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Republic Act No. 9344

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

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

TITLE I
GOVERNING PRINCIPLES

CHAPTER 1
TITLE, POLICY AND DEFINITION OF TERMS

Section 1. *Short Title and Scope.* - This Act shall be known as the "**Juvenile Justice and Welfare Act of 2006.**" It shall cover the different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration.

SEC. 2. *Declaration of State Policy.* - The following State policies shall be observed at all times:

- (a) The State recognizes the vital role of children and 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.
- (b) 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. Proceedings before any authority shall be conducted in the best interest of the child and in a manner which allows the child to participate and to express himself/herself freely. The participation of children in the program and policy formulation and implementation related to juvenile justice and welfare shall be ensured by the concerned government agency.
- (c) The State likewise recognizes the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty and exploitation, and other conditions prejudicial to their development.
- (d) Pursuant to Article 40 of the United Nations Convention on the Rights of the Child, the State recognizes the right of every child alleged as, accused of, adjudged, 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, taking into account the child's age and desirability of promoting his/her reintegration. Whenever appropriate and desirable, the State shall adopt measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. It shall ensure that children are dealt with in a manner appropriate to their well-being by providing for, among others, a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care.

(e) The administration of the juvenile justice and welfare system shall take into consideration the cultural and religious perspectives of the Filipino people, particularly the indigenous peoples and the Muslims, consistent with the protection of the rights of children belonging to these communities.

(f) The State shall apply the principles of restorative justice in all its laws, policies and programs applicable to children in conflict with the law.

SEC. 3. Liberal Construction of this Act. - In case of doubt, the interpretation of any of the provisions of this Act, including its implementing rules and regulations (IRRs), shall be construed liberally in favor of the child in conflict with the law.

SEC. 4. Definition of Terms. - The following terms as used in this Act shall be defined as follows:

(a) "Bail" refers to the security given for the release of the person in custody of the law, furnished by him/her or a bondsman, to guarantee his/her appearance before any court. Bail may be given in the form of corporate security, property bond, cash deposit, or recognizance.

(b) "Best Interest of the Child" refers to 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.

(c) "Child" refers to a person under the age of eighteen (18) years.

(d) "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 cannot 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.

(e) "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.

(f) "Community-based Programs" refers to the programs provided in a community setting developed for purposes of intervention and diversion, as well as rehabilitation of the child in conflict with the law, for reintegration into his/her family and/or community.

(g) "Court" refers to a family court or, in places where there are no family courts, any regional trial court.

(h) "Deprivation of Liberty" refers to any form of detention or imprisonment, or to the placement of a child in conflict with the law in a public or private custodial setting, from which the child in conflict with the law is not permitted to leave at will by order of any judicial or administrative authority.

(i) "Diversion" refers to 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.

(j) "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.

(k) "Initial Contact With-the Child" refers to the apprehension or taking into custody of a child in conflict with the law by law enforcement officers or private citizens. It includes the time when the child alleged to be in conflict with the law receives a subpoena under Section 3(b) of Rule 112 of the Revised Rules of Criminal Procedure or summons under Section 6(a) or Section 9(b) of the same Rule in cases that do not require preliminary investigation or where there is no necessity to place the child alleged to be in conflict with the law under immediate custody.

(l) "Intervention" 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 counseling, skills training, education, and other activities that will enhance his/her psychological, emotional and psycho-social well-being.

(m) "Juvenile Justice and Welfare System" 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.

(n) "Law Enforcement Officer" refers to the person in authority or his/her agent as defined in Article 152 of the Revised Penal Code, including a barangay tanod.

(o) "Offense" refers to any act or omission whether punishable under special laws or the Revised Penal Code, as amended.

(p) "Recognizance" refers to an undertaking in lieu of a bond assumed by a parent or custodian who shall be responsible for the appearance in court of the child in conflict with the law, when required.

(q) "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 by activating the offender, the victim and the community in prevention strategies.

(r) "Status Offenses" refers to offenses which discriminate only against a child, while an adult does not suffer any penalty for committing similar acts. These shall include curfew violations; truancy, parental disobedience and the like.

(s) "Youth Detention Home" refers to a 24-hour child-caring institution managed by accredited local government units (LGUs) and licensed and/or accredited nongovernment organizations (NGOs) providing short-term residential care for children in conflict with the law who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.

(t) "Youth Rehabilitation Center" refers to a 24-hour residential care facility managed by the Department of Social Welfare and Development (DSWD), LGUs, licensed and/or accredited NGOs monitored by the DSWD, which provides care, treatment and rehabilitation services for children in conflict with the law. Rehabilitation services are provided under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them into their families and communities as socially functioning individuals. Physical mobility of residents of said centers may be restricted pending court disposition of the charges against them.

