

# Improving Juvenile Justice

## Brazil, Paraguay, United States



**IMPROVING  
JUVENILE  
JUSTICE**

An international initiative from



**Family**  
for every child

**Report compiled by:**

Ilinisa Hendrickson and Erin O'Donohue, Three Mountains  
Ashley Melwani, Legal Services for Children

In support of the Children in Conflict with the Law Working  
Group of Family for Every Child

# Executive Summary

The Children in Conflict with the Law Working Group of Family for Every Child is made up of member organizations from Brazil, Guyana, India, Paraguay, Philippines, Rwanda, and the United States. Group members have previously worked together to address several issues, including detention and reintegration, prevention, diversion, and overrepresentation.

This joint research project involved group members from Brazil, Paraguay, and the United States, and focused on creating an understanding of key legal and policy issues impacting children in conflict with the law in our respective country contexts. The research teams for each country identified strengths, gaps, and areas for potential collective advocacy.

Each team reviewed key policies, legal frameworks, and legislation, using the United Nations Convention on the Rights of the Child (UN CRC) as a framework for analysis. This project integrates the findings from Brazil, Paraguay, and the United States and includes a full country report responding to the questions designed by the Children in Conflict with the Law Working Group, a brief summary of each full report, a matrix providing quick side-by-side comparisons of laws in the countries compared to the UN CRC, and a synthesis of our three countries, which includes some promising innovations from each country that are changing juvenile justice systems to improve the lives of youth and their families.

# Synthesis and Innovations

By bringing together the policies, legal frameworks and innovations concerning children in conflict with the law in Brazil, Paraguay and the United States, we can identify commonalities and differences. One significant point is that the United States is the sole United Nations member state to refuse to ratify the UN CRC. It is important to note this as our research only covered three countries, making the US a very unique case in terms of juvenile justice. Paraguay and Brazil may be more typical examples of Latin American countries as both adopted the UN CRC in the 1990's and reformed their legal systems to come into compliance. However, reality may still differ from what is legally required, and all three countries agree that conditions for youth in conflict with law in their countries need improvement. The difference is that in Paraguay and Brazil the laws call for better treatment than the youth and their families are receiving, while in the US there are still many areas in which laws and policies are not in compliance with international standards and best practices, including the UN CRC.

Below we take the questions from each summary country report and compare and contrast them with each other. We then look at all three countries to see what innovations are being undertaken in Brazil, Paraguay and the US. Finally, we integrate the most important findings from the reports along with details of particular innovative programs and policies and put them in conversation with each other. Our goal is that this dialogue between our three countries will help us with our own country advocacy and spark a larger dialogue amongst other countries, so we can work together to improve the lives of youth in conflict with the law and their families.

## **BRAZIL, PARAGUAY, UNITED STATES**

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### **Q: How is the juvenile justice system structured?**

Both Paraguay and Brazil have national laws and plans: Brazil has a Child and Adolescent Statute and a National System of Social and Educational Assistance (SINASE) and Paraguay has a National Code for Children and Adolescents and a System for the Comprehensive Protection and Promotion of the Rights of Children and Juveniles (SIPPINA). The US is very complex, and has no single juvenile justice system.

### **Q: How is a juvenile defined by law? What are the laws around sentencing for juveniles?**

Paraguay establishes that adolescents subjected to criminal proceedings must be between ages 14-17, while in Brazil it is ages 12-18. Both countries' laws say that social and educational measures should be applied for youth and that prison should only be a last resort – although this is not upheld in practice. In the case of Paraguay, the law grants criminal responsibility only when it is possible to determine that there is a sufficient degree of psychosocial maturity. The US is complex with varying definitions of juvenile in federal law and in each state, but the country is a major exception to the UN CRC since youth can be tried as adults in certain felony matters.<sup>1</sup>

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<sup>1</sup> Human Impact Partners, "Juvenile Injustice: Charging Youth as Adults is Ineffective, Biased, and Harmful." February 2017, at page ii.

