

**REVISED RULE ON
CHILDREN IN CONFLICT WITH THE LAW**

Section 1. *Applicability of the Rule.* – This Rule shall apply to all criminal cases involving children in conflict with the law.

A child in conflict with the law is a person who at the time of the commission of the offense is below eighteen years old but not less than fifteen (15) years and one (1) day old.

This Rule shall not apply to a person who at the time of the initial contact as defined in Sec. 4(q) of this Rule shall have reached the age of eighteen (18) in which case, the regular rules on criminal procedure shall apply without prejudice to the rights granted under Secs. 53, 54, 55 and 56 of this Rule.

Section 2. *Objective.* – The objective of this Rule is to ensure that the justice system treats every child in conflict with the law in a manner that recognizes and upholds human dignity and worth, and instills in the child respect for the fundamental rights and freedom of others. The Rule considers the developmental age of the child and the desirability of the child's reintegration in and assumption of a

constructive role in society in accordance with the principles of balanced and restorative justice.

To attain this objective, the Rule seeks:

(a) To provide child-appropriate proceedings, including programs and services for crime prevention, diversion, rehabilitation, re-integration and aftercare to ensure the normal growth and development of the child in conflict with the law;

(b) To provide procedural rules dealing with children in conflict with the law that take into account their distinct circumstances, assure all parties of a fair hearing with each party's constitutional and statutory rights recognized and respected, and ensure that appropriate disposition measures are implemented by law enforcers, social services and the courts;

(c) To divert from the formal justice system children in conflict with the law who can be cared for or placed under community continuum alternative programs of treatment, training and rehabilitation in conformity with the principles of balanced and restorative justice;

(d) To deal with the child in a family environment whenever possible, and to separate the child from the parents only when necessary for the child's welfare or in the interest of public safety;

(e) To remove from children in conflict with the law the stigma of criminality and criminal behavior;

(f) To promote, facilitate and implement in administrative and judicial proceedings respect for the views of the child;

(g) To provide for the care, protection and wholesome moral, mental, and physical development of children in conflict with the law; and

(h) To promote and protect the rights and interest of children as zones of peace in situations of armed conflict, but who are alleged to be in conflict with the law. (a)

Section 3. *Interpretation.* – This Rule shall be interpreted liberally to promote the best interest of the child in conformity with Philippine laws, the United Nations' Convention on the Rights of the Child and relevant international treaties and protocols.

Section 4. *Definitions.* – As used in this Rule,

(a) *Age of criminal responsibility* is the age when a child, fifteen (15) years and one (1) day old or above but below eighteen (18) years of age, commits an offense with discernment.

(b) *Bail* refers to the security given for the release of the child in custody of the law, furnished by the child, the child's parent,

guardian, or a bondsman, to guarantee the child's appearance before any court. Bail may be posted in a form such as corporate security, property bond or cash deposit.

(c) *Balanced and Restorative Justice* is a principle in juvenile justice that requires a process of resolving conflicts with the participation of the victim, the child in conflict with the law, and the community. It seeks to obtain reparation for the victim; reconciliation of the victim, the child in conflict with the law, and the community, and the reassurance that the child in conflict with the law can be reintegrated into society. It also enhances public safety by involving the victim, the child in conflict with the law, and the community in prevention strategies. (a)

(d) *Best interest of the child* refers to the totality of the circumstances and conditions that 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) *Case study report* is a written report on the social case inquiry conducted by the social worker of the local government unit or the Department of Social Welfare and Development or by the social

worker designated by the court on the social, cultural, economic and legal status or condition of the child in conflict with the law. It shall include, among other matters, the child's developmental age; educational attainment; family and social relationships; the quality of the child's peer group; the strengths and weaknesses of the family; parental control; the child's attitude towards the offense; the harm or damage done to others resulting from the offense; record of prior offenses, if any; and the attitude of the parents towards the child's responsibility for the offense. The social worker shall also include an initial determination of the child's discernment in the commission of the offense. (a)

(f) *Community continuum* refers to the after-care of a child in conflict with the law and is a community-based group therapy process that provides continuous guidance and support to the child in conflict with the law upon release from rehabilitation and subsequent reintegration into society. Community continuum for the child includes timely release, suitable residence, food, clothing, available employment and sufficient means to facilitate successful reintegration in society which shall be provided by the concerned local government unit and other appropriate agencies. (n)

(g) *Corporal punishment* is any kind of physical punishment

inflicted on the body as distinguished from pecuniary punishment or fine.

(h) *Court* refers to a designated family court or in places where there are no designated family courts, any regional trial court hearing family and youth cases. (a)

(i) *Deprivation of Liberty* refers to any form of detention or imprisonment, or to the placement of a child in conflict with the law in a public or private custodial setting, from which the child in conflict with the law is not permitted to leave at will except by order of any judicial or administrative authority. (a)

(j) *Discernment* means the capacity of the child at the time of the commission of the offense to understand the difference between right and wrong and the consequences of the wrongful act.

(k) *Disposition conference* is a meeting held by the court with the social worker who prepared the case study report, together with the child in conflict with the law and the parents or guardian *ad litem*, and the child's counsel for the purpose of determining the disposition measures appropriate to the personal and special circumstances of the child.

(l) *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 adjudication.

(m) *Diversion programs* refer to programs the child in conflict the law is required to undergo in lieu of formal court proceedings.

(n) *Expedited Transfer of a Child* is a process where a child who commits an offense is immediately brought by the apprehending officer or private individual to a social worker for preliminary determination of discernment. (n)

(o) *Guardian Ad Litem* is a person appointed by the court to protect the best interest of the child. (a)

(p) *In conflict with the law* means taken into custody, detained, or charged with the commission of an act defined and punished as a crime or offense under the law, including violations of traffic laws, rules and regulations, and ordinances of local government units. (a)

(q) *Initial contact* 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 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. (n)

(r) *Intake report* is the initial written report containing the personal and other circumstances of the child in conflict with the law prepared by the social worker assigned to assist the child entering the justice system.