(u) "Victimless Crimes" refers to offenses where there is no private offended party.

CHAPTER 2

PRINCIPLES IN THE ADMINISTRATION OF JUVENILE JUSTICE AND WELFARE

SEC. 5. *Rights of the Child in Conflict with the Law.* - Every child in conflict with the law shall have the following rights, including but not limited to:

(a) the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment;

(b) the right not to be imposed a sentence of capital punishment or life imprisonment, without the possibility of release;

(c) the right not to be deprived, unlawfully or arbitrarily, of his/her liberty; detention or imprisonment being a disposition of last resort, and which shall be for the shortest appropriate period of time;

(d) 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. In particular, a child deprived of liberty shall be

separated from adult offenders at all times. No child shall be detained together with adult offenders. He/She shall be conveyed separately to or from court. He/She shall await hearing of his/her own case in a separate holding area. A child in conflict with the law shall have the right to maintain contact with his/her family through correspondence and visits, save in exceptional circumstances;

(e) 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/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on such action;

(f) the right to bail and recognizance, in appropriate cases;

(g) the right to testify as a witness in his/her own behalf under the rule on examination of a child witness;

(h) the right to have his/her privacy respected fully at all stages of the proceedings;

(i) the right to diversion if he/she is qualified and voluntarily avails of the same;

(j) 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;

(k) the right to have restrictions on his/her personal liberty limited to the minimum, and where discretion is given by law to the judge to determine whether to impose fine or imprisonment, the imposition of fine being preferred as the more appropriate penalty;

(l) in general, the right to automatic suspension of sentence;

(m) the right to probation as an alternative to imprisonment, if qualified under the Probation Law;

(n) the right to be free from liability for perjury, concealment or misrepresentation; and

(o) other rights as provided for under existing laws, rules and regulations.

The State further adopts the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice or "Beijing Rules", United Nations Guidelines for the Prevention of Juvenile Delinquency or the "Riyadh Guidelines", and the United Nations Rules for the Protection of Juveniles Deprived of Liberty.

SEC. 6. *Minimum Age of Criminal Responsibility.* - A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

SEC. 7. *Determination of Age.* - 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. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Any person contesting the age of the child in conflict with the law prior to the filing of the information in any appropriate court may file a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within twenty-four (24) hours from receipt of the appropriate pleadings of all interested parties.

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts at determining the age of the child in conflict with the law.

TITLE II STRUCTURES IN THE ADMINISTRATION OF JUVENILE JUSTICE AND WELFARE

SEC. 8. *Juvenile Justice and Welfare Council (JJWC).* - A Juvenile Justice and Welfare Council (JJWC) is hereby created and attached to the Department of Justice and placed under its administrative supervision. The JJWC shall be chaired by an undersecretary of the Department of Social Welfare and Development. It shall ensure the effective implementation of this Act and coordination among the following agencies:

- (a) Council for the Welfare of Children (CWC);
- (b) Department of Education (DepEd);
- (c) Department of the Interior and Local Government (DILG);
- (d) Public Attorney's Office (PAO);
- (e) Bureau of Corrections (BUCOR);
- (f) Parole and Probation Administration (PPA)
- (g) National Bureau of Investigation (NBI);
- (h) Philippine National Police (PNP);.
- (i) Bureau of Jail Management and Penology (BJMP);
- (i) Commission on Human Rights (CHR);

(k) Technical Education and Skills Development Authority (TESDA);

(l) National Youth Commission (NYC); and

(m) Other institutions focused on juvenile justice and intervention programs.

The JJWC shall be composed of representatives, whose ranks shall not be lower than director, to be designated by the concerned heads of the following departments or agencies:

(a) Department of Justice (DOJ);

(b) Department of Social Welfare and Development (DSWD);

(c) Council for the Welfare of Children (CWC)

(d) Department of Education (DepEd);

(e) Department of the Interior and Local Government (DILG)

(f) Commission on Human Rights (CHR);

(g) National Youth Commission (NYC); and

(h) Two (2) representatives from NGOs, one to be designated by the Secretary of Justice and the other to be designated by the Secretary of Social Welfare and Development.

The JJWC shall convene within fifteen (15) days from the effectivity of this Act. The Secretary of Justice and the Secretary of Social Welfare and Development shall determine the organizational structure and staffing pattern of the JJWC.

The JJWC shall coordinate with the Office of the Court Administrator and the Philippine Judicial Academy to ensure the realization of its mandate and the proper discharge of its duties and functions, as herein provided.