## Q: What rights do youth have, what are the laws that apply to them as compared to adults?

The laws in all three countries provide rights for youth in the legal process that are generally close to the rights of adults. Paraguay and Brazil have additional rights for youth that adults do not have, such as the right not to be questioned by a prosecutor without a judge or defense attorney present or the figure of dejudicialization typical of the adolescent criminal process that is consistent with a restorative paradigm: that of remission (in Paraguay), or the right to have their social development protected (in Brazil).<sup>2</sup> In the US, youth have a handful of additional rights such as separate courts, but youth also do not have access to certain rights of adults under federal law.<sup>3</sup> In terms of family involvement, youth in Brazil have the right to have their family present during legal proceedings, while in Paraguay the court is supposed to maintain the youth's connections to home and family, although this rarely happens in reality. The US has no provisions for family engagement and the juvenile justice system in the United States has historically placed the state in the role of 'parent' with respect to children in conflict with the law.<sup>4</sup> However, various places across the US have begun programs to increase family engagement and more are in pilot stages.

## Q: How does the state respond to key considerations in juvenile justice including overrepresentation?

All three countries experience overrepresentation in their juvenile justice systems. The US states that the area where

the country is most out of line with the UN CRC is racial and ethnic inequality: Black, Latino and Indigenous youth are highly over-represented in all areas of the legal system.<sup>5</sup> Paraguay reports gender differences but emphasizes that the most significant overrepresentation is youth from lower socioeconomic status.

## INNOVATIONS: BRAZIL, PARAGUAY, US

Despite challenges with the juvenile justice systems in Brazil, Paraguay and the United States, all three countries report innovative new approaches to children in conflict with the law.

- Restorative Justice is an alternative to the traditional legal approach that allows youth opportunities to make amends for their actions outside of the court and prison systems. Brazil, Paraguay, and the US have all implemented restorative justice programs. Programs in Paraguay and the US are currently being evaluated with initial positive results.<sup>6,7</sup>
- Restorative Community Conferencing aims to remove youth from the criminal justice system while simultaneously meeting the needs of people harmed. The US has implemented restorative community conferencing in a number of different programs.<sup>8,9</sup>

<sup>2</sup> Brazil Child and Adolescent statute, article 3

<sup>3</sup> Michon, K., "Constitutional Rights in Juvenile Cases." Retrieved from: <https://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>

<sup>4</sup> Pennell, J., Shapiro, C., & Spigner, C. Safety, fairness, stability: Repositioning juvenile justice and child welfare to engage families and communities. Georgetown University: Center for Juvenile Justice Reform, 2011.

<sup>5</sup> Prison Policy Initiative, "Youth Confinement, The Whole Pie." 2019, Retrieved from: <https://www.prisonpolicy.org/reports/youth2019.html>

<sup>6</sup> Paraguay Agreement no. 917/2004

<sup>7</sup> Shem-Tov, Y., et al. "The Impacts of the Make-it-Right Program on Recidivism – California Policy Lab". January 2022. Retrieved from: <https://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>

<sup>8</sup> Bazemore, E and Umbreit, M., "A Comparison of Four Restorative Conferencing Models". Office of Juvenile Justice and Delinquency Prevention Bulletin, 2016.

<sup>9</sup> SF District Attorney's Office, "Make it Right." Retrieved from: <https://www.sfdistrictattorney.org/policy/restorative-justice/make-it-right/>

## Synthesis and Innovations

- Diversion and Remission programs operate after youth are arrested and keep them out of the criminal courts. Both Paraguay and the US have diversion and remission programs for children in conflict with the law.<sup>10, 11</sup>
- Elimination of Juvenile Prisons: The US state of California is taking bold action to reform its youth justice system by closing youth prisons and drastically reducing its use of detention and shifting significant funding towards alternative programs.<sup>12</sup> If this model proves successful, it could be an encouragement to other US states and other countries.
- Non-judicial government agencies to oversee courts: Paraguay and Brazil have government bodies that are outside the judicial system and are charged with protecting rights of children and adolescents.<sup>13</sup>
- Specialized lawyers: Paraguay has dedicated public defenders who are specially trained to intervene in adolescent criminal cases, however, the number of adolescent criminal defenders is not sufficient to cover the demand that the system receives.<sup>14</sup>
- Youth Courts differ from the traditional court system in that it is typically a group of peers who make decisions about the outcome of a case, rather than adults.<sup>15</sup>
- Family engagement programs promote more contact and support for families both during trial and detention, if the youth is sentenced. Brazil's laws require family engagement at all stages of the legal process.<sup>16</sup> In Paraguay, the Code for Children and Adolescents has as some of the rights for adolescents: requirement to be kept, preferably, in their family environment and communication with families during the execution of measures. However, there are several obstacles to the development of these approaches in Paraguay.
- NGO support for reintegration: government agencies in the US and Paraguay are starting to work with community groups to provide support (transportation, housing, education, work, etc.) to youth for reintegration after serving time in detention.<sup>17, 18</sup>

