

**Management of Children who Come into Conflict with the Law  
during the Pre-Trial Stage in Malaysia. Do the Current Practice  
and Procedures Accord to International Standards?**

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**ORIGINAL LITERARY WORK DECLARATION**

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## **Abstract**

Malaysia as a State Party to the Convention on the Rights of the Child and other international instruments are bound by the provisions enshrined in those treaties. Despite all this commitments and obligations, children still experience arbitrary arrest, torture and ill-treatment while undergoing police investigation. Still too often, they are deprived of proper treatment that should have been given to them under those treaties. Past literature would show that the rights afforded to children in conflict of the law especially during the pre-trial stage are reduced significantly or in other words not given proper consideration by the enforcement authorities in particular the police and the probation officers even though it is clearly worded in the Child Act 2001. However none of the previous research were able to precisely identify what are the reasons for the non-compliance.

The findings from this research show that the reasons for the non-compliance is because the personnel from the enforcement agencies are not properly trained, shortage of manpower, logistics setbacks, legal issues in the Child Act 2001 or in the Administration Directive (IGSO) and lack of commitment from the Malaysian government. All these shortcomings are not in accordance with the international standards that are prescribed under those treaties. Through this research it would able to outlines some specific and possible recommendations for strengthening the Malaysia juvenile justice system especially in the pre-trial stage.



## Abstrak

*Malaysia sebagai satu pihak kepada Konvensyen Hak Kanak-Kanak dan surat cara antarabangsa yang lain adalah tertakluk kepada peruntukkan-peruntukkan yang termaktub di dalam perjanjian tersebut. Walaupun dengan semua komitmen dan obligasi, kanak-kanak masih mengalami penangkapan secara sewenang-wenangnya, penyeksaan dan dilayan dengan buruk semasa dalam penyiasatan polis. Masih terdapat keadaan dimana kanak-kanak dinafikan layanan yang sepatutnya diberikan kepada mereka di bawah surat cara antarabangsa. Artikel-artikel sebelum ini menunjukkan bahawa hak kanak-kanak yang terlibat dalam jenayah semasa peringkat sebelum perbicaraan telah berkurangan dengan ketara atau dengan lain kata tidak diberikan pertimbangan sewajarnya oleh pihak berkuasa terutama pihak polis dan pegawai akhlak walaupun hak-hak ini jelas diperuntukkan di dalam Akta Kanak-Kanak 2001. Namun begitu penyelidikan sebelum ini gagal mengenalpasti apakah sebab-sebab yang membawa kepada ketidakpatuhan tersebut.*

*Hasil penemuan dari penyelidikan ini menunjukkan bahawa sebab-sebab kepada ketidakpatuhan ini adalah kerana kakitangan dari agensi penguatkuasa tidak dilatih dengan sempurna, kekurangan keanggotaan, masalah logistic, isu-isu perundangan di dalam Akta Kanak-Kanak 2001 atau arahan-arahan pentadbiran (IGSO) dan kurang komitmen dari kerajaan Malaysia. Kesemua kekurangan ini adalah tidak selaras dengan standard antarabangsa yang termaktub dalam surat cara antarabangsa. Melalui penyelidikan ini ia mampu menggariskan beberapa cadangan spesifik atau mungkin untuk memperkukuhkan sistem keadilan juvana di Malaysia terutamanya di peringkat sebelum perbicaraan.*



## **List of Abbreviations**

“Beijing Rules”	United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985
CA	Child Act 2001 (Act 611)
CCPR	Covenant on Civil and Political Rights
“Child Offenders”	Children who come into Conflict with the Law
CPC	Criminal Procedure Code, Act 593.
CRC	Convention on the Rights of the Child
“DSW”	Department of Social Welfare
FIR	First Information Report
“JDLs”	United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990
IGSO	Inspector General Standing Order
IO/AIO	Investigation Officer/Assistant Investigation Officer
IP	Investigation Paper
IPD	District Police Headquarter
KBSJD	Chief of District Criminal Investigation Department
NCP	National Child Policy
NCPP	National Child Protection Policy
NGO	Non-Governmental Organization
NLAF	National Legal Aid Foundation
OCPD	Officer in Charge of Police District
“Riyadh Rules”	United Nations Guidelines for the Prevention of Juvenile Delinquency 1990
“RMP”	Royal Malaysian Police



SIO	Senior Investigation Officer	Page
SUHAKAM	Human Rights Commision of Malaysia	
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# Chapter 1: Introduction

## 1.1 Statement of the Problem

The United Nation's Convention on the Rights of the Child (hereinafter referred to as the CRC) promotes holistic development, care, and protection of children throughout its interactions with the juvenile justice system, and Malaysia ratified it on 17 February 1995. Since then and despite the initial reservations, Malaysia has ratified most of the articles but is still deliberating on the remaining reservations<sup>1</sup>. As a State Party to the CRC, the Government of Malaysia is duty-bound to the ratification. For Malaysia to fully ascend to the spirit of the articles of the CRC, all branches of its civil service must work together and improve to make the rights of the child a reality.

A dilemma to most authorities is how best to engage with a child who has committed a crime and/or is considered a threat to society's peace and harmony. The apprehension of children who come into conflict with the law (hereinafter called "child offenders") raises the question of whether they are being treated as they should be: as a child. The preamble to the Child Act 2001 (hereinafter referred to as CA) stipulates that children should be accorded greater protection simply because of their innate immaturity. This should be upheld by the enforcement authorities, who must take the necessary steps to ensure it.

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<sup>1</sup> At present Malaysia still registers five reservations on the CRC, namely Article 2 (Right to non-discrimination), 7 (Right to name and nationality), 14 (Right to freedom of thought, conscience and religion), 28 paragraph 1(a) (Right to compulsory and free primary education), and 37 (Torture and Deprivation of Liberty).

To quote Shakespeare, **'To be, or not to be...'**<sup>2</sup>. This dilemma plagues police officers enforcing the law on "child offenders". Treating "child offenders" the same way they do adult offenders makes them appear insensitive to the needs of children.

The question remains what action the police should take. To close an eye to "child offenders" is unacceptable; the public will cry inaction. Take stern action and the public cries insensitivity. What really is the best method to adopt so balance is retained between the different needs of punishment, rehabilitation, and reformation?

Police officers are still the main gatekeepers of the juvenile justice system. They have a responsibility to safeguard the best interests of "child offenders" throughout the required investigation. They cannot escape or ignore these responsibilities on reasons of manpower shortage or logistical difficulties but must face them and do what they can.

The police are still usually the first point of contact for "child offenders. Theirs is indeed an important role as their action or inaction during the initial stages of investigation and subsequent arrest of suspected "child offenders" will impact the children's development. Treating the children fairly and kindly will result in cooperation and participation during investigation. Treating them unfairly and harshly may result in retaliation instead.

The foremost issue to be addressed by this research is therefore whether the Royal Malaysian Police (hereinafter referred to as "RMP") observes the basic rights of a

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<sup>2</sup> "The Tragedy of Hamlet, Prince of Denmark". First Folio 1623



child in accordance with Article 37 of the CRC and other international standards<sup>3</sup>. This is the first problem this paper will attempt to find a solution to.

The available protective mechanism that legally exists during this early stage is the presence of a probation officer from the Department of Social Welfare (hereinafter referred to as the “DSW”). Section 87(a) of the Child Act 2001 (hereinafter referred to as the CA) provides that it is mandatory for the “RMP” to contact the probation officer upon apprehended a child offender. The purpose is understandably to ensure that the basic rights of the child are not infringed with during this stage. The second statement of problem therefore lies in this matter.

The primary aim of this research is to evaluate how best to optimize both the “RMP” (in its role of gatekeeper to the juvenile justice system) and the “DSW” so the rights of “child offenders” are effectively safeguarded.

## **1.2 Research Objectives**

The first objective of this research is to look at the relevance of police practices and discover the extent to which the provisions of the CA and other international instruments such as the CRC, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (hereinafter referred to as the “Beijing Rules”), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (hereinafter referred to as the “JDLs”), and the United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (hereinafter referred to as the “Riyadh Rules”)

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<sup>3</sup> The “Beijing Rules”, “JDLs”, and the “Riyadh Rules”.



are adhered, and how the Police Force could advance its practices in tandem with the spirit of the CRC (particularly Article 37).

This research seeks to identify the challenges posed and the difficulties faced by the present law and in practice. The writer will recommend improvements to police practices for management of “child offenders” during a police investigation process.

The second objective is to determine whether the probation officers from “DSW” are aware of the protective elements which Section 87(a) of the CA seeks to secure. Could it be that “DSW” omits to create this awareness or that their efforts to comply with the law are hampered by lack of manpower and infrastructure resources? This research will identify all the possibilities and subsequently attempt to recommend improvements to the present practices of probation officers so the welfare and best interest of “child offenders” are safeguarded during the pre-trial stage.

### **1.3 Research Methods**

This study used the mixed-mode type of research method; namely, qualitative and quantitative. Managing “child offenders” involves mostly human sentiments and capacities, thus a qualitative method is suitable because of its inquisitorial nature. The qualitative method for data collection will be interviews with the relevant parties involved in the pre-trial stage; namely the police, the probation officers, and the “child offenders”. The quantitative method for data collection will be the statistical data obtained from the Statistics & Operations Division (D4), the Criminal Investigation Department, and the “RMP”. These data, though secondary, shall provide the necessary backdrop to understanding the demographic profiles of “child offenders”.



## 1.4 Sample Size and Selection

In conducting the research, the writer will apply purposeful sampling criteria. He will use maximal variation strategy sampling to best aid understanding of the phenomenon central to the research. The writer chose two District Police Headquarters (hereinafter referred to as the IPD) as samples: one in Selangor (IPD Ampang Jaya) and another in Kuala Lumpur (IPD Dang Wangi), and the period starting January to July 2014. This research will focus on “child offenders” involved in property crimes<sup>4</sup> only.

Both the IPDs were chosen because of their central location within the city, which can best help the writer understand the central phenomenon. Furthermore, the total number of cases recorded from 2011 until 2014 (January – July) in the two states is among the highest in the country, and their property crime cases equal 69.7% of the total cases recorded<sup>5</sup>. Although the number of cases in both IPDs<sup>6</sup> is not as significant as the total cases recorded by both their states, the writer wished to look at only a handful of cases in every year and whether the police and the probation officers considered the best interests of the “child offenders”.

A total of thirty percent (30%) of “child offenders” involved in property crimes and arrested by the police was interviewed in each IPD for feedback on how they were treated while in police custody. Thirty percent (30%) of the investigation officers<sup>7</sup>

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<sup>4</sup> Property crime is a category of crime in which the person who commits the crime seeks to derive an unlawful benefit or interest from another's property without using force or threat of force. Property crimes are often high-volume crimes and that's including burglary, theft of vehicle, larceny and shoplifting. This information is available online: <http://definitions.uslegal.com/p/property-crime/> (Retrieved 3 September 2014).

<sup>5</sup> As may be found on pages 107 and 108 of Appendices ‘A’ and ‘B’ of this research.

<sup>6</sup> As may be found on page 109 of Appendix ‘C’ of this research.

<sup>7</sup> In this research, investigation officer refers to both the investigation officer (IO) and also the assistant investigation officer (normally called AIO). Throughout this research paper, the word IO refers to both the IO and the AIO. This does not include Senior Investigation Officer (SIO), who is also involved in conducting investigations but only on serious crimes or cases of public interest. The main duty of the SIO



(hereinafter referred to as “IOs”) interviewed in each of the two IPDs had had experience handling cases involving “child offenders”. Their feedbacks on whether their practices and procedures are in line with the international standard were gathered. Probation officers in charge of cases involving “child offenders” in each of the two IPDs were interviewed to identify whether the provision under Section 87(a) of the CA had been followed and complied with.

The writer will also visit the lock-ups of both IPDs and also the court premises to observe whether there are any separate cells for “child offenders” and also the condition of the cells. Being a police officer<sup>8</sup> himself, the writer will naturally tap into his own experiences in, and observations of, the practices and procedures concerning “child offenders” at pre-trial stage.

### **1.5 Data Collection Procedures**

The writer will conduct one-on-one face-to-face interviews with the respondents. This method avoids the possibility of the child being influenced by others if the interviews were done in groups or included family members. Such interviews allow for the recounting of individual experiences and perceptions in greater detail. They are particularly useful when the rapport built achieves a certain level of trust from which truthful response (because of his<sup>9</sup> tender age) can be secured from the child.

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is to monitor all the investigations done by the IO and the AIO. The writer excluded the SIO from this research because they seldom deal directly with “child offenders” who are usually involved in property crimes only rather than serious crimes.

<sup>8</sup> The writer is a senior police officer with the Royal Malaysian Police force and holds the rank of Assistant Superintendent of Police (ASP). He has served the force for the past 22 years. On top of that are his 13 years of experience investigating criminal cases involving not only adult offenders but also “child offenders”.

<sup>9</sup> The usage of the word ‘he’, ‘his’, or ‘him’ throughout this research connotes gender neutrality.



Interviews with the investigation officers and probation officers will be conducted in similar ways to those with the child.

Ideal-position and interpretive questions will be posed to the respondents to obtain thorough answers. The writer has chosen to adopt a set of open-ended and semi-structured interviews. Open-ended questions allow respondents to discuss their opinions, views, and experiences fully and in detail. Closed-ended questions may inhibit respondents from expressing their full opinions and experiences. Besides these, data will also be collected by analysis of documents, journals, articles, statutes, and relevant case laws. With regards to the procedures, approval will be sought from the respondents. Upon agreement of the respondents, meetings will be held at places of the respondent's choice and the interviews will be conducted in private. Prior to the meeting, the respondents will be given a set of questions. Before commencing the interviews, all the necessary explanations on the purpose of this research will be given. The respondents will then acknowledge their understanding and sign the consent form as a probe of agreement to participate in this research. This is to avoid the possibility of any respondents alleging later that they did not agree to or did not understand the reasons for or the purpose of this research. Upon the respondent's approval, the interviews will be recorded in writing so they could be detailed.

A set of questions will be prepared<sup>10</sup> as a topical guide to the practices and procedures, practical challenges, personal experiences, difficulties in the pre-trial stage, and suggested improvements by the relevant stakeholders.

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<sup>10</sup> As may be found on pages 110 to 112, 113 to 117, and 118 to 121 of the Appendix 'D', 'E', and 'F' of this research. However, all the interview questions were set in the Malay language because most of the respondents were not fluent in English.

## 1.6 Research Questions

The questions of the research are as follows:-

- i) Firstly, whether the police in their conduct and practices follow the procedure laid down by law and other international norms governing the juvenile justice system, such as the CRC, the “Beijing Rules”, the “JDLs” and the “Riyadh Rules”;
- ii) Secondly, that if the police are not following the rules and guidelines satisfactorily, what then are the challenges and difficulties faced by them as posed by the current law and practices?
- iii) Thirdly, what are the possible improvements for the “RMP” in handling child suspects during investigation?
- iv) Next, to what extent are the probation officers aware of their duties and responsibilities as required by Section 87(a) of the CA, towards “child offenders”, when informed by the police of the apprehension of those “child offenders”?
- v) Another, that if the probation officers are not aware of or not observing the guidelines, what are their reasons for non-compliance?



- vi) And lastly, what are the potential improvement measures and best practices for the “DSW” to best protect the interests of the “child offenders” while undergoing pre-trial detention?

## 1.7 Significance of the Research

Upon addressing all the research objectives listed early on and achieving the research objectives outlined, this research will be able to contribute towards proper identification of the current state of affairs in the management of children at the pre-trial stage.

## 1.8 Literature Review

Apart from the provisions of the CA, there have been only a minimal number of researches done on the topic of current practices of Malaysian enforcement agencies when dealing with “child offenders” at pre-trial stage. In his book titled “*Criminal Litigation Process*”<sup>11</sup>, Baljit Singh Sidhu dedicated a whole chapter to discussing the procedure for dealing with “child offenders”. However, he only merely reproduced the provisions of CA without any real discussion or research on the topic.

In the article titled “*The UN Convention on the Rights of the Child and the Administration of Juvenile Justice: An Examination of the Legal Framework in Malaysia*”<sup>12</sup> by Dr Farah Nini Dusuki, the author states on page 149 that “It is to be

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<sup>11</sup> Baljit Singh Sidhu. (2008). *Criminal Litigation Process*, Kuala Lumpur: Marsden Law Book.

<sup>12</sup> Dr. Farah Nini Dusuki. (2009). *The UN Convention on the Rights of the Child and the Administration of Juvenile Justice: An Examination of the Legal Framework in Malaysia*, Published in Asia Law Quarterly, Vol. 1 No. 1, pp. 141-158; Retrieved on 8 October 2014 from [http://www.klri.re.kr/uploadfile/Ak21/ALQ\\_200901\\_08.pdf](http://www.klri.re.kr/uploadfile/Ak21/ALQ_200901_08.pdf).



*noted that the right for children to be treated with dignity<sup>13</sup>, the right to life<sup>14</sup>, the right to be presumed innocent<sup>15</sup>, prohibition of torture and ill-treatment of children, the avoidance of the use of harsh language and physical violence should be respected at all time". The CA not only regulates "child offenders" but also children in need of protection and care<sup>16</sup>, of protection and rehabilitation<sup>17</sup>, are beyond control<sup>18</sup>, or are abducted<sup>19</sup>. Special procedures should be clearly outlined in the CA itself, with the child's dignity and tender age to be considered. These will prevent the police from using the Criminal Procedure Code<sup>20</sup> (hereinafter referred to as the CPC) when dealing with "child offenders", in view of the lacuna in the CA. CPC should be applied solely to adult offenders whereas CA should be applied to "child offenders"; otherwise, the purpose of having CA will be defeated. For example, Section 83(1) of the CA is silent on the procedure for mode of arrest and investigation in the first 24 hours even though it mentions arrest, detention, and trial of a child who comes into contact with the juvenile justice system. With the absence of this specific provision in the CA, CPC will be applicable, and there is a tendency for the police to not consider the sensitivity of a child while in the course of investigation. The author suggests that even though CA does not contain all the provisions to safeguard the best interests of the child, nevertheless, police officers at ground level should be aware of all the rights clearly enshrined in Article 37 of the CRC. The author further mentioned that "Apart from one provision, namely Section 87, which states that upon making the arrest, the police officer is duty-bound to inform first the parents or guardian then the probation officer of the arrested child, the Act is silent on other specific procedures with respect to mode of arrest and*

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<sup>13</sup> Rule 13 of the Beijing Rules.

<sup>14</sup> Article 6 of the CRC.

<sup>15</sup> Rule 17 of the UN Rules for the Protection of Juvenile Deprived of their Liberty.

<sup>16</sup> Part V of the Child Act 2001.

<sup>17</sup> Part VI of the Child Act 2001.

<sup>18</sup> Part VII of the Child Act 2001.

<sup>19</sup> Part VIII of the Child Act 2001.

<sup>20</sup> Criminal Procedure Code (Act 593), Malaysia, International Law Book Services. Legal Research Board.



investigation in the first 24 hours. In practice, practical difficulties in locating the probation officer results in only the parents or guardian being informed by the police. Thus the protective element which Section 87 seeks to secure is not achieved". In short, there is a tendency for the probation officer to not be aware that a child has been arrested, hence the necessary assistance is not accorded".

Another article by the author Srimurugan Alagan entitled "*Remand Proceedings – Practice and Procedure*"<sup>21</sup> discusses and elaborates on whether a child could be detained under Section 117 of the CPC for the police to complete their investigations (because Section 83 of the CA does not expressly state it). In practice, during a police investigation, when a suspect (whether child or adult) is arrested and the police is unable to finish investigations within 24 hours, the suspect will be brought before a Magistrate for further detention under Section 117 of the CPC. This practice by the police has been ongoing before and after CA had been enacted. However, on 13 April 2013, this issue was first raised when a child was arrested and brought before a Magistrate to obtain a remand order. After the remand order had been issued, the Magistrate entertained some doubts, thus requested the High Court to review it. The decision by the High Court in that case<sup>22</sup> was that the detention of a child shall be in accordance with the CA, thereby rendering Section 117 of the CPC inapplicable as expressly provided. However, the Court of Appeal unanimously overturned the decision of the High Court and held that in absence of a specific period for remand under Section 84(2) of the CA, Section 117 of the CPC is applicable to the child. In short, the same provision that applies to adult offenders still applies to "child offenders".

