Guidance Notes on
Preliminary Assessment Report for Children in Conflict with Law

Community Child & Adolescent Mental Health Service Project
Dept. of Child & Adolescent Psychiatry, NIMHANS
In Collaboration with
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The preliminary assessment uses information from the detailed psychosocial and mental health assessment (that is done first) and presents that information as outlined below.

A. Mental & Physical Capacity to Commit Alleged Offence
The child's ability to make social decisions and judgments are compromised due to:

(i) Life skills deficits (emotional dysregulation/ difficulty coping with peer pressure/ assertiveness & negotiation skills /problem-solving/ conflict-resolution/ decision-making).

(ii) Neglect / poor supervision by family/poor family role models

(iii) Experiences of abuse and trauma

(iv) Substance abuse problems

(v) Intellectual disability

(vi) Mental health disorder/ developmental disability

(vii)Treatment/ interventions provided so far

Guidance Notes
For this section, the professional filling out the preliminary assessment form is simply required to mark off against each item (a tick mark to indicate 'yes' and an X mark to indicate 'no') whether or not the child is compromised in this particular area. The information is drawn from relevant sections of the detailed psychosocial and mental health proforma, which contain information on: how a child's abilities to make appropriate social decisions and judgements (which translate into actions and behaviours) have been affected by the child's life circumstances and mental health or developmental problems.

For item (i) on life skills deficits, refer to Section 6, 'Life Skills Deficits and Other Observations of the Child' and sub-section 6.1. on 'Life Skills Deficits'.
For item (ii), refer to Section 2, sub-section 2.1. on 'Family Issues Identified'.
For item (iii) on experiences of abuse and trauma, refer to Section 3, 'Trauma Experiences: Physical, Sexual and Emotional Abuse Experiences'.
For items (iv) and (vi) on substance abuse problems and mental health disorders/ developmental disability, refer to Section 5, 'Mental Health Concerns'.
For item (v) on intellectual disability, you may rely on your judgement based on your interaction with the child during the entire process of administering the psychosocial and mental health proforma—if the child was unable to respond to most questions or responded

in an age-appropriate manner (like a younger child would, demonstrating little understanding of many things asked or discussed), then you may suspect that he/she has intellectual disability. (Following this, it would be useful and necessary to confirm this through relevant IQ testing conducted by psychologists located in mental health facilities).
For item (vii), you may have enquired from the child, during the assessment, about whether he/she has received any professional assistance or treatment for any mental health issues/ family problems or life skills deficits that he/she has. (Generally, children in the Observation Home have never received any treatment or interventions for their problems).

In actual fact, everyone, except someone with serious physical disability (the type that severely impacts locomotor skills) or with intellectual disability, has the mental and physical capacity to commit offence. So, to ask whether a given child has the mental and physical capacity to commit offence, in simplistic terms, is likely to elicit the answer 'yes' in most cases. And just because someone has the physical and mental capacity to commit an offence, does not mean that they will or that they have. Therefore, a dichotomous response as elicited by this question posed by the JJ Act is of little use in making decisions regarding child who has come into conflict with the law.

Thus, in response to the problems resulting from a simplistic dichotomous response to the physical-mental capacity question, we have adopted a more detailed, descriptive and nuanced interpretation. As per the preliminary assessment report we have developed, mental and physical capacity to commit offence is the ability of a child to make social decisions and judgments, based on certain limitations that the child may have. In other words, a child's abilities to make social decisions and judgments are compromised due to life skills deficits, neglect / poor supervision by family/poor family role models, experiences of abuse and trauma, substance abuse problems, intellectual disability, and/or mental health disorder/ developmental disability. Such issues (if untreated) adversely impact children's world view, and their interactions with their physical and social environment, thereby placing them at risk of engaging in antisocial activities.

B. Circumstances of Alleged Offence

(i) Family history and relationships (child's living arrangements, parental relationships, child's emotional relationship & attachment to parents, illness & alcoholism in the family, domestic violence and marital discord if any).

(ii) School and education (child's school attendance, Last grade attended, reasons for child not attending school- whether it is due to financial issues or lack of motivation, school refusal, corporal punishment).

(iii) Work experience/ Child labour (why the child had to work/ how child found the place of work, where he was working / hours of work and amount of remuneration received, was there any physical/emotional abuse by the employer and also regarding negative influence the child may have encountered in the workplace regarding substance abuse etc).

(iv) Peer relationships (adverse peer influence in the context of substance use/ rule-breaking/inappropriate sexual behaviour/school attendance)

(v) Experiences of trauma and abuse (physical, sexual & emotional Abuse experiences)

(vi) Mental health disorders and developmental disabilities: (Mental health disorders and developmental disabilities that the child may have).

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All of the above information for this section is to be documented as it is in the detailed psychosocial and mental health assessment, drawing on relevant sections from the detailed assessment, so as to present the factors and circumstances that made the child vulnerable to committing offence.

Information for the first four heads needs to be drawn from Section 2, Social History, of the psychosocial and mental health proforma—which contains details on family, school, institution and peer issues; Information for the fifth item on trauma, needs to be drawn from Section 3, Trauma Experiences: Physical, Sexual, and Emotional Abuse Experiences' of the psychosocial assessment form;

For the sixth item on Mental Health Disorders, Section 5, 'Mental Health Concerns' (including substance abuse) from the psychosocial assessment form, would need to be used.

It is important to recognize that 'Circumstances of the Offence' does NOT refer to proximal factors i.e. what happened right before the offence incident took place. This is because proximal factors have a history which is important to recognize—there is a whole set of factors and life events that led up to the decisions and actions to just before the offence as well as the offence itself. Therefore, 'circumstances' are interpreted as life circumstances and a longitudinal approach is taken to understanding vulnerabilities and pathways to offences. This entails events and circumstances starting from the child's birth (or starting with the mother's pregnancy experiences) to the current date. This is the universal approach to history-taking in child and adolescent mental health, to be able to understand children's emotions and behaviours based on their contexts and experiences, as they have played out over several years(and so it is not actually specific to children in conflict with the law).

C. Child's Knowledge of Consequences of Committing the Alleged Offence

(A brief about the child's understanding of social/ interpersonal and legal consequences of committing offence along with the child's insights regarding committing such an offence).

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This is based on the 'Potential for Transformation' section in the detailed psychosocial and mental health assessment, as well as the first level interventions provided immediately after. How the child responded during the assessment i.e. extent of his/her insight and motivation, must be documented here.

Social and interpersonal consequences refer to the child's sense of empathy and understanding of how his/her actions would (negatively) impact his/her relationship with family, friends and others; legal consequences refer to the child's understanding of his/her actions as being a boundary violation/ breaking of rules with serious negative consequences for himself/herself, including punishment and coming into conflict with the law.

D. Other Observations & Issues

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Any other observation made during the assessment regarding the child's social temperament/ child's behaviour in the observation home/ level of motivation for change/ if any positive behaviour noted is also provided. This may be drawn from Section 6 of the psychosocial and mental health proforma, on 'Life Skills Deficits and Other Observations of the Child', sub-section 6.2 'Other Observations of the Child'.

These refer not just to negative observations but also to positive ones you might have made during the assessment. Observations may thus include the child's demeanour, or any views or ideologies that the child may have expressed regarding problem behaviours such as violence or abuse—which may better help understand who he/she is (and help the magistrate view the offence behaviour from varied perspectives). They may also include any odd behaviours that you observe which might help substantiate the evidence on mental health disorders and developmental disabilities—for instance, if the child's responses appear socially and cognitively inappropriate to his age, you may note possible intellectual disability; or if a child appears disoriented in terms of place and time or has marks of self-harm on his body, then you might note mental health issues.

E. Recommendations

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Finally, the report makes recommendations for treatment and rehabilitation interventions for the child, based on the interests and desires of the child. These could pertain to placement, living arrangements, education and schooling, counseling for parents, referral to a tertiary facility for further mental health and psychosocial care and treatment. This sub-section is critical as it provides the JJB magistrate with clear direction on what assistance the child requires, thus creating an imperative for the board to consider options and respond in ways that are supportive and proactive (versus making decisions of transfer to the adult justice system).

JJB magistrates may be requested to refer the child to a psychiatric facility for treatment, so that other issues pertaining to family and school can also be taken care of by the mental health system, which is then obligated to report to the JJB on the child's progress. In many instances, JJB magistrates have issued a conditional bail to ensure that the child and family follow through with mental health services as required i.e. bail is given to the child on condition that he/she presents at the mental health facility and complies with treatment (if the child refuses to do so, the magistrate can revoke the bail). Thus, there are adequate provisions under the JJ Act, which if effectively invoked, can be used to protect CICL from transfer to adult systems, and to facilitate their rehabilitation instead.