



Republika ng Pilipinas

Komisyon ng Karapatang Pantao ng Pilipinas

(Commission on Human Rights of the Philippines)

**POSITION PAPER
ON THE SENATE BILL AMENDING REPUBLIC ACT 9344 OR
“THE JUVENILE JUSTICE AND WELFARE ACT”**

Commission on Human Rights of the Philippines

The call to clarify the implementation of Republic Act 9344 or the Juvenile Justice and Welfare Act, through the introduction of specific and child-oriented amendments in the said law, is earnestly supported by the Commission on Human Rights (CHR).

Admittedly, the CHR has a special affinity with the said Act as Section 11 of the law institutionalized one of the component offices of the CHR, the Child Rights Center. The law further reinforced the role of the CHR as the institution that monitors the compliance of Government in its obligations under international human rights instruments.

In line with the Constitutional and statutory mandate to monitor all Government measures and its harmonization with the spirit and ideals of international human rights treaties that the Government is a State Party to, the CHR welcomes the current legislative efforts enhancing special protection afforded to the Filipino children in contact or conflict with the law (CICL).

The salient portions of the amendments supported by the CHR are the following:

1. **Re-alignment of the Juvenile Justice and Welfare Council (JJWC) from the Department of Justice (DOJ) to the Department of Social Welfare and Development (DSWD).** This amendment will cure some of the logistic difficulties the current institutional set-up has with the DSWD as the head of the JJWC but with the secretariat subsumed under the DOJ. Much is credited to the DOJ in terms of being one of the major proponents and lobbyists of RA 9344 through at least three Congresses. DOJ is

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further acknowledged for its sincere efforts to capacitate its ranks to ensure the proper implementation of the law. However, the schizophrenic tendencies of separating the head of an inter-agency mechanism from its secretariat may have affected the expeditious implementation of the law. The DSWD, with its mandate to provide technical assistance and augmentation support to the local social workers who arguably may have the widest scope of responsibilities when it comes to CICL, should pragmatically hold the administrative cudgels in overseeing the full implementation of the law. The CHR opines that with DSWD as focal agency for the JJWA, other stakeholders can now fairly expect for a more facilitated and efficacious local implementation of the law given that most of the front line service providers, from the handling and treatment to intervention, are city or municipal social welfare or development workers who seek guidance from the DSWD.

2. **Clarification of the meaning of "fifteen years of age."**
The CHR welcomes the inclusion of the phrase, "*A child is deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of his or her birth date.*" The addition of this line shows receptiveness on the part of the proponents of the amendments because not only is the age of criminal liability a perpetual question raised in several fora designed to disseminate the law but the real danger is the possible and actual non-inclusion of children at least fifteen years and a day old from the formal proceedings under the JJWA. The CHR also added "or her" in the phraseology to be consistent with the subsequent line of the provision which reads " xxx unless he/she has acted with discernment xxx."
3. **Local consultations.** The CHR finds wisdom in the directive to JJWC to engage and consult with local officials as they are ultimately the front-line service providers the CICL and his or her family comes in contact with and relies on for assistance and support. The aspiration is for the JJWC to find a timely, rational and strategic process in developing child-oriented policies with local officials.
4. **Periodic study on age of discernment.** The conduct of the study on the age of discernment of children every three

years is well-taken by the Commission. The results of this study and its data should affect the future treatment of the age of discernment and the administration of juvenile justice and influence the legislators to address the necessity to amend the same.

5. **Treatment of children criminally exempt.** In the explanatory note, it is very clear that the justification for the amendment is that attention must be given to those who are "repeat offenders and those who have committed specific violent offenses, i.e., heinous crimes" and that there is a need to "remove the child from his community and place him in a residential facility to prevent retaliation by the victim or victim's family and to provide for a more focused and structured program that addresses the psychosocial issues confronting the child." The CHR applauds this inclusion and also suggests that another gray area in the law be considered and this is the need for clarification on where individuals, who were minors at the time of the commission of the alleged crimes, will be brought pending final resolution of their respective cases, if they have already reached the age of majority. Indeed, there might be some difficulties in putting these individuals who are already at least eighteen (18) years of age and mix them with children in youth homes. In the same vein, the CHR finds that there is a need still to separate this unaccounted population of RA 9344 from offenders who were already adults at the time of their alleged commission of the crime.
6. **Maximum penalty for exploiters.** The CHR supports any and all efforts in the harmonization of child-friendly laws. Therefore, the inclusion of the provision from RA 9165 or the Dangerous Drugs Act allowing for the maximum penalty to be meted out to those who exploit children is earnestly supported by the Commission. A point of introspection, that requires further exploration by the lobbyists for amending JJWA, is the treatment of parents as the offenders who took advantage of their own offsprings' minority and criminal exemption.
7. **Assistance to victims.** The CHR welcomes this provision because it effectively deflects the often heard criticism against JJWA being anti-victim. This recommended

section is also in pursuance to the principles of restorative justice which necessitates taking into account the welfare of the victim and his or her family.

