



LA CHILD 
Enhancing legal aid for children in conflict with the law

LEGAL AID FOR CHILDREN IN CONFLICT WITH THE LAW

**National Report on Sweden
May - July 2020**



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INTRODUCTION TO THE PROJECT AND THE QUESTIONNAIRE

This national research questionnaire was prepared when implementing the EU co-funded project *Legal aid for children in criminal proceedings: developing and sharing best practices (LA CHILD)*. The Project is implemented by the consortium consisting of *Law Institute of Lithuania (LIL)*, *Defence for Children International (DCI) - Belgium* and *Center of Integrated Legal Services and Practices (CILSP, Albania)*. It started in February 2020 and will end in December 2021.

The Project' s overall objective is to contribute to enhancing protection of procedural rights of children in conflict with the law and to foster coherent implementation of Directive 2016/800 in the EU Member States as regards legal aid to children. For this purpose, the Project will develop common standards, showcase best practices and innovative approaches that can be replicated across the EU as well as organize capacity building activities.

The Project' s activities started with the evaluation of regulation and practices in European States when providing legal aid for children in conflict with the law. This questionnaire is the basis of this research. After having collected the responses, these responses will be analysed by the project researchers and a summarising report will be drafted. The prepared report will identify the main challenges encountered as well as the best approaches to achieving effective and efficient legal aid for children.

Later on, the Project team will draft Guidelines on providing legal aid to children in conflict with the law as well as a 'child friendly' version. In addition, in the end of 2020, an international conference is planned in Vilnius, where experts from different states will share their knowledge and insights. In 2021, tailored practical trainings to lawyers, judges, legal aid board members and social workers will take place in Lithuania, Belgium and Albania. The final stage of this Project will be a roundtable discussion in Brussels where key Project outcomes and best practices will be presented and discussed.

KEY DEFINITIONS:

Legal aid means the provision of legal advice, assistance and representation at the expense of the State on the conditions and in accordance with the procedures established under the national law for persons detained, arrested or imprisoned; for persons suspected or accused of, charged with or convicted of a criminal offence; and for victims and witnesses in the criminal justice process. Legal aid includes legal education, access to legal information and other services provided through alternative dispute resolution mechanisms and restorative justice processes.¹

Child is a human being under the age of 18.

A child in conflict with the law is a person who has reached the age of criminal responsibility but not the age of majority (under 18 years old), who is suspected or accused of having committed an offence under his national criminal law.² The age that needs to be taken into consideration to determine whether a child is in conflict with the law is the age at the time of committing the offence, not later than that.

Legal aid provider means any person who is providing legal aid pursuant to national law.

Legal aid authority means the authority established under the national law for the purpose of managing, coordinating and monitoring the provision of legal aid.³

¹ Model Law on Legal Aid in Criminal Justice Systems. United Nations. Vienna, 2017.: www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf

² <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

³ *Ibid.*

PART 1: AUTHOR AND GENERAL INFORMATION

1.1 Please list all the names of experts and lawyers who worked on this report.

Sandra Ibrahim, associate at DLA Piper Sweden.

1.2 Please name the country which this report applies to.

Sweden.

1.3 Please provide a full list of acronyms used in your report, if any.

N/A.

1.4 Please explain the methodology used to complete this report and sources that were used (such as internet research, legal database research, case law research) and any limitations that were experienced when undertaking this research (such as lack of enough data, resources, directives, etc.)

The methodology used to complete this report was mainly legal data base research as well as some internet research to fill in some blanks or provide further background information. The information provided in the questionnaire mainly comes from sources such as laws and regulations as well as other directions and handbooks from different Swedish authorities. Lack of sufficient data was experienced when working with some parts of the questionnaire.

1.5 Please keep a list of the most useful materials that you find during your research that are applicable to your country. We are mainly looking for research studies, analyses, reports, tools, etc. relevant to the rights of access to legal aid for children in conflict with the law at the local/national level.

The most useful materials during research have been the preparatory work and the applicable commentaries on laws. This is commonly used in Sweden and has a great legal value.

For some more general information and for understanding how the legal system deals with children in legal proceedings the following handbooks have been useful;

- The Child Handbook by the Swedish Prosecution Authority, see further <https://www.aklagare.se/globalassets/dokument/handbocker/barnhandboken.pdf>
- The Handbook on dealing with crime victims by the Swedish Prosecution Authority, see further <https://www.aklagare.se/globalassets/dokument/handbocker/bemotande-av-brottsoffer.pdf>.

