



## The Juvenile Justice and Welfare Act of 2006: Changing Patterns and Responses for Juvenile Offending

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## I. INTRODUCTION

In general, the concept of juvenile justice is a pressing concern that poses a wide array of legal questions. The treatment of *children in conflict with the law*<sup>1</sup> in this day and age is highly disputed, especially in a society where the notion of criminal justice is determined by the final imposition of a penalty. Existing international and domestic laws radically detract from the

the Court Administrator (OCA), Supreme Court, in the nationwide orientation-seminars on the Juvenile Justice and Welfare Act of 2006.

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Cite as 52 ATENEO L.J. 293 (2007).

1. The term *children in conflict with the law* will be used throughout this Article to replace 'juvenile delinquents' and 'youthful offenders' as labels.

conventional punitive view, as they involve the imposition of criminal liability in line with preserving the best interests of the child, characterized by rehabilitative and restorative justice.

At present, the Philippine response is embodied in the Juvenile Justice and Welfare Act of 2006,<sup>2</sup> a recent legislation enacted in the hope of constituting a definitive legal framework for the treatment and protection of children in conflict with the law. As with any form of legislation, the Act is currently a subject of much debate, both on legal and non-legal levels. Questions have arisen as to whether it is adequate and effective as a comprehensive law, whether the law is consistent with existing international and domestic legal principles governing juvenile justice, and whether its mechanisms are appropriately designed for the administration of criminal justice, taking the unique situation of the child in conflict with the law as a special consideration.

This Article addresses these questions through a thorough examination of the Juvenile Justice and Welfare Act, and evaluates whether the present law is well-structured to provide effective law enforcement *vis-à-vis* the protection required in handling children in conflict with the law. Part II provides a discussion on the legal foundations and principles of juvenile justice as embodied in both international and domestic realms, as well as its application in the Philippine setting. Part III provides a topical presentation of the Juvenile Justice and Welfare Act, noting the law's scope, measures, and other key areas of concern. Part IV discusses the current legal issues and implications that arise from the enactment of the law.

## II. THE CONCEPT OF A JUVENILE JUSTICE SYSTEM: AN OVERVIEW OF LEGAL INSTRUMENTS

### A. Recognition and Basis in International Law

The sources of standard-setting mechanisms for the promotion of juvenile justice at the international level range from general guidelines to treaty-based rights.<sup>3</sup> While treaty-based rights put more emphasis on international responsibility and compliance, soft law instruments, such as declarations and

2. An Act Establishing A Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and For Other Purposes [JUVENILE JUSTICE AND WELFARE ACT], Republic Act No. 9344 (2006).

3. Adhikain Para sa Karapatang Pambata (AKAP) & United Nations Children's Fund, *Situation Analysis on Children in Conflict with the Law and the Juvenile Justice System* 7 (Sedfrey M. Candelaria ed., 1998) [hereinafter AKAP].

guidelines, provide a more detailed framework presenting the various principles to be followed in promoting juvenile justice.<sup>4</sup>

#### 1. The United Nations Convention on the Rights of the Child

To date, the United Nations Convention on the Rights of the Child<sup>5</sup> (the Convention) is the primary authority with respect to the universal recognition of children's rights in the international legal setting. The Convention entered into force on 2 September 1990 as a formal binding instrument among States Parties for the protection and care of children, acknowledging that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."<sup>6</sup> The principle of non-discrimination<sup>7</sup> and the promotion of the best interests of the child<sup>8</sup> are some

4. *Id.*

5. Convention on the Rights of the Child, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sep. 2, 1990 [hereinafter U.N. CRC].

6. *Id.* Preamble; see, Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

7. U.N. CRC, art. 2.

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

8. *Id.* art. 3.

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

of the fundamental principles embodied in the Convention.<sup>9</sup> At present, there are 193 States Parties to the Convention, comprised mostly of members to the United Nations.<sup>10</sup>

The principle of a juvenile justice system hinges upon the administration of justice in accordance with promoting the child's best interest. Article 40 of the Convention provides for the legal framework for implementing a juvenile justice system among States Parties, recognizing that the treatment of every child in conflict with the law must not deviate from universally accepted principles governing basic human rights, thus requiring special consideration. According to the Convention,

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.<sup>11</sup>

The Convention contains the positive aims of the juvenile justice system,<sup>12</sup> as demonstrated by the tenor and substance of its provisions, such as the emphasis on the declaration against the retroactive application of penal laws to child offenders.<sup>13</sup> In the event that a child has been alleged as, accused of, or recognized as having infringed a penal law,<sup>14</sup> the Convention likewise enumerates the minimum basic rights afforded to children subjected to criminal procedure. These fundamental rights include the presumption of

9. See, Sedfrey M. Candelaria & Rosalyn C. Rayco, *The Philippines and the Convention on the Rights of the Child: Evaluating Compliance with Respect to the International Standards for Procedural Rules Involving Children*, 49 ATENEO L.J. 1016, 1022-23 (2005) [hereinafter Candelaria & Rayco].

10. Office of the High Commissioner for Human Rights (OHCHR), Convention on the Rights of the Child, Status of Ratification, <http://www2.ohchr.org/english/bodies/ratification/11.htm> (last accessed Dec. 16, 2007). The Philippines became a signatory to the Convention on Jan. 26, 1990, subsequently ratifying the same on Aug. 21, 1990.

11. U.N. CRC, art. 40, ¶ 1 (emphasis supplied).

12. Candelaria & Rayco, *supra* note 9, at 1049.

13. U.N. CRC, art. 40, ¶ 2 (a) ("[n]o child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed.")

14. See, U.N. CRC, art. 40, ¶ 1; JUVENILE JUSTICE AND WELFARE ACT, § 4 (e). The present Juvenile Justice and Welfare Act refers to a child in conflict with the law as a child "who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws."

innocence,<sup>15</sup> the right to be informed (through his parents or legal guardians, if deemed appropriate),<sup>16</sup> the right to a competent, independent and impartial hearing (in the presence of legal or other appropriate assistance, unless it is not the child's best interest),<sup>17</sup> the right against self-incrimination and the right to cross-examine and be examined by witnesses under conditions of equality,<sup>18</sup> the right to judicial review,<sup>19</sup> the right to the free assistance of an interpreter,<sup>20</sup> and the right to privacy at all stages of the proceedings.<sup>21</sup> Moreover, the right of children in conflict with the law against arbitrary arrest, detention, or imprisonment is afforded by the Convention. There is even a mandate that "[t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."<sup>22</sup>

A child deprived of liberty is likewise given adequate protection and care under the Convention, as States Parties are enjoined to treat every child "with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her

15. U.N. CRC, art. 40, ¶ 2 (b) i ("[t]o be presumed innocent until proven guilty according to law").

16. *Id.* art. 40, ¶ 2 (b) ii ("[t]o be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense").

17. *Id.* art. 40, ¶ 2 (b) iii.

[t]o have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair-hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians . . .

18. *Id.* art. 40, ¶ 2 (b) iv ("[n]ot to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality").

19. *Id.* art. 40, ¶ 2 (b) v ("[i]f considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law").

20. *Id.* art. 40, ¶ 2 (b) vi ("[t]o have the free assistance of an interpreter if the child cannot understand or speak the language used").

21. U.N. CRC, art. 40, ¶ 2 (b) vii ("[t]o have his or her privacy fully respected at all stages of the proceedings").

22. *Id.* art. 37 (b).

age."<sup>23</sup> In view of this standard, the Convention provides for the rules that States Parties should observe in such cases. These include the protection of children against cruel and inhuman punishment,<sup>24</sup> the non-imposition of capital punishment or life imprisonment without possibility of release to persons below 18 years of age,<sup>25</sup> the "right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."<sup>26</sup> Also, children deprived of liberty "shall be separated from adults unless it is considered in the child's best interests not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances."<sup>27</sup>

The Convention urges its States Parties to formulate laws specially applicable to children in conflict with the law, pertaining to "the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law"<sup>28</sup> and "whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected."<sup>29</sup> The Philippines' Juvenile Justice and Welfare Act is an example of a legislative enactment in compliance with this international obligation under the Convention. The relevant portions of the Juvenile Justice and Welfare Act will be discussed in the next part of this Article.

## 2. The Beijing Rules

The protection afforded by the Convention to children in conflict with the law is bolstered by earlier supplemental international legal instruments that promote juvenile justice. In 29 November 1985, the United Nations General Assembly adopted the Standard Minimum Rules for the Administration of Juvenile Justice<sup>30</sup> (more commonly known as the Beijing Rules), containing a set of adaptable guidelines for the implementation of juvenile justice systems across nations. These Rules were "deliberately formulated so as to be

23. *Id.* art. 37 (c).

24. *Id.* art. 37 (a).

25. *Id.*

26. *Id.* art. 37 (d).

27. U.N. CRC, art. 37 (c).

28. *Id.* art. 40, ¶ 3 (a).

29. *Id.* art. 40, ¶ 3 (b).

30. United Nations Standard Minimum Rules for the Administration of Juvenile Justice [BEIJING RULES], G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders."<sup>31</sup> The scope of its application is extensive, as the Rules are to be applied to all juvenile offenders "impartially, without distinction of any kind, for example as to race, color, sex, language, religion, political or other opinions; national or social origin, property, birth or other status."<sup>32</sup>

The Beijing Rules' primary objectives may be summarized into two: 1) *the promotion of the well-being of the juvenile* and 2) *the principle of proportionality*.<sup>33</sup> The first objective deals with the flexibility of present court mechanisms in relation to the application of penal sanctions to children in conflict with the law. According to the United Nations, "the well-being of the juvenile should ... be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions."<sup>34</sup> This aim calls upon present family and administrative courts to customize their procedural rules in order to adequately serve the best interests of the child in conflict with the law, without discounting the State interest of imposing appropriate legal responses.