SEC. 9. Duties and Functions of the JJWC. - The JJWC shall have the following duties and functions:

(a) To oversee the implementation of this Act;

(b) To advise the President on all matters and policies relating to juvenile justice and welfare;

(c) To assist the concerned agencies in the review and redrafting of existing policies/regulations or in the formulation of new ones in line with the provisions of this Act;

(d) To periodically develop a comprehensive 3 to 5-year national juvenile intervention program, with the participation of government agencies concerned, NGOs and youth organizations;

(e) To coordinate the implementation of the juvenile intervention programs and activities by national government agencies and other activities which may have an important bearing on the success of the entire national juvenile intervention program. All programs relating to juvenile justice and welfare shall be adopted in consultation with the JJWC;

(f) To formulate and recommend policies and strategies in consultation with children for the prevention of juvenile delinquency and the administration of justice, as well as for the treatment and rehabilitation of the children in conflict with the law;

(g) To collect relevant information and conduct continuing research and support evaluations and studies on all matters relating to juvenile justice and welfare, such as but not limited to:

(1) the performance and results achieved by juvenile intervention programs and by activities of the local government units and other government agencies;

(2) the periodic trends, problems and causes of juvenile delinquency and crimes; and

(3) the particular needs of children in conflict with the law in custody.

The data gathered shall be used by the JJWC in the improvement of the administration of juvenile justice and welfare system.

The JJWC shall set up a mechanism to ensure that children are involved in research and policy development.

(h) Through duly designated persons and with the assistance of the agencies provided in the preceding section, to conduct regular inspections in detention and rehabilitation facilities and to undertake spot inspections on their own initiative in order to check compliance with the standards provided herein and to make the necessary recommendations to appropriate agencies;

(i) To initiate and coordinate the conduct of trainings for the personnel of the agencies involved in the administration of the juvenile justice and welfare system and the juvenile intervention program;

(j) To submit an annual report to the President on the implementation of this Act; and

(k) To perform such other functions as may be necessary to implement the provisions of this Act.

SEC. 10. Policies and Procedures on Juvenile Justice and Welfare. - All government agencies enumerated in Section 8 shall, with the assistance of the JJWC and within one (1) year from the effectivity of this Act, draft policies and procedures consistent with the standards set in the law. These policies and procedures shall be modified accordingly in consultation with the JJWC upon the completion of the national juvenile intervention program as provided under Section 9 (d).

SEC. 11. Child Rights Center (CRC). - The existing Child Rights Center of the Commission on Human Rights shall ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights. The CHR shall strengthen the monitoring of government compliance of all treaty obligations, including the timely and regular submission of reports before the treaty bodies, as well as the implementation and dissemination of recommendations and conclusions by government agencies as well as NGOs and civil society.

**TITLE III
PREVENTION OF JUVENILE DELINQUENCY**

**CHAPTER 1
THE ROLE OF THE DIFFERENT SECTORS**

SEC. 12. *The Family.* - The family shall be responsible for the primary nurturing and rearing of children which is critical in delinquency prevention. As far as practicable and in accordance with the procedures of this Act, a child in conflict with the law shall be maintained in his/her family.

SEC. 13. *The Educational System.* - Educational institutions shall work together with families, community organizations and agencies in the prevention of juvenile delinquency and in the rehabilitation and reintegration of child in conflict with the law. Schools shall provide adequate, necessary and individualized educational schemes for children manifesting difficult behavior and children in conflict with the law. In cases where children in conflict with the law are taken into custody or detained in rehabilitation centers, they should be provided the opportunity to continue learning under an alternative learning system with basic literacy program or non- formal education accreditation equivalency system.

SEC. 14. *The Role of the Mass Media.* - The mass media shall play an active role in the promotion of child rights, and delinquency prevention by relaying consistent messages through a balanced approach. Media practitioners shall, therefore, have the duty to maintain the highest critical and professional standards in reporting and covering cases of children in conflict with the law. In all publicity concerning children, the best interest of the child should be the primordial and paramount concern. Any undue, inappropriate and sensationalized publicity of any case involving a child in conflict with the law is hereby declared a violation of the child's rights.

SEC. 15. *Establishment and Strengthening of Local Councils for the Protection of Children.* - Local Councils for the Protection of Children (LCPC) shall be established in all levels of local government, and where they have already been established, they shall be strengthened within one (1) year from the effectivity of this Act. Membership in the LCPC shall be chosen from among the responsible members of the community, including a representative from the youth sector, as well as representatives from government and private agencies concerned with the welfare of children.

The local council shall serve as the primary agency to coordinate with and assist the LGU concerned for the adoption of a comprehensive plan on delinquency prevention, and to oversee its proper implementation.

One percent (1%) of the internal revenue allotment of barangays, municipalities and cities shall be allocated for the strengthening and implementation of the programs of the LCPC: Provided, That the disbursement of the fund shall be made by the LGU concerned.