PART 2: NATIONAL LEGAL AID SYSTEM

Regulation of legal aid

2.1 Please shortly describe the legal framework regulating the legal aid system in your country. (this description should not be longer than half of a page).

The Swedish legal aid framework regulating the legal aid system in Sweden are mainly the (i) *Code of Judicial Procedure (1942:740)* and (ii) *Legal Aid Act (1996:1619)*. According to the *Code of Judicial Procedure*, in some cases an individual facing criminal charges has to be assigned a public defender if they ask for one e.g. when suspected of a crime with a penalty of no less than six (6) months imprisonment. Aside one's right to have a public defender appointed when being a suspect and facing criminal charges, the main rules for the Swedish legal aid system are found in the *Legal Aid Act*. The main principle in the Swedish legal aid system is that legal aid is secondary to each individual's legal protection under his or her insurance. A person who has legal protection in his or her insurance does not have a right to receive legal aid. If a person does not have such protection included in his or her insurance but should have such coverage considering his or her financial situation, he or she will not have the right to obtain legal aid. Only under special circumstances can a person who should have legal protection insurance obtain legal aid. Further, only persons with a yearly income under 260,000 SEK, with the person's personal economic situation taken into account, have a right to obtain legal aid. Decisive otherwise is the person's need for counsel and that the need cannot be fulfilled in a way other than receiving legal aid. Legal aid gives a person the right to a maximum of a hundred (100) hours of aid in his or her legal manner. Investigation costs are paid for up to a maximum of 10 000 SEK. Costs related to evidence are fully covered by the state.

2.2 Which laws or/and policy documents regulate legal aid? Please describe briefly the objectives and content of regulation of each legal act or policy document.

The following laws, regulations and policy documents regulate legal aid in Sweden;

- *Code of Judicial Procedure (1942:740)* – for a brief description **see above question 2.1.**
- *Legal Aid Act (1996:1619)* - for a brief description **see above 2.1.**
- *Legal Aid Regulation (1997:404)* – Regulates the application of the *Legal Aid Act* with more detailed rules and rules of procedure for applying for and receiving legal aid.

2.3 Do those general laws or/and policy documents on legal aid refer to specifics of legal aid to children? Please describe briefly and present the relevant extracts from those documents.

No. Although, there is a law with special regulations regarding children and young people (up to the age of 21) in conflict with the law. It is called *Law containing Special Provision concerning juvenile offenders (1964:167)*.

Extract from section 24 in *Law containing Special Provision concerning juvenile offenders (1964:167)*;

A public defender shall be appointed for a suspect who has not reached the age of eighteen, unless it is evident that he or she lacks the need of a defender.

The law stipulates that, as a main principle, children shall be appointed a public defender at the early stage of being a suspect in a crime. A public defender is paid by the state and his or her services are therefore a part of the legal aid system. It is only when it is evident that the child does not have need for a public defender that one does not have to be appointed. In that case, the child could apply for legal aid according to the *Legal Aid Act*. A child can receive full coverage for the expenses related to his or her encounter with the legal system through the legal aid system regulated in the *Legal Aid Act*.

Extract from section 32a in *Law containing Special Provision concerning juvenile offenders (1964:167)*;

A legal advisor shall be appointed for the young;

1. *during an investigation according to section 31 first paragraph , if it is not evident that the young lacks the need thereof, and*
2. *during an investigation according to section 31 second and third paragraph, if there are exceptional reasons therefore.*

Section 31, which is referred to in the extract, regulates investigations in cases where a child under the age of 15 is involved. There is a presumption in favour of appointing a legal advisor for the child if the investigation concerns a crime in which the penalty is no less than one (1) year of imprisonment, according to the first point in the extract. The same rules regarding appointment of public defenders and legal aid applies in these situations as well.

2.4 Are there any laws or policy documents specifically addressing legal aid for children adopted in your country? If yes, please describe objectives and content of regulation of these laws or policy documents and provide their texts (if the texts are long, no translation for the texts is requested).

No, there are no laws or policy documents specifically addressing legal aid for children. The rules regarding legal aid for children are incorporated in other laws, as above mentioned in **question 2.3**

2.4 bis. Does your country have a law that specifically regulates or limits access to legal aid for terrorist suspects or perpetrators? Does such a regulation also apply to minors and what does it provide for?

