

CONGRESSIONAL CHILD CARE A JUVENILE ATTEMPT AT LAW MAKING: REVISITING THE JUSTICE SYSTEM FOR CHILDREN IN CONFLICT WITH THE LAW

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I. INTRODUCTION

A high school kid from Quezon City was beaten to death by his thirteen year old schoolmate, but because of Republic Act 9344 (The Juvenile Justice and Welfare Act 2006) which exempts children below fifteen years of age from criminal liability, he was released from prison. In Puerto Princesa, an eleven

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year old boy who admitted killing a two year old child turned himself in and confessed to the *barangay* officials a few days after the body of the two year old boy was found floating at a nearby river. The boy said that he killed the victim because he thought that the victim's family was stealing from them. There was not even a trace of remorse in the facial expression and tone of the eleven year old boy when he confessed his crime. Again, because of R.A. 9344, the minor offender was not charged of any criminal offense.¹

Republic Act 9344, otherwise known as the Juvenile Justice and Welfare Act of 2006 was sponsored by Senator Francisco Pangilinan and Representative Simeon Datumanong. The enactment of the new law was brought about by the condemnation of the international community after Cable News Network (CNN) featured in documentary, thousands of children in prison sharing the same jail facilities with adult offenders. The law was passed by Congress on March 22, 2006 and was signed by President Gloria Macapagal-Arroyo into law on April 28, 2006. It took effect on May 5, 2006, fifteen days after its publication.² An immediate effect of this law was the retroactive dismissal of criminal cases filed against thousands of children below fifteen years of age throughout the country.³ It is the first law that protects the rights of children in conflict with the law. R.A. 9344 provides them the opportunity and chance, through alternative child-friendly measures, to reform and be reintegrated into their family and community as a productive member of society.⁴ The aim is to divert children who commit minor crimes out of the formal criminal justice system and to keep them out of jails confining adult prisoners. The law is anchored on the principle that youth offenders should not be punished in the same way as adult offenders are punished, but instead be made to undergo rehabilitation programs. The objective of the law is to fully protect the rights of "children at risk" and "children in conflict with the law" and make the detention of such children as the last resort.⁵ Section 4 of R.A. 9344 defines a child as a person under the

¹ RA 9344 Juvenile Justice Law: *Should it be amended, repealed or retained* <http://queencassiopeia.wordpress.com/2007/09/28ra-9344-juvenile-justice-law-should-it-be-amended-repealed-or-retained/> (last accessed December 28, 2007).

²<http://www.pcij.org/blog/?p=912> (last accessed December 2, 2007).

³ <http://www.cyc-net.org/features/viewpoits/c-problemslaw.html> (last accessed December 2, 2007).

⁴ About RA 9344-Juvenile Justice and Welfare Act of 2006 <http://www.dswd.gov.ph/faqdetails.php?id=48> (last accessed December 28, 2007).

⁵ R.A. 9344, § 2 (2004).

age of eighteen years. “Child at Risk” refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:

- (1) being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse; are unwilling, or unable to provide protection for the child;
- (2) being exploited including sexually or economically;
- (3) being abandoned or neglected, and after diligent search and inquiry, the parent or guardian can not be found;
- (4) coming from a dysfunctional or broken family or without a parent or guardian;
- (5) being out of school;
- (6) being a streetchild;
- (7) being a member of a gang;
- (8) living in a community with a high level of criminality or drug abuse; and
- (9) living in situations of armed conflict.⁶

“Child in Conflict with the Law” refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.⁷ Children in conflict with the law are presumed by R.A. 9344 as victims themselves. They are not considered as criminals but as victims of circumstances beyond their control who are supposed to be treated as individuals with problems who need guidance and assistance. When children come into conflict with the law, they need help, not retribution.

Republic Act 9344 has introduced several reforms in the manner by which children in conflict with the law are handled. It establishes a comprehensive system for the administration of juvenile justice, including the rehabilitation of children in conflict with the law, their reintegration into their respective communities and the prevention of juvenile delinquency.⁸ The new law enumerates the rights of children in conflict with the law, prohibits their detention in jails and provides for alternatives to detention. It introduces the principle of restorative justice and a system of diversion in dealing with children in conflict with the law. The new law also increases the age of criminal responsibility from nine to fifteen

⁶ R.A. 9344, § 4 (d).

⁷ R.A. 9344, § 4 (e).

⁸ *Supra* note 2.

years of age. It exempts children from being prosecuted for certain crimes and decriminalizes status offenses. Moreover, a national council on juvenile justice and welfare was created to ensure the effective implementation of the new law.

II. PROFILE OF A CHILD IN CONFLICT WITH THE LAW

Before R.A. 9344 took effect, there were already several laws governing the welfare and protection of children in conflict with the law such as the Child and Youth Welfare Code (P.D. 603), The Special Protection of Children against Child Abuse, Exploitation and Discrimination Act 1992 (Republic Act 7610) and An Act Establishing Family Courts (Republic Act 8369) which grants family courts exclusive original jurisdiction over cases involving children. Despite these laws, juvenile delinquency continues to be one of the major problems of our country. According to the *Second Country Report on the Implementation of the Convention on the Rights of the Child* submitted by the government's Council for the Welfare of Children, an average of 28 children are being arrested and detained everyday.⁹ Children in conflict with the law are usually male, between the ages of 14-17 and who come from low-income families. With respect to educational attainment, studies indicate that many of the children in conflict with the law have not even completed elementary education.¹⁰ More than half of the crimes committed by them were not serious offenses. Theft was the most common offense committed followed by violations for sniffing rugby, vagrancy and going against the 10 p.m. curfew imposed by local ordinances.¹¹ Almost all children in conflict with the law were arrested *in flagrante delicto*.¹² Upon their arrest they were brought to jails and were detained together with adult prisoners because majority of the jails all over the country do not have separate detention facilities

⁹ <http://pressinstitute.ph/archives/jds.html> (last accessed December 2, 2007).

