Legal custody Given to children and adolescents as prevention of family violence and its aftermath in the formation of the individual

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Summary

This article has the evil ways with which adolescents and children are treated in your own home for those who need to offer the your well-being, physical, moral and mental integrity. Debate-if the boundaries of an education as a means to the use of violence. Puts in question the influences that aggressive attitudes reflected in the society in which we live and the effectiveness of laws to combat violence here explanada. How methodology using the bibliographical research associated with the analysis of available data on the subject.

Keywords: Violence, Child, Adolescent, Family, Yuck.
INTRODUCTION

In current society violence won such a visibility that seems to have invaded all social spaces, all areas of the life of individuals and their relationships, including a place that historically has been designed as the core of protection and shelter for children, adolescents and adults-home. Proof of this is that domestic violence is still reaching alarming rates of occurrences. Also alarming is the domestic violence perpetrated against children and adolescents. Although they occur in the same space – domestic – persons and domestic violence differ because, while in the first case, the attacker has inbred or affective bond with the victim, in the second case, the offender may be any person – a babysitter, or a neighbour-, for example.

Domestic and family violence are not in 100% of cases, clearly identifiable, but, without doubt, are responsible for thousands of children victimized in Brazil and in the world, being present in all socio-cultural levels. However, most abused children is from strata with low social status and engage early in labour activities that expose the situations of violence; others live in a total absence of social standards and rules and, as a result, drift to juvenile delinquency.

On the severity of the side effects produced by domestic and intra-family violence, is the need for research, with a view to necessary clarification of the population about the true reality of domestic violence, and thus awaken her for the high rates of occurrences, contributing in this way to the improvement of assistance programs, since it will be easier the job of preventing violence, protection of victims and accountability of the attackers.

With the advent of law No. 8,069/90 (child and adolescent-ECA), it is necessary to check the high rate of domestic violence and intrafamiliar violence against children and adolescents. Does the Statute of children and adolescents has managed to achieve your main goal, which is to protect the child and the adolescent. It is possible to say that this law has contributed to the better clarification of the population and that the punishments provided for in your bulge decreased domestic violence against children and adolescents?

On this question, the present approach is to emphasize the importance of legal coercive mechanisms of this practice, in particular, the above-mentioned law No. 8,069/90 known as child and adolescent-YUCK. The goal is to demonstrate the level of effectiveness of this device as a mechanism for the protection of victims of these types of violence.

1. THE FAMILY IN THE CURRENT SOCIETY

The discussion on the issue of family violence pervades the discussion of the role of the family in society,
as in the scene of domestic violence and intra-family, parents, children, women, and children are active characters. It is however a controversial discussion, when you realize the frequency of crimes committed within familiar; patricide, matricide, filicidio, femicide among others. However, in this work, the focus of the discussion will focus on domestic violence, that is, violence perpetrated against children and adolescents by any person in the family circle, regardless of bond of kinship.

Currently, we are experiencing a time of great transformation of family settings, and this means that the idea of nuclear family no longer applies as easily. The theorizing about family crisis in current society is often attributed to these new settings, i.e. changes in the traditional family model to the current family. However, this does not mean that those families who remains – or try to keep-along the lines of the traditional family, don't reveal conflicts, or that do not present problems related to domestic violence and intra-family.

The new models reinforce the notion of nuclear family. Thus, the family still is a reference to all and for that reason, your presence today, reveals, on the other hand, the multiple family models, and on the other, the loss of certain values. This situation can specify the conflicts experienced by the family, including domestic and intra-family violence.

2 VIOLENCE and SOCIETY

The violence today, leads the company to question about the roots of a problem that seems to be limited only to the chaotic society of this Millennium. However, problems such as abandonment and violence committed against children and adolescents are present throughout the history of mankind. And even repudiating these historical facts, we have to recognize that cultures are and will always be different from each other, so that what we see today as something "normal" may, in future, be seen as barbarism. For this reason, it is necessary to separate times and customs of the kind of violence that will be addressed in the course of this work.

2.1 the SOCIAL-historical EVOLUTION OF VIOLENCE against children and adolescents

2.1.1 historical background of violence against children

We leave the assumption of existing culture among the Indians, who until then had no influence of the Jesuits and that even today we see how barbaric and unfounded as birth rites and initiation, i.e. when there is a transition from child to adul TA.

