



LEGAL SERVICE
 GENERAL ADMINISTRATION AND SUPPORT
 SERVICES GROUP
 DSWD-GF-004 | REV 03 | 22 SEP 2023

DRN: LS-L-LO-24-10-94819-C

MEMORANDUM

FOR : **EDMON B. MONTEVERDE**
 Director IV, Program Management Bureau (PMB)

FROM : **THE ASSISTANT SECRETARY FOR GENERAL
 ADMINISTRATION AND SUPPORT SERVICES GROUP
 AND CONCURRENT OFFICER-IN-CHARGE, LEGAL
 SERVICE**

SUBJECT : **LEGAL OPINION ON THE CASES OF FEMALE CHILD IN
 CONFLICT WITH LAW WHO HAVE REACHED THE AGE OF
 MAJORITY**

DATE : **02 DECEMBER 2024**

This is in reference to your Memorandum¹ received by the Legal Service (LS) requesting guidance on the following concerns:

1. Whether an individual who was a minor at the time of committing an offense but reached the age of majority during trial/ upon promulgation of judgment is still considered a Child in Conflict with the Law (CICL);
2. *Where should a CICL, who has reached the age of majority, have her rehabilitation; and*
3. Whether HFW can manifest to the Court that referrals to the Center should consider NOT only the age of the client but also the Center's mandate and the specific nature of the client's circumstances."

Comments

1. **Whether an individual who was a minor at the time of committing an offense but reached the age of majority during trial / upon promulgation of judgment is still considered a Child in Conflict with the Law (CICL).**

Yes, an individual who was a minor at the time of committing an offense but reached the age of majority during trial/ upon promulgation of judgment is still considered a Child in Conflict with the Law (CICL).

Pursuant to Republic Act No. 9344 (RA No. 9344) otherwise known as "Juvenile Justice and Welfare Act of 2006" a **CICL** is referred to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.²

RA 9344 as amended, provides that:

¹ Annex A – Memorandum from PMB dated 07 October 2024

² Section 4. Definition of Terms (e)



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.

In *People v. Sarcia*³ and *People v. Mantalaba*⁴, the Supreme Court cited Section 38 of RA 9344, as amended, to clarify the sentencing of offenders who were minors at the time of committing the offense but were already beyond 21 years old when judgment was rendered. According to the Court, while a conviction may be rendered, the penalty imposed should take into account the mitigating circumstance of minority, as provided under the second paragraph of Article 68 of the Revised Penal Code.

Additionally, Section 51 of RA 9344, as amended, prescribes that instead of confinement in regular penal institutions, these offenders should serve their sentences in agricultural camps or other training facilities overseen by the Bureau of Corrections in coordination with the Department of Social Welfare and Development (DSWD). This alternative aims to support rehabilitation outside of standard penal facilities.

Further reinforcing this approach, the Supreme Court in the *En Banc* decision of *People v. Gambao*⁵ emphasized that the age of the child in conflict with the law at the time of judgment is irrelevant for the application of Section 51. What matters is the offender's age at the time of the offense. Consequently, if an offender was a minor when the crime was committed, they cannot be confined in regular penal institutions with hardened criminals, regardless of their age at the time of judgment.

Thus, as long as the offender is a minor at the time of commission of the crime, regardless of her age at the time of promulgation of the judgment, she cannot be placed together with hardened criminals in regular penal institutions. In case of conviction, as long as the offender is a minor at the time of the commission of the crime, she shall not be made to serve sentence in regular penal institutions.

2. Where should a CICL, who has reached the age of majority, have her rehabilitation?

The CICL who attains the age of majority may still remain in the care of DSWD, in the absence of a Regional Rehabilitation Center for Youth for Girls and Bahay Pag-asa within the locality. The other option is to transfer the CICL to a licensed and/or accredited NGOs within the jurisdiction of the Court where the case of CICL is pending.

This is pursuant to the Juvenile Justice and Welfare Council (JJWC) Council Resolution No. 2, series of 2014 entitled "Revised Rules and Regulations

³ *People of the Philippines v. Richard Sarcia*, GR no. 169641 dated 10 September 2009

⁴ *People of the Philippines v. Allen Mantalaba*, GR no. 186227 dated 20 July 2017

⁵ *People of the Philippines v. Halil Gambao*, GR no. 172707 dated 01 October 2013

Implementing Republic Act No. 9344, as amended by R.A. 10630”, a CICL shall not be detained to jail during the pendency of her trial, thus:

“Rule 64.a. No Detention in a Jail Pending Trial

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A CICL who reaches the age of eighteen (18) years while in the custody of an institution for the youth, during the pendency of the criminal case, shall not be transferred to a jail for adults.⁶
(Underscoring and emphasis supplied)

The commitment to the care of the Department of CICLs is sanctioned under Rule 64(a) of the Revised Rules and Regulations Implementing Republic Act No. 9344, as amended by R.A. 10630, viz:

“Rule 64.a. No Detention in a Jail Pending Trial

xxx

In the absence of a “Bahay Pag-asa,” the child in conflict with the law may be committed to the care of the DSWD or a licensed and/or accredited NGOs, within the jurisdiction of the Court. The center or agency concerned shall be responsible for the child’s appearance in Court, whenever required.⁷ xxx” (Underscoring and emphasis supplied)

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Considering that the social case management aspect is within the expertise of the Proponent, we leave the propriety of such transfer to the Proponent, in coordination with JJWC, either to the **Haven for Women (HFW)** or to a licensed or accredited NGO within the Court’s jurisdiction.

