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## The Malaysian juvenile justice system: The compelling need to implement diversion in handling the issue of juvenile delinquency

Norshamimi Mohd Mazlan, Aminuddin Mustaffa\*

Faculty of Law and International Relations, Universiti Sultan Zainal Abidin, Terengganu, Malaysia

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### Abstract

Juvenile delinquency is always regarded as an essential issue under the juvenile justice system. While other countries have introduced alternative measures in dealing with children in conflict with the law, Malaysia persists in the traditional approach, fundamentally based on a formal adjudication system. The formal adjudication system mainly focuses on police and Court-based interventions, eventually leading to institution-based rehabilitation. To date, the Malaysian juvenile justice system does not have any direct provision to provide for formal diversion programs or processes in dealing with children in conflict with the law. This research will apply qualitative methods that combine analytical research and comparative analysis. This paper seeks to analyse the importance and advantages of diversion as an alternative measure in dealing with children in conflict with the law. It will explore how the diversion process and restorative approaches have been effectively implemented in many legal systems worldwide, including the United Kingdom and New Zealand. This paper concludes that there is a compelling need to introduce diversionary measures into the current Malaysian juvenile justice system to protect the interest and welfare of children in conflict with the law.

**Keywords:** juvenile, diversion, alternative measures

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### Introduction

As a matter of fact, children are more fragile than adults in all aspects. They develop at different rates and will be at varying maturity levels at any given age (Stephen, 2008). They need comprehensive guidance to do the right things, and their ability to understand the wrongfulness of criminal acts develops gradually. Researches indicate various factors contribute to delinquent behavior. Poverty, low social and economic status, paired with inadequate parental monitoring, harsh discipline, and deviant peer groups are among the primary causes that lead children to be involved with juvenile delinquency (Lauren & Danielle, 2010).

Under the Malaysian legal system, a child refers to a person under eighteen years old. This Definition is provided under Section 2 of the Child Act 2001 ("the CA"). In line with principles of the Convention on the Rights of Child ("the CRC"), the CA emphasises the use of the phrase 'children in conflict with the law' when referring to children who come into contact with the justice system when suspected or accused of committing an offence (UNICEF Malaysia, 2013) <sup>[37]</sup>. The CRC disapproves of the use of the term 'juvenile' as it implies a negative connotation (Farah, 2006). Nonetheless, the term juvenile is still used by the Criminal Procedure Code ("CPC"), which applies to children in the event of any lacunae in the CA. It means that the term "child" and "juvenile" are still be used interchangeably when describing the overall structure of the juvenile justice system and when the media reports the occurrence of youth offending.

To date, the Malaysian criminal justice system focuses too much on formal adjudication methods, even when handling children in conflict with the law. It does not provide any special procedures on informal or alternative measures and subsequently causes a high number of children incarcerated every year (Paul, 2018). This article aims to specifically focus on the issue of the introduction of diversion as an alternative approach in dealing with juvenile delinquency. It is divided into six sections. The first section provides background on juvenile delinquency in Malaysia. The second section discusses the concept of diversion. The third section highlights on development and status of the Malaysian juvenile justice system. The fourth section discusses the experiences of other countries in implementing a diversionary approach in dealing with children in conflict with the law. The fifth and final sections conclude the discussion and provide suggestions towards integrating diversion into the system.

### What is Diversion?

Basically, diversion is a process to 'divert' a child in conflict with the law from the formal justice system (Traci, 2018). They are to be dealt with alternative measures that are more lenient and appropriate with their age, especially when the offence is so minor in nature. Since the primary purpose of diversion is to avoid formal court procedures, it usually requires police discretion or a prosecutor's decision as to how they deal with the child in the circumstances. Diversion can also be decided by the judge when it appears that after an allegation made, the

child offender has already undertaken reparation efforts (Josine & Frieder, 2009). The use of community-based sanctions, as opposed to judicial sanctions, is another practical benefit of diversion. Diversion recognises that most child offenders should not be referred to formal judicial proceedings because they are considered low-risk offenders (O'Driscoll, 2008) <sup>[29]</sup>. Any form may take place at the pre-charge stage and the post-charge stage (Richard & others, 2003). Pre-charge alternative measures refer to the process where the child is being diverted from the formal justice system before being charged. Meanwhile, post-charge alternative measures can be imposed on the child offenders after being formally charged for committing any criminal offence.

Article 40 and 37 of the CRC are the core provisions that are principally relevant for children in conflict with the law. According to Article 40 of the CRC, children who break the law must be treated in a manner appropriate to their age, proportionate both to their circumstances and the offence. Furthermore, instead of focusing too much on judicial proceedings, the CRC details a variety of dispositions, including care, probation, guidance, foster care, educational and vocational training that should be available to ensure that children are dealt with in a manner appropriate to their well-being. Due to the fact that the majority of child offenders commit only minor offences, the UN Committee on the Rights of the Child ("the UNCRC") recommends that states parties avoid resorting children to formal judicial proceedings in any way as possible unless it is against the public interest. More importantly, any measures or sanctions imposed on children must fully respect their rights, and their reintegration into society must be the main priority (Ursula, 2008).

### **Effectiveness of diversion**

The empirical evidence of possible negative consequences of the formal criminal justice system has promoted the recognition of the principle of diversion as an alternative measure in handling juvenile delinquency since the beginning of the 1960s in most Western countries (Michael & James, 2014). The governing principle underlying the concept of diversion is that education should be the main priority instead of punishment, and this is called an educative diversion (John, 2002). Besides, when a child commits an offence, the focus must be to improve their life prospects instead of simply punishing them (Charlie, 2016).

There are numerous studies conducted on the mechanism and effectiveness of diversion in dealing with children in conflict with the law, making it popular and widely practiced in various legal systems across the world. First and foremost, diversion may protect children from the negative consequences of formal court adjudication, such as unjustified labelling and stigmatisation (Lesley & Susan, 2007). Instead of fostering social reintegration, children will be subjected to the negative impacts of labelling and stigmatisation due to their engagement with formal court sanctions. According to the labelling theory, someone labelled as an offender by the judicial system will begin to act in ways consistent with that label. As a result, diversion should be encouraged in order to minimise labelling of child offenders and unfavourable societal judgments (Peter, 1978).

Second, diverting children to various diversionary programs is much more effective than formal judicial system processing in terms of lowering recidivism (Mark, 2009). A recent study found that exposing children to direct interaction with the formal legal system increases the likelihood of re-offending. Evidence of the episodic and less serious nature of most juvenile crimes forms the criminological foundation of diversion. According to criminological studies, juvenile delinquency is a widespread and transient condition linked to age (Haslinda, 2015) <sup>[16]</sup>. When they reach the age of twenty or twenty-five, even so-called "repeat career offenders" give up their illegal lifestyle. Because most juvenile crimes are episodic and minor, diversion, or avoiding or reducing state engagement is viable. This technique is complemented by increased educational initiatives in the home or social community groups.

Thirdly, diversion is a more expedient and cost-effective method of case disposition than formal legal proceedings. A formal judicial process is time-consuming because it frequently contains complex legal issues, strict protocols, complicated legal intricacies, and tiresome procedures (Kathleen, 2000). Delays in the disposition of cases may have negative consequences for children. The court proceeding that takes a long time to settle cause hardship to the parents or guardians because it is hard for them to understand the process and cost them time, energy, and money to engage with the lawyers. Indeed, the official adjudication process imposes high financial costs on all parties (Nicholas, 2003). The parties are responsible for the costs of counsel, document preparation, transportation, expert witnesses, and facility use. As the UNCRC notes, diversion avoids stigma, results in positive outcomes for children, and is cost-effective. Thus, the use of diversion may assist parties to save money on the adjudication procedure while also reducing the caseload of the children's court (Mark & Alex, 2009).

### **Malaysian juvenile justice system**

After the Second World War in 1946, the Malayan Union government proposed a separate Act to treat juvenile delinquents. The Juvenile Courts Act ("the JCA"), which was introduced in 1947, was designed primarily to prohibit, if not wholly eliminate, the involvement of children and adolescents from taking to a life of crime (Kandiah, 1983) <sup>[19]</sup>. Through this Act, the Juvenile Court was established. It deals only with juvenile offenders, who, according to Section 2 of said Act, are people aged between ten and eighteen years. It has been created to implement social and legal measures for childcare control and is based on preventive, treatment, and rehabilitation ideas. The social science impact, which offered optimism that children's futures and young people might be improved by means of educated social service initiatives, encourages the creation of a distinct treatment

system for juvenile offenders. The idea of juvenile justice was that children and teenagers are not entirely accountable for their criminal behavior and that punishment for adults should be prevented (Kee, 2003) <sup>[20]</sup>.

Since Malaysia ratified the CRC on February 17, 1995, things have shifted. Following Malaysia's ratification of the CRC, it is required to put the CRC's provisions into effect to preserve children's legal rights. The best interests have received a lot of attention, and they should be the top consideration in any situation involving a child. In 2001, Malaysia introduced the Child Act, the primary statute governing the juvenile justice system, repealing and incorporating the JCA, the Women and Girls Protection Act 1973, and the Child Protection Act 1991 into one statute by virtue of Section 140 of the Child Act.

Despite the Act's implementation in 2001 and the improvements it brought, Malaysia's perspective on children who violate the law, particularly policies that define children's rights, has remained substantially constant. The Malaysian Child Act 2001 expressly specifies that any order must be in the child's best interests but fails to offer enough guidance on the concepts or criteria to be used in making best interest findings. Malaysia's commitments under the CRC have not resulted in significant changes in the way children who violate the law are treated (Andrews, 2018) <sup>[2]</sup>. Malaysia's response to children who are in confrontation with the law remains primarily dependent on formal police and court interventions, as well as institutional-based rehabilitation (Child Rights Coalition Malaysia, 2013). Hence, the requirement to prioritise the children's best interest and their social reintegration are not fully met.

After several years, the Child Act (Amendment) 2016 has been amended to respond to current needs and circumstances. The amendment, among other things, incorporated new provisions in response to several UNCRC observations and recommendations following Malaysia's initial report to the Committee in 2007. However, it is essential to note that there was no new provision relating to alternative measures in dealing with children, as recommended by the UNCRC Committee, inserted in the Child Act (Amendment) 2016. Thus, the opportunity to revisit the incorporation and implementation of alternative measures into the Act, in line with its primary purpose and philosophy, was missed. The original Preamble as enacted in 2001 remains, with no direct reference to the issue of child rights. Alternative measures in dealing with children in conflict with the law were not addressed adequately except for introducing a community service order ("the CSO"). The CSO is a rehabilitative program for children involved in crime and adult offenders, particularly the mother, father, and guardians of children who have been abused or neglected. As a result of the lack of an informal procedure in the Malaysian juvenile justice system, any child who violates the law will be subjected to the same harsh criminal process that adult criminals are subjected to (Samuri, 2009) <sup>[32]</sup>.

As a result, new global strategies, such as diversion, are not adequately reflected in law and practice. Malaysia's approach to juvenile justice is grounded in formal police and Court-based interventions and institution-based rehabilitation. Due to the absence of diversionary measures in the Malaysian juvenile justice system, the current system does not comply with the international. As a result, emerging worldwide methods such as diversion do not receive proper representation in this country's law and practice. Malaysia's juvenile justice system remains focused on the formal legal approach of police and court interventions and institution-based rehabilitation. Due to the lack of diversionary procedures in the Malaysian juvenile justice system, the existing system appears to be inconsistent with international standards for rehabilitating children who have run afoul of the law. Upon the ratification of the CRC, Malaysia is obliged to comply with the rules and guidelines set up by the international instruments. Regarding juveniles' delinquency and diversionary principles, the relevant international instruments involved are the CRC, Riyadh Guidelines, Tokyo Rules, and Beijing Rules. Therefore, Malaysia should start to reform its juvenile justice system in accordance with the international instruments primarily for the best interest of children because the rules and standards have been proven to be effective in dealing with children in conflict with the law.

### **Formal adjudication method**

It is evident that the current Malaysian juvenile justice system focusses on a formal adjudication system. Many disadvantages are coming from this formal system of juvenile justice. One of the disadvantages is that the rigidity of current Malaysian juvenile justice is inappropriate in dealing with children in conflict with the law. The formal justice system can be very complicated and eventually cause excessive pressures and trauma to the children in many aspects.

The process also will deprive the children of their childhood because they will spend a lot of time in court or detention centres rather than receive a proper education. Other than that, when children conflict with the law involved with the formal justice system, they will suffer negative labelling and stigmatisation from society, which will cause more possibilities for them to re-offend in the future.

Numerous studies conducted worldwide have revealed continually high recidivism rates among young individuals who receive punitive judicial interventions (Rachel & others, 2020). Rather than lessening the chance of recidivism, engagement in the formal court system is connected with an increased likelihood of future offending (Amélie & others, 2013). In Malaysia, the total number of juvenile cases in 2015 was 4,569, of which 417 of them were repeat offenders. The number kept increasing until 2018 when the total number of juvenile cases was 5,294, where 675 of them were arrested for repeated offences (Department of Statistics Malaysia). As a result, it is clear that the traditional adjudication method is inefficient in dealing with children who have run afoul of the law. The end goal of this system should be to make sure they can rehabilitate well and finally reintegrate into society.

### **Experiences from other Countries**

Due to the effectiveness of diversion in dealing with children in conflict with the law, it has been widely practiced in various legal systems across the world. The adoption of comparative method in this research is essential as it may enable the identification of flaws and weaknesses in the existing Malaysian juvenile justice system, which shall then be used as reference for legal reform in this area.

#### **The United Kingdom**

In England and Wales, government policy has specifically aimed to encourage a variety of alternative methods to prevent child and adolescent crime. As a result, their juvenile justice system is centred on the restorative justice philosophy. When children initially get into difficulty, act antisocially, or commit minor offences, they can usually be handled outside of the court system by the police and local government through a variety of orders and agreements. This is to prevent children from becoming entangled in the juvenile justice system too early while providing them with the assistance and support necessary to quit offending (Blakeman, 2008)<sup>[5]</sup>. When dealing with children who have broken the law, they employ rebuke and final warning as preventative measures. Additionally, they utilise Community punishments such as a supervision order, a community rehabilitation order, a fine, and a conditional discharge. They only use custodial sentences when the child or young person has committed serious crimes. The effectiveness of alternative measures and diversion can be seen when the number of first-time entrants into the youth justice system in England reduced from 75,270 in 2009 to 11,374 in 2019. The number of child arrests in Wales has decreased significantly from 13,889 in 2010 to 3,383 in 2018 (UNICEF, 2021)<sup>[36]</sup>. More importantly, statistics had shown that when the government decided to focus on alternative measures rather than a formal justice system, re-conviction rates for young people have declined significantly (Haines & others, 2013)<sup>[15]</sup>.

Another exciting form of restorative justice is youth conferencing, practiced in Northern Ireland. In Northern Ireland, its juvenile justice system is primarily influenced by the Justice Northern Ireland Act 2002, which established several alternative measures to youth custody, including a statutory-based restorative conferencing model for young offenders provided under Part IV of the said Act. Youth conferencing was introduced following recommendations from the Criminal Justice Review Group that restorative justice should be integrated into the juvenile justice system in Northern Ireland (McEvoy & Mika, 2002)<sup>[25]</sup>. The youth conference coordinator will present the prosecution or court with a strategy for dealing with the young person's offence. This juvenile conferencing is not meant for minor, first-time offenders, who are often dealt with by the police through a warning or police caution. Instead, they are intended for young offenders who would otherwise be prosecuted in court but are found fit for resolution through a restorative conference. The young person will escape a court appearance and criminal conviction if a conference plan is agreed upon and carried out satisfactorily. Except for a small number of very serious offences, the Act effectively makes conferencing necessary.

Northern Ireland's restorative youth conferencing procedures have been very effective, and the most crucial aspect of that success is that it was integrated into the criminal court system. As a result, the traditional prosecutions system was completely dismantled, and the government appropriately resourced and funded the new structure. More importantly, the process's effectiveness is dependent on its ability to deliver justice in a way that actively holds perpetrators accountable while also providing victims a voice. Restorative conferencing has produced high levels of satisfaction with both the process and outcomes for participants in Northern Ireland. It has finally been able to bring a more just response to crime for many. As a result, it is possible to conclude that the formal legal system and youth custody in the United Kingdom is extremely limited and only apply to individuals who have committed serious, violent, or sexual offences. One of the ultimate goals is to keep children from getting involved in crime in the first place and avoid punishment if possible (Youth Justice Agency, 2013). As a result of the Youth Diversion Scheme and other restorative measures implemented by the government, the number of young people in prison in the United Kingdom has reduced dramatically (Maclure, Campbell & Dufresne, 2003)<sup>[23]</sup>.

#### **New Zealand**

In New Zealand, the youth justice system is mainly built on the concept of restorative justice, which is defined as a process in which all parties affected by an injustice get an opportunity to examine how they have been harmed and decide how to repair the harm (John, 2002). The goal is to keep children and adolescents out of the formal criminal justice system. The Children, Young Persons and Their Families 1989 ("the CYPF Act") is the country's primary piece of legislation since it is the long-established statute that governs governmental involvement relating to children, young people, and their families in New Zealand (Ministry of Social Development New Zealand, 2012). The CYPF Act establishes a comprehensive statutory diversion scheme, as evidenced by the Act's guiding principle for youth justice, which states that criminal proceedings against a child or young person should not be initiated if an alternative means of resolving the matter exists, unless it is contrary to the public interest. Additionally, the CYPF Act places a legal priority on addressing the needs and reintegration of adolescent offenders into their communities and increasing youth and family engagement in decision-making (Morris & Maxwell, 1993)<sup>[27]</sup>.

In New Zealand, if it has been decided that a sanction should be imposed on the child who has committed an offence, the authorities should choose the most appropriate form according to the circumstances. The chosen sanction is for the best interest of the child offender in terms of his development. The CYPF Act begins the

youth justice procedure when a police officer suspects a child committing an offence. Depending on the age of the child and the seriousness of the alleged offence, several responses are available to the police, which are warnings, alternative action, made a referral to Family Group Conferences ('FGC'), and arrest.

Firstly, for the minor offence committed by first-time child offenders, the attending police officer usually will discharge the child after issuing them an immediate formal warning, followed up by a letter from the Youth Aid Officer acknowledging the warning. This is the most common action taken by the police when dealing with child offenders, as statistics show that almost 50% of youth offending is settled by way of warnings. Next, if the circumstances show that warning is considered inappropriate, the police will consider bringing the matter to the next level, which is an alternative action program. Alternative action is a diversion plan devised by a Youth Aid Officer and may involve an apology, reparation, or community service. In this case, Youth Aid, a specialist division of the New Zealand Police that deals primarily with youth offending, is in charge. Whether the nature of the offence is more serious than minor or whether the police have dealt with the offender on previous instances involving some types of wrongdoing are among the factors considered. Although the CYPF Act does not directly limit what can be utilised as an alternative action, the efforts should emphasise restoration and rehabilitation and the importance of achieving accountability for acts in ways that are offence-linked (Green & others, 2020) <sup>[13]</sup>. The goal is to find solutions suited to each young person's unique circumstances that satisfy victims, reduce re-offending, and integrate or reintegrate young people into their communities. The Police Youth Aid Division is in charge of ensuring that the responsibilities assigned are completed. If the agreed-upon alternative action is carried out effectively, the police will not file charges and close the case.

Next, where the offending cannot be dealt with by way of warning or alternative action, the police will indicate an indication to charge, but there will be no arrest. This is when a Youth Aid officer will refer the matter to a Youth Justice Coordinator to convene the FGC. The FGC scheme was introduced in New Zealand as part of a reform plan to keep young people out of trouble with the law through police cautions or informal remedies. Young persons can only be prosecuted if they have been arrested and reported to the FGC by the police. The courts are compelled to send criminals for FGC, and they must consider the conference's recommendations before proceeding with the case. In general, cases are not dealt with until they have received a conference recommendation (Morris & Maxwell, 1998) <sup>[26]</sup>. If all FGC participants agree, the problem will be settled as decided by the FGC, and no Youth Court participation will be required until the agreed-upon actions are not carried out. After participating in the FGC, the police frequently decide not to pursue their initial purpose to charge a young person.

Finally, arrests will only be made in specific instances. Only 16% of cases involving children or young people in New Zealand are apprehended, and a charge is filed in the Youth Court each year. As previously stated, diversionary methods work to keep young people out of the Youth Court unless they have committed major or recurring offences. This is made possible in part by the substantial limitations placed on the police's ability to arrest a minor. The CYPF Act puts severe restrictions on arrest, and in most situations, a young person cannot be detained unless it is absolutely required. These constraints do not apply if the crime is purely indictable, such as murder or sexual offending, and the arresting officer believes that arrest is necessary for the public interest. Before making an arrest, the police must have a reasonable belief that the young person has committed a severe criminal offence and that the arrest is in the public interest.

In summary, there are numerous advantages to the New Zealand juvenile justice system. In New Zealand, it is believed that if an offender admits their wrongdoing, attends an FGC, exhibits remorse, and indicates they will not re-offend, there is a more significant chance they will not re-offend (O'Driscoll, 2008). It has successfully diverted the majority of young offenders from criminal courts, and institutional use has been greatly reduced (Morris & Maxwell, 1998) <sup>[26]</sup>. Families are involved in decision-making processes and, in most cases, take responsibility for their children. As an alternative to foster care and institutions, extended families are becoming more active in the ongoing maintenance of their kin. Because adolescent offenders are more vulnerable than adult offenders, the government recognises and protects the rights of children and young people as a unique group and responds to youth offending individually (O'Driscoll, 2008). Therefore, Malaysia should learn from the New Zealand youth justice system, especially regarding varieties of alternative measures provided to control juvenile delinquency.

### **Other countries**

Apart from the United Kingdom and New Zealand, some other countries have incorporated alternative methods into their juvenile justice systems. For example, in Canada, they feel that the community is the best support system for young offenders. That community-based intervention has been a significant success in reducing re-offending (Johnson, 2015) <sup>[17]</sup>. The Youth Criminal Justice Act 2003 ("the YCJA") is the primary legislation governing how young offenders are dealt with in Canada. Police and community organisations will respond to adolescent misbehaviour in alternative ways, except in the most serious or violent cases, where the court is obligated to intervene (Bala & Roberts, 2006) <sup>[4]</sup>. They place a far higher focus on juvenile offender rehabilitation. Before and during their community sentence, offenders are allocated a youth worker who will assist them in planning for their reintegration, which may include periods of 'reintegration leave' to prepare for their return to the community (Department of Justice, Canada, 2012). Over the first five years following the Act, the number of young people sentenced to jail for property offences decreased by 50% across nine Canadian

jurisdictions. The total number of young people convicted for any offence decreased by 36% (Elwick & others, 2013)<sup>[12]</sup>.

Similarly, Scotland's youth justice system takes a welfare approach to youth justice, encouraging stakeholders to employ minimum and early engagement with juvenile offenders. Scotland recently adopted "alternative punishments for juvenile offenders to promote rehabilitation rather than punishment." (Johnson, 2015)<sup>[17]</sup>. Thus, Scotland's whole juvenile justice system is founded on policies and practices to rehabilitate young offenders. While juvenile courts have the authority to impose "community service, probation, drug treatment, liberty limitations, supervised attendance, fines, deferred sentences, or discharge." (Burman & others, 2006)<sup>[7]</sup>. These punishments are severely enforced, and youth offenders who violate them receive jail sentences.

Furthermore, in Finland, the general approach to youth crime is to avoid incarcerating those under the age of 18 (Justice Policy Institute, 2011), instead of relying on 'care orders' that place a premium on welfare and the involvement of social agencies and assistance (Pitts & Kuula, 2005)<sup>[31]</sup>. These care orders include supervised activities and programs to enhance young people's community skills (Criminal Sanctions Agency, 2012). While juveniles may be placed under supervision for the duration of their sentence, they cannot be imprisoned (Criminal Sanctions Agency, 2012). Instead of youth jails, Finland today has six state-operated and two privately managed reformatories that provide residential care and education. Special Care Units inside these reformatories are reserved for exceptionally volatile and vulnerable youngsters and, unlike other units within the facility, restrict their inhabitants' independence. The welfare services in Finland view reformatory placement as a 'last resort,' as indicated by the low number of young people in detention in the country (Elwick & others, 2013)<sup>[12]</sup>.

In short, it can be summed up that most of the legal systems around the world have already adopted and integrated various forms of diversionary measures into their juvenile justice systems. Reference to these legal systems persuasively discloses that the implementation of diversion in these legal systems effectively reduces the number of juvenile rates and significantly reduces recidivism rates among child offenders. For these reasons, experiences from other countries on how to properly utilise diversion shall be learned.

### **Steps Towards Reformation**

Rather than submitting children in violation of the law to formal legal processes, there are a variety of alternative approaches advocated by international instruments that have been demonstrated to be effective when implemented in many nations' adolescent justice systems. These measures are regarded as reasonable and proportionate to the child's well-being and the nature of the offence. As a result, the Malaysian legislature is well-timed to overhaul the country's present juvenile justice system by including diversionary tactics as alternative measures for dealing with youngsters who have violated the law.

First and foremost, the principal statute governing child delinquency, the CA, should be reviewed and amended by inserting a comprehensive chapter containing provisions relating to diversionary measures. The chapter should elaborate on the procedural aspects of diversion measures to facilitate its smooth implementation. As is the case in Northern Ireland, diversion must be integrated into the criminal court system in order to be properly utilised. Along with the change, the government should adequately resource and subsidise the new strategy. In practice, this meant that police officers, prosecutors, defence attorneys, and magistrates would receive training on the new approach's implementation.

Generally, diversion can be divided into two categories: diversion by "non-intervention" and diversion by "formal intervention." The former category does not require the child to be in contact with formal justice intervention, in which the police officer can dismiss the case by way of reprimands or warnings (Mustaffa, 2018). This type of diversion should be prioritised in most children's cases, especially when the offences are so petty and minor. At this level, the police officer should be given the discretion to discharge such children in the presence of their parents or guardian without leaving any criminal records. Nonetheless, an informal record should be kept by the police to indicate that the said child has been given a warning for the first time. If the child re-offends in the future, the police shall give him a final warning if it is appropriate to the circumstance. If the child re-offends more than twice, the police may consider bringing the child to another level of diversion.

On the other hand, diversion by formal intervention is suggested by local academicians to focus mainly on combining restorative justice with educational measures to deal with more serious cases applicable to children who commit criminal offences punishable with ten years of imprisonment and below (Mustaffa, 2018). This type of diversion may include several alternative measures such as minor fines, victim-offender mediation, counselling and vocational training programs, community service, and youth conferencing. At this level, the children's parents or guardians should be involved in the process to help decide what is best for their children. Nevertheless, it is to be noted that the interest of the victims should also be taken into consideration in any of these processes. In most situations involving children in conflict with the law, the authorities shall bear in mind that the formal juvenile court dispositions should be preserved only for persistent or more severe child offenders. Next, to successfully implement the diversionary measures into the Malaysian juvenile justice system, it is crucial to establish a government-based juvenile justice board to be in charge of the process of diversion, especially in the level of diversion by formal intervention. The idea is that once the police believe that the child cannot be discharged merely by warning as it is not appropriate in certain circumstances, this is when the board comes in handy. The board will act as a coordinator and advisor to determine what kind of measures apply to the child based on the child's age and severity of the offence. In addition, the board may work together with probation officers under the Children's Division of Social Welfare Department across the country that is

currently responsible for providing probation reports to the Court for Children containing information about the children, such as his general conduct or attitude. Home surroundings and educational background. Apart from that, the authorities may also collaborate with non-governmental organisations and community groups to deal with measures such as searching for foster care and supervising the child offenders whether they comply with community service orders or not.

In short, extensive changes to the legislation and procedural aspects need to be made with a proper plan and cooperation by the government and relevant stakeholders in this field. The abovementioned matters are among the essential features in incorporating diversionary measures into the Malaysian juvenile justice system that should be considered. A general reformation towards a better system in handling children in conflict with the law is not impossible with earnest efforts and commitments from all relevant parties.

### Conclusion

Based on various statistics and studies around the world, it can be concluded that diversion is a much better way to deal with child delinquency compared to the formal adjudication method that the Malaysian juvenile justice system has practiced for a long time ago until now (Junger-Tas and Dunkel, 2009)<sup>[18]</sup>. First-time offenders who were 'diverted' instead of sanctioning had much lower re-conviction rates. Even for repeat offenders, re-offending rates were lower following informal sanctions than after official sanctions (Junger-Tas and Dunkel, 2009)<sup>[18]</sup>. Not only has diversion been proven to be effective in reducing recidivism rates among child offenders and is very cost-effective, but the workload of cases from the court will also be reduced. With significant advantages of implementing diversion, there is no reason for Malaysia to hesitate to take real action to implement diversion and prioritise the principle of restorative justice in the juvenile justice system. It is proven that restorative justice does less harm than a court process and that people view the process as fairer than what happens in court (Daly, 2000)<sup>[10]</sup>. According to international studies, most victims are satisfied with the outcomes of restorative interventions, which often try to offer victims some sort of compensation while also assisting them in recovering from the repercussions of crime. Restorative justice measures for juvenile offenders provide a process that holds them accountable while also making amends and making things right. When children are dealt with through the traditional criminal justice system, they are more likely to do more harm than good. As a result, considerable reform is required as soon as possible for a brighter future in handling children in conflict with the law, not only for the sake of the children but also for the advancement of Malaysian society.

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