A large part of the rituals performed by the various indigenous groups of Brazil can be classified as rites of passage. The rites of passage are ceremonies marking the change of an individual, or group, of a social
situation to another. As an example, we mention those related to changing seasons, to initiation rites, the rites of marriage, funerals and others such as pregnancy and birth.

Today we know of rites of passage where the children to demonstrate strength and be recognized as adults, need for the hand in a sort of glove full of ants, which will bite her and only after receiving several painful bites is that these children will be able to join the Warriors of the tribe.

As demonstrated, today it seems violence and torture, however, for such people is perfectly normal and necessary to select the good and the bad of such collective. This way to educate, to exercise the power, surpasses all models we have as suitable, as politically correct, checked today in society.

With the evolution of society and the emergence of the State, gradually settled reproofs against abusive practices, however, insufficient to coibi them; that's because, before there was the necessary care to children and adolescents as a social practice, then this care including the discipline began to be sole responsibility of the family and the State intervene in your intimacy, even because, ideologically, was being built the conception that the family is the cell of society and criticize it would be admitting that social contradictions to the State was not interested in point.

The legislation may be considered the best thermometer to further understand the changes that were happening in the posture that the State was faced with violence against children and adolescents in homes. There was an international trend towards greater State intervention in family dynamics. The starting point was the buzz surrounding the case Mary Ellen, who became a scandal in American newspapers. The girl was tortured by foster parents, and those who tried to help her had to resort to an animal protection agency, because there was no equivalent to protect children.

Throughout the Decade of 80 to the present day, many other studies have been published on the aforementioned violence. Also, at the same time, began to be created the first spaces in order to report and forward the cases of violence by parents or guardians against their children.

2.2 THEORETICAL-conceptual REDEFINITION of the TERM "VIOLENCE"

We have seen in previous threads that, historically, the violence is a phenomenon present forever in all societies, and comes over time, reporting of diversified manner, both in expression as in potential force in the various segments and socially spaces built. So it is, initially, a redefinition of violence in modern society.

In this perspective, Chauí (1995, p. 336-337) defines violence as:
Exercise of physical force and mental coercion to force someone to do something against you, contrary to their interests and wishes, contrary to your body and your conscience, causing them deep and irreparable damage, such as death, madness, self-injury or aggression to others.

Based on the above definition, we can affirm that violence is characterized as a foreign imposition on someone about another person, that hurts the human condition, being generally asymmetric ratio of intrinsic power concerning the quality of relationships social.

However, you mustn't lose sight of the fact that violence can be of several types: physical, psychological and sexual. In any case, in dealing with violent, free and conscious individual is reduced and degraded to an attacker's gratification at the expense of your dignity as a person.

2.3 Violence or physical abuse

Violence or physical abuse are physical assaults, with use of physical force, practiced by parents or guardians with the intent to cause bodily harm to the child or adolescent; are common punches, slaps, assaults with various objects and Burns by hot liquids or objects, as stated in this quote:

The physical assaults are still present in the constellation of ill-treatment in the form of beatings, cigarette burns; found other forms of aggression, using the tool as the knife or the whip, or using physical force, pushing against the wall. Physical violence is the most common abuse among middle-class families and low, and serious social and public health problem and is increasing in frequency and severity (WAR, 2000, p. 49).

Corporal punishment has been considered as violence or physical abuse, as well as, the use of physical force and all acts of action or omission that have as objective: to hurt or destroy the child; burn it; cut it; choke her; squeeze or twist any part of the body, using objects, their hands or feet, regardless of the degree of severity of the Act, because usually these acts leave marks or injuries being the most common: skin lesions, ocular, auditory and visceral; upper and lower limbs fractures; bruises; Burns; esganaduras; internal bleeding, scarring; permanent injuries etc., depending on the severity to death.

Monteiro Filho, pediatrician and founder of the Brazilian Multi-professional Association of child and adolescent protection-ABRAPIA, says: "Hitting is recognition of not knowing how to set boundaries to the children" (http://www1.folha.uol.com.br/folha/dimenstein/noticias/ gd120704a.htm) this author compares the physical strength and size of adults towards children to justify the lack of "place" of a corporal punishment.

