Making Juvenile Justice Work

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It is common, then as now, for children in conflict with the law to come under the full retributive authority of a criminal court. The retributive method, in contrast to the welfare approach that focuses on the needs of the juvenile, is centered on punishment and setting the child as an example to protect the public. Children and young people, early in life or at the ages of 6 to 9, even as status offenders or for unruly behavior and once transferred to an adult court, already feel the cruel brunt of the law when penalized for not having the maturity and experience to decide wisely and in the way grown-ups do.

While reports thrive that juvenile crime is increasingly committed at younger ages and at times characterized by violence, it does not mean that tougher measures such as longer sentences and huge or no bail policies have to be adopted making more children who transgress the law stay in ghastly jails longer. Besides, uneven reporting of juvenile crime by different agencies undercuts attempts to disclose meaningful trends of youth offending to justify drastic change in law and court procedures.

Studies in the growth of children show that during the first dozen years or so of life, a helpless newborn undergoes many significant physical or motor changes as well as cognitive and social developments before becoming a competent member of society. A child’s capacity to reason varies over time too. In fact, when a preschooler is shown 5 toy apples and 3 toy oranges and asked if there are more apples or fruits present, the child customarily answers “more apples.”

Moreover, causal factors like the rise in child poverty (close to 1 billion of the world population in 2005 are children); family matters including parent separation, child abuse and neglect, domestic violence, or family breakdown and their upshot on parenting and nurturing abilities; harsh elements in the environment; negative media influence; and declining social morality impact considerably on juvenile offending. In addition to what have been mentioned as precursors to youth felonies, the high incidence in testing with alcohol, drugs and sex has transformed the lives of children and young people contributing appreciably to the threat of their being involved in violent and criminal conduct. There are risks too for children who are unsupervised in the hours after school. Researches reveal that children spend 25% of their free time watching television, including lewd and violent shows.

In view of all these, children lower than a certain age are considered to be either too young or are not developmentally ready to face trial in court for breaking the law. They do not have, as yet, the discernment to understand the difference between right and wrong. And so, the UN Convention on the Rights of the Child prescribes that member states establish a minimum age for children below which they are presumed not to have the capacity to infringe any penal law.

While no precise age is set, international standards such as the UN Standard Minimum Rules for the Administration of Juvenile Justice propose that the age of criminal responsibility be founded on emotional, mental and intellectual...
maturity. Parenthetically, children who are not nurtured in safe and stable environment where they are able to form attachments with family members are at larger risk of having delinquent, violent and criminal behaviors. Hence, aside from not fixing the age of criminal responsibility excessively low, its determination is similarly guided by the best interests of the child.

“Best interests of the child” is defined in the Philippine context as the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the child and most encouraging to his or her physical, psychological, and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.

Many countries place the age of criminal responsibility for children between 12 and 15 years old. True enough as available data tell us that it is only at said ages or during mid-adolescence period that there is symbolic movement away from the home environment; children start recognizing social virtues like being a good citizen and respecting authority; and altruistic nature emerges.

Article 40 of the United Nations Convention on the Rights of the Child lays down the provision that every state recognizes the rights of the child who has breached the law consistent with the promotion of his or her sense of dignity and worth. We are well aware that children under difficult circumstances together with those charged in court for offenses are essentially victims whether they get into the justice system as complainants or perpetrators and they need protection, child justice, and compassion. Consequently, a separate juvenile law is necessary and it is one that is child rights-based and containing procedural guarantees that reinforce the strong position of the child all through the justice process.

The special law for juveniles governs youth cases from entry into the justice system, trial stage, disposition, and aftercare or rehabilitative service plans for the return of the child as productive member of society. More importantly, juvenile justice legislation provides for diversion of youth to alternative child-appropriate means of determining responsibility and treatment in lieu of formal court proceedings along with delinquency prevention. The detention of children pursuant to the UN Rules for the Protection of Juveniles Deprived of Their Liberty is always a last resort.

There are times though when juvenile justice system actors run out of options and peremptorily decide to place juveniles in custody. This might be likely in extreme cases except that youths held in confinement are totally helpless before those who are supposed to look after them. Knowing the high episode of abuse, suicide, threats, coercion, torture, exploitation, bullying, involuntary servitude, self-harm, and mental health problems, being in a lock-up facility is truly distressing for children and young persons.

Albeit the nature of penal violations, children who are apprehended and detained are entitled to fair treatment by specially trained juvenile justice professionals in the areas of child welfare and human rights. Small open facilities are ideal to minimize the negative effects of deprivation of liberty. Any personnel with custody of a young person found to have violated the rights of the juvenile shall be administratively, civilly and criminally liable.
In the Philippines, the Family Courts Act and the Supreme Court Rule on Juveniles in Conflict with the Law detail the manner by which juveniles are taken into custody. Pre-court/trial custody at the law enforcement and prosecution levels is done conformably with basic constitutional safeguards counting the presence of parents or guardian and social worker for intake measures and for referral of the juvenile to medical or mental examination and treatment. In this way, the time, effort and resources of the juvenile justice system are not wasted.

