

Received: 10 January 2024, Accepted: 15 February 2024

DOI: <https://doi.org/10.33282/rr.vx9il.135>

The special measures in lieu of criminal prosecution in case of juveniles committing offenses under the juvenile and Family Court Act: Implementation and Realization in Thailand

Assoc. Prof. Dr. C. Ratchadapunnathikul¹

<https://orcid.org/0009-0005-6817-4669>

Faculty of Social Science and Humanities, Mahidol University, Nakornprathom, Thailand

Dr. P. Teeranuwa²

<http://orcid.org/000-0002-4619-6745>

Faculty of Social Science and Humanities, Mahidol University, Nakornprathom, Thailand

Abstract

The evaluation of law enforcement, juvenile and family court procedures to avert the case and use the diversion and alternative measures instead of criminal proceedings by the concept of restorative justice to comply with the Convention on the Rights of the Child in the principles of protection of the rights of children and young people in the judicial process according to the standards and guidelines of the United Nations. This aim to enhance law enforcement effectiveness through performance assessment and alignment with legal principles. This study will identify potential obstacles to procedure implementation, arising from existing laws or actions of legal system officials. Sample of 50 key informants chosen via purposive and snowball sampling, utilizing a suitable questionnaire for drawing conclusions. The questionnaire is deemed adequate for this study's conclusions. According to the data analyzed for this study, it must be able to distinguish children or young people who commit crimes because of their youth. Additionally, the analysis highlights the significance of differentiating youth offenders based on their reasons for committing crimes. The study will be emphasizing the importance of tailored corrective and rehabilitative approaches for different categories of offenders. The significant results from this study could potentially influence the development of legal provisions to better address and identify young offenders. Moreover, the study's findings could provoke to consider the real-world factors and emerging challenges is central to this approach. The future research should delve into how law enforcement affects behavioral changes in individuals and society. This exploration would provide a comprehensive understanding of the broad effects and consequences of law enforcement practices on both individuals and the wider community.

Keywords: *The special measures, criminal proceedings, juvenile*

Introduction

Juveniles shouldn't be held to the same criminal responsibility standards as adults since their ability to make decisions is limited as they grow older, they are less able to resist coercion, and

¹ Associate Professor, Faculty of Social Science and Humanities, Mahidol University, Nakornprathom, Thailand, <https://orcid.org/0009-0005-6817-4669>

² Email: p.teeranuwa@yahoo.com, <http://orcid.org/000-0002-4619-6745>

their character is still developing. The distinctiveness of immaturity as a mitigating circumstance justifies a commitment to a legal framework where the majority of young people are dealt with in a separate justice system (Steinberg & Scott,2003). Furthermore, this concept was used in response to escalating rates of Youth Offender, the majority of state legislatures have implemented punitive changes, including clauses that transfer an increasing number and variety of teenagers to criminal courts for adult prosecution. Advocates argue that criminal prosecution will provide more proportionate punishments, more effective deterrence, and higher incapacitation because juvenile court sanctions and services are neither just nor effective responses to cunning juvenile criminals. Even though there isn't enough data to draw firm conclusions, the empirical evidence points to the falsity of the majority of those claims. Numerous minor and non-threatening offenders are transferred under expansive transfer policies, which further worsen racial disparities and place adolescents with special needs in correctional systems that are not equipped to handle them for some, transfer results in harsher punishments (Donna,2000). Moreover, eliminate non-dangerous criminals and first-time offenders from the current legal system, integrating children and adolescents into community-based rehabilitation programs lowers the likelihood of future criminal activity since criminal prosecution of young people stigmatizes them. According to that, the treatment and rehabilitation program for youth Offenders with the greatest effectiveness and benefit.

The special measures instead of prosecuting criminal proceedings consist of 2 stages, which are before prosecution and proceedings (court level). The special measures have adopted the principles of the Convention on the Rights of the Child (CRC) that when deemed appropriate and desirable establish measures to be taken against children alleged to have violated the criminal law, without relying on judicial process provided that human rights and legal protections will be fully respected. Measures are designed to screen children and young people accused of offending them for treatment and remediation in order to leave the justice system and return to society by being able to play a creative role. The special measures adopt the concept of restorative justice process in providing a process for creating a remedial treatment plan with cooperation from all parties, including children or youth victims, psychologists, social workers or even relevant communities or government agencies in order to truly solve the problem.