¹⁰ Lifted from Ma. Amelia Corado's Thesis on *Cognitive/Behavioral Modification program for Children in Conflict with the Law* (2004).

¹¹ L. Peña, *Risk Factors and Causal Processes in Juvenile Delinquency: Research and Implications for Prevention*, PHILIPPINE JOURNAL OF PSYCHOLOGY (2006).

¹² Generally, before an arrest can be effected there must first be a warrant of Arrest. However, Rule 113 Section 5 of the Rules on Criminal Procedure enumerates the instances whereby an arrest may be validly made even without a warrant, one of which is the warrantless arrest under circumstances contemplated under Section 5 (a) that is when the person to be arrested has committed, is actually committing, or is attempting to commit an offense is denominated as one "*in flagrante delicto*"

for children.¹³ While under detention, these children live in appalling conditions. The daily food budget for detained children is only P35.00. They are allowed to eat only P35.00 worth of meals a day which is why most of the children become sickly and malnourished. Most of them complain of being tortured and abused by the police officers as well as the adult prisoners. In Southern Mindanao for instance, more than five out of every ten detained children suffer from sexual advances while in the custody of government authorities.¹⁴ They are abused by those who are supposed to guard them. Such treatment is not only inhumane but also inconsistent with the United Nations Convention on the Rights of the Child to which the Philippines is a signatory.

IV. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The Philippines is a signatory to the *United Nations Convention on the Rights of the Child*¹⁵ and the enactment of The Juvenile Justice and Welfare Act 2006 is one of the efforts of the country in honoring the provisions of the convention.¹⁶ It is an international convention setting out the civil, political, economic, social

¹³ House Bill No. 5065 entitled “An Act Providing Special Protection to Children in Conflict With Law By Establishing A Comprehensive Juvenile Justice and Delinquency Prevention Under The Department of Justice, Appropriating Funds Therefor and For Other Purposes”, 13th Congress, No. 110, February 13, 2006, Representative Etta Rosales.

¹⁴ *Id.*

¹⁵ In the 1940s the United Nations produced the Universal Declaration of Human Rights, which was adopted in 1948. This declaration applies to children as well as adults. However, growing awareness of the rights of children led to calls for a dedicated children’s human rights treaty. In 1959 the UN General Assembly adopted the second Declaration of the Rights of the Child. This consisted of ten principles for working in the best interests of the child. This was not legally binding, however, and was only a statement of intent.

The Convention on the Rights of the Child was drafted over the course of 10 years between 1979 and 1989. Representatives from all societies, religions and cultures contributed, and a working group was given the task of drafting the convention. Like all human rights treaties, the Convention on the Rights of the Child had first to be approved, or adopted, by the United Nations General Assembly.

On 20 November 1989, the governments represented at the General Assembly agreed to adopt the convention into international law. It came into force in September 1990. (http://en.wikipedia.org/wiki/Conventions_on_the_Rights_of_the_Child [December 17, 2007]).

¹⁶ <http://davaotoday.com/2007/07/02/judge-avisado-juvenile-justice-act-is-a-good-law-but/> (last accessed December 28, 2007).

and cultural rights of the children and sets out in detail what every child needs to have a safe, happy and fulfilled childhood.¹⁷ The Convention is child-centric and deals with the child-specific needs and rights. It is a comprehensive instrument which sets out rights that define universal principles and norms for the status of children. It not only outlines these fundamental rights and freedoms, but also takes into account the need for children to have special assistance and protection due to their vulnerability. It is the first instrument to focus solely on the child regardless of sex, religion and social origin.¹⁸ At present, it is the most widely ratified international human rights instrument, 193 states are party to the Convention.¹⁹ Except for the United States and Somalia, almost all the members of the United Nations have ratified the Convention.

Article 40 of the UN Convention specifically deals with juvenile justice and the treatment of children in conflict with the law. It maintains that every child who has infringed the penal law is entitled to treatment in “in a manner consistent with the promotion of the child’s sense of dignity and worth.”²⁰ It states that a child accused of having infringed the penal law must be afforded a fair trial and must be:

- ♦ presumed innocent until proven guilty according to law;
- ♦ 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;
- ♦ 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;

¹⁷ http://en.wikipedia.org/wiki/Convention_on_the_Rights_of_the_Child (last accessed December 19, 2007).

¹⁸ <http://www.everychildmatters.gov.uk/strategy/uncrc/background/> (last accessed January 22, 2008).

¹⁹ *Supra* note 17.

²⁰ <http://www.justice.govt.nz/youth/media/conference-london-sept-2005/chapter-2.html> (last accessed January 22, 2008).

- ✦ not 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;
- ✦ 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;
- ✦ have the free assistance of an interpreter if the child cannot understand or speak the language used;
- ✦ have his or her privacy fully respected at all stages of the proceedings.²¹

It further dictates that States must promote laws and judicial procedures that are tailored to children who are alleged to have infringed the penal law.²² States that have ratified the Convention are urged to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.²³ The Convention, however, does not set a specific age and it varies among the different countries which ratified such Convention. In China for example, children from ages 14 to 18 are dealt with by the juvenile justice. In Japan, offenders below the age of 20 are tried in a family court rather than in the criminal court system. In all Scandinavian countries, the age of criminal responsibility is fifteen and adolescents under eighteen are subject to a system of justice inclined mostly towards social services with incarceration as the last resort. In Latin American countries such as Brazil, Columbia and Peru the age of criminal responsibility has been raised to 18 years old. In such countries children from 12 to 18 years old are held responsible under a system of juvenile justice.²⁴ In the United States²⁵ the age of criminal responsibility is established by state law. Only 13 states have set minimum ages, which range from 6 to 12 years old. Most states rely on common law, which holds that from age 7 to 14, children

²¹ UN Convention on the Rights of the Child (UNCRC), Article 40 par. 2 (b)

²² *Supra* note 20.

