

# JUVENILE DELINQUENCY AND JUVENILE JUSTICE SYSTEM

## Historical Background of Juvenile Delinquency and Juvenile Justice System

- **Code of Hammurabi** – the first comprehensive description of a system used by society to regulate behavior and at the same time punish those who disobeyed the rules. It is the origin of the legal principle of “**lex talionis**”, that is, an eye for an eye.
- **1641 Stubborn Child Law** – it was passed by the General Court of Massachusetts which stated that children who disobeyed their parents could be put to death.
- **Children Only law** – due to increasing demand on the state to take responsibility for improving the lives of children and eventually new regulations, such as, child labor laws were enacted.
- **1916 Keating-Owen Act** – passed by the United States Congress and become the first piece of child labor in America. After 2 years it was revised through the case of Hammer V. Dagenhart, it did lay the groundwork for the passage in 1938 of the **Fair Labor Standards Act**.
- **Child-saving Movement** – concerned citizens eventually formed a social activist group called **Child Savers**, who believed that: children were born good and became bad”.
- **Parens Patria** – during the heights of child savers this doctrine was created. It is the right and responsibility of the government to take care of minors and others who cannot legally take care of themselves.
- **1818** – a committee reports listed “**juvenile delinquency**” as a major cause of pauperism, the first public recognition of the term juvenile delinquency.
- **1899** – the Illinois legislature passed a law creating a juvenile court that became the cornerstone for juvenile justice throughout the United States. The vision of the child savers and the founders of the juvenile court was the rehabilitative ideal of reforming children instead of punishing them.
- **Medical Model** – established by the Illinois Court Act, viewing crimes as a disease that could be treated and cured by social intervention.

## House of Corrections for Juvenile Delinquent

1. **Bridewells** – it was the first house of corrections in England. They confined both children and adults considered to be idle and disorderly.
2. **Hospice of San Michele (Saint Michael)** – this was established in 1704. **John Howard**, a former, brought to England from Rome a model of the first institution for treating juvenile offenders. He was often thought of as the **father of prison reform**.
3. **House of Refuge** - it was situated in New York in 1825. It was opened to house juvenile delinquents, who were defined in its charter as “youths convicted of criminal offenses or found in vagrancy”.

## Significant Cases Concerning Juvenile Delinquency

- **In re: Winship**- It established proof beyond reasonable doubt as the standard for juvenile adjudication

proceedings, eliminating lesser standards such as a preponderance of the evidence, clear and convincing proof and reasonable proof.

- **Breed vs. Jones-** It recognized that a juvenile cannot not be adjudicated in a juvenile court and then tried for the same offense in an adult criminal court (double jeopardy)
- **Kent vs. United States-** It provided the procedural requirements for waiver to criminal court as articulated by the U.S. Supreme Court.
- **In re Gault (1967)-** The court held that the juvenile courts must provide the basic procedural protection that the Bill of Rights guarantee to adults, including timely advance notice of the charges, the right to counsel, confrontation and cross examination, self-incrimination, and the right to remain silent.
- **America Bar Association (1977)-** It endorsed decriminalization of status offenses, urging that juvenile delinquency liability should include only such conduct as would be designated a crime if committed by an adult.
- **Schall vs. Martin (1984)-** The Supreme Court upheld the state's right to place juveniles in preventive detention. Preventive detention was perceived as fulfilling a legitimate state interest of protecting society and juveniles by detaining those who might be dangerous to society or to themselves.

## Basic Concepts and Definition

- **Juvenile-** It is a person who has not reached adulthood or the age of majority. By this definition, it can be assumed that the term covers a child, an adolescent, a minor, a youth, or a youngster below 18 years old.
- **Delinquent-** A person, of whatever age, whose attitude toward other individuals, towards the community, toward lawful authority is such that it may lead him into breaking the law.
- **Juvenile Delinquency-** Refers to criminal acts performed by juveniles.
- **Deviant Behavior-** Refers to a behavior that does not conform to norms.
- **Juvenile Crime-**In law, denotes various offenses committed by children or youths under the age of 18.
- **Status Offenses-** Acts that only juveniles can commit and that can be adjudicated only by a juvenile court.

## Stages of Delinquency

- a. **Emergence.** The child begins with petty larceny between 8 and sometime during the 12<sup>th</sup> year.
- b. **Exploration.** He or she then may move on to shoplifting and vandalism between ages 12 to 14.
- c. **Explosion.** at age 13, there is a substantial increase in variety and seriousness.
- d. **Conflagration.** at around 15, four or more types of crime are added.

## Classification of Delinquency

1. **Unsocialized Aggression** – children who are rejected or abandoned, no parents to imitate and become aggressive.
2. **Socialized Delinquency** – membership in fraternities or groups that advocate bad things
3. **Over-inhibited** – group who secretly trained children to do illegal activities such as planting marijuana or industries making illegal weapons and guns.

## Pathway to Delinquency

1. **Authority-conflict pathway** – children at young or early age begin to show stubborn behavior. This leads to defiance and later on may result in avoidance to authority.
2. **Covert Pathway** – it begins with minor, deceitful behavior that leads to property damage. This will escalate to more serious forms of criminality such as violence.
3. **Overt Pathway** – it will start with minor aggression, physical fighting and then to violence.