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<sup>21</sup> [2005] 2 CLJ i (June)

<sup>22</sup> *PP v N (A Child)* [2004] 2 CLJ 176



In the “*Report of the Working Group on Arbitrary Detention in Malaysia by the Human Rights Council of the United Nations in 2010*”<sup>23</sup>, the Working Group states on page 17 that “*The police agents often fail to inform detainees about their rights to contact family members and to consult a lawyer of their choice*”. The Working Group on Arbitrary Detention conducted a mission to Malaysia from 7 to 17 June 2010 at the invitation of the Government and found quite a number of weaknesses pertaining to the pre-trial of a child and adult detainees. Access to legal counsel and communication between detainees with their relatives should be guaranteed and is a recommendation of the Working Group.

In the “*Status Report on Children’s Rights in Malaysia*”<sup>24</sup>, a research project conducted by the Child Rights Coalition Malaysia (Non-Governmental Groups), is stated on page 27 that “*Since the Child Act does not clearly explain the procedure for the mode of arrest, child suspects are very much at the mercy of the arresting officer. Key issues noted at the arrest, investigation, and bail stages including failure by the police to inform the child’s parents or guardians of the arrest, lack of access to legal representation, non-involvement of “DSW” probation officers until the child is brought to court, and use of force by police officers at arrest and during questioning*”. This report concludes that the juvenile justice system in Malaysia is very much focused on formal police and court-based interventions and institution-based rehabilitation. One suggestion encourages speedy implementation of restorative justice programmes including diversion.

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<sup>23</sup> Report of the Working Group on Arbitrary Detention, Mission to Malaysia Human Right Council of United Nation in 2010. Retrieved on 9 September from [http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.47.Add.2\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.47.Add.2_en.pdf).

<sup>24</sup> Status Report on Children’s Rights in Malaysia by Child Rights Coalition Malaysia (December 2010). Retrieved on 9 September from [http://www.unicef.org/malaysia/Report\\_on\\_Childrens\\_Rights\\_.pdf](http://www.unicef.org/malaysia/Report_on_Childrens_Rights_.pdf).



In a paper titled "*Criminal Justice System and Procedure Relating to Children*"<sup>25</sup> presented by Dr Farah Nini Dusuki during SUHAKAM, Report on the Roundtable Consultation 2004, a few of the author's suggestions as appeared on page 28 pertaining to the pre-trial process involving a child include "*To provide, distinguish, and clarify in the law or Practice Directions, the powers of the police with regards to remand, to amend lock-up rules to prevent children from being detained with adult offenders, and to provide for basic needs of children, such as access to legal advice and family visitations, clean clothes, reading materials, and religious requirements, to prohibit the use of handcuffs for cases involving child offenders, and to upgrade probation services in terms of increasing the number and training of personnel*". These suggestions by the author are to improve the present condition of the treatment received by "child offenders". On top of that, after reviewing and discussing the recommendations during the Roundtable Consultation 2004, SUHAKAM supported the idea of realizing Voluntary Probation Officers to foster greater involvement in the management of criminal justice, prevention of crime and rehabilitation of offenders. This is in line with the Tokyo Rules (United Nations Standard Minimum Rules for Non-Custodial Measures)<sup>26</sup> and is also provided in the National Plan of Action for Children. The SUHAKAM suggestion clearly shows recognition of the important role of probation officers in our juvenile justice system. This role must also be proactive rather than passive.

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<sup>25</sup> Dr. Farah Nini Dusuki. (2004). Criminal Justice System and Procedure Relating to Children, SUHAKAM, Report on the Roundtable Consultation.

<sup>26</sup> Article 1.2 states that, "The Rules are intended to promote greater community involvement in the management of criminal justice, especially in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society".



In the article by the author Nadzriah Ahmad, *"The Unheard Voices of Child Offenders: Time for Reform for the Youth Justice System in Malaysia?"*<sup>27</sup>, the author states on page 2 that *"The finding of the research demonstrates that the majority of the respondents were denied legal protection at the pre-trial process because of the inadequacy of the existing laws in protecting the legal rights of the children."* The author further found that presently *"The enforcement officers, particularly the police force, rely heavily on CPC when undertaking their duty in dealing with child offenders, and the same provisions in the CPC are also applicable to adult offenders who came into contact with the criminal justice system."* The author submits that a separate juvenile justice system for "child offenders" should be created while CPC should be made applicable to adult offenders only. CA's shortcomings affect the way the police execute their investigations, which need arrest, remand, and detention of "child offenders"; and while exercising this duty, there is the possibility that "child offenders" are not treated with due respect or are subjected to some form of force by the police when there are no special provisions by the CA.

In the article titled, *"Strengths and Weaknesses of the Protection Mechanism and Support System for Reintegration of Children in Conflict with the Law"*<sup>28</sup>, one of the weaknesses highlighted by the author James Nayagam on page 72 is that *"There is no proper case management where it involves a child in conflict with the law. It is proposed that the officer of The Department of Social Welfare be present at first reporting of the offence in the police station"*. The above article illustrates weakness on the part of the probation officer in preventing violation of the human rights of the child who has come into conflict with the law. In the present system, the welfare officer is

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<sup>27</sup> Nadzriah Ahmad. (2013). *The Unheard Voices of Child Offenders: Time for Reform for the Youth Justice System in Malaysia?* In 6<sup>th</sup> World Congress on Family Law and Child Rights Sydney, Australia. Retrieved on 7 September 2014 from <http://www.lawrights.asn.au/6th-world-congress/paper.html>.

<sup>28</sup> James Nayagam. (2012). *Strengths and Weaknesses of the Protection Mechanism and Support System for Reintegration of Children in Conflict with the Law*, Malaysian Journal on Human Rights Vol 6, 2012.



only required to be in the court to present the probation report just before sentencing. Thus, he plays a passive role at pre-trial stage.

In the *“The Malaysian Juvenile Justice System: A Study of Mechanisms for Handling Children in Conflict with the Law”*<sup>29</sup>, a joint study by the Ministry of Women, Family and Community Development and UNICEF Malaysia, page 12 suggests to *“Improve arrest and investigation practices by developing detailed Standing Orders for the police, establishing specialized police units in major cities to handle all child suspects and designating child specialists in other location, involving probation officers (or trained volunteers) from point of arrest, requiring a parent, probation officer, lawyer, or some other supportive adult to be present whenever a child is questioned by the police and establishing more centralized lock-ups for children with appropriate facilities”*. This study concluded that the juvenile justice system in Malaysia need to undertake a holistic reform so that it could go in tandem with the international standards and global best practices in the administration of juvenile justice, while at the same time ensuring the system is relevant and appropriate to the Malaysian context.

With all the above and on analysis of the nine views on the pre-trial process involving “child offenders”, the writer finds that the police are less sensitive in handling investigations involving “child offenders” when there is an absence of a specific provision in the CA. In the mean time, “DSW” probation officers rarely play their role in protecting the welfare of the “child offenders” after their arrest, and sometimes cannot be contacted or located by the police. This clearly goes against the spirit of Section 87(a) of the CA and yet there is only minimal research directed towards determining the extent of non-compliance by the “RMP” and “DSW” to the

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<sup>29</sup> The Malaysian Juvenile Justice System, A Study of Mechanisms for Handling Children in Conflict with the Law (2013). A study jointly conducted by the Ministry of Woman, Family and Community Development and UNICEF Malaysia.



international standards and what caused it. Could it be due to the “RMP” and the “DSW” having problems in human resource or logistics? These will be the points on which this research will be based. The study will determine the practices and procedures that do not meet the international standards and also the causes of the police’s and probation officers’ non-compliance with the existing law. It could enhance the sensitivity of the police and the probation officers when managing “child offenders” during the pre-trial stage. Past literature studies on “child offenders” were based on the detainees at Henry Gurney School or Sekolah Tunas Bakti for insights on how “child offenders” are treated while undergoing police detention. None of the “child offenders” interviewed in those researches consists of those who are not charged in court or charged then released by the Court upon admonishment or some other forms of non custodial orders. Through this research, a better understanding of how “child offenders” are treated can be obtained because all the child respondents in this research are not currently under detention and they constitute the majority of “child offenders” who have ever been detained by the police.

### **1.9 Limitation of Research**

The limits of this research on purposeful sampling method are the decreased generality of the findings. The whole population of “child offenders” that have been in police custody cannot be generalized. The writer knows that locating “child offenders” when they are no longer under police detention is an arduous task. Even if the writer manages to locate them, another obstacle is getting their permission to be interviewed. Other limitations would be the lack of time and/or budget for this research. Lack of time resulted in the writer managing only 30% of interviews of the IOs/AIOs at the two IPDs and of the “child offenders”, besides obtaining the relevant information by interviewing



probation officers based in “DSW” Hulu Langat and Jalan Duta. The delimitation of this study is that it is confined to cases involving “child offenders” who committed property crimes within the last seven months, with the statistics and numbers verified as they are kept by the D4 division of the Criminal Investigation Department, the Bukit Aman Federal Police Headquarters, also the District Police Headquarters of Dang Wangi and Ampang Jaya.

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## **CHAPTER 2: Overview of the International and Domestic Laws on the Management of Children who come into Conflict with the Law**

### **2.0 Introduction**

The term ‘criminal justice system’ describes the legal processes applicable to those who commit an offence or fail to comply with the criminal law enforced in a particular country. ‘Juvenile justice’ is the term used to describe a criminal justice system developed and applied solely to “child offenders”. It covers a vast and complex range of issues from prevention through first contact with the police, the judicial process, the conditions of detention, and social reintegration, and involves a wide range of actors<sup>30</sup>. The purpose of this chapter is to provide an outline on the history and development of the rights of “child offenders” under international and domestic laws throughout the existence of mankind. The second and third subtopics will focus on what rights “child offenders” are accorded by international law and Malaysian law, respectively.

The emphasis will be on the rights of “child offenders” when they undergo an investigation process or are in the pre-trial stage; also what rights the enforcement agencies (especially the police force) should be aware of and uphold. It is important for the child’s development because his first contact with the criminal justice system is through the police officer. His views and attitudes towards law enforcement are shaped by the encounter, therefore the role played by the police officer is considered especially important. At the same time, “DSW” probation officers must ensure that the welfare of every child who comes into conflict with the law is taken care of. Whether there any

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<sup>30</sup> Unicef, *Improving the Protection of Children in Conflict with the Law in South Asia: A Regional Parliamentary Guide on Juvenile Justice*, 2007 at pg 5.



international laws relevant to these matters and how far our own domestic laws comply with them will be explored in this chapter.

## **2.1 History and Development of International and Domestic Laws relating to Children who come into Conflict with the Law**

In this subtopic, the researcher will explore some of the history and development of treatment and punishment of “child offenders”. Without looking back at the history of laws dealing with “child offenders”, we will never get a clear and precise picture on how they were treated and why those laws must change for the betterment of the child. However, we must first understand what “children’s rights” mean. There are two fundamental and competing theories that have grappled with the notion of children’s rights<sup>31</sup>. The first theory is of ‘choice’ or ‘will’ advocated by Hart (1984)<sup>32</sup> and Feinberg (1980)<sup>33</sup>, which is based on the notion that to have a right is to be able to make a choice about enforcement of duties imposed on others. It has been used to deny young children their rights because their immaturity makes decision-making difficult for them<sup>34</sup>. Another, the ‘interest’ theory, bases rights on whether a child has an interest that is in need of protection or is actually capable of asserting or waiving his claim<sup>35</sup>. This theory needs to identify which among a child’s interests should be marked as a right. Two approaches towards children’s rights have been unveiled by Rogers and Wrightsman, namely, the rights to nurturance and self-determination<sup>36</sup>. Nurturance is protection of the child whereas self-determination gives autonomy to him. They seem to conflict each

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<sup>31</sup> Freeman, M.D.A. (1983). *The Rights and Wrongs of Children*, London: Continuum International Publishing, chapters 1 & 2.

<sup>32</sup> Hart, H.L.A. (1984) ‘Are There Any Natural Rights?’, in Waldron, J (ed) *Theories of Right*, Oxford: Oxford University Press.

<sup>33</sup> Feinberg, J. (1980) *Rights, Justice and the Bounds of Liberty: essay in social philosophy*, Princeton, New Jersey: Princeton University Press.

<sup>34</sup> Farah Nini Dusuki. (2012). Protection of Children’s Rights. Dlm Abdul Ghafur Hamid. *Human Rights Law International, Malaysian and Islamic Perspectives*, pg 199.

<sup>35</sup> Buck, Trevor, Gillespie, Alisdair A, Ross, Lynne and Sargent, Sarah. (2011). *International Child Law*, New York: Taylor & Francis Group, at pg 25-26.

<sup>36</sup> Rogers, C. M. and Wrightsman, L. S. (1978), Attitudes toward Children’s Rights: Nurturance or Self-Determination?. *Journal of Social Issues*, Vol. 34(2): 59-68.



other. Denying a child the right to make his own decisions, for example, is good for him in terms of protection or care. Another important point is that children are passive recipients of the nurturance provided by their parents, guardians, or the state. The right to self-determination thus opposes the right to nurturance. In decision making, age is a very important factor. Until a specific age is reached, children's self-determination is either exercised by adult representatives or simply unavailable.

According to Freeman, defending children's rights seriously and effectively requires policies, practices, structures, and laws<sup>37</sup>. Four categories of children rights proposed by him are the rights to welfare, protection, social justice, and claims for greater freedom from control and more autonomy over their lives<sup>38</sup>. The first two rights according to Freeman are paternalistic and are considered appropriate by adults whether or not the child claims them. The third and fourth belong to a more liberalist school: respectively, the right to be treated like an adult and the right to be against an adult<sup>39</sup>. Freeman points out that a child's right to be treated like an adult is based on his mental capacity and is case-based. If a dispute arises, it should be referred to the courts so a solution can be obtained.

Eekelaar classifies children's interests into three groups: 'basic', 'development', and 'autonomy'<sup>40</sup>. He suggests that adults should 'make some kind of imaginative leap and guess what a child might retrospectively have wanted once he reaches a position of maturity'<sup>41</sup>. He defines a child's basic interests as immediate care (physical, emotional,

<sup>37</sup> Freeman, M.D.A. (1992). "Taking children's rights more seriously", 6 *Int J Law & Fam* 52 at 69 – quoted by Farah Nini Dusuki, 2012. *Protection of Children's Rights. Dlm Abdul Ghafur Hamid. Human Rights Law International, Malaysian and Islamic Perspectives*, pg 200.

<sup>38</sup> Freeman M.D.A. (1983). *The Rights and Wrongs of Children*, London: Continuum International Publishing.

<sup>39</sup> *Supra*, note 34 at pg 200.

<sup>40</sup> Eekelaar, J. (1986). "The Emergence of Children's Rights", (1986) 6(2) *Oxford Journal of Legal Studies* 161.

<sup>41</sup> *Ibid* at pg 170.



and intellectual); development interests as optimization of full development potential through equal access to the relevant resources; autonomy interests as “the freedom to choose personal lifestyles and enter social relations according to personal inclinations; uncontrolled by the authorities of the adult world, be it parents or institutions”<sup>42</sup>. Important to note of the three interests or rights is that where there seems to be a conflict between autonomy interests and basic or developmental interests, the latter should prevail. This suggestion has significant and far-reaching implications in practical situations, such as when a child’s decision to start smoking cigarettes be overridden by basic and developmental health interests because this behaviour or habit would clearly prejudice the child’s life-chances in adulthood. Other than the philosophical debates on choices and interests are typologies by Wald (1979), who suggests four-fold classification: “Rights Against the World”, “Protection from Inadequate Care”, “Rights to an Adult Legal Status”, and “Rights Versus Parents”<sup>43</sup>. These are the same four-fold classification suggested by Campbell (1992), who made it according to the minor’s status: person, child, juvenile, and future adult<sup>44</sup>. There seems to be a fundamental conflict between the need to fulfill children’s rights to protection and the need to promote their capacity for self-determination<sup>45</sup>.

A more comprehensive definition of a child’s rights can be found in the Canadian Heritage poster for UNICEF:

*“Rights are things every child should have or be able to do. All children have the same rights. These rights are listed in the UN Convention on the Rights of*

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<sup>42</sup> Ibid at pg 171.

<sup>43</sup> Wald, M. (1979). ‘Children’s Rights: A Framework for Analysis’, 12(2) *University of California Davis Law Review* 255-282.

<sup>44</sup> Campbell, T. (1992). ‘The Rights of the Minor’ in Alston, P., Parker, S. and Seymour, J. (eds) *Children, Rights and the Law*, Oxford: Clarendon Press.

<sup>45</sup> *Supra*, note 35 at pg 28.



*the Child. Almost every country has agreed to these rights. All the rights are connected to each other, and all are equally important. Sometimes, we have to think about rights in terms of what is best for children in a situation, and what is critical to life and protection from harm. As you grow, you have more responsibility to make choices and exercise your rights”<sup>46</sup>.*

The next focus will be on the history of the law that deals with “child offenders”. In the biblical period of western society, children were perceived in the same manner as their counterparts in the near-eastern worlds: legal property of their father if he was a free man or of a master if they had been born to slave parents<sup>47</sup>. The legal position of “non-person” can be found within the codes of Hammurabi and Mosaic, and within both the ‘Twelve Tables’ and the Corpus Juris Civilis of Rome<sup>48</sup>. These legal codes contained rules for acceptable behavior within the society and the type of punishment for those who violated them. There seems to be little or no evidence at all of concern for the moral, physical, or emotional needs of the child as compared with most of modern systems of law<sup>49</sup>. Under Roman law, the responsibility of disciplining children was given exclusively to parents. The crucial factor determining whether the child is to be subjected to parental discipline or the more severe penalties invoked for adult violators is the age of the youth at the time the crime was committed. While its origin is unknown, 7 was the age used in Roman times to distinguish infants from older children who violated the law<sup>50</sup>. The earliest code of Roman law was contained in the ‘Twelve Tables’, which was enacted somewhere around 455 BC;

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<sup>46</sup> [www.rcmp.grc.ca/pdfs/NCD](http://www.rcmp.grc.ca/pdfs/NCD) (Retrieved on 27 October 2014).

<sup>47</sup> Oppenlander, Nan. (1981). The evolution of law and wife abuse. *In Law and Policy Quarterly*, Vol. 3(4), 382-405.

<sup>48</sup> Ibid.

<sup>49</sup> Vohrah, Paula, Datin, (1979). *The Legal Rights of a Child*, paper presented during The Fifth Malaysian Law Conference.

<sup>50</sup> Champion, Dean J. (1998). *The Juvenile Justice System: Delinquency, Processing, and the Law*, New York: Prentice Hall, at pg 6.



compared with modern law, it sounds incredibly harsh<sup>51</sup>. It contains many of the principles and practices of Roman society at the time, such as the principles of *patriae potestas* and the practices of *jus vitae necisque* and *a fortiori*. Under the principle of *patriae potestas*, the father has the absolute power within the family and over all family matters; it was the philosophical foundation upon which all Roman law was built. The Roman father has undisputed power in making decisions in his household and for its members, such as sell his family members into bondage/slavery or arrange marriages for his children. Within the principle of *patriae potestas* were the practices of *jus vitae necisque* and *a fortiori*. *A fortiori* is the power to carry out unlimited corporal punishment to control and correct the behavior of family members, whereas the ultimate expression of *patriae potestas* is found in *jus vitae necisque*, where the father has the power of life and death over all his family members and slaves<sup>52</sup>.

As stated early on, the age distinguishing infants from older children or adults used to be 7 years old but according to Griffin and Griffin (1978), under the Roman law, besides the child's age, factors such as physical development, nature of the offence, and the child's mental development do play a role in determining the child's legal responsibilities. In short, the father could punish his children privately for their misdeeds whereas misbehaving mature children will be punished by the Roman state publicly<sup>53</sup>. These legal philosophies of the middle and later periods of the Roman Empire had the greatest impact on most western civilizations<sup>54</sup>. During the Middle Ages, most of the European countries were feudal states and the king was the lord of the land who oversaw every aspect of the life of his subjects. From thereon came the notion

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<sup>51</sup> *Supra*, note 49 at pg 214.

<sup>52</sup> Patenaude, Allan L, (2006). History of the Treatment of and Attitudes toward Children. In Sims, Barbara and Preston, Pamela. *Handbook of Juvenile Justice : Theory and Practice*, pg 7.

<sup>53</sup> Griffin, Brenda S. and Charles T. Griffin. (1978). *Juvenile Delinquency in Perspective*. New York: Harper and Row.