SEC. 16. *Appointment of Local Social Welfare and Development Officer.* - All LGUs shall appoint a duly licensed social worker as its local social welfare and development officer tasked to assist children in conflict with the law.

SEC. 17. *The Sangguniang Kabataan.* - The Sangguniang Kabataan (SK) shall coordinate with the LCPC in the formulation and implementation of juvenile intervention and diversion programs in the community.

**CHAPTER 2
COMPREHENSIVE JUVENILE INTERVENTION PROGRAM**

SEC. 18. *Development of a Comprehensive Juvenile Intervention Program.* -

A Comprehensive juvenile intervention program covering at least a 3-year period shall be instituted in LGUs from the barangay to the provincial level.

The LGUs shall set aside an amount necessary to implement their respective juvenile intervention programs in their annual budget.

The LGUs, in coordination with the LCPC, shall call on all sectors concerned, particularly the child-focused institutions, NGOs, people's organizations, educational institutions and government agencies involved in delinquency prevention to participate in the planning process and implementation of juvenile intervention programs. Such programs shall be implemented consistent with the national program formulated and designed by the JJWC. The implementation of the comprehensive juvenile intervention program shall be reviewed and assessed annually by the LGUs in coordination with the LCPC. Results of the assessment shall be submitted by the provincial and city governments to the JJWC not later than March 30 of every year.

SEC. 19. *Community-based Programs on Juvenile Justice and Welfare.* -

Community-based programs on juvenile justice and welfare shall be instituted by the LGUs through the LCPC, school, youth organizations and other concerned agencies. The LGUs shall provide community-based services which respond to the special needs, problems, interests and concerns of children and which offer appropriate counseling and guidance to them and their families. These programs shall consist of three levels:

- (a) Primary intervention includes general measures to promote social justice and equal opportunity, which tackle perceived root causes of offending;
- (b) Secondary intervention includes measures to assist children at risk; and
- (c) Tertiary intervention includes measures to avoid unnecessary contact with the formal justice system and other measures to prevent re-offending.

**TITLE IV
TREATMENT OF CHILDREN BELOW THE AGE OF CRIMINAL
RESPONSIBILITY**

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

**TITLE V
JUVENILE JUSTICE AND WELFARE SYSTEM**

**CHAPTER I
INITIAL CONTACT WITH THE CHILD**

SEC. 21. *Procedure for Taking the Child into Custody.* - From the moment a child is taken into custody, the law enforcement officer shall:

(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 pursuant to Section 7 of this Act;

(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 DSWD, and the PAO 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.

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.

SEC. 22. Duties During Initial Investigation. - The law enforcement officer shall, in his/her investigation, determine where the case involving the child in conflict with the law should be referred.

The taking of the statement of the child shall be conducted in the presence of the following: (1) child's counsel of choice or in the absence thereof, a lawyer from the Public Attorney's Office; (2) the child's parents, guardian, or nearest relative, as the case may be; and (3) the local social welfare and development officer. 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.

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.

CHAPTER 2 DIVERSION

SEC. 23. System of Diversion. - Children in conflict with the law shall undergo diversion programs without undergoing court proceedings subject to the conditions herein provided:

- (a) Where the imposable penalty for the crime committee is not more than six (6) years imprisonment, the law enforcement officer or Punong Barangay with the assistance of the local social welfare and development officer or other members of the LCPC shall conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in 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 (6) 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, in coordination with the BCPC;

(c) Where the imposable penalty for the crime committed exceeds six (6) years imprisonment, diversion measures may be resorted to only by the court.

SEC. 24. Stages Where Diversion May be Conducted. - Diversion may be conducted at the Katarungang Pambarangay, the police investigation or the inquest or preliminary investigation stage and at all levels and phases of the proceedings including judicial level.

SEC. 25. Conferencing, Mediation and Conciliation. - A child in conflict with law may undergo conferencing, mediation or conciliation outside the criminal justice system or prior to his entry into said system. A contract of diversion may be entered into during such conferencing, mediation or conciliation proceedings.

SEC. 26. Contract of Diversion. - If during the conferencing, mediation or conciliation, the child voluntarily admits the commission of the act, a diversion program shall be developed when appropriate and desirable as determined under Section 30. Such admission shall not be used against the child in any subsequent judicial, quasi-judicial or administrative proceedings. The diversion program shall be effective and binding if accepted by the parties concerned. The acceptance shall be in writing and signed by the parties concerned and the appropriate authorities. The local social welfare and development officer shall supervise the implementation of the diversion program. The diversion proceedings shall be completed within forty-five (45) days. The period of prescription of the offense shall be suspended until the completion of the diversion proceedings but not to exceed forty-five (45) days.

