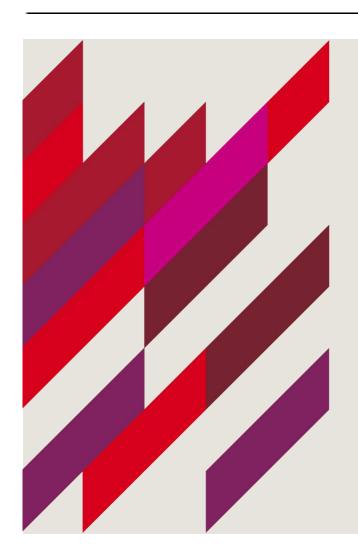
It is part of the LAWS552 PACE International Remote Internships Programme carried out through partnership between the Macquarie University in Sydney, Australia and HAQ: Centre for Child Rights, an NGO based in New Delhi, India.

The project was carried out under supervision of Debra Ronan (PACE Supervisor at Macquarie University) and Bharti Ali (Co-Founder & Executive Director at HAQ).

What we will discuss







- Brief Overview
- 2. What drives juvenile crime?
- 3. Theory: Approaches to juvenile justice
- 4. International Standards
- 5. 'Populist Politics'
- 6. Juvenile Waiver overview
- 7. Psychological Assessment overview
- 8. Welfare Approach
 - Canada
- 9. Justice Approach
 - Saudi Arabia
- 10. Hybrid Approach
 - Belgium and USA
- 9. Recommendations / Further Research

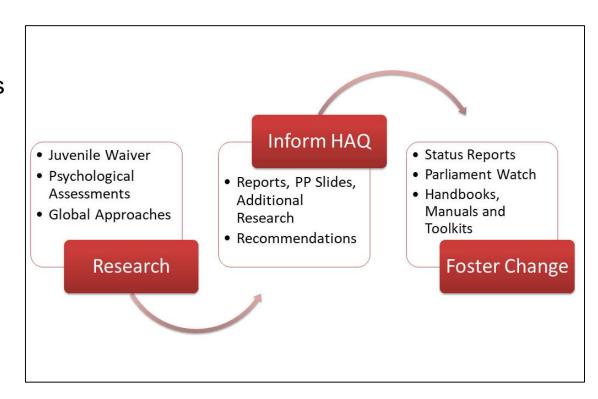
Our Research Goal





What did we set out to achieve?

- 1. An understanding of the common mechanisms used by countries to prosecute young offenders as adults i.e. juvenile waivers.
- 1. An understanding of how psychological assessments are used to determine capacity and criminal responsibility.
- 1. Analysing how these two focus areas (theory) are implemented in legal systems across the globe (in practice).



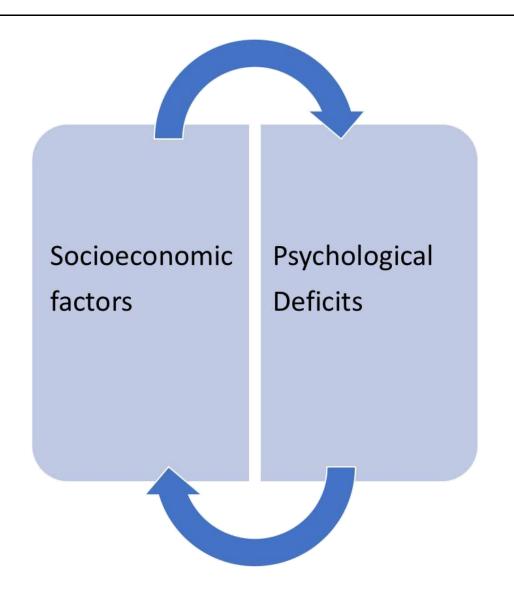


What Drives Juvenile Crime?