²³ UNCRC, Art. 40 par. 3 (a)

²⁴ <http://www/unicef.org/pon97/p56a.htm> (last accessed December 2, 2007).

²⁵ The United States of America did not ratify the Convention US signed the Convention but never completed their ratification process. On February 16, 1995 Madeleine Albright, US Ambassador to the UN at that time, signed the Convention. However President Clinton did not submit it to the Senate for its advice and consent. (http://en.wikipedia.org/wiki/Conventions_on_the_Rights_of_the_Child [December 17, 2007]).

cannot be presumed to bear responsibility but can be held responsible.²⁶ The minimum age in Bangladesh, India, Myanmar and Thailand is 7. In Singapore the age of criminal responsibility is likewise pegged at 7. From the data it can be readily seen that there is considerable disparity among different jurisdictions as to the minimum ages adopted for imposing criminal responsibility. The wide variation in the age of criminal responsibility reflects a lack of international consensus.²⁷ International standards such as the Beijing Rules for juvenile justice recommend that the age of criminal responsibility be based on emotional, mental and intellectual maturity.

In formulating R.A. 9344, legislators took into account the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)²⁸ and the UN Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).²⁹ These two are the most commonly referred to international instruments for purposes of juvenile justice reform. The Beijing Rules take into account diverse national setting and legal structures, reflect the aims and spirit of juvenile justice and set out desirable principles and practice for the administration of justice for children in conflict with the law.³⁰ The Rules represent the minimum conditions internationally accepted, under which children in conflict with the law shall be treated. The Rules likewise emphasize that placement of a child in conflict with the law shall always be a disposition of last resort and for the minimum necessary period and that the reaction of the authorities is proportionate to the circumstances of the offender as well as the offense. The Rules promote: the use of diversion from formal hearings to the proper community programs; proceedings before any authority to be conducted in the best interests of the child; thorough consideration before depriving a child in conflict with the law of liberty; specialized training for all personnel dealing with juvenile cases; the organization and promotion of research as

²⁶ *Supra* note 24.

²⁷ *Id.*

²⁸ The UN Guidelines for the Prevention of Juvenile Delinquency was adopted by the General Assembly in its resolution 45/112 of December 14, 1990. It was first elaborated at a meeting held by the Arab Security Studies and Training Center (ASSTC) in Riyadh and was thus designated as the Riyadh Guidelines.

²⁹ The Beijing Rules was adopted by the General Assembly in its resolution 40/33 of November 29, 1985 upon the recommendation of the Seventh Congress.

³⁰ <http://www.uncjin.org/Standards/Compendium/pt1e.pdf> (last accessed January 22, 2008).

a basis for effective planning and policy formation. According to the Beijing Rules, a juvenile justice system should be fair and humane. The paramount consideration is always the well-being and the best interest of the child. The importance of rehabilitation is also emphasized, requiring necessary assistance in the form of education, employment or accommodation to be given to the child and calling upon volunteers, voluntary organizations, local institutions and other community resources to assist in that process.³¹ Although the Beijing Rules are not in the form of a treaty, which means that they are not directly enforceable, they nevertheless made an important contribution to children's rights.

The Riyadh Guidelines, on the other hand, move beyond viewing children's rights simply as procedural. The Guidelines adopted a more expansive approach to children's rights and urged a focus on the development of social policies and practices that avoided criminalizing and penalizing behaviors. The Guidelines call for the decriminalization of status offenses. Also, the Guidelines intend to rechannel resources in order to prevent anti-social behavior.³² These resources are aimed at strengthening families, reforming educational programs, reorienting community resources toward supporting children and families and maximizing the appropriate use of the mass media.³³ The emphasis is on the responsibility of the society to assist families in giving care and protection for youth and in ensuring their well-being.

IV. SALIENT FEATURES OF THE JUVENILE JUSTICE AND WELFARE ACT

A. Rights of a Child in Conflict with the Law

The child in conflict with the law is conferred with the following rights, among others:

- (a) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment;
- (b) The right not to be deprived, unlawfully or arbitrarily, of his/her

³¹ <http://www.juvenilejusticepanel.org/en/standardsoverview.html> (last accessed November 30, 2007).

³² J.R. Levesque, *Future Visions of Juvenile Justice: Lessons from International and Comparative Law*, CREIGHTON LAW REVIEW, Vol.29 (1995-1996), at 1568.

³³ *Id.*

liberty; detention or imprisonment being a disposition of last resort, and which shall be for the shortest appropriate period of time;

- (c) The right to be treated with humanity and respect, for the inherent dignity of the person, and in a manner which takes into account the needs of a person of his/her age;
- (d) The right to testify as a witness in his/her own behalf under the rule on examination of a child witness;
- (e) The right to his/her privacy respected fully at all stages of the proceedings;
- (f) The right to diversion if he/she is qualified and voluntarily avails of the same;
- (g) The right to be imposed a judgment in proportion to the gravity of the offense where his/her best interest, the rights of the victim and the needs of society are all taken into consideration by the court, under the principle of restorative justice.³⁴

B. Restorative Justice

The Juvenile Justice and Welfare Act of 2006 adopts restorative justice as a framework. Section 1 of R.A. 9344 provides that the State shall apply the principles of restorative justice in all its laws, policies and programs applicable to children in conflict with the law. Restorative Justice refers to a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offenders, 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 by activating the offender, the victim and the community in prevention strategies.³⁵ It is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior.³⁶ Restorative justice, as opposed to retributive justice or justice attained by punishing or sanctioning the offender,

³⁴ <http://www.mb.com.ph/issues/2007/05/23/OPED2007052394463.html> (last accessed December 2, 2007).