No, there is no such law in Sweden.

Management and administration of legal aid

2.5 How the legal aid system is organised nationally, regionally or locally? Who is in charge of the management and oversight? Please describe status and functions of the legal aid authority (legal aid board or similar body) institution.

The legal aid system in Sweden is organised nationally through the Swedish Legal Aid Authority. The authority is co-managed with the District Court in Sundsvall and the Rent and Tenancy Tribunal in Sundsvall. The chief judge in the District Court in Sundsvall is also

the authority chief for the Swedish Legal Aid Authority. The authority is under the Government's oversight. The authority mainly works with dunning procedures.

2.6 Is there an institution who is working particularly with legal aid for children? Is there a department (division) within the main legal aid institution that is specialised in legal aid for children? If yes please describe in more detail.

No, there is no institution nor department in the Swedish Legal Aid Authority that is specialised in legal aid for children.

Funding of legal aid

2.7 How is the legal aid system financed?

The legal aid system is funded through state allocation set out in Sweden's national budget, which is proposed by the Swedish Government and adopted by the Swedish Parliament.

2.8 How are legal aid providers (including lawyers) paid? What are legal aid providers' (lawyers') fees for legal aid?

Legal aid providers, including lawyers, are paid according to fixed rates adopted by the government each year. The legal aid providers' fees for legal aid differ depending on what type of legal proceedings they are involved in and which role they have in the proceedings. A compilation of all legal aid providers' fees for the year 2020 can be found in the following document published by the Courts of Sweden; see URL: https://www.domstol.se/globalassets/filer/gemensamt-innehall/for-professionella-aktorer/rattshjalp_och_taxor_2020.pdf.

2.9 Are there any differences between fees provided for legal aid for children compared with legal aid for adults? If yes please describe in more detail.

No, there are no such differences.

2.10 Are there different fees for a representation of a child in criminal (juvenile justice) proceedings as compared to representation in civil or administrative cases?

There are different fees for representation in criminal proceedings as compared to representation in civil or administrative cases. Nevertheless, these fees do not vary when the case concerns children. Rather, the fees vary depending on the type of proceedings at hand.

PART 3: RIGHTS OF BENEFICIARIES OF LEGAL AID

Access to legal aid

3.1 What are the general criteria for accessing legal aid? Who is entitled to legal aid?

The criteria for obtaining legal aid according to *the Legal Aid Act* are the following;

- The person applying for legal aid has to be a natural person;
- The person applying for legal aid cannot have a yearly income exceeding SEK 260 000;
- The person applying for legal aid needs a legal advisor in a greater respect than legal; guidance and this need cannot be met in another way than receiving legal aid;
- I cannot be regarding a matter in which a public defender or public advisor could be appointed;
- The person applying for the legal aid cannot have a legal protection insurance which covers the matter: and
- Legal aid can only be provided if it with regards if the type and meaning of the matter, the subject matter value and the circumstances in general makes it reasonable for the state to contribute to the costs.

Receipt of legal aid is not limited by age or citizenship.

3.2 In which circumstances are children in conflict with the law entitled to legal aid?

Children in conflict with the law are entitled to legal aid under the same circumstance as adults. Children do although have the possibility for full coverage of their expenses through legal aid.

The rules regarding public defenders (public defenders are paid by the state) differ depending on if a public defender is being appointed for an adult or a child. For a child, the presumption is that a public defender shall be appointed unless it is evident that the child lacks the need for a defender. As to adults, the adult has to be suspected of a crime

with a penalty of no less than six (6) months imprisonment, the investigation is complicated, the choice of penalty is hard, and the suspect's personal circumstance calls for the need of guidance.

3.2bis. Are foreign children entitled to legal aid in your country when they are in conflict with the law (is access to legal aid conditioned by nationality or residency status for children)?

Access to legal aid is not conditioned by nationality. However, under *the Legal Aid Act*, a person who is not a Swedish citizen and neither lives nor has lived in Sweden can only receive legal aid if there are exceptional reasons.

The right to obtain legal aid by being appointed a public defender is not in any way limited by nationality or residency.

3.3 Is legal aid to children in conflict with the law always free or partial payment can be requested?

Legal aid in Sweden is not free but, depending on the individual's personal financial situations, he or she could receive full coverage for costs related to the legal proceedings. Partial payment is most common although in some cases full coverage could be requested and granted.