As detention becomes necessary, it is mandated under Philippine laws that juveniles are held in quarters separate from the opposite sex or adult offenders. Their cases are accordingly coded and recorded in a police blotter exclusively for youth wrongdoings. Better responses, of course, incorporate the keeping of juveniles away from detention cells of adult offenders in “sight and sound,” and warrantless arrests that anyhow are ambivalent to children are not allowed whether or not the prosecution is for minor/status or serious infractions of the law.

Once the case of a juvenile is filed in court, other forms of reprieve from detention may be availed of, to wit: by posting cash, corporate surety, or property bail, the amount of which is reduced by the mitigating circumstance of minority; and, be released on recognizance to the custody of parents, guardian or suitable person with the duty to bring the child to court when required.

On top of the above, it is best for the court not to perfunctorily restrain the freedom of juveniles who merely violate court orders because technically they have not committed new offenses. And more, when the duration of maximum penalty for the offense allegedly committed by the juvenile has lapsed, outright release from incarceration is made subject to the completion and closure of the court proceedings.

The administration of juvenile justice that is on the whole inter-agency and multi-level takes into account the cultural and religious standpoints of children. Proceedings before any authority are conducted with a child perspective and in a manner that deals with the juvenile in a family environment. The child is allowed to freely participate, express himself/herself and be helped, where appropriate, by a guardian ad litem or a trained child advocate. The identity, and records or proceedings of the juvenile during the court trial are private and confidential. Both the relevant database and monitoring mechanism for compliance with the laws by duty-holders are essential components of the juvenile justice system.

A family court with a unified system and restorative justice template is best suited to take cognizance of juvenile cases, rendering speedy and individual justice. It is worth stressing that only a family court can focus on the unique nature of “family law,” which has a single constant- the dynamics of the family, juvenile delinquency being part of it. Delay in the resolution of cases is avoided for each single day that the child spends in prison amounts to a year taken away from his or her growing years.

In all family law matters, particularly juvenile lawbreaking, the family court, acting as the best parent under the doctrine of parens patriae, balances the competing rights of family members who are often at odds not only with the system but with each other also. The restorative justice framework
on one hand resolves the conflict of the parties with the maximum partaking of the victim, offender and the community.

Good dispositional practices in a family court are along these lines: adoption of diversion programs at all stages of the court process such as apology, payment of damages, counseling and literacy program that involves the community as a direct service provider to children; probation; automatic suspended sentence when adjudged guilty; and non-imposition of the death penalty.

Some critics of the juvenile system, however, assume that youths in crimes become entangled in plea-bargaining mechanisms by agreeing to a lesser charge and thus begin the process of building a criminal record likely to influence future discretionary decisions in the justice system. Still, for many youths, the unpredictable responses of the juvenile court, such as the kind and length of sentences meted out or the simple practice of not following court calendars, are important correlates in the perpetuation and in the case of first-timers, the onset of juvenile crime.

Another concern of child advocates is some jurisdictions frequently transfer cases of minors from juvenile to adult court. The consequence of this is the denial to some juveniles of the rights and protections that have evolved in child justice practice. Worse, different types of waiver mechanisms set a lower age limit like 13 and 14 years old, although majority agree on the ages of 17 and 18. Even so, many approaches are being explored towards a more humane and needs-tested course of action against juveniles.

Throughout the legal proceedings, juvenile justice authorities refrain from labeling children as young criminals, juvenile delinquents, prostitutes, or attaching to them in any manner other derogatory and pejorative names. Likewise, no discriminatory remarks and practices are permitted with respect to the child’s class or ethnic origins.

When it comes to aftercare services for children coming into contact with the juvenile justice system, it is necessary that they are already in place at the time they are ordered by the family court; the support programs run for at least 6 months; are evidence-tested and are individually suited. Juveniles are, thus, not merely fitted into available programs for rehabilitation.

Furthermore, the rehabilitation of juveniles are phased into 3 stages—first, by enabling the child to understand the consequences of the criminal act; second, the life and occupational skills of the young person are developed; and third, a form of financial assistance is provided to the juvenile or the family to start a viable source of income.

Juveniles with special needs demand special guiding principles in judging their cases. Children who live in poverty, for instance, are well-known to experience feelings of disorganization, deterioration, and despair. In point of fact, pervasive poverty undermines the relevance of school and breeds conditions that are conducive to crime.
All too often we hear about fatherless children, separated or divorced spouses, unwed mothers and other one-parent types that impact on social problems such as juvenile drug or substance abuse and juvenile delinquency. There are other target groups requiring singular court assessment, for instance, juveniles who are members of gangs or who do drugs; youth who victimize fellow child; juvenile female offender; violent juvenile offender; juvenile sexual offender; and gay children who commit crimes.