8. **Tool to measure discernment.** The CHR congratulates the DSWD in the formulation of the tools to measure discernment of a child. Indeed, the standardization of the assessment of discernment is needed and by elevating the process into a scientific level ensures the objectivity and validity, and therefore the credibility, of the findings and recommendations of the social workers.
9. **Requirement that discernment be alleged in the information.** The CHR supports the inclusion as the express requirement will facilitate the legal processes the CICL will undergo as well as provide a guidepost for lawyers of victims in order for the case to be properly prosecuted.
10. **Clarification on curfews.** Another welcome provision by the CHR is the standardization of treatment of children picked up for breaking the curfew ordinance. The imposition of curfews can only be justified if the same be for the protection of the child. More importantly, the consequences of infringing curfew ordinances must have a modality that is child-sensitive and in pursuance to the ideals of the UNCRC and the JJWA. Therefore, the express inclusion of where the child will be brought, who can fetch the child, and the intervention programs the child has access to, are all welcome law-making initiatives. However, it must be noted that the CHR has received reports that some children who have been "rescued" from the streets, whether or not in pursuance of curfew ordinances, are often times lumped together in youth homes with CICL. What aggravates the situation is that the existing youth homes in some jurisdictions are already congested in the first place. In light of the foregoing, the CHR is of the opinion that the proposed amendment could be worded, thus:

"CURFEW ORDINANCES ENACTED BY LOCAL GOVERNMENTS SHALL BE FOR THE PROTECTION OF CHILDREN. NO PENALTY

SHALL BE IMPOSED ON CHILDREN FOR CURFEW VIOLATIONS. INSTEAD, THE CHILD SHALL BE BROUGHT TO HIS OR HER RESIDENCE OR TO THE BARANGAY HALL TO BE FETCHED BY HIS OR HER PARENTS OR THE CHILD'S LEGAL GUARDIAN. IF THE CHILD IS PROVEN TO BE WITHOUT ANY LEGAL GUARDIAN, HE/SHE SHALL BE ENDORSED TO THE LOCAL SOCIAL WELFARE OFFICER OR THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT. THE AUTHORITIES WHO SHALL RESCUE THE CHILD IS CONSCRIPTED FROM ENDORSING THE CHILD TO A YOUTH REHABILITATION CENTER WITHIN THE MEANING OF THIS LAW. xxx"

11. A point of clarification sought by CHR is how the proponents of the amendments came up with the age of twelve (12) as the minimum age of children to be allowed commitment in youth rehabilitation centers. The silence on where children below twelve (12) are to be brought in lieu of youth rehabilitation homes is cause for concern. The CHRP proposes that a provision be inserted by the proponents of the amendments on how criminally-exempt children below twelve are to be handled and treated and how they can avail of intervention and restorative measures.

In congruence with one of the basic tenets of the UN Convention on the Rights of the Child, the right of the child to participate, the CHR encourages the proponents of the amendments to include a specific provision on **child participation as a right and not merely as a modality to implement the law.**


As now worded, the law, in its Declaration of State Policy, provides: *"(p)roceedings 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."* (Sec. 2) The law further directs the JJWC to *"set-up a mechanism to ensure that children are involved in research and policy development"* (Sec. 9. letter [g]).

The CHR opines that the strategic inclusion of a provision on the right of the child to participate, subject to the child's evolving capacity, will plant the seed of attitudinal change in all stakeholders dealing with children to recognize them not only as beneficiaries but, more importantly, as real stakeholders in decisions that will directly affect them and their young lives. The right to participation of the child merits as much importance as 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 (Sec 2, letter [c]); and the right of children 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 (Sec. 2 [d]) which are enshrined in the Declaration of State Policy. The process of amending this landmark law as RA 9344 may be the most opportune time to institutionalize the child's right to participation. The Commission feels very strongly that the law can be an impetus for further enhancement of the right to participation veering away from merely ensuring the right of the child to express one's thoughts to a directive addressed to state instrumentalities to allow for modalities, agency practice, policy and programming, that can ensure the right of the child to meaningfully participate in governance.


In conclusion, the CHR supports all efforts to provide an improved legal framework for children and commit to harness its institutional influence and authority to assist in the achievement of this end.

Respectfully submitted.

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