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Construire une Europe
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Council of Europe project

Preventing and protecting children from violence including in the digital environment in the Republic of Moldova

*under the framework of
the Council of Europe Action Plan for the Republic of Moldova (2021-2024)*

Review of the “Law no 299 on the measures and services provided to children with deviant¹ behaviour in Moldova”

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The contents of the report are the responsibility of the consultants and do not necessarily reflect the views of Council of Europe

¹ The Report is using the term “children with deviant behaviour” only to refer to the current title of the Law subject to this Review as this is the actual title of the Law 299. In any other context the Report refers to this category of children as children in conflict with the law under MACR. The report also refrains from using the term juvenile delinquency whenever possible and instead uses the term juvenile criminality as provided for by Riyadh Guidelines and Council of Europe Recommendation Rec (2003) 20.

TABLE OF CONTENTS

LIST OF ACRONYMS	3
LIST OF FIGURES AND TABLES	3
EXECUTIVE SUMMARY	4
1. INTRODUCTION	8
1.1. <i>General context</i>	8
1.2. <i>Stakeholders analysis</i>	12
2. REVIEW FRAMEWORK	14
2.1. <i>Purposes, objectives and scope</i>	14
2.1.1. Purposes	14
2.1.2. Research objectives	14
2.1.3. Research scope	14
2.2. <i>Ethical and guiding principles</i>	15
2.3. <i>Data collection methods and sampling</i>	15
2.3.1. Review of literature	15
2.3.2. Semi-structured interviews with key informants	15
2.4. <i>Limitations of the research and mitigation measures</i>	16
3. WORK PROCESS	17
4. FINDINGS	18
4.1. <i>International and European standards in prevention of children's criminality</i>	18
4.2. <i>Prevention of children's criminality and protection of children in conflict with the law under MACR through Law 299 and its compliance with international standards</i>	19
4.2.1. Definitions and Scope of the Law	19
4.2.2. Measures and services provided by the law and their implementation	22
4.2.3. Procedure, responsible Institutions, and mechanisms for implementation	29
4.2.4. Complaints mechanism for children and legal guardians/parents against measures	31
4.2.5. Data collection	31
4.3. <i>Good practices in working with children in conflict with the law below MACR</i>	32
4.4. <i>Relationship of Law 299 and Law 140</i>	35
5. CONCLUSION	38
6. RECOMMENDATIONS	40
Appendix 1: List of Interviewed stakeholders	42
Appendix 2: Bibliography	43

LIST OF ACRONYMS

CC:	Criminal Code
CoE:	Council of Europe
CRC:	Convention on the Rights of the Child
IDI:	Key informant interview
IO	International Organization
MACR	Minimum age of Criminal Responsibility
KRQ	Key Review Questions
ToR:	Terms of reference
UNEG:	United Nations Evaluation Group
UNODC	United Nations Organization of Drugs and Crime

LIST OF FIGURES AND TABLES

IMAGE 1 AGE OF CHILDREN IN CONFLICT WITH THE LAW IN 2020 AND 2021	9
IMAGE 2 TYPE OF CRIMES COMMITTED BY CHILDREN AND WITH THEIR PARTICIPATION DURING 2021 COMPARED TO 2019 AND 2020	10
TABLE 1. OFFENSES COMMITTED BY CHILDREN BY SEX AND CHARACTERISTICS OF THE CRIME, 2016-2020 ¹	10
TABLE 2. CHILDREN IN CONFLICT WITH THE LAW BY SEX AND AGE GROUPS, 2016-2020 ¹	11
TABLE 3. LIMITATIONS AND MITIGATIONS MEASURES	16

EXECUTIVE SUMMARY

UNICEF estimates that 4,000 children come into contact with the law each year in Moldova.² Many Moldovan boys and girls are confronted with a justice system that is primarily focused on solving the case, with less attention being paid to the child's needs.³ Research conducted in Moldova by Terres des Hommes in 2018, shows that in most cases of juvenile delinquency, children are victims of domestic, institutional or community violence and neglect,⁴ with most children coming from socially vulnerable families, where parents lack the skills and necessary resources to solve the problems that arise and do not know how to respond to children's needs.⁵ At community level, among the reasons of juvenile criminality is the lack of organized extracurricular activities designed specifically for different children's ages that can have positive impact on children's development.⁶

Currently, in Moldova, the provision of services for 'children at risk is dictated by the Law 140 on the Special Protection of Children at Risk and Separated from their Parents (that draws from the Law no. 338/1994 on the rights of the child) that came into force in January 2014. Law 140 emphasises the importance of coordination of services at the primary prevention stage. Guidelines for identification, monitoring and referral are set out in government Decree 270, on the Inter-Sectorial Cooperation Mechanism for the Identification, Evaluation, Referral, Assistance and Monitoring of Child Victims and Potential Child Victims of Child Abuse, Neglect, Exploitation and Trafficking. Until 2019, children in conflict with the law below age of criminal responsibility were treated under the Law 140. However, in 2019 the parliament adopted the "LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour," that have singled out children in conflict with the law that are not subject to criminal liability as children with 'Deviant Behaviour' and have recognized them as a separated category different from the category of 'Children at Risk'.⁷ The law foresees the creation of an inter-sectorial cooperation mechanism regarding the implementation of measures for children with deviant behaviour⁸ that is still in its draft form.

With the view of those developments, CoE under the project on "Preventing and protecting children from violence including in the digital environment in the Republic of Moldova" has contracted two experts, one international and one national, to conduct a peer review of the "Law 299/2018 on measures and services for children with deviant behaviour" - that encompasses children in conflict with the law below MACR and to 1) analyse its alignment with international standards 2) to obtain information that will reflect the current trends and challenges in application of this law and 3) issue recommendations with respect to further development of the legislation on protection of children in conflict with the law under MACR in Moldova.

During the process of the development of this report the experts reviewed important international and national standards and legislation, conducted interviews with relevant national stakeholders (from

² UNICEF Moldova, 2022, found on: <https://www.unicef.org/moldova/en/child-protection/justice-children>

³ Terre des homes, "Preventing juvenile delinquency in the Republic of Moldova", by Liliana Astrahan, 2018.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

⁸ THEMATIC REPORT EVALUATING THE EFFICIENCY AND EFFECTIVENESS OF INTERSECTORAL COOPERATION MECHANISMS IN THE FIELD OF CHILD RIGHTS PROTECTION, the peoples Advocate, Ombudsman Moldova, 2020.

the governmental and non-governmental sector) and analysed current good practices in the area of protection of children in conflict with the law under MACR in other countries in the world. This process has led to the following findings:

The formulation “children with deviant behaviour” that is used by the Law 299 is not in concurrence with international standards and research and is contrary to the best interest of children. The law discriminates and stigmatizes a whole group of children (children in conflict with the law under MACR) and favours a criminogenic perspective towards these children. The Law does not concentrate on removing the ‘risks’ that these children face but on addressing a certain behaviour, *i.e.* “deviant behaviour” which does not promote a social/welfare perspective. In addition, the law does not promote legal certainty for children in conflict with the law under MACR because it does not elaborate on definition and methodology based on which the behaviour will be evaluated as “deviant.” Furthermore, Law No 299 does not include preventions measures/programmes to prevent children’s criminality thus it is a reactive, rather than a proactive piece of legislation.

The Law does not provide for a specialised individual supervision plan and psychosocial risk assessment for children at risk in conflict with the law under MACR with strong input from psychologists. Moreover, from four measures provided for children with “deviant behaviour” in the Law two include institutional residential care, which is not in the best interest of children, as pointed out by international standards. The law falls short on provision of specialized services and programmes such as: community based services, after-care services, specialised services for children with mental health issues and/or substance abuse addiction in conflict with the law under MACR.

With the view of international standards, the law does not provide for procedure that ensures meaningful participation of children into procedures and in creation of individualised protection programmes. The law does not explain how child’s opinion is sought, for example in a child friendly environment, through specialized child support person, etc. Also, the law does not require all decisions taken by responsible authorities regarding the child to include an explanation of the extent of the consideration given to the views of the child, the consequences for the child and the best interest of the child.

With the view of international standards, the Law does not provide for adequate data collection mechanism on measures provided for children at risk in conflict with the Law under MACR, thus monitoring of implementation is difficult. It could be concluded, that at the moment, there is no unified data collection system on central level with respect to children in conflict with the law under MACR that will provide bases for data informed policy development.

Currently, the Law misses clear framework for inter-sectorial work and it is not clear on the exact role of each professionals with respect to protection of children encompassed by this law, including clear relationship between central and local government and instructions’ roles, which complicates implementation. Implementation of the only one available measure for children at risk in conflict with the law (strengthen supervision) is extremely difficult, because the authority that should implement it - the territorial and local guardianship authority are only advisory by nature. Furthermore, the Law’s implementation is further complicated by the lack of accountability mechanisms for responsible institutions as well as for parents, legal representatives and caregivers.

In turn, Law 140 has already established strong multi-sectorial working procedures through Government Decision 270, which are already tested in practice. All measures provided by the Law are operational and are given to children at risk and separated from parents. Mechanisms for monitoring evaluation and accountability are in place and the law, for most part, takes social protection approach. Measures that are provided in both laws (140 and 299) with exception to highly specialized residential facility overlap and could be implemented by the same authority and under the mechanisms provided in Decision 270 (under Law 140) because the same institutions are involved in implementation of both laws.

Finally, albeit, Law 299 and Law 140 target different sub-categories of children at risk, both Laws target one common category of children, *i.e. children at risk in need of protection and support*.

Recommendations

- Morph/merge Law 299 into Law 140 - provide one common category of children at risk, and two other categories children at risk without parental care and children at risk in conflict with the Law under MACR, or alternatively children at risk in social problem:
 - Possible solutions:
 - “Children at risk in conflict with the law under MACR: “child in conflict with the law is a child who is alleged or found to have committed an offence and has not completed eighteen years of age on the date of commission of such offence;” or
 - “Children at risk under MACR with a social problem:” social problem is/are “objective events or situations caused by societal events, family occurrences and socially dangerous behaviours, that have a negative effect on the person in a way that affects its social functioning and which consequences cannot be overcome without an organized social support.”
- In order for Law 140 amended/merged/morphed - to be operational and in line with international standards conduct a rapid assessment of the Law’s compliance with international standards and possible modalities of morphing/merging with Law 299.
- Amend, accordingly, Government Decision 270 as to accommodate the newly added category of children and mechanisms for implementation.
- Provide a section on general prevention on children’s criminality in Law 140, identifying institutions, their role and activities in prevention.
- Law 140 should provide services/measures for all children at risk in conflict with the law under MACR as children in need of protection and their parents/legal representatives and caregivers without coercion:
 - Law should specify ages of children encompassed by the law;
 - Law should specify whether children with mental health/substance addiction problems are included.
- The Law should provide clear information regarding initial identification and referral of children in conflict with the law under MACR:
 - Initial identification reporting of crime/offence committed by child under MACR mandatory for educational, social, health and other institutions to police;
 - Police should refer children to Social Services;

- Social Services should conduct risk assessment and developed specializes individual plan for services for all children referred with involvement of a psychologist;
 - Services and measures implemented should be voluntary and consented by parents and children;
 - Measures and services should be implemented with cooperation with local authority;
 - In case when family environment is endangering the child's best interest alternative home like residence/placement should be organised/mandated by the civil court through civil law procedure initiated by social services;
 - Placing children in residential institutions should be avoided/strengthen de-institutionalisation;
 - Children's participation in all processes should be guaranteed, possibly through involving a 'support person' for the child/decisions about the child should elaborate on impact of child's opinion, as well as the best interest of the child;
 - Implement accountability mechanism that will take more social protection approach when targeting parents/legal representatives and caregivers - one that will include facilitation and motivation mechanisms to achieve children's and parents/legal guardians and caregivers' participation in services and programmes.
- Create a road map for reform of the social services system to accommodate children at risk in conflict with the law under MACR:
 - Map existing/available services under Law 200 and Law 140 for children at risk;
 - Conduct needs assessment in real time of services for prevention of children's criminality and protection of children at risk in conflict with the law under MACR;
 - Based on international best practices, build-upon existing services and develop new ones where missing (mental health support, substance abuse prevention /treatment programmes, community programmes, programmes for family support, programmes for parental skills, programmes for children);
 - Provide for territorial coverage of measures and services involving territorial authorities/ local authorities/NGO sector and private sector.
 - In line with international standards provide in the Law on Mental Health methodology for identification assessment and services for children with metal health problems and/or substance abuse in conflict with the law under MACR and above MACR and link it with Law 140.
 - Develop unified data collection system for recording of children at risk in conflict with the law under MACR, with specific indicators to enable data informed policy/measures development.