³⁵ R.A. 9344, § 4 (q).

³⁶ <http://www.restorativejustice.org/editions/2006/oct06/intro> (last accessed December 2, 2007).

is seen as an effective way by which diversion can be done.³⁷ Diversion is defined as 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.³⁸ Retributive justice centers on the crime and the criminal. The victim is essentially forgotten for the focus is on punishing the criminal rather than restoring the victim to his or her self-worth and self-esteem. In restorative justice, attention is not centered on the criminal alone but on the victim as well. The criminal is made to confront and see the pain and the suffering he has caused apart from being meted out the penalty he deserves in accordance with the law.³⁹ It has been said that facing an angry victim and his family in mediation is often more difficult for an offender than simply serving detention without facing his victim. Restorative justice involves bringing together the offender and the victim in mediation in a community setting, using respected community members as mediators. The offender experiences justice in a very real way by facing his/her victim, confronting the offense and hopefully working out a solution that is acceptable and mutually beneficial to all parties concerned.⁴⁰

C. Minimum Age of Criminal Responsibility and Diversion

With the enactment of R.A. 9344, the age of criminal responsibility has been increased from nine to fifteen years of age.⁴¹ Section 6 provides that “a child fifteen years of age or under at the time of the commission of the offense shall be exempt from criminal liability.” Instead of imprisonment, the child shall be subjected to an intervention program which refers to a series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program which may include

³⁷ Save the Children UK, *Breaking Rules: Children in Conflict with the Law and the Juvenile Justice Process THE EXPERIENCE* (2004).

³⁸ R.A. 9344, § 4 (i).

³⁹ http://www.manilastandardtoday.com//page=ritaLindaJimeno_june12_2006 (last accessed December 2, 2007).

⁴⁰ Save the Children UK, *supra* note 37.

⁴¹ Before RA 9344 was enacted, the law governing the age of criminal responsibility was Presidential Decree No. 603 (The Child and Youth Welfare Code). Article 189 of the said decree provides that a child nine (9) years of age or under at the time of the commission of the offense shall be exempt from criminal liability.

counseling, skills training, education, and other activities that will enhance his/her psychological, emotional and psycho-social well-being.⁴² The intervention program involves the case management process to include assessment, planning, implementation, monitoring and evaluation to ensure the proper handling of the case.⁴³

For children in conflict with the law who are fifteen years old and below, the law provides that they are exempt from criminal liability but are made to undergo an intervention program. In taking the child into custody, the law enforcement officer must properly identify himself and present proper identification to the child. He must explain in simple language why the child is being taken into custody and explain the offense committed. The officer must inform the child of his constitutional rights in a language or dialect understood by him and must avoid displaying or using any firearm, weapon, handcuffs or other instruments of force or restraint unless absolutely necessary and only after all methods of control have been exhausted and have failed.⁴⁴ The law enforcement officer releases the child to his parents or guardian or in the absence thereof, the child's nearest relative immediately upon arrest. The law enforcement officer then shall give notice to the local social welfare and development officer who must explain to the child and his parents or guardian the consequences of the child's acts and determine the appropriate intervention program for the child.⁴⁵

A child who is above fifteen years but below eighteen years of age at the time of the commission of the offense, shall likewise be exempt from criminal liability and will undergo intervention program if he acted without discernment.⁴⁶ Whenever the child is arrested, the arresting officer turns over the custody of the child to the social worker. The latter in turn determines if turnover of the child's custody to his parents is appropriate. The presence or the lack of discernment is likewise determined by the social worker. If the social worker finds that the child

⁴² R.A. 9344, §4 (I).

⁴³ <http://www.dswd.gov.ph/faqdetails.php?id=48> (last accessed December 2, 2007).

⁴⁴ R.A. 9344, § 21.

⁴⁵ R.A. 9344, § 20.

⁴⁶ Discernment is defined by psychologists as "patterns of reasoning that enables an individual to discriminate the rightness from wrongness about a moral issue. It is the ability to tell right from wrong. *Arrested Development: The Level of Discernment of Out-of-School Children and Youth* (<http://www.childprotection.org.ph/monthlyfeatures/archives/mar2k3b.html> [December 2, 2007]).

acted without discernment, such child will be made to undergo an intervention program and will be proceeded against and treated in the same manner as a child below fifteen years of age.

In both instances, the child's exemption from criminal liability does not include exemption from civil liability. His civil liability shall be enforced in accordance with existing laws.⁴⁷

If the child above fifteen years but below eighteen years acted with discernment, he shall be required to go through a diversion program.⁴⁸ Diversion program refers to the program that the child in conflict with the law is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings.⁴⁹ Its mechanisms involve conferencing, mediation and counseling. The diversion program shall likewise include adequate socio-cultural and psychological responses and services for the child.⁵⁰ It involves the child's family, the community and the local *barangay* officials. The term diversion generally describes the various processes that may be used to ensure that children in conflict with the law are prevented from entering the formal justice system.⁵¹ Diversion is more than a mere removal from any of the stages of the formal criminal justice. The purpose is not to provide an easy ride for the child so that he can avoid his liability but to give him options that would enhance his sense of responsibility and accountability.⁵² Under R.A. 9344, with the supervision of local social welfare officers, the children in conflict with the law will undergo a program for diversion which includes the following:

- ✦ Written or oral apology
- ✦ Restitution of property
- ✦ Reparation of the damage caused
- ✦ Indemnification of consequential damages

⁴⁷ R.A. 9344, § 6.

⁴⁸ R.A. 9344, § 22(b).

⁴⁹ R.A. 9344, § 4 (j).

⁵⁰ *Supra* note 43.

⁵¹ Save the Children UK, *supra* note 37.

⁵² <http://www.alternativelawgroups.org/upimages/3%20juvenile%20justice%20faq.pdf> (last accessed December 28, 2007).