[California is closing its state-run juvenile prisons and shifting funding to community-based and trauma-informed services for children in conflict with the law.<sup>19</sup> Los Angeles County has renamed its juvenile probation department the Department of Youth Development, and beginning this year youth sentenced to confinement will no longer be housed in juvenile jails but instead be placed in small local "Healing Centers" staffed with social workers.<sup>20</sup>]

[Paraguay launched a Restorative Justice pilot program in Lambaré Juvenile Criminal Court in 2014. It was successful in reducing incarceration of adolescents, and in adopting the figure of remission, but has not yet been adopted in other courts in other parts of the country.<sup>21</sup>]

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**10** Annie E. Casey Foundation, "What is Diversion in Juvenile Justice?" October 22, 2020. Retrieved from: <https://www.aecf.org/blog/what-is-juvenile-diversion/>

**11** Paraguay Law no. 1680, 2001, art. 234

**12** Rainey, James. "California plans to close troubled youth prisons after 80 years. But what comes next?" Los Angeles Times, February 15, 2021. Retrieved from: <https://www.latimes.com/california/story/2021-02-15/california-youth-prisons-closing-criminal-justice-reform>

**13** Refer to CODENI in Paraguay and CONANDA in Brazil

**14** See full Paraguay country report for details

**15** Pearson, et al. "Youth Court: A Community Solution for Embracing At-Risk Youth." American Youth Policy Forum, 2015, at 16-17.

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**16** SINASE, Available at: [http://www.planalto.gov.br/ccivil\\_03/ato2011-2014/2012/lei/112594.htm](http://www.planalto.gov.br/ccivil_03/ato2011-2014/2012/lei/112594.htm)

**17** US OJJDP, "Juvenile Reentry and Community Supervision." <https://ojjdp.ojp.gov/programs/juvenile-reentry>

**18** Available at: <https://informacionpublica.paraguay.gov.py/portal/#/ciudadano/solicitud/45004>

**19** Rainey, James. "California plans to close troubled youth prisons after 80 years. But what comes next?" Los Angeles Times, February 15, 2021. Retrieved from: <https://www.latimes.com/california/story/2021-02-15/california-youth-prisons-closing-criminal-justice-reform>

**20** For further discussion, see Justice Policy Institute. "Sticker Shock: The Cost of Youth Incarceration." 2020. Retrieved from: <https://justicepolicy.org/research/policy-brief-2020-sticker-shock-the-cost-of-youth-incarceration/>

**21** See full Paraguay country report for details

# Common Themes

Many common themes emerged between Brazil, Paraguay and the US in their research and discussion on how their countries approach children in conflict with the law. These themes are examined below.

## Increase Family Engagement and Expand NGO Partnerships

The UN CRC Article 37 calls for youth to have contact with their family while in the legal system and in prison. Yet both Paraguay and the US describe a major lack of family engagement and support for youth in conflict with the law. The legal systems themselves present barriers to family engagement instead of proactively attempting to engage families, and most families simply do not have resources to participate in the legal system.<sup>22</sup>

Paraguay and the US also pointed to feelings of shame as a factor that may inhibit family engagement. In Paraguay and the US it has been documented that caregiver involvement in the juvenile justice system is often connected to feelings of guilt, shame and isolation.<sup>23, 24</sup>

Paraguay and the US noted that local NGOs can provide help for reintegration. The US report also suggested that the juvenile justice system could partner with local mental health systems to provide more support to youth.

[The Mental Health Juvenile Justice Program in Illinois (US) brings mental health clinicians into juvenile detention centers to assess youth and provide individual therapy and support groups. When youth are released, the program creates a community reentry plan to maintain continuity of mental health services once detention is over. The program was evaluated and determined to improve mental health indicators and school attendance for participating youth, while lowering their rate of recidivism.<sup>25</sup>]

Brazil's laws, on the other hand, require family participation in all stages of the legal process for youth in conflict with the law and state that criminal penalties for youth must be designed with goal of reintegrating youth with their families and communities.