However, the use of special measures in place of prosecution criminalizes juveniles who commit offenses in the pre-prosecution and judicial stages under the Juvenile and Family Court Act and Juvenile and Family Court Procedure B.E.2553 (A.D.2010) is unclear and does not cover in many respects. Therefore, the research tries to evaluate law enforcement, juvenile, and family court processes to prevent cases using restorative justice and protect children's rights in line with United Nations guidelines.

Review of Literature

The treatment of children who come into conflict with the law is today defined by an amazing corpus of international law, which also specifies the rights to which they are entitled. Even though, there are some ambiguities, vagueness, or omissions in the instruments, it is interesting that they are constant in their dedication to age-appropriate treatment, the value of diversion, and the necessity of rehabilitation.

They are sufficiently broad to encompass systems defined as "welfare" or "justice" in orientation, but they are also sufficiently specific to outline the duties that states must uphold to ensure that the children's rights are safeguarded in youth justice (Ursula, 2008).

Principles for the protection of the rights of children and young people in the judicial process according to the standards and guidelines of the United Nations, also The Convention on the Rights of

the Child (CRC) are the principles for protection of the children who have problems with conduct or commit criminal acts in focusing on protecting children accused of committing criminals are treated differently than adult offenders by minimizing the impact of prosecution and detention for children with behavior problems or committing criminal offenses to be given the opportunity to heal and grow up to be a good citizen of society. The hypothesis is that the child acts because of lack of maturity and the environment influences the child's behavior. In addition, there is a guarantee that the child will not be sentenced to life imprisonment, with the essence of items 37 and 40 as follows:

Article 37 The state ensures that (1) No child will be tortured or being treated or subjected to cruel and inhuman punishment. There will be no death penalty or life imprisonment without the possibility of release (2) No child shall be deprived of his liberty illegally detention or child imprisonment will be as a last resort only (3) All children deprived of their liberty shall be treated humanely and with respect to the inherent dignity of man and must be separated from adults (4) Every child deprived of liberty has the right to seek legal or other appropriate assistance as well as the right to object legally or in other appropriate ways, as well as the right to challenge the lawfulness of the deprivation of his liberty before a court or other independent, impartial authority (Child Rights International Network).

The outlaw ship of torture according to UNICEF, torture of kids "occurs in different contexts, including police operations against children seen as a threat to public order or safety; children confined in prisons or detention facilities; and kids seen as linked to subversive groups, including the kids of militants" (O'Donnell and Liwski,2010). The torture is another tool used by police to obtain information and confessions. According to the Committee on the Rights of the Child's 2006 General Comment, non-physical punishment that "belittles, humiliates, denigrates, scapegoats, threatens, scares, or ridicules the child" is cruel and humiliating and is incompatible with the Committee on the Rights of the Child's 2006 General Comment.

Article 40

(1) States Parties recognize the right of every child who has been accused of or deemed to have violated the criminal law to be treated in a manner consistent with fostering a sense of the child's dignity and worth which will strengthen children's respect for human rights and fundamental freedoms of others that must take into account the age of the child and the desire to promote reintegration into society (2) To this end, and with regard to provisions relating to international instruments, states parties ensure that no child shall be accused, charged or deemed to have infringed criminal law, which is not prohibited by national or international law, while the action took place, provided that at least it was guaranteed by his presumed innocence until proven guilty according to law. Moreover, the child will be charged immediately and directly, and where appropriate, by a parent or legal guardian and will receive legal assistance. It must also be decided without delay by an independent and impartial authority or judicial body in considering justice according to law and children will not be compelled to testify or confess. If a child is found to have violated the criminal law, it must be reviewed by a competent, independent and impartial authority or judicial body and at all stages of the proceedings to respect the privacy of children (3) States parties shall seek to encourage the enactment of legislation. In addition, determine the procedure, establishment of agencies and institutions. This applies especially to children who have been accused of, or are deemed to have violated, criminal law and especially must set a minimum age children under that age are deemed incapable of violating the criminal law without relying on judicial process provided that human rights and legal protections (4) Operations such as supervision, guidance and supervision orders, probation counseling foster care education program and vocational training and other ways besides having the institution supervise shall be in place to ensure that the child is treated in a manner appropriate to the child's well-being (Child Rights International Network).