<sup>54</sup> *Supra*, note 52 at pg 6.



of *parens patriae* which means the nation-state is represented by the king who had the responsibility to intervene in the lives of lesser lords and peasants in the best interest of the kingdom<sup>55</sup>. If it applies to juvenile matters, *parens patriae* means that the sovereign is in charge of, makes decisions about, or has responsibility for, all matters involving juvenile conduct. In the early English common law, parental authority primarily focused on the upbringing of their children and those children above the age of 7 years. It will be the state's responsibility if they violated the law. Chancellors will act on the name of the sovereign to deal with matters involving juveniles who violated the law but the juvenile had no legal rights in any court and is the sole responsibility of the sovereign or his agents when his future is to be determined<sup>56</sup>. However, in eighteenth-century England, "child offenders" above 7 years old were treated alike and subjected to the same type of punishment used against adult offenders; no distinctions of either age or gender. Corporal punishment, banishment, and death penalty were invoked frequently even for offences such as petty crimes against "child offenders". On top of that, "child offenders", regardless of gender, were confined together with adult offenders in jails patterned largely after the workhouses<sup>57</sup> that were common nearly two centuries earlier<sup>58</sup>. The idea of separating "child offenders" from adult offenders never came across the state or the government of the day and no initiative was ever taken towards it.

As discussed above, this was the situation that surrounded the juvenile justice system right up to eighteenth-century Europe (mostly). Things started to change for the

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<sup>55</sup> Ibid at pg 8.

<sup>56</sup> *Supra*, note 50 at pg 15.

<sup>57</sup> One example of this type of workhouse is the Bridewell Workhouse established in 1557 in London.

<sup>58</sup> *Supra*, note 50 at pg 6.



better in England when the Children's Act 1908 was passed by the Liberal Governments as part of the reformist legislation<sup>59</sup>. The Act contained these 3 fundamental rules:

- a) "Child offenders" ought to be kept separately from adult prisoners and be treated differently according to their special needs;
- b) Parents must be made to feel more responsible for the wrongdoings of their children; and
- c) Sending "child offenders" to prison regardless of the offence is unsuitable penalty.

However, at international level, there is no instrument to deal directly with the rights of "child offenders". The first effort to address these rights at international level was in 1924 when the Assembly of the League of Nations formulated and adopted the Geneva Declaration of the Rights of the Child. The document contains five aspirational points<sup>60</sup> inspired by the experience of Save the Children founder Eglantyne Jebb in the First World War<sup>61</sup>. Sadly, with the outbreak of the Second World War, this document was rendered impotent. After the Second World War ended in 1945, the United Nations (UN) was formed and a new Declaration on the Rights of the Child was passed by the UN General Assembly in 1959 to commemorate the thirty-fifth anniversary of the 1924 Declaration. This new Declaration is only a statement of internationally accepted general principles. It is not a legally binding convention and cannot be enforced. Still, it can be regarded as evidence of a set of aims and ideals recognized by the international

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<sup>59</sup> Bradley, Kate. (2009). The Children Act 1908: Centennial Reflections, Contemporary Perspectives (Review). *History Workshop Journal*, Issue 68 at pg 303-305. Retrieved on 28 September 2014 from <http://muse.jhu.edu/journals/hwj/summary/v068/68.bradley.html>.

<sup>60</sup> For the text of the 1924 Declaration, see Van Bueren, G, *International Documents on Children*, 1993, Dordrecht: Kluwer, pg 3.

<sup>61</sup> Fottrell, Deirdre. (1999). *Children's Rights*. In Hegarty, Angela & Leonard, Siabhan. *Human Rights: An Agenda for the 21<sup>st</sup> Century*.

community, for which and to which all nations are prepared to strive and contribute with their best efforts<sup>62</sup>.

Nothing much has changed since then until 1979, which was the International Year of the Child, during which the Polish Government proposed that the principles in the United Nations Declaration of the Rights of the Child 1959 to be translated into international law. Even though the initial Polish draft was rejected, work towards accomplishing a new Convention on children's rights began to take place. Almost at the same time, another non-binding text relating to juvenile justice was adopted by the United Nations, namely the United Nations Standard Minimum Rules on the Administration of Juvenile Justice or better known as the "Beijing Rules", on 29 November 1985, during the United Nations General Assembly. The "Beijing Rules" are not specific to education but apply solely to the juvenile justice system as follows:

- a) Emphasize the well-being of young people and ensure that any reaction is always proportionate to the circumstances of both the offender and the offence;
- b) Encourage the use of diversion programs that remove young people from the criminal justice process and implement supportive or community services;
- c) Ensure the right to privacy and procedural safeguards including the presumption of innocence;
- d) Ensure that proceedings are conducive to the best interests of the child and that young people have the opportunity to participate and express themselves freely;
- e) Use inquiry reports on social, familial, and educational background to identify and provide appropriate social services;

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<sup>62</sup> *Supra*, note 49 at pg 216.



- f) Avoid institutionalization as much as possible by instead using other measures such as counseling, probation, or community service;
- g) Use institutionalization only as a last resort; and
- h) Focus on the goal of institutionalization as assisting young people in becoming productive members of society<sup>63</sup>.

As can be observed from the above, the “Beijing Rules” provide guidelines for all member states of the United Nations to follow and adhere to even though it is a non-binding text. At last the climax of a long international campaign pushing for an international instrument that recognizes human rights for children finally came through with the adoption of the CRC on 20 November 1989, which opened for signatures on 26 January 1990 and was enforced into international law on 2 September 1990. CRC is indeed a remarkable piece of international instrument. No less than 61 states parties signed on the first day it opened for signatures – somewhat a record for an international treaty<sup>64</sup>. At the moment, 193 state parties have ratified the CRC. Only Somalia and the United States have yet to do so even though both countries are signatories to it. Somalia has yet to ratify it because of the civil war since 1991 and the successive waves of further inter-clan tension leaving in its wake a failed state. According to Rutkow and Lozman (2006), the failure of the United States in ratifying the CRC owed to four areas of concern: sovereignty, federalism, reproduction and family planning, and parental rights<sup>65</sup>. Member states that have ratified the CRC must submit an initial report within 2 years of the date the CRC entered into force for that state and thereafter every 5 years<sup>66</sup>.

<sup>63</sup> <http://www.un.org/documents/ga/res/40/a40r033.htm> (Retrieved on 27 September 2014).

<sup>64</sup> *Supra*, note 35 at pg 88.

<sup>65</sup> Rutkow, L. and Lozman, J.T. (2006). ‘Suffer the Children? A Call for United States Ratification of the United Nations Convention on the Rights of the Child’, 19 *Harvard Human Rights Journal* at pg 161-190.

<sup>66</sup> Article 44 of the CRC.



This form of check and balance shows that the international body is serious in monitoring CRC member states' upholding of the spirit of the Convention. In the same year CRC entered into force, two more non-binding texts relating to juvenile or children in conflict with the law were adopted and proclaimed by the United Nations General Assembly on 14 December 1990: the "JDLs" and the "Riyadh Rules". Combined with the early mention of the "Beijing Rules", it formed the blueprint for the various processes that should be applied to children caught up in youth crimes.

The discussion above allow summary that children's rights have undergone a massive evolution dating back from the ancient time of the Romans during which the Roman father had undisputed power in making decisions for his children and those who violated the law were punished on the same laws that applied to an adult. The concept of juvenile justice did not exist at the time and adults and children were no different in the eyes of the law. Things stayed almost the same during the Middle Ages. Only during the early twentieth century did the international community begin to recognize that children do have their own rights. This was reflected by the passing of the Children's Act 1908 in England, which showed that the modern government knew that "child offenders" should be treated differently from adult offenders. The 1924 League of Nations Declaration of the Rights of the Child was the first international instrument that recognized the rights of the child. It carried a significant moral force even though it is a non-binding resolution. Improvement was seen after the World War 2, and the climax of a long international campaign was the adoption of the CRC. The CRC now constitutes the most authoritative and comprehensive statement of the fundamental rights of children, covering civil and political, social, economic, cultural, recreational, and humanitarian rights even though not all the rights in the Convention are



enforceable<sup>67</sup>. Since the adoption of the CRC, many countries have modified their domestic laws to guarantee children the rights set for them by the Convention and other international instruments<sup>68</sup>. However, the Convention still allows state parties to enter their *Reservations*, thus making full implementation difficult. A good example is the general reservation of Islamic countries, who state that their adherence to the Convention is subject to the provisions of Islamic law. Even so, the adoption of the CRC is the right move in recognizing the rights of children and especially “child offenders”.

## **2.2 Rights of Children who Come into Conflict with the Law during Arrest and at Pre-Trial Disposition under the present International Law**

Children involved in crime do not or should not lose their right to be treated as children<sup>69</sup>. “Child offenders” are less dangerous to society than adult offenders are, and are less responsible for their action but more amenable to training and education<sup>70</sup>. At present, the CRC is the primary instrument guiding the development of the juvenile justice system on the international platform, through which children should be treated in a manner consistent with their rights in the justice system.

In general, CRC talks about children’s rights in terms of accessibility to education, healthcare, and protection, quality of care and education, also respect. The four main principles of CRC are that children must not suffer discrimination<sup>71</sup> and have the right to survival and development<sup>72</sup>; their best interests must be a primary

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<sup>67</sup> *Supra*, note 34 at pg 203.

<sup>68</sup> *Ibid* at pg 204.

<sup>69</sup> *Ibid* at pg 210.

<sup>70</sup> Ingleby Committee Report, Home Office, 1960, para 106.

<sup>71</sup> Article 2.

<sup>72</sup> Article 6.

consideration<sup>73</sup>; they must be allowed active participation in all matters affecting their lives and the freedom to express their opinions<sup>74</sup>. Before the adoption of the CRC, relevant international norms that seek to protect children under the age of 18 years had existed for decades. The Standard Minimum Rules for the Treatment of Prisoners (1955) was first to establish the principle of separating young people from adults in custodial facilities. Article 6.5 of the 1966 International Covenant on Civil and Political Rights (hereinafter referred to as the CCPR) reiterates the principle in the form of “hard law” and prohibits the death penalty from persons found guilty of a crime committed when they were under the age of 18<sup>75</sup>. Under the CCPR it lay down a lot of safeguards especially for juvenile offenders, in which the court procedure shall be as such that age and promotion of rehabilitation be considered<sup>76</sup>.

With regards to “child offenders”, CRC obliges the State Parties to protect “child offenders” at every stage of the juvenile justice system, in line with the requirements of Articles 37 and 40 of the CRC, in order to uphold the principle of best interest for the child<sup>77</sup>. Article 37 of the CRC obligates the State Parties to uphold the leading principles in deprivation of liberty, procedural rights, and treatment and conditions afforded to “child offenders” when deprived of liberty. Article 40 safeguards the legal rights of “child offenders” by ensuring that they are given protection in the form of proper treatment and guarantee of a fair trial<sup>78</sup>. At the moment, the main child-focused norms regulating this field are contained in the following non-binding texts: the “Beijing Rules”, “JDLs”, and the “Riyadh Rules”<sup>79</sup>.

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<sup>73</sup> Article 3.

<sup>74</sup> Article 12.

<sup>75</sup> *Supra*, note 34 at pg 211.

<sup>76</sup> Article 14.4.

<sup>77</sup> General Comment No. 10 (2007): Children’s Rights in Juvenile Justice, CRC/C/GC/10. Retrieved on 9 November 2014 from <http://www2.ohchr.org/english/bodies/crc/comments.htm> at para 10.

<sup>78</sup> *Ibid* at para 5.

<sup>79</sup> *Supra*, note 34 at pg 211.



The CRC, together with the “Beijing Rules”, “JDLs”, and the “Riyadh Rules”, constitute a comprehensive framework for the care, protection, and treatment of children coming into conflict with, or at risk of coming into conflict with, the law. The three sets of rules discussed above can be seen as guidance for a three-stage process: firstly, applying social policies to prevent and protect young people from committing an offence (the “Riyadh Guidelines”); secondly, establishing a progressive justice system for young people in conflict with the law (the “Beijing Rules”); and thirdly, safeguarding fundamental rights and establishing measures for ensuring the dignity and welfare of children and young people deprived of their liberty, whether in prison or other institutions (the “JDLs”)<sup>80</sup>. Although the Rules and Guidelines above contain greater details and more substantive provisions, the obligations of the States are minimal because they are non-binding and serve only to persuade.

With the adoption of the CRC, a new barometer is laid down for the implementation of the juvenile justice system by the State Parties. All the procedures and practices by the police in handling “child offenders” during the pre-trial stage will be examined in these areas:

- i) The arrest procedure and whether the police are allowed any form of force<sup>81</sup>;
- ii) The use of handcuffs<sup>82</sup> and police vehicles for the arrest;
- iii) The rights after the arrest, such as being informed of the grounds for arrest in a language understood by the child<sup>83</sup>;

<sup>80</sup> Roy, Nikhil and Wong, Mabel. (2004). *Juvenile Justice: Modern Concept of Working with Children in Conflict with the Law* at pg 24. Retrieved on 9 September 2014 from [https://www.essex.ac.uk/armedcon/story.../save\\_ij\\_modern\\_concepts.pdf](https://www.essex.ac.uk/armedcon/story.../save_ij_modern_concepts.pdf).

<sup>81</sup> Section 15 of the Criminal Procedure Code.

<sup>82</sup> Part A 120 of Inspector General Standing Order (IGSO).

<sup>83</sup> Rule 6 of the “JDLs”, Article 5(3) Federal Constitution of Malaysia and section 28A(1) of the CPC.

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- iv) The right to inform and maintain contact with parents or guardians and the probation officers after the arrest<sup>84</sup>;
- v) The right to communicate with a legal practitioner post-arrest<sup>85</sup>;
- vi) The right to be presumed innocent<sup>86</sup>;
- vii) The right for the prohibition of torture, ill-treatment, and harsh language to be observed and respected at all time while under police investigation<sup>87</sup>.
- viii) The right to be separated from adult offenders while in police and court lock-ups<sup>88</sup>;
- ix) Should a child be remanded or released on police bail as detention to be treated as the last resort<sup>89</sup>.
- x) The right to be treated with dignity<sup>90</sup>;
- xi) The right to be provided with clean clothes, reading material, and religious requirements<sup>91</sup>.
- xii) The right to restriction of media reporting and/or publication of “child offenders”<sup>92</sup>.

<sup>84</sup> Rule 10.1 of The Beijing Rules and section 87(a) of the Child Act 2001 (Act 611).

<sup>85</sup> Rule 18(a) of the “JDLs”, para 49 of the General Comment No. 10(2007), Article 5(3) Federal Constitution of Malaysia and section 28A(2)(b) of the Criminal Procedure Code (Act 593).

<sup>86</sup> Rule 17 of the UN Rules for the Protection of Juvenile Deprived of their Liberty.

<sup>87</sup> Rule 10.3 of the “Beijing Rules”

<sup>88</sup> Standard Minimum Rules for the Treatment of Prisoners (1955), which first established the principle of separation of young people from adults in custodial facilities, Rule 13.4 of The Beijing Rules and section 85(a) and (b), Child Act 2001 emphasize it.

<sup>89</sup> Rule 2 of the “JDLs”

<sup>90</sup> Rule 13 of the “Beijing Rules”.

<sup>91</sup> Rule 13.5 of the “Beijing Rules” and Rule 18(c) of the “JDLs” does emphasize on this issues.

<sup>92</sup> Rule 8 of the “Beijing Rules” and section 15 of the Child Act 2001 (Act 611).



The issues above show that what counts most is whether or not the rights of the “child offenders” are fully respected according to those accepted international norms discussed earlier. What is the point when Malaysia as a State Party to the Convention does not fully translate the spirit of the Convention into domestic law and practice of the enforcement agencies?

### **2.3 Rights of Children who Come into Conflict with the Law during Arrest and Pre-Trial Disposition under Malaysian Law**

After the Second World War, in 1946 the Malayan Union government proposed a separate Act for the treatment of juvenile delinquents<sup>93</sup>. In 1947, the Juvenile Court Act 1947 (Act 90) was passed, with its focus being “the treatment of juvenile delinquency and the steps necessary in the interest of juvenile welfare”<sup>94</sup>. Through this Act, the Juvenile Court was established. It deals only with juvenile offenders, who, according to Section 2 of said Act, is a person aged between 10 and 18 years. As the years went by, two more Acts dealing with the protection of children, girls, and women were introduced, namely, the Women and Girls Protection Act 1973 (Act 106) and the Child Protection Act 1991 (Act 468).

Things started to change since Malaysia’s ratification of the CRC on 17 February 1995. A child’s best interests gained significant emphasis and should be the primary consideration in all matters dealing with the child<sup>95</sup>. Initially, Malaysia made reservations to 12 of the Articles, generally on grounds of inconsistencies with the country’s constitution, national laws, and national policies<sup>96</sup>. Four of those reservations

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<sup>93</sup> Norbani Mohamed Nazeri. (2007). “Welfare: The Key To Juvenile Justice In Malaysia”, *The 4<sup>th</sup> ASLI Conference*, at pg 198.

<sup>94</sup> Proceeding of the Advisory Council Malayan Union 1947. B172.

<sup>95</sup> Article 3 of the CRC.

<sup>96</sup> Dr. Farah Nini Dusuki. (2009). *The UN Convention on the Rights of the Child and the Administration of Juvenile Justice: An Examination of the Legal Framework in Malaysia*, Published in Asia Law



were removed later but in July 2010 the reservations to Articles 1<sup>97</sup>, 13,<sup>98</sup> and 15<sup>99</sup> were withdrawn and came into effect on 18 August 2010<sup>100</sup>. At present, Malaysia still registers five reservations of the CRC, namely, Articles 2, 7, 14, 28, and paragraphs 1(a) and 37 of the Convention<sup>101</sup>. Malaysia's reservation over Article 37 of the CRC is mainly because of Sections 91(g) and 97 of the CA and not for any other reasons. Both sections refer to the possibility of a child being whipped by light caning and be detained at the pleasure of the Ruler if the child has been charged and subsequently convicted for offences punishable by a mandatory death sentence.

Upon Malaysia's ratification of the CRC, it is obliged to implement the provisions of the CRC in order to protect the legal rights of children. In line with the ratification, a committee was appointed to review the social laws relevant to children<sup>102</sup>. They are the Juvenile Courts Act 1947 (Act 90), the Women and Girls Protection Act 1973 (Act 106), and the Child Protection Act 1991 (Act 468). Consequent to the review, in 2001, the CA was passed and came into force in August 2002. At the same time, it repealed the three Acts above by virtue of Section 130 of the CA. In line with the spirit of the CRC, the word 'juvenile' or 'young offender', both of which have negative connotations, was replaced by the word 'child'. The main objective of Act 611 is to unify laws relating to care, protection, and rehabilitation of children as well as to provide remedial measures available to all courts with jurisdiction over all children<sup>103</sup>.

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Quarterly, Vol. 1 No. 1, pp. 141-158; Retrieved on 8 October 2014 from [http://www.klri.re.kr/uploadfile/Ak21/ALQ\\_200901\\_08.pdf](http://www.klri.re.kr/uploadfile/Ak21/ALQ_200901_08.pdf). at pg 142.

<sup>97</sup> Definition of a child.

<sup>98</sup> Freedom of speech.

<sup>99</sup> Freedom to indulge in associations.

<sup>100</sup> Kamala Bhaie a/p M.G.Pillai. (2011). *Protection of Children*, Selangor: MCJ, pg 448.

<sup>101</sup> *Supra*, note 1.

<sup>102</sup> Social Action Plan (PINTAS) set up in 1996.

<sup>103</sup> Act 611, section 83: trial of children at the High Court for criminal matters to comply with the Child Act 2011.



The juvenile justice system in Malaysia is governed by the CA, particularly Parts X<sup>104</sup> and XIII<sup>105</sup> of the CA. Section 3 of the CPC stipulates that in the absence of any legal provisions governing the juvenile justice system, then the legal provisions in the CPC are applicable. In short, the CPC is applicable to a child in the event of any lacuna in the CA<sup>106</sup>. Police investigation can thus be said to be fully guided by the provisions of the CA and CPC, which provide all the guidelines for the juvenile justice system in Malaysia.

Under Section 2 of the CA, a child, for the purpose of criminal proceedings, is a person aged between 10 years and 18 years. A child under the age of 10 years is recognized as 'doli incapax' as per Section 82 of the Penal Code<sup>107</sup>, and this presumption that the child is incapable of committing a crime is irrefutable. The presumption of 'doli incapax' is derived from the recognition of the fact of the immaturity of children who possess neither a fully developed understanding of what is wrong or right nor the ability to fully appreciate the consequences of his act<sup>108</sup>. Therefore, "child offenders" is a classification for people over the age of 10 years, known for being involved in crime, or has been found guilty of a crime by a court of law. For the purpose of criminal liability, these children are treated as adults, regardless of the nature of the crime, although treated differently in terms of criminal procedure<sup>109</sup> and the disposals available to the court.<sup>110</sup>

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<sup>104</sup> Outline the criminal procedure in Court for Children.

<sup>105</sup> Explain the process of investigation, arrest, search and seizure of commission of any offence under the CA.

<sup>106</sup> *PP v N (A Child)* [2004] 2 CLJ 176.