(s) *Intervention programs* refer to a series of individualized treatment activities or programs designed to address issues that caused the child to commit an offense. These may include counseling, skills training, education, and other activities that are aimed to improve and enhance the child's psychological, emotional and psycho-social well-being. (n)

(t) *Law Enforcement Officer* refers to the person in authority or an agent as defined in Article 152 of the Revised Penal Code, including a *barangay tanod*. (n)

(u) *Non-Serious Offense* refers to an offense where the imposable penalty for the crime committed is not more than six (6) years imprisonment. (n)

(v) *Probation* is an alternative disposition, ordered by the court, under which a child in conflict with the law is released after

conviction and sentence and permitted to remain at home or with an appropriate custodian, subject to certain terms and conditions imposed by the court.

(w) *Recognizance* is an undertaking in lieu of a bond, assumed by a mother or father, or appropriate guardian or custodian, or in their absence, the nearest relative, or any responsible member of the community to assume custody of a child in conflict with the law and be responsible for the appearance of the child in court whenever required during the pendency of the case. (a)

(x) *Segregation* refers to the procedure where, upon initial contact with a child alleged to have committed an offense, the law enforcer places the child in a separate and different area from adult detention prisoners, and ensures that female children are separated from male children. (n)

(y) *Serious offense* refers to an offense where the imposable penalty for the offense committed exceeds six (6) years imprisonment. (a)

(z) *Status offenses* refer to offenses that discriminate only against a child, such as curfew violations, truancy, parental disobedience and the like. (n)

(aa) *Suspended sentence* is the holding in abeyance of the

service of the sentence imposed by the court upon a finding of guilt of the child in conflict with the law, whereby the child undergoes rehabilitation within a fixed period under such terms and conditions as may be ordered by the court. (n)

(bb) *Victimless Crimes* refer to offenses where there are no private offended parties. (n)

(cc) *Youth detention home* refers to a 24-hour child-caring institution managed by accredited local government units and licensed and/or accredited non-government organizations providing short-term residential care for children in conflict with the law and where the child may be physically restricted by order of any judicial, administrative or other public authority, and from which the child is not permitted to leave at will, pending court disposition of the charge or transfer to other agencies or jurisdiction. (a)

(dd) *Youth rehabilitation center* refers to a 24-hour residential care facility managed by the Department of Social Welfare and Development, local government units, licensed and/or accredited non-government organizations monitored by the Department of Social Welfare and Development. The Center provides care, treatment and rehabilitation services for children in conflict with the law under a structured therapeutic environment through the guidance of a trained

staff, where the physical mobility of the children may be restricted pending court disposition of their cases. (a)

Section 5. *Determination of Age.* – The child in conflict with the law shall enjoy the presumption of minority and shall enjoy all the rights of a child in conflict with the law until proven to be eighteen years old or older at the time of the commission of the offense. The age of the child shall be determined according to the following rules:

(1) The best evidence to prove the age of a child is an original or certified true copy of the certificate of live birth;

(2) In the absence of a certificate of live birth, similar authentic documents such as baptismal certificates and school records or any pertinent document that shows the date of birth of the child;

(3) In the absence of the documents under paragraphs 1 and 2 of this section due to loss, destruction or unavailability, the testimony of the child, the testimony of a member of the family related to the child by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the child pursuant to Sec. 40, Rule 130 of the Rules on Evidence, the testimonies of other persons, the physical appearance of the child and other relevant evidence, shall suffice.

Section 6. *Burden of Proof of Age.* – Any person alleging the age of the child in conflict with the law has the burden of proving the age of such child.

If the age of the child is contested prior to the filing of the information in court, a case for determination of age under summary proceeding may be filed before a court which shall render its decision within 24 hours from receipt of the appropriate pleadings of all the parties. *(n)*

In all cases involving a child, the court shall make a categorical finding as to the age of the child.

Section 7. *Exemption from Criminal Liability.* – A child fifteen 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 as provided for in Republic Act No. 9344 when consented to by the child and the parents. *(a)*

Exemption from criminal liability does not include exemption from civil liability which shall be enforced in accordance with the provisions of Article 221 of the Family Code in relation to Article 101 of the Revised Penal Code and Rule 111 of the Revised Rules of

Criminal Procedure. If the act or omission of the child involves a *quasi-delict*, Article 2180 of the Civil Code shall apply.

Section 8. *Procedure for Handling Children Exempted from Criminal Liability.* – If it is determined at the initial contact that the child is 15 years of age or below, the procedure provided in Section 20, Republic Act No. 9344 shall be observed as follows:

(a) The authority who had the initial contact with the child shall immediately release the child to the custody of the mother or father, or the appropriate guardian or custodian, or in their absence, the nearest relative.

(b) The authority shall immediately notify the local social welfare and development officer of the taking of the child into custody.

(c) The local social welfare and development officer shall, with the consent of the child and the person having custody over the child, determine the appropriate intervention programs for the child.

(d) If the child's parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; a barangay official or a member of the

Barangay Council for the Protection of Children; a local social welfare and development officer; or, when and where appropriate, the Department of Social Welfare and Development.

(e) If the child has been found by the local social welfare and development office to be abandoned, neglected or abused by the parents, or if the parents and the child do not consent to or do not comply with the prevention program, the Department of Social Welfare and Development or the Local Social Welfare and Development Office shall file before the court a petition for involuntary commitment pursuant to Presidential Decree No. 603, otherwise known as “The Child and Youth Welfare Code.” (a)

Section 9. Procedure for Children Not Exempted from Criminal Liability. – A child fifteen (15) years and one (1) day old or above but below eighteen (18) years of age at the time of the commission of the offense shall, at the sound discretion of the court and subject to its supervision, be released on recognizance to the care of the willing and responsible mother or father, or appropriate guardian or custodian, or, in their absence, the nearest relative. However, if the prosecution determines that the child acted with discernment, the child shall be proceeded against in accordance with Secs. 25 to 29 or, in case of

diversion, Secs. 31 to 38 of this Rule.

Section 10. *Determination of Discernment.* – Discernment is preliminarily determined by a social worker and finally by the court in the case of a child charged with a non-serious offense. In all other cases, discernment is determined by the court.