1. INTRODUCTION

1.1. General context

UNICEF estimates that 4,000 children come into contact with the law each year in Moldova.⁹ Many Moldovan boys and girls are confronted with a justice system that is primarily focused on solving the case, with little regard for the child's needs. Children who engage with the justice system face obstacles; from laws that overlook their specific rights and treats them as adults, to a lack of legal aid and insufficient juvenile delinquency prevention programs (existing ones are sporadic and short-term).

¹⁰ In fact, research shows that in most cases of juvenile delinquency, children are victims of domestic, institutional or community violence and neglect,¹¹ with most children coming from socially vulnerable families, where parents lack the skills and necessary resources to solve the problems that arise and do not know how to respond to children's needs. At community level, among the reasons of juvenile criminality is the lack of organized extracurricular activities designed specifically for different children's ages that can have positive impact on children's development.¹²

Having this in mind it is important that children at risk are identified and supported before their behaviour escalates to criminality, as well as children already in conflict with the law but below the MACR to be diverted from coming again in conflict with the law by providing necessary protection and support services including psychological support, behaviour change, social aid and educational programmes targeting children and families, as well as community support.¹³

Legal and policy framework relating to children in conflict with the law below age of criminal responsibility in Moldova

- **Minimum age of criminal responsibility**

In the Republic of Moldova, according to legislation, a child is a person who has not reached the age of 18. The legislator established that the subject of criminal liability is the person who has reached the age of 16.¹⁴ However, as an exception, for some categories of offenses children between 14 years of age and 16 years of age are considered to have limited criminal responsibility as described by the Criminal Code of Moldova.¹⁵ Thus, children aged 14-18 are subject to criminal liability only if it is proven that they were aware of the meaning of the act they were committing at the time of the commission

⁹ UNICEF <https://www.unicef.org/moldova/en/child-protection/justice-children>

¹⁰ Terre des homes, "Preventing juvenile delinquency in the Republic of Moldova", by Liliana Astrahan, 2018.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid also see Recommendation No. R (87) 20 on social reactions to juvenile delinquency.

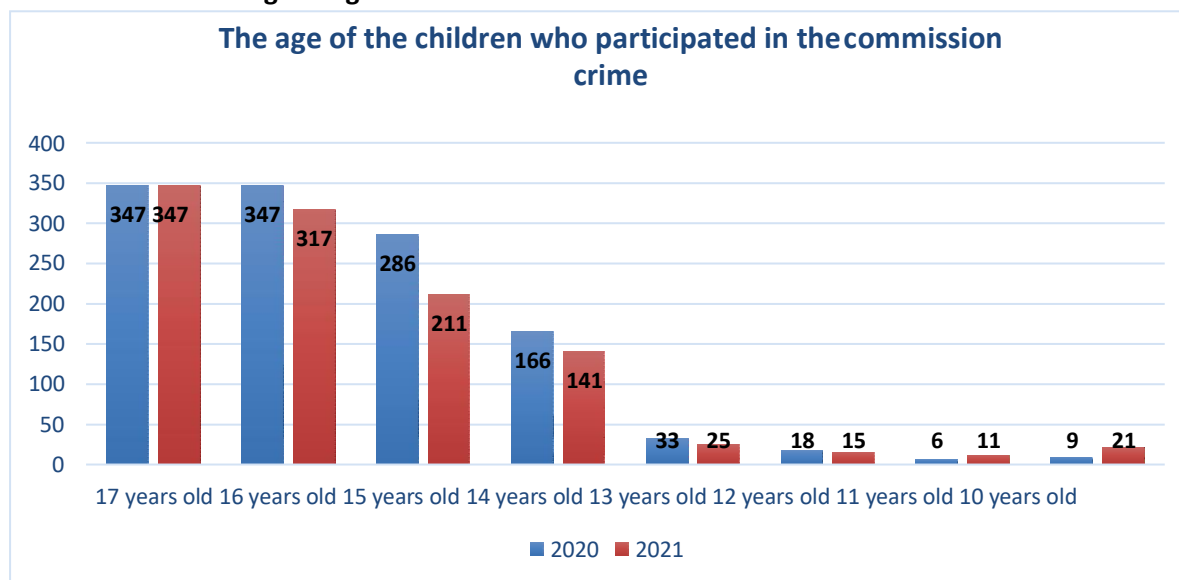
¹⁴ Study - The pathway of a child through the criminal justice system of the Republic of Moldova, Terres des hommes, 2017.

¹⁵ Criminal Code, the responsible natural persons who, at the time of committing the crime, have reached the age of 16 are liable to criminal liability. Article 21: "(2) The natural persons aged between 14 and 16 are liable to criminal liability only for committing the offenses provided for in art. 145, 147, 151, 152 paragraph (2), art. 164, 166 paragraph (2) and (3), art.171, 172, 175, 186-188, 189 para. (2) - (6), art. 190 para. (2) - (5), art. 192 para. (2) - (4), art. 192 para. (2) and (3), 196 paragraph (4), art.197 paragraph (2), art.212 paragraph (3), art.217 paragraph (4) letter b), art.217 paragraph (3) and paragraph (4) letters b) and d), art.217 paragraph (3) letters a) and b), art.217, art.216 paragraph (2), art.260, 268, 270, 271, art.275, 280, 281, 283-286, 287 paragraphs (2) and (3), art.288 paragraph (2), art.290 paragraph (2), art. 292 para. (2), art. 317 para. (2), art.342."

of the offence.¹⁶ Thus, in the Republic of Moldova, the minimum age for absolute criminal responsibility (MACR) is 14 years and 16 years is limited criminal responsibility.

In 2021, there were total of 1242 children in conflict with the law and 695 criminal deeds were committed by children and/or with their participation, which is an increase of 14.69 per cent compared to the same period of 2020.¹⁷ Thus, in 2021, 2.73 per cent of the total number of crimes registered on the territory of the Republic Moldova was committed by children and/or with their participation.¹⁸

Image 1. Age of children in conflict with the law in 2020 and 2021



Even though the majority of children in conflict with the law in 2021 and 2020 were above the minimum age of criminal responsibility (MACR), a significant 24 percent were children, involved in crime, below minimum age of criminal responsibility (below 14) and 70 percent were below the limited age of criminal responsibility (below 16).

In 2021, there were 391 parents in the Police documents, who did not fulfill their obligations to education, training and / or maintenance of the child.

The most frequent crimes committed by children in 2020 were theft, 56.3 per cent of all criminal offences, robberies - 6.6 per cent, hooliganism - 4.0 per cent, intentional injuries - 2.0 per cent and rape - 1.2 per cent, as well as other crimes - 29.9per cent.¹⁹

¹⁶ Ibid.

¹⁷ https://politia.md/sites/default/files/nota_informativa_privind_starea_delincventei_juvenile_si_activitatea_pe_domeniul_siguranta_copii_pe_parcursul_a_12_luni_ale_anului_2021_presa.pdf

¹⁸ https://politia.md/sites/default/files/nota_informativa_privind_starea_delincventei_juvenile_si_activitatea_pe_domeniul_siguranta_copii_pe_parcursul_a_12_luni_ale_anului_2021_presa.pdf

¹⁹ <https://statistica.gov.md/newsview.php?l=ro&idc=168&id=7002>

Image 2. Type of crimes committed by children and with their participation during 2021 compared to 2019 and 2020

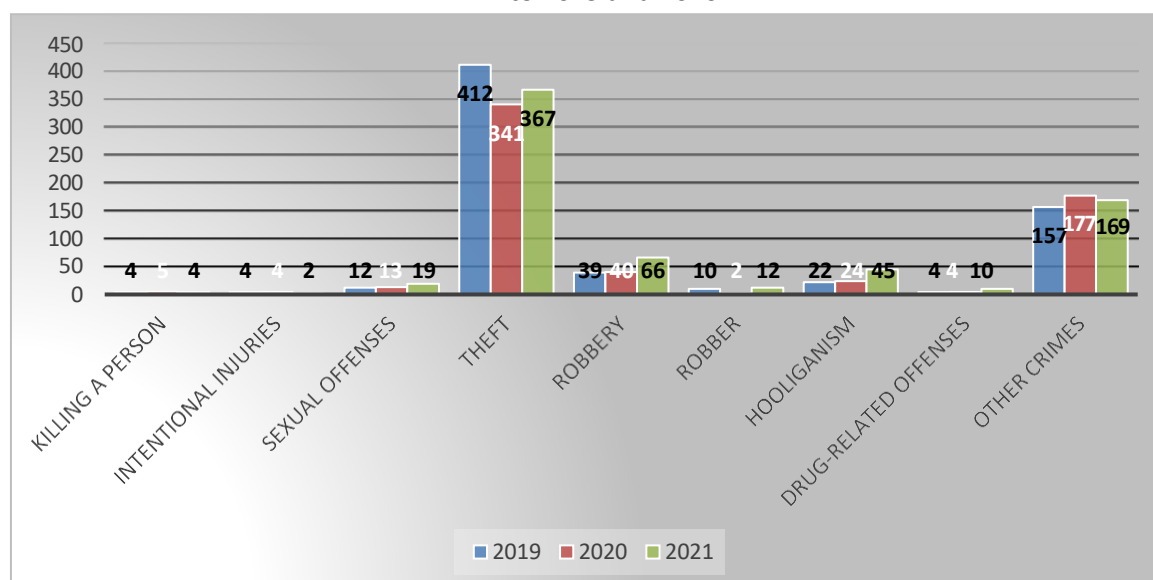


Table 1. Offenses committed by children by sex and characteristics of the crime, 2016-2020¹

	2016	2017	2018	2019	2020
Crimes committed by children	941	798	688	664	606
by the girls	78	103	86	102	35
by the boys	863	695	602	562	571
Crimes committed:					
Repeatedly	79	111	88	102	98
In group	206	179	153	113	147
influence of alcohol	34	24	20	15	20

Several reforms have indeed been initiated in the past ten years in Moldova that introduced positive changes towards better compliance with international standards regarding the juvenile justice system. In 2012 a juvenile justice reform led to changes in law and policy, including the closure of residential schools, the ending of the role of the juvenile inspectors, and the establishment of a multi-agency approach to primary prevention. In 2007 the Commission for Minors was replaced by the Commission for Protection of Child in Difficulty at the district level. Meanwhile, the number of children in residential schools referred to in Ordinance No. 400 has decreased and a number of the institutions have been closed.²⁰ The Objective 1.7 of the National Strategy "Education 2020" sets the target of "Social and educational re-integration of children living in residential-type institutions, which will lead to a decrease in the number of children from these institutions by 25 per cent by 2015 and by 50 per cent by 2020, and to the transformation of at least 20 per cent by 2015, and at least 25per cent by 2020 of these residential-type institutions into the general education institutions."²¹

²⁰ CHILDREN IN CONFLICT WITH THE LAW, Needs assessment of primary, secondary and tertiary prevention services in Moldova 2015. UNICEF.