On the other hand, the principle of proportionality centers on the application of penal sanction. According to the Rules, punitive measures must be applied not merely by gauging the gravity of the offense committed but, more importantly, by taking into account the personal circumstances of the child.<sup>35</sup> For example, "[t]he individual circumstances of the offender ... should influence the proportionality of the [child's] reactions," such as "having regard to the offender's endeavor to indemnify the victim or to her or his willingness to turn to wholesome and useful life."<sup>36</sup> In this respect, the Beijing Rules provide support to the principle that capital punishment shall not be imposed for any crime<sup>37</sup> committed by a child.

The provisions of the Beijing Rules provide for general standards that legal systems are to follow in the application of criminal laws and procedures

31. OHCHR, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, at [http://www.unhcr.ch/html/menu3/b/h\\_comp48.htm](http://www.unhcr.ch/html/menu3/b/h_comp48.htm) (last accessed Dec. 16, 2007) [hereinafter Commentary on the Beijing Rules], Commentary on rule 2; BEIJING RULES, rule 2.2 (c) ("[a] juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offense.").

32. BEIJING RULES, rule 2.1.

33. Commentary on the Beijing Rules, *supra* note 31, Commentary on rules 3-4.

34. *Id.* Commentary on rule 3.

35. *Id.* Commentary on rule 4.

36. *See*, Commentary on the Beijing Rules, *supra* note 31, Commentary on rule 4.

37. BEIJING RULES, rule 17.2.

to a child in conflict with the law. These include reasonable efforts in fixing the age for criminal responsibility,<sup>38</sup> respect for the basic rights of juveniles,<sup>39</sup> highlighting the protection of the juvenile's privacy throughout the course of criminal proceedings.<sup>40</sup> This inclusion is intended to protect the child from adverse criminal stigmatization that mass media might permanently inflict.<sup>41</sup>

Specific guidelines are also outlined in the Beijing Rules to be used in the investigation and prosecution phases of criminal proceedings. These guidelines outline the measures that law enforcers must undertake in handling the juvenile offender, beginning from initial contact with the child,<sup>42</sup> to obtaining the child's custody and standards to be observed during the child's detention pending trial.<sup>43</sup> The Beijing Rules also provide standards that must be maintained in the adjudication and disposition of cases involving children in conflict with the law. These standards include competent authority to adjudicate,<sup>44</sup> avoidance of unnecessary delay in the disposition of cases,<sup>45</sup> the confidentiality of the child's records,<sup>46</sup> and the least possible use of institutionalization, except in cases of last resort.<sup>47</sup> In plain terms, the character of any criminal proceeding — from the initial contact of the offender to disposition of the case — must always be in accordance with the child's best interest. Quoting the Beijing Rules, "[t]he well-being of the juvenile shall be the guiding factor in the consideration of her or his case."<sup>48</sup>

The Beijing Rules adopts the fundamental perspective of juvenile justice systems "as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles,

38. *Id.* rule 4.1.

39. *Id.* rule 7.1.

40. *Id.* rules 8.1-8.2.

41. *See*, Commentary on the Beijing Rules, *supra* note 31, Commentary on rule 5.

42. BEIJING RULES, rules 10.1-10.3.

43. *Id.* rules 13.1-13.5.

44. *Id.* rules 14.1-14.2.

45. *Id.* rule 20.1.

46. *Id.* rules 21.1-21.2.

47. *Id.* rule 19.1; *see*, BEIJING RULES, rule 18.1 (where the United Nations enumerates various case disposition measures and/or legal sanctions which may be implemented so as to avoid the institutionalization of the child. These include, but are not limited to, care, guidance and supervision orders, probation, community service orders, financial penalties, compensation and restitution, intermediate treatment and other treatment orders, orders to participate in group counseling and similar activities, and orders concerning foster care, living communities or other educational settings.).

48. BEIJING RULES, rule 17.1 (d).

thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society."<sup>49</sup> This recognition emphasizes the importance of

fully mobilizing all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.<sup>50</sup>

In this pursuit, the Beijing Rules likewise includes the concept of *diversion* in its provisions. Diversionary measures, such as those "involving removal from the criminal justice process and redirection to community support services,"<sup>51</sup> are strongly encouraged by the Rules as an alternative system to the traditional punitive measures. This is achieved by substituting criminal punishment with social involvement through maximization of available resources.<sup>52</sup>

Particular standards are also prescribed by the Beijing Rules in strengthening the participation of the various members of the community and other related institutions in handling the issue of juvenile delinquency. These include the need for professionalism and training for personnel handling juvenile delinquency cases,<sup>53</sup> rehabilitative orientation through mobilization of volunteer and other community services,<sup>54</sup> the development of specialized training for police and other law enforcers,<sup>55</sup> and continued research as basis for planning, policy-formulation and evaluation.<sup>56</sup> All these features of the Beijing Rules serve as key complements to the fundamental principle of fully utilizing all possible resources within the community in order to address the issue of juvenile delinquency.

### 3. The Riyadh Guidelines

In 14 December 1990, the United Nations General Assembly adopted the United Nations Guidelines for the Prevention of Juvenile Delinquency (also

49. *Id.* rule 1.4.

50. *Id.* rule 1.3 (emphasis supplied); see also, Candelaria, *supra* note 9, at 1024-25.

51. Commentary on the Beijing Rules, *supra* note 31, Commentary on rule 6.

52. See, Candelaria & Rayco, *supra* note 9, at 1024.

53. BEIJING RULES, rules 22.1 - 22.2.

54. *Id.* rule 25.1.

55. *Id.* rule 12.1.

56. See, BEIJING RULES, rule 30.

known as the Riyadh Guidelines).<sup>57</sup> Its scope of implementation is envisioned to supplement the framework of juvenile justice systems, within the context of the Convention, the Beijing Rules, other pertinent international rules and norms,<sup>58</sup> and within the context of the economic, social and cultural conditions prevailing in each Member State.<sup>59</sup> These guidelines were formulated in order to amplify crime prevention, with the recognition that "prevention of juvenile delinquency is an essential part of crime prevention in society."<sup>60</sup> The primary principle of the Riyadh Guidelines acknowledges that "[b]y engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes."<sup>61</sup>

In accordance with this basic tenet, the Riyadh Guidelines focus on the concept of *child-centered orientation* in relation with the prevention of delinquency. This involves "efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood."<sup>62</sup> "Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control."<sup>63</sup> In this respect, the prevention of juvenile delinquency is well in complement with the internationally recognized principle of implementing legal measures and procedures in accordance with the best interests of the child.<sup>64</sup>

Broadly, the Riyadh Guidelines consist of standards for general prevention measures,<sup>65</sup> socialization processes,<sup>66</sup> social policy,<sup>67</sup> legislation

57. United Nations Guidelines for the Prevention of Juvenile Delinquency [RIYADH GUIDELINES], G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990).

58. RIYADH GUIDELINES, 7; see generally, Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976; Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16), U.N. Doc. A/4354 (1959).

59. RIYADH GUIDELINES, 8.

60. *Id.* 1 (emphasis supplied).

61. *Id.*

62. *Id.* 2.

63. *Id.*

64. See generally, U.N. CRC.

65. RIYADH GUIDELINES, III.

and juvenile justice administration,<sup>68</sup> and research and policy development and coordination,<sup>69</sup> all of which are designed to aid in the prevention of children coming into conflict with present laws.

General prevention measures<sup>70</sup> and social policies<sup>71</sup> — idealized as being implemented at every level of Government — include comprehensive measures, policies and programs formulated to maximize prevention efforts and develop “close interdisciplinary co-operation between national, State, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labor, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime”<sup>72</sup> These are also in connection with efforts to strengthen research and evaluation for policy development and formulation.

Socialization processes relate to the formulation of “preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations.”<sup>73</sup> The Riyadh Guidelines put special emphasis on the roles and responsibilities of the family,<sup>74</sup> education,<sup>75</sup> community-based services,<sup>76</sup> and the mass media<sup>77</sup> in the child’s socialization process.

With respect to legislation and juvenile justice administration, the Riyadh Guidelines encourage governments of Member States to “enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.”<sup>78</sup> Legislation and law enforcement must be directed “to prevent further stigmatization, victimization and criminalization of young persons.”<sup>79</sup> In accordance with the Beijing Rules, the Riyadh

66. *Id.* IV.

67. *Id.* V.

68. *Id.* VI.

69. *Id.* VII.

70. *See generally*, RIYADH GUIDELINES, III.

71. *See generally*, RIYADH GUIDELINES, V.

72. RIYADH GUIDELINES, 9 (g).

73. *Id.* 10.

74. *Id.* IV, A.

75. *Id.* IV, B.

76. *Id.* IV, C.

77. *Id.* IV, D.

78. RIYADH GUIDELINES, 52.

79. *Id.* 56.

Guidelines also highlight the importance of special considerations that must be taken by law enforcers, such as the best interest of the child, as well as the implementation of diversionary measures. Emphasis is also given to the need of law enforcement and other relevant personnel, of both sexes, being trained to respond to the special needs of young persons and be familiar with and use, to the maximum extent possible, programs and referral possibilities for the diversion of young persons from the justice system.<sup>80</sup>

#### *B. Foundation and Principles under Philippine Laws*

In the Philippines, the need to protect children in conflict with the law from all conditions prejudicial to their development is rooted in constitutional policy.<sup>81</sup> The Philippine government “recognizes the vital role of the youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being” and “shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.”<sup>82</sup> To enliven this state policy, various pieces of legislation and executive issuances have been formulated for the protection of children, all of which serve as fundamental principles of juvenile justice. These special laws highlight the specific legal framework established for the treatment of children in conflict with the law: while considered as criminal offenders, these children are also considered to be victims of circumstances beyond their control.<sup>83</sup> As will be demonstrated below, the treatment of youthful offenders in Philippine jurisdiction is rehabilitative rather than punitive in character.<sup>84</sup>

#### *1. Prior Statutory Rules on the Minimum Age of Criminal Responsibility and Treatment of Youthful Offenders*

##### *a. The Revised Penal Code*

The Revised Penal Code<sup>85</sup> initially provided for the minimum age of criminal responsibility, exempting persons under nine years of age from criminal liability.<sup>86</sup> Under the said Code, minority is also an exempting circumstance from criminal responsibility when the person is over nine years

80. *Id.*

81. AKAP, *supra* note 3, at 43.

82. PHIL. CONST. art II, § 13.

83. AKAP, *supra* note 3, at 44.

84. *Id.*

85. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1930).