### Types of Delinquent Youth

1. **Socialized Delinquent** – youths who became delinquent as a result of their social association with people from whom they learned deviant values.
2. **Neurotic Delinquents** - youths who became delinquents as a result of distortions in their personality and perception of the world around them.
3. **Psychotic Delinquents** – youths with severe personality disturbance of their perception of the society and people around them. Their distorted view of reality and their delusional thoughts may compel them to commit weird acts that violate the law.
4. **Sociopathic Delinquents** – youths that are characterized by an egocentric personality. They have limited or no compassion for others.

### Other classification of delinquents

1. **Environmental delinquents** – they are occasional law breakers.
2. **Emotionally maladjusted delinquents** – they are chronic lawbreakers who make law breaking a habit they cannot avoid or escape.
3. **Psychiatric delinquents** – they are youths who became delinquents due to mental illness or serious emotional disturbances in the family.
4. **Occasional delinquents** – these delinquents participate in the group. They do what others are doing.
5. **Maladjusted delinquents** – the activity stems from personality disturbance rather than gang activities or slum residence. They have “weak ego” the “asocial” experienced early and severe parental rejection.
6. **Gang delinquents** – they generally commit the most serious infractions, most often sent to a correctional institution and most often continuous in a pattern of semi-professional criminal behavior as adults.

**Gang-** is frequently associated with groups in socially disorganized and deteriorated inner-city neighborhoods. It is applied to youths who are engaged in a variety of delinquencies ranging from truancy, street brawls, and beer running to race riots, robberies, and other serious crimes. **Characteristics of Gang:**

1. **Organization** – this states that a gang or gang members has collective goals.
2. **Leadership** – they have leaders that may decide matters related to the organization.
3. **Turf or Territory** – it involves identification and control. Identify places like parks, housing projects, or schools to impose their illegal acts.
4. **Cohesiveness** – it refers to a gang's very close, tight-knit organization with loyal members bound to one another by mutual friendship and common interests.

## Theories of Crime and Delinquency

- **Supernatural Theory**- blames delinquency on demonic possession.
- **Classical School Theory**- proposed by Cesare Beccaria and Jeremy Bentham. The view focuses on the utilitarian view that people weigh the benefits and costs of future action before they decide to act.
- **Neoclassical School Theory**- The theory also states that people are not the same. Children, insane, and the incompetent are not responsible for their behaviour as adults, the sane and the competent.
- **Mitigating circumstances** – such as age or mental condition, sometimes influence the choices that are made and affect a person's ability to form criminal intent or means rea (guilty mind). This is why children under age of seven cannot legally commit crime-they are presumed to be not capable of having guilty mind.

### I. Modern Classical School theory

- **Rational Choice Theory** – it claimed that delinquents are rational people who make calculated choices regarding what they are going to do before they act.
- **Routine Activity Theory** – it is focused on the crime target or anything an offender wants to take control of, whether it is house to break into or a bottle of beer to shoplift. Before the crime will occur, three elements must come together: motivated offenders, suitable targets, and absence of people to deter the would-be offender.

### II. Biological and Psychological theories

- **Charles Darwin** was largely responsible for the shift in thinking about a crime from a focus on the act to the actor. In his work, *On the Origin of Species*, he argued that God had not created all the species of animals and that people had evolved from lower forms of life over millions of years.
- **Scientific Study of Crime** (Positive School of Criminology)- believed that crime was caused by factors that are in place before the crime occurs. Free will had nothing to do with what people did.
- **Biological Theories**- These theories locate the causes of crime inside the person.

### Physical Appearance and Crime

- **Criminal Anthropometry** – Cesare Lombroso was the first to connect crime to human evolution. Criminals were atavistic or throwbacks to an earlier, more primitive stages of human development. Because criminals were not highly evolved, they possessed stigma or distinctive physical features such as asymmetrical face, an enormous jaw, large or protruding ears, and receding chin.
- **Physiognomy** – it was founded by **J. Baptiste Della Porte**. It was popularized by Johann Kaspar Lavater who link facial figures and crime.
- **Phrenology** – from the Greek word: “**mind**”; and logos, “**knowledge**” and this theory claims to be able to determine character, personality traits and criminality on the basis of the **shape of the head**. **Franz Joseph Gall** developed his work on **craniology**; in which he alleged that crime was one behaviours organically controlled by a specific area of the brain.

**Body Type and Crime**- William Sheldon suggested that there was a relationship between body build and temperament which was known as Somatotype theory. Human body consisted of three components:

- **Endomorph** – soft temperament, has the tendency toward plumpness, corresponds to **viscerotonia** temperament tolerant, love of comfort and luxury, extravert.

- **Mesomorph** – square masculinity and skeletal massiveness. Has the tendency towards masculinity, and corresponds to the Somatonia temperament courageous, energetic, active, dynamic, assertive, and aggressive and risk taker.
- **Ectomorph** – linearity and frailty. The tendency towards slowness, corresponds to **cerebrotonia** temperament artistic, sensitive, apprehensive, introvert.