²¹ Strategy for developing of education for the period 2014-2020 "Education-2020", approved by the GD 944 from 14.11.2014.

Table 2. Children in conflict with the law by sex and age groups, 2016-2020 ¹

	2016	2017	2018	2019	2020
Total					
Both sexes	1 490	1 384	1 254	1 215	1 137
Girls	117	120	123	108	81
Boys	1 373	1 264	1 131	1 107	1 056
up to 14 years					
Both sexes	112	89	78	70	66
Girls	13	13	16	11	11
Boys	99	76	62	59	55
14-15 years					
Both sexes	463	404	396	393	377
Girls	49	44	47	52	36
Boys	414	360	349	341	341
16-17 years					
Both sexes	915	891	780	752	694
Girls	55	63	60	45	34
Boys	860	828	720	707	660

Currently, the provision of services for ‘at-risk’ children is dictated by Law 140 on the Special Protection of Children at Risk and Separated from their Parents (that draws from the Law no. 338/1994 on the rights of the child) which was adopted in 2013 and came into force in January 2014. Law 140 emphasises the importance of coordination of services at the primary prevention stage. Guidelines for identification, monitoring and referral are set out in government Decree 270, on the Inter-Sectorial Cooperation Mechanism for the Identification, Evaluation, Referral, Assistance and Monitoring of Child Victims and Potential Child Victims of Child Abuse, Neglect, Exploitation and Trafficking. Until 2019, children in conflict with the law below age of criminal responsibility were treated under the Law 140. However, in 2019 the parliament adopted the “LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour,” that have singled out children in conflict with the law that are not subject to criminal liability as children with ‘Deviant Behaviour’ and have recognized them as a separated category different from the category of ‘Children at Risk’.²² It seems that the Law 299 is meant to be an instrument of further prevention of criminality of children. The law establish the creation of an inter-sectorial cooperation mechanism regarding the implementation of measures for children with deviant behaviour.²³ The Law in its Art. 26 provides for the obligation of employees of central and local public authorities, structures, institutions and services within, working in the fields of social assistance, education, health care, law enforcement agencies, the process of establishing and implementing measures, as well as the provision of services for children with deviant behaviour, in accordance with the inter-sectorial cooperation mechanism approved by the Government.²⁴ In order to put the newly adopted Law in action and elaborate on the cross sectorial cooperation the new Government Decision from 2020 regarding the approval of the Instruction on the cross-sectorial cooperation mechanism in the process of establishing and implementing measures and services for children with deviant behaviour is still its draft form.²⁵

²² LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

²³ THEMATIC REPORT EVALUATING THE EFFICIENCY AND EFFECTIVENESS OF INTERSECTORAL COOPERATION MECHANISMS IN THE FIELD OF CHILD RIGHTS PROTECTION, the peoples Advocate, Ombudsman Moldova, 2020.

²⁴ Ibid.

²⁵ Draft Decision of Government of Moldova on Law 299 inter-sectorial referral mechanism 2020.

1.2. Stakeholders analysis

The following section presents stakeholders that have are important for the implementation of the protection and services to children in conflict with the law below MACR in Moldova. This section reflects the list of **key institutions and organizations (key informants)** that are encompassed with the Review:

State institutions:

- **Directorate for the Protection of the Rights of the Child and Families with Children within the Ministry of Labour and Social Protection** - *leading institution that creates and implements policy and legislation with respect to child protection in cooperation with central and local authorities and civil society;*
- **Committee on social protection, healthcare and family-** *The Parliament of the Republic of Moldova - Social protection; providing the state social aid; healthcare and medial assistance; issues related to family, mother and child, elderly persons, disabled persons; labour relations and wages;*
- **People's advocate for child's right (Ombudsman)** –*The Ombudsman for Children's Rights is one of the two Ombudsmen appointed by the Parliament it monitors the implementation of rights of children and possible violations.*
- **Ministry of Justice** - *The fields of activity of the Ministry of Justice are: elaboration of draft laws and decisions of the Government in the field of justice, human rights, as well as of the drafts of the most important laws in other socio-economic fields; improving legislation, systematizing legislation and preparing proposals for its codification; coordinating the activity regarding the accomplishment of the judicial reform.*
- **Ministry of Interior** - *The Ministry of Internal Affairs ensures public order and security and respect for fundamental human rights and freedoms, as well as the defense of public and private property.*
- **General Inspectorate of Police** - *a state institution subordinate to the Ministry of Internal Affairs that regulates law enforcement in Moldova*
- **General Directorate for the Protection of the Rights of the Child Chisinau** – *works in monitoring and supervision of children's rights and ensures children's rights are upheld.*
- **National Probation Inspectorate** - *a specialized structure that, through the Probation Offices of the enforcement offices, enforces criminal penalties not deprived of liberty and exercises the probation with persons released from the criminal penalty.*
- **National Council for State Guaranteed Legal Aid** - *and its four territorial offices manage the provision of state-guaranteed legal aid. The services are provided to Moldovan citizens free of charge, per the existing legal framework.*

NGO's and IO:

- **The Association for Participatory Criminal Justice (AJPP)** - *a non-governmental organization that promotes reforms to improve criminal law, criminal justice as a whole, and the development of elements of restorative justice. The objectives of the AJPP include supporting cross-sectorial collaboration between legal professionals and those in social services in the field of criminal justice, including child justice and.*
- **Shelter and Relief (Adăpost și Alinare)** - *supporting orphaned children and children left without parental care; Providing social assistance to socio-vulnerable families, those who have children under guardianship, and those in need of state support; Supporting single-parent families, especially single women caring for and educating their children; Developing social protection*

and recovery programs, especially for women who have used alcohol/drugs, sexually abused women, and women who have been chased from home.

- **CCF/HHC Moldova - Child, Community, Family (CCF/HHC Moldova – Copil, Comunitate, Familie)** - *Support to families at risk of separation, with children younger than 18 years old; Preventing the separation of children from their biological families; Reintegration of children in their biological families or in alternative services created after having left residential institutions.*
- **Institute for Criminal Reform (IRP)** - *of good practices in the field of Juvenile Justice, based on the best interests of the child; Promoting legal, paralegal and psycho-social assistance services that ensure the best interests of the child; Elaboration of standards for the initial and continuous training of specialists in the field of juvenile justice; Conducting specialized participatory training in the field of juvenile justice; Promoting the concept of specialized courts; Elaboration and development of the Strategy for the prevention of juvenile delinquency; Creation of Social Reintegration Centres for Minors.*
- The "Bălți Legal Clinic" - *responds to the needs of disadvantaged categories by facilitating access to justice and promoting modern methods of university legal training.*
- The fields of activity of the Bălți Legal Clinic aim at promoting and defending Human Rights.
- **Terre des Hommes Moldova** - *Promoting participatory and child-friendly methodologies and creating services; Strengthening the capacity of child protection professionals (child protection specialists, social workers, teachers, police officers, doctors, NGO workers, etc.); Improving the system for identifying, referring and managing cases of child abuse, neglect and exploitation; Strengthening inter- sectorial protection mechanisms at the local level; Improving the availability of information, as well as raising awareness of children's rights and needs.*
- **Child Rights Information Centre (CRIC)** - *Establishing children as subjects of rights / children as right-holders; Family environment (and alternative care); Education; Protection of children from all forms of violence.*
- **UNICEF** - *has a mandate to safeguard the rights of all children, everywhere. That mandate is rooted in the 1989 Convention on the Rights of the Child (CRC), which sets out universal and indivisible rights that apply to every child, and the Sustainable Development Goals (SDGs) adopted by world leaders in 2015, which apply to every country with focus on the children who are overlooked and left behind by economic and social progress.*

2. REVIEW FRAMEWORK

In this section the purposes, objectives, the target audience and the scope of the Review are explored. The information presented here is based on: consultations with Council of Europe team, desk review, of relevant international and national documents and existing research on Justice for Children and Children in Risk in Moldova.

2.1. Purposes, objectives and scope

2.1.1. Purposes

The purpose was to analyse the “Law 299/2018 on measures and services for children with deviant behaviour” - that encompasses children in conflict with the law below MACR in line with the international standards and to obtain information that will reflect the current trends and challenges in application of this law.

2.1.2. Research objectives

General objective:

To respond to the purpose, this exercise seeks: To assess the whether the “Law 299 on measures and services for children with deviant behaviour” is in line with international standards and to provide analytical presentation with recommendations.

Specific objectives:

- To assess whether the term “deviant behaviour” is appropriate term according to international standards;
- To assess which category of children are/should be subjects of the law;
- To establish the best solutions to protect children at risk and in conflict with the law below MACR and thus prevent children’s criminality/repeated criminality.
- To access what services are/should be provided to children with “deviant” behaviour (children in conflict with the law below MACR) in accordance to international standards;
- To access what is the specific role of each authority under the Law;
- To show best practices in the area-access the availability and effectiveness of prevention programmes for children at risk in conflict with the law implemented on national level that target children, parents/guardians and community;

2.1.3. Research scope

The Review concentrated on current legislation and practices for protection of children in conflict with below MACR and prevention of children’s criminality. The preparation of the Review took place in the period of between March and May 2022.

2.2. Ethical and guiding principles

Guiding principles on which this Review will base it self are:²⁶

- ✓ the best interest of the child being a primary consideration;
- ✓ advocating for no discrimination on the ground of race, colour, sex, language, religion, political or other (opinion, social origin, disability, birth);
- ✓ highlighting the right to life, survival and development;
- ✓ expressing children's views freely- child's participation;
- ✓ protecting child's right to privacy and ensuring confidentiality of procedures.

2.3. Data collection methods and sampling

The researchers adopted a **participatory approach** to data collection. The research adopted mainly **qualitative data collection method**. Statistical data was utilized whenever available to support objectives of the Review.

2.3.1. Review of literature

Review of literature enabled the team to gather contextual information.

The analysis of documents was an important aspect for the preparation of Review. The experts consulted available legal and policy documents and literature relevant to the assignment. The literature included *inter alia*:

- National legislation and policy documents;
- Reports, evaluations and analyses on the situation of Justice for Children in Moldova;
- National statistics;
- International human rights documents including General observations and general comment of the Committee on the Rights of the Child on Moldova 2017;
- Any other documents considered relevant for the research (see pg. 5 for more details).

2.3.2. Semi-structured interviews with key informants

Semi-structured interviews were carried out with key informants (list of key informants provided in section 1.4 Stakeholders analysis), who are important for implementation of the legislation subject to this Review.

- **Sampling method**

Individual in-depth interviews will be conducted with professionals from these institutions on central level:

- Directorate for the Protection of the Rights of the Child and Families with Children within the Ministry of Labour and Social Protection
- Committee on social protection, healthcare and family
- People's advocate for child's right (Ombudsman)
- Ministry of Justice
- Ministry of Interior

²⁶ UN Convention on the Rights of the Child, New York, 20 November 1989 Entry into force 2 September 1990, in accordance with article 49(1).