Zehr (2017) demonstrated three ideas have been presented as the core of restorative justice (RJ) systems, sometimes known as transformational justice (Maschi et al.,2014), which are restoration, accountability, and engagement by attempting to balance the needs of all the parties involved (victim, offender, and community), restorative conferencing is an alternative to offender-centered sanctions and punishment that results in restorative agreements while fostering accountability for offending behavior and fostering victim recovery from traumatic stress (Maschi et al.,2018). Moreover, limiting, maximizing, and enabling standards are the three different categories of restorative justice standards. They are created as multifaceted standards for assessing restorative justice initiatives. The lengthy list of criteria can be summed up by saying that they specify measures to protect citizens' republican freedom (dominion) through repair, transformation, empowerment of others, and restraint of the use of power over individuals (Braithwaite, 2002). The list is also defended in terms of principles found in widely accepted UN human rights agreements and from what is known experimentally about the benefits that citizens expect from restorative justice. In the final analysis, such top-down lists inspired by UN documents, or the speculations of intellectuals are only significant for providing a temporary, amendable agenda for bottom-up discussion on the most appropriate restorative justice criteria to uniquely regional concerns about injustice (Braithwaite, 2002). According to that, the individual country should design and evaluate program to aggregation into national and worldwide standards.

The direct victim is a party in the restorative process, who have two fundamental needs: firstly, to reclaim control over their own lives, and to have their rights respected. The victims must have their wounds treated and restored in order to continue to be allowed to gain over control of their life. Secondly, the victim needs the community recognize that the violation takes place before RJ process (Llewellyn & Howse, 1999). Therefore, the youth offender can enter the process of the special measures in lieu of criminal prosecution only with the consent of the victim. However, that consent would not have been possible without a standard for determining the value of the victim. Zehr (2017) recommend to respect for victims' feelings should be addressed by asking the following questions: firstly, are there sufficient opportunities for them to tell their truth to relevant listeners, secondly, are they receiving needed compensation or restitution, thirdly, is the injustice adequately acknowledged, lastly, do they have a voice in the process. The implementation of use justice programs should be available at all stages of the criminal justice system. It should only be used where there is sufficient evidence to take action against the perpetrator and with the consent of both the victim and perpetrator. It can be said RJ is the concept of healing the injured. Moreover, it is a diversion of the case from the criminal justice process as a form. The objective is not to bring the youth offender to the court process but use appropriate litigation measures such as mediation compromise in criminal disputes family group meeting preparation of a rehabilitation plan based on the participation of all stakeholders, such as youth offender, victims, families, communities, to jointly draw conclusions of the plan. And brought into special measures instead of continuing criminal proceedings.

Special measures instead of criminal proceedings which has been prescribed as a measure instead of criminal proceedings and measures instead of judgments which can be examine section 86 and 90 sections in the Juvenile and Family Court Act and Juvenile and Family Court Procedure B.E.2553(A.D.2010) of Thailand as follows:

Section 86 of the Juvenile and Family Court and Juvenile and Family Procedure Act, B.E.2553(A.D.2010) states that, when a child or youth commits an offense, the penalty for imprisonment of up to five years will apply, regardless of whether a fine is imposed or not. The possibility of reducing the penalty will not be considered. The penalty rate will only be taken into account for imprisonment, while the option of imposing a fine may or may not be considered. The criteria for imposing a fine will not be considered when deciding to take special measures instead of

criminal proceedings. If the child or youth has never been sentenced to imprisonment, except for a minor offense committed through negligence or a misdemeanor, special measures can be taken instead of criminal proceedings. If the court decides on imprisonment but changes it to training, it will be considered that the child or youth has never been sentenced to imprisonment. The child or youth must acknowledge their wrongdoing from the beginning in order to modify their behavior positively and prevent future offenses. The director of The Observation Center may consider indications that the child or youth may become a good person without prosecution, such as the number of offenses committed. The rehabilitation plan must be approved by the victim and deemed suitable by the public prosecutor for children and youth. If not approved, it will be amended or normal remedial plan will be pursued. The rehabilitation plan must not restrict the rights or liberties of children or young people unless it is for their benefit or the protection of the public interest and does not violate their human dignity. The plan may include admonishment, conditions, and measures such as social services or public works for a maximum of thirty hours. Compliance with the rehabilitation plan must not exceed one year.

