



## Justice Sector Coordination Office

Enhancing Justice Delivery

DRAFT POCKET GUIDE ON DIVERSION IN SIERRA LEONE

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for every child

## What is Diversion?

Diversion is defined as the “conditional channelling of children in conflict with the law away from formal judicial proceedings towards a different way of resolving the issue that enables many- possibly most- to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record”.

Diversion is included as a measure for providing justice for children under the just concluded third generation **Justice Sector Reform Strategy and Investment Plan (JSRSIP III)**.

Diversion is Outcome 3 in the **National Child Justice Strategy (2014-2018)**, ‘**Children in Conflict with the Law are diverted from the formal justice system**’.

The SLP in 2005 adopted the **Informal Dispute Resolution Approach**.

There is no formally laid down approach to diversion. Agencies such as the Sierra Leone Police (SLP) and the Legal Aid Board (LAB) are undertaking aspects of diversion through mediation for the LAB, and through mediation and cautioning for the SLP for minor offences and family related disputes.

## Why Diversion

Detention of children has the following effects:

- It creates and reinforces institutionalization of children
- It criminalizes children
- It stigmatizes children and young people when they return back to their families and communities.
- It can create recidivism: **congregating delinquent youth together negatively affects their behavior and increases their chance of re-offending**
- It is more expensive than diversion
- Children below the age of criminal responsibilities that commit serious offences often do not have means of rehabilitation
- Immense physical and psychological implications for their growth and development.
- Negatively affect their educational needs and opportunities.
- Restorative measures often not used in rehabilitation

## International and National Framework

- ❑ Globally, children and young people should be dealt with differently to adults. (**United Nations Standard Minimum Rules for the Administration of Juvenile Justice otherwise known as the “Beijing Rules”**)
- ❑ Article 40 (3) of Convention on the Rights of a Child states ‘parties shall seek to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable’.

- ❑ **Convention on the Rights of the Child (1989) which Sierra Leone signed in 1990. Article 37(b)**  
No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last
- ❑ Children under the age of 14 cannot be deemed criminally responsible.
- ❑ Death penalty and life imprisonment cannot be applied to persons under 18 years, if the crimes are committed whilst under 18 years
- ❑ CRA, 2007 provides that the best interest of the child, right to life and maximum survival and development should be the overriding principle in dealing with a child.
- ❑ Sections 70-75 of the CRC 2007 establishes a Child Panel for alternative non judicial measures for adjudicating matters of children. (including mediation which is a form of diversion)
- ❑ All child suspects and defendants under the age of 18 are entitled to **special protection** under the **Children and Young Persons Act (Cap 44)** as amended by the CRA.

**Sierra Leone’s diversion programme is required under two key government ratified treaties:**

1. the African Charter on the Rights and Welfare of the Child; and the
2. United Nations Convention on the Rights of the Child.

In Africa, diversion programmes are being implemented in Ghana, Malawi, South Africa, Uganda and Zimbabwe.

**Guiding Principles**

The best interests of the child offender / juvenile are to be the paramount consideration

1. Detention is to be used as a last resort, and for the shortest possible period of time
2. To the greatest extent possible, a child offender / juvenile’s contact with the formal justice system is to be minimized
3. The child offender / juvenile’s right to protection from abuse, exploitation and violence is to be respected at all times, including protection from unlawful corporal punishment as a response to alleged criminal behavior
4. All children are to be separated from alleged and convicted adult offenders throughout their contact with the justice system
5. A child offender / juvenile’s right to due process is to be respected at all times
6. No child offender / juvenile is to be penalized for capacity constraints that exist in the system, which are beyond his control
7. Boys and girls are to be treated differently, where necessary, to ensure maximum benefit from their participation in the diversion process.

## Eligibility for Diversion

*Children under the age of 18 years; and*

- ✓ *Who have committed non-serious offences or misdemeanor. **Young offenders committing serious offences such as murder, rape and robbery will not be eligible. Repeat and serious offenders will also not be eligible;***
- ✓ *Who, without coercion, accept responsibility for the offence; and*
- ✓ *Are willing to take part in a program of activities identified by the diversion committee.*

### **Diversion is to be applied for minor and non-violent offences**

Examples of minor and non-violent offences that might be suitable.

Larceny (of a minor nature)

Absconding

Loitering

Common Assault;

Throwing Missile;

Cruelty to Animal;

Malicious Damage (of a minor nature);

Fraudulent Conversion;

Threatening remarks.