- General Inspectorate of Police
- General Directorate for the Protection of the Rights of the Child Chisinau
- National Probation Inspectorate
- National Council for State Guaranteed Legal Aid

Individual in-depth interviews will be conducted with professionals from these IO and NGOs

- The Association for Participatory Criminal Justice (AJPP)
- Shelter and Relief (Adăpost și Alinare)
- CCF/HHC Moldova - Child, Community, Family (CCF/HHC Moldova – Copil, Comunitate, Familie)
- Institute for Criminal Reform (IRP)
- The "Bălți Legal Clinic"
- Terre des Hommes Moldova
- Child Rights Information Centre (CRIC)
- UNICEF

2.4. Limitations of the research and mitigation measures

Several research limitations are projected during the preparation of the methodology and are presented in the table below that includes possible solutions to address the identified limitations:

Table 3: Limitations and Mitigations measures

Limitation	Mitigation measures proposed by the research team
Availability of key informants may be an issue during the interviews phase	In order to ensure participation, the team will contact the selected respondents in advance to confirm their availability.
Short time allocated for the implementation of the assignment	The team of experts will rely on information gathered through the interviews and available data, as well as data provided to the team by CoE.
Due to Covid-19 restrictions the interviews and focus groups might not be possible to be organized in person.	The team will have this in mind from the beginning and will consider implementation of on-line interviews.

3. WORK PROCESS

The **review process** is divided in several complementary phases. Each phase (tools, deliverables and expected results) is complementary to the other. The sequencing is essential to guarantee the quality of the Review.

Phase 1: Methodology Development and desk review

In the planning phase, Council of Europe and the experts held a kick-off meeting (Teams), whose objective was to ensure that both have a common understanding of the mission and its objectives. A consultation with Council of Europe and review of available literature at the moment of the writing was the main basis of the Methodology Report. Following the acceptance of the Methodology Report a thorough desk review was conducted.

Phase 2: Interviews with stakeholders

Following the desk review, selected respondents were contacted, by the national expert (Council of Europe provided support). The national and international experts conducted the interviews between 11 and 20 April 2022.

Phase 3: Preparation of the Report

The experts analysed received data and produced a draft report that was shared with CoE and one round of comments was incorporated into the Final Review by the 06 of May 2022.

Phase 4: Validation of Results /presentation of results

The international and the national experts presented the Final Review in a validation workshop / expert meeting to discuss results and recommendations to Government stakeholders based on a PowerPoint presentation. The workshop aimed at sharing and validating findings and finalizing recommendations and took place on 10 of May 2022.

4. FINDINGS

4.1. International and European standards in prevention of children's criminality

Intentional standards call for the establishments of child-centered youth justice system in which children's interests are paramount and the inherent dignity of children is preserved. In line with that, states should systematically implement fundamental, as well as general principles underpinning juvenile justice in the administration of their juvenile justice systems.²⁷

The general principles stipulate that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.**²⁸

Furthermore, States should assure to the child who is capable of forming his or her own views the right to **express those views freely** in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity **to be heard** in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.²⁹

Also, it is important to ensure that all children are **protected against all forms of discrimination or punishment** on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Children in conflict with the law should be treated in a manner consistent with the **promotion of the child's sense of dignity and worth**³⁰ and any treatment of children in conflict with the law should take into consideration their age as well as the desirability of **promoting their reintegration and their assumption of a constructive role in society.**³¹

Documents that provide more specific standards regarding children in conflict with the law under MACR, against which Law 299 will be reviewed, are as follows:

- United Nations Convention on the Rights of the Child and the CRC General Comments, 12, 10 and 14, 20 and 24;
- Council of Europe Recommendation Rec (2005) 5 on the rights of children living in residential institutions;
- Recommendation Rec (2004) 10 concerning the protection of the human rights and dignity of persons with mental disorder;

²⁷ Committee on the Rights of the Child, General Comment No 10: Children's Rights in Juvenile Justice, CRC/C/GC/10, 25 April 2007, para. 5.

²⁸ Convention on the Rights of the Child, ADOPTED 20 November 1989 BY General Assembly resolution 44/25, Art.3.1.

²⁹ Recommendation CM/Rec(2012)2 of the Committee of Ministers to member States on the participation of children and young people under the age of 18.

³⁰ Convention on the Rights of the Child, ADOPTED 20 November 1989 BY General Assembly resolution 44/25, Article 40(1).

³¹ Recommendation No. R (87) 20 on social reactions to juvenile delinquency.

- Recommendation CM/Rec (2012) 2 of the Committee of Ministers to member States on the participation of children and young people under the age of 18;
- Recommendation Rec (2003) 20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;
- Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions or measures;
- Recommendation No. R (92) 16 on the European rules on community sanctions and measures;
- Recommendation No. R (87) 20 on social reactions to juvenile delinquency;
- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice;
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules);
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules);

4.2. Prevention of children’s criminality and protection of children in conflict with the law under MACR through Law 299 and its compliance with international standards

“Prevention of children’s criminality” means measures and activities at reducing the likelihood of engaging persistent criminal behaviour as opposed to prevention of crime which is concerned with lowering numbers of offences committed.”³² (Rec (2000) 20 on the role of early psychosocial intervention in the prevention of criminality)

4.2.1. Definitions and Scope of the Law

Standards:

1. *The Committee encourages the **use of non-stigmatizing language relating to children alleged as, accused of or recognized as having infringed criminal law.***³³ (CRC general Comment 24)
2. *Children **must not be labelled as "deviant", "delinquent" or "pre-delinquent",** since this contributes to the development of a consistent pattern of undesirable behaviour by the child.*³⁴ (Riyadh Guidelines)

- **Scope of the Law**

The scope of Law No 299 is provided in Article 1.³⁵ Accordingly, the Law’s scope is to regulate the **measures and services** for children with **deviant behaviour**, the **categories of beneficiaries of such measures and services**, the **principles and purposes** of establishing measures for children with **deviant behaviour**, as well as, **the manner of establishing, extending, amending and repealing** such measures.

- **Definitions/terms**

The Law refers to “children with deviant behaviour” as the main subjects of the Law. However, the Law does not elaborate on any definition of “children’s deviant behaviour,” or on how this deviant behaviour should be identified and evaluated by relevant professionals. Instead, the Law leaves for

³² General comment No. 24 (2019) on children’s rights in the child justice system.

³³ Ibid.

³⁴ United Nations Standard Minimum Rules for the Administration of Juvenile Justice Riyadh Guidelines, Art 5(f).

³⁵ Article 1, LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

“deviant behaviour” to be understood as an umbrella term that encompasses behaviour/s belonging to all children that have committed either a criminal or conventional offence, but are not subject to criminal or conventional liability as provided in its Article 2.³⁶

- a. Children who have committed a deed provided for by the criminal law, but who are not subject to criminal liability;
- b. Children who have committed a deed provided for by the contraventional law, but who are not subject to contraventional liability;

Research shows that children under MACR that have offended are children that are influenced by various risk factors, such as, for example, poor parental supervision, parental substance abuse, coupled with poor academic performance/child’s substance abuse or risk of violence in the family and the school.³⁷ A recent research conducted in Moldova, by UNICEF, identified several risk factors for children, such as: special educational needs, poor mental health, experience of losing a loved one, vulnerability to negative influences, consumption of alcohol and other substances, loss, abuse or neglect as contributor to “delinquent behaviour.”³⁸ A study in the UK found that around 50% of children offenders in the caseload of child protective services have had traumatic experiences, been the victim of abuse neglect and/or violence.³⁹ The link between child maltreatment (abuse and neglect) and offending and reoffending is well established and there is now significant evidence that the timing of this maltreatment matters.⁴⁰ Children whose maltreatment is chronic and persists from early childhood are much more likely to be involved in crime and reoffending.⁴¹ Thus, majority of children under MACR that have offended are also children that have suffered neglect/abuse, parental neglect and are without parental care.⁴²

Standard:

3. Recommendation (2000) 20 of CM on the role of early psychosocial intervention in the prevention of criminality) calls these situations as risk factors, which are individual characteristics or socio-economic, cultural, demographic, and other circumstances, which increase the likelihood of engaging in future and persistent criminal behaviour.⁴³ Accordingly the Recommendation refers to children that are under influence of these factors as children at risk i.e. exposed to multiple risk factors.⁴⁴

Thus, the formulation “children with deviant behaviour” that is used by the Law 299 is not in concurrence with international standards and research, as its position towards children at risk under MACR that have committed offences is discriminatory, stigmatizing and it favours a criminogenic perspective towards children rather than social/welfare perspective. The Law does not concentrate on removing the ‘risks’ but on addressing a certain behaviour, i.e. deviant behaviour.

³⁶ Article 2, *ibid*.

³⁷ Stouthamer-Loeber, M., Loeber, R., Wei, E., Farrington, D. P., & Wikström, P.-O. H. (2002). Risk and promotive effects in the explanation of persistent serious delinquency in boys. *Journal of Consulting and Clinical Psychology*, 70(1), 111–123.

³⁸ Children in conflict with the law. Needs assessment for primary services, secondary and tertiary education in the Republic of Moldova, UNICEF, 2015.

³⁹ *Ibid*.

⁴⁰ *Ibid*.

⁴¹ Family Matters No. 89 - December 2011 The link between child maltreatment and adolescent offending Systems neglect of adolescents Judy Cashmore.

⁴² UK Department of Education, The impacts of abuse and neglect on children; and comparison of different placement options, Evidence review, March 2017, Dr Julie Wilkinson Dr Susannah Bowyer Research in Practice.

⁴³ (Rec (2000) 20 on the role of early psychosocial intervention in the prevention of criminality).

⁴⁴ (Rec (2000) 20 on the role of early psychosocial intervention in the prevention of criminality).

Children in conflict with the law /children that have offended under MACR should be considered, as children at risk and the efforts should be directed at removing the risk factors that contribute towards their offending.

It is suggested that a terminology, that is in concurrence with international standards, research and that avoids labelling children, be used in Moldovan legislation, for example: “Children at risk in conflict with the law under MACR” where a child in conflict with the law: could be defined as: “a child who is alleged or found to have committed an offence and has not completed eighteen years of age on the date of commission of such offence” or “Children at risk under MACR with a social problem,” social problem could be defined as: “objective events or situations caused by societal events, family occurrences and socially dangerous behaviours, that have a negative effect on the person in a way that affects its social functioning and which consequences cannot be overcome without an organized social support.”

- **Categories of persons under the Law**

Law 299 (Article 2 a),b)) applies to children that are not criminally or contraveniently liable but have committed an offence or contravention.⁴⁵ However, when it comes to its implementation, it seems that there is a confusion as to which age group of children the Law 299 applies. Most stakeholders have expressed their belief that this Law applies only to children under 14 years of age (even though it was stressed by representatives from the Ministry of Justice that the intention of the legislator has been to include also children between 14-16 years of age exempted by criminal legislation Art. 21 Criminal Code).⁴⁶ Stakeholders have stated that in practice, so far, the Law has been implemented mostly on children in conflict with the law under 14 years of age. Therefore, a clearer formulation of the age groups to which the Law applies is needed, for example, a clarification, could point out that this Law applies to children at risk in conflict with the law up to age of 16, excluding children who have committed offences as per Article 21 from the Criminal Code and/or have committed contravention acts but who are not liable in accordance with Art. 16 from the Contravention Code.⁴⁷

Another important point is that the Law provides for broad formulation of which children it applies to. Namely, it does not clarify in definitions nor in measures whether it also applies to children with developmental delays or neurodevelopmental disorders, or children with already established mental health disorders and substance abuse addictions that are in conflict with the law. The Law should clarify whether it applies to children with developmental delays or neurodevelopmental disorders, or children with already established mental health disorders and substance abuse addictions.