3. Whether HFW can manifest to the Court that referrals to the Center should consider NOT only the age of the client but also the Center’s mandate and the specific nature of the client’s circumstances.

Yes, HFW can manifest to the Court that referrals to the Center should consider NOT only the age of the client but also the Center’s mandate and the specific nature of the client’s circumstances.

The HFW provides residential care and comprehensive support services to female survivors of abuse, with ages 18-59 years old, and their dependents, promoting healing, recovery, and empowerment.⁸ Among the integrated/holistic services are individual and group counseling, medical and legal assistance, self- awareness sessions that will build women victim survivors self-esteem, stress reduction/crisis

⁶ Rule 64 a, JJWC Council Resolution No. 2, series of 2014 entitled “Revised Rules and Regulations Implementing Republic Act No. 9344, as amended by R.A. 10630 dated 11 August 2014

⁷ Juvenile Justice and Welfare Council (JJWC) Council Resolution No. 2, series of 2014 dated 11 August 2014

⁸ Program Overview of Haven for Women, Program and Services, DSWD Website: <https://fo1.dswd.gov.ph/programs/center-based-services/haven-for-women/#:~:text=Section%2040%20mandates%20the%20DSWD,rehabilitative%20programs%20and%20livelihood%20assistance.&text=This%20is%20the%20core%20service,the%20Case%20Manager%20%2F%20Social%20Worker.>

management sessions, livelihood/entrepreneurship development, spiritual enrichment and other activities along socio-cultural scheme.

The establishment of HFW is anchored under R.A. No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, to wit:

“Section 40. Mandatory Programs and Services for Victims. – The DSWD, and LGU's shall provide the victims temporary shelters, provide counseling, psycho-social services and /or, recovery, rehabilitation programs and livelihood assistance.”

On the other hand, the **Home for Girls (HFG)** is primarily a residential treatment facility for female minors, with age 7 to 17 years old, who have been removed from their families due to sexual abuse or exploitation and are under state custody. These female minors are referred by the police, Government and Non-Government Organizations, Local Government Units, family of the victims, or concerned citizens.⁹

HFG is founded on the principles of Republic Act No. 7610, 'An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination,' specifically, on State intervention when parents/guardians fail to protect children; protection from abuse, exploitation, and discrimination; and support services for child victims.¹⁰

As can be gleaned from above discussion, HFG and HFW aim to safeguard and rehabilitate victims of abuse, exploitation, and discrimination. Conversely, RA 9344/JJWC Resolution focus on diverting¹¹ and intervening¹² in CICL cases, promoting the CICL's rehabilitation and well-being.

The Proponent mentioned that in the absence of the Regional Rehabilitation Center for Youth for Girls and Bahay Pag-asa within the locality, the HFG has been accepting girls in conflict with the law. Additionally, the Proponent stated that when the CICL of HFG reaches the age of majority, HFG would manifest to the court of their transfer to the HFW and this manifestation is usually allowed by the Court, to wit:

“When the Child in Conflict with Law (CICL) clients of HFG reach the age of majority or 18 years old, the HFG would manifest to the respective courts that the CICL be transferred to the Haven for Women (HFW) because of their age. This manifestation is usually allowed by the court.”

To this arrangement, the Proponent stated the following:

⁹ Program Overview, <https://fo1.dswd.gov.ph/programs/center-based-services/home-for-girls/#:~:text=To%20provide%20protection%20and%20rehabilitation,to%20their%20families%20and%20community.>

¹⁰ Sec. 2, Art. 1, RA 7610

¹¹ Revised Implementing Rules and Regulations of RA No. 9344 as amended by RA No. 10630, Rule 2, Definition of Terms, Item No. (13) "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 the child's social, cultural, economic, psychological or educational background, without resorting to formal court proceedings

¹² Revised Implementing Rules and Regulations of RA No. 9344 as amended by RA No. 10630, Rule 2, Definition of Terms, Item No. (13) "Intervention" generally refers to programmatic approaches or systematic social protection programs for children that are designed and intended to:

- a. Promote the physical and social well-being of the children;
- b. Avert or prevent juvenile delinquency from occurring; and
- c. Stop or prevent children from re-offending.

"Such transfer is not favorable on the side of HFW since they are not designed to manage cases of CICL even if they reached 18 years of age as the HFW is designed for survivors of Violence against Women (VAW) and other forms of gender-based violence and considering they have also dependents with them in the center. Hence, the program and services of the HFW are focused on the empowerment and healing of women, along with their dependents. On the other hand, CICL's need for rehabilitation is by far different from what is being offered in the Haven for Women. Sometimes, the aggression of CICLs does not help with victim-survivors of gender-based violence."

Further, the HFG argued that:

"Since the CICL is already 18 years old, the client should be admitted to HFW, however, the latter asserts that the client's need for rehabilitation is the opposite of what they provide who are all victim-survivors and not instigators. Hence, the client should be rehabilitated as CICL and not as victim-survivor despite reaching the age of 18."

This level opines that HFW can submit its mandate to the court and request that the referral should not be based solely on the age but on the mandate of the Center and the nature of the client as well. The said request should be included in the manifestation by the HFW in the court proceedings. This manifestation will be then ruled upon by the court of competent jurisdiction.

Lastly, please be informed that the foregoing legal opinion is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

For your consideration. Thank you.



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Approved by:



ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG ^{AT}