In brazilian law, spanking is not categorized in the criminal code. The cases of moderate tapas hardly
reach the judiciary. According to Lara Vignoto, lawyer and Rose legal advisor Abrapia, the culture of "no spanking" begins with the Statute of the child and adolescent-ECA, in 1990 (http://www1.folha.uol.com.br/folha/equilibrio/noticias/ult263u3628.shtml).

In accordance with article 5 of the ECA, any child or adolescent can be the object of any form of neglect, discrimination, exploitation, violence, cruelty and oppression, as expressed (in verbis): "Art. 5-no child or adolescent will be object of any form of neglect, discrimination, exploitation, violence, cruelty and oppression, punishment in the form of the law any attempt, by action or omission, their fundamental rights ".

So, anyone who hears frequent cries of child in the neighborhood or suspect that a child or adolescent is assaulted by their parents or guardians have the obligation to report the abuse to a child protective services, second down the ACE.

**2.4 spanking Law**

13,010/14 law prohibited the use of cruel and degrading treatment as a means of punishing children and adolescents. Exceeds the physical element here and starts to punish offending treatments also as threats, humiliations, that is, any action that causes the child or adolescent is exposed to emotional stress.

Some time ago several proponents of the creation of the law sought a way to how it could be sanctioned, but this only happened after the "case of the boy Bernardo" which generated great repercussion in the media and a massive popular revolt, something that served as a great driver pa RA the approval of the law.

The law of spanking, as was known, caused changes in the art. 18 of the ECA, creating the arts. 18-A and B-18 with the following text:

Art. 18—to. The children and adolescents have the right to be educated and care without the use of physical punishment or cruel or degrading treatment, as forms of correction, discipline, education or any other pretext, by parents, by members of the extended family, by those responsible, by implementing educational measures public officials or any person in charge of taking care of them, treat them, educate them or protect them.

Sole paragraph. For the purposes of this Law:

I-physical punishment: disciplinary or punitive nature action applied with the use of physical force on the child or the adolescent that results in:
the) physical suffering; or
b) injury;

II-cruel or degrading treatment: conduct or cruel treatment in relation to the child or teenager who:

the) humiliate; or
b) threatens to severely; or
c) scorn.

Art. 18-b. parents, extended family members, responsible, public agents executors of educational measures or any person in charge of taking care of children and adolescents, treat them, educate them or protect them using physical punishment or treatment cruel or degrading as forms of correction, discipline, education or any other pretext will be subject, without prejudice to other sanctions, the following measures, which will be applied according to the severity of the case:

I-the official program or community referral of family protection;

II-referral to psychological or psychiatric treatment;

III-referral to courses or guidance programmes;

IV-obligation to forward the child to specialized treatment;

V-warning.

Sole paragraph. The measures provided for in this article shall be applied by child protective services, without prejudice to any other legal action.

2.5 ill-treatment

When the victim is a child, in addition to proactive aggression is considered physical violence, also, the Act of omission and ill-treatment practised by parents, guardians or any person who takes the family sphere, including the neighborhood.

Article 70 of the ECA provides that "it is the duty of all prevent the occurrence of threat or violation of the rights of children and adolescents". When it comes to politics, the statute determines, in item (III) of article 87, one of the lines of action of this policy are "special services of prevention, psychosocial and medical care to victims of negligence, ill-treatment, exploitation, abuse, cruelty, and oppression ".

We can still identify a measure of prevention on assignment that has child services, referred to in item II of article 136, the ECA to meet and advise the responsible. It is up to the Dcf's guide these parents and apply the same measures provided for in article 129, in items from I to VII. These measures are,

Art. 129 of the ECA, in verbis:

I – the official program or community referral of promotion to family;

II-inclusion in official or Community programme of aid, orientation and treatment of alcoholics and drug addicts;

III-referral to psychological or psychiatric treatments;

IV – referral to courses or guidance programmes;

V – obligation to enroll the child or pupil and monitor your frequency and harnessing school.

Vi – obligation to forward the child or adolescent treatment;

VII-warning.

The warning is the most appropriate measure for parents of any social status, and the Judge of the childhood and youth apply it against parents located in society, which are sometimes the most suitable recipients.