If the Law does apply to these categories of children, this needs to be explicitly reflected in its Article 2, as well as throughout the measures and services that are foreseen by the Law, because these categories of children have specific protection needs that cannot be achieved with regular services. This is even more pressing issue, having in mind that the current regulatory framework governing mental health in Moldova does not clearly proscribe the mechanisms for the identification, protection, treatment and

⁴⁵ Article 2, LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

⁴⁶ Article 21, The Criminal Code of the Republic of Moldova, No. 985-XV dated 18.04.2002, Republished: Official Monitor of the Republic of Moldova No. 72-74/195 dated 14.04.2009 Official Monitor of the Republic of Moldova No. 128-129/1012 dated 13.09.2002.

⁴⁷ Article 1, LAW The Contravention Code of the Republic of Moldova No. 218-XVI of 24 October 2008 Official Monitor of the Republic of Moldova No.3-6/15 dated 16 January 2009.

referral of children at risk in conflict with the law under MACR, who have mental health problems and / or drug or alcohol dependence.

Finally, the Law also applies to parents and institutions (Art. 2 c), d)):

“c) parents, other legal representatives or persons in whose care the children stipulated in letter a) and b) are;

d) persons/institutions responsible for providing measures and services for children stipulated in let. a) and b).

4.2.2. Measures and services provided by the law and their implementation

- **Prevention measures and services**

Standard:

4. Programs for early psychosocial intervention in preventing criminality of children should be developed and part of legislation. They should comprise of range of relevant measures which target as full a range as possible risk factors within the primary domains of children’s lives-school, family, the peer group, the community.⁴⁸ (CM Rec (2000) 20).

Law No 299 starts by elaborating provision of measures to children that have committed offences and are under MACR. The Law in itself is reactive as such, directed at treating the “problem,” *i.e.* addressing the “deviant behaviour.” Research shows that prevention and early intervention strategies in a form of support services is needed to combat likely pathways of children into the justice system – such as family support; mental health; disability support; youth engagement; and rehabilitation services should aim to address the underlying risk factors, which can lead to poor justice outcome.⁴⁹ In the view of international standards the Law No 299 does not contain measures and programmes directed at preventing children’s criminality. Arguably, Law 140 contains measures of protection of children at risk separated from their parents and this is a form of prevention of children coming in conflict with the law, but it does not include targeted prevention measures on individual, family and community level. The Committee on the Rights of the Child in the Concluding Observations on the Fourth and Fifth Periodic Report of the Republic of Moldova⁵⁰ points out that it is important to provide for concrete programmes for parents/legal guardians and caretakers in order to prevent children coming at risk *inter alia* of offending such as for example - implementing National Parenting Skills Training Program and psychosocial interventions to actively address substance abuse by parents/legal guardians, with a view to continuously reducing the institutionalization of children.

Interviews with stakeholders have revealed that primary prevention of children’s criminality is the most important missing link in the system that needs further development. *Stakeholders expressed the need to include more focused prevention of children’s criminality in legislation, through identification of institutions that will be involved in prevention, their responsibilities and targeted activities developed for that purpose.*

⁴⁸ CM Rec (2000) 20.

⁴⁹ Minimum Age of Criminal Responsibility, Policy Statement of Law Council of Australia 2020.

⁵⁰ Committee on the Rights of the Child in the Concluding Observations on the Fourth and Fifth Periodic Report of the Republic of Moldova, CRC/C/MDA/4-5.

- **Measures for children under the Law 299**

Standards:

5. *State parties are required to provide a variety of dispositions, such as care, guidance and supervision orders, counseling, probation, foster care, education, vocational training programs and other alternatives to institutional care to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence. These measures are not regarded as sanctions or punishments on the child in conflict with the law. Rather, they are perceived as protective measures, which aim to re-educate or re-habilitate the child.*⁵¹ (CM Rec (2000) 20)

6. *Early intervention for children who are below the minimum age of criminal responsibility requires child-friendly and multidisciplinary responses to the first signs of behavior that would, if the child were above the minimum age of criminal responsibility, be considered an offence. (CRC Comment 24).*

7. *Evidence-based intervention programs should be developed that reflect not only the multiple psychosocial causes of such behavior, but also the protective factors that may strengthen resilience. Interventions must be preceded by a comprehensive and interdisciplinary assessment of the child's needs. As an absolute priority, children should be supported within their families and communities. (CRC Comment 24).*

8. *States parties should develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families.*⁵² (CRC Comment 24).

Law 299 in its Article 5 provides for the following measures for children at risk in conflict with the law:⁵³
 “Measures for children with “deviant behaviour”

- a. Specialized supervision;
- b. Placement in the guardianship/curatorship service or in the family type service;
- c. Placement in the residential type service;
- d. Placement in the highly specialized residential type service.”

The Law stipules conditions when certain measure can be used. Thus, measure of placement in the guardianship/curatorship service, in the family type service or in the residential/highly specialized residential type service can be established only if, after the establishment of the specialized supervision measure, the child **commits two or more deeds stipulated by the contravention law.**

The Law provides that the measure of special supervision is conducted on the basis of an individual supervision plan, that is to be developed within five working days by a specialist in the protection of children's rights or a social worker, following the evaluation of the child's situation by the multidisciplinary team provided in Art. 3 of Law no. 140/2013 on the special protection of children at

⁵¹ CRC art. 40 (4)

⁵² CRC Comment 24 also see CM Rec (2000) 20.

⁵³ Article 5 LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

risk and children separated from their parents. Thus, Law 299 refers to Article 3 of Law 140,⁵⁴ that stipulates that multidisciplinary team is a group convened by **the specialist in child's rights protection** (a professional that is still unavailable to the services for children in at risk in conflict with the law under MACR) or, in the absence of him/her, by the community social worker that comprises professionals from various areas with child protection duties who collaborate to prevent and/or solve cases of children at risk.⁵⁵

Standard:

*9. In order to distinguish children at risk national regional and local agencies should developed appropriate structures and processes...all means designed to distinguish children at risk should be undertaken in their best interest.*⁵⁶

*10. Risk assessment and formulation is a crucial step to identify which children require services, the type and intensity of service provision required and in guiding appropriate care planning.*⁵⁷

The individual supervision plan is routinely provided for children at risk separated from their parents, i.e. children that have not offended. Law 140 does not provide for a specialized supervision plan and psychosocial risk assessment, conducted with regular participation of psychologist, with respect to children at risk in conflict with the law under MACR. *It is recommended that such specialized plan is prepared with professional input of a psychologist and is included either in Law 140 or in Law 299. This specialized plan will concentrate on specific needs of this category of children that will identify risks, will select and if possible devise services/programmes that can address the identified risks including psycho-pedagogical assistance services.*

The specialized supervision measure consists in keeping the child with “deviant behaviour” in the family, subject to compliance, as appropriate, by him/her and by his/her parents/legal representative or the person in whose care he/she is, with one or more obligations, such as:

- a. Attendance of compulsory education courses;
- b. Use of specialized day social services;
- c. Attendance of medical treatments, counselling or psychotherapy programmes;
- d. Forbiddance to attend certain places or to have connections with certain people;
- e. Obligation to not commit further deeds stipulated by the criminal law and/or the contraventional law.⁵⁸

With respect to implementation, according to interviewed stakeholders this measure is the only measure from Law 299 that is implemented in practice, but with limited success due to: monitoring issues from responsible institutions and non-compliance from parents, legal guardians and caregivers (elaborated further in Section 4.2.3).

⁵⁴ Art. 3 of Law no. 140/2013 on the special protection of children at risk and children separated from their parents.

⁵⁵ Law 140 art. 3.

⁵⁶ Ibid, Ch. III, para. 8

⁵⁷ Scottish Government, policy-Working with children in conflict with the law/ standards- 2021. These standards replace those published in 2012 and are intended to guide both strategic and operational services' understanding of what is expected at each stage of a child's journey through the justice system.

<https://www.gov.scot/publications/standards-those-working-children-conflict-law-2021/pages/3/>

⁵⁸ Article 6, LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

The second measure - placement in guardianship/curatorship service or in the family type service is provided if the maintenance in the family of the child with “deviant behaviour” is not possible due to objective reasons or when the specialized supervision measure cannot be conducted due to neglect or violence on the part of the parents, of the legal representative or the person in whose care the child is found.⁵⁹ Even though this measure is in accordance to international standards, placement for children at risk in conflict with the law under MACR is not in function. It is important to note that the recent revisions of Law 140, through Law no. 112,⁶⁰ provide for the possibility of placing only a child that is temporarily left without parental care or of a child left without parental care in the guardianship/curatorship service and provide for the territorial guardianship authority to take into account the following options when assessing child placement priority:

- a) Placement in the extended family;
- b) Placement in the family of the person with whom the child has established close relations (neighbour, family friend, etc.);
- c) Placement in the adopter's family, selected according to the methodology approved by the central authority for child protection.

However, its implementation is still pending since a Regulation of the Guardianship and Curatorship Service that describes the procedures, documentation, keeping files and type of service, etc., is still not adopted.

Standards:

11. The family is the natural environment for the growth and well-being of the child and the parents have the primary responsibility for the upbringing and development of the child; Measures of support for children and families in accordance with their special needs should be provided as far as possible; the placement of a child should remain the exception and have as the primary objective the best interests of the child and his or her successful social integration or re-integration as soon as possible; the placement must guarantee full enjoyment of the child's fundamental rights.⁶¹(Council of Europe Recommendation Rec(2005)5 on the rights of children living in residential institutions)

12. It is necessary to establish alternatives to the institutionalized care of children who commit acts of violence, such as help, guidance and supervision; counselling; probation; foster carers; vocational and educational training programs.⁶²(Recommendation CM / Rec (2009) 10 on policy guidelines for integrated national strategies for the protection of children against violence)

13. Child placed in residential care has to receive appropriate education, vocational guidance and training, medical care, and enjoy freedom of thought, conscience and religion and access to leisure, including physical education and sport.⁶³ (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice).

⁵⁹ Article 7 LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

⁶⁰ Law no. 112 of 09.07.20, in force since 14.08.20.

⁶¹ Council of Europe recommendation Rec (2005)5 on the rights of children living in residential institutions.

⁶² Recommendation CM / Rec (2009) 10 on policy guidelines for integrated national strategies for the protection of children against violence.

⁶³ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum.

If the specialized supervision of the child with deviant behaviour or his/her placement in the guardianship/curatorship service or in the family type service is not possible due to objective reasons or when the measure of placement in the guardianship/curatorship service or in the family type service does not achieve the purpose for which it was established, the responsible authority may order the placement of the child in a residential type service, and finally, if the deed stipulated by the criminal law, committed by a child who is not subject to criminal liability, poses an increased degree of social danger, as well as if the child commits further deeds stipulated by the criminal law and/or manifests a violent behaviour that cannot be influenced by the parents, by the legal representative or by the person in whose care he/she is, the responsible authority may order the placement of the in a highly specialized residential type service.⁶⁴

The Law provides two out of four measures to be measures that include placement in institutionalized care and does not provide time limits for the duration of these measures (Article 13).⁶⁵ In a view of international standards, the Law's approach towards children at risk in conflict with the law under MACR with respect to the measures provided here takes a punitive approach towards children. According to international standards putting children in institutional care should be measure of last resort and general aim of these measures should be to facilitate the child's effective socialization and reintegration into the family, community and society. To mention the CRC Committee's Concluding Observations on the Fourth and Fifth Periodic Report of the Republic of Moldova⁶⁶ in which it welcomes the de-institutionalization reform but is concerned with the lack of individual care plans and inadequate monitoring of the institutional placement of children, which perpetuates the phenomenon of institutionalization and minimizes the chances of reintegration of the child into the family.⁶⁷ The committee observes that *foster care services and family-type homes are better option to institutional/residential type of placement.* Research shows that children at risk in conflict with the law under MACR placed in residential care have high levels of contact with the criminal justice system, leading to further youth detention and "the almost inevitable progression to the adult corrections system."⁶⁸

According to interviewed stakeholders, none of these two measures are implemented in practice for children at risk in conflict with the law under MACR. It was pointed out that a residential facility did exist in Moldova but it was connected to many negative practices and as such it was discontinued. Some stakeholders expressed the view that a specialized residential institutions for a very short-term stay for isolated cases of children is necessary but they need to be implemented with the view of international standards - *to be a short term solution and to offer children education/ vocational trainings and other necessary services with the view of reintegration and re-socialisation.*

⁶⁴ Article 8 and 9 LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

⁶⁵ Article 13, LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

⁶⁶ Committee on the Rights of the Child in the Concluding Observations on the Fourth and Fifth Periodic Report of the Republic of Moldova, CRC/C/MDA/4-5.