86. *Id.* art. 12 (2).

under 15, unless the child acted with *discernment*.<sup>87</sup> If the child is found to have acted with discernment, then the court shall commit him to the care or custody of his family or to the care of some institution or person mentioned in article 80 of the same Code.<sup>88</sup> The reason for the exemption is that a minor of such age is presumed to lack the mental element of a crime, or the capacity to know what is wrong as distinguished from what is right or to determine the morality of human acts.<sup>89</sup>

In cases where the person is under 18, minority shall be a mitigating circumstance to the crime committed.<sup>90</sup> The Revised Penal Code prescribed the adjustment of the penal sanctions for children adjudged as criminally liable, depending on their age at the time when the crime was committed. For persons over nine years but under 15 who are not exempt from criminal responsibility, a discretionary penalty shall be imposed, but always at least lower by two degrees than that prescribed by law for the crime he committed.<sup>91</sup> In cases where the child is over 15 but under 18, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.<sup>92</sup>

#### b. The Child and Youth Welfare Code

The enactment of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code,<sup>93</sup> modified the age of criminal responsibility provided for by the Revised Penal Code, whereby

[a] child nine years of age or under at the time of the offense shall be exempt from criminal liability and shall be committed to the care of his or her father or mother, or nearest relative or family friend in the discretion of the court and subject to its supervision ...<sup>94</sup>

By exclusion, "one who is over nine years but under 21 years of age at the time of the commission of the offense"<sup>95</sup> was considered a *youthful*

87. *Id.* art. 12 (3). The issue of discernment shall be further discussed in the following sections.

88. *Id.* art. 12 (3). Article 80 of the Revised Penal Code, together with article 189 of the Child and Youth Welfare Code, has been expressly modified by the Juvenile Justice and Welfare Act.

89. *Jose v. People*, 448 SCRA 116, 123 (2005).

90. REVISED PENAL CODE, art. 13 (2).

91. *Id.* art. 68 (1).

92. *Id.* art. 68 (2).

93. The Child and Youth Welfare Code [CHILD AND YOUTH WELFARE CODE], Presidential Decree No. 603 (1974).

94. *Id.* art. 189.

95. *Id.*

*offender* in the eyes of the law. Similarly, the Child and Youth Welfare Code made the same discernment qualification as that of the Revised Penal Code.<sup>96</sup> In such a case, the court "shall suspend all further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare ... until he shall have reached 21 years of age or, for a shorter period as the court may deem proper ..."<sup>97</sup> This provision, found in article 189 of the Child and Youth Welfare Code, expressly modified the commitment system found in article 80 of the Revised Penal Code.<sup>98</sup>

The suspension of proceedings and commitment to social welfare institutions, a key feature of the Child and Youth Welfare Code, were given other attributes designed for the care and handling of youthful offenders. A youthful offender whose sentence has been suspended was entitled to appeal under the regular appellate procedure for criminal cases.<sup>99</sup> The law also noted the responsibility of the family and, in default thereof, the local government, with respect to the expenses incurred for the care and maintenance of the youthful offender.<sup>100</sup> If it is shown to the satisfaction of the court that the youthful offender whose sentence has been suspended has behaved properly and has shown his capability to be a useful member of the community, even before reaching the age of majority, it shall dismiss the case and order his final discharge upon recommendation of the Department of Social Welfare.<sup>101</sup> This release on good conduct, however, does not preclude any claim for civil liability,<sup>102</sup> which may be enforced against the child's parents or the guardian.<sup>103</sup>

The Child and Youth Welfare Code likewise provided for certain measures to be implemented in the administration of criminal procedure and penal sanctions. These included the physical and mental examination of a child immediately after apprehension<sup>104</sup> and, if unable to furnish bail, the commitment of the child to the care of the Department of Social Welfare or the local rehabilitation center or a detention home in the province or city, which shall be responsible for his appearance in court whenever required, subject to release on recognizance.<sup>105</sup> While serving sentence, the law

96. *See*, CHILD AND YOUTH WELFARE CODE, art. 189. The issue of discernment shall be further discussed in the following sections.

97. CHILD AND YOUTH WELFARE CODE, art. 192.

98. *Id.* art. 189.

99. *Id.* art. 193.

100. *Id.* art. 194.

101. *Id.* art. 196.

102. *Id.* art. 198.

103. CHILD AND YOUTH WELFARE CODE, art. 201.

104. *Id.* art. 191.

105. *See*, CHILD AND YOUTH WELFARE CODE, art. 191.



... prescribed that youthful offenders be placed in "separate quarters as far as practicable, group them according to appropriate age levels or other criteria as will insure their speedy rehabilitation ..."<sup>106</sup>

The Child and Youth Welfare Code also mandated that the records<sup>107</sup> involved in any proceeding against a youthful offender be immediately destroyed, subsequent to the child's acquittal, case dismissal or commitment to a social welfare institution, or to the dropping of the charges against him, unless civil liability has also been imposed in the criminal action, in which case such records shall be destroyed after satisfaction of such civil liability.<sup>108</sup>

The abovementioned rules pertaining to the minimum age of criminal responsibility and the treatment of minors in conflict with the law must be read in accordance with the modifications brought about by recent enactments, which will be the subject of the discussions in the latter portions of this Article.

2. The Family Courts Act of 1997

Taking into account the peculiar circumstances of the youthful offender, the recognition for the protection of children in conflict with the law in the Philippines has been strengthened by the creation of Family Courts. On 28 October 1997, pursuant to the state policies emphasized in the Constitution,<sup>109</sup> and in response to international treaty obligations under the Convention on the Rights of the Child, the Family Courts Act of 1997<sup>110</sup>

106. CHILD AND YOUTH WELFARE CODE, art. 199.

107. *Id.* art. 200 ("[r]ecords' within the meaning of this article shall include those which may be in the files of the National Bureau of Investigation and with any police department, or any other government agency which may have been involved in the case.").

108. *Id.*

109. PHIL. CONST. art II, § 13.

The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

110. An Act Establishing Family Courts, Granting them Exclusive Original Jurisdiction Over Child and Family Cases, Amending Batas Pambansa Blg. 129, as Amended, Otherwise Known as Act of 1980, Appropriating Funds Therefor and for Other Purposes [FAMILY COURTS ACT], Republic Act No. 8369 (1997).

was promulgated, designed to establish Family Courts in every province and city throughout the country.<sup>111</sup>

Apart from the original jurisdiction of Family Courts over cases involving women and children,<sup>112</sup> the Family Courts Act empowers Family Courts to issue special provisional remedies,<sup>113</sup> exercise supervision over youth detention homes,<sup>114</sup> and provide social services and counseling in coordination with the Department of Social Welfare and Development.<sup>115</sup>

3. The Dangerous Drugs Act of 2002

The suspension of sentence for minors is exercised in cases where they are adjudged to have committed violations of the Comprehensive Dangerous Drugs Act of 2002 (Dangerous Drugs Act).<sup>116</sup> The benefits of a suspended sentence may be given to a minor who is over 15 but under 18 years of age, provided that 1) said minor has not been previously convicted of violating any provision of the Dangerous Drugs Act, the Revised Penal Code, or any special penal law; 2) he has not been previously committed to a rehabilitation center or to the care of a physician duly accredited by the Department of Health; and 3) the Dangerous Drugs Board favorably recommends for the suspension of said sentence.<sup>117</sup> It must be stressed that under the Dangerous Drugs Act, the suspension of sentence may only be availed of by a first-time offender.<sup>118</sup>

While the sentence is suspended, the minor shall be under the supervision and rehabilitative surveillance of the Dangerous Drugs Board, subject to the Board's further after-care and follow-up recommendations.<sup>119</sup> According to the Dangerous Drugs Act, in cases where the minor is under 15 years of age, the provisions of the Child and Youth Welfare Code will

111. *Id.* § 3.

112. *Id.* § 5.

113. *Id.* § 7.

114. *Id.* § 8.

115. *Id.* § 9-11.

116. An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes [DANGEROUS DRUGS ACT], Republic Act No. 9165 (2002).

117. *Id.* § 66.

118. *Id.* § 68.

119. *Id.* § 66.

When all conditions for the suspended sentence have been met, with the court, upon a favorable recommendation by the Board, discharge the minor and dismiss all other criminal proceedings.<sup>121</sup> Pursuant to the rules on confidentiality, all records involved in the proceedings shall likewise be expunged, which will restore the minor to his status prior to the institution of the case.<sup>122</sup> Nevertheless, where the minor violates any of the conditions of the suspended sentence, promulgation of judgment will immediately ensue and the minor shall immediately serve his sentence as any convicted person.<sup>123</sup>

Upon the promulgation of sentence, the court may, in its discretion, order the first-time offender to be on probation, if the sentence is higher than that prescribed by the existing probation law,<sup>124</sup> or to perform community service in lieu of imprisonment.<sup>125</sup> If the sentence promulgated by the court requires imprisonment, the period spent in the treatment and rehabilitation center by the accused during the suspended sentence period shall be deducted from the sentence to be served.<sup>126</sup>

#### 4. The Rule on Children Charged under the Dangerous Drugs Act

On 11 September 2007, the Supreme Court issued the Rule on Children Charged under Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002,<sup>127</sup> to take effect on 5 November 2007. This Rule was approved, among other reasons, to "ensure that the rights of children charged with violation of any of the offenses under the Dangerous Drugs Act ... are well-protected, and that their interests and those of their family and community are adequately balanced."<sup>128</sup> The Rule provides for the procedure to be followed in the specific courts vested with jurisdiction to take cognizance of cases involving children charged and penalized for

120. *Id.* § 66; see, CHILD AND YOUTH WELFARE CODE, art. 189. These must be read in accordance with the modifying provisions of the Juvenile Justice and Welfare Act.