The determination of discernment shall take into account the ability of a child to understand the moral and psychological components of criminal responsibility and the consequences of the wrongful act; and whether a child can be held responsible for essentially antisocial behavior.

Section 11. *Duties of a Person in Authority Taking a Child into Custody.* –Any person taking into custody a child in conflict with the law shall:

- (a) Assign an alias to the child;
- (b) Ensure that the blotter details containing the true name of the child, if any, are modified, to reflect the alias by which the child shall be known throughout the proceedings;
- (c) Explain to the child in simple language and in a dialect that can be understood the reason for placing the child under custody, and

the offense allegedly committed;

(d) Advise the child of his/her constitutional rights in a language or dialect understandable to the child;

(e) Present proper identification to the child;

(f) Refrain from using vulgar or profane words and from sexually harassing or abusing, or making sexual advances on the child;

(g) Avoid displaying or using any firearm, weapon, handcuffs or other instrument of force or restraint, unless absolutely necessary and only after all methods of control have been exhausted and have failed;

(h) Avoid violence or unnecessary force and refrain from subjecting the child to greater restraint than is necessary for apprehension and custody;

(i) Ensure that a body search of the child is done only by a law enforcement officer of the same gender as that of the child;

(j) Ensure expedited transfer of the child by immediately, or not later than eight (8) hours after apprehension, turning over custody of the child to the local social welfare and development office or other accredited non-government organizations;

(k) Notify the child's parents, guardians or custodians or in their absence, the child's nearest relative and the Public Attorney's

Office of the child's apprehension;

(l) Ensure that the child is not locked up in a jail or detention cell during the investigation;

(m) Bring the child immediately to an available government medical or health officer for a thorough physical and mental examination;

(n) Ensure that should detention of the child in conflict with the law be necessary, the segregation of the child be secured in quarters separate from that of the opposite sex and adult offenders, except where a child is taken into custody for reasons related to armed conflict, either as combatant, courier, guide or spy, and families are accommodated as family units in which case, the child shall not be separated from the family;

(o) Record all the procedures undertaken in the initial investigation including the following: whether handcuffs or other instruments of restraint were used, and if so, the reason for such use; that the parents or guardian of the child, the Department of Social Welfare and Development, and the Public Attorney's Office were informed of the taking into custody of the child and the details thereof; the measures that were undertaken to determine the age of the child, and the precise details of the physical and medical examination or in

case of failure to submit a child to such examination, the reason therefor; and

(p) Ensure that all statements signed by the child during the investigation are witnessed and signed by the child's parents or guardian, social worker or legal counsel in attendance. (n)

Section 12. *Rights of a Child Under Custody.* – At the custodial investigation, a child who has been taken into custody shall have the following rights:

(a) At the police station, to be immediately assisted by a lawyer and a social worker who shall make sure that the child is effectively informed of his/her rights, as far as the child's maturity and discernment allow;

(b) To demand that the questioning or interrogation take place in conditions that respect the rights of the child and are compliant with child-sensitive procedural rules;

(c) To have the child's family located and notified with dispatch;

(d) To be informed, together with the parents, guardians or custodians or nearest relatives, by the social welfare and development officer of the local government unit or of the Department of Social

Welfare and Development of the consequences of the offense alleged to have been committed with a view towards counseling and rehabilitation, diversion from criminal justice system and reparation if appropriate;

(e) To have the results of the child's medical and dental examination kept confidential unless otherwise ordered by the court. Whenever medical treatment for any physical or mental defect is necessary, to demand that steps must be immediately taken by the medical officer to provide the child with the necessary and proper treatment;

(f) To have the right of privacy respected and protected at all times, including the utilization of all measures necessary to promote this right, including the exclusion of the media; and

(g) While under investigation, not to be fingerprinted or photographed in a humiliating and degrading manner.

Section 13. *Taking Custody of a Child Without a Warrant.* – The law enforcement officer or a private person taking into custody a child in conflict with the law without a warrant shall observe the provisions in Sections 5, 8 and 9 of Rule 113 of the Revised Rules of Criminal Procedure and shall forthwith deliver the child to the nearest police

station. The child shall be proceeded against in accordance with Section 7 of Rule 112 of the Rules of Criminal Procedure.

Section 14. *Conduct of Initial Investigation by the Police.* – The police officer conducting the initial investigation of a child in conflict with the law shall do so in the presence of either or both of the parents, guardian or custodian, or in their absence, the nearest relative of the child, the child’s counsel of choice, or a lawyer from the Public Attorney’s Office, and the local social welfare officer. A representative of a non-government organization, religious group, or member of the Barangay Council for the Protection of Children shall be allowed to be present at the investigation in the absence of the parents, guardian, relative, or social welfare officer. (a)

Section 15. *Guidelines for Fingerprinting and Photographing of the Child.* – The following guidelines shall be observed when fingerprinting or photographing the child:

(a) The child’s fingerprint and photograph files shall be kept separate from those of adults and shall be kept confidential. They may be inspected by law enforcement officers only when necessary for the effective discharge of their duties and upon prior authority of the

court; and

(b) The fingerprints and photograph shall be removed from the files and destroyed: (1) if the case against the child is not filed, or is dismissed; or (2) when the child reaches twenty-one (21) years of age and there is no record that the child committed an offense after reaching eighteen (18) years of age.

Section 16. *Intake Report by the Social Welfare Officer.* – Upon the taking into custody of a child in conflict with the law, the social welfare officer assigned to the child shall immediately undertake a preliminary background investigation of the child and, should a case be filed in court, submit to the court the corresponding intake report prior to the arraignment.

Section 17. *Filing of Criminal Action.* – A criminal action may be instituted against a child in conflict with the law by filing a complaint with the prosecutor.

All criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the public prosecutor assigned to the court.

Petitions for confinement of a child drug dependent shall be filed

under Section 21 of the Rule on Children Charged under Republic Act No. 9165. (n)

Section 18. *Prosecution of Civil Action.* – When a criminal action is instituted against a child in conflict with the law, the action for recovery of civil liability arising from the offense charged shall be governed by Rule 111 of the Revised Rules of Criminal Procedure.