<sup>107</sup> Penal Code (Act 574), Malaysia, International Law Book Services. Legal Research Board

<sup>108</sup> Michael J Allen, *Textbook on Criminal Law*, Blackstone Press Ltd, London, 1991 at pg 9.

<sup>109</sup> Child Act 2001, Part X and XIII on criminal procedure for children.

<sup>110</sup> Child Act 2001, Part X, XI and XII.

Besides the written laws that govern juvenile justice in Malaysia, efforts have been taken by the Government of Malaysia to safeguard children's rights, eradicate abuse, and consider their special needs. Malaysia's commitment is the first step towards improving protection of "child offenders", laying the foundation for the necessary reform. These initiatives can be seen from the two national policies approved on 29 July 2009: for child development and protection. Said policies follow.

### **2.3.1 National Child Policy**

The National Child Policy (hereinafter referred to as the NCP) complements the National Social Policy through its offering of an objective that is common to the relevant parties and focuses on children's welfare in the nation's development process<sup>111</sup>. It embodies the spirits lauded, namely, survival, protection, development, and participation. Children shall enjoy opportunities and space to achieve holistic development in a more conducive environment, as provided by the CRC. The NCP aims at producing individuals who are healthy, fit, knowledgeable, innovative, creative, competitive, and progressive. The individuals shall also possess a personal identity and noble Malaysian values. The NCP also stipulates that children have the right to speak out and participate in any issue for their own benefit and well-being. The Women, Family and Community Ministry spearheaded steps to ensure that government agencies, non-governmental organizations, academicians, and the society join hands in developing the younger generations of Malaysia. There are six objectives in NCP and 29 strategies drawn according to the CRC, outlining the programs and action to be taken by the relevant parties in the short, medium, and long terms.

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<sup>111</sup> *Supra*, note 100 at pg 87.



The strategies outlined in NCP try to tackle the main reason behind child delinquency instead of just dealing with it. A close scrutiny of the NCP reveals that three of the strategies deal solely with the juvenile justice system, namely to create a child-friendly atmosphere as well as provide support to child witnesses and offenders in each court, increase awareness and sensitivity among the media and advertising agencies so they can be more responsible in protecting the interest of the child, complainant, and family, and introduce diversion programs<sup>112</sup> for “child offenders”. Even though these strategies are still in their infancy, with such a positive move they indicate the government’s commitment to uphold children’s rights.

### **2.3.2 National Child Protection Policy**

Owing to the recent development in children’s issues especially child protection, the Government of Malaysia has decided to formulate the National Child Protection Policy (hereinafter referred to as NCPP). This policy ensures that children are protected from all forms of neglect, abuse, violence, and exploitation. It will also encourage all organizations that deal with children to develop guidelines for child protection. The NCPP focuses on aspects of prevention, advocacy, intervention, reporting, and support services in protecting children. The plan of action provides standard guidelines and procedures in areas related to child protection. The term protection under NCPP includes abuse and violence, whether physical or verbal, from enforcement agency personnel especially the “RMP” who are duty-bound to conduct investigations involving criminal cases. This form of protection is very important because it will shape the way the child reacts towards the State and society at large after their release.

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<sup>112</sup> Rule 11 of the ‘Beijing Rules’ encourage the use of diversion when dealing with juvenile offenders without resorting to formal juvenile justice system and Article 40(3)(b) of the CRC too promote measures in dealing with children in conflict with the law without resorting to judicial proceedings.

## 2.4 Conclusion

Despite all the international Convention, Rules, and Guidelines that exist for juvenile justice, the fact remains that there are big differences between what is stated in the Convention and the real situation on ground. In many countries, there is inadequate legislation, and even where an appropriate legal framework does exist, the implementation is not executed properly. Too many children come into contact with the formal criminal justice system and are badly treated once they are within the system. Although it has been more than two decades since the CRC came into force, the administration of juvenile justice around the world is far from satisfactory. Juvenile justice remains a neglected issue both in terms of governments' reporting on the situation in their countries and more importantly the reality that happens on ground. According to Abramson (2001), the reports from the Committee on the Rights of the Child after analysis of various government reports concluded that 'Juvenile justice is the unwanted child in the UN system'<sup>113</sup>.

The focus for Malaysia is how far is its implementation of the provisions of the CRC and other related international rules and guidelines for the pre-trial stage. If the practices of the "RMP" are not in line with the provisions of the CRC, then any fundamental shifts in policies that should occur must ensure that children's rights are protected by the juvenile justice system. Each component of a juvenile justice system should, in its facilities and mode of functioning, protect the rights and welfare of children<sup>114</sup>.

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<sup>113</sup> Abramson, B. (2001). *Juvenile Justice: The 'Unwanted Child' of State Responsibilities*, International Network on Juvenile Justice, Defence for Children International.

<sup>114</sup> Ibid.



## **Chapter 3: An Empirical Study on Current Police Practices and Procedures in Investigation and their Compliance with International Standards**

### **A. Introduction**

#### **3.1 Police Investigation**

Since the focus of this research project is the pre-trial stage involving “child offenders”, where the first point of contact is with the police officers of the “RMP”, thorough understanding of their duty and the law behind their actions is very important. Section 3(3) of the Police Act 1967<sup>115</sup> provides that “The Force subject to this Act shall be employed in and throughout Malaysia (including the territorial waters thereof) for the maintenance of law and order, the preservation of peace and security in Malaysia, the prevention and detection of crime, the apprehension and prosecution of offenders, and the collection of security intelligence”.

This generally means that among the duties of the Police Force are maintenance of the law and public order and preservation of peace and security in Malaysia, the suppressing of any elements perceived as a threat to the nation’s security and harmony. The most important functions of the police in times of peace would be the prevention and detection of crime, the apprehension and prosecution of offenders, the issuance of summonses and warrants, the provision of assistance in protecting life and property, and the attendance at the criminal courts as stated in Section 20(3) of the Police Act 1967. Section 19 of the Police Act 1967 further states that every police officer shall when required to act as a police officer, be deemed to be always on duty.

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<sup>115</sup> Police Act 1967 (Act 344) and Rules and Regulations, ), Malaysia, International Law Book Services, Legal Research Board

In preventing and detecting crime, and prosecuting an offender, the police are given the power to arrest (with or without warrant) and detain for investigation, the offender<sup>116</sup>. Whether or not there is a First Information Report (hereinafter referred to as the FIR) is beside the point, as it is not a pre-condition to setting into motion the criminal investigation<sup>117</sup>. This holds true for police officers as far as policing and enforcement is generally concerned, and they who know of a design to commit any seizable offence may arrest without order from a Magistrate and without warrant if it appears that the commission of the offence cannot otherwise be prevented<sup>118</sup>. Moreover, arrest and investigation, though differ, are interrelated.

Police investigation usually commences when information is received through either own wit/intelligence (credible information) or reasonable suspicion. Investigation is also prompted by an FIR (of reasonable complaint). In non-seizable cases, Section 108 of the CPC clearly stipulates that an order to investigate from the Public Prosecutor is first needed to enable the police to exercise their special powers in relation to police investigations such as recording statements from witnesses under Section 112 of the CPC. In seizable cases, Sections 109 and 110 of the CPC state that the police officer whose rank is at least a Sergeant is not required to obtain the order to investigate but may exercise his special powers relating to police investigation. He must however report those cases to the Public Prosecutor unless the offence is of the type the Public Prosecutor had pre-directed to not be reported to him. A police officer whose rank is not less than a Sergeant or the officer in charge of the police station may proceed with the investigation but if he delegated the task to a lower-ranking subordinate police officer, the latter shall withhold from resorting to the special powers of investigation provided by 111 CPC (summoning witnesses), 112 CPC (interviewing witnesses), 116 CPC

<sup>116</sup> Section 23, 28, 103, 105, 107 to 120 of the Criminal Procedure Code.

<sup>117</sup> *PP v Foong Chee Cheong* [1970] 1 MLJ 97; *PP v Dato Seri Anwar bin Ibrahim* [1999] 2 MLJ 1.

<sup>118</sup> Section 104 and 105 of the Criminal Procedure Code.



(search of premises), and 117 CPC (further detention of suspect). These are pro-active powers the police have to ensure they can get hold of the evidence.

As has been mentioned, the criminal justice system is set into motion when information is obtained by the police. The investigation will commence according to the nature of the offence (whether it is non-seizable or seizable). In this research, the focus will be on seizable offences because the police may exercise their special powers<sup>119</sup> relating to police investigation. For example, suspected “child offenders” are often put into detention and interrogated upon arrest. They are brought to court to be remanded under Section 117 of the CPC and in the remand period, the child suspect will be taken to the crime scene or be asked to assist in arresting his accomplices that are still at large. In exercising all the special powers of investigation, there is a possibility that the rights of the child would be violated or not given due attention by the police.

## **B. Findings of the Surveys Conducted**

### **3.2 Background and List of Participants of this Research**

The purpose of this study is to investigate how the “child offenders” are treated by enforcement officers (particularly the police) and the role played by the probation officers during the pre-trial stage (whether in-line with the international standard). The participants were selected randomly from among “child offenders” but still based on the total number of property crime cases recorded by both IPDs. The total number recorded in the period of this research (January – July 2014) was sixteen (16) cases in IPD Dang Wangi and thirty-six (36) cases in IPD Ampang Jaya (see Appendix ‘C’). Therefore, five (5) “child offenders” interviewed were from IPD Dang Wangi and eleven (11)

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<sup>119</sup> Special powers of investigation provided under section 111 CPC (summoning witnesses), 112 CPC (interviewing witnesses), 116 CPC (search of premises) and 117 CPC (further detention of suspect).

more from IPD Ampang Jaya. This is equivalent to thirty percent (30%), as prescribed in the research methodology section. There were sixty five (65) IOs in IPD Dang Wangi<sup>120</sup> and fifty five (55) in IPD Ampang Jaya<sup>121</sup>. The number of IOs interviewed was twenty (20) from IPD Dang Wangi and seventeen (17) from IPD Ampang Jaya. This is equivalent to thirty percent (30%). Also interviewed were two (2) probation officers from “DSW” Jalan Duta and one (1) probation officer from “DSW” Hulu Langat. Both deal with “child offenders” in both the IPDs.

The information collected by interviewing all the stakeholders are presented in the table below, showing the details and particulars of those who took part.

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<sup>120</sup> Royal Malaysian Police, Dang Wangi District Headquarters, Criminal Investigation Branch  
<sup>121</sup> Royal Malaysian Police, Ampang Jaya District Police Headquarters, Criminal Investigation Branch

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**Table A: Particulars of the “Child Offenders” Interviewed**

Gender	Respondents	Age	School / Dropout	Cases Involved	Location of Arrest
<b>IPD Dang Wangi</b>					
Male	5	16 – 2 17 – 3	Schooling - 4 Dropout - 1	Theft in Dwelling House – 5	Public - 5
<b>IPD Ampang Jaya</b>					
Male	11	13 – 2 14 – 2 16 – 1 17 – 6	Schooling - 3 Dropout - 8	House breaking and Theft – 2  Theft of M/Cycle – 8  Theft - 1	House of the child - 5  Public - 6
<b>Total</b>	<b>16</b>	<b>16</b>	<b>16</b>	<b>16</b>	<b>16</b>

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The table above lists the “child offenders” interviewed. They had been involved in property crimes and arrested by IPDs Dang Wangi and Ampang Jaya. The five respondents from IPD Dang Wangi were 16 – 17 years old and male. Four of them (80%) were still in school and one was a drop-out. The offences committed by them were theft in dwelling houses. They were arrested at the shopping mall where they committed their offence. None of the respondents were arrested in their school compound. The eleven respondents from IPD Ampang Jaya comprised 13 – 17 year-olds and male. Three of them (27.3%) are still schooling while the rest are school drop-outs. The offences of the eleven respondents include stealing motorcycles (eight

<sup>122</sup> The list of the particular and detail of all the five respondents from IPD Dang Wangi and eleven respondents from IPD Ampang Jaya may be found at pages 122 and 123 to 124 of the Appendix ‘G’ and ‘H’ of this research.

respondents), shoplifting at a convenience store (one), and house-breaking and theft (two). Five were arrested at their home and the remaining six at public places.

Obstacles encountered by the writer include first and foremost locating the “child offenders”. Some had moved from the address given to the IPDs, so the writer had to use his own initiatives and experience to locate them. Even when the tracking was successful, the writer still had difficulties obtaining permission to interview because of parental objection, thus the breakdown on gender could not be balanced. Nevertheless, the number of female “child offenders” involved in property crimes at both IPDs was few (only three children)<sup>123</sup> and would not affect the findings of this research.

Tables B and C below list the experiences of all the IOs/AIOs the writer interviewed at both IPDs. The parameters investigated include number of years in service, present position in the Criminal Investigation Department (CID), experience as IO, and estimated number of cases investigated that involved “child offenders”.

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<sup>123</sup> *Supra* note 120 and 121.



**Table B: Particulars of the IOs/AIOs from IPD Dang Wangi**

<b>Respondents</b>	<b>Years of Service in PDRM</b>	<b>Experience as IO / AIO</b>	<b>Current Position in CID</b>	<b>Number of Cases Investigated that Included "Child Offenders"</b>
<b>1</b>	2	1	IO	Fewer than 10
<b>2</b>	2	1	IO	Fewer than 10
<b>3</b>	4	3	IO	15-20
<b>4</b>	7	6	IO	40-45
<b>5</b>	4	3	IO	20-25
<b>6</b>	7	6	IO	35-40
<b>7</b>	4	3	IO	20-25
<b>8</b>	2	1	IO	Fewer than 10
<b>9</b>	2	1	IO	Fewer than 10
<b>10</b>	5	2	AIO	15-20
<b>11</b>	8	2	AIO	20-25
<b>12</b>	30	2	AIO	10-15
<b>13</b>	26	6	AIO	50-60
<b>14</b>	2	1	AIO	Fewer than 10
<b>15</b>	10	2	AIO	Fewer than 10
<b>16</b>	34	15	AIO	150-200
<b>17</b>	13	1	AIO	Fewer than 10
<b>18</b>	7	2	AIO	12-15
<b>19</b>	4	2	AIO	Fewer than 10
<b>20</b>	9	2	AIO	Fewer than 10

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<sup>124</sup> The particulars and details of all twenty respondents may be found on pages 125-127 of Appendix 'I'.



**Table C: Particulars of IOs/AIOs from IPD Ampang Jaya**

<b>Respondents</b>	<b>Years of Service in PDRM</b>	<b>Experience as IO / AIO</b>	<b>Current Position in CID</b>	<b>Number of Cases Investigated that Included "Child Offenders"</b>
<b>1</b>	3	2	IO	10-12
<b>2</b>	8	3	IO	15-20
<b>3</b>	2	1	IO	Fewer than 10
<b>4</b>	3	2	IO	15-20
<b>5</b>	2	1	IO	Fewer than 10
<b>6</b>	10	1	IO	Fewer than 10
<b>7</b>	7	3	IO	15-20
<b>8</b>	35	15	AIO	120-150
<b>9</b>	31	7	AIO	60-70
<b>10</b>	5	3	AIO	25-30
<b>11</b>	4	3	AIO	20-25
<b>12</b>	24	6	AIO	40-45
<b>13</b>	33	14	AIO	90-100
<b>14</b>	33	4	AIO	20-25
<b>15</b>	34	6	AIO	40-45
<b>16</b>	11	1	AIO	Fewer than 10
<b>17</b>	32	5	AIO	35-40

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<sup>125</sup> The particulars and details of all seventeen respondents may be found on pages 128-130 of Appendix 'J'.



**Table D: Particulars of Probation Officers from “DSW” Jalan Duta and Hulu Langat**

<b>Respondents</b>	<b>Years of Service in “DSW”</b>	<b>Experience as Probation Officer</b>	<b>Current Position in “DSW”</b>	<b>Average Cases Referred to Per Year</b>
<b>1</b>	13	1	Head of Probation Officers at “DSW” Jalan Duta	1
<b>2</b>	12	12	Probation Officer at “DSW” Jalan Duta	10
<b>3</b>	22	1	Probation Officer at “DSW” Hulu Langat	3

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Table D lists the details of all the probation officers the writer interviewed in this research. Only one probation officer from “DSW” Hulu Langat was interviewed (she is the sole probation officer in-charge for IPD Ampang Jaya) and two (2) probation officers from IPD Dang Wangi. The reason for the two probation officers from “DSW” Jalan Duta instead of one is because there is none solely in-charge of IPD Dang Wangi. This information was given by the first respondent, who heads “DSW” Jalan Duta. According to him there are altogether four (4) probation officers working at “DSW” Jalan Duta. They work on rotation, i.e., after the first officer had taken a case referred to him/her, the next case is then referred to another officer and so on and so forth. The rotation applies only to preparing the probation reports required by Section 90(13) of the CA. The protective element in Section 87(a) of the CA is that the report should go to the probation officer who was at the office when it referred to by the police officer. Since there are no specific probation officers in charge of IPD Dang Wangi, the writer

<sup>126</sup> Lists of the particulars and details of all the three respondents may be found on page 131 of Appendix ‘K’ of this paper.

decided to interview the first respondent, who is the head of “DSW” Jalan Duta. The second respondent is the most senior probation officer there. With the help of both respondents, the writer obtained a clear insight into the working mechanism of the “DSW”, particularly the duties and functions of a probation officer.

With regards to the practices and procedures of the police and the probation officer managing “child offenders” at the pre-trial stage, next are the findings of this research.

### **3.2.1 Treatment of Suspected “Child Offenders” during an Arrest**

When arresting a child or any other suspects, the arresting officers must have some lawful basis for the arrest and subsequent detention, including a clear nexus between the suspect and his offence<sup>127</sup>, and not for purposes such as getting their help through questioning. The procedures for arresting a child and an adult differ because the child’s sensitivity has to be considered with respect to his dignity and tender age (so as to not leave a negative impact on him in his later life). If a child suspect is to be arrested in his school/workplace/home, what the suspicion is must first be conveyed to his school headmaster/employer/guardian. One opinion here is that though the child suspect might be cleared of what he was accused of by the police after the subsequent investigation is concluded, he would have to live with the embarrassment of the arrest as witnessed by friends and family. We have to bear in mind that Clauses 39 and 40 of the Magna Carta, signed in 1215 in Runnymede, state that the right of all men to be free except by lawful judgment of his peers, evolved the fundamental rule in criminal law,

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<sup>127</sup> *Polis Diraja Malaysia v Keong Mei Cheng Audrey* [1994] 3 MLJ 296.



that the accused is presumed innocent until proven guilty<sup>128</sup>, and is reinstated by Article 40(2)(b)(i) of the CRC, Rule 7.1 of the “Beijing Rules”, and Rule 17 of the “JDLs”. As such the police have to investigate tactfully before arresting a child suspect to avoid any negative impact to the child. The results of the interviews on how the “child offenders” were treated during arrest follow.

**Table E: Results of the Interviews on Treatment of “Child Offenders” during Arrest, for IPD Dang Wangi and IPD Ampang Jaya**

Number of Respondents	Treated with Respect		Impact of the Arrest		Handcuffs		Ground for Arrest Conveyed		Use of Police Vehicle and Uniformed Police Officers	
	Yes	No	Negative	No Effect	Yes	No	Yes	No	Yes	No
IPD Dang Wangi										
5	5	0	5	0	5	0	5	0	4	1
IPD Ampang Jaya										
11	9	2	11	0	7	4	11	0	2	9

The interview results for the sixteen respondents (“child offenders”) from both IPDs are as listed in Table E. Five (5) aspects of treatment and the effect of the arrest were investigated. Two of the sixteen (12.5%) reported that they were not treated with respect and the arresting police officers inflicted physical violence on them during the

<sup>128</sup> Jerald Gomez, *Rights of Accused Person – Are Safeguards being Reduced?* [2004] 1 MLJ xx at pg 2 & 3.

arrest. Further questioning of both respondents found the reason for the violence was their trying to evade and resist arrest (they were riding on stolen motorcycles). All the five respondents from IPD Dang Wangi, however, were treated amicably. They had been arrested by the shop owner against whom they committed the offence and handed over to the police for further action. The writer is of the opinion that “child offenders” will offer less resistance if they were arrested by the public because there are chances that they can negotiate out a settlement with the owner without bringing the matter to the police compared when they were arrested by the police. As for the respondents from IPD Ampang Jaya, none were arrested by the public. The circumstances of the arrest were thus different from those of IPD Dang Wangi.