Causes of juvenile crime





Different Approaches to Juvenile Justice Haring Centre Control Centre Control Centre C





Three different models

1. Welfare Model	2. Justice Model	3. Hybrid Model (justice model/welfare model)
 Parens patriae Child protection Education Rehabilitation Restorative justice Best interests of child 	 Punitiveness Incapacitation Punishment Retribution Deterrence Victim support Judicial waiver 	 Combination of approaches from both the welfare and justice models E.g. High age of criminal responsibility + juvenile waiver (Belgium) E.g. Educational reforms + wide judicial discretion when sentencing (Malaysia) E.g. Ratification of international instruments + cultural and religious principles

Populist Politics, Moral Panic and Sensationalist Media Reporting









International Standards



Serious Young Offenders and International Standards of Sentencing

'Every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice'.

Participation by juvenile

Best - Interests of juvenile

Community Safety Detention as a last resort

Shortest appropriate time in cases of detention

Rehabilitation

Cruel, inhuman or degrading

Proportionality

Are a range of sentencing options available?

Is the sentence free from arbitrariness?

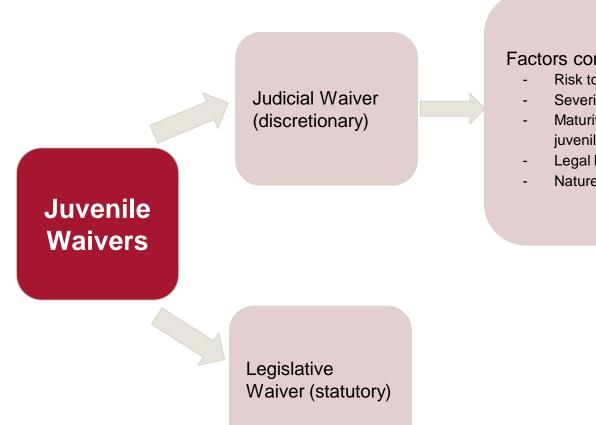


Juvenile Waiver





Common mechanism by which to try juveniles as adults



Factors considered:

- Risk to the community
- Severity of the offence
- Maturity and character of the juvenile
- Legal history
- Nature of the offence

Opportunity for the use of psych assessments (welfare considerations)

No psych assessments (justice considerations)





Psychological Assessments

Screening triage on entering justice system

- Used to triage or 'sort' juveniles to appropriate testing
- The Massachusetts Youth Screening Instrument-Version 2(MAYSI-2)
- Problem-Oriented Screening Instrument for Teenagers (POSIT), and the Child and Adolescent **Functional** Assessment (CAFAS)

Assessments & capacity

- Risk assessments using Risk, Sophistication-Maturity, and Treatment Amenability instrument or the Structured Assessment of Violence Risk in Youth (SAVRY)
- · Needs to evaluate dynamic MH conditions
- Mental health assessments looking for underlying mental health disorders
- Youth Level of Service/Case Management Inventory

