

# **Juvenile Justice and Welfare Act of 2006**

**Republic Act No. 9344  
(Approved April 28, 2006)**

# **The Main Reason for a New Law: Children in Detention**

# Profile of CICL

- **Male, 14-17 yrs. old**
- **Elementary school level**
- **From a family of 4-6 children**
- **Middle child, usually from a low-income family**
- **Charged with property related crimes (67%)**
- **Exposed to substance abuse especially drugs**

# Offenses Committed by Children in Conflict with the Law

<b>Crimes vs. Persons</b> (Murder, homicide, rape, physical injuries)	<b>23%</b>
<b>Crimes vs. Property</b> (Robbery, theft)	<b>67%</b>
<b>Drugs</b>	<b>4%</b>
<b>Other crimes</b>	<b>6%</b>
<b>Average number of cases reported to the police annually</b>	<b>5,500-6,000</b>

# **Salient Features of the New Law**

# **Juvenile Justice and Welfare System**

- It refers to 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**

# Coverage of the Act

- **Different stages involving children at risk and child in conflict with the law (CICL) from prevention to rehabilitation and reintegration**

# **Child in Conflict with the Law**

- **It refers to a child who is alleged as, accused of, or adjudged as, having committed an offense**



# Declaration of State Policy

- **Protects the best interest of the child**
- **Recognizes the rights of children to care and special protection**
- **Recognizes rights of CICL under Convention on the Rights of the Child**
- **Applies the principle of restorative justice in dealing with CICL**

# Best Interest of the Child

- **It refers to the totality of 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.**

# Restorative Justice

- **It 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 can be reintegrated into society.**
- **It also enhances public safety by activating the offender, the victim and the community in prevention strategies.**

# Rights of CICL

- **No torture**
- **No capital punishment**
- **No unlawful deprivation of liberty; detention as a last resort and for shortest period of time**
- **Humane treatment; separation from adults**
- **Access to legal and other assistance**
- **Bail and release on recognizance**
- **Testify in his behalf**
- **Privacy**

# **Rights of CICL**

- **Diversion, if qualified**
- **Proportionate judgment**
- **Restrictions on liberty kept to a minimum**
- **Automatic suspension of sentence**
- **Probation, if qualified**
- **Exemption from perjury**
- **Others rights under existing laws**

**Beijing Rules, Riyadh Guidelines and Rules on JDL  
are adopted**

# **Age of criminal liability**

- **Exemption for those 15 years of age or younger at time of commission of offense**
- **Exemption for those above 15 and below 18 years of age, unless shown to have acted with discernment**
- **Presumption of minority; age may be contested in a summary proceeding**

# **Children Below Age of Criminal Responsibility**

- No exemption from civil liability, which is borne by parents**
- Child released to parents, but may undergo program supervised by social worker**
- Where appropriate, the child may be committed in a rehabilitation center**

# Stages of Prevention

- **Primary – general prevention measures directed at all children**
- **Secondary – early intervention for children at risk of offending**
- **Tertiary – diversion for CICL**



# Prevention at LGU Level

- **Strengthening of Local Councils for the Protection of Children; 1% of IRA allocated for LCPCs**
- **Appointment of social worker to assist CICL**
- **Local 3-year comprehensive intervention and restorative program**

- The following are the steps to be undertaken by the Law Enforcement Officer (Punong Barangay, Kagawad, Tanod, Women & Children's Desk Officer) immediately after having been notified of the commission of an offense. If the complaint is through phone/text message or radio transceivers, personal appearance of complainant is necessary. In case of a report that an offense is being committed, the PB shall send a representative to verify the report.

# **Stage 1: Initial Contact with CICL/Apprehension of CICL**

- A. Advise the complainant to fill-up Form A (Complaint Form)
- B. Record the complaint in the BCPC logbook
- C. Take initial custody of the alleged CICL

# **Initial Contact: Duties of Law Enforcement Officer**

- **Explain to child reason for apprehension**
- **Inform child of constitutional rights**
- **Identify himself to child**
- **Refrain from harassing or abusing child**

# **Initial Contact: Duties of Law Enforcement Officer**

- Avoid use of firearms or instruments of force or restraint, unless absolutely necessary**
- Refrain from subjecting child to greater restraint than is necessary**
- Avoid violence or unnecessary force**
- Determine age of child**
- Turn over child to social worker within 8 hours**
- Take child to medical officer for examination and treatment**

# **Initial Contact:**

## **Duties of Law Enforcement Officer**

- **If detention is necessary, separate child from adult detainees**
- **Record: use of handcuffs or other instruments of restraint; notice to parents, DSWD and PAO; measures taken to determine age**
- **Ensure that statements signed by child are witnessed by parents, guardian, social worker, or legal counsel**

**Search on child to be conducted by officer of same gender**

- If the alleged CICAL is not a resident of the barangay where the offense was committed, but within the same municipality/city, refer the case to the barangay concerned. In case the alleged CICAL is a resident of another mun/city, refer the case to the higher LGU thru the LSWDO concerned.