On whether the police have the right to use force against a child while conducting arrest, Section 83(1) of the CA provides that the suspected “child offenders” shall not be arrested, detained, or tried except in accordance with the CA<sup>129</sup>, but sadly this section does not stipulate specifically the mode of arrest for “child offenders”. Since there are no specific provisions in the CA regarding mode of arrest, then the provisions of the CPC shall be applicable<sup>130</sup> and will give legitimacy to the police to use all necessary means to effect arrest including reasonable force<sup>131</sup>. Given that the two respondents tried to evade arrest and resisted it, then the use of force by the arresting officers were justified and lawful. As such the police will have to investigate thoughtfully and if possible to avoid making a formal arrest of child suspects to minimize any negative impact and to line up with the requirements of Article 37(b) of

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<sup>129</sup> In the case of *PP v N (A Child)* [2004] 2 CLJ 176 at pg 304, the Court of Appeal recognized that Section 83 of the CA prohibits a child offender from being arrested, detained or tried except in accordance with the CA.

<sup>130</sup> Section 15(2) of the CPC.

<sup>131</sup> *Shaaban & Ors v Chong Fook Kam & Anor* (1969) 2 MLJ 219



the CRC<sup>132</sup> and Rule 10.3 of the “Beijing Rules”<sup>133</sup>. This position is affirmed by the Committee of the Rights of the Child in paragraph 10 of the General Comment No. 10. In the opinion of the writer, the police should revise their arrest method (if it is necessary and unavoidable) and adopt one that is more suitable to the situation so the social stigma to the child is minimized even though the general application of CPC allows the police reasonable force. In essence, the CA provision for mode of arrest is not in line with the international standard. Urgent amendment is needed to ratify it.

The effect of making a formal arrest against “child offenders” is shown by Table E. All the sixteen respondents agreed that the arrest process had a negative impact on them. When asked what the negative impact was, all but two agreed that this was their first time being arrested by the police. They felt ashamed, scared, and embarrassed. For the other two “child offenders”, despite this not being their first arrest, going through the arrest process still impacted them negatively. A formal arrest is thus surely not in the best interest of the child even though it is necessary. It should be the last resort. Some international studies worldwide have produced consistent evidence that disrespectful or unfair treatment by the police can increase the risk of a repeat offence by the child offender compared with fair and respectful treatment<sup>134</sup>. The conclusion is that the process of arrest negatively impacts a child’s wellbeing. This is what Article 37(b) of the CRC, Rule 10.3 of the “Beijing Rules”, and General Comment No. 10 by the Committee of the Rights of the Child is trying to avoid.

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<sup>132</sup> Article 37(b) of the CRC requires that formal arrest and detention of a child be used as a measure of last resort.

<sup>133</sup> Rule 10.3 stated that the contact between enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of, promote the well-being of, and avoid harm, which prohibits the use of harsh language, physical violence, or exposure to the environment.

<sup>134</sup> McLaren, Kaye. (2000). “Tough is not Enough. Getting Smart about Youth Crime: A review of research on what works to reduce offending by young people,” New Zealand Ministry of Youth Affairs, 2000. Retrieved on 9 Mac 2015 from <http://www.myd.govt.nz/uploads/docs/0.7.4.2%20tough%20fulldoc.pdf>.



During their arrest, twelve of the child offenders (75%) informed that they were handcuffed by the police officers. Further questioning revealed that they had been either caught red-handed by the police or complainants, or found to possess a stolen motorcycle (the reason they were handcuffed). Four were not handcuffed because of their age (13 and 14 years old). From the writer's practical experience, the chances for these young kids to escape or put up a fight are slim compared with the other twelve respondents (16 and 17 years old). There are currently no laws governing the use of handcuffs by police officers. The use of handcuffs on a suspected "child offenders" has been argued as being unnecessary. This was stated by the Inspector General Standing Order (hereinafter referred to as the IGSO) Part A120, though provisions in the IGSO are not exhaustive and allows for handcuffs to be used if, to the assessment of the arresting officer, the detainee shows flight risk. Such assessments are important to arresting officers because if by his discretion the handcuffs are not used and the detainee escapes, the officer himself may be charged under Section 223 Penal Code<sup>135</sup> for negligence. Handcuffing the "child offender" secures not only the arrest officer's safety but also saves him from a negligence suit if the "child offender" either took flight or fought.

The use of handcuffs is not in line with the international standard, particularly Rule 10.3 of the "Beijing Rules", which emphasizes "avoid harm" and should be broadly interpreted to include the least possible harm to the child. Handcuffing a "child offender" is in itself harmful and affects the child's dignity and is certainly not for his best interest. Despite the Administration Order (IGSO) governing the use of handcuffs by arresting officers, the officer's discretion is still needed case by case. He must thus exercise care in his evaluations of any particular case.

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<sup>135</sup> Penal Code (Act 574) , Malaysia, International Law Book Services, Legal Research Board



All the sixteen respondents (100%) reported being informed of the grounds for their arrest in simple Malay language which they understood. Note that informing the suspect of the ground for his arrest is a mandatory requirement under Article 5(3) of the Federal Constitution and Section 28A (1) of the CPC, unless the suspect is arrested while committing his offence (caught red handed) or the offender himself made it impossible for the arresting officer to inform<sup>136</sup>. Still, even with the two circumstances, at the first reasonable opportunity post-arrest, the arresting officer is duty-bound to inform the offender the ground for his arrest<sup>137</sup>.

Ten of the sixteen respondents (62.5%) claimed that the arresting officers were not using police vehicles and were in civilian clothing when conducting the arrest. The rest (37.5%) reported the use of police vehicles and full uniform. Further questioning of the six respondents revealed that two<sup>138</sup> were chased by MPV (Mobile Police Vehicle) because they had been riding on stolen motorcycles and four<sup>139</sup> were rearrested by the police after they had been initially arrested by the public while committing the offence in a shopping mall. On the issues above, even though the police have a guideline for respecting the position of the child if the arrest is made in the child's school compound, it required that the arrest officer not be in uniform or use a police vehicle<sup>140</sup>. There is no specific guideline if the arrest is done in a public place or the child is at home. From this writer's practical experience and his interviews with all the IOs/AIOs, this guideline is not fully complied with by the ground officers because they are either unaware of the

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<sup>136</sup> *Christie & Anor v Leachinsky* [1947] 1 All ER 567.

<sup>137</sup> Ibid.

<sup>138</sup> Arrested for cases in IPD Ampang Jaya.

<sup>139</sup> Arrested for cases in IPD Dang Wangi.

<sup>140</sup> With regards to the guideline, the writer conducted a search within the Administration Division of the Criminal Investigation Department (D1) Bukit Aman and found only a verbal directive by the former Director of the Criminal Investigation Department (the late Datuk Seri Salleh Mat Som) during a meeting in 2006. This directive did not circulate in the form of "*Arahan Pentadibran Pengarah Jabatan Siasatan Jenayah*" to all the ground officers.



existing guideline<sup>141</sup> or face a shortage of unmarked police vehicles<sup>142</sup>. The writer recalls his personal experience while serving as Senior Investigation Officer (hereinafter referred to as the SIO) in IPD Ampang Jaya where there were no unmarked police vehicles and the IOs/AIOs had to use their own vehicles. The same with awareness of the guideline. Most IOs/AIOs do not even know of its existence. One conclusion is that with the guideline not being in administrative directive form, it would somehow or rather not be observed or practiced by ground officers and this is clearly non-compliant to the international standard<sup>143</sup>.

### **3.2.2 Treatment of Suspected “Child Offenders” after the Arrest**

The procedure for body search is now laid down by Section 20A of the CPC. Before the amendment to the CPC, Sections 7 and 8 of the Lock-up Rules 1953 were applied when conducting a body search on an offender before putting him into lock-up. The sections, however, do not have any guideline on how the body search should be conducted. It is therefore open to abuse and was what led to the incident in the IPD Petaling Jaya lock-up where a video of a female detainee who was naked and doing ear squats was recorded and subsequently circulated on the internet<sup>144</sup>. Following that incident, in 2007 the Parliament inserted a new section<sup>145</sup> into the CPC, detailing the procedure for conducting a body search on any person arrested. This new section states that a body search must comply with the procedure specified in the Fourth Schedule of

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<sup>141</sup> Only five investigation officers from IPD Dang Wangi and six from IPD Ampang Jaya were aware of this directive.

<sup>142</sup> All the IOs/AIOs from both IPDs revealed the non-availability of any unmarked vehicles for them to use for this purpose.

<sup>143</sup> Article 37(c) of the CRC deals with the child's dignity aspect. If the arrest is done in the school compound and by police officers in full uniform, it will be witnessed by his friends and he will have to live with the embarrassment and stigma for the rest of his life.

<sup>144</sup> [http://www.utusan.com.my/utusan/info.asp?y=2005&dt=1128&pub=utusan\\_Malaysia&sec=Dalam\\_Negeri&pg=dn\\_01.htr](http://www.utusan.com.my/utusan/info.asp?y=2005&dt=1128&pub=utusan_Malaysia&sec=Dalam_Negeri&pg=dn_01.htr) (Retrieved 27 September 2014).

<sup>145</sup> Section 20A of the CPC.



the CPC and with the objective stated<sup>146</sup>. In light of the new procedure, all body searches must comply with it, whether the arrested person is an adult or a child. Table F lists the results of the writer's interviews with "child offenders" from both IPDs on how they were treated after their arrest.

**Table F: Interview Results for Post-Arrest Treatment of "Child Offenders" from IPD Dang Wangi and IPD Ampang Jaya**

Number of Respondents ("Child Offenders")	Search done in Polite way?		The Right to Communicate with Parent/Guardian and Legal Practitioner was informed?		Represented by Lawyer during Remand?		Visited by Family or Relatives during Remand?		Visited by Probation Officers?	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
IPD Dang Wangi										
5	5	0	5	0	0	5	0	5	0	5
IPD Ampang Jaya										
11	11	0	11	0	10	1	10	1	0	11

The results are listed in five (5) aspects ranging from the search process right up to role play by the probation officers. All the sixteen respondents (100%) agreed that the body search conducted by the police were done politely<sup>147</sup>. Still, they somehow felt that the body search affected their dignity as it was done by an adult policeman. A body

<sup>146</sup> CPC Fourth Schedule para 1(1) states the objective as to obtain incriminating evidence of the commission of the offence for which the offender has been arrested; to seize the contraband and the proceeds of the crime or other things criminally possessed or used in conjunction with the offence, or to discover the evidence relating to the reason of arrest, or to preserve the evidence, or to prevent disposal of such evidence by the person arrested.

<sup>147</sup> All the respondents were subjected to a pat down search by the police officer.



search is conducted twice, one by the arresting officer, another by the officer managing the lock-up. The arrest officer is required by law to conduct the search in order to determine whether the “child offender” had on his person any offensive weapons or prohibited items<sup>148</sup>. The officer managing the lock-up is also duty-bound for the body search<sup>149</sup>. If he fails in his duty, there is a possibility that the child might smuggle in any weapons or drugs<sup>150</sup> into the lock-up. On the claim that the search affects the dignity of the “child offender”, for the police to not comply with the requirement of the law would be difficult. Nevertheless, if it is done politely, it will be in accordance with Article 37(c) of the CRC<sup>151</sup> and Rule 52 of the “Riyadh Rules”<sup>152</sup>.

Apart from the body search, the arrest officer is duty-bound to convey immediately to the parents/guardians and probation officer of the “child offender” as required by Section 87(a) of the CA. Besides complying with the requirements of Section 87 of the CA, the police officer allows the child to consult with a legal practitioner of his choice<sup>153</sup> even though the CA is silent on it. The right to legal consult, enshrined in our Constitution, ensures that an arrested person has the right to consultation with, and defence by, a legal practitioner of his choice<sup>154</sup>. The results of the interviews with the sixteen respondents revealed that before questioning by the police, the parents were informed by the arrest officer and the “child offender” were allowed to communicate with a legal practitioner of his choice. However, none of the respondents or their families could afford to hire one. Further questioning of all the respondents revealed that only ten respondents were remanded while the other six were released on

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<sup>148</sup> Section 20 of the CPC.

<sup>149</sup> Rule 7 of the Lock-up Rules 1953 requires that all prisoners (Section 2 defines “prisoner” as any person, whether convicted or not, confined or detained in a lock-up) shall be searched before entering the police lock-up. The Lock-up Rules 1953 are still valid and applicable although the Prison Ordinance 1952 in which the Rules were made has since been repealed, by virtue of Section 68 of the Prison Act 1995.

<sup>150</sup> Rule 19 of the Lock-up Rules 1953.

<sup>151</sup> Every child deprived of liberty shall be treated with humanity and respect for his inherent dignity.

<sup>152</sup> Law and procedures to promote and protect the rights and well-being of all young persons.

<sup>153</sup> Requirement under Section 28A(2)(b) of the CPC.

<sup>154</sup> Article 5(3) of the Federal Constitution.



police bail after their statement had been recorded<sup>155</sup>. Through the interviews, the writer discovered that the reason for no remand was the case being straightforward and the investigation being completed within 24 hours<sup>156</sup>. The ten respondents remanded could not afford to hire a lawyer, yet during the remand proceedings they were represented by one<sup>157</sup>, who was provided by the National Legal Aid Foundation (hereinafter referred to as the NLAf). The parents of all the ten respondents were allowed to visit their children once during the remand period. Visits by parents and relative are governed by Rules 22<sup>158</sup>, 23<sup>159</sup> and 24<sup>160</sup> of the Lock-up Rules 1953. The IGSO Part A120 para 16 sets out the detailed procedure for compliance with the above. An excerpt of para 16.3.7 follows.

*"The fundamental principle to observe is that, as far as possible, everything should be done to meet the wishes of lawyers and the accused and that, if a visit is refused or delayed, it should be done only where this can be justified as necessary and reasonable in the interest of justice."*

The action by the police of allowing parents to visit their children once per week is clearly in line with the IGSO and the Lock-up Rules 1953<sup>161</sup>. The remand period for

<sup>155</sup> Five respondents from IPD Dang Wangi. Their offence was theft in a dwelling house; the sixth respondent was from IPD Ampang Jaya and had committed the offence of house breaking.

<sup>156</sup> Section 28 of the CPC requires that the police either release on bail without unnecessary delay or produce the arrested person before the Magistrate within 24 hours. Section 29 relates to releasing on bail or by a Magistrate's written order, the person arrested, by an Inspector.

<sup>157</sup> In the case of *Saul Hamid v PP* [1987] 2 MLJ 736 the decision was that in remand proceedings the arrested person has the right to representation by a legal practitioner unless the police can discharge the onus of satisfying the magistrate that allowing this right will result in interference to the course of investigation.

<sup>158</sup> It deals with visitation of the prisoner by close relatives or friends and advocates; the prisoner cannot be visited more than once a week, the duration of every visit was to be not more than fifteen minutes, and other related procedures.

<sup>159</sup> The prisoner is allowed to be visited by his lawyer in preparation of their defence and mitigation in relation to his or her case.

<sup>160</sup> It deals with the visiting hours where prisoner is not allowed to be visited during weekend and public holiday and any visit should be done during office hour or any other time determined from time to time by the Officer-in-Charge of Lock-up.

<sup>161</sup> *Supra*, note 158.



all the ten respondents was only three to seven days. The issue of access to legal representation and visitation by family members is clearly in accordance with the international standard<sup>162</sup>. The remand period of the ten respondents, however, is against the international standard, which states in crystal clear terms that the detention should be for the shortest appropriate period of time<sup>163</sup>.

Coming back to the requirement of Section 87(a) of the CA, the interviews conducted with all the IOs and AIOs from both IPDs found that as a matter of practice, the required informing of parents/guardians is fulfilled by the police. This was confirmed by all the sixteen "child offenders", who were allowed (according to them) to inform their parents/guardians of their whereabouts<sup>164</sup>. Concluded is that informing the parents/guardians of the "child offenders" after the arrest is fully complied with by the police and is in line with the international standard<sup>165</sup>. However, in relation to the probation officers as provided in the same section, it is worth highlighting here that attempts to contact the probation officers from the "DSW" regarding such arrests of child suspects are often futile when done after office hours or on weekends. If an arrest is made by the police outside office hours, on weekends, or on public holidays, then the IO have to contact the probation officer on the next working day. It must be emphasized here that any arrest made by police officers is not limited to office hours or working days but at any time according to the circumstances of the case. According to the IOs and AIOs from both IPDs, even if the investigation officers managed to contact the probation officers, in reality they never turned up at the police station to conduct any interviews with the child. This was confirmed by all the sixteen "child offenders", who

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<sup>162</sup> Article 37(c) and (d) of the CRC, Rule 7.1 of the "Beijing Rules" and Rule 18(a) of the "JDLs".

<sup>163</sup> Article 37(b) of the CRC, Rule 13.1 of the "Beijing Rules" and Rule 17 of the "JDLs".

<sup>164</sup> Five of the respondents were arrested in their home and their parent knew about the arrest while the balance ten respondents were arrested outside of their home and were allowed by the investigation officer to inform their parents on their whereabouts.

<sup>165</sup> Article 37(c) of the CRC and Rule 10.1 of the "Beijing Rules".



mentioned that the probation officers from the “DSW” never visited them during their detention period in the police lock-up.

The feedback from the three probation officers interviewed contradicted those of the IOs and AIOs. They claimed that for most of the arrests involving “child offenders”, they were not informed by the IOs/AIOs and so were unaware of it. They found this out only when the court required them to prepare the probation report for the “child offenders” for the purpose of sentencing. They further argued that on average they were referred to one to ten cases per year which is much lower than the number of property-crime cases recorded by both the IPDs in the past three years<sup>166</sup>. They could not, however, produce any records supporting their claims because “DSW” did not keep any. Further questioning by the writer found that all the three probation officers did not know what to do after being informed of the arrest by the investigation officers because they were never exposed to it whether by their superior or the courses they attended. Even if they knew of the protective element in Section 87(a), they still faced shortages in manpower and logistic support<sup>167</sup> to visit all the “child offenders”. In “DSW” Hulu Langat there is only one probation officer in charge of all the cases in IPD Ampang Jaya and only four for the whole of Kuala Lumpur. The writer was also informed that as of date the “DSW” does not have any Standard Operation Procedure (SOP) for it.

It is submitted that probation officers should turn up and enquire after the detained child’s condition and provide any assistance to him as needed while he is under police detention and not merely prepare a probation report on the child. In the present system, the probation officers are required to only be in the court to present the

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<sup>166</sup> Based on the statistic in Appendix ‘C’ the number of property crime cases recorded by both the IPDs ranges from sixteen to fifty two cases from 2011 to 2014 (Jan – July), which is much higher than the number of cases referred to the three probation officers by the investigation officers.

<sup>167</sup> All the three probation officers revealed that “DSW” did not provide them with any vehicle and they have to use their own transport in the course of their duty.



probation report just before sentencing<sup>168</sup>. Thus the protective element which Section 87 of the CA seeks to secure is not achieved. This is partly due to the wordings in Section 87 of the CA, which do not specify the duty of the probation officer after he or she is informed by the police of the arrest of a “child offender”. Even the CA includes additional protections requiring the police to inform the probation officers yet the writer’s findings show that compliance with this provision is far from satisfactory.

According to all the IOs and AIOs from both IPDs, if the child’s family cannot afford to hire a legal practitioner of their choice, then the IO/AIO has a responsibility to inform NLAF through a letter sent via fax or email at the NLAF office address. The NLAF was incorporated on 25 January 2011 with the objective of providing free legal aid and advice in criminal matters to all Malaysian citizens at the stages of arrest, remand, and bail application<sup>169</sup>. The means test will only be conducted to determine who is eligible for legal representation at the trial stage. Since this research is focusing only on the pre-trial stage, the writer will not elaborate on the means test. The IOs/AIOs in both IPDs are required to fax and email the letter to the NLAF office no later than 30 minutes<sup>170</sup> after the child is arrested, with the condition that the child’s family cannot afford to hire a legal practitioner of their choice. Among the information to be included in the letter to the NLAF office are the question of whether the child is going be remanded and if he is, then in which court will the remand be conducted. This information is vital to the NLAF lawyer so he can present himself at the right court during the remand application by the IO/AIO. To ensure the IO’s/AIO’s compliance, the “RMP” have an internal control mechanism that requires the IPD to send a daily report to the headquarters on the number of cases referred to the NLAF. However, in

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<sup>168</sup> Section 90(12) of the Child Act 2001 (Act 611).

<sup>169</sup> <http://www.ybgk.org.my>. (Retrieved 12 November 2014).