⁶⁷ Ibid.

⁶⁸ Katherine McFarlane, 'From Care to Custody: Young women in out-of-home care in the criminal justice system' (2010) 22(2) Current Issues in Criminal Justice 345, 348.

- **Services for children, parents legal guardians and carers**

Standard:

14. States shall conducted regular In-depth analyses of the problem and inventories of programmes, services, facilities and resources available.¹ (Riyadh rules)

Law 299 in Article 14 provides for “Assistance and support services for children ‘with deviant behaviour’.” Services that are provided are meant to target parents/legal guardians and everyone that cares for the child and they comprise of: qualified social, legal, medical, pedagogical, psychological, informational assistance or other assistance, in order to achieve positive changes in the child’s behaviour. The Law mandates that parents, the legal representative or the person in whose care the “child with deviant behaviour” is, shall participate in the counselling programmes and those for the development of parental skills, organised by the competent authorities/institutions.

The law, further provides for specialized and highly specialized social services for children with “deviant behaviour” such as:

- a. Day social service;
- b. Guardianship/curatorship service;
- c. Family type service;
- d. Residential type service;
- e. Highly specialized residential type service.

According to interviewed stakeholders these services, even though available to children at risk separated from parents under Law 140, are largely not applicable to children at risk in conflict with the law under MACR because they are not specialized to target this specific category of children. In particular stakeholders have stated that referral to the psycho-pedagogical assistance service is missing, as well as documentation of some children, etc. With the view of international standards, specialised services, resources and facilities for children at risk in conflict with the law are largely missing.

Standard:

15. A child leaving care should be entitled to an assessment of his or her needs and appropriate after-care support in accordance with the aim to ensure the re-integration of the child in the family and society.⁶⁹ (Guidelines for the Alternative Care of Children)

Evidently, specialized measures/services and programmes for children at risk in conflict with the law under MACR are missing in Moldova at this point, especially community based services, after-care services, are not mentioned at all, and specialised services for children with mental health issues and or substance abuse addiction in conflict with the law under MACR. The later, as pointed out by stakeholders during the interviews is a real need as many of the children under MACR that have offended in Moldova have had substance abuse and/or mental health problems. A study conducted in Moldova on children at risk found that some of the children that were involved in the study said that have had experienced and suicidal feelings that have contributed to them committing an offence. The study states that the failure to meet children’s mental health needs often leads to aggression and

⁶⁹ Articles 37(b) and 20(3) of the CRC68 and the Guidelines for the Alternative Care of Children).

breakdown in the child's family, school and social life.⁷⁰ Research conducted in the USA showed that mental health disorders are prevalent among youths in the juvenile justice system⁷¹ and that as many as 70 per cent of youths have a diagnosable mental health problem in addition to issues with substance use.⁷² These findings suggest that *in addition to measures, evidence-based prevention services should be included as part of the legislation (Law 299 and Law 140), even when children do not initially present with mental health or/and substance abuse service needs.*

Fortunate circumstance is that the Law on Mental Health is currently in its drafting phase at the Parliamentary commission. This creates a timely opportunity to *include into the Law specialized child-friendly services for children at risk/and children at risk in conflict with the law under MACR with mental health problems and substance addictions in line with international standards.* These services need to be cross-linked with Law 299, as well as with the Law 140.

Finally, it is important that a *mapping of services and programmes available and that could be available to children at risk in conflict with the law under MACR and their parents guardians, caregivers and community is conducted in real time and based on real needs of beneficiaries.* Accordingly a *strategy/road map of development of such programmes should be drafted and implemented in foreseeable future.*

- **Right of the child to participate and be heard regarding measures imposed by the Law**

Standards:

16. States parties must assure that the child is able to express her or his views “in all matters affecting” her or him and to introduce legislative measures requiring decision makers in judicial or administrative proceedings to explain the extent of the consideration given to the views of the child and the consequences for the child.⁷³ (CRC General Comment 12)

17. The procedure, organisation and individual care plan of the placement, including a periodic review of the placement, shall guarantee the rights of the child, notably the child’s right to be heard.⁷⁴ (CRC General Comment 24)

18. If participation is to be effective, meaningful and sustainable, it needs to be understood as a process and not a one-off event and requires on-going commitment in terms of time and resources.⁷⁵ (Recommendation CM/Rec (2012)2)

The Law points out that children’s participation will be maintained throughout the procedure. Thus, prior to the establishment of a measure, the child shall be given the opportunity to be heard both directly and through his/her legal representative or the person in whose care he/she is. The opinion of the child, when it is not contrary to his/her own interests, shall be taken into account.⁷⁶ Further in Article 11 (4) the Law also provides that the territorial guardianship authority shall ensure the hearing

⁷⁰ Children in conflict with the law. Needs assessment for primary services, secondary and tertiary education in the Republic of Moldova, UNICEF, 2015.

⁷¹ Funk, R., Knudsen, H.K., McReynolds, L.S. *et al.* Substance use prevention services in juvenile justice and behavioral health: results from a national survey. *Health Justice* 8, 11 (2020). <https://doi.org/10.1186/s40352-020-00114-6>.

⁷² Intersection between Mental Health and the Juvenile Justice System, 2017, www.ojdp.gov/mpg

⁷³ CRC General Comment 12.

⁷⁴ CRC Comment 24.

⁷⁵ Committee of Ministers, Recommendation CM/Rec(2012)2 of the Committee of Ministers to member States on the participation of children and young people under the age of 18, 28 March 2012.

⁷⁶ Article 11 (4) LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

of the opinion of the child in respect of whom the opportunity to establish a measure is being examined.

Children that are encompassed with this Law are children under 16/14 years of age and some of them could be quite young. With the view of international standards, the Law does not provide for procedure of how this opinion is sought from the child/ for example a child friendly environment and who decides and how whether the child is capable to form an opinion etc., as well as the Law does not provide for a requirement that in all decisions brought by the responsible authority with respect to “deviant children” should include an explanation of the extent of the consideration given to the views of the child and the consequences for the child.

4.2.3. Procedure, responsible Institutions, and mechanisms for implementation

- The procedure of identification of the child

Standards:

19. States shall provide for well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts; Riyadh rules⁷⁷

20. Mechanisms for the appropriate co-ordination of prevention efforts between governmental and nongovernmental agencies;⁷⁸ Riyadh rules

Law 299 provides for institutions that are responsible for implementing the procedure for establishing and monitoring measures for “children with deviant behaviour” in its Article 11. Also, Article 11 stipulates the procedure of imposing measures to “children with deviant behaviour.”

According to Article 11 (1), the parent of the child with deviant behaviour, his/her legal representative, the person in whose care he/she is, the educational institution in which he/she studies, the law enforcement bodies or the local guardianship authority shall notify the territorial guardianship authority in writing of the need to establish a measure for children with deviant behaviour.⁷⁹

Thus, the bodies who can preliminary identify child as “deviant” are: his/her legal representative, the person in whose care the child is, the educational institution in which the child studies, the law enforcement bodies or the local guardianship authority.

The question that emerges here is: *based on what all the above-mentioned institutions/natural persons report the child to the local/territorial guardianship? Is it certain behaviour, or is it the fact that the child committed and criminal or contraventional offence?* In the case of the later, only a state organ that has jurisdiction to ascertain that a child has committed an offence in accordance with law can report a child to the territorial guardianship. If it is certain behaviour after the fact of committing an offence, that is to be considered “deviant”, the Law does not provide for the methodology based on which the behaviour is considered as “deviant.” This leaves space for interpretations and it can be damaging to the child’s psychosocial development.

⁷⁷ The Riyadh guidelines (A/RES/45/112).

⁷⁸ The Riyadh guidelines (A/RES/45/112).

⁷⁹ Article 11 (1) LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

- **Institutions and mechanism for implementation**

Further, the Law in Article 11 (2) provides that after being notified, the territorial guardianship authority shall request the local guardianship authority to draw up a **report on the assessment of the situation of the child with deviant behaviour**.⁸⁰ The procedure is considered as urgent, *i.e.* within 10 working days, the local guardianship authority, shall submit to the territorial guardianship authority a report on the assessment of the child's situation.⁸¹ The report mentioned here is the report as described in Law 140, elaborated in section 4.2.2. **After receiving the report on the assessment of the situation of the child with deviant behaviour**, the territorial guardianship authority shall request the chairman of the **Commission for the Protection of Children in Difficulty** to convene it, in order to examine the request and issue an opinion on the appropriateness of establishing, for the respective child, of one of the measures provided by this law, in accordance with the inter-sectorial cooperation mechanism approved by the Government (still in a draft form).⁸²

Unfortunately, the Law is silent on what is done if the child is not found to be "deviant" if this is a possibility at all. This argument brings us back to the observation made in section 4.2.1 that according to the Law all children that have committed criminal and contraventional offences are children with deviant behaviour.

The Law further states that in case of obtaining a positive opinion from the Commission for the Protection of Children in Difficulty, the territorial guardianship authority shall notify the persons and institutions on the receipt of the notification regarding the establishment, for the child, of one of the measures provided by this law and of the opinion of the Commission for the Protection of Children in Difficulty and shall request their opinion on the measure to be established. However, there is no clarity regarding the mechanism for implementing the provisions of Law no. 299, and there is no clear delimitation of responsibilities of all actors involved into implementation of measures. *This reaffirms the need for adoption of a Government decision that is still in its draft form if the law will be retained as a stand-alone law.*

With respect to implementation, interviews with stockholders have revealed that implementation of measures for children at risk in conflict with the law under MACR is extremely difficult because clear implementing mechanism is not in force yet (it is even more difficult to find services for children with alcohol or drug addiction, or with mental health needs. The lack of such an infrastructure often leaves children in the community unsupported⁸³). In a mean time the publication "Instructions of Multi-sectorial work" from 2021, prepared with participation of CoE have been useful tool to bridge the existing gap.

In addition, it was pointed out that the authority of the territorial and local guardianship authority is only advisory by nature. In other words this/these body/s do not have any jurisdiction to impose measures on children and parents/legal representatives or caregivers nor to impose actions to other institutions involved in the process. Consequently, in reality, parents, legal guardians and caregivers

⁸⁰ Article (2) LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

⁸¹ Article 11(2). LAW No. PL299/2018 of 30.11.2018 on measures and services for children with deviant behaviour.

⁸² Ibid.

⁸³ Children in conflict with the law. Needs assessment for primary services, secondary and tertiary education in the Republic of Moldova, UNICEF, 2015.

are not required by law to follow the measures and actions issued by this advisory body, which complicates implementation.