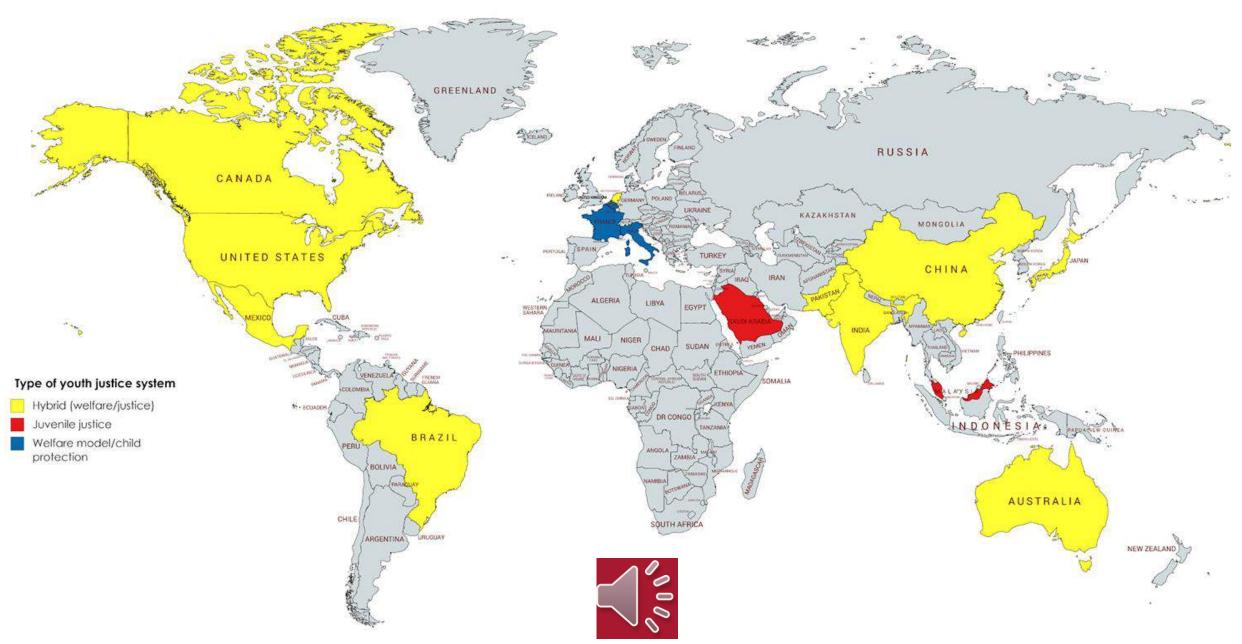


- Personality, i.e. Minnesota Multiphasic Personality Inventory
- · Behavioural, i.e. Revised Behaviour Problem Checklist
- General Intelligence, i.e. Wechsler Intelligence Scale for Children
- Emotional functioning, i.e. Hare Psychopathy Checklist: Youth Version