Section 19. *Preliminary Investigation.* – As far as consistent with this Rule, the preliminary investigation of a child in conflict with the law shall be governed by Section 3 of Rule 112 of the Revised Rules of Criminal Procedure. A specially trained prosecutor shall be assigned to conduct the inquest, preliminary investigation and prosecution of the case involving a child in conflict with the law. The child, on the other hand, shall be assisted by a private lawyer or if none, a lawyer from the Public Attorney's Office. If there is an allegation or evidence of torture or ill-treatment of a child in conflict with the law during custody or detention, it shall be the duty of the prosecutor to investigate the same. (n)

Section 20. *Conduct of Preliminary Investigation.* – Preliminary

investigation shall be conducted in the following instances: (a) when the child in conflict with the law does not qualify for diversion; (b) when the child, the parents or guardian do not agree to diversion as provided in Sections 27 and 28 of Republic Act No. 9344; or (c) when, after considering the assessment and recommendation of the social worker, the prosecutor determines that diversion is not appropriate for the child in conflict with the law. (n)

At the preliminary investigation, should there arise a need for clarificatory questions to be propounded on the child, the Rule on Examination of a Child Witness shall apply.

Section 21. *Filing of Information.* – If the investigating prosecutor finds probable cause to hold the child in conflict with the law for trial, there being discernment, the corresponding Resolution and Information shall be prepared for the approval by the provincial or city prosecutor, as the case may be. The child and the mother or father, or appropriate guardian or custodian, or in the absence thereof, the nearest relative, and the child's private counsel or lawyer from the Public Attorney's Office shall be furnished forthwith a copy of the approved resolution and the Information.

The Information shall be filed with the court within forty-five

(45) days from the start of the preliminary investigation. (n)

No Information shall be filed against a child for the commission of the following:

- a) status offenses;
- (b) vagrancy and prostitution under Section 202 of the Revised Penal Code;
- (c) mendicancy under Presidential Decree No. 1563; and
- (d) sniffing of rugby under Presidential Decree No. 1619.

Children taken into custody for the foregoing shall, with their consent and that of their parents, guardian or custodian, instead undergo appropriate counseling and treatment program. (n)

Section 22. Duties of the Clerk of Court Upon Receipt of Information. – The Clerk of Court, upon receipt of the Information, shall:

(1) Maintain a separate case docket or logbook for cases involving children in conflict with the law. Whenever possible, the Clerk of Court shall use color coding or other method to easily distinguish the records of children in conflict with the law from the other case records;

(2) Determine whether the offense charged qualifies for

diversion, that is, it is punishable by imprisonment of not more than twelve (12) years, regardless of fine, or fine alone regardless of the amount;

(3) If the crime charged is punishable by such imprisonment, immediately assign a temporary case number in accordance with Sec. 23 of this Rule and raffle off the case to a court so that its Diversion Committee can immediately undertake the appropriate action under Section 33 of this Rule; and

(4) If the crime charged does not qualify for diversion because it is punishable by imprisonment of more than twelve (12) years, the case shall be assigned a regular criminal case docket number and raffled off to a court for formal proceedings. (*n*)

Section 23. *Docketing of the Case.* – A case that qualifies for diversion under paragraph 3 of the preceding Section shall not be docketed as a regular criminal case but instead shall be assigned a temporary case number as follows: CICL-(no.)____- (year)____-D (which means diversion), before the same is raffled off to the appropriate court.

Section 24. *Venue.* – Subject to the provisions of Section 15,

Rule 110 of the Revised Rules of Criminal Procedure, any criminal or civil action involving a child in conflict with the law shall be instituted and tried in the appropriate court nearest the place where the offense was committed or where any of its essential elements occurred.

Section 25. Release of Children on Recognizance to the Parents, Guardian, Custodian or Nearest Relative. – The release of a child from custody during the pendency of the case involving a non-serious offense as defined in Sec. 4 (u) of this Rule may be ordered by the court only after a hearing for that purpose, and upon favorable recommendation of the social worker assigned to the child, with the conformity of the public prosecutor and the private complainant. The child shall be released to the custody of a willing and responsible mother or father, or appropriate guardian or custodian or in their absence, the nearest relative, who shall be responsible for the child's good behavior and appearance in court whenever required.

No child shall be ordered detained in jail pending trial or hearing of the child's case, subject to the provisions of this Rule. (n)

Section 26. Commitment and Transfer to a Youth Rehabilitation Center. – A child charged with a non-serious offense as defined in

Section 4 (u) of this Rule, unless released on bail or recognizance, may be transferred to a youth detention home or rehabilitation center or other appropriate facility such as the Department of Social Welfare and Development which shall ensure the appearance of the child in court.

In the absence of a youth detention home established by the local government pursuant to Section 8 of the Family Courts Act, in the city or municipality where the child resides or, a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court, or the Department of Social Welfare and Development or other appropriate local rehabilitation center, the youth shall be placed under the care of a provincial, city or municipal jail which shall ensure the appearance of the child in court when so required. (a)

Section 27. *Bail as a Matter of Right.* – All children in conflict with the law shall be admitted to bail as a matter of right before final conviction of an offense not punishable by *reclusion perpetua* or life imprisonment.

Section 28. *When Bail Not a Matter of Right.* – No child charged

with an offense punishable by *reclusion perpetua* or life imprisonment shall be admitted to bail when evidence of guilt is strong. In this case, the court shall commit the child to a youth detention home or youth rehabilitation center, or in the absence thereof, to the care of a provincial, city or municipal jail as provided for in Section 27 of this Rule, which shall be responsible for the appearance of the child in court whenever required.

Section 29. *Care of Child in Youth Detention Homes or Rehabilitation Centers.* – The child in conflict with the law who has been transferred to a youth rehabilitation center or youth detention home shall be provided with a healthy environment. If the child is placed under the care of the provincial, city or municipal jail, the child shall be provided with adequate quarters separate from adults and prisoners of the opposite sex depending on the age, sex, sexual lifestyle, and such other circumstances and needs of the child.