The child shall present himself/herself to the competent authorities that imposed the diversion program at least once a month for reporting and evaluation of the effectiveness of the program.

Failure to comply with the terms and conditions of the contract of diversion, as certified by the local social welfare and development officer, shall give the offended party the option to institute the appropriate legal action.

The period of prescription of the offense shall be suspended during the effectivity of the diversion program, but not exceeding a period of two (2) years.

SEC. 27. Duty of the Punong Barangay When There is No Diversion. - If the offense does not fall under Section 23(a) and (b), or if the child, his/her parents or guardian does not consent to a diversion, the Punong Barangay handling the case shall, within three (3) days from determination of the absence of jurisdiction over the case or termination of the diversion proceedings, as the case may be, forward the records of the case of the child to the law enforcement officer, prosecutor or the appropriate court, as the case may be. Upon the issuance of the corresponding document, certifying to the fact that no agreement has been reached by the parties, the case shall be filed according to the regular process.

SEC. 28. Duty of the Law Enforcement Officer When There is No Diversion. - If the offense does not fall under Section 23(a) and (b), or if the child, his/her parents or guardian does not consent to a diversion, the Women and Children Protection Desk of the PNP, or other law enforcement officer handling the case of the child under custody, to the prosecutor or judge concerned for the conduct of inquest and/or preliminary investigation to determine whether or not the child

should remain under custody and correspondingly charged in court. The document transmitting said records shall display the word "CHILD" in bold letters.

SEC. 29. Factors in Determining Diversion Program. - In determining whether diversion is appropriate and desirable, the following factors shall be taken into consideration:

- (a) The nature and circumstances of the offense charged;
- (b) The frequency and the severity of the act;
- (c) The circumstances of the child (e.g. age, maturity, intelligence, etc.);
- (d) The influence of the family and environment on the growth of the child;
- (e) The reparation of injury to the victim;
- (f) The weight of the evidence against the child;
- (g) The safety of the community; and
- (h) The best interest of the child.

SEC. 30. Formulation of the Diversion Program. - 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.

The following factors shall be considered in formulating a diversion program for the child:

- (a) The child's feelings of remorse for the offense he/she committed;
- (b) The parents' or legal guardians' ability to guide and supervise the child;
- (c) The victim's view about the propriety of the measures to be imposed; and
- (d) The availability of community-based programs for rehabilitation and reintegration of the child.

SEC. 31. Kinds of Diversion Programs. - The diversion program shall include adequate socio-cultural and psychological responses and services for the child. At the different stages where diversion may be resorted to, the following diversion programs may be agreed upon, such as, but not limited to:

- (a) At the level of the Punong Barangay:
 - (1) Restitution of property;
 - (2) Reparation of the damage caused;
 - (3) Indemnification for consequential damages;
 - (4) Written or oral apology;
 - (5) Care, guidance and supervision orders;
 - (6) Counseling for the child in conflict with the law and the child's family;

(7) Attendance in trainings, seminars and lectures on:

- (i) anger management skills;
- (ii) problem solving and/or conflict resolution skills;
- (iii) values formation; and
- (iv) other skills which will aid the child in dealing with situations which can lead to repetition of the offense;

(8) Participation in available community-based programs, including community service; or

(9) Participation in education, vocation and life skills programs.

(b) At the level of the law enforcement officer and the prosecutor:

(1) Diversion programs specified under paragraphs (a)(1) to (a)(9) herein; and

(2) Confiscation and forfeiture of the proceeds or instruments of the crime;

(c) At the level of the appropriate court:

(1) Diversion programs specified under paragraphs (a) and (b) above;

(2) Written or oral reprimand or citation;

(3) Fine;

(4) Payment of the cost of the proceedings; or

(5) Institutional care and custody.

CHAPTER 3 PROSECUTION

SEC. 32. *Duty of the Prosecutor's Office.* - There shall be a specially trained prosecutor to conduct inquest, preliminary investigation and prosecution of cases involving a child in conflict with the law. If there is an allegation of torture or ill-treatment of a child in conflict with the law during arrest or detention, it shall be the duty of the prosecutor to investigate the same.

SEC. 33. *Preliminary Investigation and Filing of Information.* - The prosecutor shall conduct a preliminary investigation in the following instances: (a) when the child in conflict with the law does not qualify for diversion; (b) when the child, his/her parents or guardian does not agree to diversion as specified in Sections 27 and 28; and (c) when considering the assessment and recommendation of the social worker, the prosecutor determines that diversion is not appropriate for the child in conflict with the law.

Upon serving the subpoena and the affidavit of complaint, the prosecutor shall notify the Public Attorney's Office of such service, as well as the personal information, and place of detention of the child in conflict with the law.