Post adjudication mechanisms

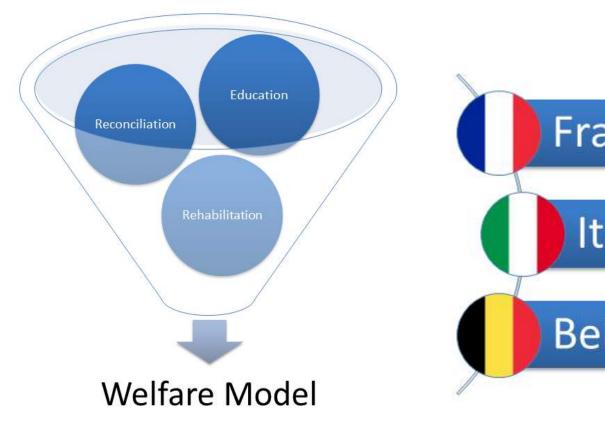




Welfare Model

Approach 1







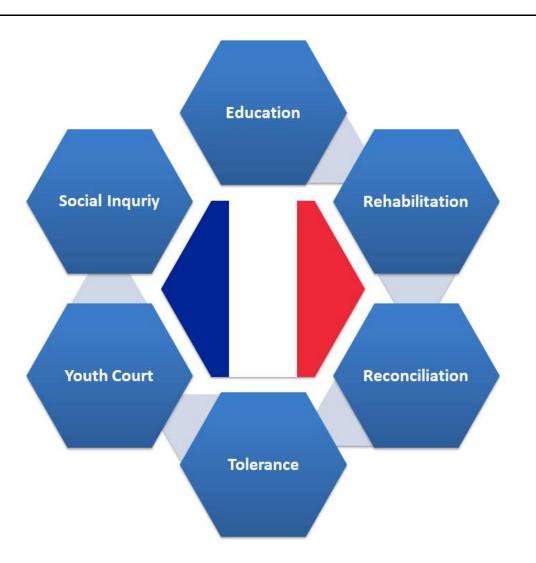


France

HAR Centre for Child Rights



CHILD WELFARE

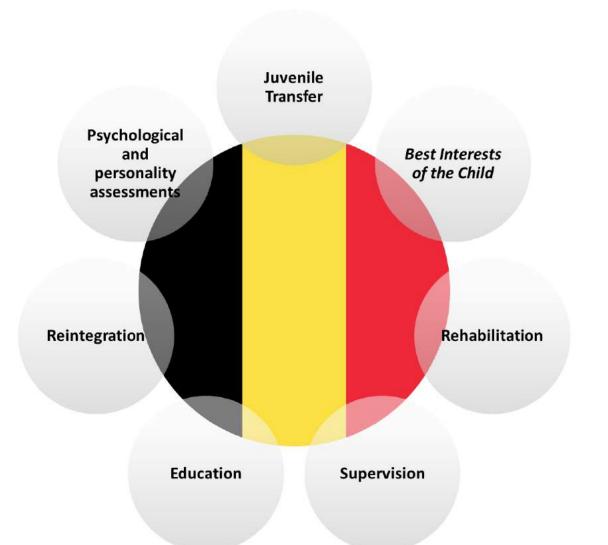




Belgium

CHILD WELFARE







Justice Model

Approach 2









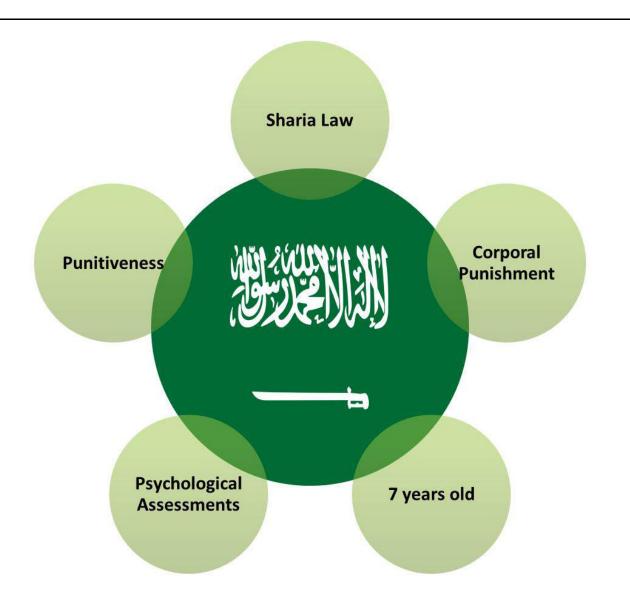


Saudi Arabia

Centre for Child Rights



JUSTICE MODEL

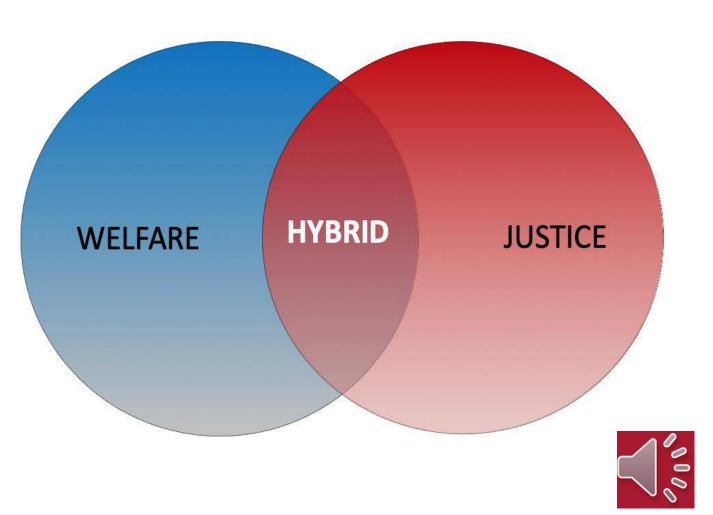




Hybrid Approach

Hybrid model (welfare + justice)