Multifaceted juvenile problems exact swift, early, and consistent interventions. Such juvenile support schemes are case-explicit and are backed up by scientific evidence as to their effectiveness. Every so often, the responsibility for juvenile offending is expanded to include the young person’s parents and the community where he or she belongs. The tough situations of several juveniles are discussed below:

First, the case of a youth who associates with gangs is difficult to manage and judicial reaction to the challenge is not easy. Although a gang is substitute family to a lot of juveniles, gang membership leads youths to commit heinous offenses in concert with adults and serves as the entry of young persons into the world of organized crime.

The response starts with the community using various strategies to make parents and other care-givers aware of the harms of gang activities and then assuming the task of preventing youths from being criminally involved through gang ties. The juvenile justice pillars for their part possess the necessary tools to handle youth gang activities and they make certain that the juveniles are properly screened and assessed, administering counseling programs to them and their families.

Second, when a juvenile uses drugs, parents believe that friends or drug dealers have pressured their child to do it. On the contrary, survey shows that children use drugs because they want to eliminate their pain, sadness or boredom; forget about their troubles and feel good; have fun; satisfy their curiosity; take risks; feel grown-up; show their independence; or have a sense of belonging to a specific group. But for nearly every poor child, drugs numb the stomach when he or she feels hungry. For these reasons, the commitment of juveniles to drug rehabilitation centers may be done voluntarily and without too much court intervention.

But following the arrest of a juvenile for drugs law violation, a thorough evaluation of the case referred to court is key to determining if treatment is on out-patient or residential/hospital basis. The family court has access to a complete range of services for effective identification, treatment and rehabilitation of drug offenders. Such services may be developed within the court operation or in partnership with related agencies. A combination of basic approaches may be utilized as well. Whatever the treatment program be, it is one that is primed and consistently used.

Third, studies confirm that even within the juvenile justice system, mentally-challenged youths frequently go unidentified. Scores of them walk in and out of our juvenile courts without ever being noticed or treated. And so, all youths referred to court must go through mandatory testing for potential mental health problems. At the same time, judges, prosecutors, probation officers and defense attorneys ought to be educated on how to deal with the mentally-troubled juvenile.
What is more, children in conflict with the law have substantially higher rates of mental disorder than children in the general population, and they may have rates of conduct disorder comparable or exceeding those among youth being treated in the mental health system. However, it is just as improper as it is inhuman to put juveniles with mental intricacy in crisis units where they are shackled to beds or toilets and kept naked.

Aside from having links to services offered by mental health professionals, some readings confirm that family courts go into cross-disciplinary dialogues and develop common set of definitions and a glossary of mental health and juvenile justice terms that enables them to interact with each other in mutually understood language. The judges afterwards enable juveniles to avail of pertinent services and hold accountable those responsible for delivery of mental health services.

Fourth, the so-called violent, serious, repeat, serial, or persistent juvenile offenders, although encompassing a nominal portion of the delinquent cluster, tend to shape correctional systems’ responses and programs for all delinquents generally. To meet the needs of this group, juvenile justice workers have to create treatment services that attempt to alter both their behaviors and adverse living conditions whereas addressing public safety concerns.

Fifth, girls in the juvenile justice system, upon the other hand, bring with them a multitude of complex social and public health themes related to sexual behavior, substance abuse, trauma and violence. Girls are far different from boys. Many female children who come in contact with the juvenile justice system do not seek help. Instead, relevant analyses show that they rely more on internalization, avoidance, and self-harm as modes of coping.

Similarly, female runaways see prostitution as a means of survival and a way out of their homes. The mental health needs of girls, therefore, ought to be looked upon as different both in content and context from those of boys. Accordingly, an all-female team of professionals with both child and gender sensitivity handle their cases.

Sixth, a swelling number of juveniles commit offenses against fellow minor victims. Here, the juvenile justice system is faced with the dilemma of how to balance the rights of these children, or is it necessary at all to weigh the respective legal entitlements of the juvenile and the child victim? At the same time, there are none or very few protocols to guide professionals in tackling this issue. It is not a viable alternative to the family court either to order the juvenile who is not expected to be gainfully employed at this stage in life to compensate monetarily a youth victim.

Seventh, the gay and lesbian youth population may come before the juvenile justice system unidentified and their needs unaddressed. They may enter the court system as runaways or throwaways and they usually take alcohol and other drugs to self-medicate. This group may at times be diagnosed with gender-identity disorder in children and are often severely-depressed and at high risk for suicide. While there is a scarcity of literature embarking upon this group of children, competent counseling and assistance that address their and their families’ unique needs are worthwhile.
Lastly, rape or sexual violence committed by juveniles is a compensatory behavior. If the life history of the juvenile is looked into, the juvenile sexual offender may have been a prior sex victim. A predominantly male phenomenon, as the juvenile entered the legal system, he was well into a cycle of sex offending. Applicable evaluations on this subject confirm that prior to the act of sexual violence the juvenile may have had sex assault fantasies or had actually committed other types of sexual violence. The use of drugs or alcohol is oftentimes used as an excuse.