Upon determination of probable cause by the prosecutor, the information against the child shall be filed before the Family Court within forty-five (45) days from the start of the preliminary investigation.

CHAPTER 4 COURT PROCEEDINGS

SEC. 34. *Bail.* - For purposes of recommending the amount of bail, the privileged mitigating circumstance of minority shall be considered.

SEC. 35. *Release on Recognizance.* - Where a child is detained, the court shall order:

- (a) the release of the minor on recognizance to his/her parents and other suitable person;
- (b) the release of the child in conflict with the law on bail; or
- (c) the transfer of the minor to a youth detention home/youth rehabilitation center.

The court shall not order the detention of a child in a jail pending trial or hearing of his/her case.

SEC. 36. *Detention of the Child Pending Trial.* - Children detained pending trial may be released on bail or recognizance as provided for under Sections 34 and 35 under this Act. In all other cases and whenever possible, detention pending trial may be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. Institutionalization or detention of the child pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

Whenever detention is necessary, a 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.

In the absence of a youth detention home, the child in conflict with the law may be committed to the care of the DSWD or a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court. The center or agency concerned shall be responsible for the child's appearance in court whenever required.

SEC. 37. *Diversion Measures.* - Where the maximum penalty imposed by law for the offense with which the child in conflict with the law is charged is imprisonment of not more than twelve (12) years, regardless of the fine or fine alone regardless of the amount, and before arraignment of the child in conflict with the law, the court shall determine whether or not diversion is appropriate.

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 sentence, without need of application: *Provided, however,* That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) 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 Rule on Juveniles in Conflict with the Law.

SEC. 39. *Discharge of the Child in Conflict with the Law.* - Upon the recommendation of the social worker who has custody of the child, the court shall dismiss the case against the child whose sentence has been suspended and against whom disposition measures have been issued, and shall order the final discharge of the child if it finds that the objective of the disposition measures have been fulfilled.

The discharge of the child in conflict with the law shall not affect the civil liability resulting from the commission of the offense, which shall be enforced in accordance with law.

SEC. 40. *Return of the Child in Conflict with the Law to Court.* - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

SEC. 41. *Credit in Service of Sentence.* - The child in conflict with the law shall be credited in the services of his/her sentence with the full time spent in actual commitment and detention under this Act.

SEC. 42. *Probation as an Alternative to Imprisonment.* - The court may, after it shall have 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 interest of the child. For this purpose, Section 4 of Presidential Decree No. 968, otherwise known as the "Probation Law of 1976", is hereby amended accordingly.

CHAPTER 5 CONFIDENTIALITY OF RECORDS AND PROCEEDINGS

SEC. 43. *Confidentiality of Records and Proceedings.* - All records and proceedings involving children in conflict with the law from initial contact until final disposition of the case shall be considered privileged and confidential. The public shall be excluded during the proceedings and the records shall not be disclosed directly or indirectly to anyone by any of the parties or the participants in the proceedings for any purpose whatsoever, except to determine if the child in conflict with the law may have his/hes sentence suspended or if he/she may be granted probation under the Probation Law, or to enforce the civil liability imposed in the criminal action.

The component authorities shall undertake all measures to protect this confidentiality of proceedings, including non-disclosure of records to the media, maintaining a separate police blotter for cases involving children in conflict with the law and adopting a system of coding to conceal material information which will lead to the child's identity. Records of a child in conflict with the law shall not be used in subsequent proceedings for cases involving the same offender as an adult, except when beneficial for the offender and upon his/her written consent.

A person who has been in conflict with the law as a child shall not be held under any provision of law, to be guilty of perjury or of concealment or misrepresentation by reason of his/her failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him/her for any purpose.

TITLE VI REHABILITATION AND REINTEGRATION

SEC. 44. *Objective of Rehabilitation and Reintegration.* - The objective of rehabilitation and reintegration of children in conflict with the law is to provide them with interventions, approaches and strategies that will enable them to improve their social functioning with the end goal of reintegration to their families and as productive members of their communities.

SEC. 45. *Court Order Required.* - No child shall be received in any rehabilitation or training facility without a valid order issued by the court after a hearing for the purpose. The details of this order shall be immediately entered in a register exclusively for children in conflict with the law. No child shall be admitted in any facility where there is no such register.

SEC. 46. *Separate Facilities from Adults.* - In all rehabilitation or training facilities, it shall be mandatory that children shall be separated from adults unless they are members of the same family. Under no other circumstance shall a child in conflict with the law be placed in the same confinement as adults.

The rehabilitation, training or confinement area of children in conflict with the law shall provide a home environment where children in conflict with the law can be provided with quality counseling and treatment.

SEC. 47. *Female Children.* - Female children in conflict with the law placed in an institution shall be given special attention as to their personal needs and problems. They shall be handled by female doctors, correction officers and social workers, and shall be accommodated separately from male children in conflict with the law.