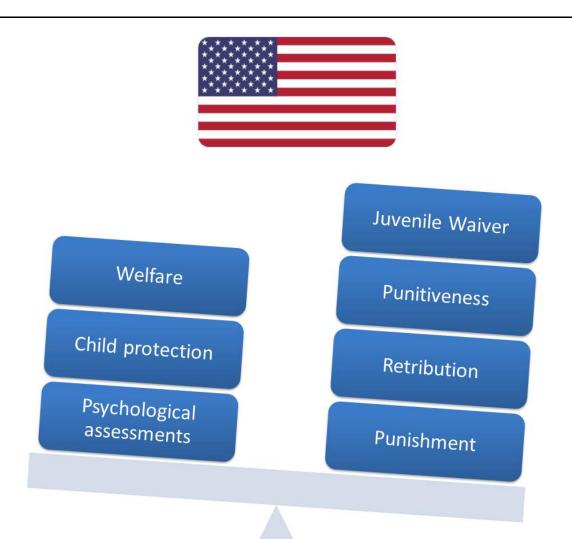


United States of America





HYBRID MODEL



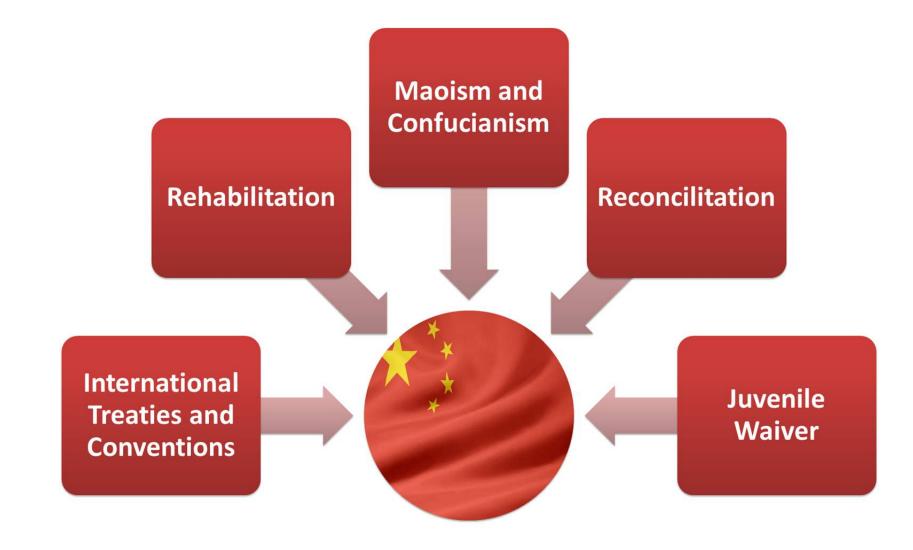


China

HAC Centre for Child Rights



HYBRID MODEL





Further Research



- Kirk Heilbrun, David DeMatteo, Thomas Kline and Naomi Goldstein (eds), APA Handbook of Psychology and Juvenile Justice (American Psychological Association, 1st Edition, 2016).
 - Excellent resource on psychological evaluations, social inquiries, risk assessment, training professionals to perform psych evaluations etc. in the U.S.
- Ton Liefaar and Maryse Hazelet, 'Alternatives to Custody for Young Offenders: National Report on Juvenile Justice Trends (Netherlands)' (Comparative Report, International Juvenile Justice Observatory, 2012).
- Sabien Hespel and Johan Put, 'Alternatives to Custody for Young Offenders: National Report on Juvenile Justice Trends (Belgium)' (Comparative Report, International Juvenile Justice Observatory, 2012).
 - Two excellent and recent resources on juvenile transfer in Belgium and the Netherlands
- Government of Canada, 'Youth Risk/Need Assessment an Overview of Issues and Practices,'
 Department of Justice (Web Page, 1 July 2015) < https://www.justice.gc.ca/eng/rp-pr/cj-jp/yj-jj/rr03_yj4-rr03_jj4/a1.html.
 - 42 item list to survey youth in Canada, including scientific and psychological assessments