3.4 Can children victims of crime access free legal aid in your country?

Yes, children who are victims of crime have a right to access free legal aid.

3.5 Is the representation of a lawyer mandatory for any alleged child offender? In which case and at what point in the proceedings?

As a starting point, an alleged child offender shall be appointed a public defender. A public defender can be appointed to an alleged child offender at the early stage of only being a suspect if the suspicion has been communicated to the child. Although, when it is evident

that the child lacks the need for legal representation, a public defender does not have to be appointed. There are very few circumstances under which it is evident that the child is not in need of any legal representation, these cases are e.g. when the child has confessed to the crime and the investigation is uncomplicated, the matter concerns trivial offences, and cases where the investigation could be expected to proceed with only giving the child a caution.

3.5bis. Is there a mandatory lawyer participation for children who are suspected or accused of terrorism?

There is no rule about mandatory lawyer participation in relation to which crime the child is suspected or accused of. Nevertheless, as mentioned above, the main principle is that children in conflict with the law should have representation. Exceptions can only be made to the main principle if it is evident that representation is not needed, which is not common. If a child were to be suspected or accused of terrorism, the law, as it is formulated today, would require lawyer participation.

3.6 Is there mandatory lawyer participation for children victims of crime provided in your country? In which cases?

There is no mandatory lawyer participation for children victims of crime. Nevertheless, the matter of legal counsel for victims of crime is regulated in *Act concerning Counsel for the Injured Party (1988:609)*. As the answer to the prior question, the law is not formulated as if mandatory lawyer participation is required in any case. Rather, an evaluation on a case-to-case basis has to be made. The main principle is that a victim of sex-related crimes, abuse, robbery etc. should be appointed counsel. Although, if it is evident that the victim does not need counsel, one would not be appointed for him or her. In the *Act concerning Counsel for the Injured Party*, there is a paragraph specially designed for cases in which a need for counsel almost always exists, i.e. cases concerning especially vulnerable victims such as children. In those cases, the crime to which the person is a victim must have imprisonment as penalty for the crime.

3.7 If a child benefits from legal aid, can he/she choose his/her lawyer? What is the legal role of the parents in this regard?

Yes, a child benefitting from legal aid can choose his or her lawyer. The parents act as guardians and have the right to oversee and be continuously informed during the whole legal process, if it not against the best for the individual child, in order to make sure that the child's rights are being respected and considered correctly in the process.

E.g. According to the section 5 in *Law containing Special Provision concerning juvenile offenders (1964:167)* the parents of the child have to be informed about the investigation and should be called to the Childs questioning.

3.8 If the child benefits from legal aid, can he/she change lawyer during the same proceedings? In which circumstances? What is the procedure? Please explain the answers in more detail.

Yes. According to section 26 of the *Legal Aid Act*, a change of lawyer can only be made after requesting and receiving special permission from a court or the Swedish Legal Aid Authority and if there are particular grounds. Particular grounds exist, e.g. when the lawyer cannot fulfil his or her mission due to sickness, if the lawyer is disqualified, or if there exist profound disagreement between the lawyer and the person benefitting from legal aid. According to chapter 21 section 6 in the *Code of Judicial Procedure*, a child who has been appointed a public defender can also during the legal proceedings change lawyer if there are particular grounds which motivate the change. The child, or his or her representative i.e. guardian, has to send a request to the court demanding a change of public defender and presenting the reasons motivating the request for a change. The court will then make an assessment which could lead to either granting or denying the request. If the request is denied, the decision could be appealed. In order for the court to grant the request, the court must assess that particular grounds exist. Such ground could be that there are profound disagreements between the child and the public defender or the child has lost faith in the public defender. Even less profound disagreements could lead to a change of lawyer if the child is up for trial for a serious crime.

3.9 Does a child have the right to access free interpreter if he/she needs one when meeting with provided lawyer?

Yes, access to a free interpreter is included in the legal aid.

Access to information about legal aid

3.10 Does the State play a role in giving information to a child regarding legal aid system? Are there any initiatives (media or educational campaigns, etc.) to inform children about the legal aid system?

Regarding children, especially children under the age of 15, social services have a special responsibility to help them and be present during legal investigations and proceedings concerning crimes. It is also social services who usually informs the child and his or her parents of the child's rights during the process, including legal aid. Social services have also set up a website (www.kallpasoc.se) that includes some limited information regarding legal aid. However, no other specific initiatives or other measures have at this time been taken by the state in the matter of information spreading regarding legal aid to children.