The special measures that can be taken in place of criminal proceedings for children or youth offenders, in accordance with Section 90 of the Juvenile and Family Court and Juvenile and Family Procedure Act B.E.2553(A.D.2010). The principles and essence of these measures include a maximum imprisonment rate of 20 years, with exceptions for negligence or misdemeanor; the offender has never been imprisoned before; the offender is aware of the consequences of their actions, regrets them, and is ready to make amends; and the victim agrees and the prosecutor does not object.

Instead of criminal prosecution, a remedial treatment plan will be drawn up for the offender, which includes rehabilitation overseen by the director of The Observation Center or a person deemed appropriate by the court. The meetings will be held, attended by the youth offender, victim, court psychologists, and potentially community representatives or agencies affected by the youth offender. The public prosecutor may also attend if necessary.

If the rehabilitation plan is successfully completed, the case may be struck from the case-list, and the right to bring criminal cases to prosecute is extinguished, without prejudice to the right of stakeholders to civil prosecution.

Objectives of the Study

1. To identify the effectiveness of the special measures in lieu of criminal prosecution in case of juveniles committing offenses

Research Methodology

This research is qualitative research which, the In-depth interview was used to evaluate the law enforcement of the Juvenile and Family Court Act and Juvenile and Family Court Procedure, B.E. 2553 (A.D.2010). The key informants must have experience in operating under the Juvenile and Family Court Act and Juvenile and Family Court Procedure, B.E. 2553 (A.D.2010) for not less than 3 years. The total 50 key informants consisting of three major group was selected in each five regions in Thailand which are: firstly, child rights protection expert in the alternative justice process, 5 persons. Secondly, central and provincial officials involved in the implementation of the Juvenile and Family Court Act and Juvenile and Family Procedure Act, social worker, psychologist, probation officer, prosecutor investigators, courts lawyers (legal advisors) and community representatives. This key informant group must be experienced in operating under the Juvenile and Family Court Act and Juvenile and Family Court Procedure B.E. 2553 (A.D.2010) for not less than 3 years, totaling 10 people. Thirdly, people involved in the implementation of the Juvenile and Family Court and Juvenile and Family Court Procedure Act B.E. 2553(A.D.2010), including parents, guardians, persons or

organizations with whom the child or youth resides, victims (parents in case the victim is a minor) by means of select a specific sample and/or a snowball of 35 people.

Result and Discussion

The conclusions of this study are founded on data gathered using questionnaire. This research provides qualitative evidence to finding the research objectives. According to that, in this stage, the in-depth interview was used to evaluate the law enforcement of the Juvenile and Family Court Act and Juvenile and Family Court Procedure, B.E. 2553(A.D.2010) was found seven implication which consist of (1) there is a requirement and/or utilization of the law. It has been discovered that there are regulations or actions that dictate the law. It is essential to be coherent and capable of addressing the intent of the law and the present circumstances. Additionally, information regarding the need for the existence and/or implementation of the law is examined from stakeholders and/or those impacted by the law (2) there is a system for verifying legal provisions, reviewing, and revising them to ensure that they align with the intent and purpose of the provisions, the benefits to be gained, and the applicability of the law to individuals or groups. Additionally, there is a transparent plan for reviewing and amending the provisions of the law and the enforcement of the law, which can be checked (3) law enforcement practitioners are hired with supervise and monitor operators in law enforcement. Moreover, there is management of human resources and material resources (4) law enforcement has the ability to access information and educate law enforcement, promote positive attitudes and behavior among law enforcement. It is heading in a positive direction since the law has been implemented (5) there is insufficient data collected by relevant agencies regarding complaints about issues that arise from violating the law, both before and after its enforcement, and that affect the spirit of the law (6) the impact of law enforcement has led to a statistical analysis of reduced repeat offenses, or a study of the behavior of those who have committed crimes, which has improved. This includes improvements in economic, social, political, and environmental conditions after legal intervention. Additionally, there should be a study of public attitudes/opinions towards those who have committed crimes in the past. (7) reintegrating the juvenile back into society and improving the quality of youth development is worth enacting and implementing the law, compared to the benefits that the people or stakeholders will receive.