- Care, guidance and supervision orders
- Confiscation and forfeiture of the proceeds or instruments of the crime
- Payment of costs of the proceedings
- Written or oral reprimand or citation
- Counseling
- Attendance in trainings, seminars and lectures on anger management, conflict resolution, values information and other skills which will aid the child in dealing with situations which can lead to repetition of the offense
- Community service
- Participation in education, vocation or life skills programs
- Institutional care or custody⁵³

In formulating a diversion program, the individual characteristics and the peculiar circumstances of the child in conflict with the law shall be used to formulate an individualized treatment.⁵⁴ Since no two children in conflict with law are alike, it is only proper to prepare a program or treatment especially designed for a particular minor offender. In making a diversion program for the child several factors are taken into consideration such as: the child's feelings of remorse for the offense he committed; the parent's 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 of the child.⁵⁵

During diversion, mediation, family conferencing and conciliation are conducted or if appropriate, ingenuous modes of conflict resolution in accordance with the best interest of the child are adopted. For children in conflict with the law above fifteen but below eighteen years of age who acted with discernment, the proper authority determines if diversion is appropriate. Diversion proceedings may either be at the level of the *Punong Barangay*,⁵⁶ at

⁵³ R.A. 9344, § 31.

⁵⁴ R.A. 9344, § 30.

⁵⁵ *Id.*

⁵⁶ R.A. 9344, § 31 (a).

the level of the law enforcement officer and the prosecutor⁵⁷ or at the level of the appropriate court.⁵⁸ The *Punong Barangay* or the law enforcement officer with the assistance of the local social welfare and development officer conducts the diversion if the imposable penalty for the crime committed is not more than six years imprisonment.⁵⁹ In victimless crimes⁶⁰ where the imposable penalty is not more than six years imprisonment, the local social welfare and development officer conducts the diversion proceedings.⁶¹ Where the imposable penalty for the crime exceeds six years imprisonment, diversion measures may be resorted to only by the court.⁶²

If there is failure in the diversion program such as when the child in conflict with the law does not qualify for diversion or when the child, his parent, or guardian does not agree to diversion, the prosecutor shall conduct a preliminary investigation. Upon determination of probable cause by the prosecutor, an information shall be filed against the child.⁶³ During the trial of the case, the child may be released on recognizance to his/her parents or he may be released on bail. The detention of the child pending trial shall be used only as a measure of last resort.⁶⁴

D. Suspension of Sentence

Once a child in conflict with the law is found guilty of the offense charged, he is placed under suspended sentence without the need of application.⁶⁵ This is different from that provided under the old law. Prior to R.A. 9344, the law governing the suspension of sentence of youth offenders was Article 192 of P.D. No. 603 as amended by P.D. No. 1179. Under the old law, a minor who is fifteen

⁵⁷ R.A. 9344, § 31 (b).

⁵⁸ R.A. 9344, § 31 (c).

⁵⁹ R.A. 9344, § 23 (a).

⁶⁰ Victimless crimes refer to crimes where there is no private offended party.

⁶¹ R.A. 9344, § 23 (b).

⁶² R.A. 9344, § 23 (c).

⁶³ R.A. 9344, § 33.

⁶⁴ R.A. 9344, § 36.

⁶⁵ R.A. 9344, § 38.

years old but less than eighteen, may apply for suspension of sentence provided that: (a) the penalty prescribed for the crime is not death or life imprisonment; (b) he must not have been given a suspended sentence before since the privilege can only be availed of once; and (c) at the time the sentence is promulgated, he is still below eighteen (18).⁶⁶ To benefit from P.D. No. 603 as amended by P.D. 1179, the accused must be a youthful offender not only at the time of the commission of the crime but also at the time of the trial. Thus, when the accused is no longer a youthful offender at the time of sentencing, he can not anymore avail of the benefit of suspension of sentence.⁶⁷ However, under R.A. 9344 the court shall still suspend the promulgation of sentence even though the offender is already eighteen years old at the time of the pronouncement of his guilt.

In the case of *Declarador v. Gubaton*,⁶⁸ the Court had the occasion to apply R.A. 9344 particularly the provision regarding suspension of sentence. In this case an Information was filed against Frank Bansales for the killing of Yvonne Declarador. At the time the Information was filed, Bansales was still a minor. After trial, the court rendered judgment finding Bansales guilty of murder. During the promulgation of his sentence, Bansales was still a minor. The court suspended the sentence of the accused and ordered his commitment to the Regional Rehabilitation for Youth in Guimaras. Rennie Declarador, the surviving spouse of the victim filed a petition for *certiorari* assailing the decision suspending the sentence of Bansales and committing him to the rehabilitation center. Declarador claimed that under Article 192 of P.D. 603 as well as A.M. No. 02-1-18-SC otherwise known as the Rule on Juveniles in Conflict with the Law, the benefit of a suspended sentence does not apply to a youth offender who is convicted of an offense punishable by death, *reclusion perpetua* or life imprisonment. During the pendency of the petition, R.A. 9344 took effect. Section 38 of the law reads:

SEC. 38. *Automatic Suspension of Sentence.* – Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended

⁶⁶ L. BOADO, NOTES AND CASES ON THE REVISED PENAL CODE (2004), at 88.

⁶⁷ *Id.* at 89.

⁶⁸ G.R. No. 159208, August 18, 2006

sentence, without need of application: *Provided, however,* That suspension of sentence shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court on Juveniles in Conflict with the Law.