121. DANGEROUS DRUGS ACT, § 67.

122. *Id.*

123. *Id.* § 69.

124. See, Establishing a Probation System, Appropriating Funds Therefor and for Other Purposes [PROBATION LAW], Presidential Decree No. 968 (1976).

125. DANGEROUS DRUGS ACT, § 70.

126. *Id.*

127. RULE ON CHILDREN CHARGED UNDER REPUBLIC ACT NO. 9165 OR THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 [RULE ON CHILDREN CHARGED UNDER THE DANGEROUS DRUGS ACT], A.M. No. 07-8-2-SC, Sep. 11, 2007.

128. *Id.* § 2.

violations under the Dangerous Drugs Act, particularly the Family Courts and specified Regional Trial Courts.

The Rule introduces a new step in producing *prima facie* evidence of violation of the Dangerous Drugs Act by means of conducting a twin set of tests: a screening laboratory test and a confirmatory test. According to the Rule, a child taken into custody for alleged violation of the said Act shall be subjected to a screening laboratory test within 24 hours from the time the child is taken into custody.<sup>129</sup> The Rule emphasizes that the apprehending officer must have reasonable grounds to believe that the child is indeed under the influence of dangerous drugs, such as the presence of physical signs or symptoms or other visible or outward manifestations.<sup>130</sup> This ground may be challenged personally by the child, or through his/her parents, guardian, custodian, or any relative within the fourth degree of consanguinity or affinity, through a confirmatory test conducted by any accredited laboratory equipped with gas chromatograph, mass spectrometry equipment, or other modern accepted method of drug testing.<sup>131</sup> If confirmed, the test results shall be *prima facie* evidence that the child has used dangerous drugs, without prejudice to prosecution for other violations of the said Act.<sup>132</sup> To be valid as evidence, the positive screening test must be so confirmed.<sup>133</sup>

A child who is drug-dependent, or suspected to be one, may, personally or through his/her parents, guardian or relative within the fourth degree, apply for treatment and rehabilitation.<sup>134</sup> Necessary procedures such as appropriate case studies<sup>135</sup> and drug dependency examination<sup>136</sup> shall also be administered. The court handling the case shall also direct the creation of a treatment program designed for the rehabilitation of the child, taking into consideration the child's family history of substance abuse, personality characteristics (such as low self-esteem, sensation-seeking attitude, lower intellectual achievement, and aggressive behavior), gender-based violence, lack of family or relational attachments, peer pressure, or education environment.<sup>137</sup> Intervention treatments may also be directed by the court to ensure the active participation and collaboration among the members of the

129. *Id.* § 6.

130. *Id.*

131. *Id.*

132. *Id.*

133. RULE ON CHILDREN CHARGED UNDER THE DANGEROUS DRUGS ACT, § 6.

134. *Id.* § 8.

135. *Id.* § 9.

136. *Id.* § 10.

137. *Id.* § 12.

community, including his/her family, school, and other community organizations.<sup>138</sup>

The Rule also provides for the child's discharge under the Voluntary Submission Program, which will exempt said child from criminal responsibility,<sup>139</sup> provided that the child has complied with all the rules and regulations of the rehabilitation program, including the after-care and follow-up programs prescribed by competent authority.<sup>140</sup> Any child found to be dependent on dangerous drugs who refuses to apply for rehabilitation under the Voluntary Submission Program shall, upon petition, be compulsorily confined under a Compulsory Submission Program.<sup>141</sup> The provisions of the Rule further provide for recommitment mechanisms,<sup>142</sup> compliance with community service orders,<sup>143</sup> automatic suspension of sentence,<sup>144</sup> and the corresponding liabilities of parents or guardians who refuse to cooperate with any of the authorities designated over the child's case.<sup>145</sup>

### III. THE CHILD TOUCHING BASE WITH THE PHILIPPINE JUSTICE SYSTEM: THE PRESENT JUVENILE JUSTICE AND WELFARE ACT OF 2006

Given recognized international and state policies moving towards a specialized criminal justice system for children in conflict with the law, there came a need to promulgate a new law outside the adult-oriented and punitive character of present Philippine penal laws. Such legislation instituting a Juvenile Justice System in the Philippines was sought in order to reinvent the treatment of child offenders so as to be in consonance with existing state policies and international obligations and guidelines. As a response, the Juvenile Justice and Welfare Act was enacted on 20 May 2006,<sup>146</sup> designed to protect the best interests of children in conflict with the law and pursuant to the principles of restorative justice.

138. *Id.*

139. RULE ON CHILDREN CHARGED UNDER THE DANGEROUS DRUGS ACT, § 26.

140. *See*, RULE ON CHILDREN CHARGED UNDER THE DANGEROUS DRUGS ACT, § 14-15.

141. RULE ON CHILDREN CHARGED UNDER THE DANGEROUS DRUGS ACT, § 21.

142. *See*, RULE ON CHILDREN CHARGED UNDER THE DANGEROUS DRUGS ACT, §§ 16, 19 & 25.

143. *See*, RULE ON CHILDREN CHARGED UNDER THE DANGEROUS DRUGS ACT, § 35.

144. *See*, RULE ON CHILDREN CHARGED UNDER THE DANGEROUS DRUGS ACT, § 20.

145. *See*, RULE ON CHILDREN CHARGED UNDER THE DANGEROUS DRUGS ACT, § 38.

146. The implementing rules and regulations were enacted on Sep. 19, 2006.

#### A. General Principles

As a legislative enactment, the Juvenile Justice and Welfare Act is envisioned to establish a comprehensive juvenile justice and welfare system — “a system dealing with children at risk and children in conflict with the law, which provides child-appropriate proceedings, including programs and services for prevention, diversion, rehabilitation, re-integration and aftercare to ensure their normal growth and development.”<sup>147</sup> Adopting the relevant provisions of the United Nations Convention on the Rights of the Child, the Beijing Rules, the Riyadh Guidelines, and the United Nations Rules for the Protection of Juveniles Deprived of Liberty,<sup>148</sup> the law is designed to operate under a set of general principles in consonance with the existing international framework.

#### 1. Fundamental Recognition of the Rights of the Child in Conflict with the Law

The Juvenile Justice and Welfare Act affords various rights to children in conflict with the law, which are not limited to the constitutional rights ordinarily availed of by an accused under regular criminal procedure.<sup>149</sup> These rights, in accordance with international legal standards, follow the basic premise that children in conflict with the law essentially possess “the right to be treated with humanity and respect ... in a manner which takes into account the needs of a person of his/her age.”<sup>150</sup>

Specifically, these additional rights include: the right not to be imposed capital punishment without the possibility of release,<sup>151</sup> the right not to be deprived unlawfully or arbitrarily of liberty, with detention and imprisonment being merely dispositions of last resort,<sup>152</sup> the right to be separated from adult offenders at all times and the right to maintain contact with family members through correspondence and visits,<sup>153</sup> the right to testify as a witness in accordance with the rules on examination of child witness,<sup>154</sup> the right to diversionary measures,<sup>155</sup> the right to proportionate

147. An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council under the Department of Justice, Appropriating Funds Therefor and for Other Purposes [JUVENILE JUSTICE AND WELFARE ACT], Republic Act No. 9344, § 4 (m) (2006).

148. *See*, JUVENILE JUSTICE AND WELFARE ACT, § 4 (u) (on victimless crimes).

149. *See*, 2000 RULES OF CRIMINAL PROCEDURE, rule 15.

150. JUVENILE JUSTICE AND WELFARE ACT, § 5 (d); *see also*, U.N. CRC.

151. JUVENILE JUSTICE AND WELFARE ACT, § 5 (b).

152. *Id.* § 5 (c).

153. *Id.* § 5 (d).

154. *Id.* § 5 (g); *see also*, RULE ON EXAMINATION OF CHILD WITNESS, A.M. No. 004-07-SC, Dec. 15, 2000.

judgment under the principle of restorative justice,<sup>156</sup> the right to automatic suspension of sentence,<sup>157</sup> and the right to probation as an alternative to imprisonment, if qualified.<sup>158</sup>

## 2. The Best Interests of the Child

The Act refers to the *best interests of the child* as the "totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child's physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child."<sup>159</sup>

This concept serves as the core standard to be utilized in the administration of a juvenile justice and welfare system in the Philippines. As a fundamental rule, in dealing with children found to be in conflict with the law, all measures — whether in the context of legal proceedings or other alternative forms of rehabilitation —, must account for the child's best interests.<sup>160</sup> This is bolstered by the definitive state policy whereby the State "shall protect the best interests of the child through measures that will ensure the observance of international standards of child protection, especially those to which the Philippines is a party."<sup>161</sup>

## 3. Restorative Justice and Reintegration

The Juvenile Justice and Welfare Act adopts the principles of restorative justice as a general principle in all its laws, policies, and programs applicable to children in conflict with the law.<sup>162</sup>

"Restorative justice" refers to a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community; and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety

155. JUVENILE JUSTICE AND WELFARE ACT, § 5 (i).

156. *Id.* § 5 (j).

157. *Id.* § 5 (l).

158. *Id.* § 5 (m).

159. *Id.* § 4 (b).

160. *See*, JUVENILE JUSTICE AND WELFARE ACT, § 2 (b) & (d).