<sup>170</sup> A sample of the letter to the NLAF (*Surat Pemberitahuan YBGK*) may be found on pages 132 and 133 in the Appendices of this paper.



practice and from the writer's personal experience, even if the NLA lawyer had been informed, they never did turn up at the police station to meet with the "child offender", only at the remand proceedings. The writer is of the opinion that a necessary reform in NLA is making it mandatory for their lawyers to meet up with the "child offender" at the arrest stage, otherwise the protective measure of obtaining legal advice will not be achieved. The presence of NLA lawyers nevertheless creates an avenue of help for the "child offenders" to argue and oppose the remand application submitted by the IO/AIO, upon any non-compliance of the provisions of either the CA or the CPC. The very existence of NLA is crucial to providing free legal aid<sup>171</sup> and simultaneously challenges the legality of the child's detention in accordance with Article 37(d) of the CRC.

If the lawyer wishes to present himself to, or communicate with, the child, then the police is duty-bound to provide a reasonable facility for the communication or consultation to take place as it is a requirement under Section 28A(7) of the CPC. The consultation must be within sight of a police officer but the communication should not be overheard<sup>172</sup>. The writer's visit to the lock-ups of the two IPDs presented him with a special room made ready for meetings between the suspects and the lawyers. The existence of this facility is in accordance with Rule 18(a) of the "JDLs"<sup>173</sup>. The rights of a child under Sections 28A (2), (3), (4), (5), (6), and (7) of the CPC shall not be applicable<sup>174</sup> if the police officer who gave the authorization (he must not be below the rank of Deputy Superintendent of Police, i.e., DSP)<sup>175</sup> had reasonable belief that the

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<sup>171</sup> Rule 18(a) of the "JDLs".

<sup>172</sup> Section 28A(5) of the CPC.

<sup>173</sup> It deals with the communication between juveniles and their legal advisers where privacy and confidentiality of such communications shall be ensured.

<sup>174</sup> Section 28A(8) of the CPC

<sup>175</sup> Section 28A(9) of the CPC

condition specified in subsection (8)<sup>176</sup> would arise. He should record the grounds for his belief and the record should be made as soon as it was practicable<sup>177</sup>. It is the writer's opinion that subsection (8) was inserted to balance the rights of the arrested person and the duty of the police to protect the public from the wrongdoers by apprehending the offenders and collecting whatever evidence exists against them<sup>178</sup>.

### 3.2.3 Detention, Movement of Suspected Child Detainees, and Special Cells

Section 85 of the CA among others provides that child detainees should be separated from adult detainees in police stations or courts to prevent them from associating. Under the provisions of IGSO A118 and Lock-Up Rules 1953, all police lock-ups used to house detainees must be gazetted under Section 7(1) of the Prison Act 1995<sup>179</sup>. Such a gazette must be made in accordance with the category of the detainee (male, female, child). The IGSO states that a child offender aged below 18 years should be separated from adult offenders and placed in a lock-up gazetted for children and the location of the child lock-up must be different from that of the adult offenders. Table G lists the results for a survey on detention, movement of suspected child detainees, and special cells.

<sup>176</sup> These rights can be denied by the police where the police reasonably believe that compliance with Sections 28A(2) to (7) would result in –

a) The accomplice of the arrested person being informed and taking steps to avoid arrest; or  
b) The concealment, fabrication or destruction of evidence or the intimidation of a potential witness; or  
c) Having regard to the safety of others, the questioning or recording of statement is found to be so urgent that it should not be delayed.

<sup>177</sup> Section 28A(10) of the CPC

<sup>178</sup> *Ooi Ah Phua v Officer in Charge of Criminal Investigation, Kedah/Perlis* [1975] 2 MLJ 198 at pg 200.

<sup>179</sup> Prison Act 1995, Act 537 and Regulations, Malaysia, International Law Book Services. Legal Research Board.



**Table G: Results of Interviews on Detention, Movement of Suspected Child Detainees, and Special Cells**

Number of respondents	Detained separately from adults in police lock-up?		Handcuffed while taken to Remand?		Mixed with adults while waiting to be transported to court?		Placed in the same Vehicle on the way to Court?		Mixed with Adults in Court Lock-up?	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
	IPD Dang Wangi									
5	5	0	0	5	0	5	0	5	0	5
	IPD Ampang Jaya									
11	11	0	10	1	10	1	10	1	11	0

All the sixteen respondents were detained separately from the adult offenders while in police lock-up in both the IPDs. Their cells were indeed separate but the location was shared and the child detainees were exposed to full view of the adult detainees so they were able to communicate with each other right from their holding cells. With due respect, it is submitted that such a situation and practice is clearly against Section 85(a)(i) of the CA because “associating” not only refers to physical distance but also communication. The purpose of this section of the CA will be defeated because the child detainees can still be ‘wrongly inspired’ or intimidated by the adult detainees while in detention.

From the interviews with the eleven respondents from IPD Ampang Jaya, all except one respondent<sup>180</sup> reported being mixed with adult offenders while waiting to be transported to court and also placed in the same vehicle on the way to court. The same occurred in court lock-up while waiting for the remand proceedings. Ten respondents reported being chain-cuffed with other adult detainees while being escorted to court. In IPD Dang Wangi, things were different. The remand proceedings were conducted in a special room in the lock-up itself so the child was not moved to and fro. All the five child detainees from IPD Dang Wangi, however, were released on police bail and never remanded, thus the relevant further information could not be obtained. It is the writer's opinion here that the existing practice of the police should be changed. Suspected "child offenders" should not be chain-cuffed and transported together with suspected adult offenders. Putting them together risks the child suspect of exposure to unnecessary elements and influence or wrong inspiration by the adult suspect. There is also the risk of the adult suspect escaping with the child suspect in tow.

The writer visited the lock-ups of both IPDs and found their condition to be not quite up to the mark in terms of cleanliness. All the sixteen child respondents told of not being provided with any reading materials suitable for their age and faith. They were nevertheless provided with the basic necessities such as food and clothes<sup>181</sup>. At the Ampang Jaya court lock-up, the writer found only two separate lock-ups for detainees: one for male, the other for female; no special cell for child detainees. This concurred with the feedback of the ten other respondents. This practice of putting "child offenders" together with adult offenders, whether in police lock-up, during transport, or

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<sup>180</sup> This respondent was released on police bail and not remanded.

<sup>181</sup> Rule 13.5 of the "Beijing Rules" and Rule 18(c) of the "JDLs" do emphasize this issue.



in court lock-up, is certainly against the international standard<sup>182</sup>, which clearly states protection of the child's rights and well-being.

### 3.2.4 Should a Child be Remanded or Released on Police Bail?

Article 5(4) of the Federal Constitution and Section 28 of the CPC do provide that no person shall be detained in excess of 24 hours. Section 83(1) of the CA, however, does not explicitly provide for the mode of investigation in the first 24 hours after an arrest. Ten of the sixteen respondents (62.5%) reported being brought to court within 24 hours of their arrest. The other six were released on police bail. The issue here is whether the police is empowered to detain a child suspect under Section 117 of the CPC to complete their investigation. This issue was first raised in the case of *PP v N (A Child)*<sup>183</sup> where a child was arrested on suspicions of committing an offence under Section 420 of the Penal Code. After the Magistrate granted a four-day remand order against the child through Section 117 of the CPC, he entertained some doubts on his course of action and thus requested the High Court to review said order. Augustine Paul J (as he then was) in the High Court held that:

*"Section 83(1) of the CA is manifestly patent that the arrest and detention of a child shall be in accordance with the Act thereby rendering Section 117 of the CPC inapplicable as expressly provided. Unlike Section 117 of the CPC, Section 84(2) of the CA deals with the detention of a child and does not prescribe any time period for detention."*

<sup>182</sup> Article 37(c) of the CRC, Rule 13.4 of the "Beijing Rules" and Rule 52 of the "Riyadh Rules".

<sup>183</sup> [2004] 2 CLJ 176.



However on appeal by the Public Prosecutor, the Court of Appeal unanimously overturned the decision of the High Court and held that since Sections 84 and 86 of the CA do not provide for specific periods of remand, Section 117 of the CPC must and should thus continue to apply. The word ‘detention’ in Section 83(1) of the CA should not include detention pending investigation because that particular section was contained in Part X of the Act which dealt with ‘Criminal Procedure in Court of Children’ and not for the purpose of investigation. If Parliament had intended to prohibit a child from being detained for investigation for more than 24 hours, it would have said so expressly. The decision in this case allowed the police to detain a child through Section 117 of the CPC if the investigation cannot be completed within 24 hours.

If the police resort to the special provisions of Section 117 of the CPC, the Magistrate before whom the person arrested is brought may authorize detention even if the offence for which the person is arrested is a bailable offence and that person is prepared to furnish bail<sup>184</sup>. The discretion of the police officer is clearly very important in determining whether or not a child should be released on police bail<sup>185</sup>. The feedback from the IOs/AIOs at the two IPDs was that they would examine each case individually and consider the welfare of the child with the interest of completing the investigation before having to decide whether or not to release the child on police bail. There is an internal control mechanism for determining whether or not a child should be remanded. All applications to remand “child offenders” will be scrutinized first by the SIO or the Chief of District Criminal Investigation Department (hereinafter referred to as the KBSJD). The final decision will be made by the Officer in Charge of Police District

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<sup>184</sup> Confirmed by Tan Chiaw Thong J in the case of *Maja Anak Kus v PP* [1985] 1 MLJ 311.

<sup>185</sup> Section 387 and 388 of the CPC is pertaining to bailable and non-bailable offence. Both of the sections refer to whom and under what condition that a person can be released on police bail and section 84(4) of the Child Act did not affect the powers of police to release the child arrested on bail.



(hereinafter referred to as the OCPD). Both signatures of the SIO or KBSJD and OCPD must be on the remand application to prevent any misuse of power by the IOs/AIOs. The reason for the SIO or KBSJD and the OCPD to scrutinize the remand application is to make sure there are grounds to support the application and enable the police to complete their investigation, which primarily means:-

- a) Preventing a suspect from interfering with witness or evidence. This includes remand to prevent him from absconding if there is enough ground to believe so<sup>186</sup>; or
- b) The presence of the accused while the police are conducting investigations would assist in the discovery of evidence, and that the presence of the accused is thus indispensable<sup>187</sup>; or
- c) That the detention of the accused is beneficial to completing the investigations and this cannot be achieved or would be prejudiced if he is released on bail<sup>188</sup>;
- d) Although a remand for the purpose of interrogating a suspect is bad in law<sup>189</sup>, the case of the *Detention of Leonard Teoh Hooi Leong*<sup>190</sup> had permissible ground to remand an accused person to record his statements.

This internal control mechanism is to ensure that all the necessary documentations for the remand application are fulfilled and there are valid grounds for the remand. The investigation diary of the IO, a copy of which is to be attached as prescribed under Section 119 of the CPC<sup>191</sup>, is an example of the necessary documents.

<sup>186</sup> *Re Syed Mohammad b Syed Isa & 3 Ors* [2001] 3 AMR 3769 at 3778.

<sup>187</sup> *Re Detention of Leonard Teoh Hooi Leong* [1998] 1 CLJ 857.

<sup>188</sup> *Dasthigeer Mohamed Ismail v Kerajaan Malaysia & Anor* [1999] 6 CLJ 317 at 327.

<sup>189</sup> *Re Mohamad Ezam b. Mohd Nor* [2001] 4 AMR 3955.

<sup>190</sup> *Supra*, note 187.

<sup>191</sup> *Re The Detention of R. Sivarasa & Ors* [1997] 1 CLJ 471.



These ensure that the detentions are not arbitrarily decided on<sup>192</sup>, and the well-being of the child is emphasized<sup>193</sup>. This exemplifies the police force's care in those matters where six of the "child offenders" were released on police bail after their statements had been recorded. Only ten were detained further for the police to complete their investigation. It is submitted that the public's and non-governmental organization's (hereinafter referred to as NGO) painting of the "RMP" as the "bad guys" where detention under Section 117 of the CPC is a must upon arrest is wrong and misguided.

### 3.2.5 Interrogation Process and Restrictions on Mass Media Reporting

In the course of police investigation, the child detainee will have to undergo the interrogation process for the police to gather relevant and useful information pertaining to the case. During this stage the child is likely to be denied the presence of parents, social workers, or legal representative who might be in the position to provide protection against any form of torture or cruel treatment. The absence of these 'protectors' opens possibilities for the police to abuse their power in obtaining confessions<sup>194</sup> through inappropriate methods such as violence or torture (sometimes even in cases where no crime had been committed). Table H lists the results of a survey on how "child offenders" were treated during interrogation while under detention.

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<sup>192</sup> It is to ensure that further detention by the police is in line with Article 37(b) of the CRC which provides that arrest, detention, or imprisonment of a child shall be in conformity with the law **and only as a measure of last resort and for the shortest appropriate period of time.**

<sup>193</sup> Rule 5 of the 'Beijing Rules'.

<sup>194</sup> Even though confession obtained in the course of police investigation cannot be used as evidence against the maker as prescript under the new amended section 113 of the CPC, nevertheless it can be use to increased the police solving crime rate. Solving crime rate is determined by the Director of the Criminal Investigation Department and at present it is set at 55%. Source: Royal Malaysian Police, Criminal Investigation Department, Bukit Aman.



**Table H: Results of Interviews on the Interrogation of Child Detainees**

Number of Respondents ("Child Offenders")	How the Child Detainees were Treated during Interrogation			Interrogation Room	
	Police Inflicted Force	Not Treated with Respect	Treated with Respect	Separated from Adult	Together with Adult
	IPD Dang Wangi				
5	0	2	3	4	1
	IPD Ampang Jaya				
11	5	4	2	9	2

With respect to the detention process at the pre-trial stage, none of the respondents from IPD Dang Wangi claimed mistreatment or infliction of violence/force by the police while they were undergoing interrogation. Two respondents (40%), however, claimed disrespectful treatment and harsh language by the police. They told of the interrogators scolding them when their answers did not relate to the questions asked. They also claimed impatience of the interrogators. Only three respondents spoke of respectful treatment in the form of advice by the interrogators. Note that in the process of interrogation or questioning, the police will use all necessary means to extract any information that may help in the investigation, but the use of force is strictly prohibited. Use of harsh language on a child should be avoided to preserve his dignity and tender age and to avoid leaving any negative impact on him in his later life<sup>195</sup>.

<sup>195</sup> Rule 10.3 of the Beijing Rules.



Feedback from the eleven (11) “child offenders” from IPD Ampang Jaya was alarming. Five (5) respondents were beaten up by the interrogators using rubber hose on their soles after they refused to confess to their crime. All five did not make any complaints to the Magistrate during the remand proceedings or lodge any police report in support of their claim. Nevertheless, the actions of the interrogators are clearly against the law<sup>196</sup> and other international norms<sup>197</sup>. Such practice by the police should stop immediately because it has a lasting impact on the child’s well-being and will influence the child’s attitude towards authority and the rules of law. Another four respondents revealed that even though they were not beaten up, the attitude of the interrogators towards them displayed no respect at all. All four were scolded and threatened when they did not cooperate with the interrogators. The negative attitude towards the “child offenders” was unwarranted and drastic changes are needed. Only two of the “child offenders” were really treated with respect according to their status of child.

From the writer’s analysis and observation, the reason for all the “child offenders” from IPD Dang Wangi to be treated with respect as a child compared with their counterparts from IPD Ampang Jaya is the nature of the offence committed. All were arrested for theft in dwelling houses. The offence is straightforward and a simple interrogation is enough to obtain the relevant information needed for each case<sup>198</sup>. In contrast, ten of the eleven “child offenders” from IPD Ampang Jaya were remanded<sup>199</sup> for mostly breaking into houses and stealing motorcycles. From the writer’s experience,

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<sup>196</sup> Section 15(b) of the CPC allowed the use of force by the arresting officer only if the suspect forcibly resists the arrest attempt or he attempts to evade arrest; if such force was exerted during interrogation, then under Section 330 of the Penal Code (Act 574) the interrogator is liable to be charged for voluntarily causing hurt to extort confession.

<sup>197</sup> Article 37(a) of the CRC, Rule 10.3 of the “Beijing Rules” and Rule 52 of the “Riyadh Rules”. Rule 7 of the “JDLs” further stated that effective remedies including compensation should be awarded when injuries are inflicted on juveniles.

<sup>198</sup> This was supported by the fact that all of them were not remanded and released on police bail.

<sup>199</sup> See table G.



further and intensive interrogation is needed to obtain the relevant information on the suspects' involvement in other related cases and the whereabouts of accomplices, also to determine whether the crime is syndicated, and to recover exhibits. This, coupled with the short period of remand, also unnecessary pressure from superiors who demand quick results, will certainly affect interrogators in the course of their duty. The excuses do not justify actions such as inflicting force on "child offenders" because they are considered "special" and should be protected at every stage of the criminal justice system.

With regards to the special interrogation room for "child offenders", the writer found that none exists in both the IPDs. Three of sixteen "child offenders" revealed that when they were undergoing interrogation, adult offenders were placed together with them in the same room. When the balance thirteen respondents were interrogated, none of the adult offenders were present, and in some cases only other "child offenders" were kept together in the same room. This interrogation practice by the "RMP", i.e., using force and placing "child offenders" together with adults in the same interrogation room, is clearly against the provisions of Section 85(a)(i) of the CA, which promotes separating the child from the adult in a police station. It is submitted that this practice does not go well with the spirit of the CRC, which is explicitly adopted by the preamble to the CA itself, which particularly states:

*"Acknowledging that a child, by reason of his physical, emotional and mental immaturity, is in need of special safeguards, care, and assistance....."*

The act was clearly promulgated in the best interest of the child.



Another common incident is the mass media's reporting and publishing of photographs of "child offenders". This disregards the child's privacy and is against the CA<sup>200</sup> and other international norms that govern the juvenile justice system<sup>201</sup>. Failure of the police in restricting the media will lead to the identity of the child being exposed and the child subsequently being 'labeled' a criminal, whether in the child's own mind or in the minds of others. Anonymity of the child is the most vital aspect of welfare. It is important not only for the present but also the future well-being of the child<sup>202</sup>. Failure to retain anonymity will affect the child's rehabilitation. Pre-trial reporting could ruin a child's life because it can create embarrassment especially if the child is not charged later. This is best illustrated by the case of Adam Dent who was 15 years old when he was accused of rape, and whose academic career was ruined by the undue publicity given to him. What was more unfortunate was that in the end he was not even charged with the offence<sup>203</sup>.

Recently there was a report by a Chinese language newspaper<sup>204</sup> on the arrest of three children aged 17 years old. They allegedly stole from a recycling centre. Their photographs were released by the newspaper, eyes blackened out and actual names not revealed, but the exact location of the theft was revealed, which gave a clue to the local community who the three were. No attempt was made by their police escort to protect them from the media or public scrutiny. This clearly violates the provisions of Section 15(2) of the CA, which restrict publication of pictures or photographs of a child and consider the act an offence punishable under Section 15(4) of the CA<sup>205</sup>. Even though

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<sup>200</sup> Section 15(2) of the Child Act 2001 and reinstated again in section 85(c) of the same act.

<sup>201</sup> Article 17 of the CRC and Rule 8 of the Beijing Rules.

<sup>202</sup> Norbani Mohamed Nazeri. (2007), "Welfare: The Key To Juvenile Justice In Malaysia", *The 4<sup>th</sup> ASLI Conference*, at pg. 201.

<sup>203</sup> Ibid at pg 202.

<sup>204</sup> China Press, "*Sneak inside recycle centre to steal money*". Published on 19 October 2013 at pg A20. (Retrieved 10 December 2014).

<sup>205</sup> Anyone committing this offence is liable to a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding five years or both.



the media have a social responsibility to highlight news for the public's interest, the child's privacy should be paramount. It is submitted that the duty to protect the child should lie with the 'protectors'<sup>206</sup> (as in the case of child abuse) and with the arrest or the escort police. Section 15 places emphasis on the need to protect the interest of a child and the CA reflects the government's commitment to do so. The provision of Section 15 can be seen to be in line with the provisions of the CRC to which Malaysia is party.

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<sup>206</sup> Sections 2 and 8 of the Child Act 2001.