The Court upheld the contention of Declarador and ruled that Bansales was not entitled to a suspension of sentence. The *raison d' etre* is that R.A. 9344 merely amended Article 192 of P.D. 603, as amended by the Rule on Juveniles in Conflict with the Law, wherein the suspension of sentence shall be enjoyed by the youth offender even if he is already 18 years of age or more at the time of the pronouncement of his guilt. In other words disqualifications in Article 192 of P.D. 603, as amended⁶⁹, and Section 32 of A.M. No. 02-1-18-SC⁷⁰ have not been

⁶⁹ Art. 192. *Suspension of Sentence and Commitment of Youthful Offender.* – If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him, the court, shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court, upon application of the youthful offender and if it finds that the best interest of the public, as well as that of the offender will be served thereby, may suspend all further proceedings and commit such minor to the custody or care of the Department of Social Welfare and Development or to any training institution operated by the government or any other responsible person until he shall have reached twenty-one years of age, or for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare and Development or the government training institution or responsible person under whose care he has been committed.

Upon receipt of the application of the youthful offender for suspension of his sentence, the court may require the Department of Social Welfare and Development to prepare and submit to the court a social case study report over the offender and his family.

The youthful offender shall be subject to visitation and supervision by the representative of the Department of Social Welfare and Development or government training institution as the court may designate subject to such conditions as it may prescribe.

The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted for an offense punishable by death or life imprisonment or to one who is convicted for an offense by the Military Tribunals._

⁷⁰ Sec. 32. *Automatic Suspension of Sentence and Disposition Orders.* – The sentence shall be suspended without need of application by the juvenile in conflict with the law. The court shall set the case for disposition conference within fifteen (15) days from the promulgation of sentence which shall be attended by the social worker of the Family Court, the juvenile, and his parents or guardian *ad litem*. It shall proceed to issue any or a combination of the following disposition

deleted from Section 38 of R.A. 9344. Evidently, the intention of Congress was to maintain the other disqualifications as provided in Article 192 of P.D. 603, as amended, and Section 32 of the Rule on Juveniles in Conflict with the Law. Hence, youth offenders convicted of a crime the imposable penalty for which is *reclusion perpetua*, life imprisonment or *reclusion perpetua* to death or death, are disqualified from having their sentences suspended.

E. Probation as an Alternative to Imprisonment

When a child in conflict with the law is convicted and sentenced, the court may place him on probation⁷¹ in lieu of service of his sentence taking into account the best interest of the child.⁷² Under Presidential Decree No. 968 otherwise known as the Probation Law, an application for probation cannot be granted if the defendant has perfected an appeal from the judgment of conviction. The application for probation must be filed within the same period for perfecting an appeal which means that appeal and probation are exclusive remedies. However, under Section 42 of R.A. 9344 the child in conflict with the law is allowed to apply for probation at any time even after he has appealed his judgment of conviction.

measures best suited to the rehabilitation and welfare of the juvenile: care, guidance, and supervision orders; Drug and alcohol treatment; Participation in group counseling and similar activities; Commitment to the Youth Rehabilitation Center of the DSWD or other centers for juvenile in conflict with the law authorized by the Secretary of DSWD.

The Social Services and Counseling Division (SSCD) of the DSWD shall monitor the compliance by the juvenile in conflict with the law with the disposition measure and shall submit regularly to the Family Court a status and progress report on the matter. The Family Court may set a conference for the evaluation of such report in the presence, if practicable, of the juvenile, his parents or guardian, and other persons whose presence may be deemed necessary.

The benefits of suspended sentence shall not apply to a juvenile in conflict with the law who has once enjoyed suspension of sentence, or to one who is convicted of an offense punishable by death, *reclusion perpetua* or life imprisonment, or when at the time of promulgation of judgment the juvenile is already eighteen (18) years of age or over.

⁷¹ Probation is a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer. (Establishing a Probation System, Appropriating Funds Therefore and For Other Purposes, Presidential Decree 968 as amended by P.D. No. 1257, B.P. 76 and P.D. No. 1990).

⁷² R. A. 9344, § 4 (b).

F. Presumption of Minority

A child in conflict with the law enjoys the presumption of minority. He shall be allowed to enjoy all the rights of a child in conflict with the law until it is proved that he is already eighteen years old or older.⁷³ The responsibility of determining the age of the child is given to the law enforcement officer once the child is taken into custody. Under the law, the age of the child may be determined by the child's birth certificate, baptismal certificate or other relevant documents. If these documents are not available, the age may be based on the information given by the child himself, from the testimonies of other persons or from the physical appearance of the child. Since the child in conflict with the law enjoys the presumption of minority the burden of proving otherwise is on the person contesting the age of the child. In case of doubt as to the age of the child, such doubt should be resolved in his favor.

G. Confidentiality of Records and Proceedings

All records and proceedings involving children in conflict with the law are considered private and confidential. R.A. 9344 provides that the records of a child in conflict with the law can not be used in subsequent proceedings for cases involving the same offender as an adult except when beneficial to the offender. The law further provides that a person who has been in conflict with the law as a child is not required to disclose any proceedings taken against him under R.A. 9344 and his concealment of such fact shall not render him criminally liable for perjury.⁷⁴ Perjury is punished under the Revised Penal Code and is considered as a crime against public interest. Perjury is the "willful and corrupt taking of a false oath in regard to a material matter in a judicial proceeding". It is sometimes called "lying under oath."⁷⁵ Because children are expressly exempted from being prosecuted for perjury despite their failure to disclose any proceedings taken against them under R.A. 9344, in effect the law allows and even encourages children to lie.

⁷³ R.A. 9344, § 7.

⁷⁴ R.A. 9344, § 43.

⁷⁵ http://criminal-law.freeadvice.com/white_collar_crimes/perjury.htm (last accessed January 27, 2008).

H. Status Offenses and Offenses Not Applicable to Children

Among the more important features of R.A. 9344 is the provision regarding status offenses. Status offenses are those which are punishable only when committed by minors but not punishable when committed by adults.⁷⁶ Truancy,⁷⁷ disobedience to parents under P.D. 603 and curfew regulations are the most common examples of a status offense. Since R.A. 9344 decriminalizes status offenses, curfew ordinances passed by most *barangays*, towns and cities against minors are now considered illegal. Likewise, ordinances enacted by the different local government units to fight truancy are currently considered unlawful.