161. JUVENILE JUSTICE AND WELFARE ACT, § 2 (b). *See generally*, U.N. CRC; BEIJING RULES; RIYADH GUIDELINES.

162. JUVENILE JUSTICE AND WELFARE ACT, § 2 (f).

by activating the offender, the victim and the community in prevention strategies.<sup>163</sup>

The application of restorative justice and reintegration in the implementation of the present Juvenile Justice and Welfare Act is a break away from the traditional punitive character of penal laws in the country. Its adoption within the existing criminal law framework seeks to strengthen and emphasize the state recognition of the vital role of the youth in nation-building.<sup>164</sup>

## 4. Maximum Use of Available Resources

The juvenile justice and welfare system necessarily calls for the maximum use of available resources for the child's rehabilitation and reintegration to his/her family and community.<sup>165</sup> In this regard, the Juvenile Justice and Welfare Act recognizes the important role played by the family,<sup>166</sup> educational institutions,<sup>167</sup> the mass media,<sup>168</sup> local social welfare groups,<sup>169</sup> and the *Sangguniang Kabataan*<sup>170</sup> in the promotion of children's rights, the prevention of juvenile delinquency, and in the development of programs which may serve as alternatives to institutionalization.

### B. Coverage of the Law

Consistent with the standard set by the Beijing Rules, the Juvenile Justice and Welfare Act now provides for the minimum age whereby a child may be considered criminally liable under present laws.

According to the Act, a child 15 years of age or under at the time of the commission of the offense shall be exempt from criminal liability,<sup>171</sup> but will be subject to an intervention program in coordination with a local social welfare officer.<sup>172</sup> The same exemption shall be applied to a child whose age is above 15 but below 18, unless the child acted with discernment.<sup>173</sup> Notably, these new standards increased the minimum age of criminal

163. *Id.* § 4 (g) (emphasis supplied).

164. *See*, JUVENILE JUSTICE AND WELFARE ACT, § 2 (b) ¶1.

165. *See*, Candelaria & Rayco, *supra* note 9, at 1024.

166. *See*, JUVENILE JUSTICE AND WELFARE ACT, § 12.

167. *See*, JUVENILE JUSTICE AND WELFARE ACT, § 13.

168. *See*, JUVENILE JUSTICE AND WELFARE ACT, § 14.

169. *See*, JUVENILE JUSTICE AND WELFARE ACT, § 16.

170. *See*, JUVENILE JUSTICE AND WELFARE ACT, § 17.

171. JUVENILE JUSTICE AND WELFARE ACT, § 6.

172. *Id.* § 20.

173. *Id.* § 6, ¶ 2.

responsibility, further modifying those previously set by the Revised Penal Code and the Child and Youth Welfare Code.<sup>174</sup>

In determining the age of the offender, minority shall be presumed: the child shall enjoy all the rights provided for in the Act until it is proven that he/she is 18 years old or older.<sup>175</sup> The age of a child may be determined from different sources of information, such as the child's birth/baptismal certificate and other documents or, in default thereof, the child's physical appearance, testimonies of other persons, and information from the child himself/herself.<sup>176</sup> The determination of the age of the child shall be a priority, especially when a case has already been filed in court. Pending resolution, proceedings on the main case filed against the child shall be suspended.<sup>177</sup>

### C. Initial Contact with the Child

174. See, JUVENILE JUSTICE AND WELFARE ACT, § 20.

If it has been determined that the child taken into custody is 15 years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise, known as The Child and Youth Welfare Code.

175. JUVENILE JUSTICE AND WELFARE ACT, § 7.

176. *Id.*

177. *Id.* § 7, ¶ 3.

The Juvenile Justice and Welfare Act outlines the steps to be undertaken by the law enforcement official charged to take custody of the child. The said law enforcer must, from the moment the child is taken into custody:

- (a) explain to the child in simple language and in a dialect that he/she can understand why he/she is being placed under custody and the offense that he/she allegedly committed;
- (b) inform the child of the reason for such custody and advise the child of his/her constitutional rights in a language or dialect understood by him/her;
- (c) properly identify himself/herself and present proper identification to the child;
- (d) refrain from using vulgar or profane words and from sexually harassing or abusing, or making sexual advances on the child in conflict with the law;
- (e) avoid displaying or using any firearm, weapon, handcuffs or other instruments of force or restraint, unless absolutely necessary and only after all other methods of control have been exhausted and have failed;
- (f) refrain from subjecting the child in conflict with the law to greater restraint than is necessary for his/her apprehension;
- (g) avoid violence or unnecessary force;
- (h) determine the age of the child;
- (i) immediately but not later than eight (8) hours after apprehension, turn over custody of the child to the Social Welfare and Development Office or other accredited NGOs, and notify the child's apprehension. The social welfare and development officer shall explain to the child and the child's parents/guardians the consequences of the child's act with a view towards counseling and rehabilitation, diversion from the criminal justice system, and reparation, if appropriate;
- (j) take the child immediately to the proper medical and health officer for a thorough physical and mental examination. The examination results shall be kept confidential unless otherwise ordered by the Family Court. Whenever the medical treatment is required, steps shall be immediately undertaken to provide the same;
- (k) ensure that should detention of the child in conflict with the law be necessary, the child shall be secured in quarters separate from that of the opposite sex and adult offenders;
- (l) record the following in the initial investigation:
  1. whether handcuffs or other instruments of restraint were used, and if so, the reason for such;
  2. that the parents or guardian of a child, the Department of Social Welfare and Development, and the Public Attorney's Office have been informed of the apprehension and the details thereof; and

3. the exhaustion of measures to determine the age of a child and the precise details of the physical and medical examination or the failure to submit a child to such examination; and,
- (m) ensure that all statements signed by the child during investigation shall be witnessed by the child's parents or guardian, social worker, or legal counsel in attendance who shall affix his/her signature to the said statement.<sup>178</sup>

Moreover, "a child in conflict with the law shall only be searched by a law enforcement officer of the same gender and shall not be locked up in a detention cell."<sup>179</sup>

Under the Act, law enforcement officers are mandated to determine where the case involving the child should be referred to.<sup>180</sup> During initial investigation, the statement of the child shall be taken in the presence of the child's counsel of choice (or in the absence thereof, a lawyer from the Public Attorney's Office), the local social welfare officer and development officer, and the child's parents, guardian or nearest relative.<sup>181</sup> If the child is below 15 years of age, or above 15 but below 18 years and was found to have acted without discernment, he/she will be subjected to the intervention proceeding.<sup>182</sup> Otherwise, diversionary measures shall be applied.<sup>183</sup>

#### D. Diversionary Measures

As defined by the Act, diversion consists of "an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background *without resorting to formal court proceedings*."<sup>184</sup> Children in conflict with the law shall undergo diversion programs, subject to the following conditions:

- (a) where the *imposable penalty for the crime committed is not more than six years imprisonment*, the law enforcement officer or *Punong Barangay* with the assistance of the local social welfare and development officer ... shall conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in

<sup>178</sup> *Id.* § 21.

<sup>179</sup> *Id.* § 21 (last paragraph). In the absence of the child's parents, guardian, or nearest relative, and the local social welfare and development officer, the investigation shall be conducted in the presence of a representative of an NGO, religious group, or member of the BCPC.

<sup>180</sup> JUVENILE JUSTICE AND WELFARE ACT, § 22, ¶ 1.

<sup>181</sup> *Id.* § 22, ¶ 2.

<sup>182</sup> *See*, JUVENILE JUSTICE AND WELFARE ACT, § 22, ¶ 3 (a), § 20.

<sup>183</sup> *See*, JUVENILE JUSTICE AND WELFARE ACT, § 22, ¶ 3 (b).

<sup>184</sup> JUVENILE JUSTICE AND WELFARE ACT, § 5 (i) (emphasis supplied).

accordance with the best interest of the child with a view to accomplishing the objectives of restorative justice and the formulation of a diversion program. The child and his/her family shall be present in these activities;

- (b) in *victimless crimes* where the imposable penalty is not more than six years imprisonment, the local social welfare and development officer shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and rehabilitation program ...;
- (c) where the imposable penalty for the crime committed exceeds six years imprisonment, diversion measures may be resorted to only by the court.<sup>185</sup>

Prior to such entry into a diversion program, a child in conflict with the law may undergo family conferencing, mediation, or conciliation.<sup>186</sup> If during these events, the child voluntarily admits the commission of the unlawful activity, a contract of diversion may be entered into<sup>187</sup> and the child shall be subjected to the appropriate program. This admission with respect to the commission of the offense shall not be used against the child in any subsequent judicial, quasi-judicial, or administrative proceeding.<sup>188</sup> In determining whether diversion is appropriate and desirable, the Act enumerates the following factors to be taken into consideration: the nature and circumstances of the offense charged, the frequency and the severity of the act, the circumstances of the child, the influence of the family and environment on the growth of the child, the reparation of injury to the victim, the weight of the evidence against the child, the safety of the community, and most importantly, the best interests of the child.<sup>189</sup>

Diversion proceedings may be conducted at different stages: they may be resorted to at the *Katarungang Pambarangay* level, the police investigation, inquest/preliminary investigation level, or at all phases of criminal proceedings, including the judicial level.<sup>190</sup> The program shall include adequate socio-cultural and psychological responses and services for the child.<sup>191</sup> Below is a table of diversion programs that are prescribed by the Act,<sup>192</sup> depending on the level where they are implemented:

LEVEL OF IMPLEMENTATION	KINDS OF DIVERSIONARY PROGRAM
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<sup>185</sup> *Id.* § 23 (emphasis supplied).

<sup>186</sup> *Id.* § 25.

<sup>187</sup> *Id.* § 26, ¶ 1.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* § 29 (a) - (h).

<sup>190</sup> JUVENILE JUSTICE AND WELFARE ACT, § 24.

<sup>191</sup> *Id.* § 31.

<sup>192</sup> *Id.* § 31 (a) - (c).