SEC. 48. *Gender-Sensitivity Training.* - No personnel of rehabilitation and training facilities shall handle children in conflict with the law without having undergone gender sensitivity training.

SEC. 49. *Establishment of Youth Detention Homes.* - The LGUs shall set aside an amount to build youth detention homes as mandated by the Family Courts Act. Youth detention homes may also be established by private and NGOs licensed and accredited by the DSWD, in consultation with the JJWC.

SEC. 50. *Care and Maintenance of the Child in Conflict with the Law.* - The expenses for the care and maintenance of a child in conflict with the law under institutional care shall be borne by his/her parents or those persons liable to support him/her: *Provided*, That in case his/her parents or those persons liable to support him/her cannot pay all or part of said expenses, the municipality where the offense was committed shall pay one-third (1/3) of said expenses or part thereof; the province to which the municipality belongs shall pay one-third (1/3) and the remaining one-third (1/3) shall be borne by the national government. Chartered cities shall pay two-thirds (2/3) of said expenses; and in case a chartered city cannot pay said expenses, part of the internal revenue allotments applicable to the unpaid portion shall be withheld and applied to the settlement of said obligations: *Provided, further*, That in the event that the child in conflict with the law is not a resident of the municipality/city where the offense was

committed, the court, upon its determination, may require the city/municipality where the child in conflict with the law resides to shoulder the cost.

All city and provincial governments must exert effort for the immediate establishment of local detention homes for children in conflict with the law.

SEC. 51. Confinement of Convicted Children in Agricultural Camps and other Training Facilities. - A child

in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

SEC. 52. Rehabilitation of Children in Conflict with the Law. - Children in conflict with the law, whose sentences are suspended may, upon order of the court, undergo any or a combination of disposition measures best suited to the rehabilitation and welfare of the child as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

If the community-based rehabilitation is availed of by a child in conflict with the law, he/she shall be released to parents, guardians, relatives or any other responsible person in the community. Under the supervision and guidance of the local social welfare and development officer, and in coordination with his/her parents/guardian, the child in conflict with the law shall participate in community-based programs, which shall include, but not limited to:

- (1) Competency and life skills development;
- (2) Socio-cultural and recreational activities;
- (3) Community volunteer projects;
- (4) Leadership training;
- (5) Social services;
- (6) Homelife services;
- (7) Health services; .
- (8) Spiritual enrichment; and
- (9) Community and family welfare services.

In accordance therewith, the family of the child in conflict with the law shall endeavor to actively participate in the community-based rehabilitation.

Based on the progress of the youth in the community, a final report will be forwarded by the local social welfare and development officer to the court for final disposition of the case.

If the community-based programs are provided as diversion measures under Chapter II, Title V, the programs enumerated above shall be made available to the child in conflict with the law.

SEC. 53. Youth Rehabilitation Center. - The youth rehabilitation center shall provide 24-hour group care, treatment and rehabilitation services under the guidance of a trained staff where residents are cared for under a structured

therapeutic environment with the end view of reintegrating them in their families and communities as socially functioning individuals. A quarterly report shall be submitted by the center to the proper court on the progress of the children in conflict with the law. Based on the progress of the youth in the center, a final report will be forwarded to the court for final disposition of the case. The DSWD shall establish youth rehabilitation centers in each region of the country.

SEC. 54. Objectives of Community Based Programs. - The objectives of community-based programs are as follows:

- (a) Prevent disruption in the education or means of livelihood of the child in conflict with the law in case he/she is studying, working or attending vocational learning institutions;
- (b) Prevent separation of the child in conflict with the law from his/her parents/guardians to maintain the support system fostered by their relationship and to create greater awareness of their mutual and reciprocal responsibilities;
- (c) Facilitate the rehabilitation and mainstreaming of the child in conflict with the law and encourage community support and involvement; and
- (d) Minimize the stigma that attaches to the child in conflict with the law by preventing jail detention.

SEC. 55. Criteria of Community-Based Programs. - Every LGU shall establish community-based programs that will focus on the rehabilitation and reintegration of the child. All programs shall meet the criteria to be established by the JJWC which shall take into account the purpose of the program, the need for the consent of the child and his/her parents or legal guardians, and the participation of the child-centered agencies whether public or private.

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.

TITLE VII GENERAL PROVISIONS

CHAPTER 1 EXEMPTING PROVISIONS

SEC. 57. Status Offenses. - 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.