R.A. 9344 also enumerates offenses which are not applicable to children. Section 58 of the said law provides that persons below 18 years old are exempt from prosecution for the crimes of vagrancy,⁷⁸ prostitution,⁷⁹ mendicancy⁸⁰ and sniffing rugby.⁸¹ Children are not only exempt from criminal liability but

⁷⁶ R.A. 9344, § 57.

⁷⁷ **Truancy** is a term used to describe any intentional unauthorized absence from school. The term typically refers to absences caused by students of their own free will, and usually does not refer to legitimate “excused” absences (<http://en.wikipedia.org/wiki/Truancy> [last accessed December 2, 2007]).

⁷⁸ Article 202 of the Revised Penal Code –The following are vagrants:

1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;
2. Any person found loitering about public or semi public buildings or places, or tramping or wandering about the country or the streets without visible means of support
3. Any idle or dissolute person who lodges in houses of ill-fame, ruffians or pimps and those who habitually associate with prostitutes
4. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose

⁷⁹ Prostitution is any lascivious or lewd act habitually done for profit by a woman.

⁸⁰ Section 3 of Presidential Decree 1563 (The Mendicancy Law of 1978) defines mendicancy as any person, except those enumerated in Section 4 of this Decree, who has no visible and legal means of support, or lawful employment and who is physically able to work but neglects to apply himself to some lawful calling and instead uses begging as a means of living.

⁸¹ Sniffing rugby is punishable under Presidential Decree 1619 (Penalizing the Use or Possession of Unauthorized Sale to Minors of Volatile Substance for the Purpose of Inducing Intoxication or In Any Manner Changing, Distorting or Disturbing the Auditory, Visual or

are likewise exempt from being prosecuted for these crimes. Instead, children who are caught committing such crimes are required to undergo appropriate counseling and treatment program.

I. Creation of A Welfare Council

R.A. 9344 provides for the creation of a juvenile justice and welfare council. The council is placed and attached under the administrative supervision of the Department of Justice (DOJ) but headed by an undersecretary of the Department of Social Welfare and Development (DSWD)⁸² The main function of the council is to oversee the implementation of the law and to develop a comprehensive three to five year national juvenile intervention program with the participation of various government agencies and youth organizations.⁸³

V. PROBLEMS WHICH THE LAW OVERLOOKED

The common notion is that the Juvenile Justice Law is not a sound legislation; to let young criminals freely roam the streets instead of punishing them is not what many believe a proper thing to do to maintain peace and order in the society.⁸⁴ The clamor to amend the R.A. 9344 has started to snowball. While the new law appears to be complete and ideal it fails to consider other equally important factors and arguments. For one, it fails to take into consideration the rights of the victim. The law seems to be more beneficial to the child in conflict with the law, disregarding the rights of the victims and leaving said victims at the losing end.⁸⁵ It provides for the rehabilitation of the children who come in conflict with the law but does not say anything about the rehabilitation of the victims, who may also be minors. After going through a traumatic and painful experience caused by the offender do these victims and their families not need

Mental Process).

⁸² R.A. 9344, § 8.

⁸³ R.A. 9344, § 9.

⁸⁴ <http://www.yehey.com/News/Articles.aspx/id=177263> (last accessed December 2, 2007).

⁸⁵ <http://www.mb.com.ph/issues/2007/0523/OPED2007052394463.html> (last accessed December 2, 2007).

rehabilitation too? To whom should they go now for justice? Despite the fact that R.A. 9344 requires that children in conflict with the law be sent to centers for rehabilitation, the present status of the rehabilitation system in the country is not yet ready to implement the law.

The new law diverts children away from the usual court proceedings by letting them go through alternative procedures and programs for rehabilitation and reintegration⁸⁶ This means that when a child comes in conflict with the law, instead of being formally charged in court, the child is released to his parents and will be made to undergo an intervention or diversion program, as the case may be. Such amendment by the new law on P.D. 603 has been the subject of criticism. Some lawyers preferred the previous law on youth offenders wherein minors could still be charged in court but would serve a suspended sentence in a juvenile facility.⁸⁷ Moreover, the release of the child to his parents continue to be questionable because most of the time the parents are the ones who incite and encourage their children to commit criminal acts for their own benefit.⁸⁸

Some of the law's provisions have become controversial, most especially the provision on criminal exemption of minors below fifteen years of age. Anti-crime advocacy groups and prosecutors have criticized the law for its weakness on crime because of the exemption of children fifteen years of age and below from criminal liability under the law even when they commit heinous crimes.⁸⁹ Most lawyers are not happy about the exemption of minors below fifteen years of age from criminal liability. As a consequence of such exemption, children would not hesitate to commit a crime because of the assurance given to them by the law that they would not be penalized. Also, the law failed to anticipate a very possible scenario whereby criminal syndicates could purposely use minors for their illegal activities. Because of poverty, minors have been exploited and taken advantage of and used by syndicates in the furtherance of their criminal activities. Now they will be exploited precisely because of their minority and

⁸⁶ http://www.congress.gov.ph/committees/commnews/index.php?pg=commnews_det&newsid=113 (last accessed January 23, 2008).

⁸⁷ http://globalnation.inquirer.net/cebudailynews/news/view_article.php?article_id=81090 (last accessed January 21, 2008).

⁸⁸ <http://visayandailystar.com/2007/July/27/opinion.htm> (last accessed November 30, 2007).