Section 30. *Case Study Report.* – After the institution of the criminal action, the social worker assigned to the child shall immediately undertake a social case inquiry of the child and the child's family, the child's environment and such other matters relevant to aid

the court in the proper disposition of the case. The report shall be submitted to the court preferably before arraignment. If not available at that time, the Report must be submitted to the court as soon as possible.

Section 31. *Diversion Committee.* – In each court, there shall be organized a Diversion Committee composed of its Branch Clerk of Court as chairperson; the prosecutor, a lawyer of the Public Attorney's Office assigned to the court, and the social worker assigned by the court to the child, as members

Section 32. *Proceedings Before Arraignment.* – The Diversion Committee shall determine if the child can be diverted and referred to alternative measures or services. Subject to pertinent provisions of this Rule and pending determination of diversion by the Committee, the court shall release the child on recognizance to the parents, guardian or custodian, or nearest relative; or if this is not advisable, commit the child to an appropriate youth detention home or youth rehabilitation center which shall be responsible for the presence of the child during the diversion proceedings.

If the Diversion Committee determines that diversion is not

proper, or when the child or the private complainant objects to the diversion, or when there is failure of the diversion program if undertaken by the child, it shall submit a report to the court recommending that the case be subjected to formal criminal proceedings. The court in turn shall direct the transmittal of the records of the case to the Office of the Clerk of Court for the assignment of a regular criminal docket number to the case as follows: CICL Crim. Case No.____-____(year). The Office of the Clerk of Court shall thereafter return the case to the court for arraignment and formal proceedings.

Section 33. *Proceedings Before the Diversion Committee.* – Upon receipt by the Committee of a case for diversion from the Office of the Clerk of Court, the chairperson shall call for a conference with notice to the child, the mother or father, or appropriate guardian or custodian, or in their absence, the nearest relative, the child’s counsel, and the private complainant and counsel, to determine if the child can be diverted to the community continuum instead of formal court proceedings.

In determining whether diversion is appropriate for the child, the Committee shall consider the following factors:

- (a) The past records, if any, involving the child in conflict with the law;
- (b) The likelihood that the child will be an obvious threat to himself/herself and the community;
- (c) Whether the child has feelings of remorse for the offense committed;
- (d) If the child or the parents are indifferent or hostile; and whether the parents or guardians have the ability to properly guide and supervise the child;
- (e) The nature of the child's relationships with peers and whether this will increase the possibility of delinquent behavior; and
- (f) If community-based programs for the rehabilitation and reintegration of the child are available.

If the Committee finds that diversion is appropriate, it shall design a diversion program in accordance with Section 34 of this Rule for the consideration and approval of the court.

Should the Committee determine that diversion is not appropriate, it shall make the corresponding report and recommendation in accordance with Section 31 of this Rule.

The Committee cannot recommend diversion in case the child or the private complainant objects.

Section 34. *Diversion Programs.* – The Committee shall design a diversion program taking into consideration the individual characteristics and peculiar circumstances of the child in conflict with the law. The program shall be for a specific and definite period and may include any or a combination of the following:

- (a) Written or oral reprimand or citation;
- (b) Written or oral apology;
- (c) Payment of the damage caused;
- (d) Payment of fine;
- (e) Payment of the cost of the proceedings;
- (f) Return of the property;
- (g) Guidance and supervision orders;
- (h) Counseling for the child and his family;
- (i) Training, seminars and lectures on (i) anger management skills; (ii) problem-solving and/or conflict resolution skills; (iii) values formation; and (iv) other skills that will aid the child to properly deal with situations that can lead to a repetition of the offense;
- (j) Participation in available community-based programs;
- (k) Work-detail program in the community; or
- (l) Institutional care and custody.

The Committee shall also include in the program a plan that will secure satisfaction of the civil liability of the child in accordance with Sec. 2180 of the Civil Code. Inability to satisfy the civil liability shall not by itself be a ground to discontinue the diversion program of the child. On the other hand, consent to diversion by the child or payment of civil indemnity shall not in any way be construed as admission of guilt and used as evidence against the child in the event that the case is later on returned to the court for arraignment and conduct of formal proceedings.

Section 35. *Hearing of Diversion Program.* – The court shall set the Committee's diversion report and recommendation for hearing with notice to all parties, their counsel and members of the Committee within ten (10) days from receipt of such report.

The court shall act on the recommendation within five (5) days from the termination of the hearing.

Section 36. *Undertaking.* – In all cases where a child in conflict with the law is granted diversion by the court, the child, together with the mother or father, or appropriate guardian or custodian, or in their absence, the nearest relative, and the child's counsel shall sign an undertaking to comply with their respective duties and obligations

under the terms and conditions of the diversion program. The program, which shall contain the express agreement by complainant assisted by counsel to the diversion of the child, shall be approved by and enforced under the supervision and control of the court. It shall contain the following minimum principal terms and conditions:

(a) The child shall appear before the social worker assigned to the child by the Court that approved the diversion program at least once a month for evaluation of its effectiveness.

(b) The child shall faithfully comply with the terms and conditions of the program. Should the child fail to do so, the Committee shall report such failure to the court which shall set a show-cause hearing with notice to the child and private complainant. The court shall thereafter determine whether to allow the child to continue with the diversion program, or to end the same and direct that the case now undergo a formal proceeding.

(c) Should the child be permitted by the court to reside in a place under the jurisdiction of another court, control and supervision over such child shall be transferred to the appropriate court of that place. The diversion records of the case such as the minutes of the diversion proceedings, copy of the undertaking, the intake and case study reports and all other pertinent documents shall be transmitted to

the court to which jurisdiction over the diverted child has been transferred.

Section 37. Report of Social Worker. – The court social worker shall conduct regular monthly visits to the child undergoing diversion proceedings and shall submit the corresponding reports about the status of the diverted child to the Committee. At any time before or at the end of the diversion period, the Committee shall file with the court a report recommending termination or extension of diversion, as the case may be. The report and recommendation shall be heard by the court within fifteen (15) days from receipt, with notice to the members of the Committee, the child, the mother or father, or the appropriate guardian or custodian, or in the absence thereof, the nearest relative, the child’s counsel, and the complainant and counsel.