One of possible ways to solve this issue is *to amend the status of the territorial/local guardianship authority in the Administrative Code, and/or to provide accountability mechanisms for non-compliant subjects, institutions, as well as, parents/legal representatives or caregivers.*

Finally, It is worth to *consider implementing accountability mechanism that will take more social protection approach when targeting parents/legal representatives and caregivers, that will vary from compulsion to facilitation and motivation mechanisms to achieve children's attendance in, for example, community services.*

4.2.4. Complaints mechanism for children and legal guardians/parents against measures

Standard:

21. Children in conflict with the law should have the right to access appropriate independent and effective complaints mechanisms.⁸⁴(Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice).

Law 299 in its Article 11 provides for a complaint mechanism of parents/legal representatives and caretakers of children at risk in conflict with the law that have been given one of the measures under the Law. The procedure for contesting the measure established by the territorial guardianship authority is carried out based on the provisions of the Administrative Code.

Law 299 provides for adequate complaint mechanism. However it is not clear how well it functions in practice. Although Law 299 and the Administrative Code provide a clear procedure for challenging the decisions of guardianship authorities regarding the application of measures for “children with deviant behaviour,” data on the number of contested decisions is not available.

4.2.5. Data collection

Standard:

22. Systematically collect disaggregated data relevant...for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency.⁸⁵ (CRC General Comment 24).

Although certain statistical data regarding the response of the child protection system and institutions indicated in Law 299 are collected, each institution has its own specific methodology for collection and analysis of data, which creates problems in identification of relevant data on national level, as well as, identification of gaps and/or good practices.

⁸⁴ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum.

⁸⁵ CRC General Comment 24.

Furthermore, the data collection system in place does not contain indicators for monitoring and evaluation of implementation of the Laws 299 and 140, which would set bases for data informed policy/strategy development for protection of these categories of children. Thus, *it is suggested that unified data collection system for recording of children at risk in conflict with the law under MACR, with specific indicators, to be developed in foreseeable future.*

4.3. Good practices in working with children in conflict with the law below MACR

The following section elaborates good practices with respect to prevention of children under MACR's criminality in various countries.

Scotland – early and effective intervention⁸⁶

Scotland's approach to reducing and addressing children's offending under MACR is through the Children & Young People (Scotland) Act 2014, the 2008 Preventing Offending by Young People Framework and 2015 Preventing Offending: "Getting it Right for Every Child" policy documents laid the groundwork for Scotland's prevention plan; with a key priority of the latter document being the advancement of the multi-agency partners working together to keep children out of the formal system, i.e. formal measures – something which has become a key policy in light of the growing body of evidence highlighting the criminogenic consequences of formal system-contact and labelling for children. A key pillar of the WSA approach is early and effective intervention (EEI).

EEI works by means of multi-agency partnerships to engage children who have committed criminal acts and to help them stop offending, via appropriate and targeted professional and practitioner expertise and support ('interventions'). Successively, EEI seeks to reduce unnecessary referrals to the Children's Hearings System. Within Scotland the approach has mainly taken two forms: a multi-agency meeting model and a co-ordinator model. The multi-agency meeting model involves key representatives from local agencies including police, health, education and social work, who meet on a routine basis. Children are referred to them by the police and for each child the representatives gather relevant information from their respective professional networks. They then combine and discuss the information at a meeting and decide upon a 'joint outcome' for the particular child. The 2015 Early and Effective Intervention – Framework of Core Elements guidance states that primary outcomes within the approach can include:

- No further action;
- Police direct measures;
- Single agency support – through social work, education, health;
- Referral for a targeted intervention – substance misuse work, mental health problems, etc;
- Referral to the Children's Reporter – this is not an alternative to offering support through EEI but an option in addition to it, where a compulsory supervision order might be necessary to support the young person.

⁸⁶ A RIGHTS-BASED ANALYSIS OF YOUTH JUSTICE IN THE UNITED KINGDOM, UNICEF 2020.

North Macedonia-de-institutionalisation alternatives to institutional type care/re-socialization

With the process of deinstitutionalization that was completed in 2017, children at risk in conflict with the law that would have normally been sent to residential type of institution are now placed in small group homes (children up to 14 years of age). The small group homes host no more than five children and they are of an open type. There are no closed type facilities for children under 14 years of age in the country. In the small group homes professionals are striving to create warm and family like environment for the children to help them with rehabilitation and treatment if necessary. The experience of professionals shows that all children make progress, and that there are almost no escapes in the time since the homes were opened. Children from the group homes are included in regular education process and are involved in community activities.

Portugal-children at risk in conflict with the law are victims not offenders⁸⁷

Children under 12 are considered to be victims, not offenders, when committing an offence qualified by the penal law as crime. They are treated through the system of promotion and protection. The measures applied through this system aim to remove any risks, promote the child's safety, health and personal development, and guarantee his/her psychological recovery. The protection measures applied by the local Children and Youth's Protection Commissions or by the family and youth courts aim to remove children from the danger they are facing, giving them conditions that protect and promote their safety, health, education, well-being and full development, and trying to assure the physical and psychological recovery of those who were victims of any form of exploitation or abuse. The protection measures are divided into two categories. In the first category are the family-based protection measures enforced in with autonomy, located in every municipality, and are composed by representatives of local entities, such as the administration State services, social services, education and health services, police authorities, youth associations, and others. The Commission intervention's depends on the consent of the parents, legal guardian or de facto guardian, and is also required the non-opposition of the child aged 12 years or older. These Commissions can apply measures for the protection of children and youth (except placement for future adoption), but only when having an agreement in the terms mentioned above. If there is no agreement regarding the implementation of the protection measures proposed by the Commission, or if the required consents are withdrawn, this entity has to report the case to the Public Prosecution services. The Public Prosecutor monitors and assesses the activity of the Children and Youth's Protection Commissions, and has the legal duty to represent children, by bringing to court the cases for the protection of their rights. In care and protection cases, the court can take protective measures by a care and protection agreement or by a judicial order, after a trial (judicial debate, as it is called by the law. Measures are improvement of the children's living environment: parental support; family support (given to another child's relative); entrustment to a third person (non relative); entrustment to a person selected for adoption; and youth's support towards autonomy. The second category refers to the placements' measures, which are very rare, which imply the removal of the child or of the young person from his/her life context: foster care, institutional care, and entrustment to a residential institution aiming at future adoption.

1. Azerbaijan-Centres for children – reintegration of children⁸⁸

This programme has five staff, including a psychologist, a teacher, a social worker and a sports trainer. Activities offered include counselling (group, individual and family), social work with families, art

⁸⁷ ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS NATIONAL REPORT ON JUVENILE JUSTICE TRENDS, Portugal 2014.

⁸⁸ UNICEF, The Child Protection System in Azerbaijan: Situation Analysis Available Resources, Referral Mechanisms, Gaps and Risks seen from a Child Rights Perspective.

therapy, IT training, English language lessons, sports and recreational outings. Most children participate in the programme for three to six months. Attendance is dependent upon children's individual plans; some children attend two or three times a week, others five days a week. Representatives of the police, judiciary, Prosecutor's Office and Commission of Minors sit on the council that supervises the implementation of the programme. The age of participants ranges from 10 to 18 years. Most participants are referred to the programme by the Commission of Minors at the suggestion of the police, and some had been convicted and placed in the programme as an alternative sentence.

Every participant, as well as his or her parent or legal guardian, must consent to referral to the programme. An initial meeting with a social worker takes place in the child's home to explain to the child and his or her career the mission of the centre. The child is then invited to the centre to meet the staff and to be interviewed by psychologists. This also allows the child to observe the work conducted by the centre with other children. The decision of the child to participate or not is taken into account and given careful consideration. Street children are not included since working with children together with their families is an essential part of the programme. Substance abusers are not accepted into the programme either, as a clinic providing medical care in a residential setting exists elsewhere for such children.

Sweden-Social services and measures for children⁸⁹

The minimum age of criminal responsibility in Sweden is 15. Offending by children is viewed as a welfare issue, and social services determine the response to the offending (taking into account the social situation and the previous criminal conduct). For those aged between 15 and 17, the responsibility is divided between social services and the judicial authorities. Sweden, individuals under the age of 15 are not criminally responsible and can therefore not be convicted of criminal offences. Social services, rather than the police, handle youth under the age of 15. According to the Swedish system, the Social Services always have to be informed when a child under 15 years of age is suspected of committing a criminal offence. Social services are responsible and have to be involved in any action taken towards that child. The Social Services do not sentence young people for their offences but decide on appropriate and suitable measures. These measures are individualized and take into account the person's social situation, including of course a possible history of prior criminality. The entire responsibility for responding to crimes committed by individuals under the age of 15 is placed on the social services, as this is seen in Sweden as a welfare problem issue. The Swedish legislation aims to helping the young offender out of the social situation that is led him/her to commit crimes. Regarding children under MACR with minor criminal histories, these measures are usually limited to one or a series of talks with the child and his parents. If it becomes apparent through these talks that there are serious problems in the home an attempt through services will be made to resolve these problems.

The family is then given certain opportunities to receive economic support, therapy, a contact person and other forms of support. In certain cases the family may get a social worker who can meet with them at home over a longer period in order to help the family members resolve various problems. Other types of measures can also be taken in order to prevent the youth to further engage in criminal activities such as foster care and in exceptional situations residential care.

⁸⁹ Sophie Anderson, Keeping youth away from crime: searching for best European practices, Sweden. National Report (2014) 4–5.

4.4. Relationship of Law 299 and Law 140

Law 140 from 2014 on the special protection of children at risk and of children separated from their parents establishes the procedures of identification, evaluation, assistance, referral, monitoring and record keeping of children at risk and children separated from their parents, as well as the authorities and structures in charge for the enforcement of these procedures.⁹⁰ It addresses children at child at risk – child who, after the assessment, is in one of the situations as follows:

- a) children are victims of violence;
 - b) children are neglected;
 - c) children practice vagrancy, begging and prostitution;
 - d) children are without parental care and supervision because their parents are not at home for unknown reasons;
 - e) children's parents have died;
 - f) children live in the streets, have run away or been expelled from home;
 - g) children's parents refuse to fulfill their parental duties regarding the child's growth and care;
 - h) children have been abandoned by parents;
 - i) children's parents have been deprived of their legal capacity by court decision;
- as well as, children separated from parents – children without parental care in cases when parents are absent, abroad, the child is taken from parents because of an imminent danger for his/her life or health, and when the child has the status of child without parental care on a temporary or permanent basis and abandoned children.⁹¹

As opposed to Law 299, Law 140 provides for clear procedure of who identifies that child (social services) and proscribes the conditions and procedures regarding the identification including the preparation of the individual care plan (the same plan that is to be used under Law 299). The law provides measure and services for protection of children, targeted by this law, such as: a) placing children with family of relatives or other people with whom the child has close relations (neighbors, family friends, etc.); b) family-type placement services; and c) residential placement services.⁹²

Two of these measures overlap with measures provided by Law 299 the placement in the guardianship/curatorship service or in the family type service; and the placement in the residential type service, even though placement in residential type of services raises questions with respect to children's rights as explained in the previous sections.

Institutions and their responsibilities for implementation of the Law 140 are explained in detailed in the law.⁹³ It is interesting to note that institutions that are responsible for implementing Law 140 are the same institutions responsible for implementing Law 299.