## Heredity and Crime

- **IQ and Delinquency** – examine the relationship between heredity and crime centered on intelligence. Suggested that every person had a mental age that could be presented by an IQ score.
- **Historical Studies – Henry Goddard** (Kallikak Family) administered intelligence test to prison and jail inmates and discovered that 70% were “feeble-minded”.

## III. Psychological Theories

- **Psychoanalytical Theory**- The theory believed that people develop in a series of stages. When abnormalities occur, the person is more likely to experience conflict. The theory can be traced to **Sigmund Freud** who believed that personality consist of three parts: **ID, EGO & SUPEREGO**.

## IV. Behavioral Theory and Delinquency

- **B.F. Skinner** – is the most famous behaviorist who believe that environment shapes behavior. Skinner thought children learn which aspects of their environment are pleasing and which ones are painful.
- **Albert Bandura** – expanded Skinner’s idea and developed the theory of aggression where he said children learn by modelling and imitating others. Children learn to be aggressive from their experiences.

## V. Social Class Theories

- **Culture Deviance Theory**- believes that children do not really commit delinquent acts. Their behavior may be considered deviant by the larger society but it is compatible or acceptable in the neighborhood that they live in.
- **Clifford Shaw and Henry McKay** blames delinquency on the neighborhood where a child lives. They hypothesized that delinquency rates would decline or decrease the farther one moved from the center of the city, called zonal hypothesis. Those who are on the center of the zone tends to be more prone to delinquency.
- **Differential Association theory or Social Learning Theory**- **Edwin Sutherland** has proposed this study where he described the process children go through to become delinquent. His theory states that crime is learned behavior. People learn criminal behavior through the groups with which they associate.

**VI. Strain Theories**- assume that children are basically good. Only under pressure (strain) do they deviate. Pressure for deviance comes from their having internalized society’s goals, such as being successful and wanting to achieve them.

- **Robert Merton Strain Theory**- According to him, although most people share common values and goals, the means for legitimate economic and social success are satisfied by socio-economic class. Consequently, these youths may either use deviant methods to achieve their goals or reject socially accepted goals or substitute deviant ones. Merton’s suggests five adaptations to this dilemma:

**\*Innovation** – individuals who accept socially approved goals, but not necessarily the socially approved means.

**\*Retreatism** – those who reject socially approved goals and the means for acquiring them.

**\*Ritualism** – those who buy into a system of socially approved means, but lose sight of the goals.

**\*Conformity** – those who conform to the system's means and goals.

**\*Rebellion** – people who negate socially approved goals and means by creating a new system of acceptable goals and means.

- **Albert Cohen Strain Theory**- He began by identifying characteristics of delinquents. They are malicious, negativistic, non-utilitarian, versatile, loyal, and cannot deter gratification.
- **Differential Opportunity Theory**- according to Richard Cloward and Lloyd Ohlin, flourish in the lower-classes and take particular forms so that the means for illegitimate success are no more equally distributed than the means for legitimate success are no more equally distributed than the means for legitimate success.
- **Robert Agnew Strain Theory**- Agnew added a twist to the work of Merton, Cohen, and Cloward and Ohlin in his **General Strain Theory** that increased the number of conditions and produced frustration for children. **Agnew's Types of Strain: failure to achieve positively valued goals, denial of previously attained achievements, and exposure to negative stimuli.**

## VII. Social Control Theory

- **David Matza Social Control Theory**- he believes that delinquents are normal except in belonging to a subculture that teaches them it is all right to be delinquent.
- **Travis Hirschi Social Control Theory**- This theory states that members in society form bonds with other members in society or institution such as parents, pro-social friends, churches, schools, teachers, and sports team.

## VIII. Labelling and Conflict theory

- **Frank Tannenbaum Labeling Theory**- sees delinquents as well-adjusted people. Delinquent behaviour is behaviour so labelled by adults in a community. Once children are labelled delinquent, they become delinquent.
- **Edwin Lemert**- he said that not all labelled delinquents eventually become delinquents; how open they are to such label depends on their social class. If the youth belongs to a poor family, he or she is more likely to accept the assigned delinquent role.
- **Howard Becker**- believed that acquiring a label depends on how other people react to the behavior itself.
- **Conflict theory**- Views conflict within the society as normal and rejects the idea that society is organized around a consensus of values and norms. It also believes that in its normal state, society is held together by force, coercion, and intimidation. Conflict theory of the Marxist mode suggest that capitalism is the essential root of crime and that repressive efforts by ruling class to control the ruled class produce delinquency.

## Female Delinquency Theories

### 1. Biological and Psychological Theories

**1.1 Lombroso and Ferrero's Atavistic Girl-** Cesare Lombroso and William Ferrero- The female just like the atavistic nature of male criminals are also seen as biologically inferior and distinct to non-criminal women. According to them women are naturally more childlike, less intelligent, lacking in passion, more maternal, and weak-characteristics that make them less inclined to commit crimes.

**1.2 Freud's "Inferior Girl"**- Sigmund saw female delinquency arising primarily out of the anatomical inferiority of women and their inability to deal adequately with Electra complex. Which emerges during the oedipal stage of development.