SEC. 58. Offenses Not Applicable to Children. - Persons below eighteen (18) years of age shall be exempt from prosecution for the crime of vagrancy and prostitution under Section 202 of the Revised Penal Code, of mendicancy under Presidential Decree No. 1563, and sniffing of rugby under Presidential Decree No. 1619, such prosecution being inconsistent with the United Nations Convention on the Rights of the Child: *Provided*, That said persons shall undergo appropriate counseling and treatment program.

SEC. 59. Exemption from the Application of Death Penalty. - The provisions of the Revised Penal Code, as amended, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and other special laws notwithstanding, no death penalty shall be imposed upon children in conflict with the law.

CHAPTER 2 PROHIBITED ACTS

SEC. 60. Prohibition Against Labeling and Shaming. - In the conduct of the proceedings beginning from the initial contact with the child, the competent authorities must refrain from branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names. Likewise, no discriminatory remarks and practices shall be allowed particularly with respect to the child's class or ethnic origin.

SEC. 61. Other Prohibited Acts. - The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited:

- (a) Employment of threats of whatever kind and nature;
- (b) Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement;
- (c) Employment of degrading, inhuman and cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and
- (d) Compelling the child to perform involuntary servitude in any and all forms under any and all instances.

CHAPTER 3 PENAL PROVISION

SEC. 62. Violation of the Provisions of this Act or Rules or Regulations in General. - Any person who violates any provision of this Act or any rule or regulation promulgated in accordance thereof shall, upon conviction for each act or omission, be punished by a fine of not less than Twenty thousand pesos (P20,000.00) but not more than Fifty thousand pesos (P50,000.00) or suffer imprisonment of not less than eight (8) years but not more than ten (10) years, or both such fine and imprisonment at the discretion of the court, unless a higher penalty is provided for in the Revised Penal Code or special laws. If the offender is a public officer or employee, he/she shall, in addition to such fine and/or imprisonment, be held administratively liable and shall suffer the penalty of perpetual absolute disqualification.

CHAPTER 4 APPROPRIATION PROVISION

SEC. 63. Appropriations. - The amount necessary to carry out the initial implementation of this Act shall be charged to the Office of the President. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the succeeding General Appropriations Act.

An initial amount of Fifty million pesos (P50,000,000.00) for the purpose of setting up the JJWC shall be taken from the proceeds of the Philippine Charity Sweepstakes Office.

TITLE VIII TRANSITORY PROVISIONS

SEC. 64. *Children in Conflict with the Law Fifteen (15) Years Old and Below.*

- Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

SEC. 65. *Children Detained Pending Dial.* - If the child is detained pending trial, the Family Court shall also determine whether or not continued detention is necessary and, if not, determine appropriate alternatives for detention.

If detention is necessary and he/she is detained with adults, the court shall immediately order the transfer of the child to a youth detention home.

SEC. 66. *Inventory of "Locked-up" and Detained Children in Conflict with the Law.* - The PNP, the BJMP and the BUCOR are hereby directed to submit to the JJWC, within ninety (90) days from the effectivity of this Act, an inventory of all children in conflict with the law under their custody.

SEC. 67. *Children Who Reach the Age of Eighteen (18) Years Pending Diversion and Court Proceedings.* - If a child reaches the age of eighteen (18) years pending diversion and court proceedings, the appropriate diversion authority in consultation with the local social welfare and development officer or the Family Court in consultation with the Social Services and Counseling Division (SSCD) of the Supreme Court, as the case may be, shall determine the appropriate disposition. In case the appropriate court executes the judgment of conviction, and unless the child in conflict with the law has already availed of probation under Presidential Decree No. 603 or other similar laws, the child may apply for probation if qualified under the provisions of the Probation Law.

SEC. 68. *Children Who Have Been Convicted and are Serving Sentence.* - Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.

TITLE IX FINAL PROVISIONS

SEC. 69. *Rule Making Power.* - The JJWC shall issue the IRRs for the implementation of the provisions of this act within ninety (90) days from the effectivity thereof.

SEC. 70. Separability Clause. - If, for any reason, any section or provision of this Act is declared unconstitutional or invalid by the Supreme Court, the other sections or provisions hereof not affected by such declaration shall remain in force and effect.

SEC. 71. Repealing Clause. - All existing laws, orders, decrees, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 72. Effectivity. - This Act shall take effect after fifteen (15) days from its publication in at least two (2) national newspapers of general circulation.

Approved,

FRANKLIN DRILON
President of the Senate

JOSE DE VENECIA JR.
Speaker of the House of
Representatives

This Act which is a consolidation of Senate Bill No. 1402 and House Bill No. 5065 was finally passed by the Senate and the House of Representatives on March 22, 2006.

OSCAR G. YABES
Secretary of Senate

ROBERTO P. NAZARENO
Secretary General
House of Representatives

Approved: April 28, 2006

GLORIA MACAPAGAL-ARROYO
President of the Philippines