⁸⁹ <http://www.manilatimes.netnational/2007/feb/12/yehey/opinion/20070212opi4.html> (last accessed December 2, 2007).

their exemption from criminal prosecution.⁹⁰

Indeed, while the law intends to increase the protection of children in conflict with the law, it deviously encourages children to commit crimes instead. The law is a virtual reproduction of Western-style juvenile laws and that the upsurge of reported crimes involving children even after its enactment could only mean that such Western-based laws are inapplicable to our cultural backdrop.⁹¹ The decriminalization of status offenses or those offenses which are punishable only when committed by minors are likewise not favored. Because of such decriminalization, employing punishment for parental disobedience is now made an offense committed by parents against their children. Thus, the children can even sue their parents for imposing discipline.

The creation of a juvenile justice welfare council has been criticized. Creating another government agency will entail additional cost which is impractical in these times of economic hardship. It is suggested that an inter-agency body should instead be created.⁹²

In the same manner, the law brings about many challenges to the *barangay* authorities, social workers, police officers and the parents of the child in conflict with the law who are the immediate implementers of said law.⁹³ The authors of R.A. 9344 consulted DSWD officials extensively but failed to check with the city and municipal social workers who are expected to implement the new law. The social workers are not equipped and trained to effectively determine whether or not the child has acted with discernment since they are not psychologists.⁹⁴ Also, the police officers who would have initial contact with the child are still struggling on the procedure in handling children in conflict with the law. The new law directs police officers to turn over the children to social workers upon their apprehension. However this new task is “putting the strain on the present

⁹⁰ http://famli.blogspot.com/2007_10_07_archive.html (last accessed December 2, 2007).

⁹¹ <http://www.sunstar.com.ph/static/bag/2007/11/27/news/council.asks.domogan.to.champion.juvenile.law.changes.html> (last accessed December 2, 2007). Comment of Vice Mayor Daniel Farinas of Baguio City in a news article.

⁹² Comment of Assistant Secretary Teresita Domingo of the Department of Justice (DOJ) in a news article http://www.congress.gov.ph/committees/commnews/index.php?pg=commnews_det&newsid=113 (last accessed January 23, 2008).

⁹³ *Supra* note 85.

⁹⁴ www.varsitarian.com/details.asp?id=2297 (last accessed December 2, 2007).

number of social workers.”⁹⁵

R.A. 9344 is silent on special cases like child terrorists.⁹⁶ There is no provision under the law which deals specifically on cases of child terrorists considering that terrorist groups might use children to execute their plans since the children are less likely to be suspected by the authorities.⁹⁷ Military officials call for the amendment of R.A. 9344. In the past, there had been cases wherein children were being tapped by terrorist groups to be couriers of explosives.

Furthermore, there is no provision under R.A. 9344 which deals with cases of children in conflict with the law who again commit an offense despite undergoing an intervention or diversion program. After being apprehended for the second or third time will they be required to undergo the same program and thereafter be released? A high-ranking police officer suggested that cases of repeat offenders and “hard-core” juvenile delinquents should be treated separately under R.A. 9344.⁹⁸

VI. CONCLUSION

The case of the thirteen year old student who beat his classmate to death and the eleven year old offender who killed a two year old boy are only few of the many crimes committed by minors which were dismissed because of the enactment of R.A. 9344. With its effectivity, there is no doubt that criminal convictions involving children in conflict with the law will surely decrease. This is precisely because charges can no longer be filed against minors as they are required to be diverted from the regular court processes and are instead made to undergo rehabilitation. Although there are cases where children in conflict with the law were depicted as brutal and unrepentant criminals, there are also real life stories wherein children were sent to prison beyond their supposed punishment for the misdemeanors and petty crimes they have committed. It

⁹⁵ *Supra* note 16.

⁹⁶ <http://www.mb.com.ph/issues/2007/0523/OPED2007052394463.html> (last accessed December 2, 2007).

⁹⁷ *Supra* note 94.

⁹⁸ http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=79173 (last accessed December 2, 2007).

is for this reason that the authors of the law proposed its enactment to remedy the condition of children in conflict with the law languishing in jails together with adult offenders. It cannot be denied that the intention of the new law is laudable. The aim of the law in segregating a child in conflict with the law from adult prisoners is commendable. However, while many would agree that mixing children in conflict with law with adult offenders will not promote their best interest, releasing them will not likewise help them and guarantee that they will not commit crimes again. The decriminalization of status offenses is simply not acceptable. Status offenses like truancy and violations of curfew regulations are made punishable for the benefit and the protection of children. Moreover, the exemption of minors from being prosecuted for vagrancy and prostitution has no moral reason and basis.

It has been over a year now since the Juvenile Justice and Welfare Act 2006 was enacted and at present, the law has not yet been fully implemented. Since the law was passed, there has been little improvement in our juvenile justice system and the way children in conflict with the law are being handled and treated. The jailing and detention of children continues to be the routine despite the fact that it is forbidden by P.D. 603 and R.A. 9344. Those who are supposed to be the immediate implementers of said law are still groping for the proper procedure regarding the arrest and the detention of minors. The law clearly mandates the separation of children in conflict with the law from adult offenders whenever the detention of such children becomes necessary. Notwithstanding such provision, minors remain to be detained in the same facilities together with the hardened criminals. This situation no longer comes as a surprise to most Filipinos. P.D. 603 makes segregation of minors from adult offenders compulsory. The said law was promulgated in 1974, more than 30 years ago and up to now, such law remains inadequately enforced and implemented. The challenge of the Juvenile Justice and Welfare Act of 2006 is really the enforcement and the implementation.

The major problem the new law is facing, like any other laws enacted to promote the welfare of children, is the budget or should we say the lack of it. It is really difficult for developing countries like the Philippines to improve its justice system for children who come into conflict with the law when the country is already struggling with limited resources in addition to the problem of rampant corruption in the government. Also, with the gray areas in the new legislation, the author doubts if the new law will really serve the purpose for which it was enacted.