3.11 Are there any organisations or associations that give information and facilitate a child's right to legal aid?

No, at this time there are no such organisations (other than the above mentioned in the answer to question **3.11**).

3.12 If a child is deprived of liberty in the context of criminal proceedings (e.g. held on remand at a prison, held at the police station or a hospital etc.) how does he/she receive information on his/her right to legal aid?

Exceptional reasons need to exist for a child to be deprived of his or her liberty. In cases where a child is being deprived of his or her liberty, many parties have a, more or less, obligation to keep the child and his or her guardians informed of the child's rights during the process. The main role is played by the social services, which is the authority

responsible for all children's wellbeing, especially in the child's encounters with the State and its authorities. Also, the police and the prosecutor leading the investigation have an obligation to inform the child and his or her guardians of the child's rights, including the child's right to representation and legal aid.

3.13 Is there an obligation to provide the information in child-friendly language?

Yes, when dealing with children, special consideration has to be taken to the child's age and maturity. Further, the person providing the information to the child has to make sure that an adult, e.g. guardian, social services representation etc., who can look after the child's interests, or at least help the child look after his or her own interests, also receives the information. The Swedish Prosecution Authority has a handbook on working with children involved in legal proceedings.

3.14 If a child cannot speak the official language of the country, is there an obligation to provide the information in the child's mother tongue or in a language spoken/understood by the child?

Yes, a person who does not understand the Swedish language has the right to free interpreter when in contact with authorities regardless of the matter.

3.15 If the information needs to be translated or an interpreter needs to be provided, who covers the costs for the interpretation/translation?

The state covers the costs of the interpretation or translation.

Protection of child interests

3.16 Is there a legal mechanism or a rule to address a conflict of interests between the child and his parents (e.g. when a child is a suspect and a parent is a victim)? Is there a legal mechanism or a rule to address a conflict of interests between the child and his lawyer? If yes, please describe in more detail.

Yes, there are special rules to address a conflict of interests between the child and his parents. These rules mainly address the scenario where a child is a victim of a crime and the parent or parents are suspects but there are no official hindrances to using the same principles in a reversed scenario. In the *Act regarding special representative for children (1999:997)*, a child has a right to a special representative when the child's interests could be in conflict with the interests of his or her parent/parents/guardian/guardians. The application for a special representative for the child has to be made by the prosecutor and be submitted to a district court.

The above mentioned rules (see answer to question **3.8**) regarding a change of lawyer during procedure are to be used if the child and his or her lawyer have a conflict of interests.

3.17 Is the child protection institution involved in criminal proceedings when a child is suspect or accused? In case, please describe in more detail.

In Sweden, the social service is the institution in charge of overall protection of children and their interests. In criminal proceedings, when a child is suspected or accused of a crime, social services do their own investigation as to the need to provide help and support to the individual child. The police have an obligation to provide notice to social services when a child is suspected of a crime. Further, for a child under the age of 15, social services always have to be present during questioning (if such is held) and formal contact with the child by the police and/or the prosecutor. Furthermore, a child under the age of 15 cannot be sentenced for a crime, it is therefore social services who will decide what to do with the child. When child is under the age of 18 and suspected of a crime to which the penalty could be imprisonment, the police have an obligation to contact and include social services in the process.

3.18 Are experts such as psychologists, social workers, medical staff or others involved in criminal proceedings when a child is suspected or accused? In which cases? Are they paid by the State or by the child or his/her parents?

Yes, it is up to the prosecutor to decide if it is necessary for a psychologist or other medical staff to be involved in the criminal proceeding. It is very usual for psychologists to interview children during a criminal investigation. The prosecutor then follows the interview through video. It all depends on the case, the circumstances around the case, and the personal needs of the child involved in the proceedings. It is therefore decided upon on a case-to-case basis. Social workers always have to be involved when a child is suspected or accused of a crime (see above answers to questions **3.10,3.12,3.16,3.17**). The social workers and other parties involved in the criminal proceedings are paid for by the State.

PART 4: LEGAL AID PROVIDERS (LAWYERS)

General requirements for legal aid providers

- 4.1 What professionals are entitled to provide legal aid to children in conflict with the law in your country? Please describe the status and functions (duties) of legal aid providers.