PUNONG BARANGAY	Restitution of property
	Reparation of damage caused
	Indemnification for consequential damages
	Written or oral apology
	Care, guidance, and supervision orders
	Counseling for the child in conflict with the law and the child's family
	Attendance in trainings, seminars and lectures on: <ol style="list-style-type: none"> <li>1. anger management skills</li> <li>2. problem solving and/or conflict resolution skills</li> <li>3. values formation</li> <li>4. other skills which will aid the child in dealing with situations which can lead to repetition of the offense</li> </ol>
	Participation in available community-based programs, including community service
	Participation in education, vocation and life skills programs
	LAW ENFORCEMENT OFFICER AND PROSECUTOR (POLICE INVESTIGATION, INQUEST / PRELIMINARY INVESTIGATION)
JUDICIAL	Confiscation and forfeiture of the proceeds or instruments of the crime
	Diversionary programs specified in the first two levels
	Written or oral reprimand or citation
	Fine
	Payment of the cost of the proceedings
	Institutional care and custody

In formulating the appropriate diversion program, the Act prescribes that the individual characteristics and the peculiar circumstances of the child be

used to arrive at an individualized treatment, such as the child's feelings of remorse for the offense committed, parents' or legal guardians' ability to guide and supervise the child, the victim's view about the propriety of the measures to be imposed, and the availability of community-based programs for rehabilitation and reintegration.<sup>193</sup>

#### E. Status Offenses

By definition, status offenses are those acts "which discriminate only against a child, while an adult does not suffer any penalty for committing similar acts ..."<sup>194</sup> These acts include curfew violations, truancy, parental disobedience, vagrancy, prostitution, mendicancy, and the like. While these "offenses" were previously punished under the penal laws, the Juvenile Justice and Welfare Act states that "any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child."<sup>195</sup> Upon initial contact, the child shall be turned over to the Local Social Welfare District Officer for appropriate counseling or treatment, without need for diversionary, prevention, or rehabilitation measures.

#### IV. KEY ISSUES AND CONCERNS

##### A. Discernment

The issue of determining whether a child acted with *discernment* in committing a crime is a primary concern in the administration of juvenile justice under the present Juvenile Justice and Welfare Act. Under criminal law, *discernment* means the mental capacity of a minor to fully appreciate the consequences of his unlawful act.<sup>196</sup> The determination of the lack of discernment at the time of commission of the offense, together with the application of the age of criminal responsibility, are both founded on the child's emotional, mental, and intellectual maturity.<sup>197</sup> This determination thus proves to be crucial. As discussed above, a positive finding shall subject the child to the appropriate measures and responses provided for by law.

##### 1. Legal Definitions

Jurisprudence provides for a heavy presumption of minority which qualifies the degree of discretion in determining the existence of discernment. In

193. *Id.* § 30 (a) - (d).

194. *Id.* § 4 (r).

195. *Id.* § 57.

196. I LUIS B. REYES, THE REVISED PENAL CODE 218 (15d ed. 2001) (citing *People v. Navarro*, 51 O.G. 4062 (1955)) [hereinafter REYES].

197. See generally, BEIJING RULES.

*People v. Estepano*, the Supreme Court held that, when a minor is between 15-18 years, he is presumed to have acted without discernment — it is incumbent on the prosecution to prove that the minor acted otherwise.<sup>198</sup> Nevertheless, this presumption is clearly rebuttable.<sup>199</sup> In the case of *People v. Jose*, the Court emphasized that, “[f]or a minor ... to be criminally liable, the prosecution is burdened to prove beyond reasonable doubt, by direct or circumstantial evidence, that [the child] acted with discernment, meaning that he knew what he was doing and that it was wrong.”<sup>200</sup> According to the Court, circumstantial evidence may include “the utterances of the minor; his overt acts before, during and after the commission of the crime relative thereto; the nature of the weapon used in the commission of the crime; his attempt to silence a witness; his disposal of evidence or his hiding the *corpus delicti*.”<sup>201</sup> For example, the existence of discernment was determined by the courts in situations where the minor committed the crime during nighttime to avoid detection<sup>202</sup> or where the minor displayed elation over accomplishment of criminal act.<sup>203</sup>

Notably, discernment in committing a criminal act must be distinguished from criminal *intent*. In the 1939 case of *People v. Doquena*, the Supreme Court defined discernment to be the child’s “mental capacity to understand the difference between right and wrong.”<sup>204</sup> Intent refers to the *desired act of the person* while discernment relates to the *moral significance that the person attaches to the act*.<sup>205</sup> Discernment is not *mens rea* or “guilty mind” for purposes of criminal liability or conviction. Hence, even if the child acted with discernment, the presumption of innocence still holds.

## 2. Psychosocial Perspective

Discernment in a minor suspected of committing a criminal act must also be understood in consonance with psychō-social and other behavioral factors

198. See, *People v. Estepano*, 307 SCRA 701, 711 (1999) (citing I LUIS B. REYES, THE REVISED PENAL CODE 216 (1993 ed. 2001)).

199. See, *Jose v. People*, 448 SCRA 116 (2005); *Jarco Marketing Corporation v. Court of Appeals*, 321 SCRA 375 (1999); *Guevarra v. Almodovar*, 169 SCRA 476 (1989).

200. *Jose*, 448 SCRA at 123.

201. *Id.*

202. See, *People v. Magsino*, 60 Phil. 1001 (1934) (unpublished).

203. See, *People v. Alcabao*, 44 O.G. 5006 (1947).

204. *People v. Doquena*, 68 Phil. 580 (1939) (emphasis supplied); see, *Guevarra v. Almodovar*, 169 SCRA 476 (1989).

205. REYES, *supra* note 196, at 218 (citing *Guevarra v. Almodovar*, 169 SCRA 476, 481 (1989)) (emphasis supplied).

which come into play, especially concerning those within the developmental characteristics of the age group covered by the law.

In modern psychological literature, “delinquency has been used interchangeably with *antisocial behavior* and refers to a *continuum* of behaviors which transgresses social norms in ways that could result in serious disciplinary ... or ... adjudicatory consequences.”<sup>206</sup> According to Liane Alampay of the Department of Psychology of the Ateneo de Manila University, “[this] notion of a continuum conveys that these acts are progressive and hierarchical with increasingly negative consequences for the person and the community.”<sup>207</sup> She further notes that, “rather than considering juvenile delinquency as simply present or absent in a person, it must be recognized as something which one *does*, and something that is done *more or less*.”<sup>208</sup> There are degrees of risk for engaging in delinquent behaviors based on multiple individual and environmental factors, such as parenting practices and parent-child relationships, family stressors, child maltreatment and abuse, and peer relationships.<sup>209</sup>

Recent studies have shown that majority of Filipino children in conflict with the law are adolescents aged between 14 to 17 years old.<sup>210</sup> Some developmental psychologists believe that “it is normative for adolescents to engage in minor delinquent behaviors during this period, as these are motivated by the particular developmental needs and characteristics of teenage youth.”<sup>211</sup> Categorized as *adolescence-limited antisocial behavior*, this is “delinquency that is late in onset (*i.e.*, first offense is committed after age 13)” and is “limited to the adolescent stage (and decreasing or disappearing thereafter in most cases).”<sup>212</sup> Alampay further suggests that, “rather than

206. Liane Peña Alampay, Risk Factors and Causal Processes in Juvenile Delinquency: Research and Implications for Prevention, available at <http://www.childprotection.org.ph/monthlyfeatures/archives/aug2k6b.html> (last accessed Aug. 1, 2007) [hereinafter Alampay].

207. *Id.* at 2.

208. *Id.* (citing R. P. LORION, P. H. TOLAN & R. G. WAHLER, *Prevention in HANDBOOK OF JUVENILE DELINQUENCY* 383-416 (H. Quay ed., 1987)) (emphasis supplied).

209. *Id.* at 3-10.

210. *Id.* at 11.

211. *Id.*

212. Alampay, *supra* note 206, at 11. (citing Terrie E. Moffitt, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 PSYCHOL. REV. 674-701 (1993)).



being arbitrary or simply perverse, risk behaviors — including delinquency — are purposive and fulfill goals that are central to adolescent life.”<sup>213</sup>

From these findings, it may be stressed that, to characterize a child to have committed criminal acts with discernment, the same must be viewed from the child’s *capacity* to engage in such acts, taking into consideration the child’s individual and social circumstances.

### 3. Determination under the Juvenile Justice and Welfare Act

Under the present Juvenile Justice and Welfare Act, the Local Social Welfare District Officer shall make a preliminary determination of the existence of discernment at the initial investigation conducted by law enforcement agents.<sup>214</sup> This initial procedure raises a particular concern with respect to the amount of discretion given to social workers. Indeed it may be asked, why does the law make the social worker decide?

In cases involving children in conflict with the law, the social worker is deemed to play the important role of a witness in the course of proceedings against the minor. This is based on the principle of evidence obtained from an expert witness, with respect to the social worker’s opinion as evidence.<sup>215</sup> The law makes certain assumptions as to the qualification of the social worker as an expert witness, particularly with respect to his/her education, training, experience, licensure, and familiarity with the surrounding facts of the case involving the minor. It is also based on this reasoning, that the law entrusts various responsibilities to the social worker, notably, those which deal with the diversionary measures and rehabilitative, after-care, and supervision programs<sup>216</sup> directed towards the child.

213. *Id.* at 12. Some of these adolescent goals of delinquent behavior, as enumerated by Alampay, include: 1) efforts to attain goals that are blocked or unattainable, such as attaining independence from parental control; 2) means of expressing opposition to adult authority and conventional society, whose values may be perceived as different from those of the youth; 3) coping mechanism for dealing with the various anxieties, frustrations, inadequacies, and uncertainties of the adolescent transition; 4) way of gaining admission to the peer group and expressing solidarity with peers; 5) confirmation of important attributes of personal identity; 6) a symbol of having achieved a more mature status; and as a 7) means of sensation seeking, having fun and escaping from boredom.