**1.3 Thomas' "Unadjusted Girl"**- W.I. Thomas postulated that males and female are biologically different. Although both males and females are motivated by natural biological instincts leading to wish fulfilment", how they approach the fulfilment of wishes differs. Thomas identified four (4) distinct categories of wishes: the desire for new experience; the desire for security and moral codes designed to guide people's actions as they attempt to fulfil their wishes.

**1.4 Pollak's "Deceitful Girls"**- Otto Pollak argued that women are actually as criminal as men but their criminality is hidden or "masked".

**2. Marxist-Feminist Theories-** combine the notions of patriarchal male dominance in the home and interpersonal relationships with male control of the means of production. In such an environment, the criminal justice system "defines crimes as those actions that threaten this capitalist-patriarchal system".

**3. Differential Oppression Theory-** argues that adults oppress children as they attempt to impose and maintain adult conceptions of social order. Children are perceived as objects, devalued and defined as inferior to adults, and consequently experience a sense of powerlessness and marginality.

**MARRIAGE-** A social union or legal contract between individuals that creates kinship. Such union may also be called **matrimony**, while the ceremony that marks its beginning is usually called a **wedding** and the marital structure created is known as **wedlock**.

### Etymology of Marriage

Modern English word "**marriage**" derives from Middle English **mariage**, which first appear in 1250-1300 C.E. This in turn is derived from Old French **marier** (to marry) and ultimately Latin **maritare** (to marry) and **maritus** (of marriage)

**-Marriage License-** It is a document issued, either by a church or state authority, authorizing a couple to marry.

**-Common-law Marriage-** It is sometimes called **de facto marriage, informal marriage** or **marriage by habit and repute**, is a form of interpersonal status which is legally recognized in some jurisdictions as a marriage even though no legally recognized marriage ceremony is performed or civil marriage contract is entered into or the marriage is registered in the civil registry.

**-Same-sex Marriage-** It is a term used to describe a legally or socially recognized marriage between two persons of the same biological sex or social gender. Other terms used to describe this type of recognition include **gay marriage** or **gender-neutral marriage**.

## Forms of Marriage

- **Monogamy-** This refers to the marriage on one male and one female
- **Polygamy-** This refers to the marriage between one person of one sex and a minimum of two persons of the other sex.

### Types of Polygamy

- **Polyandry** - refers to marriage of one woman to two or more men.
- **Polygyny-** refers to the marriage of one man to two or more women

## KINDS OF MARRIAGE

- **ADOPTIVE MARRIAGE-** If the family does not have a son to preserve their surname; the prospective son-in-law adopts the family name of the bride's parents before marriage.
- **SORORATE MARRIAGE-** It is sometimes called sister –in-law marriage. It is called as such because a man remarries his deceased wife's sister.
- **LEVIRATE MARRIAGE-** Reverse of sororate marriage. This is a marriage where a women marries the deceased husband's brother.
- **GHOST MARRIAGE-** This is similar to levirate marriage. Under this form of marriage, the children of the woman who married the deceased husband's brother are considered "sired" by the dead husband.
- **ENDOGAMY MARRIAGE-** This refers to the norms which indicate that an individual should marry from a member of one's clan or ethnic group.
- **EXOAMY-** This marriage prescribes that one marries outside of one's clan or ethnic group.

## Residence after Marriage

1. **Neolocal Residence** – means that the newly married couple lives in their own residence.
2. **Patrilocal Residence** – means that the newlywed couple moves in with the husband's parents. Virolocal residence is another term used for this type of residence.
3. **Matrilocal Residence** – this means that the newly married couple moves in with the wife's parents. Uxorilocal residence is the other term used for this type of residence.
4. **Bilocal Residence** – means the newlywed couple shifts residence from matrilocal to patrilocal residence.



## **Marriage under Philippine Law**

- Executive Order No. 209 (the Family Code of the Philippines, as amended by Executive Order no. 227)

### **Marriage (Article 1. FC)**

- Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life.

### **Two essential requisites of valid marriage (Art. 2, FC)**

- A legal capacity of the contracting parties who must be a male and a female; and
- Consent freely given in the presence of the solemnizing officer.

### **A marriage ceremony which takes place with:**

- Appearance of the contracting parties before the solemnizing officer;
- Their personal declaration that they take each other as husband and wife; and
- In the presence of not less than two witnesses of legal age.

**Parental Consent-** is required if either or both of the contracting parties are between the ages of 18 and 21.

**Parental Advise-** is required if either or both of the contracting parties is/are between the age of 21 and 25.

**What happens if parental consent is required, but not secured or given?-** The marriage is voidable, subject to the filing of a petition for annulment. In other words, the marriage is valid until annulled.

