

## The Baltic Sea Region

# Handling, protecting and testing evidence from children in legal proceedings

A comparative study

**Anna Kaldal, Associate Professor in procedural Law  
Faculty of Law, Stockholm University, Sweden**

# ***Handling, protecting and testing evidence from children in a child-friendly justice system***

- Focus on children who are victims or witnesses in criminal proceedings
  - Child protection cases and parental disputes
- A broad scope of awareness as to the complexity of the position of children who are victims or witnesses in criminal proceedings, but the same underlying dilemma:
  - Balancing the best interests of the child on the one hand and the principles of evidentiary law and a fair trial on the other

# ***Handling, protecting and testing evidence from children in a child-friendly justice system***

- A consensus concerning children's vulnerability and need of protection from involvement in legal proceedings
  - the burden of giving testimony,
  - repeated interviews,
  - being summoned to court, etc.
- Different approaches to this
  - Focus on protecting the child from being involved in a legal proceedings can lead to a system where the child does not receive access to justice
    - Focus should instead be on adjusting the legal proceeding to the child
      - still safeguarding the defendants right to a fair trial

# ***Handling, protecting and testing evidence from children in a child-friendly justice system***



- Gathering evidence from a child is a core task in criminal investigations and therefore crucial for a child's access to justice – and society's responsibility to investigate crimes
  - Basic criteria's need to be met in order to realise the right of child victims or witnesses when gathering evidence from a child in a child-friendly justice system.

# ***Handling, protecting and testing evidence from children in a child-friendly justice system***



## Basic criteria's in a child-friendly justice system

- Appointing a special *legal representative and counsel*, who has the responsibility to safeguard the child's best interest throughout the criminal proceedings
  - When the child's parent is suspected of a crime against the child
  - When the child is a witness of domestic violence
- Appointed at an early stage in the criminal investigations
- A lawyer, free of cost, and trained in and knowledgeable of children's rights and communicating with children

# ***Handling, protecting and testing evidence from children in a child-friendly justice system***



## Basic criteria's in a child-friendly justice system

- *A child-friendly environment* and modern techniques where *interviews can be video-documented* and the *defense counsel present*, addressing questions without facing the child
- Sustainability requires child-friendly settings and interview arrangements to be *state-funded* and not dependent on non-governmental organisations or local dedication and commitment

# ***Handling, protecting and testing evidence from children in a child-friendly justice system***

## Basic criteria's in a child-friendly justice system

- The child's capacity must be taken into account in the reception, preparation and interviewing
  - The child's age, psychological and psychiatric aspects
- The number of interviews should be adapted to the individual child and the circumstances in the case
  - Investigative reasons
  - The child needs time to “dare to tell”

# ***Handling, protecting and testing evidence from children in a child-friendly justice system***

## Basic criteria's in a child-friendly justice system

- Qualitative *interviewing methods and techniques*
  - A high level of expertise, adequate forensic interviewing methods
  - Training and a need to perform a certain number of interviews on a regular basis in order to maintain their expertise



# ***Handling, protecting and testing evidence from children in a child-friendly justice system***



## Basic criteria's in a child-friendly justice system

- In order to meet the *defendant's right to cross-examination*, a second interview with a child should always be planned
  - This will optimise the conditions for an indictment and the probative value and admissibility of the child's statements
- Repeated interviews should be conducted by the same person

# ***Handling, protecting and testing evidence from children in a child-friendly justice system***

## Basic criteria's in a child-friendly justice system

- *Interviews of children should be conducted without delay in criminal investigations*
  - Important in order to safeguard the probative value of children's statements in criminal investigations and, at the same time, optimise the assessment of the children's need of protection

# ***Handling, protecting and testing evidence from children in a child-friendly justice system***

## Basic criteria's in a child-friendly justice system

- A joint agency approach
  - Children's statements from criminal proceedings can be of importance in the assessments of the child's need of protection (child protection services)
  - Co-ordination of child protection investigations and criminal investigations
    - reduces the burden of repeated interview at different settings with different professionals
    - safeguards the probative value of children's statements

# ***Handling, protecting and testing evidence from children in a child-friendly justice system***

## *Children's House-model*

- Optimise the child's right to access to justice as well as protection from the burden of parallel investigations – and safeguards the right to a fair trial
  - Child friendly environment
  - Modern techniques
    - Safeguarding interviews according to children's needs, evidentiary rules and the defendants right to a fair trial
  - Co ordination of investigations
    - Child protection
    - Treatment

# ***Handling, protecting and testing evidence from children in a child-friendly justice system***



## *Proceedings concerning parental responsibility and child protection*

- *A legal representative and counsel* should be appointed at an early stage, particularly if abuse or mistreatment is suspected
- Any specially appointed legal representative and counsel must be *highly skilled and free of cost*
- If the child is to give a trustworthy statement concerning either his or her opinion or the facts of a case, the interview therefore should be conducted in a child-friendly setting such as the Children Houses
- *Skilled and trained interviewers* is not of lesser importance than in criminal cases