- H. Conduct initial investigation using the Intake and Profile Form (Form B).
- **The following shall be observed:**
- 1. The law enforcement officer, specifically from the Women and Children Protection Desk where present, shall take the statement of the child during the initial investigation, which shall be conducted in the presence of the following (Section 22):
  - 1.1 Child's counsel of choice or in the absence thereof, a lawyer from the Public Attorney's Office;
  - 1.2 Child's parents, guardian, or nearest relative, as the case may be; and
  - 1.3 LSWDO.



- In the absence of the child's parents, guardian, or nearest relative, and of the LSWDO, the investigation shall be conducted in the presence of a representative of an NGO or faith-based group, or a member of the BCPC (Rule 23.b).
- 2. In taking the statement of the child, the law enforcement officer shall observe the following guidelines (Rule 23.c):
  - 2.1 The investigation shall be child friendly and be conducted in a non-intimidating manner.

- 2.2 The interview of the child shall be conducted in a separate interview room to make the child feel comfortable and free to express him/herself.
- The law enforcement officer shall use simple and understandable language in taking the statement of the child during the initial investigation.
- The law enforcement officer shall allow the LSWDO, or the persons taking his/her place as above enumerated, to actively assist in conducting the initial investigation.

- 3. The law enforcement officer having initial contact with the child, after taking the child into custody, shall immediately determine the age of the child. In making such determination, the law enforcement officer shall, consistent with Section 7 of the Act, take any or all of the following measures to ascertain the age of the child (Rules 22 and 30.a):
  - 3.1 Obtain documents that show proof of the child's age, such as:
    - 3.1.1 Child's birth certificate;
    - 3.1.2 Child's baptismal certificate; or
    - 3.1.3 Any other pertinent documents such as, but not limited to, the child's school records, dental records or travel papers.

- The law enforcement officer may obtain the assistance of the LSWDO and the BCPC in gathering documents and other relevant information in ascertaining the age of the child.
- 4. In case of doubt as to the age of the child, after all measures are exhausted to determine it, the age shall be resolved in his/her favor as provided in Section 7 of the Act, the child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older (Rule 30.b).

- I. Take the child immediately to the proper medical, dental 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 medical treatment is required, it shall be immediately administered (Section 21.j);

- 2. if the parents, guardian or nearest relatives of the CICL cannot be located, or if they refuse take custody of the child, the child may be released by the authority having initial contact with the child to any of the following:
  - A duly registered NGO, i.e., duly licensed and accredited by the DSWD;
- 2.2 A faith-based organization;
- 2.3 A barangay official;
- 2.4 A member of the BCPC;
- 2.5 An LSWDO; and
- 2.6 The DSWD when and where appropriate.

- 3. Turn over CICL above 15 years but below 18 years old to the LSWDO to assess presence or absence of discernment in committing the offense.
- 4. If the LSWDO cannot be reached, the LEO shall ensure that the child is secured in an area separate from that of the opposite sex and adult offenders and not put in the detention cell or jail. The temporary physical custody of the child may also be given to a duly registered NGO, i.e., licensed and accredited by the DSWD, a faith-based organization, a barangay official, or a member of the BCPC.
- Turn over to PNP or to the concerned Lupong Tagapamayapa as may be appropriate if the offender is 18 years and above
- 5. All cases turned over or referred to the LSWDO, PNP, LT shall be properly recorded in a separate log book indicating therein the disposition of the case.
- K. Prepare a report containing all the information gathered during the interview together with other related documents

# **Diversion**

- **An alternative, child-appropriate process of determining the responsibility and treatment of CICL on the basis of CICL's social, cultural, economic, psychological or educational background, without resorting to formal court proceedings**



# When Diversion Allowed

- **Diversion shall be conducted if the child is not exempt from liability and the offense has a penalty of not more than 6 years imprisonment**
- **If the penalty is not more than 12 years imprisonment, court can order diversion**