## Types of Diversion

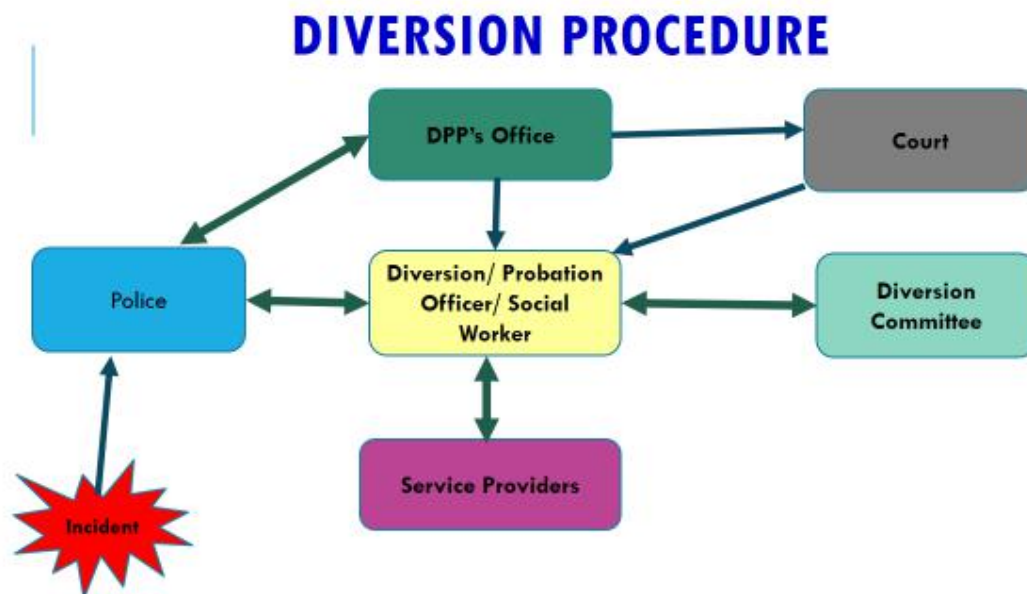
- Reparation:** Takes the form of Community service or work or service for the benefit of the victim, reasonable compensation in cash or kind or an apology to the victim.
- Counselling:** This may be necessary depending on the nature of the offence and will be facilitated by persons duly trained in this field.
- Oral/Written apology:** Given the nature of an offence committed, a child could be asked for an oral or written apology to the victim and the community. As part of the apology, the child should commit him/herself to never committing any offence in the future.
- Victim-Offender Mediation:** This involves a meeting between the offender and the victim, together with relatives and other important adults.
- Constructive use of leisure time:** This is intended to provide appropriate activities to occupy the leisure time of the child in order to prevent him from engaging in crime motivated by boredom or lack of appropriate supervision. Activities are not to be selected as a form of punishment.
- Police Cautions:** Matters can be referred back to the Police for a Formal Caution, in line with the Guidelines for Police Cautions.
- Training on life skills:** This option is meant to provide child offenders with the relevant skills required for peaceful co-existence with family and community members. It may include training in anger management, self-discipline, decision making, etc. The training is to be delivered through a professional scheme managed by an institution or professional trainer.

## Conditions for Diversion

1. A well-defined legislative and institutional framework on diversion.
2. Resources available and dedicated to the implementation of diversion.
3. Capacity building for institutions and actors central to the diversion process.
4. Active and Effective Referral Pathways.
5. Political will.
6. Multi-sectoral response.

### The Diversion Programme is intended to apply only to:

- Child offenders admitting their guilt unequivocally and who are prepared to be diverted.
- Young people who take responsibility for their behaviour, it must be entered into voluntarily.
- Young people who **deny their guilt** are entitled to due process, including having their matter heard in court.



# DIVERSION PROCEDURE



Note that FSU and SW work together but SW feedback FSU with information/decision of the diversion committee. SW also refers to & follow up with services providers while they also provide info/feedback to SW verse-versa

## Monitoring and Evaluation

A Monitoring and Evaluation Framework would be developed to track the efficiency and effectiveness of the process. Findings from the M&E process will inform challenges and gaps identified.

**Monitoring and Evaluation** will be done independently by the National Commission for Children who will report to the CJWG and advice accordingly.