The court shall thereafter determine whether the diversion program has been fully and satisfactorily complied with.

Section 38. Closure Order. – On the basis of the report and recommendation of the Committee, the court may:

(a) Issue a closure order terminating the case if it is convinced that the child has complied satisfactorily with the diversion program;

or

(b) Extend the period of diversion if it is convinced that the child may still be rehabilitated; or

(c) Order the case to undergo formal court proceedings if it finds that the child has not complied with the diversion program, is incorrigible, or that the program is not serving its purpose.

In case of a judicially-approved transfer of residence of the child in conflict with the law, the court to which supervision of the diversion program was transferred shall make the proper finding. If it finds that diversion has been successful, it shall order the closure of the case. However, if it determines that diversion has failed, it shall return the case to the original court for formal criminal proceedings.

Section 39. Rights of the Child in Conflict with the Law. – In all criminal proceedings, the child in conflict with the law shall have the following rights which shall be respected and protected by the court:

(a) To be presumed innocent until guilt is proved beyond reasonable doubt;

(b) To be informed promptly and directly of the nature and cause of the charge and if appropriate, through the child's mother, father, legal guardian, or appropriate custodian;

(c) To be present at every stage of the proceedings, from arraignment to promulgation of judgment. The child may, however, waive presence at the trial pursuant to the stipulations set forth in the bail bond, unless presence at the trial is specifically ordered by the court for purposes of identification. The absence of the child without justifiable cause at the trial of which there was due notice shall be considered a waiver of the right of the child to be present. Escape by the child under custody shall be deemed a waiver of the right to be present in all subsequent hearings until custody over such child is regained;

(d) To have legal and other appropriate assistance in the preparation and presentation of the child's defense; in case of a child arrested for reasons related to armed conflict, to have immediate free legal assistance;

(e) If detained, to be released (i) on recognizance to the willing and responsible mother or father or appropriate guardian or custodian, or in the absence thereof, the nearest relative; (ii) on bail; or (iii) by commitment to a youth detention home or youth rehabilitation center;

(f) Not to be detained in a jail or transferred to an adult facility pending trial or hearing of the case, unless detention is used as a last resort which must be done for the shortest time possible, and only

upon order by the court;

(g) In case the child has been arrested for reasons related to armed conflict, either as combatant, courier, guide or spy:

(i) To be segregated and have separate detention quarters from adults except where families are accommodated as family units;

(ii) To immediate free legal assistance in the absence of private counsel;

(iii) To immediate notice of such arrest to the parents, guardians or custodians or nearest relatives of the child; and,

(iv) To be released on recognizance within twenty-four (24) hours to the custody of the Department of Social Welfare and Development or any responsible member of the community as determined by the court.

(h) To testify as a witness in his/her own behalf; and subject to cross-examination only on matters covered by direct examination. The child shall not be compelled to be a witness against himself/herself and the child's silence shall not in any manner prejudice him/her;

(i) To confront and cross-examine the witnesses against him/her;

(j) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in the child's behalf;

(k) To have speedy and impartial trial, with legal or other appropriate assistance and preferably in the presence of the child's parents or legal guardian or custodian, unless such presence is considered not to be in the best interest of the child taking into account the latter's age or other peculiar circumstances;

(l) To be accorded all the rights under the Rule on Examination of a Child Witness;

(m) To have the child's privacy fully protected in all stages of the proceedings; and

(n) To appeal in all cases allowed and in the manner prescribed by law.

Section 40. *Rights of Victims of Offenses Committed by Children in Conflict with the Law.* – In any case involving a child in conflict with the law, the victim has the following rights:

(1) To be reasonably protected from the child in conflict with the law;

(2) To timely notice of any public proceeding, or any parole

proceeding involving the crime or of any release or escape of the child in conflict with the law;

(3) Not to be excluded from any public proceeding, unless the court, after receiving clear and convincing evidence, determines that the testimony by the victim would be materially altered if the victim heard other testimony in that proceeding;

(4) To be reasonably heard at any administrative or public proceeding involving diversion, release, plea, suspension of sentence and determination of disposition measures, or any parole proceeding;

(5) To confer with the prosecutor in the case;

(6) To avail of legal assistance from the Public Attorney's Office, Integrated Bar of the Philippines, any other legal aid office or any law practitioner;

(7) To be informed of the availability of compensation from the Department of Justice Board of Claims in accordance with the provisions of Rep. Act No. 7309 (1992);

(8) To be entitled to support services from the Department of Social Welfare and Development and local government units;

(9) To be entitled to all legal remedies and support as provided for under the Family Code;

(10) To be informed of the rights and the services available to

victims of offenses including the right to apply for a protection order;

(11) To full and timely restitution as provided in law;

(12) To proceedings that are free from unreasonable delay; and

(13) To be treated with fairness and with respect for the victim's dignity and privacy.

Section 41. *Responsibilities of the Court.* – For the protection of the rights of the child in conflict with the law, the court shall have the following responsibilities:

(1) To monitor the status of a child whose case is pending in its court placed in a youth detention center or other institution during the pendency of the child's case;

(2) To receive and investigate complaints concerning violations of the rights of the child whose case is pending in its court;

(3) To require all professionals working for the welfare of the child, such as barangay captains, teachers, social workers, medical professionals, and law enforcers, to render regular monthly reports to the court;

(4) To order access to adequate services for rehabilitation, counseling and other forms of reintegration for the child:

(5) To ensure that the child who is capable of forming his or

her own views has the right to express those views freely in all matters affecting the child, and that such views be accorded due weight in accordance with the developmental age and maturity of the child;

(6) To ensure that the child, either directly or through a representative, is provided the opportunity to be heard in all proceedings affecting such child;

(7) To ensure communication at all times between the judge and the child;

(8) To ensure that the child sits with close family members of the child's choice during the court proceedings;