As Law 299 is a recent law enacted in 2018 still lacks a clear multi-sectorial operational scheme as opposed to Law 140 that has clear and operational multi-sectorial tool embodied in Government Decision No. 270 of 08.04.2014 on the approval of the Instructions on the inter-sectorial cooperation mechanism for the identification, assessment, referral, assistance and monitoring of child victims and potential victims of violence, neglect, exploitation and trafficking, Law 299, so far, has been partially

⁹⁰ Article 1, Law no. 140/2013 on the special protection of children at risk and children separated from their parents.

⁹¹ Article 2, 3 of Law no. 140/2013 on the special protection of children at risk and children separated from their parents.

⁹² Art. 3 of Law no. 140/2013 on the special protection of children at risk and children separated from their parents.

⁹³ Law no. 140/2013 on the special protection of children at risk and children separated from their parents.

relying on this established mechanism.⁹⁴

- **Discussion**

Discussions with stakeholders revealed that Law 140 has already established strong multi-sectorial working procedures through Government Decision 270,⁹⁵ which are already tested in practice. All measures provided by the Law are operational and are given to children at risk and separated from parents. Mechanisms for monitoring evaluation and accountability are in place.

In turn, Law 299 still is mostly inoperative with no clear multi-sectorial procedures, no clearly described procedures of identification, nor established procedures for accountability of stakeholders and largely not in concurrence with international standards because of its coercive nature.

Following the notion that is supported by international standards and good practices, children with “deviant behaviour” are actually children at risk that are in conflict with the law under MACR. Thus the institution and procedure deployed for identification of children at risk in Law 140 should be the same for identification of needs for services of children at risk in conflict with the law. Actually, all children at risk in conflict with the law should benefit from various services tailored to match their individual needs.

In addition, according to interviewed stakeholders measures that are provided in both laws with exception to highly specialized residential facility are basically the same and could be implemented by the same authority and under the mechanisms provided in Decision 270. What is needed is that the measures that already exist to be adapted to children at risk in conflict with the law under MACR.

Stakeholders expressed the view that, inter alia, it would be more cost effective to organize the protection of the children at risk in conflict under MACR under the law 140 having already established mechanism with the view that the same institutions and almost the same measures and services could be deployed to the both identified groups of children, the ones from law 140 and ones from law 299.

Finally, it is international practice that these categories of children are dealt under one law, usually “laws on social protection of children.”

With the view of the above-stated morphing Law 299 into Law 140 is the obvious, effective, child-friendly step that is also in concurrence with international standards.

- Benefits of morphing Law 299 into Law 140:
 - ✓ Children with “deviant behaviour” will become another category of children at risk in concurrence with international standards.”
 - ✓ Instead of focusing on addressing behaviour-efforts will be focused the protection of children at risk in conflict with the law, their reintegration and socialization.”

⁹⁴ Government Decision No. 270 of 08.04.2014 on the approval of the Instructions on the inter-sectorial cooperation mechanism for the identification, assessment, referral, assistance and monitoring of child victims and potential victims of violence, neglect, exploitation and trafficking.

⁹⁵Ibid.

- ✓ It is easier to specialize and strengthen already existing and tested services, measures and procedures than to create new ones - this adds to cost-effectiveness of the system;
- ✓ It is easier to add to the already established accountability mechanism for implementation rather than creating a new one.
- ✓ Prevention of children's criminality can be developed more properly within one law rather than to be scattered across two laws.

5. CONCLUSION

Law 299 is in most part not in Concurrence with International and European standards with respect to children in conflict with the law under MACR.

Conclusions regarding the legal text of the law:

- ✓ The formulation “children with deviant behaviour” that is used by the Law 299 is not in concurrence with international standards and research and is contrary to the best interest of children. The law discriminates and stigmatizes a whole group of children (children in conflict with the law under MACR) and favours a criminogenic perspective towards these children. The Law does not concentrate on removing the ‘risks’ that these children face but on addressing a certain behaviour, *i.e.* “deviant behaviour,” which does not promote a social/welfare perspective. In addition, the law does not promote legal certainty for children in conflict with the law under MACR, because, it does not elaborate definition and methodology based on which the behaviour will be evaluated as “deviant.”
- ✓ Furthermore, Law No 299 does not include prevention measures/programmes to prevent children’s criminality thus it is a reactive, rather than a proactive piece of legislation.
- ✓ The Law does not provide for a specialised individual supervision plan and psychosocial risk assessment, with involvement of psychologist, for children at risk in conflict with the law under MACR.
- ✓ From four measures provided for children with “deviant behaviour” in the Law, two include institutional residential care, which is not in the best interest of children and not in concurrence with international standards. Also, the Law falls short on provision of specialized services and programmes such as: community based services, after-care services, specialised services for children with mental health issues and/or substance abuse addiction in conflict with the law under MACR.
- ✓ With the view of international standards, the Law does not provide for procedure that ensures meaningful participation of children into procedures and in creation of individualised protection programmes. The Law does not explain how child’s opinion is sought, for example in a child friendly environment, through specialized child support person, etc.
- ✓ The Law does not require all decisions taken by responsible authorities regarding child to include an explanation of the extent of the consideration given to the views of the child, the consequences for the child and the best interest of the child determination process.
- ✓ With the view of international standards, the Law does not provide for adequate data collection mechanism on measures provided for children at risk in conflict with the Law under MACR, thus monitoring of implementation is difficult. Such unified data collection system still does not exist on central level, making the following a child through the system impossible.
- ✓ Data on central level that will provide bases for data informed policy development is not in place.

Conclusions regarding Law 299's implementation:

- ✓ The Law misses clear framework for inter-sectorial work and it is not clear on the exact role of each professionals with respect to protection of children encompassed by this law, including clear relationship between central and local government and instructions' roles, which complicates implementation.
- ✓ Implementation of the only one available measure for children at risk in conflict with the law (strengthen supervision) is extremely difficult, because the authority that should implement it - the territorial and local guardianship authority are only advisory by nature.
- ✓ The Law's implementation is further complicated by the lack of accountability mechanisms for responsible institutions as well as for parents, legal representatives and caregivers.

Conclusions regarding relationship between Law 140 and Law 299:

- ✓ Law 140 has already established strong multi-sectorial working procedures through Government Decision 270, which are already tested in practice. All measures provided by the Law are operational and are given to children at risk and separated from parents. Mechanisms for monitoring evaluation and accountability are in place and the law, for most part, takes social protection approach.
- ✓ In turn, Law 299 still is mostly inoperative with no clear multi-sectorial procedures (Government Decision still in a Draft form), no clearly described procedures of identification, nor established procedures for accountability of stakeholders and largely not in concurrence with international standards because of its coercive nature.
- ✓ Measures that are provided in both laws with exception to highly specialized residential facility overlap and could be implemented by the same authority and under the mechanisms provided in Decision 270.
- ✓ The same institutions are involved in implementation of both laws.
- ✓ Albeit, Law 299 and Law 140 target different sub categories of children at risk, both Laws target one common category of children, i.e. children at risk in need of protection and support.

6. RECOMMENDATIONS

- Morph/merge Law 299 into Law 140 - provide one common category of children at risk, and two other categories children at risk without parental care and children at risk in conflict with the Law under MACR,⁹⁶ or alternatively children at risk in social problem:
 - Possible solutions:
 - “Children at risk in conflict with the law under MACR: “child in conflict with the law is a child who is alleged or found to have committed an offence and has not completed eighteen years of age on the date of commission of such offence;” or
 - “Children at risk under MACR with a social problem:” social problem is/are “objective events or situations caused by societal events, family occurrences and socially dangerous behaviours, that have a negative effect on the person in a way that affects its social functioning and which consequences cannot be overcome without an organized social support.”
- In order for the Law 140 amended/merged/morphed to be operational and in line with international standards conduct rapid assessment of the Law’s compliance with international standards and modalities of morphing/merging with Law 299.
- Amend, accordingly, the Government Decision 270 as to accommodate the newly added category of children and mechanisms for implementation.
- Provide a section on general prevention on children’s criminality in Law 140, identifying institutions, their role and activities in prevention.
- Law 140 should provide services/measures for all children at risk in conflict with the law under MACR as children in need of protection and their parents/legal representatives and caregivers without coerciveness:
 - Law should specify ages of children encompassed by the law;
 - Law should specify whether children with mental health/substance addiction problems are included.
- The Law should provide clear information regarding initial identification and referral of children in conflict with the law under MACR:
 - Initial identification reporting of crime/offence committed by child under MACR mandatory for educational, social, health and other institutions to police;
 - Police should refer children to Social Services;
 - Social Services should conduct risk assessment and developed specialized individual plan for services for all children referred with involvement of a psychologist;
 - Services and measures implemented should be voluntary and consented by parents and children;
 - Measures and services should be implemented with cooperation with local authority;
 - In case when family environment is endangering the child’s best interest alternative home like residence/placement should be organised/mandated by the civil court through civil law procedure initiated by social services;
 - Placing children in residential institutions should be avoided/strengthen de-institutionalisation;

⁹⁶ To note: the position of Terre des Hommes Moldova with respect to Law 299 is that it should be retained as such and multi-sectorial mechanisms should be developed and implemented.

- Children's participation in all processes should be guaranteed, possibly through involving a 'support person' for the child/decisions about the child should elaborate on impact of child's opinion, as well as the best interest of the child determination process;
- Implement accountability mechanism that will take more social protection approach when targeting parents/legal representatives and caregivers - one that will include facilitation and motivation mechanisms to achieve children's and parents/legal guardians and caregivers' participation in services and programmes.
- Create a road map for reform of the social services system to accommodate children at risk in conflict with the law under MACR:
 - Map existing/available services under Law 200 and Law 140 for children at risk;
 - Conduct needs assessment in real time of services for prevention of children's criminality and protection of children at risk in conflict with the law under MACR;
 - Based on international best practices, build-upon existing services and develop new ones where missing (mental health support, substance abuse prevention /treatment programmes, community programmes, programmes for family support, programmes for parental skills, programmes for children);
 - Provide for territorial coverage of measures and services involving territorial authorities/ local authorities/NGO sector and private sector.
- In line with international standards provide in the Law on Mental Health methodology for identification assessment and services for children with metal health problems and/or substance abuse in conflict with the law under MACR and above MACR and link it with Law 140.
- Develop a unified data collection system for recording of children at risk in conflict with the law under MACR, with specific indicators to enable data informed policy/measures development.

Appendix 1: List of Interviewed stakeholders

11 April 2022	National Public Security Inspectorate
11 April 2022	UNICEF
13 April 2022	Ministry of Justice
	General Directorate of Criminal Investigation
	National Probation Inspectorate
13 April 2022	PEOPLE'S ADVOCATE FOR CHILD'S RIGHT
13 April 2022	Institute for Criminal Reform
	Terre des Hommes Moldova
	Child Rights Information Center (CRIC)
	Clinica Juridică Universitară Bălți
	Asociația pentru Justiție Penală Participativă
	National Council for State Guaranteed Legal Aid
	CCF/HHC Moldova - Child, Community, Family (CCF/HHC Moldova – Copil, Comunitate, Familie)
	Shelter and Relief (Adăpost și Alinare)
19 April 2022	Ministry of Labor and Social Protection

Appendix 2: Bibliography

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CRC General Comments, 12, 10 and 14 and 24;

Council of Europe Recommendation Rec (2005) 5 on the rights of children living in residential institutions;

Recommendation Rec (2004) 10 concerning the protection of the human rights and dignity of persons with mental disorder;

Recommendation Rec (2003) 20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;

Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions or measures;

Recommendation No. R (92) 16 on the European rules on community sanctions and measures;

Recommendation No. R (87) 20 on social reactions to juvenile delinquency;

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice;

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules);

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules);

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Law no. 140/2013 on the special protection of children at risk and a children separated from their parents;

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