214. JUVENILE JUSTICE AND WELFARE ACT, § 22.

215. 1997 REVISED RULES ON EVIDENCE, rule 130, § 4 (“[t]he opinion of a witness on a matter requiring special knowledge, skill, experience or training which he shown to possess, may be received in evidence.”).

216. JUVENILE JUSTICE AND WELFARE ACT, §§ 20, 22 & 56.

Sec. 20. *Children Below the Age of Criminal Responsibility.* - If it has been determined that the child taken into custody is fifteen

Despite these positive aims, there are still questions as to the great responsibility that the law imposes on social workers with respect to cases involving juvenile justice. Does this element, at some point, deprive the local courts of its sound discretion to determine discernment?

### B. Minimum Age of Criminal Liability

The present Juvenile Justice and Welfare Act, subject to intervention measures, decriminalizes offenses committed by children aged 15 and below.<sup>217</sup> While the law treats minors as incapable of committing criminal acts, this does not discount the fact that children, at the age of 15, may well be aware of their actions and their attendant consequences. This significant change in the setting of the age of criminal responsibility, founded on previous legislation, further invites questions and concerns with respect to its legal implications and questions as to law enforcement procedure.

Examining the law more closely, the change in the minimum age of criminal responsibility contains gray areas which the present law does not specifically cover. For example, how does the Juvenile Justice and Welfare

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(15) years old or below, the authority ... shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child.

Sec. 22. *Duties During Initial Investigation.* - ... After the initial investigation, the local social worker conducting the same may do either of the following:

(a) Proceed in accordance with Section 20 if the child is fifteen (15) years or below or above fifteen (15) but below eighteen (18) years old, who acted without discernment; and,

(b) If the child is above fifteen (15) years old but below eighteen (18) and who acted with discernment, proceed to diversion under the following chapter.

Sec. 56. *After-Care Support Services for Children in Conflict with the Law.* - Children in conflict with the law whose cases have been dismissed by the proper court because of good behavior as per recommendation of the DSWD social worker and/or any accredited NGO youth rehabilitation center shall be provided after-care services by the local social welfare and development officer for a period of at least six (6) months. The service includes counseling and other community-based services designed to facilitate social reintegration, prevent re-offending and make the children productive members of the community.

217. *Id.* § 6.

Act treat minors who have allegedly committed heinous offenses?<sup>218</sup> Should they remain exempt from criminal responsibility simply by virtue of the law's minimum age provision? The present enactment seems to be silent with respect to this particular situation, and this silence may serve as a dangerous avenue for the continued commission of heinous crimes by minors. At best, the possible remedy would be to subject the child to mandatory rehabilitation and reintegration provided for in the Act.<sup>219</sup>

The increase in the minimum age of criminal responsibility has likewise brought about concerns from local police and law enforcement agencies, especially those concerned with the prevention of syndicated crimes. Recent reports from the Cebu City Police Office reveal that a significant number of cases involving minor offenders have increased since the law took effect.<sup>220</sup> According to Senior Superintendent Patrocinio Comendador, Jr., director of Cebu City police, "he was afraid that the inability of police to arrest minors would lead some minors to lead a life of crime early."<sup>221</sup> Instead of being protected from the harsh conditions of penal institutions and punitive responses, this significant change in the age of criminal responsibility may well attract syndicates to use minors as necessary actors in perpetrating crimes. According to the Cebu City Council, "syndicates seem to have taken advantage of the new law,"<sup>222</sup> as "[c]riminal syndicates are believed to be utilizing children 15 years old and younger, who are not liable under the juvenile justice law, as drug couriers and runners."<sup>223</sup>

218. See, An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, and for Other Purposes, Republic Act No. 7659 (1993). The second Whereas clause defines *heinous crimes* as those "grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society." These include the crimes of treason, piracy, qualified piracy, qualified bribery, parricide, murder, infanticide, kidnapping and serious illegal detention, robbery with violence against or intimidation of persons, destructive arson, rape, plunder, carnapping, and those specifically punished under the Dangerous Drugs Act of 2002.

219. See, JUVENILE JUSTICE AND WELFARE ACT, § 52.

220. Jhunnex Napallacan, 'Amend, not repeal juvenile justice', CEBU DAILY NEWS, Aug. 8, 2007, available at [http://globalnation.inquirer.net/cebudailynews/news/view\\_article.php?article\\_id=81322](http://globalnation.inquirer.net/cebudailynews/news/view_article.php?article_id=81322) (last accessed Aug. 1, 2007).

221. *Id.*

222. Editorials: *Controversial law on juvenile justice*, editorial, SUN STAR CEBU, Aug. 15, 2007, <http://www.sunstar.com.ph/static/ceb/2007/08/15/oped/editorial.html> (last accessed Aug. 1, 2007).

223. *Id.*

Given these, is there a need for an amendment with respect to the coverage of this minimum age provision? Will inclusion of specific exemptions be necessary to cover particular situations such as those abovementioned? The present law is silent as to these points, which may well be the subject of future re-examination.

### C. Diversionary Measures

The Juvenile Justice and Welfare Act prescribes a system of diversionary measures conducted at various stages of the proceedings concerning the minor involved.<sup>224</sup> Proponents in support of this limited retributivism argue that

a reduction of the severity of punishment for young people is not simply to serve utilitarian ends by minimising the harmful consequences of the criminal justice process itself, rather ... it is appropriate to judge juveniles by a less stringent standard because of the difficulties faced by this age group in first coming to terms with making their own decisions and leading autonomous lives.<sup>225</sup>

It is their argument that "[y]outh is a transitional period in an individual's life, and one which involves a certain amount of experimentation, and society should not judge the resulting mistakes that are made during this period as harshly as it does the wrongdoing of adults."<sup>226</sup>

The implementation of diversionary measures in a juvenile justice system, as a mode of rehabilitation and reintegration thus presents a clash of due process versus the child's best interests.<sup>227</sup> While its goal is one of welfare directed towards assisting the minor, there remains the belief that law enforcers have an obligation under the law "to adopt an attitude of formality in which rules are adhered to and the juvenile is treated with fairness as an adversary."<sup>228</sup> The present law's utilization of diversion, which is literally a "detour from the normal or expected route"<sup>229</sup> of criminal prosecution brings the notion to Philippine jurisdiction that "the expected or anticipated route for the majority of young offenders today is not to be dealt with by the

224. See, JUVENILE JUSTICE AND WELFARE ACT, §§ 23-31.

225. Laurence Koffman & Gavin Dingwall, *The Diversion of Young Offenders: A Proportionate Response?*, 2 WEB J. CURRENT LEG. ISSUES (2007), available at [http://webjcli.ncl.ac.uk/2007/issue2/koffman2.html#\\_Toc165365780](http://webjcli.ncl.ac.uk/2007/issue2/koffman2.html#_Toc165365780) (last accessed Jan. 1, 2007) [hereinafter Koffman & Dingwall].

226. *Id.*

227. JAMES T. CAREY & PATRICK MCANANY, INTRODUCTION TO JUVENILE DELINQUENCY: YOUTH AND THE LAW 228 (1984).

228. *Id.*

229. Koffman, *supra* note 225.

formal court system, but rather by a variety of decisions and measures which do not have the same level of public scrutiny as a criminal trial."<sup>230</sup>

Criticisms with respect to the present enactment, however, question the utility of diversion as the appropriate legal response to children in conflict with the law: can these diversionary measures effectively rehabilitate the child? Will diversionary measures prove to be the appropriate method with respect to the offenders, as well as with respect to effectively administering justice to the victims of crimes committed by minors? Similarly, issues as regards implementation feasibility and resource availability are also put into question, as there remains the issue of how diversionary measures can be best institutionalized.<sup>231</sup> These pertinent concerns are waiting to be addressed by further ventures into the implementation of the present law.

#### D. Detention Centers

In cases where detention is necessary, the Juvenile Justice and Welfare Act provides that the "child will always be detained in youth detention homes established by local governments, pursuant to section 8 of the Family Courts Act, in the city or municipality where the child resides."<sup>232</sup>

While the aim of the present law is theoretically positive, one paramount consideration with respect to this principle is the reality of the unavailability of detention facilities and the detrimental effect of such absence on children. A recent study conducted in Cebu revealed that, due to the lack of detention facilities specifically for children, children held in custody are confined in congested prisons under very poor conditions.<sup>233</sup> Imprisoned with adult offenders who are hardened criminals, these children also suffer from physical and sexual abuse and exploitation.<sup>234</sup> An earlier study conducted across the metropolitan areas of Manila, Cebu, and Davao likewise revealed that children held in custody in jails and rehabilitation centers were experiencing

230. *Id.*

231. See, SAVE THE CHILDREN UK (PHILIPPINES PROGRAMME), BREAKING RULES: CHILDREN IN CONFLICT WITH THE LAW AND THE JUVENILE JUSTICE PROCESS (THE PHILIPPINE EXPERIENCE) 53 (2004) [hereinafter SAVE THE CHILDREN, BREAKING RULES].

232. JUVENILE JUSTICE AND WELFARE ACT, § 36; see, FAMILY COURTS ACT, § 8; see also, SAVE THE CHILDREN UK (PHILIPPINES PROGRAMME), BACK ON TRACK: MAKING COMMUNITY-BASED DIVERSION WORK FOR CHILDREN IN CONFLICT WITH THE LAW (A DOCUMENTATION OF FREELAVA'S EXPERIENCE IN CEBU CITY, PHILIPPINES) 42 (2005) [hereinafter SAVE THE CHILDREN, BACK ON TRACK].

233. SAVE THE CHILDREN, BACK ON TRACK, *supra* note 232, at 1.

234. *Id.*

abuse from the hands of the staff and even older children.<sup>235</sup> According to the study, these and other findings detailing the dreadful conditions in places of custody point to either an absence of official guidelines for the staff as to the proper treatment of children in custody or a lack of awareness of or conscious non-compliance with the said guidelines.<sup>236</sup> Serious rehabilitation programs and reintegration planning were also found to be minimal, if not lacking.<sup>237</sup> These are the challenges that the present law must likewise address in order to effectively ensure the proper care of children held in detention centers, as this is a clear mandate of law.