(9) To ensure that the child can communicate freely with counsel at all times;

(10) To ensure that the child is informed in age-appropriate language of all stages of the judicial proceeding affecting such child;

(11) To ensure that a child placed in a Youth Detention Home or Youth Rehabilitation Center or in any child facility be given appropriate medical examination in order to determine and put on record any evidence of ill-treatment; to identify any physical or mental condition requiring medical attention; and thereafter make sure that child is provided adequate treatment and medical attention;

(12) To ensure that the child is informed as soon as possible of

the death, serious illness or injury of any immediate family member and be allowed to visit the ill family member or attend the funeral, when appropriate and advisable;

(13) To ensure that if a child dies during the pendency of the case or within six (6) months of release, an independent inquiry is conducted on the circumstances of the death and a report thereof, including the child's death certificate, be made available to the child's mother or father, guardian, custodian or nearest relative;

(14) When appropriate and advisable, to allow the child to temporarily leave the detention home or rehabilitation center by means of an "out-on-pass" order to attend special family occasions such as Christmas and New Year celebrations. The "out-on-pass" order shall contain reasonable restrictions to ensure safety, security and timely return to detention as may be determined by the court;

(15) To allow at all times, and from the moment of initial contact, any member of the family or the guardian of the child to visit with the child, unless prejudicial to the latter's best interests;

(16) To allow the appointment of a *Guardian Ad Litem* if available and advisable, to enable the child to raise concerns and complaints without fear of retribution; and

(17) To undertake all other appropriate measures to ensure the

promotion of the best interest of the child and the child's eventual reintegration in society.

Section 42. *Determination of the Best Interests of the Child.* –

The following factors may be considered in determining the best interests of a child in conflict with the law: the child's age and sex, the child's mental and physical health, the mental and physical health of the parents, their lifestyle and other social factors; the emotional ties between the parents and the child, the ability of the parents to provide the child with food, shelter, clothing and medical care; the established living pattern for the child concerning school, home, community and religious institution, quality of schooling, the existence of other relatives who may be in a better position to be with the child and the child's relationship with these relatives; the child's background, maturity and level of understanding, sexual orientation, lifestyle and any other characteristics and needs of the child that the court may deem relevant.

Section 43. *Arraignment and Plea.* – The provisions of Rules 116 and 117 of the Revised Rules of Criminal Procedure shall apply to the arraignment of the child in conflict with the law. The arraignment

shall be scheduled within three (3) days from the date of receipt of the complaint or information by the court, unless a shorter period is provided for by law.

In case the child is not assisted by a private counsel, the court shall immediately appoint its Public Attorney as the child's counsel *de officio*.

Arraignment shall be held in chambers and conducted by the judge by furnishing the child and counsel a copy of the complaint or Information, reading the same in a language or dialect known to and understood by the child, explaining the nature and consequences of a plea of guilty or not guilty and asking the child's plea.

Section 44. *Pre-trial*. – The provisions of Rule 118 of the Revised Rules of Criminal Procedure shall govern the pre-trial of the child in conflict with the law. Agreements or admissions made during the pre-trial conference shall be in writing and signed by the child, the mother, father or duly appointed guardian, and counsel; otherwise, the agreements or admissions shall not be admissible against the child.

Whenever possible and practicable, the court shall explore all possibilities of settlement of the case, except its criminal aspect. Plea bargaining shall be resorted to only as a last measure when it shall

serve the best interest of the child and the demands of truth and restorative justice.

Section 45. *Trial.* – All hearings shall be conducted in a manner conducive to the best interest of the child and in an environment that will allow the child to participate fully and freely in accordance with the Rule on Examination of a Child Witness.

Section 46. *Guiding Principles in Judging the Child.* – Subject to the provisions of the Revised Penal Code, as amended, and other special laws, the judgment against a child in conflict with the law shall be guided by the following principles:

(1) The judgment shall be in proportion to the gravity of the offense, and shall consider the circumstances and the best interest of the child, the rights of the victim, and the needs of society in line with the demands of balanced and restorative justice.

(2) Restrictions on the personal liberty of the child shall be limited to the minimum. Where discretion is given by law to the judge to determine whether the penalty to be imposed is fine or imprisonment, the imposition of the fine should be preferred as the more appropriate penalty.

(3) No corporal punishment shall be imposed.

(4) In case of the presence of any exculpatory evidence or doubt in the prosecution's evidence, the doubt shall be resolved in favor of the child.

Section 47. *Promulgation of Sentence.* – If, after trial, the court should find the child in conflict with the law guilty beyond reasonable doubt of the offense charged, it shall impose the proper penalty, including any civil liability which the child may have incurred, and promulgate the sentence in accordance with Section 6, Rule 120 of the Revised Rules of Criminal Procedure.

Section 48. *Automatic Suspension of Sentence and Disposition Orders.* – If the child is found guilty of the offense charged, the court, instead of executing the judgment of conviction, shall place the child in conflict with the law under suspended sentence, without need of application. Suspension of sentence can be availed of even if the child is already eighteen years (18) of age or more but not above twenty-one (21) years old, at the time of the pronouncement of guilt, without prejudice to the child's availing of other benefits such as probation, if qualified, or adjustment of penalty, in the interest of justice.

The benefits of suspended sentence shall not apply to a child in conflict with the law who has once enjoyed suspension of sentence, but shall nonetheless apply to one who is convicted of an offense punishable by *reclusion perpetua* or life imprisonment pursuant to the provisions of Rep. Act No. 9346 prohibiting the imposition of the death penalty and in lieu thereof, *reclusion perpetua*, and after application of the privileged mitigating circumstance of minority.

If the child in conflict with the law reaches eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with the provisions of Republic Act No. 9344, or to extend the suspended sentence for a maximum period of up to the time the child reaches twenty-one (21) years of age, or to order service of sentence.