3. TRIGGERS FACTORS OF DOMESTIC VIOLENCE

It is in the family where everything starts; your function is important for the development of children and adolescents, because it not only makes them fit but also can qualify them as inept and even a misfit living in society. From the time when the family unit if disrupts by several factors, can result violent acts threatening and aggressive family conviviality; It can be said that this passes to that if named domestic violence against the child and the adolescent expressed as abuse of disciplinary and coercive power of parents or guardians in respect of children and pupils.

Normally, people don't usually get involved in trouble or family disputes, either out of fear of the threats that suffer or even understand not be correct the interference in these cases, and with it, make it difficult to combat such violence.
Domestic violence is found in all social classes, but takes on greater visibility on popular layers, first for being more numerous and, second, as they seek more, more often, the public services; for this, come to light factors like chronic poverty, unemployment, underemployment, low wages, poor or homelessness, alcoholism and drugs, among others, as responsible for family disorganization, with direct consequences for the maintenance of consistent offspring, generating more violence.

Is domestic violence committed against children and adolescents by generating more violence, which, according to Suely Ferreira Fernandes, can be observed and noted from the following features:

a) physical indicators of the child or adolescent, presence of all manner of physical injuries, exemplified how Burns, wounds, fractures that are not well suited for alleged thing. Concealment of old injuries.

b) behavior of the child or adolescent aggressive or lethargic. Extremely hyperactive or depressed; assustável or fearful; self-destructive tendencies; fears to their parents, claims parental aggression suffer; claims little viable causes of their injuries; features low self-concept; runs constantly and houses have learning problems.

c) features the family hides the lesions of the child or adolescent or justifies so unconvincing or contradictory; Describes the child as bad and naughty; defends the severe discipline, abuse of alcohol and/or drugs; have unrealistic expectations of the child or adolescents; history of maltreatment in the family (FERNANDES, 2005, pp. 19-20).

In reality, these "clues" are just mere indicators of behaviors for professionals that meet the protected, mainly in the area of health and social assistance, seek the consolidation and standardization of criteria for diagnoses.

At this point, the serious and fearless performance of guardianship councils, at least in the cities of medium and small businesses, has served to receive news and investigate acts of domestic violence, often repeatedly, against children and adolescents.

4. CONSEQUENCES OF VIOLENCE ON THE VICTIMS

Most people have a mistaken view about this problem familiar abuse against children and adolescents; the fathers and stepfathers, which are always seen as the aggressors, in fact are not alone in this role. The mothers, who maintain a protective aura, are also big bullies. In addition, any person who has the victim under their care can hit her.

Taking into account the psychological effects it is easy to conclude that a minority of adolescents who
suffer attacks rebels with violence and retaliates. These turn out to be the parricides that were harshly punished throughout history. The vast majority becomes victim throughout life, for just playing this relationship of unequal power in relationships with other people.

Thus, a vicious cycle in which the attacked is potentially influenced to one day become an aggressor.

4.1 Bullying

Currently is facing studies bullying practitioner, by this, in many cases, suffer with violence inside turning that which is beaten in attacker, discounting the violence suffered at home in their schoolmates.

"We cannot remain silent, isolate and marginalize who commits bullying. We need to get him involved with the group in a positive way, help you put in place of the other and to raise awareness, this is diplomacy and Rubinstein master Edith in psychology and Director of the Center for the study of educational psychology Seminars, of Sao Paulo. (Source: https://estilo.uol.com.br/gravidez-e-filhos/noticias/redacao/2016/03/02/em-casos-de-bullying-agressor-precisa-de-tanta-atencao-quanto-a-vitima.htm?cmpid=copiaecola)

In this way, the practitioner of bullying becomes just another victim of the system of violence to children and adolescents.

5. LEGAL MECHANISMS OF PROTECTION FOR CHILDREN AND ADOLESCENTS

5.1 law No. 8,069/90-the STATUTE of the CHILD and TEENAGER-ECA

Law No. 8,069/90 of 13 July 1990, nicknamed ECA-Statute of the child and adolescent, rules on the rights of the child, regulating Article 227 of the Federal Constitution concerning the fundamental rights of the person: education, health, leisure, sport, conviviality family and community, among others. In these ten years, the Statute did not suffer significant change in its principles and guidelines, despite the onslaught of certain more conservative sectors of society. As features a new way of looking at and treat the child and the adolescent-subjects of rights-has been a reference for many countries of the American continent in changing their legal provisions.