## Reduce the “Police and Prison First” Approach

UN CRC Article 40 states that prison sentences should only be given where youth have committed the most serious crimes. However, at least in Paraguay and the US, the reports found that the legal systems place far too many youth into prisons, or prison-like youth facilities, who did not commit serious crimes. The two countries found similar reasons why this is occurring: because alternatives are not funded while detention is well funded, and detention is often considered the safest, best or only place for youth to be held.<sup>26, 27, 28</sup> As a result, youth who may simply need family support, help resolving problems in school, have substance use issues (one of the biggest problems for Paraguay at the

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<sup>22</sup> Galeano, J.; Mendoza, J.; Machuca, F.; Corvalán, C. y Ávalos, J. (2019) Psychosocial effects of the institutionalisation of juveniles detained in educational centres in Paraguay. *Paraguay Journal of Social Sciences, Social Studies Group Journal on Paraguay*, no. 10, pg. 1-24 Latin American and Caribbean Studies Institute, University of Buenos Aires, Argentina. Available at: <https://publicaciones.sociales.uba.ar/index.php/revistaparaguay/article/viewFile/3534/4160>

<sup>23</sup> See full Paraguay country report for details

<sup>24</sup> Walker, S. C., et al., “A Research Framework for Understanding the Practical Impact of Family Involvement in the Juvenile Justice System: The Juvenile Justice Family Involvement Model.” *Am J Community Psychol* 56, 408–421. 2015. Retrieved from: <https://doi.org/10.1007/s10464-015-9755-6>

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<sup>25</sup> Lyons, et al. “Clinical and Forensic Outcomes from the Illinois Mental Health Juvenile Justice Initiative.” *54 Psychiatric Servs.*, 1629, 1632, 1634 (2003).

<sup>26</sup> Gainborough, J. and Lean, E. “Convention on the Rights of the Child and Juvenile Justice.” 2008. *Child Welfare League of America: The Link*. Summer 2008, Vol. 7, No. 1. Retrieved from: <https://files.eric.ed.gov/fulltext/ED504480.pdf>

<sup>27</sup> The Annie E. Casey Foundation. What is Juvenile Detention? Updated on March 26, 2021 and Originally Posted on November 13, 2020. <https://www.aecf.org/blog/what-is-juvenile-detention>

<sup>28</sup> See full Paraguay country report for details

## Common Themes

moment), or have other kinds of social or educational deficits, are placed into detention instead of receiving the help they need. For example, in Paraguay, youth whose family has no fixed address may be arrested for a very minor offense but detained because of the lack of other options for the authorities.<sup>29</sup>

Additionally, the US has very significant problems with reintegration of youth. According to a 2017 report, 74% of youth released from California youth detention centers were re-arrested and 54% were convicted of another crime.<sup>30</sup>

## Strengthen Separation of Legal Systems for Youth

Treating youth differently than adults in the legal system is a core principle of the UN CRC, and all three countries have laws that adhere to this. All three countries have separate courts for youth, at least in theory, but all three reports recommend reorganizing the youth courts. The reorganization should move these courts away from the criminal model and towards national policy-based approaches focused on the UN CRC principle of social and educational measures first and incarceration as only a last resort.

All three countries also called for more transparency and oversight of juvenile courts. Brazil seems to have the most developed oversight mechanism for its courts under their System of Guarantees of Rights.

[Brazil has an entire non-judicial agency, the Councils of Rights of Children and Adolescents, responsible for protecting the rights of youth who are involved in the legal system and monitoring the actions of public authorities.<sup>31</sup>]

The Councils of Rights of Children and Adolescents could be a model for other countries to follow, although more information is needed about the on-the-ground performance of this innovative agency. In the US and Paraguay, diversion and remission programs aim to keep youth out of court entirely. One United States jurisdiction that has modeled best practices on diversion is Multnomah County, Oregon, where a push for greater use of diversion resulted in 60% of juvenile offenders being referred out of formal proceedings during 2016.<sup>32</sup>

## More and Better Trained Staff in Juvenile Justice System

All three reports note that a significant reason for violations of the rights of youth under UN CRC is legal system staff who are overloaded, not well trained, and not specialized. This includes prosecutors and defense attorneys, police officers, judges and other court staff, social workers, probation officers, and the staff of non-judicial bodies such as Codeni in Paraguay and Guardianship Councils in Brazil.