Section 49. *Disposition Conference.* – In case of suspended sentence, the court shall set the case for disposition conference within fifteen (15) days from the promulgation of sentence with notice to the social worker of the court, the child and the parents or guardian *ad litem* of the child and the child's counsel, the victim and counsel. At the conference, the court shall proceed to determine and issue any or a combination of the following disposition measures best suited to the

rehabilitation and welfare of the child:

- (1) Care, guidance, and supervision orders;
- (2) Community service orders;
- (3) Drug and alcohol treatment;
- (4) Participation in group counseling and similar activities;

and

(5) Commitment to the Youth Rehabilitation Center of the Department of Social Welfare and Development or other centers for children in conflict with the law authorized by the Secretary of the Department of Social Welfare and Development.

Section 50. *Compliance with Disposition Measures.* – The social worker assigned to the child shall monitor the compliance by the child in conflict with the law with the disposition measures and shall submit regularly to the court a status and progress report on the matter. The court may set a conference for the evaluation of such report in the presence, if practicable, of the child, the parents or guardian, counsel and other persons whose presence may be deemed necessary.

Section 51. *Discharge of Child Subject of Disposition Measure.*

– Upon the recommendation of the social worker assigned to the child,

the court shall, after due notice to all parties and hearing, dismiss the case against the child who has been issued disposition measures, even before reaching eighteen (18) years of age, and order a final discharge if it finds that the child has been rehabilitated and has shown the capability to be a useful member of the community.

If the court finds that the child (a) is incorrigible; or (b) has not shown the capability of becoming a useful member of society; or (c) has willfully failed to comply with the conditions of the disposition or rehabilitation program; (d) or the child's continued stay in the training institution is not in the child's best interest, the child shall be brought before the court for execution of the judgment.

The final release of the child shall not extinguish the civil liability. The parents and other persons exercising parental authority over the child shall be civilly liable for the injuries and damages caused by the acts or omissions of the child living in their company and under the parental authority subject to the appropriate defenses provided by law.

Section 52. Probation as an Alternative to Imprisonment. – The court may, after it shall have convicted and sentenced a child in conflict with the law and upon application at any time, place the child

on probation if qualified, in lieu of service of sentence taking into account the best interest of the child.

Section 53. *Credit in Service of Sentence.* – The child in conflict with the law who has undergone preventive imprisonment shall be credited in the service of the sentence consisting of deprivation of liberty, with the full time during which the child has undergone preventive imprisonment, if the child agrees voluntarily in writing to abide by the same or similar disciplinary rules imposed upon convicted prisoners, except in any of the following cases:

(1) When the child is a recidivist or has been convicted twice or more times of any crime; or

(2) When upon being summoned for execution of sentence, the child failed to surrender voluntarily.

A child who does not agree to the same disciplinary rules imposed upon convicted prisoners shall be credited in the service of the sentence with four-fifths of the time during which the child has undergone preventive imprisonment.

Whenever the child has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which the child may be sentenced and the case

is not yet terminated, the child shall be released immediately without prejudice to the continuation of any on-going intervention program, and the trial thereof or the proceeding on appeal, if the same is under review. In case the maximum penalty to which the child may be sentenced is *destierro*, the child shall be released after thirty (30) days of preventive imprisonment.

Any form of physical restraint imposed on the child in conflict with the law, including community service and commitment to a rehabilitation center, shall be considered preventive imprisonment.

Section 54. *Confidentiality of Proceedings and Record.* – All proceedings and records involving children in conflict with the law from initial contact until final disposition of the case by the court shall be considered privileged and confidential. The public may be excluded from the proceedings and pursuant to the provisions of Section 31 of the Rule on Examination of a Child Witness, the records shall not be disclosed directly or indirectly to anyone by any of the parties or the participants in the proceedings for any purpose whatsoever, except to determine if the child may have the sentence suspended under Section 38 of this Rule or if the child may be granted probation under the Probation Law, or to enforce the civil liability imposed in the criminal

action.

The court shall employ other measures to protect confidentiality of proceedings including non-disclosure of records to the media, the maintenance of a separate police blotter for cases involving children in conflict with the law and the adoption of a system of coding to conceal material information, which will lead to the child's identity. The records of children in conflict with the law shall not be used in subsequent proceedings or cases involving the same offender as an adult.

Section 55. *Non-liability for Perjury or Concealment or Misrepresentation.* – Any person who has been in conflict with the law as a child shall not be held guilty of perjury or of concealment or misrepresentation by reason of failure to acknowledge the case or recite any fact related thereto in response to any inquiry.

Section 56. *Sealing of Records.* – The court, *motu proprio* or on application of a person who has been adjudged a child in conflict with the law, or if still a minor, on motion of the parents or legal guardian, shall, upon notice to the prosecution and after hearing, order the sealing of the records of the case if it finds that two (2) years have

elapsed since the final discharge of the child after suspension of sentence or probation, or from the date of the closure order and the child has no pending case of an offense or a crime involving moral turpitude.

Upon entry of the order, the case shall be treated as if it never occurred. All index references shall be deleted and in case of inquiry, the court, prosecution, law enforcement officers and all other offices and agencies that dealt with the case shall reply that no record exists with respect to the child concerned. Copies of the order shall be sent to these officials and agencies named in the order. Inspection of the sealed records thereafter may be permitted only by order of the court upon petition of the child who is the subject of the records or of other proper parties.

This procedure shall be without prejudice to the rule on destruction of video or audio tapes under Section 31 of the Rule on the Examination of a Child Witness.

Section 57. Prohibition of Labeling. – In the conduct of proceedings from initial contact with the child in conflict with the law to the final disposition of the case, there shall be no branding or labeling of the child as a young criminal, juvenile delinquent,

prostitute, vagrant, or attaching to the child in any manner any derogatory description or name. Likewise, no discriminatory statements, conduct and practices shall be allowed, particularly with respect to the child's social or economic status, physical or mental disability or ethnic origin.

Section 58. *Contempt Powers.* – A person who directly or indirectly disobeys any order of the court or obstructs or interferes with its proceedings or the enforcement of its orders issued under this Rule shall be liable for contempt of court.

Section 59. *Effectivity.* – This Rule as revised shall take effect on December 1, 2009 after its publication in two (2) newspapers of general circulation not later than November 27, 2009.