## Chapter 4: Challenges and Recommendations

### 4.1 Challenges and Difficulties Posed by the Current Laws and Practices

#### 4.1.1 Mode of Arrest and the Use of Handcuffs by the Police

Mode of arrest and use of handcuffs are discretionary to the police. The discretion is based on the character of the suspect including his show of resistance or aggression. On the use of handcuffs, there is no law governing it, only the directive from IGSO A120. For mode of arrest, the police rely on Section 15 of the CPC. The discretionary action by the police is subject to scrutiny by the public. It takes only one misstep for a mistake to become an issue and for the public to accuse the police of brutality. Sometimes this finds its way up the Parliament. Take the example of the case of Aminulrasyid. The 15-year old was killed by a ricochet bullet instead of a direct shot by the police in a high-speed car chase, between 1.10 and 2 am on 26 April 2010. Police officer Kpl Jenain Subi was subsequently charged in the Sessions Court under Section 304(a) of the Penal Code, was found guilty, and then sentenced to 5 years imprisonment. On appeal to the High Court, the conviction was overturned by Justice Abdul Rahman Sebli, who said the evidence did not support any suggestion that the shot was intended to kill the deceased<sup>207</sup>. The decision of the High Court created a public outcry, the decision was called “unfair”, and the killer was set free. The opposition coalition pointed out that the decision ultimately meant that nobody was accountable for the boy’s death. Subsequently, the prosecution filed an appeal but

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<sup>207</sup> Iskandar, Amin (6 December 2012). “Aminulrasyid’s family protest ‘unfair’ court decision”. *The Malaysian Insider*. Retrieved on 8 November 2014 from <http://www.themalaysianinsider.com/malaysia/article/aminulrasyidfamilyp-test-unfair-court-decision/>



luckily for Kpl Jenain Subi, the Court of Appeal upheld his acquittal and unanimously ruled for no merit in the prosecution's appeal<sup>208</sup>.

Another example is the incident at Cheng Technology and Industrial Park in Malacca<sup>209</sup> on 23 September 2013 during Ops *Cantas Khas*<sup>210</sup>. The arresting officer did not handcuff the 17-year-old "child offender", thinking the latter would not put up a fight. But the child broke free after a scuffle with the arrest officer, and the police officer<sup>211</sup> who gave chase subsequently died. The child offender was recaptured on the same day and found to be high on drugs. This became a lesson to the police to not underestimate the ability of a child because whether he is under the influence of drugs and could be aggressive cannot be ascertained. Handcuffing the "child offender" secures the safety of the arresting officer. Despite the police officer's sacrifice by his own life, there was not a word of praise by the public, the opposition parties, or the NGOs. The Aminulrasyid case is a good example of the police being painted in bad light by human rights champions with the aim of creating distrust towards the police force. The effect in the long run is demoralization of the police force and the feeling of being unappreciated. This is the dilemma police officers face daily while executing their duty maintaining peace and order and also upholding the law of the country. We must note that the sufferings and mental torture a policeman endures throughout his case is enormous if he is charged in court, and more so his family, as it was for the family of the slain policeman.

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<sup>208</sup> The Star, "Court upholds corporal's acquittal", Published on 27 November 2013 at pg 16. (Retrieved on 28 November 2014).

<sup>209</sup> The Star, "Cop bludgeoned to death", Published on 24 September 2013 at pg 6. (Retrieved on 30 November 2014).

<sup>210</sup> Operation against motorcycle thefts and robberies.

<sup>211</sup> Kpl 147723 Zal-Azri Abd Samad

#### 4.1.2 Lack of Manpower and Infrastructure Resources

In adhering to the rights of a child as promulgated under the Child Act, the police's efforts are hampered mostly by the lack of manpower and infrastructure resources. They try to make do with all the resources they have. These limitations have to be dealt with in tandem with the aspect of security. With regards to the issue of movement of suspected child detainees and special cells, the police must make do with only what they have. It is no secret that the Police Force is seriously undermined by its lack of manpower, as demonstrated by the two IPDs in this research. The town of Ampang Jaya has a population of 1,048,877<sup>212</sup> but the Police Force of IPD Ampang Jaya stands only at 1,028<sup>213</sup>. The ratio of the Police Force to the population of Ampang Jaya thus stands at 1 police officer to 1,020 civilians. Of the 1,028 police officers in IPD Ampang Jaya, only a handful is in the Criminal Investigation Department, i.e., 120 officers (11.7%)<sup>214</sup>. As for Dang Wangi, population 1,377,855<sup>215</sup>, the Police Force of IPD Dang Wangi is 1,152<sup>216</sup>, i.e., 1 Police Officer to 1,196 civilians. The number of police officers in the Criminal Investigation Department is only around 141 (12.2%)<sup>217</sup>. According to the benchmark set by the Interpol, the ideal police to population ratio is 1 police officer to 250 civilians<sup>218</sup>. The strength of the police force in both IPDs is thus severely lacking, especially in the Criminal Investigation Department.

With regards to conducting investigations, only 55 police officers are involved for IPD Ampang Jaya. The statistics throughout the period of this research<sup>219</sup> showed

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<sup>212</sup> Royal Malaysian Police, Ampang Jaya District Police Headquarters, Management Branch

<sup>213</sup> Ibid

<sup>214</sup> Ibid

<sup>215</sup> Royal Malaysian Police, Dang Wangi District Police Headquarters, Management Branch

<sup>216</sup> Ibid

<sup>217</sup> Ibid

<sup>218</sup> <http://www.interpol.int> (Retrieved 8 November 2014)

<sup>219</sup> Period of this research is from January until July 2014.



2,999 investigation papers initiated for various offences, which is an average of 8 investigations per officer per month<sup>220</sup>. That does not include other reports referred to them as early enquiries. The records show that for the same period of research, there were 47,430 reports made in IPD Ampang Jaya alone, so on average each IO has to handle 123 reports per month<sup>221</sup>. In IPD Dang Wangi, there were only 65 police officers involved directly in investigation but 4,717 investigation papers initiated for various offences for that period, which averaged to 10 investigations per officer per month<sup>222</sup>. The number of reports referred to an IO in the same period was 54,542 which averaged to 119 reports per IO per month<sup>223</sup>. In such a situation, it is difficult for the IO to demonstrate a high level of professionalism especially when handling cases involving “child offenders”. According to the IOs of the two IPDs, they try their very best to consider the rights of the “child offender” by providing him with all the necessary assistance they can provide.

The lack of manpower within the police force hampers movement of detainees. The police have no choice but to put detainees together and chain-cuff them for reasons of security and liability. If the detainees escape, the escort police are liable to be charged under Section 223 of the Penal Code.

With regards to special cells for child detainees, though Section 85 of the CA advocates that child detainees should be placed in separate lock-ups, in practice, the police still house child detainees with adult detainees in the same lock-ups, albeit different cells, because they do not have enough or suitable infrastructure to comply

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<sup>220</sup> Royal Malaysian Police, Ampang Jaya District Headquarters, Criminal Investigation Branch

<sup>221</sup> Ibid.

<sup>222</sup> Royal Malaysian Police, Dang Wangi District Headquarters, Criminal Investigation Branch

<sup>223</sup> Ibid.

with the requirements of the CA. Most of the police headquarters and police stations<sup>224</sup> in the country are old buildings that have existed over 60 years since the British era. The Government will have to address the issue so the police force can function more effectively in addressing the rights of a child. Take the example of IPDs Cheras and Sentul. The old buildings at both the IPDs were demolished to make way for new ones to be built, which took nearly 4 years. During the 4 years period, the personnel had to squeeze into other police stations in that particular district. They lacked even the basic facilities to properly conduct their investigations and this hampered their productivity. Lack of unmarked police vehicles is another problem. These are especially needed for arrests to be made in school compounds. With the shortage, the police have no choice but to use whatever vehicles they have including their own car for such arrests, just to comply with the Police Administration Directive and avoid any complaints by the family of the arrested child or other interested parties. On the issue of separate interrogation rooms for “child offenders”, the writer’s practical experience and the feedback from the “child offender” respondents verify that none such room exists in both IPDs. “Child offenders” thus have to be placed in the adult interrogation room, sometimes together with adult offenders. These are the dilemmas that ground officers face daily.

#### **4.1.3 Legal Issues**

Interviews conducted with all the IOs from the two IPDs revealed that investigation becomes difficult if the “child offender” requests for a particular legal practitioner for consultation because questioning or statement recording has to be

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<sup>224</sup> At the moment there are 154 IPD and 775 police station through the country, source - Royal Malaysian Police, Management Department, Bukit Aman



deferred<sup>225</sup> and reasonable time allowed for the lawyer to make his way to the police station<sup>226</sup>. Whether questioning or statement recording can still commence once reasonable time has passed is unclear. Another problem arising here is how to define reasonable time and who shall determine it to be so. One IO from IPD Dang Wangi had a case of the family lawyer requesting a period of 3 to 4 hours for him to be present at the police station because he was on his way back from Kedah. The IO ignored the request and continued with his investigation and questioning. This is a dilemma to other IOs in similar situations. There is no statutory guidance as to what constitutes reasonable time but in the opinion of the writer it should be one fixed by the relevant police officer based on the structure of Sections 28A(4) and 28A(6) and the reasonable time has the same meaning and context in both subsections. The legislative need to be aware of this lacuna and make the necessary amendments to those subsections by defining what reasonable time is.

Another practical challenge encountered by the writer himself while serving as SIO in IPD Ampang Jaya was when one of the IOs sought advice from the writer on how to deal with a “child offender” who had requested to meet with the NLAF lawyer since he could not afford to hire one. It was already 9pm at the time the request was made, and NLAF operates only between their hours of 9am to 5pm on regular workdays. The situation is worse if it was a weekend or a public holiday. At last, to solve the problem, he put the “child offender” in the lock-up without any questioning or statement recording. Only on the very next day during the remand proceedings could the IO allow the “child offender” a meeting with an NLAF lawyer and only after that could the IO continue with his investigation. Such problems jeopardize police investigations because the gathering of evidence and nabbing of accomplices need

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<sup>225</sup> Section 28A(6) of the CPC.

<sup>226</sup> Section 28A(4)(a) of the CPC.



speedy action. It is submitted that the task of the IO should have been completed after informing the NLAF office and it is the duty of the NLAF to arrange a lawyer to handle the case. The duty to identify an NLAF lawyer should not be placed on the shoulders of the IO. The NLAF office should send out a list of lawyers on standby duty, and with contact numbers attached, to all the relevant IPDs. Only then can this problem be solved once and for all.

#### **4.1.4 Problems Faced by Investigation Officers**

IOs from both IPDs spoke of their difficulty in applying for remand of “child offenders”, especially if the child is still schooling. Prior to the amendment on Section 117 of the CPC in 2006, it is easier for the IO to obtain remands on child suspects because there was nothing to prohibit the Magistrate from giving out a 14-day remand in a single application<sup>227</sup>, and the law permits IOs to make more than two applications for remands so he can complete his investigations. After the amendment, Magistrates became very strict in granting remands, especially if a child suspect is involved, and usually on the first application only one day to two days are allowed as remand. On subsequent applications, either one day is given or the application is rejected and the child suspect is released. The reason usually used by the Magistrate or counsel is that the child is still schooling and a long period of remand will disrupt his study.

Another problem encountered by IOs in both IPDs is interference by politicians or VIPs, i.e., the “child offender” is related to them or is of concern to them. Such “child offenders” are then usually released on police bail under the instructions of their superiors even though the investigation is yet to complete. The IOs are still answerable to the complainant for why the suspects were released on police bail despite the

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<sup>227</sup> *Maja Anak Kus v PP* [1985] 1 MLJ 311.



investigation being ongoing. The complainant might allege bribery of the IO by the family of the accused or other interested parties that requested for the release on police bail. Such allegations will certainly affect the career of such IOs besides demoralizing them from continuing with their investigation.

The media often take the opportunity to highlight police brutality even without sufficient evidence to support it, resulting in the police being painted as the bad guy. According to all the IOs from both IPDs, if this situation does occur then they have to spend a bulk of their time answering the unsupported allegation rather than complete their investigations. The effectiveness of the IO is then questioned by both the complainant and the family of the accused. The media should be fair to both parties. The accused has the rights of an arrested person and the police the right to investigate.

#### **4.1.5 Lack of Training and Knowledge among Investigation Officers and Interrogators**

From the writer's interviews of all the thirty seven IOs from both IPDs, he discovered that only eleven had ever heard of the CRC but were unaware of the "Beijing Rules", the "JDLs", and the "Riyadh Rules" and none of them knew the purpose and use of the CRC. The rest of the IOs had no idea what these international instruments were all about. However, all of them knew the existence of the CA but not the detailed provisions. The writer was informed by all the IOs that they were never specially trained in handling cases involving "child offenders" and that their investigations are based on their personal experience rather than according to the law or procedures. From the writer's personal experience and further information from the IOs, there is no special unit or division comprising officers that are well-trained in this particular knowledge except officers from the Sexual and Child Investigation Division



(D11) who do have the expertise. Still, lack of manpower means that officers from D11 will only be able to investigate cases involving children as victims or complainants of any sexual or abuse cases and not as suspects<sup>228</sup>. The interrogators too have never been specially trained or exposed to special interview techniques. They also mainly comprise rank and file officers. The writer's practical experience shows that these interrogators are trained to deal with adult offenders but will romp in to interrogate "child offenders" too, and because of it, five of the child respondents were hit with rubber hoses on their soles. This is the result when interrogators are not properly trained to deal with children. It can be concluded that without the necessary knowledge and expertise among the IOs and interrogators, it is difficult for them to take into account the rights of a child during an investigation.

#### **4.1.6 Awareness and Difficulties Encountered by Probation Officers**

The "DSW" is one of the specialized components in the juvenile justice system and has played their role ever since the introduction of the Juvenile Court Act 1947 which was subsequently replaced by the CA. "DSW" officers play an important role, being entrusted as they are with some of the most important duties described in the CA, ranging from child protector<sup>229</sup> right up to probation officer<sup>230</sup>. With regards to the pre-trial stage, the role of the probation officer towards "child offenders" should start from the time of arrest until the child is charged in court. Besides facing lack of infrastructure, probation officers wear different hats, are overburdened with a heavy workload<sup>231</sup>, and lack awareness of the protective elements of Section 87(a) of the CA.

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<sup>228</sup> Suspected child offender maybe involved in narcotic or traffic related cases on top of criminal cases.

<sup>229</sup> Section 8(1) of the CA.

<sup>230</sup> Section 10(1) of the CA.

<sup>231</sup> Dr. Farah Nini Dusuki. (2009). *The UN Convention on the Rights of the Child and the Administration of Juvenile Justice: An Examination of the Legal Framework in Malaysia*, Published in Asia Law



This was confirmed by interviews with three probation officers, who spoke of no instruction in terms of administrative orders from “DSW” headquarters requiring them to visit “child offenders” during the offenders’ detention period in police lock-up. Even if there is an instruction, they would be unable to fulfill the obligation, owing to the shortage of manpower and logistical infrastructure. With so many commitments and obligations prescribed by the CA placed on the shoulders of the probation officers, and lack of the necessary manpower and logistics support, no wonder this protective element so desired by legislation remains unknown or a “secret” yet to be uncovered.

## **4.2 Recommendations and Possible Improvements**

### **4.2.1 Amendment to the Child Act 2001**

At present, the police force relies heavily on the CPC when undertaking their duty in dealing with “child offenders”. The same provisions apply to adult offenders who came into contact with the criminal justice system. It is the writer’s view that having the same set of laws for both adult and child offenders defeats the purpose of having a separate juvenile justice system for “child offenders”. A “child offender” should be treated differently from an adult offender, in line with the spirit of the CRC. The legal framework of the juvenile justice system thus need overhauling, especially at the pre-trial stage, which involves mode of arrest, investigation, remand, detention, access to relatives, and legal representation including free legal assistance; all these must be incorporated into the CA<sup>232</sup>. All the improvements must also meet the standards prescribed by the CRC as well as the “Beijing Rules”, the “JDLs”, and the “Riyadh

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Quarterly, Vol. 1 No. 1, pp. 141-158; Retrieved on 8 October 2014 from [http://www.klri.re.kr/uploadfile/Ak21/ALQ\\_200901\\_08.pdf](http://www.klri.re.kr/uploadfile/Ak21/ALQ_200901_08.pdf).

<sup>232</sup> Nadzriah Ahmad. (2013). *The Unheard Voices of Child Offenders: Time for Reform for the Youth Justice System in Malaysia?* In 6<sup>th</sup> World Congress on Family Law and Child Rights Sydney, Australia. Retrieved on 7 September 2014 from <http://www.lawrights.asn.au/6th-world-congress/paper.html>.



Rules". The amendments should be made accordingly, and especially for Section 83 of the CA a clear statement must specify that remand of "child offenders" is to be the last resort; other options must be explored when dealing with them<sup>233</sup>. Clear legislative provisions ought to be inserted to distinguish and clarify the powers within remand during the investigation period and pending trial. Alternatively, Practice Directions ought to be issued and should distinguish and clarify the powers of the police and remand<sup>234</sup>. The release of a child on a bond pending investigation should promote for offences other than murder or other grave crimes<sup>235</sup>. The aim is to prevent the child from suffering a trauma or a stigma after undergoing police detention.

#### 4.2.2 Remand Proceedings

Regarding the duration of remand issued by the Magistrate, some form of balance must be struck between the rights of the "child offenders" and the duty of the police to protect the public from wrongdoers by apprehending said wrongdoers and collecting whatever evidence exists against the wrongdoers<sup>236</sup>. The Magistrate, in his decision on remands, should not think too much of the child's schooling being disrupted by the remand order. On this issue, the writer would like to recommend that all Magistrates be given a proper guideline by the judicial department on how and under what conditions should a remand be ordered for a child and how to balance the interests of all the parties concerned.

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<sup>233</sup> SUHAKAM, *Report on the Roundtable Consultation*, 2004 at pg 76.

<sup>234</sup> Ibid

<sup>235</sup> Grave crime is defined under Section 2 of the CA which includes all offences under Firearms (Increased Penalties) Act 1971, all offences under Dangerous Drugs Act 1952 that carried the penalty of imprisonment of more than 5 years or death and all the offences under Kidnapping Act 1961.

<sup>236</sup> It was decided in the case of *Ooi Ah Phua v Officer in Charge of Criminal Investigation, Kedah/Perlis* [1975] 2 MLJ 198 at pg 200.



#### 4.2.3 Procedure in Police Investigation

The practice of “arrest first and investigate later”<sup>237</sup> by the police should stop and be replaced with more comprehensive ways of investigation, particularly when child suspects are involved. An investigation should precede any arrest. The police should restrict the type of offence for which children can be arrested and replace it with other options such as a summon or a written notice for the child suspect to appear at the police station and have his statement recorded<sup>238</sup>. Even if an arrest has to be made for whatever reason, there must be a proper guideline for the police to follow. A guideline for arresting a child must aim to minimize the social stigma consequent to the arrest. A special provision could be inserted into the CA for this and could strike a balance between true investigation by the police and preserved dignity of the child.

#### 4.2.4 Special Lock-up and Use of Handcuffs by the Police against “Child Offenders”

Different lock-ups for child detainees should be considered. It should be in a premise that is separate from that which holds the adult detainees. This is because arrests can become physical sometimes, and some adult detainees may come into the same lock-up as the child's, all bloodied. There could also be adult detainees that have an attitude problem. All these might intimidate a child detainee, maybe even ‘wrongly inspire’ him. The Lock-up Rules must be amended to prevent children from being detained together with adult offenders in the same building, and to provide the

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<sup>237</sup> This was highlighted in the Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police in 2005 on some of the general police practices resulting in unnecessary use of police custody and remand.

<sup>238</sup> The Malaysian Juvenile Justice System, A Study of Mechanisms for Handling Children in Conflict with the Law (2013). A study jointly conducted by the Ministry of Woman, Family and Community Development and UNICEF Malaysia at pg. 32.

necessary facilities for their accommodation: clean clothes, reading materials, and religious requirements throughout their detention in the police lock-up<sup>239</sup>.

On the use of handcuffs, the writer suggests that they be done away with unless the child suspect shows tendency to run or become aggressive or violent. They should also be limited to serious offences only. A proper guideline should be laid down in the CA and also the Administration Orders (particular the IGSO) and must be strictly observed. Without the proper guidelines, handcuffs might be misused.

#### **4.2.5 Improved Logistics of the Police Force**

The time has come for the Government to address the shortcomings of its police force and to better equip them for the law of the day and the rights of “child offenders”. Their logistics should be upgraded (especially the number of unmarked cars, which should be increased) and allocated to all police stations throughout the country. The use of such vehicles should be made mandatory when arresting “child offenders” and must not be limited to school compounds. The arrest officer should not be in uniform to protect the dignity of the child. Guidelines in the form of Administration Directive is a must so ground officers can refer to them and comply with them. Separate interrogation rooms for “child offenders” should be built in every police station throughout the country and the word “interrogation room” be replaced with a more friendly term such as “interview room” because the word “interrogation” has a negative connotation to a child. The presence of a legal assistant or parents should be made mandatory whenever a child is questioned by the police.

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<sup>239</sup> SUHAKAM, *Report on the Roundtable Consultation*, 2004.