### **Who are allowed to Solemnize Marriage?**

1. The Chief of Justice and Associate Justice of the Supreme Court;
2. The presiding judge and justices of the Court of Appeals;
3. Judges of the Courts of First Instance
4. Mayors of cities and municipalities
5. Municipal Judges and justices of the peace
6. Any priest, rabbi's, imams, or ministers of the gospel of any denomination, church, religion or sect, duly registered.
7. Any ship captain or aircraft chief- A ship captain, airplane pilot or military commander of a unit may solemnize a marriage the following requisites concur:
  - a. the marriage must be in articulo mortis; and
  - b. it must be solemnized while the ship is at sea or the plane is in flight or during stopovers at ports of call.
8. Any military commander of the unit to which a chaplain is assigned;
9. Any consul-general, consul or vice consul in the case provided in Article 10 of Family Code.

**Who confers Marriage License?**- It shall be issued by the local civil registrar of the city or municipality where either contracting party habitually resides, except in marriages where no license is required.

### **Void and Voidable Marriage**

1. Those contracted by any party below 18 years of age even with the consent of parents or guardian;
2. Those solemnized by any person not legally authorized to perform marriages unless such marriages contracted with either or both parties believing in good faith that the solemnizing officer had legal authority to do so;
3. Those solemnized without license,
4. Those bigamous or polygamous marriages
5. Those contracted through mistake of one contracting party as to the identity of the other;
6. Those marriages contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage
7. Incestuous marriages, whether the relationship between the parties be legitimate or illegitimate

**Annulment**- It is a legal procedure for declaring a marriage null or void. It has a retroactive effect: a nulled marriage is considered to have not existed.

### **Six (6) Grounds of Annulment of Marriage**

1. That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;
2. That either party was of unsound mind, unless such party after coming to reason, freely cohabited with other as husband or wife;
3. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;
4. That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;
5. That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; and
5. That either party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable.

**How will the conjugal dwelling and the lot on which it is situated be adjudicated in case the final judgment of annulment or declaration of nullity of marriage provide for the partition of the properties of spouses?**-

In partition of properties of the spouses, the conjugal dwelling and the lot on which it is situated shall be:

- a. Adjudicated to the spouse with whom the majority of the common children should choose to remain;
- b. Children below 7 years are deemed to have chosen the mother, unless the court decides otherwise;
- c. In case there is no majority of the common child, the court shall decide, taking into account the best interest of the children

**Legal Separation-** (sometimes judicial separation, separate maintenance, divorce a **mensa et thoro** or divorce from bed-and-board) is a legal process by which a married couple may formalize a de facto separation whilst remaining legally married.

**Who and when may a petition for legal separation be filed?-** A petition for legal separation may be filed only by the husband and wife, as the case may be, within five (5) years from the time of the occurrence of any of the grounds for legal separation.

### **Ten Grounds for Legal Separation**

1. Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
2. Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
3. Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
4. Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
5. Drug addiction or habitual alcoholism of the respondent;
6. Lesbianism or homosexuality of the respondent;
7. Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
8. Sexual infidelity or perversion;
9. Attempt by the respondent against the life of the petitioner; or
10. Abandonment of petitioner by respondent without justifiable cause for more than one year.

**The decree of legal separation shall have the following effects:**

1. The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

2. The absolute community or the conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43 of the Family Code
3. The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of FC.
4. The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law

**Divorce or dissolution of marriage-** is the final termination of a marriage, cancelling the legal duties and responsibilities of marriage and dissolving the bonds of matrimony between two persons. In most countries, divorce requires the sanction of a judge or other authority in a legal process.

**Family** is the first and most important social unit to affect children; it is the first social world the child encounters. It is also a basic social institution which public policy cherishes and protects.

## **Family Structures**

1. **Nuclear Family** – this refers to a family consisting a father, mother and children.
2. **Extended Family** – this refers to a family consisting of a several generations of blood relatives. This consists of two nuclear families.
3. **Joint Family** – this refers to married children with their spouses and children living in one residence.
4. **Household** – consist of individuals that may or may not be related to each other. They are having the same residence and share in domestic functions.
5. **Truncated Family** – this refers to grandparents and grandchildren relationships.
6. **Stem Family** – this refers to a family formed by two families-the families do not share the same residence but their houses may be located in the same area.

## **Models of Family**

1. **The Corporate Model-** The father is the chief executive officer in the family. The mother is the operating officer, implements the father's policy and manages the staff (children) that in turn have privileges and responsibilities based on their seniority.
2. **The Team Model-** The father is the head and the mother is the chief of the training table and cheer leader. The children, suffering frequent performance anxiety, play the rules and stay in shape with conformity

calisthenics. In this family, competition is the name of the game, winning is everything.

**3. The Boarding School Model-** The father is the rector or head master, is in charge of the training school, mind and bodies. The mother is the dorm counselor who oversees the realm emotion, illness, good works and bedwetting. The children are the dutiful students. The parents have nothing to left to learn, there's but taught and test.

**4. The Theatrical Model-** the father is the producer. The mother is the stage manager, doubles in the part of the mother and children, the stagehands, also acts the role of the girls and boys. No writer is necessary because the lines are scripted, the roles are sex stereotypes, and the plot is predictable.

## Agents of Socialization

**1. Family** – the most important agent in socialization. It plays an important role and has a special responsibility. It is usually the most influential group in the life of the child.

**2. School** – is a formal agent of socialization. Children weaned from home are then introduced into the society. It is in the school where emotional and intellectual growths are formally forged.