The evaluation of the results should be seen in the light of the history of child care policy in Brazil and society project that it brings, which is, the attention to childhood from the perspective of the right to citizenship. So, children and adolescents have the legal, a law that assures them rights, today, with the prospect that they might have a better future.
The Statute has the doctrine of integral protection as its basic principle and introduces a new feature: a discretionary Act (for children and adolescents in an irregular situation, what were called "smaller") to cover every child and every adolescent, regardless of their socio-economic, cultural and family condition. The process of drafting the Statute was for breach of the defining look and take care to childhood in Brazil.

The ECA has been prepared, based on the need and desire of both children, teenagers, professionals of care, social, community and trade union bodies, judges, prosecutors, executive and legislative branches concerned with the development of a childhood-citizen, assuming new targeting of public policies. This radical change in the law requires the rights guarantee system (executive, legislative, justice, society in general) to look at and treat children and adolescents from the perspective of law and your peculiar condition of development, when the satisfaction of their needs. This implies a new way of management, content and method of public policy.

The change of method assumes the conception of children and adolescents as subjects of rights and in peculiar condition of development – therefore, absolute priority of public policies; management, that such a policy is no longer centralized and closed the offices of the rulers to be elaborated and defined with the democratic participation of society-advice of rights of children and adolescents (in three levels of public administration), advice Councils (municipal level) and human rights fund; content, that the actions of direct attention to childhood and adolescence is through basic social policies (education, health, sport, leisure, culture, social welfare, vocational training and work) and the actions of special protection for certain groups in personal and social risk (protection measures and socio-educational measures).

The Statute is the result of effort and partnership of countless individuals and communities interested in the protection and promotion of children and adolescents of Brazil. Is a valid instrument in the sphere of life and guarantee the full development of children and adolescents of Brazil. Of course, this Statute is to contribute to the change of mentality in brazilian society, accustomed unfortunately to be silent on the injustices and violence of which children are victims.

The purpose of the Statute of the child is of a teenager is to protect the child and the adolescent, guaranteeing each Brazilian born, your full development, ranging from the physical requirements to the moral and religious improvement. This protection begins at the gestatoria with assistance due to pregnant women referred to in art. 1st (in verbis):

Art. 1 of ACE, "this law provides for the full protection to children and adolescents". per child means a person up to 12 (twelve) years and adolescents between 12 (twelve) and 18 (eighteen) years, as can be seen from art. 2 of the Act.
The distinction of child and teenager makes if imperious, because of the psychological and social context of each be influencing in the construction of healthy personalities (or misfits and problematic) and, to justify the concerns with family, school and with other social institutions with factors, conditions and influences that facilitate and hinder human development.

The art. 3 of ECA envisages the amplitude of the fundamental rights of the human person to children and adolescents, related to full protection, for which it is intended the law itself (ECA). The device takes care and reaffirms these rights, to ensure your applicability of form adjusted to the circumstances of people in development.

Art. 4 of ECA (in verbis):

"It is the duty of the family, the community, society at large and the Government ensure, with absolute priority, the implementation of the rights related to life, to health, to food, to education, sport, leisure, professional training, culture, dignity, respect, freedom and family and community coexistence ".

The Statute in this article reports the basic rights of children and adolescents with regard to life, to health, to food, to education, dignity, respect, freedom and coexistence. These are all fundamental rights to the human person, assuring them, by law or by other means, all the opportunities and facilities to provide the physical, mental and social morality, in conditions of freedom and dignity. Such rights must be assured with absolute priority, by family, community, society and Government, and all contribute to your parcel to ensure the development and protection of the minor.

Art. 5 of the ECA, (in verbis):

"No child or adolescent will be object of any form of neglect, discrimination, exploitation, violence, cruelty and oppression, punishment in the form of the law any attempt, by action or omission, their fundamental rights".

The article deals with the protection of children and adolescents, which is an obligation of the family, but also of society, since all must ensure the dignity and protection of these beings.

5.2. Right to life and health

Article 7 of the Statute of children and adolescents provides that:

"the child and the adolescent has the right to life and health, through the implementation of public social policies that allow the birth and the sound and harmonious development, in conditions of assistance".
Such an article brings a concern with the birth and the healthy development of the child, for which your right to life can effect it is necessary to exempt special care from the womb until birth, therefore, care start well before your birth, that is, in the interaction with the environment where you live, since the intrauterine life.