# When There is No Diversion

- **Law enforcement officer shall forward case to prosecutor or municipal judge for preliminary investigation**
- **No diversion if:**
  - **Child is disqualified**
  - **Child or parents do not agree to diversion**
  - **Social worker recommends that diversion is not appropriate**

# Conduct of Diversion

- **Available at level of: barangay, police, prosecutor, courts**
- **Mechanism is conferencing, mediation and conciliation**
- **Contract of diversion, with program supervised by local social worker**
- **Failure to comply with program gives victim option to institute action**

# Prescription

- **Period of prescription suspended for 45-days during diversion proceeding**
- **Also suspended during period of program, but not to exceed 2 years**

# **Factors in Determining Diversion Program**

- **Nature and circumstances of offense**
- **Frequency and severity of act**
- **Circumstances of child**
- **Influence of family and environment**
- **Reparation of injury to the victim**
- **Evidence against the child**
- **Safety of community**
- **Best interest of the child**

# **Factors in Formulating Diversion Program**

- **Child's feeling of remorse**
- **Parent's ability to guide the child**
- **Victim's view**
- **Availability of community-based programs for rehabilitation and reintegration**

# Kinds of Diversion Programs

- **Restitution, reparation or indemnification**
- **Apology**
- **Care, guidance and supervision orders**
- **Counseling**
- **Attendance in trainings and seminars**
- **Education, vocational and lifeskills training**
- **Community service**
- **Institutional care (only in court diversion)**

# **Court Proceedings in Serious Offenses**

- Privileged mitigating circumstance of minority is determined in fixing amount of bail**
- When child is detained, court shall order: release on recognizance; release on bail; or transfer to youth home or rehabilitation center**
- Institutionalization is a last resort, and for shortest possible period of time**
- Court shall not order detention of child in jail pending trial**



# **Alternatives to Detention Where CICL Tried and Found Guilty**

- **Suspended Sentence**
  - **Automatic (without need of application)**
  - **Various disposition measures, not just commitment to DSWD-RRCY**
  - **Applicable even if child reaches 18 years of age pending trial**
- **Probation**

# **Confidentiality of Records and Proceedings**

- **Non-disclosure of records to media**
- **Separate police blotter**
- **System of coding to conceal identity of child**
- **Non-use of records in other proceedings, except when beneficial to offender and with his written consent**
- **No liability of child for perjury for not disclosing his being CICAL**

# Rehabilitation

- **Rehabilitation may be community-based or center-based**
- **Court order required for admission to rehabilitation or training facility**
- **Separate facilities from adults**
- **Special attention for female CICL; separate accommodations**

# Rehabilitation Programs

- **Competency and life skills development**
- **Socio-cultural and recreational activities**
- **Community volunteer projects**
- **Leadership training**
- **Social services**
- **Home life services**
- **Health services**
- **Spiritual enrichment**
- **Community and family welfare services**

# Centers

- **Youth Rehabilitation Centers – Established by DSWD**
- **Youth Detention Homes - Established by LGUs or licensed and accredited NGOs**
- **Sharing of costs for care and maintenance of CICAL under institutional care**

# Community-based Programs

- **Prevents disruption of education and separation of child from family, facilitates rehabilitation and reintegration, and minimizes stigma**
- **Each LGU to establish program**

# Aftercare

- **Those who have been discharged from a rehabilitation center shall be provided aftercare for at least 6 months**

# Other Exemptions

- **Children exempt from liability for vagrancy, prostitution, mendicancy and sniffing of glue and solvents**
- **Children exempt from application of death penalty under RPC, drugs law or other laws**



# Prohibited Acts

- **Branding or labeling of CICL; discriminatory remarks**
- **Threats**
- **Abusive, coercive and punitive measures**
- **Degrading, inhuman or cruel forms of punishment**
- **Compelling child to perform involuntary servitude**

# **Penalty for Violation of RA 9344**

- **Fine of Php 20,000 to 50,000**
- **Imprisonment of 8 to 10 years**
- **Both fine and imprisonment**
- **Perpetual absolute disqualification, if a public officer or employee**

# Transitory Provisions

- **Retroactive application of the law for those below 18 at time of commission of the offense**
- **Cases of CICL who were 15 years or younger at time of commission of the crime will be dismissed and CICL will be released and referred to social worker**
- **Alternatives to detention for those who are detained pending trial**

# **Juvenile Justice and Welfare Council**

- **Attached to DOJ**
- **Chaired by DSWD Undersecretary**
- **Oversees implementation of the Act**

# **Child Rights Center – Commission on Human Rights**

- **Ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights**