

OCA CIRCULAR NO. 115-2006, August 10, 2006

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TO:

ALL JUDGES OF THE FAMILY COURTS AND RTCs HEARING FAMILY AND YOUTH CASES

SUBJECT:

GUIDELINES ON THE TRANSITORY PROVISIONS OF RA 9344 OR THE JUVENILE JUSTICE AND WELFARE ACT

WHEREAS, Republic Act No. 9344 otherwise known as the Juvenile Justice and Welfare Act took effect on 20 May 2006;

WHEREAS, the Juvenile Justice and Welfare Council (JJWC) created under the Act is directed to issue the Implementing Rules and Regulations for the implementation of the provisions of the Act within ninety (90) days from its effectivity;

WHEREAS, there is urgent need for existing Family Courts and all RTC branches hearing family and youth cases for a uniform procedure in handling cases involving children or juveniles in conflict with the law in the meantime that the implementing rules and regulations promulgated;

NOW THEREFORE, the following interim Guidelines are hereby issued for the guidance of the courts concerned.

I. Coverage:

These guidelines cover children in conflict with the law (CICL) who are either currently detained pending trial, on bail, release on recognizance, undergoing diversion, on probation, on suspended sentence or serving sentence after conviction.

The law mandates that where the CICL is 15 years old and below at the time of the commission of the offense with which he/she is charged, the case against him shall immediately be dismissed and the child referred to the Local Social Welfare and Development Officer. This is so because the age of criminal irresponsibility has been raised from 9 to 15 years old.

II. Procedure in the Management of CICL cases:

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If the child was 15 years old or below at the time of the commission of the offense charged, and is detained pending trial, on bail or under release on recognizance, is under diversion, or having been found guilty is under suspended sentence or on probation, before the court can order the dismissal of his case, a Motion to Dismiss must first be filed, with due notice to all parties and their counsel. The Motion shall be set for hearing. If the grounds for the motion are proved, the court shall immediately order the dismissal of the case and refer the child

to the local social welfare and development officer. The court shall furnish the Juvenile Justice and Welfare Council (JJWC) copy of the order of dismissal.

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If the child was above 15 but below 18 years old at the time of the commission of the offense charged, is on bail, or has been released on recognizance, or is detained pending trial, trial shall continue and the prosecution must prove guilt beyond reasonable doubt to support a judgment of conviction.

If the child is detained pending trial, the court shall determine if continued detention is necessary. If it is not, then the court shall determine the appropriate alternative(s) for detention. If necessary and the child is detained with adult detention prisoners, the court shall immediately order the child to be transferred to a separate youth detention or reception center.

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If the child was 15 years old or below at the time of the commission of the offense charged, and having been convicted, is currently serving sentence, the proper habeas corpus case may be filed in behalf of the child before a regular court.

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If the child was above 15 but below 18 at the time of the commission of the offense charged, and having been convicted, is under suspended sentence, the child shall continue with his/her rehabilitation program.

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If the child reaches 18 while undergoing diversion or pending determination of diversion:

a) If alleged to have committed the offense charged while 15 years old or below, the case should be dismissed/terminated upon proper motion and the child referred to the local social welfare and development officer. Copy of the order of dismissal/termination shall be furnished the JJWC.

b) If alleged to have committed the offense while above 15 but below 18, and is undergoing diversion, diversion shall continue. If the diversion process is still ongoing, the process should continue to determine whether the child should be diverted or not.

If diversion is subsequently recommended, diversion shall proceed. If not recommended, formal trial shall proceed, and if trial results in conviction, the child may avail of suspended sentence or probation if so qualified.

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If the child was above 15 but below 18 years of age at the time of the commission of the offense, has been convicted and is currently serving sentence, he/she shall be entitled to the appropriate dispositions provided for by the Act, including adjustment of sentence or release if so qualified.

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If the criminal case against a child is dismissed on the ground of criminal irresponsibility, or the child, after trial, is acquitted and the court refers him/her to the local social welfare and development officer, in no case can the court order the child to undergo rehabilitation or detention center or any institution where his liberty of abode or movement is restrained, unless the child through his parents/guardians voluntarily consents thereto.

If rehabilitation is necessary, the voluntary and free consent of the child has to be obtained first before he can be subjected to rehabilitative measures or other restrictions on his freedom of movement.

- The dismissal of the case carries with it the dismissal without prejudice of the civil aspect if deemed instituted in the criminal case.

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