According to studies made, the juvenile sex offender is more comfortable with anger than with other types of emotions. This juvenile has rigid values, which means that he sees everything as black and white or when it comes to girls and women, they are to him either saints or prostitutes. The youth sex offender has poor social skills and during the sexual assault, the juvenile sex offender objectifies the victim. Treatment is administered within an all-male group of similarly situated juvenile offenders, with co-therapists advising the juvenile to learn and do alternative behavior.

In all the above instances or when a dual or multi-diagnosis of several problems result, experts recommend that sources of treatment if not available at the moment, should be developed and reflect the developmental needs of juveniles in conflict with the law and are not merely replications of service delivery systems originally designed for adults.

Useful interventions for juveniles, according to specialists, ensure a close match between risk of re-offending and nature, level and duration of intervention; employ practitioners whose teaching approaches corresponds to the learning capacities of child and use material tailored-cut for a certain juvenile; community-based and closely connected to youth’s home environment than institution; and draw on a range of methods such as anger management, social skills training, and problem solving.

Additionally, a continuum of care and a set of protocols are established to determine who will provide services to the youth. There is a case manager whose selection is based on the agency with greatest responsibility for the child. A comprehensive and individualized assessment addressing the appropriate levels of restrictiveness of placement and supervision should likewise be made. Individualized service plans are based on determined needs of child and family and not driven by availability of the service.

Rehabilitation of juveniles may occur in a center that provides twenty-four (24) hour group care, treatment and rehabilitation services under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end in view of reintegrating them to their families and communities as socially functioning individuals. A quarterly report is submitted by the center to the family court on the progress of the juvenile. Based on the improvements made by the youth in the center, a final report is forwarded to the court for final disposition of the case. Conditional release from an institution may be used to the greatest possible extent and is granted at the earliest possible time.

For children in conflict with the law who remain confined in a rehabilitation center, adequate academic, vocational training or alternative learning modules are extended to assure them they do not leave the center at an educational
disadvantage. Parents and guardians of juveniles confined in a center are assured of access to the children.

The reintegration programs for juveniles are drawn from arrangements designed to assist them in returning to society, family life, education or employment after release from custody. Procedures, including early release from restraint and special courses are developed towards this end. Semi-institutional set-ups, such as half-way houses, educational homes, and daytime training centers are ideal places for youth to stay as plans for them to go back to society are underway.

The UN Guidelines for the Prevention of Juvenile Delinquency prescribes national prevention strategies that are accompanied with early family support and assistance; are community-based solutions; focus on youth education; the deterrence of drugs and alcohol use or abuse among juveniles; and the participation of everyone in the society including the media. Without a doubt, there is no more important occasion in human development to lay the foundation for healthy functioning in society than in the first few years of life though most of the time we miss the critical opportunity for prevention and intervention by waiting to do so until the child is 6 or 9 years of age and is able to talk about his or her problems.

Needs-led prevention programs are applied to high-risk youths. These courses of action are powerful and cost-effective means in reducing crime and helping youths become healthy, contributing members of society. Children themselves participate in the policy formulation as well as in the implementation of juvenile justice and delinquency prevention for these are concerns that matter in their lives.

Quite interestingly, there are more known stories of how juvenile justice systems fail rather than how they succeed. For one, an agency actor may continue the long-running processing patterns of juveniles with little or no accountability among institutions. Law enforcement can do away with extensive documentation on specific offenses for court dispensation. Prosecutors may utilize charging and jurisdictional discretion to maximize chances of juvenile conviction and punishment. Defense attorneys for their part benefit from these practices by reducing charges and gaining lesser penalties for their youth client’s acts. For correction officials, it matters little why a youth was committed since it was court-ordered anyway. The court retains social control and is better off managing the calendar than caring about troubled children.

But it is always a choice. Reorienting the unpleasantly cold juvenile justice structure to shift from the inclination to punish and impose “just desserts” on juveniles towards treatment, rehabilitation and the development of a protective environment for the youth better reflects the philosophy and end of every juvenile justice set up. The best interests of youths who are in conflict with the law are the priority as soon as their cases cross the threshold of the juvenile justice system so that courts, according to the view of authorities on the issue, do not become the last resort for help. Indeed it is disastrous for a youth suffering from mental illness to be arrested first to receive treatment in the same way as it is tragic for juveniles living in poverty to be convicted and made to serve lengthy sentences in prison to continue receiving food.
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