According to section 26 in *the Legal Aid Act*, a legal aid provider has to be a lawyer, a jurist at a law firm, or another suitable person for the mission. This means that it usually is a professional with a law degree who is entitled to provide legal aid in Sweden. Although, a person which who has not obtained a law degree could theoretically be entitled to provide legal aid if found suitable for the mission. Further, according to chapter 21 section 5 *the Code of Judicial Procedure*, a lawyer or a person who is qualified to take on a judge employment can be appointed as a public defender. The person appointed as a public defender should be a person who usually appears as a trial lawyer.

- 4.2 What are the requirements to be a legal aid provider in your country?

Any formal requirements, other than the legal aid provider being suitable for the mission, do not exist.

- 4.3 In the legal aid system, is there any type of registration requirement for lawyers who want to represent children in criminal proceedings (with bar association or another body)?

No, there are no such requirements.

- 4.4 In your country, are there any legal entities (any associations/organisations) who provide legal assistance to children in criminal proceedings? If yes, can you please provide some information on such legal entity' s activities.

No, there are no such legal entities, such as associations or organisations, which specifically provide legal assistance to children in criminal proceedings.

Education and qualification of legal aid providers (requirements for becoming legal aid providers)

4.5 What are education requirements for legal aid providers?

To be able to be a legal aid provider, you either have to be a lawyer or practising law at a law firm. This means the education requirement is having a legal degree. Although, as above mentioned in the answer to question **4.1**, a person found suitable by a court could be a legal aid provider. Usually the person has to be familiar with the legal area or practising law in some kind of way.

4.6 Are there any specific requirements for legal aid providers who provide legal aid for children? Are they required to undergo specific trainings (e.g. on juvenile justice, children' s rights, psychology, communication with children, etc.)?

No. There is no difference in requirements for legal aid providers who provide legal aid for children.

Continuous training

4.7 Is there a continuous training on juvenile justice offered/mandated throughout a legal aid provider's (lawyer's) career?

- When answering those questions, please cover the following:
- Is the training mandatory?
- Is the training accessible, affordable and/or free?
- Does the training meet a common set of requirements all over the country?
- Who offers the training? (e.g. university, bar association, legal aid administrator, NGOs or other associations, etc.)?
- What is the form of the training? (e.g. day sessions, evening classes, online, self-training, etc.)
- What is the content of the training?
- What is the length of the training offered?
- Is it theoretical and/or practical?
- Is it exclusively legal? Or is it a multidisciplinary training (psycho-socio aspects, how to communicate with children, does the training include a dimension of child support/assistance, etc.)? Are other professionals involved in the training?
- Do children participate in the lawyers' training (e.g. to share their experiences with the lawyers)? How?
- Are there practical exercises on how to interview or represent children?
- Are specific trainings available for legal aid providers on the rights and needs of some specific categories of children when in conflict with the law (including migrant children, children at risk of trafficking, children accused or suspected of terrorism)?

No, a legal aid provider does not have to undergo continuous training on juvenile justice during his or her career.

4.8 Are there any materials (e.g. manuals, self-training tools, reports) that exist at the national level on the role and mission of lawyers who represent children in criminal proceedings?

There is a PM created by the Swedish Bar Association regarding the lawyers' duty with regard to weak or especially vulnerable clients, e.g. children.

Specialisation of legal aid providers

4.9 Is specialisation on children cases for legal aid providers established in your country? If yes, is the specialisation mandatory? Please describe in more detail.

No, specialisation is not established or mandatory.

4.10 Is there a network or a list of specialised legal aid providers (lawyers) available to beneficiaries? Please describe in more detail.

Legal aid providers are not specialized in any other way than those different lawyers can work in different legal areas therefore making them specialized in one or a few legal areas.

4.11 If the specialisation exists, what is the role of these lawyers at the different stages of the criminal proceeding? Where is it defined? How does it differ from the role of a lawyer who is not specialised to represent children in criminal proceedings?

N/A.

PART 5: QUALITY AND ASSESSMENT OF LEGAL AID

Legal aid quality standards (guidelines)

5.1 Are legal aid standards (or guidelines) for legal aid (in general) established in your country?

There are no standards or guidelines for legal aid. Although, some authorities, e.g. the Swedish Migration Authority, have set up internal standards as guidelines for the employees to use when assessing if someone is suitable as a public legal aid provider in connection with administrative legal processes.