**3. Peers** – it is an informal grouping of two or more individuals, about the same ages, neighborhoods, school or friends. This is the group where the parents have no control.

**4. Mass media** – it may be a form of print, broadcast, or electronic.

**5. Religion** – is an agent of socialization that can assist in giving a society a sense of direction. Morals and values which are inherent in religion can give guidance about what is appropriate in terms of roles and behaviors of the society or individual.

## PARENTING STYLE

**1. AUTHORITATIVE PARENTS** – They are warm but firm. They set standards for the child's conduct but form expectations consistent with the child's developing needs and capabilities.

**2. AUTHORITARIAN PARENTS** – They place a high value of obedience and conformity tending to favor more punitive, absolute and forceful disciplinary measures. These parents are not responsive to their children and show little warmth and support.

**3. INDULGENT PARENTS** – They behave in responsive accepting, benign or kind, and more passive ways in matters of discipline.

**4. INDIFFERENT PARENTS** – They are fairly unresponsive to their child and try to minimize the time and energy they must devote to interacting with the child or responding to their child's demands.

## Different Kinds of Children under the Family Code

- **Legitimate Children-** Children conceived or born during the marriage of the parents are legitimate.
- **Illegitimate Children-** Children conceived and born outside a valid marriage are illegitimate, unless otherwise provided by Family Code (Art. 165, FC).
- **Legitimated Children-** Only children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other may be legitimated.
- **Adopted Children-** may be defined as the juridical act which creates between 2 (two) persons a relationship similar to that which results from legitimate paternity and filiation (Arts. 183-193, FC).

### **Who may adopt?**

- A person of age and in possession of full civil capacity and legal rights may adopt, provided he is in a position to support and care for his children, legitimate or illegitimate, in keeping with the means of the family.
- The guardian with respect to the ward prior to the approval of the final accounts rendered upon the termination of their guardianship relation;
- Any person who has not been convicted of a crime involving moral turpitude;
- An alien provided:

\*A former Filipino citizen who seeks to adopt a relative by consanguinity;

\*One who seeks to adopt the legitimate child of his or her Filipino spouse; or

\*One who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse a relative by consanguinity of the latter.

\*Aliens not included in the foregoing exceptions may adopt Filipino children in accordance with the rules on inter-country adoptions as may be provided by law (28a E.O. 91 and PD 603).

**Support-** comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family (Art. 194, FC).

**Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:**

- The spouses;
- Legitimate ascendants and descendants;
- Parents and their legitimate children and the legitimate and illegitimate children of the latter;
- Parents and their illegitimate children and the legitimate and Illegitimate children of the latter; and legitimate brothers and sisters, whether of full or half-blood (Art. 105, FC).

**Parental Authority** refers to parents’ rights and responsibilities toward their children from the minute they are born until they turn 18. Under their parental authority, parents make decisions that affect their children’s well-being. This is also known as **Patria Potestas**.

**Substitute and Special Parental Authority-** In default of parents or judicial appointed guardian, the following shall exercise substitute parental authority over the child in the order indicated:

- The surviving grandparent;
- The oldest brother or sister, over 21 years of age, unless unfit or disqualified;
- The child’s actual custodian, over 21 years of age, unless unfit or disqualified;

**Suspension or Termination of Parental Authority**

The court in action filed for the purpose in a related case may also suspend parental authority if the parent or the person exercising the same:

- Treats the child with excessive harshness or cruelty;
- Gives the child corrupting orders;
- Compels the child to beg; or
- Subjects the child or allows him to be subjected to acts of lasciviousness

**Emancipation** – emancipation is the release of a person from parental authority whereby he becomes capacitated for civil life.

**CHILD AND YOUTH WELFARE AND THE COMMUNITY**

“Community” shall mean, the local government, together with the society of individuals or institutions, both public and private, in which a child lives (Art. 84)

**COMMUNITY BODIES DEALING WITH CHILD WELFARE**

**A. Barangay Councils-** shall have the authority to enact ordinances and resolutions not inconsistent with law or municipal ordinances, as may be necessary to provide for the proper development and welfare of the children in the community, in consultation with representatives of national agencies concerned with child and youth welfare. (Art. 86)

**B. Civic Association of Adults-** A “civic association” shall refer to any club, organization or association of individuals twenty-one years of age or over, which is directly or indirectly involved in carrying out child welfare programs and activities. (Art. 91)

**C. Youth Associations and Student Organizations-** A “youth association” shall refer to any club, organization or association of individuals below twenty-one years of age which is directly or indirectly involved in carrying out child or youth welfare programs and activities. (Art. 99)

