

## The Philippine Juvenile Justice System

*Good morning!*

Thank you Prof. Marta Fernandez Cabrera for the enlightening discourse on the Spanish "*criminal responsibility system for minors*". You walked us through the history of Spanish Law 5/2000 as well as the relevant process.

In particular, I took special interest on Spain's minimum "age of criminal responsibility" as well as on the "catalogue of alternative sanctions" a Judge may choose from in imposing the appropriate sanctions on the child.

In the Philippine setting, we have, in place, **Republic Act 9344**, the "*Juvenile Justice and Welfare Act of 2006*" which primarily covers the different stages involving "*children at risk*" and "*children in conflict with the law*" (or the CICL) from prevention to rehabilitation and reintegration. R.A. 9344 raised the age of criminal responsibility to **15** from **9 years of age** under the Revised Penal Code.

Just a quick briefer on the Philippine juvenile criminal responsibility, **prior to R.A. 9344**, we had **Article 12** of the *Revised Penal Code* on exempting circumstances. A person under nine (9) years of age is *absolutely exempt* from criminal liability. A person over nine (9) of age and under fifteen (15) is *also exempt, unless* he or she *has acted with discernment*, in which case, such minor shall be proceeded in accordance with the provisions of Article 80 of the Revised Penal Code.

In 1974 (December 10, 1974), **Presidential Decree No. 603**, the "*Child and Youth Welfare Code*" took effect. It covers, among others, "*youthful offender*" who is "over 9 years but under twenty-one (21) years of age at the time of the commission of the offense. The same as that provided in the Revised Penal Code, "a child over nine (9) years and under fifteen (15) years of age at the time of the commission of the offense is also *exempt* from criminal liability, *unless* the child acted with discernment.

Criminal cases then, involving youthful offenders (over nine but under 21 years of age), were heard by the *Juvenile and Domestic Relations Courts*. The proceedings were not adversarial, but were focused towards rehabilitation, to treat the youthful offender as a victim and not an aggressor. The purpose was for reformation. It provides community-based programs for youthful offenders, which include diversion, probation and after-care services.

P.D. 603 was **amended** by **Presidential Decree 1179** to **clarify** the **definition** of a "youthful offender". Article 189 of PD 603 was amended by redefining a "youthful offender" as "*a child, minor or youth, including one who is emancipated in accordance with law who is over nine (9) years but under **eighteen (18) years of age at the time of the commission of the offense***"

In 1980, *Batas Pambansa Bilang 129*, or the *Judiciary Reorganization Act of 1980*, **abolished** the *Juvenile and Domestic Relations Courts*. Section 23 of BP 129 *authorized* the Supreme Court to *designate* certain Branches of the Regional Trial Courts to handle exclusively juvenile and domestic relations cases, including criminal cases involving children.

Subsequently, in July 1990, the Philippines *ratified* the "UN Convention on the Rights of the Child" which became effective on September 2, 1990. Then, it became a signatory to the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (The "Beijing Rules"), then the *United Nations Guidelines for the Prevention of Juvenile Delinquency* (The "Riyadh Guidelines"), and the *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*.

Then, **Republic Act 9344** of 2006 was enacted which now provides the "*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 Sec. 20 of the law).

It also provides that "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** the child has **acted with discernment**, in which case, the child shall be subjected to the appropriate proceedings in accordance with R.A. 9344.

In 2012, so as to avoid confusion on who is considered a child 15 years of age under Section 6, of R.A. 9344 and, thus, considered absolutely exempt from criminal liability, **R.A. 9344** was **amended** by **R.A. 10630** which *clarified* that "a child shall be deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of his/her birthdate".

In the *2019 SC Revised Rule on CICL*, which took effect in June 2019, a CICL was defined as a "a person below 18 years old who is alleged as, accused of, or adjudged as having committed an offense under Philippine Laws."

As to the concern on the “mental age”, which instinctively arose reactions earlier, – particularly on those who cannot fully take of themselves, there were efforts to include it in the *2019 Revised Rule on CICIL*, but, unfortunately, it was not carried out. We have that definition under the *Rule on Examination of a Child Witness*, which defines a “*child witness*” to include a person over 18 years but is found by the court as unable to fully take care of himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

Under RA 9344, a “*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, 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; or is being exploited sexually or economically; abandoned or neglected; being out of school youth or a street child, or living in a community with a high level of criminality, among others.

While a “*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.

Under R.A. 9344, a CICL enjoys the presumption of minority. As discussed, it covers the different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration into the family and/or community. As it is based on the principles of “*restorative justice*”, it provides diversion programs using alternative, child-appropriate processes and community-based programs for the child in conflict with the law, which will be discussed, in detail, by Judge Lorna Catris-Chua Cheng.

At present, the Philippine minimum age of criminal responsibility is over fifteen (15) of age and under eighteen (18). Whereas **in Spain**, as discussed by Prof. Marta, it is exactly 14 years of age – also deemed to be fourteen (14) years of age on the day of the fifteenth anniversary of his/her birthdate **In Portugal**, it is 16 years of age, while **in Ireland** it is 12 years of age. We *differ*, therefore, in the minimum age of criminal responsibility.

As to law reforms initiatives, in the 18<sup>th</sup> Congress (2019-2022), **five (5) bills** were filed on the subject of lowering the minimum age of criminal responsibility, amending for the purpose Republic Act No. 9344 — one (1) from the Senate and four (4) from the House of Representatives.