5.2 Are there special standards on providing legal aid for children (guidelines on child-friendly legal aid) established in your country? If yes, please describe in more detail and present the text if possible (no translation of the text is required).

No, there are no such special standards or guidelines. Although, as previously mentioned in the answer to question **3.13**, the Swedish Prosecution Authority has a child handbook on working with children involved in legal proceedings. The handbook mainly focuses on children against whom crimes have been committed but includes several guidelines on how to deal with children involved in criminal proceedings in general.

Complaints

5.3 What is the procedure for a child/parent/guardian to present complaints about the lawyer's actions in your country (complaints to the bar, legal aid authority, etc.)?

If a child/parent/guardian is not happy with the lawyer appointed during legal proceedings, a form of complaint is submitting a request to change the lawyer. A request is granted either by the legal aid authority or a court if there are reasonable grounds. Further, a child/parent/guardian can appeal the legal aid authority's decision not to change a lawyer to the legal aid board. If the complaint concerns a public defender, the

complaint has to be submitted to a court and the courts' decision can be appealed to the court of appeal.

Another way of presenting a complaint about a lawyer is submitting a disciplinary notice to the Swedish Bar Association. The bar association will commence a disciplinary matter and assess the notice. If the bar association reaches the conclusion that the lawyer has not fulfilled his or her duties somehow, disciplinary measure can be taken.

5.4 Can a child make a complaint about his/her lawyer? How?

Yes, a child can make a complaint about his or her lawyer to the Swedish Bar Association as mentioned in the answer to question **5.3**. The only formal requirements for the submission of a disciplinary notice are that the notice has to be in written form and the person submitting the notice personally sign it.

Assessment of legal aid quality

5.5 How is lawyers work quality assessed in your country?

There are no procedures for assessing the quality of all the work that lawyers do. Most assessing occurs when; (i) doing the suitability assessment when appointing a lawyer, (ii) a request for a change of lawyer is presented; and (iii) when a complaint about a lawyer has been filed. Although, all lawyers are supervised by the Swedish Bar Association and have to consider generally accepted legal practice in their work.

5.6 Are there any legal aid quality assessments measures (e. g. peer review) established and implemented in your country? Please describe in more detail (e .g. who are responsible for assessment, what are the procedures and criteria of assessment etc.).

No, there are no such assessments at this point.

5.7 Does such assessment include children cases in criminal proceedings? Are there special rules of procedures for assessment of children cases? Please describe in more details.

N/A.

PART 6: STATISTICS

6.1. Please provide the following statistics of the year 2019 (or data of the last year available)

Please note that statistics has only been found regarding legal aid provided by the Swedish Legal Aid Authority which only concerns legal aid in civil matters. Statistics regarding public defenders are not available at this time.

- The number of persons who benefited from legal aid.

6 845 applications for legal aid at the Swedish Legal Aid Authority were approved.

- The number of children who benefited from legal aid and the number of cases.

Around 10 % of the approved legal aid during 2019 concerned children, therefore around 684.

- The number of legal aid providers (lawyers) in general.

There are around 2000 legal aid providers in general (public defenders in criminal proceedings not included).

- The number of legal aid providers (lawyers) who provided legal aid to children (if available).

N/A.

- Number of complaints about legal aid per year (total, including cases not related to children).

8,2 % of the total applications to the Swedish Legal Aid Authority were appealed.

- Number of complaints where the beneficiary of legal aid was a child (if available).

N/A.

- If you have data, please provide statistics representing backgrounds of complaint?

N/A.

PART 7: CASE LAW

7.1. Please present national case law of higher courts for the period 2015-2020 (focusing on appeal and supreme court decisions) dealing with the access to legal aid for children in criminal proceedings (for example cases dealing with difficulties to access legal aid, absence of access to a lawyer etc.). Please discuss 5-10 most important decisions/rulings. If less than 3 cases can be found in this period, please refer to the years 2010-2020.

Please use this table. Attach the full text of decisions (no translation required).