All three reports recommend greater specialization and training of these workers, as well as the need for greater staffing of all of these types of positions. The US report also cited the need to hire more staff from diverse racial and ethnic backgrounds, hoping to reflect the backgrounds of the youth in the system. This may be a factor to consider in other countries where there are racial and ethnic disparities.

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<sup>29</sup> See full Paraguay country report for details

<sup>30</sup> Center on Juvenile and Criminal Justice, "California's Division of Juvenile Justice Reports High Recidivism Despite Surging Costs." 2017, Retrieved from: [http://www.cjci.org/uploads/cjci/documents/californias\\_division\\_of\\_juvenile\\_justice\\_reports\\_high\\_recidivism\\_despite\\_surging\\_costs.pdf](http://www.cjci.org/uploads/cjci/documents/californias_division_of_juvenile_justice_reports_high_recidivism_despite_surging_costs.pdf)

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<sup>31</sup> Digiacomo, Murillo José. O Sistema de Garantias dos Direitos da Criança e do Adolescente. Available in: [The Child and Adolescent Rights Guarantee System - Operational Support Center for Child and Adolescent Prosecutors \(mppr.mp.br\)](https://www.mppr.mp.br/)

<sup>32</sup> Annie E. Casey Foundation, "What is Diversion in Juvenile Justice?" October 22, 2020. Retrieved from: <https://www.aecf.org/blog/what-is-juvenile-diversion/>

[Paraguay's Public Defense Service has hired 13 specialized juvenile criminal defense attorneys – the public defense service provides lawyers for youth in 94% of criminal trials. However the Public Prosecutor's Office has not specialized any of its staff.<sup>33</sup> ]

### Provide Greater Funding for Youth Programs that are not Police and Prisons

Paraguay and Brazil have well-developed national plans for complying with the UN CRC.<sup>34, 35</sup> The US is an exception in that it does not have a comprehensive national plan. Common among all three countries is a lack of funding for their plans, and that most funding for “youth programs” goes to youth detention and police instead of social and educational programs.

All three reports cite the need to provide more funding for non-prison and non-police youth programs.

### Need for more information

All the reports cited the need for more information, data, and monitoring and evaluation on many fronts concerning children in conflict with the law. These include:

- Basic statistics. There is not enough information on how many youth are arrested, detained, diverted, sentenced to prisons or alternatives.
- Family engagement. There is little data on whether families are participating in legal processes involving their youth, their lived experiences, and the challenges in guaranteeing this right.
- Reintegration. Both statistics and case studies would be useful to understand the process of reintegration and how to promote it.
- Diversion evaluation. Measuring the success of different diversion programs and highlighting the most effective.

<sup>33</sup> See full Paraguay country report for details

<sup>34</sup> The draft submitted to the Council is available in the IACHR's compliance monitoring report.: [https://corteidh.or.cr/docs/supervisiones/escritos/instituto\\_de\\_reeducacion\\_del\\_menor\\_vs\\_paraguay/Inf\\_Estado\\_22\\_01\\_20.pdf](https://corteidh.or.cr/docs/supervisiones/escritos/instituto_de_reeducacion_del_menor_vs_paraguay/Inf_Estado_22_01_20.pdf)

<sup>35</sup> Brazil: Law No. 12,594 of 18 January 2011 “Law on the National Social and Educational Assistance System (SINASE).” Available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2012/lei/12594.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/12594.htm)

# Conclusion

The United Nations Convention on the Rights of the Child clearly states that governments should focus on promoting healthy social development of youth, even if they come into conflict with the law, and legal systems in every country should reflect this priority.<sup>36</sup> We hope that the conversation between our three countries comparing and contrasting the approaches to children in conflict with the law can help us see both the strengths and the gaps in our systems and help generate a larger conversation about the next steps needed to improve situations and outcomes for youth and their families. We need to expand our connections and broaden our research to include more countries and go deeper into our own contexts: youth in conflict with the law and their families deserve better.

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<sup>36</sup> United Nations Convention on the Rights of the Child, Articles 27-29, 37, 40.



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