All bills were read on first reading and referred to the appropriate committees. However, since both Houses adjourned session "*sine die*", pending approval of said measures, they will have to be re-filed in the oncoming 19<sup>th</sup> Congress (2022-2025).

## I. SENATE BILL NO. 5 filed by Sen. Vicente Sotto III

***Title:*** [AN ACT LOWERING THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY AMENDING FOR THE PURPOSE SECTIONS 6, 20, 20-A, 20-B AND 22 OF REPUBLIC ACT NO. 9344, AS AMENDED, OTHERWISE KNOWN AS "THE JUVENILE JUSTICE AND WELFARE ACT OF 2006", AND FOR OTHER PURPOSES]

### ***Salient Features:***

#### A. *Minimum Age of Criminal Responsibility*

- A child **below 18 years but above 12 years** of age at the time of the commission of the crime shall be criminally liable, unless he/she acted without discernment in which case such child shall be exempt from criminal liability and shall be subjected to the appropriate intervention program.
- A child is deemed to be 12 years of age on the day of the 12<sup>th</sup> anniversary of his/her birth date.

#### B. *Serious Crimes Committed by Children Who Are Exempt From Criminal Responsibility.*

- A child who is **above NINE (9) years of age up to TWELVE (12) years of age** and who commits parricide, murder, infanticide, kidnapping and serious illegal detention where the victim is killed or raped, robbery, with homicide or rape, destructive arson, rape, or carnapping where the driver or occupant is killed or raped, or offenses under Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) punishable by more than twelve (12) years of imprisonment, shall be deemed a neglected child under Presidential Decree No. 603, as amended, and shall be mandatorily placed in a special facility within the youth care faculty or 'Bahay Pag-asa' called the Intensive Juvenile Intervention and Support Center (IJISC).

#### C. *Repetition of Offenses.*

- A child who is **above NINE (9) years of age up to TWELVE (12) years of age** and who commits an offense for the second time or oftener. *Provided*, That the child was previously subjected to a community-based intervention program, shall be deemed a neglected child under Presidential

Decree No. 603, as amended, and shall undergo an intensive intervention program supervised by the local social welfare and development officer: *Provided, further,* That, if the best interest of the child requires that he/she be placed in a youth care facility or 'Bahay Pag-asa', the child's parents or guardians shall execute a written authorization for the voluntary commitment of the child: *Provided, finally,* That if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the LSWDO pursuant to Presidential Decree No. 603, as amended.

**II. HOUSE BILL NO. 864 filed by Rep. Ferdinand L. Hernandez, HOUSE BILL NO. 1376 filed by Rep. Fredenil H. Castro, and HOUSE BILL NO. 3127 filed by Rep. Doy C. Leachon.**

*Title: [AN ACT EXPANDING THE SCOPE OF THE REFORMATION AND REHABILITATION OF CHILDREN IN CONFLICT WITH THE LAW AND STRENGTHENING THE SOCIAL REINTEGRATION PROGRAMS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9344, AS AMENDED, OTHERWISE KNOWN AS THE 'JUVENILE JUSTICE AND WELFARE ACT OF 2006']*

***Salient Features:***

*Minimum Age of Responsibility of Children In Conflict With The Law*

- A child **below twelve (12) years of age** at the time of the commission of the offense shall be exempt from liability. However, the child shall be subjected to an intervention program.

- A child **twelve (12) years of age and above but below eighteen (18) years of age** shall likewise be exempt from liability and be subjected to an intervention program, unless the child has acted with discernment, in which case, such child shall be subjected to the appropriate intervention and diversion proceedings.

**III. HOUSE BILL NO. 6512 filed by Rep. Eric L. Olivarez**

*Title: [AN ACT EXPANDING THE SCOPE OF THE JUVENILE JUSTICE AND WELFARE SYSTEM AND STRENGTHENING THE SOCIAL REINTEGRATION PROGRAMS FOR CHILDREN IN CONFLICT WITH THE LAW, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9344, AS AMENDED, OTHERWISE KNOWN AS THE 'JUVENILE JUSTICE AND WELFARE ACT OF 2006']*

***Salient Features:***

*Minimum Age of Responsibility of Children In Conflict With The Law*

- A child **below nine (9) years of age** 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.
- A child **nine (9) years of age and above but below eighteen (18) years of age** shall likewise be exempt from liability and be subjected to an intervention program, unless the child has acted with discernment.

Although there were efforts to lower the age of criminal responsibility to 12 or 9 years of age, there are several sectors that are against it. They say that lowering the age of criminal responsibility to 9 or 12 years of age goes against the letter and spirit of the rights of the child.

Nevertheless, amending the current minimum age of criminal responsibility is, certainly, a matter of policy for Congress to decide.

On a *final note*, Prof Marta, I also took an interest on the Spain's main purpose of the imposition of penalty, which must always be to pursue the minor's education. Remarkably, the Judge, under the Organic Law 5/00, has a *wide range of Sanctions* to impose under Article 7, which includes numerous alternative sanctions, not involving deprivation of liberty, to adapt to the needs of the minor. The Spanish Judge has even a *broad discretion* to impose the current 13 alternative sanctions. Such process is noteworthy to consider.

*Thank you.*