Case reference (court, decision number and date)	HD Ö 959-18
Main issue of the case	The main issue is whether a special representative for children is entitled to compensation in accordance with the Legal Aid Act (1996:1619) (<i>Sw. rättshjälpslagen</i>), or only in accordance with the criminal charge tariff (<i>Sw. Brottmålstaxa</i>).
Summary of the facts	A lawyer was appointed as a special representative for children in a case regarding abuse. The representative was declined compensation in accordance with the Legal Aid Act (1996:1619) by the court of appeal. Instead he received a smaller amount of compensation in accordance with the criminal charge tariff. The representative appealed to the supreme court.
Summary of the findings	The representative did not explain why the criminal charge tariff was not applicable in his case and the court of appeal therefore applied the tariff. The supreme court established that a special representative for children is covered by the Legal Aid Act (1996:1619). Furthermore, the court assessed the representative's claim for compensation as reasonable, and he was granted compensation in accordance with the Legal Aid Act.
Conclusion	A special representative for children is entitled to compensation for his work regarding his client, in

	<p>accordance with the provisions of section 27 of the Legal Aid Act (1996:1619) for a legal aid assistance (Section 11 of the Special Representative for Children Act). A special representative for children is thus entitled to reasonable compensation for work, loss of time and expenses required by the assignment. The representative is not covered by the criminal charge tariff, which is applicable for the public defender and the plaintiff's assistant. Nor has any specific tariff been set as far as compensation to such a representative.</p>
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Case reference (court, decision number and date)	NJA 2011 s. 15
Main issue of the case	The main issue is whether there are barriers to approve the applications for legal aid, on the grounds that the matter is covered by the applicants' mother's legal protection insurance, which the mother has stated that she does not want to claim.
Summary of the facts	In a case regarding determination of paternity, three underaged children (the applicants) applied for legal aid. The applications, which had been signed by the applicants' mother, indicated that the mother did not want to claim her legal protection insurance, and the applicants' lacked their own insurance.
Summary of the findings	Section 9 of the Legal Aid Act (1996:1619) states that legal aid is subsidiary in relation to legal protection. Therefore, legal aid may not be granted is the claimant has a legal protection insurance. If the claimant lacks legal protection but should have had such protection in view of his general insurance coverage, or financial and personal circumstances, legal aid may be granted only if there are special reasons with regard to the matter's nature and importance to the claimant. The legal aid

	<p>may not be granted if the legal applicant actually has legal protection but chooses not to use it. The fact that the deputy fails to make use of an actual legal protection available to an underaged child does not mean that there is no legal protection for the child.</p>
Conclusion	<p>Underaged legal applicants, who are covered by the legal protection of their mother's home insurance, have been considered unable to be granted legal aid (Sw. <i>rättshjälp</i>), when the mother, who is the deputy of the underaged person, has failed to claim her legal protection.</p>

Case reference (court, decision number and date)	HD Ö 2202-16
Main issue of the case	<p>According to section 27 of the Legal Aid Act, a counsel under the Legal Aid Act is entitled to a fair compensation for his work, waste of time and expenses. The right to compensation for waste of time and expenses is however limited by a limitation rule in section 27 of the Legal Aid Act. The limitation rule states that there has to exist special circumstances regarding the additional costs incurred due to that the counsel has his operations far from the place where the legal matter is mainly handled.</p>
Summary of the facts	<p>A lawyer operates his law firm in Uppsala. He was ordained as a counsel under the Legal Aid Act for a party in a custody case at Hudiksvall District Court (approximately 250 kilometres away). The party he represented lived in near Uppsala. In the case, the lawyer requested compensation for the waste of time and expenses regarding two trips between Uppsala and Hudiksvall.</p>

<p>Summary of the findings</p>	<p>The assignment of a counsel under the Legal Aid Act is often of such nature that the applicant needs the applicant and the counsel has to meet regularly to discuss the matter. Based on the purpose of the legislation, it is not appropriate for the applicant to be relied upon to hire a counsel elsewhere, just because the court proceeding may be initiated there. Therefore, the limitation rule in section 27 of the Legal Aid Act has to be interpreted so that it aims on the additional costs incurred due to the distance between the residential location of the claimant and the residential location of the counsel, and not between the residential location of the counsel and the place of the court proceeding.</p>
<p>Conclusion</p>	<p>A counsel under the Legal Aid Act who conducts his work near the place where his principal lives but at a far distance from the district court where the legal matter was tried has in a family case been considered entitled to full reimbursement for his travel costs to the district court.</p>

LA CHILD

Enhancing legal aid for children in conflict with the law



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Coordination of the project



Project partners



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DHE PRAKTIKAVE LIGJORE TË INTEGRUARA
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