## **CLASSIFICATION OF CHILD AND YOUTH WELFARE AGENCIES**

- **Child-caring institution** – one that provides twenty-four-hour resident group care service for the physical, mental, social and spiritual well-being of nine or more mentally gifted, dependent, abandoned, neglected, handicapped or disturbed children, or youthful offenders.
- **Educational institution** – one whose primary purpose is education; it is deemed to be a child-caring institution when nine or more of its pupils or wards in the ordinary course of events do not return annually to the homes of their parents or guardians for at least two months of summer vacation
- **Detention home** – a twenty-four-hour child-caring institution providing short term resident care for youthful offenders who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.
- **Shelter-care institution** – one that provides temporary protection and care to children requiring emergency reception as a result of fortuitous events, abandonment by parents, dangerous conditions of neglect or cruelty in the home, being without adult care because of crisis in the family, or a court order holding them as material witnesses.
- **Receiving home** – a family type home which provides temporary shelter from ten to twenty days for children who shall during this period be under observation and study for eventual placement by the Department of Social Welfare.
- **Nursery** – a child-caring institution that provides care for six or more children below six years of age for all or part of a twenty-four-hour day, except those duly licensed to offer primarily medical and educational services.
- **Maternity home** – an institution or place of residence whose primary function is to give shelter and care to pregnant women and their infants before, during and after delivery.
- **Rehabilitation center** – an institution that receives and rehabilitates youthful offenders or other disturbed children.
- **Reception and study center** – an institution or person assuming the care, custody, protection and maintenance of children for placement in any child-caring institution or home or under the care and custody of any person or persons for purposes of adoption, guardianship or foster care. The relatives of such a child or children within the sixth degree of consanguinity or affinity are excluded from this definition. (Art. 117)

## **SPECIAL CATEGORIES OF CHILDREN**

- **Dependent child** – one who is without a parent, guardian or custodian; or one whose parents, guardian or other custodian for good cause desire to be relieved of his care and custody; and is dependent upon the public for support.
- **Abandoned child** – one who has no proper parental care or guardianship, or whose parents or guardians have deserted him for a period of at least six continuous months.
- **Neglected child** – one whose basic needs have been deliberately unattended or inadequately attended.



Neglect may occur in two ways:

**\*Physical neglect** - when the child is malnourished, ill clad and without proper shelter. A child is unattended when left by himself without provisions for his needs and/or without proper supervision.

**\*Emotional neglect** - – when the child are maltreated, raped or seduced; when children are exploited, overworked or made to work under conditions not conducive to good health; or are made to beg in the streets or public places, or when children are in mortal danger, or exposed to gambling, prostitution and other vices. (Art. 141)

**Mentally retarded children** – refer to those: Socially incompetent – socially inadequate, occupationally incompetent and unable to manage their own affairs. Mental retardation is classified as follows:

- **Custodial Group** – they are the least capable group, severely or profoundly retarded, and with I.Q.s 1 to 25.
- **Trainable Group** – they are unable to acquire higher academic skills, but can usually acquire the basic skills for living to a reasonable degree; their I.Q.s range from about 25 to about 50.
- **Educable Group** – the degree of success or accomplishment that they will reach in life depends very much on the quality and type of education they receive, as well as on the treatment at home and in the community. This group's I.Q. ranges from about 50 to about 75.
- **Borderline or Low Normal Group** – this is the highest group of mentally retarded, with I.Q.s from 75 to about 89. The members of this classification are only slightly retarded and they can usually get by in regular classes if they can usually get by in regular classes if they receive some extra help, guidance and consideration.
- **Physically Handicapped Children** – those who are crippled, deaf-mute, blind, or otherwise defective which restricts their means of action or communication with others.
- **Emotionally Disturbed Children** – those who, although not afflicted with insanity or mental defect, are unable to maintain normal social relations with others and the community in general due to emotional problems or complexes.
- **Mentally Ill Children** – those with any behavioural disorder, whether functional or organic, which is of such a degree of severity as to require professional help or hospitalization.
- **Disabled Children** – shall include mentally retarded, physically handicapped, emotional disturbed, and severe mentally ill children. (Arts. 168-173)

### Section 3. Definition of Terms.

(a) "**Children**" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

(b) "**Child abuse**" refers to the maltreatment, whether habitual or not, of the child which includes any of the following: psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment.

(c) "**Circumstances which gravely threaten or endanger the survival and normal development of**

**children"** include, but are not limited to, the following;

- Being in a community where there is armed conflict or being affected by armed conflict-related activities;
- Working under conditions hazardous to life, safety and normal which unduly interfere with their normal development;
- Living in or fending for themselves in the streets of urban or rural areas without the care of parents or a guardian or basic services needed for a good quality of life;
- Being a member of an indigenous cultural community and/or living under conditions of extreme poverty or in an area which is underdeveloped and/or lacks or has inadequate access to basic services needed for a good quality of life;
- Being a victim of a man-made or natural disaster or calamity; or
- Circumstances analogous to those above stated which endanger the life, safety or normal development of children.

**(d) "Comprehensive program against child abuse, exploitation and discrimination"** refers to the coordinated program of services and facilities to protect children against:

- Child Prostitution and other sexual abuse;
- Child trafficking;
- Obscene publications and indecent shows;
- Other acts of abuses; and
- Circumstances which threaten or endanger the survival and normal development of children.

## **Kinds of Child Abuse**

**1. Physical Abuse** – defined as any act which results in a non-accidental trauma or physical injury.

**2. Sexual Abuse**- It is the involvement of the child in sexual activity with an adult or any person older or bigger in which for gratification of an older person's needs or desires are achieved.