#### E. Disposition Measures in Court

Under the Juvenile Justice and Welfare Act, when a minor has been found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed, automatically suspend the sentence without the need for application, and impose the appropriate disposition measure in accordance with the Supreme Court Rule on Juveniles in Conflict with the Law.<sup>238</sup> According to the Rule, subsequent to a disposition conference to be held 15 days from promulgation of sentence, the deciding court may opt to avail of the various disposition measures as provided by the Rule, which may contain any or a combination of the following: 1) care, guidance, and supervision orders, 2) community service orders; 3) drug and alcohol treatment; 4) participation in group counseling and similar activities; and/or 5) commitment to the Youth Rehabilitation Center of the DSWD or other centers for juveniles in conflict with the law authorized by the Secretary of the DSWD.<sup>239</sup> Upon recommendation, the Family Court shall, after due notice to all parties and hearing, dismiss the case against the juvenile who has been issued disposition measures, even before he has reached 18 years of age, and order a final discharge if it finds that the juvenile has behaved properly and has shown capability to be a useful member of the community.<sup>240</sup>

A primary consideration in the imposition of disposition measures by the court would be the discretion afforded to the rehabilitation center staff members in submitting a recommendation for the release of the minor. Research showed that even if the child is a first-time offender, the decision of when to release the child is primarily lodged in the rehabilitation center

235. SAVE THE CHILDREN, BREAKING RULES, *supra* note 231, at 60.

236. *Id.*

237. *Id.*

238. JUVENILE JUSTICE AND WELFARE ACT, § 38.

239. RULE ON JUVENILES IN CONFLICT WITH THE LAW, A.M. No. 02-1-18-SC, § 32, Apr. 15, 2002.

240. *Id.* § 33.

staff members, revealing that children were kept in custody anytime from six months to five years,<sup>241</sup> depending on the discretion of the staff members, which may even be tainted with arbitrariness. Thus, there is a need to formulate guidelines and appropriate measures in order for disposition measures to adhere to the principle of proportionality, pursuant to minimum standards of administering juvenile justice.

Prevention of re-offending is also an issue related to disposition measures. Second-time offenders are not eligible to avail of disposition measures and credit in service of sentence,<sup>242</sup> and this would eventually result in execution of criminal punishment. As such, courts, together with solid social welfare participation, must implement disposition measures that would avoid repeated offending by the minor, taking into consideration various circumstances such as peer group pressure, family situation, poverty, domestic and gender violence, and the like.<sup>243</sup>

Similar to diversionary measures, court disposition measures also face the problem of limited resources, from rehabilitative and integrative programs to basic necessities such as food, clothing, and beddings. This issue of budget allocation is likewise a consideration in the implementation of a comprehensive juvenile justice system.

#### F. Probation

The present enactment emphasizes the choice of probation as an alternative to imprisonment. The court may, after it has convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of his/her sentence, taking into account the best interests of the child.<sup>244</sup> The option of probation may only be availed of by a minor pursuant to the qualifications set forth in the Probation Law<sup>245</sup> or

241. *SAVE THE CHILDREN, BREAKING RULES*, *supra* note 231, at 60.

242. *RULE ON JUVENILES IN CONFLICT WITH THE LAW*, § 35.

243. *SAVE THE CHILDREN, BREAKING RULES*, *supra* note 231, at 61.

244. *JUVENILE JUSTICE AND WELFARE ACT*, § 42.

245. *Establishing a Probation System, Appropriating Funds Therefor and for Other Purposes*, Presidential Decree No. 968, §§ 8-9 (1976).

Sec. 8. Criteria for Placing an Offender on Probation. — In determining whether an offender may be placed on probation, the court shall consider all information relative, to the character, antecedents, environment, mental and physical condition of the offender, and available institutional and community resources. Probation shall be denied if the court finds that:

through the discretion of the court in drug-related cases.<sup>246</sup> Since repeat offenders officially disqualify a person from availing of the benefits of

(a) the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(b) there is undue risk that during the period of probation the offender will commit another crime; or

(c) probation will depreciate the seriousness of the offense committed.

Sec. 9. Disqualified Offenders. — The benefits of this Decree shall not be extended to those:

(a) sentenced to serve a maximum term of imprisonment of more than six years;

(b) convicted of any offense against the security of the State;

(c) who have previously been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or a fine of not less than Two Hundred Pesos;

(d) who have been once on probation under the provisions of this Decree; and,

(e) who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof.

246. *DANGEROUS DRUGS ACT*, § 70.

Upon promulgation of the sentence, the court may, in its discretion, place the accused under probation, even if the sentence provided under this Act is higher than that provided under existing law on probation, or impose community service in lieu of imprisonment. In case of probation, the supervision and rehabilitative surveillance shall be undertaken by the Board through the DOH in coordination with the Board of Pardons and Parole and the Probation Administration. Upon compliance with the conditions of the probation, the Board shall submit a written report to the court recommending termination of probation and a final discharge of the probationer, whereupon the court shall issue such an order.

The community service shall be complied with under conditions, time and place as may be determined by the court in its discretion and upon the recommendation of the Board and shall apply only to violators of Section 15 of this Act. The completion of the community service shall be under the supervision and rehabilitative surveillance of the Board during the period required by the court. Thereafter, the Board shall

probation, it must likewise follow that efforts from concerned authorities must be made in avoiding re-offending minors. Guidelines must also be created for the effective processing of the application for probation concerning children in conflict with the law.

#### G. The Role of Local Government Units in Juvenile Intervention

Under the present law, local government units (LGUs) are given responsibility to take part in institutionalizing comprehensive juvenile justice intervention programs within their respective units, primarily by means of budget allocation and program formulation in close coordination with child-focused institutions, educational institutions, and government agencies involved in delinquency prevention.<sup>247</sup> This rule was aimed at shifting monitoring social welfare from the national level to a more localized and concentrated level, which is at the level of the LGUs.

This localization of juvenile intervention programs has already received much criticism, as it may run counter to the constitutional principle of local autonomy.<sup>248</sup> This provision in the law may likely limit the financial resources of LGUs without the corresponding adjustment in their respective budgets. In a recent report, Davao City Mayor Rodrigo Duterte "lambasted the law for lacking a component that would allow mandatory [national] government allocation of a budget for such programs as correctional institutions."<sup>249</sup> According to the official, Davao City will spend Php30 Million for a correctional facility for children, which will be located in the Marilog District.<sup>250</sup> While the goals remain positive, such budget allocation is considerable and may sacrifice other needs of the LGU that also require

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render a report on the manner of compliance of said community service. The court in its discretion may require extension of the community service or order a final discharge.

In both cases, the judicial records shall be covered by the provisions of Sections 60 and 64 of this Act.

If the sentence promulgated by the court requires imprisonment, the period spent in the Center by the accused during the suspended sentence period shall be deducted from the sentence to be served.

<sup>247</sup> JUVENILE JUSTICE AND WELFARE ACT, § 18.

<sup>248</sup> PHIL. CONST. art X, § 2; *see*, An Act Providing for a Local Government Code of 1991, Republic Act No. 7160, § 2 (1991); Instituting the "Administrative Code of 1987," Executive Order No. 292, § 1 (4) (1987).

<sup>249</sup> Cheryll D. Fiel, *Duterte Wants Child-Protection Law Scrapped*, BULATLAT, Oct. 7-13, 2007, available at <http://www.bulatlat.com/2007/10/duterte-wants-child-protection-law-scrapped> (last accessed Dec. 16, 2007).

<sup>250</sup> *Id.*

funding. This is yet another issue that the present Juvenile Justice and Welfare Act needs to address.

#### V. SUMMARY

*[T]he growing child must not be treated by those rigid rules of criminal procedure which confessedly fail to prevent offenses on the part of adults or cure adult offenders.*

— Julia Lathrop

Children, no matter how they enter the justice system, are essentially victims. This redefinition cannot be overemphasized, especially in dealing with children in conflict with the law. With the passage of the recent Juvenile Justice and Welfare Act, it is the intention of legislators, in accordance with present international and local laws, to protect children from the punitive and retributive character of penal correction and, instead, provide for appropriate diversionary measures that would rehabilitate and reintegrate the child back into his/her family and outside community. This principle of restorative justice, as a foundation, is embodied in the present law, which seeks to transcend retribution and other harsh effects of criminal punishment.

Nevertheless, not all laws are perfectly formulated in an instant. There exists numerous imperfections and criticism surrounding the creation and implementation of juvenile justice systems.

Quite interestingly, there are more known stories of how juvenile justice systems fail rather than how they succeed. For one, an agency actor may continue the long-running processing patterns of juveniles with little or no accountability among institutions. Law enforcement can do away with extensive documentation on specific offenses for court dispensation. Prosecutors may utilize charging and jurisdictional discretion to maximize chances of juvenile conviction and punishment. Defense attorneys, for their part, benefit from these practices by reducing charges and gaining lesser penalties for their youth client's acts. For correction officials, it matters little why a youth was committed since it was court-ordered anyway. The court retains social control and is better off managing the calendar than caring about troubled children.<sup>251</sup>

These are the challenges that the Juvenile Justice and Welfare Act is currently faced with. While the present law provides for positive aims for the protection and preservation of children's best interests, there is, admittedly, a great need for policy structure and formulation to improve the condition of children in conflict with the law. Ultimately, cooperation from various

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<sup>251</sup> Nimfa Cuesta-Vilches, *Making Juvenile Justice Work*, available at [http://www.ojj.org/documental\\_ficha.php?rel=SI&cod=875&pgs=0](http://www.ojj.org/documental_ficha.php?rel=SI&cod=875&pgs=0) (last accessed Jan. 8, 2007).