It is essential that, the special measures in lieu of criminal prosecution in case of juveniles committing offenses to be coherent and capable of addressing the intent of the law. According to Zimring (1998), the inconsistency between the special measures and the spirit of the law, such as mild punishments and very serious acts, so, it is difficult to find a balance in many areas aspects related to the crimes committed by youth policy and considers that the more violent cases should be separated from the less violent ones to consider in particular punishments in the Juvenile Court and the Criminal Court.

When assessing the law's provisions, the law's intent must be taken into account. The law might get stricter as a result of this. The legislation won't change if juvenile continue to break the law and don't behave better. However, the law might become more compassionate toward youth offender if they are able to improve their social awareness and comprehend the regulations and legal objectives (Bregant et al., 2019)

The law enforcement should have the audit to support impartial, trustworthy information that is based on adequate and pertinent evidence. The proper use of public resources and assets, as well as the effectiveness of public institutions, should be the focus of audits to encourage transparency and accountability. Audits should encourage change by disseminating information, accomplishing analysis, and delivering meaningful suggestions (Chêne,2018).

A more modern justification for diverting young people away from the juvenile justice system before they have any involvement with it is the desire to prevent stigma. Consequently, law enforcement has the capacity to obtain information, educate, and encourage law enforcement to adopt positive attitudes and behaviors. As a result of the law's implementation, things are moving in a favorable way (Mahoney, 1974).

The presence of evidence of criminal convictions no effect on increase or reduction of future crime. It depends on the type of offender, the offence, the social environment. Therefore, it is necessary in collecting the information on complaints about youth offender offenders' problems with law violations before and after the law was enforced. The lack of information will be affecting the purpose of law enforcement in diversion juvenile from the criminal prosecution.

A statistical analysis of reduced repeat offenses, or a study of the behavior of those who have committed crimes, which has improved was argue by Fagan (1996) said that, it's possible that efforts to criminalize juvenile offenses won't have the desired impact and may even backfire. Legislative initiatives to get rid of the distinct jurisdiction for juvenile criminals or the specific jurisprudence for adolescent offenses are not supported. On the other hand, the restorative justice, it is the concept of healing the injured and diversion with multisystemic therapy (MST) found that youth sexual offenders in the MST condition evidenced significant reductions in sexual behavior problems (Letourneau a et al., 2019). Moreover, the emphasis is placed on studying the attitudes/opinions of people in the community toward former offenders following the use of special measures instead of criminal prosecution. According to, Butts and Mears (2001), many new juvenile justice laws have recently been passed by state and local governments. These measures promoted prevention, expanded rehabilitation, and enhanced the restorative elements of the juvenile justice system, but many were also designed to make the juvenile justice system stricter. Additionally, Fairclough (2001) argues that the process and circumstances in which special measures for the accused were developed have had a negative impact on how thoroughly they have become embedded within the criminal justice system.

The two beliefs that have remained relatively constant, firstly, youth are not as culpable for their conduct as adults; and secondly, youth are more capable of change and need room to grow (Zimring, 1998). According to that, the reintegrating children into society and improving the quality of youth development is worth enacting and enforcing the law compared to the benefits that the public or stakeholders will receive.

Conclusion

In summary, the key factors for success in operating the Juvenile Observation and Protection Center are the follow-up process after the youth offenders are released back into society, and the cooperation from various networks. It is important for these networks to work together as well as integrate and have clear provisions of the law. However, the problems and obstacles in operating the center include a lack of cooperation and non-compliance with instructions from parents in the remedial treatment of youth offenders. Additionally, characteristics of different communities can pose challenges, such as urban communities having different environments than rural societies. This can result in varying levels of cooperation from communities in different social contexts.