**3. Emotional Abuse** – it is commonly defined as the systematic tearing down of another human being.

**4. Child Neglect** – it is defined as a "type of maltreatment that refers to the failure to provide needed age-appropriate care," such as shelter, food, clothing, education, supervision, medical care and other basic necessities needed for development of physical, intellectual and emotional capacities.

**Section 5. Child Prostitution and Other Sexual Abuse.** – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

**Section 7. Child Trafficking.** – Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall

suffer the penalty of reclusion temporal to reclusion perpetua. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age.

## Remedial Procedures

Section 27. Who May File a Complaint – Complaints on cases of unlawful acts committed against the children as enumerated herein may be filed by the following:

- Offended party;
- Parents or guardians;
- Ascendant or collateral relative within the third degree of consanguinity;
- Officer, social worker or representative of a licensed child-caring institution;
- Officer or social worker of the Department of Social Welfare and Development;
- Barangay chairman; or
- At least three (3) concerned responsible citizens where the violation occurred.

**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.

(e) **“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.

(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) **“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.

(h) **“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.

(i) **“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.

(j) **“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 counselling, skills training, education, and other activities that will enhance his/her psychological, emotional and psycho-social well-being.

(k) **“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, reintegration and aftercare to ensure their normal growth and development.

(l) **“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.

(m) **“Youth Detention Home”** refers to a 24-hour child-caring institution managed by accredited local government units (LGUs) and licensed and/or accredited non government 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.

(n) **“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.

(o) **“Victimless Crimes”** refers to offenses where there is no private offended party.

**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.

**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. 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.

(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:

- Department of Justice (DOJ);
- Department of Social Welfare and Development (DSWD);
- Council for the Welfare of Children (CWC)
- Department of Education (DepEd);
- Department of the Interior and Local Government (DILG)
- Commission on Human Rights (CHR);
- National Youth Commission (NYC); and

- 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.

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

- To oversee the implementation of this Act;
- To advise the President on all matters and policies relating to juvenile justice and welfare;
- 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;
- To periodically develop a comprehensive 3 to 5-year national juvenile intervention program, with the participation of government agencies concerned, NGOs and youth organizations;
- 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;
- 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;
- 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:

\*the performance and results achieved by juvenile intervention programs and by activities of the local government units and other government agencies;

\*the periodic trends, problems and causes of juvenile delinquency and crimes; and

\*the particular needs of children in conflict with the law in custody.

**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. 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:

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

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

- 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;
- 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;
- Properly identify himself/herself and present proper identification to the child;
- 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;
- 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;
- Refrain from subjecting the child in conflict with the law to greater restraint than is necessary for his/her apprehension;
- Avoid violence or unnecessary force;
- Determine the age of the child pursuant to Section 7 of this Act;
- 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;
- 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;
- 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;
- Record the following in the initial investigation:

\*Whether handcuffs or other instruments of restraint were used, and if so, the reason for such;

\*That the parents or guardian of a child, the DSWD, and the PAO have been informed of the apprehension and the details thereof; and

\*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

- 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:

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

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

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

**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. 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:

- Restitution of property;
- Reparation of the damage caused;
- Indemnification for consequential damages;
- Written or oral apology;
- Care, guidance and supervision orders;
- Counseling for the child in conflict with the law and the child's family;
- Attendance in trainings, seminars and lectures on:

\*anger management skills;

\*problem solving and/or conflict resolution skills;

\*values formation; and

\*other skills which will aid the child in dealing with situations which can lead to repetition of the offense;

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

- Participation in education, vocation and life skills programs.

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

- Diversion programs specified under paragraphs (a)(1) to (a)(9) herein; and
- Confiscation and forfeiture of the proceeds or instruments of the crime;

(c) At the level of the appropriate court:

- Diversion programs specified under paragraphs (a) and (b) above;
- Written or oral reprimand or citation;
- Fine;
- Payment of the cost of the proceedings; or
- Institutional care and custody.

## DIFFERENT JUVENILE JUSTICE MODELS

- The **'welfare model'** adopts a positivistic approach that is based on the assumption that juvenile wrongdoing is the product of social or environmental factors for which the young person cannot be held individually responsible.
- **The 'Justice Model'**- In contrast to the positivism of the welfare model, the 'justice model' espouses a 'classicist' approach that is based on the assumption that even young people are – with certain limited exceptions –endowed with free will.
- **The 'Minimum Intervention Model'**- The philosophy that underpins the 'minimum intervention model' is derived in part from criminological 'labelling theory', which suggests that all official forms of processing young offenders are potentially harmful to them since they 'label' and stigmatize them as criminals.
- **The 'Restorative Justice Model'**- The 'restorative justice model' is based on a radically different set of assumptions about the concept of crime itself, the relationship between offenders, victims, citizens and the state, and also about the most appropriate ways of responding to crime. Whereas traditional criminal justice theorists have portrayed crime first and foremost as an offence against the state, the restorative justice model places particular emphasis on the harm that is done to the victim, whose interests were for many years neglected by mainstream criminal justice agencies and policy-makers alike.