The art. 13 of the Statute provides that:

"... the cases of suspected or confirmed abuse against children or adolescents shall be compulsorily reported to child protective services of the respective locality, without prejudice to other legal measures".

So, it will be up to the Guardianship Councils take appropriate action when they are notified of any attempt on the child or teenager.

5.3 right to freedom, respect and dignity

The second chapter of the statute envisages the basic rights inherent to the Brazilian citizen. Article 15 opens the chapter stating that:

"the child and the adolescent has the right to freedom, respect and dignity as people in development processes and as subjects of social and civil rights guaranteed in the Constitution and the laws"

For this reason, this article is one of the pillars supporting the democratic option of our legal system with regard to children and adolescents.

Articles 16, 17 and 18 determine what the law No. 8,069/90 defines freedom, respect and dignity. Freedom comprises community spaces; of opinion and expression; of belief and religious worship; to play sports and have fun; to participate in family and community life, without discrimination; to participate in political life, in the form of law and seek refuge, aid and guidance.

With respect to compliance, the Statute is the inviolability of the physical, mental and moral integrity of children and adolescents and on prevention of use image, identity, autonomy, values, ideas, beliefs, and personal objects.

Already the article 18 determines that ensure the dignity of the children and adolescents it is the duty of all, as well as put them safe from any inhuman, violent, frightening, harassing or embarrassing. Therefore, everyone must respect the physical, mental and moral integrity, since the company is responsible for your training. Soon, to refer to all means, both parents as those responsible.
5.4 the right to family and community living

Despite the negative experience you can have in the family environment, it is known that the family is a human motivated determination by the needs of economic and social biological reproduction. In the family space, the possibilities for developing sound biopsicológico are larger and, yet, is in the House that the future adult begins to interprojetar the values of the social group to which he belongs.

According to the art. 22 of the ECA,

"it is incumbent upon parents the obligation of support, custody and education of the minor children, fitting them in the interest of these, the obligation to comply with and enforce the legal determinations".

The article determines the duties of parents with minor children, namely: the maintenance, custody, education and the obligation to comply with and enforce judicial determinations in the interest of the child and adolescent, that duties are a result of paternal power, which is nothing more , of the fundamental rights of every child and teenager.

Failure to comply with that determination of the art. 22 of the staff regulations also features a form of child maltreatment may be punished even with the suspension or loss of the paternal power, imposed judicially in accordance with article 24 of the ECA.

5.5 Right to education, culture, sports and leisure

It is obvious that the Statute did not bother only to ensure an education focused on the transmission of information, but, above all, with the formation of the citizen and citizen. Is that article 53 provides.

Education for citizenship search show to children and young people that they are subjects of rights and responsibilities, which should respect, but that may also require respect. You can and should participate in the decisions in your family, community, school, town or country. In this process, it is important to participation in student bodies.

Article 55 of the ECA, "parents or guardians have the obligation to enrol their children or pupils in regular education network", in this way, the device determines one more duty to the parents and the breach of that obligation, without just cause, can generate adoption of measures by the Council Tutelar, that's because the school lacks or even in the same transitory, may cause failure of the parents.

CONCLUSION
Before the above you can see the progress in an attempt to protect children and adolescents through laws where the Legislature seeks to always meet the demand imposed by modern society.

However, the need for the creation of mechanisms – in addition – more effective laws to combat violence that children and adolescents suffer inside their own homes. It is noticed that there is a need for a greater investment in the educational field Brazilian citizen, seeking to demonstrate that the dialogue will always be the best option.

It appears from the will of the State to fight forcefully family violence, however, demonstrates that such a will should also from society as a whole to require and enforce the duty related to the supervision of the child and the teenager are being treated in your surroundings.

One can't help but make compliments and praise the great importance which the law 13,010/14 that contributed to guidance to parents of pedagogical character in which the ideal is the child realize that must do the right thing because it's the right thing to do and not for fear of catching or suffer any kind of aggression. Doing so is worth the ethical, moral growth of children and adolescents as a future citizen.

Therefore, it is concluded that the Brazil adopted and developed policies that ensure the child and adolescents rights necessary for the development of a human being: the right to health, dignity, respect, leisure, liberty, life, safety, among others. With that, the Statute of the child and adolescent meets your main objective, namely, to protect the child and the adolescent.

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