References

Bregant, J., Wellbery, I., & Shaw, A. (2019). Crime but not punishment? Children are more lenient toward rule-breaking when the "spirit of the law" is unbroken. *Journal of experimental child psychology*, 178, 266-282. <https://doi.org/10.1016/j.jecp.2018.09.019>

Butts, J. A., & MEARS, D. P. (2001). Reviving Juvenile Justice in a Get-Tough Era. *Youth & Society*, 33(2), 169–198. <https://doi.org/10.1177/0044118X01033002003>

- Chêne, M. (2018). The role of supreme audit institutions in fighting corruption. Berlin: U4 Anti-Corruption Helpdesk. Retrieved from. https://knowledgehub.transparency.org/assets/uploads/helpdesk/the-role-of-supreme-audit-institutions-in-fighting-corruption_2018.pdf
- Dan O'Donnell and Norberto Liwski. (2010). Child Victims of Torture and Cruel, Inhuman or Degrading Treatment. Innocenti Working Paper, Retrieve from https://www.researchgate.net/profile/Daniel-Odonnell-8/publication/46473496_Child_victims_of_torture_and_cruel_inhuman_or_degrading_treatment/links/5c3e2364458515a4c72814f8/Child-victims-of-torture-and-cruel-inhuman-or-degrading-treatment.pdf
- Donna M. Bishop. (2000). Juvenile Offenders in the Adult Criminal Justice System. *Crime and Justice*, 21, 81-167. <https://doi.org/10.1086/652199>
- Fagan, J. (1996). The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders. *Law & Policy*, 18(1-2), 77-114. <https://doi.org/10.1111/j.1467-9930.1996.tb00165.x>
- Fairclough, S. (2021). The consequences of unenthusiastic criminal justice reform: A special measures case study. *Criminology & Criminal Justice*, 21(2), 151–168. <https://doi.org/10.1177/1748895819848804>
- John Braithwaite. (2002). Setting Standards for Restorative Justice. *The British Journal of Criminology*, 42(3), 563–577. <https://doi.org/10.1093/bjc/42.3.563>
- Kieran McEvoy, Harry Mika, Restorative Justice and the Critique of Informalism in Northern Ireland, *The British Journal of Criminology*, Volume 42, Issue 3, 1 June 2002, Pages 534–562, <https://doi.org/10.1093/bjc/42.3.534>
- Letourneau, E. J., Henggeler, S. W., Borduin, C. M., Schewe, P. A., McCart, M. R., Chapman, J. E., & Saldana, L. (2009). Multisystemic therapy for juvenile sexual offenders: 1-year results from a randomized effectiveness trial. *Journal of Family Psychology*, 23(1), 89–102. <https://doi.org/10.1037/a0014352>
- Llewellyn, J. J., & Howse, R. (1999). Institutions for Restorative Justice: The South African Truth and Reconciliation Commission. *The University of Toronto Law Journal*, 49(3), 355–388. <https://doi.org/10.2307/826003>
- Mahoney, A. R. (1974). The Effect of Labeling upon Youths in the Juvenile Justice System: A Review of the Evidence. *Law & Society Review*, 8(4), 583–614. <https://doi.org/10.2307/3052885>
- Maschi, T., & Leibowitz, G. (2018). Aging, stigma, and criminal justice: Toward human rights-based assessment and intervention.
- Nuttanun Ponbownratchakul, Punchada Sirivunnabood. (2023). An Examination of The Mechanism For Diversion Under Section 90 In Situations Of Juvenile Delinquency Following Partition. *Journal of Pharmaceutical Negative Results*, 1182–1194. <https://doi.org/10.47750/pnr.2023.14.S02.146>
- Schwartz, R.G. (2001). Juvenile Justice and Positive Youth Development. In: Benson, P.L., Pittman, K.J. (eds) *Trends in Youth Development*. Outreach Scholarship, vol 6. Springer, Boston, MA. https://doi.org/10.1007/978-1-4615-1459-6_8
- Steinberg, L., & Scott, E. S. (2003). Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty. *American Psychologist*, 58(12), 1009–1018. <https://doi.org/10.1037/0003-066X.58.12.1009>
- Ursula Kilkelly. (2008). Youth Justice and Children's Rights: Measuring Compliance with International Standards. *Youth Justice*, 8(3), 187-192. DOI: 10.1177/1473225408096458
- Zehr, H., & Mika, H. (2017). Fundamental concepts of restorative justice. In *Restorative Justice* (pp. 73-81). Routledge.
- Zimring, F. E. (1998). Toward a jurisprudence of youth violence. *Crime and Justice*, 24, 477-501.