#### **4.2.6 Movement of "Child Offenders"**

It is the writer's opinion here that the existing practice of transporting suspected "child offenders" together with suspected adult offenders should be changed. Putting them together might increase the risk of the child suspect being exposed to the wrong/unnecessary elements or influence by such adults. A child might end up being 'wrongly inspired'. There is also the risk of danger to the child suspect if the adult detainee attempts escape. Supporting the writer's opinion on this is Section 12 of the CA. The law finds it fit to have a separate Court for Children, which should practically sit in a different building or room, or if it is in the same building as the other courts, it should have a different entrance and exit to enable the children to be brought in and out of it privately. The police should find the same and thus adapt their method of transporting child suspects. The act is in tandem with the spirit of the law regarding children. It tries to separate children from adults in police stations or courts on the provisions of Section 85(a) (ii) of the CA.

#### **4.2.7 Increased Manpower of the Royal Malaysian Police especially in the Criminal Investigation Department**

As of April 2014, Malaysia had a population of 29,882,532<sup>240</sup> but a police force of only 127,516 strong as of 8 April 2014<sup>241</sup>. The ratio of the police force to the population is thus 1 police officer to 234 civilians but note that the total comprises only Malaysians and none of the legal/illegal immigrants in the country right now. A statement by the Minister of Human Resources, Datuk Seri Richard Riot on 2 September 2014 during a briefing on the Human Capital Development Strategic Reform

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<sup>240</sup> "Taburan Penduduk dan Ciri-ciri Asas Demografi". Jabatan Perangkaan Malaysia. p. 5. (Retrieved 18 November 2014).

<sup>241</sup> Royal Malaysian Police, Management Department, Bukit Aman

Initiatives revealed an influx of foreign workers in our country, with the number estimated to be 5.8 million<sup>242</sup>. The number of legal or registered foreign workers is 2.9 million. The rest are illegal immigrants. If we consider that number, then Malaysia's population total would be around 36 million and the ratio of police officers to population is 1 police officer to 283 civilians. According to this ratio, Malaysia has yet to achieve the benchmark required by the Interpol standard of 1 police officer to 250 civilians<sup>243</sup>.

However, the total number of police officers in the Criminal Investigation Department is only around 10,509<sup>244</sup> or 8.2%. The "RMP" should thus re-deploy their officers in other divisions into the Criminal Investigation Department. There should also be enough number of criminal investigation officers, adequate for the workload in each IPD. Quoting IPDs Dang Wangi and Ampang Jaya, the ratio of police officers to civilians is far from standard, especially in the Criminal Investigation Department. With the IPDs being understaffed, getting the police officers to perform with the level of professionalism that the Malaysian public expects of them is difficult. The Malaysian government notes this and in the GTP NKRA 2.0<sup>245</sup> outlines one of its objectives as to increase the effectiveness of IOs by reducing the ratio of IOs to investigation papers to 1:5 per month. Through this initiative, the "RMP" will recruit an additional 1,000 inspectors and 500 sergeants as part of its overall recruitment plan. At present, all the newly trained recruits are already serving on the ground, as investigating officers, throughout the country<sup>246</sup>.

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<sup>242</sup> Metro dated 2 September (online), Retrieved on 3 January 2015 from <https://my.news.yahoo.com/lambakan-5-8-juta-pekerja-asing-membimbangkan-riot-152609418.html>.

<sup>243</sup> *Supra*, note 218.

<sup>244</sup> Royal Malaysian Police, Management Department, Bukit Aman.

<sup>245</sup> Government Transformation Programme, National Key Result Area 2.0 will be implemented from 2013 to 2015. This Report is available online: <http://www.pemandu.gov.my/gtp> (Retrieved 12 November 2014).

<sup>246</sup> Royal Malaysian Police, Management Department, Bukit Aman.



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<sup>243</sup> *Supra*, note 218.

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<sup>246</sup> Royal Malaysian Police, Management Department, Bukit Aman.



#### 4.2.8 Establish Specialized Unit and Improved Training for Investigation Officers

The police force especially the Criminal Investigation Department should be aware of the lack of knowledge among IOs and should arrange courses and trainings for them, for awareness of the relevant provisions of the CA and other international norms governing the juvenile justice system such as the CRC, the “Beijing Rules”, the “JDLs”, and the “Riyadh Rules”. This is one of the recommendations of SUHAKAM in 2008<sup>247</sup> and is consistent with the “Beijing Rules”<sup>248</sup> and the “Riyadh Rules”<sup>249</sup>, which require that police officers who frequently or exclusively deal with juveniles, or are engaged in the prevention of juvenile crime, shall be instructed and trained. The courses and trainings are vital for the present IOs before any special units can be formed to deal specifically with “child offenders”. It is submitted that special police units should be established in every IPD to investigate all the cases involving “child offenders”. The formation of the new units<sup>250</sup> should emulate the reason behind the establishment of the Sexual and Child Investigation Division (D11), which is to protect the privacy and dignity of the victim of a sexual offence. The same reason applies to the formation of these new units but the target groups are the “child offenders” rather than victims of sexual offences; it can thus go in tandem with the spirit of the CRC. With these new units in place, a proper and an inclusive Standard Operating Procedure (SOP) must be created detailing the procedures in handling “child offenders”. All the police officers in this special unit must undergo training and attend courses to be aware of the relevant provisions in the CA and other international norms governing the juvenile justice system so they can perform to the standard of the international instruments. Specially

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<sup>247</sup> SUHAKAM, *Human Rights and the Administration of Juvenile Justice*, 2008 at pg 12.

<sup>248</sup> Rule 12 of the “Beijing Rules”

<sup>249</sup> Rule 58 of the “Riyadh Rules”.

<sup>250</sup> In line with the recommendation by the Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police in 2005 to establish a separate child division in “RMP” to address child cases.



trained interrogators should be included in the new unit so they can work hand in hand with the investigation officers.

#### **4.2.9 Restricted Mass Media Reporting**

Another suggestion by the writer concerns the role of the Ministry of Home Affairs, which oversees the editing of news contents submitted by newspapers. It should be ensured that no photographs of “child offenders” shall be published. The police force, too, should start enforcing the law under Section 15 of the CA if the mass media violates this law, to prevent further violations on the protection of the child’s well-being. The police officers on escort duty should prevent photos of “child offenders” from being taken in any manner by the press, whether upon arrest or in court. However, as to date there have not been any prosecutions under the CA since the enforcement of this law on 1 August 2002<sup>251</sup>.

#### **4.2.10 Increased Number of Probation Officers and Improved Working Procedure**

At present, the “DSW” probation officers are overburdened by too many duties and responsibilities such that their performance in protecting the rights of a child is affected. This was highlighted by the three respondents from “DSW” Hulu Langat and Jalan Duta. With regards to the problem, the writer recommends an increase in the number of “DSW” probation officers and proportionately with the number of cases in any particular district. Increasing the number of probation officers will enable them to present themselves at the police station immediately at first reporting of the arrest. They

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<sup>251</sup> Farah Nini Dusuki. (2012). Protection of Children’s Rights. Dlm Abdul Ghafur Hamid. *Human Rights Law International, Malaysian and Islamic Perspectives*, pg 218.



would not be merely preparing a probation report on the child<sup>252</sup>. Another recommendation by SUHAKAM to overcome the shortage of probation officers is to amend the CA to enable volunteers (especially community leaders and retirees with law and social work background) to be appointed as voluntary probation officers<sup>253</sup>. The writer further suggests that the duty of probation officers and protectors of the CA must be handled by different officers of the “DSW”, and that each officer has a special scope of duty. The present system practiced by the “DSW” makes it difficult for probation officers to concentrate on specific areas of duty. Pertaining to the contradicting views on failure of IOs to inform probation officers of a child’s arrest, the writer suggests a proper recording system for all the cases referred to probation officers. This should prevent allegations or accusations by the public or parents of “child offenders” that probation officers fail in their duty. A proper Standard Operation Procedure (SOP) should specify the steps to be taken by probation officers with regards to Section 87(a) of the CA. The “DSW” can arrange a dialog with all the OCPDs in their area and provide them with a list of probation officers on duty 24 hours every day for IOs to contact them. Monthly meetings should be held between the “DSW” and all the OCPDs to monitor progress and sort out any problems that arise. Such a cooperation between the “DSW” and the “RMP” will better serve the interests of the child and preserves the rights of “child offenders” in accordance with domestic law and international norms.

#### **4.2.11 Enhanced Participation of the NLAF**

Bar councils or NGOs whose members are trained lawyers should participate in NLAF for the sake of “child offenders”. With their assistance, the rights of the child

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<sup>252</sup> James Nayagam. (2012). *Strengths and Weaknesses of the Protection Mechanism and Support System for Reintegration of Children in Conflict with the Law* pg 72, Malaysian Journal on Human Rights Vol 6, 2012.

<sup>253</sup> SUHAKAM, *Human Rights and the Administration of Juvenile Justice*, 2008 at pg 13.



will be better protected during the pre-trial stage. To encourage more experienced lawyers from the bar council to participate in NLA, the rates of allowance should be increased in accordance with the cost of living, especially in the city centre.

#### **4.2.12 Diversion Programmes and Restorative Justice**

As suggested earlier on, our juvenile justice system needs improvement. An important aspect is the introduction of diversion programmes<sup>254</sup>. At present, Malaysia still exercises punitive justice in the forms of retribution and rehabilitation. It is a theory of justice that considers punishment as an acceptable response to crime compared with the diversion system, which refers cases involving “child offenders” away from formal criminal justice proceedings and towards community support to avoid the negative effects of being implicated in such proceedings<sup>255</sup>. Diversion can be in the form of police warnings or cautions, restorative justice, and referral to a counseling or behavior modification programme. Local studies have shown that community service has a positive effect on a “child offender”<sup>256</sup>. As for police warnings, at present the police rely on Section 110 of the CPC, through which they are given the power to not take any action against a report if there is no suspicious ground. This section itself is not enough to allow the police to issue a warning if an offence has been committed by a child. Clear guidelines or laws are required so police officers can exercise discretion on minor offences committed by a child. The law should also specify what minor offences are. The police can then caution the child at the crime scene or formally caution him at the police station or at home in the presence of his parents or guardians.

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<sup>254</sup> Rule 11 of the ‘Beijing Rules’ encourage the use of diversion when dealing with juvenile offender without resorting to formal juvenile justice system and it is in line with Article 40(3)(b) of the CRC and Rule 58 of the “Riyadh Rules”.

<sup>255</sup> *Supra*, note 252 at pg 63.

<sup>256</sup> Teh Guan Bee (2002). Institutional Treatment Management of Organizations for Juvenile Offenders in Malaysia (From UNAFEI Annual Report for 2000 and Resource Material Series No. 59, P 203-219.

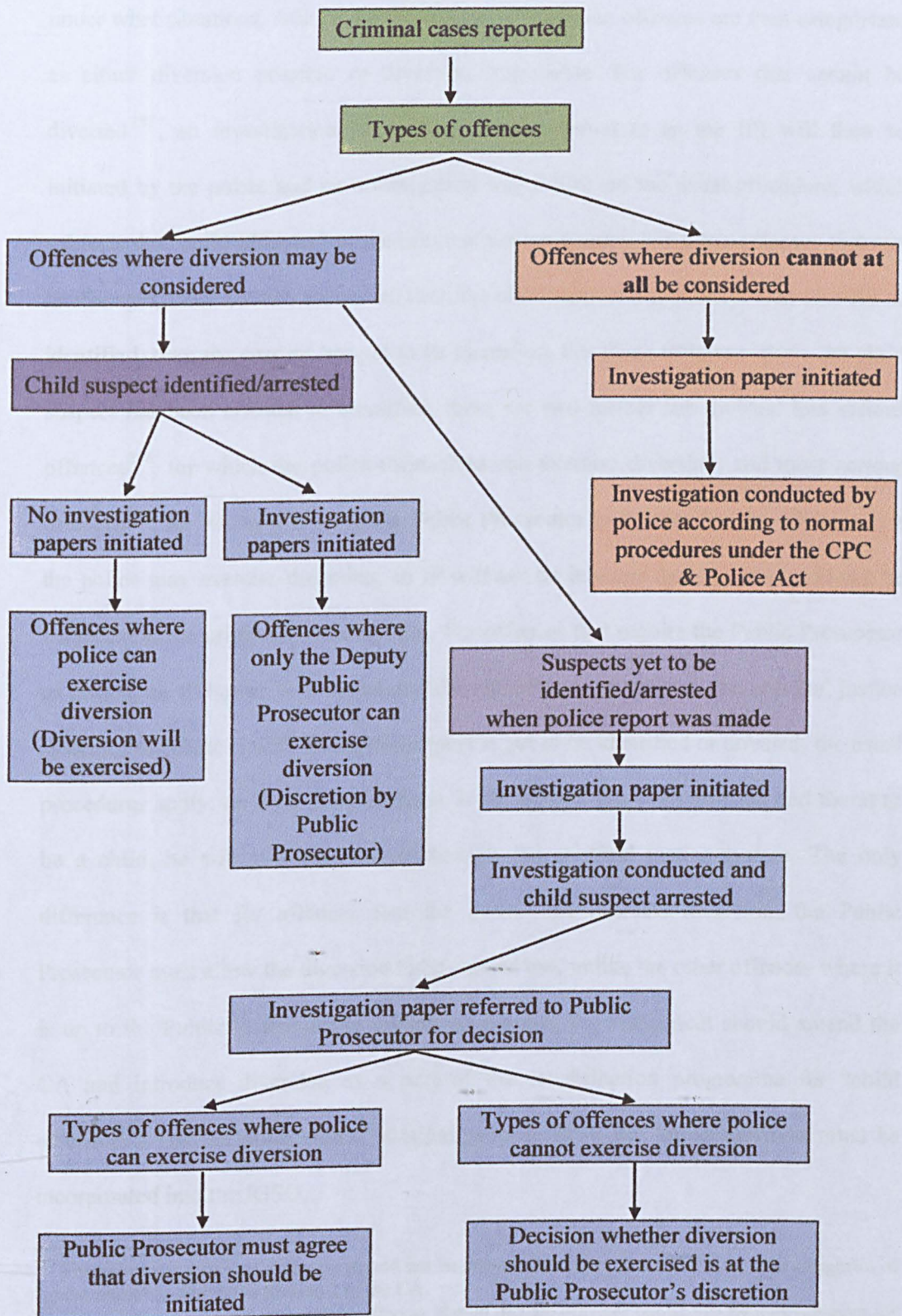
The government should formalize a diversion programme so the police, the prosecutors, or the courts may refer children to such programmes by recommendation of the probation officers. Such programmes could be managed by “DSW” or NGOs. They can include:

- Performance of specific number of hours of community service work;
- Participation in a structured life skills or competency development programmes such as decision-making, conflict resolution, anger management or drugs / alcohol awareness; and
- Postponement of formal charges to specific periods while the child participates in an agreed-on diversion programme.

Introducing diversion into the juvenile justice system will divert “child offenders” away from the formal criminal justice proceedings and towards community support. This way the child could avoid going through the formal process of arrest, police investigation, and trial and escape a possible negative impact on him in his later life. From the writer’s experience, diversion for “child offenders” should commensurate with the offence and its circumstances. The flow chart below suggests a guideline for future or upcoming diversion programmes that the government could implement.



## Flow Chart of Initiation of Diversion





The above flow chart explains how “child offenders” should be dealt with and under what situations. After the police report is made, the offences are then categorized as either diversion possible or diversion impossible. For offences that cannot be diverted<sup>257</sup>, an investigation paper (hereinafter referred to as the IP) will then be initiated by the police and an investigation will follow on the usual procedure, which subjects the “child offender” to the criminal justice system. For those offences that can be diverted, there are two scenarios. One, the child suspect has already been arrested or identified, two; the suspect has yet to be identified. For those offences where the child suspect has been arrested or identified, there are two further sub-divides: less serious offences<sup>258</sup>, for which the police themselves can exercise diversion, and more serious offences<sup>259</sup>, for which it is up to the Public Prosecutor to decide. For the offences that the police may exercise diversion, an IP will not be initiated and the child will not be subjected to the criminal justice system. For offences that require the Public Prosecutor to decide, an IP has to be initiated and the child has to go through the criminal justice system. For offences with which the suspect is yet to be identified or arrested, the usual procedures apply; an IP is to be initiated. If the suspect has been arrested and found to be a child, he will still need to go through the criminal justice system. The only difference is that for offences that the police can exercise diversion, the Public Prosecutor must allow the diversion to be carried out, unlike the other offences where it is up to the Public Prosecutor to decide. In essence, the Parliament should amend the CA and introduce diversion as a part of the rehabilitation programme for “child offenders”. For the police force, detailed procedures of the implementation must be incorporated into the IGSO.

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<sup>257</sup> The writer suggests that diversion should not be allowed for offences that fall under the categories of “grave crime” as defined in Section 2 of the CA.

<sup>258</sup> The writer suggests that less serious offences should include offences punishable by imprisonment for less than three years or offences punishable by fines only or any other offences deemed not serious by the Parliament.

<sup>259</sup> The writer suggests that more serious offences should include all offences that do not fall under “grave crime” or less serious offences as mentioned above.



Restorative justice is an approach that recognises how crime affects the victim, the community, and the offender. Its primary focus is to repair the damage caused by the offender, to make reparations to the community and to the victim, and to return the offender to a productive place in the community<sup>260</sup>. This approach is still new to Malaysia but in many developed nations such as United States, Canada, New Zealand and Australia, it has proven to be a success. The government needs to start off with a pilot programme to determine its effectiveness in our country, because of our cultural diversity compared with other nations.

#### **4.2.13 Enhanced Implementation of the National Child Policy**

Some of the suggestions above are part of the strategies for the second objective of the National Policy on Children<sup>261</sup>, namely the protection. There are (11) strategies to be implemented under the second objective. Three are for short-term planning (2009-2010) and directly involve “child offenders”. The first strategy is for all the agencies within the criminal justice system to create a child-friendly atmosphere as well as provide support to child witnesses and “child offenders” in each court. Provisions for better lock-up and facilities, the interrogation process, the movement of child detainees, and the use of handcuffs by the “RMP” will certainly assist in achieving this strategy. Restriction or prohibition on publication of photographs of “child offenders” by the media is part of the second strategy to increase awareness and sensitivity of the media including advertising agencies so they can be more responsible in protecting the interest of the child, the complainant, and the family. The government recognizes the importance and usefulness of diversion in rehabilitating “child offenders”, hence has

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<sup>260</sup> *Supra*, note 252 at pg 63.

<sup>261</sup> [http://www.jkm.gov.my/content.php?pagename=dasar\\_kanak-kanak\\_negara&lang=en](http://www.jkm.gov.my/content.php?pagename=dasar_kanak-kanak_negara&lang=en) (Retrieved on 22 Mac 2015)

included it as one of the strategies under the NCP<sup>262</sup>. All the three strategies, however, should have been implemented in full by 2010 according to the National Action Plan but they still are in the discussion stage and no agency is willing to take the lead especially for diversion<sup>263</sup>. The government needs to make sure that all the strategies under NCP are implemented according to the timeline. Otherwise they remain sound only on paper but weak without any concrete steps to implement them.

### 4.3 Conclusion

The findings of this research on management of “child offenders” during the pre-trial stage led to the conclusion that most of the current practices by the enforcement agencies, particularly the “RMP” and the “DSW”, are not in accordance with the international standard. At the same time, there are quite a number of loopholes in the CA, giving rise to opportunities for exploitation by the “RMP” at the expense of the child.

The time has come for the Government to see things through: equip the police to be more child friendly, create a division within every layer of enforcement to deal with potential “child offenders”, divert more man-power into dealing with children daily, create a better environment to house child detainee, and overhaul the CA accordingly. The police should also change their pre-training mindset that all criminals are the same and thus changes in educating police officers on the needs of a child should begin at the Police Training Centre itself.

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<sup>262</sup> Under this policy, diversion should have been implemented by 2010 according to the National Action Plan but it is still in the infancy stage where discussion on the implementation is ongoing.

<sup>263</sup> Dr. Farah Nini Dusuki (2013), Administration of Criminal Justice, (MCJ), University Malaya Law Faculty .



The police will also need to heed the need to change their practices in tandem with the changes of time. Gone are the days when people obliged sections of the society that never questioned the law or the enforcement and where everything were accepted without considering the values of its penalty. People are much more advanced today in terms of education and this serves as the foundation of human rights.

The law as we know it essentially serves as a source of protection of our rights as citizens. Those who break the law are hauled up to face justice and be punished. The writer would like to highlight here that the law should not be just about punishing. It should also serve as a platform to rehabilitate an individual and put the individual back on the right track, particularly children because they are still in their formative years, young and vulnerable. The success of the police force should not be measured by the rate of arrest made or the rate of prosecution and conviction but rather, how the police force shapes the society through its practices. The current practices of the police do not deal with the rights of a child effectively.

A child can never be equated to an adult. Neither should such sentiments be confused with mere affection for children. If the law in its prison programmes subjected criminals to vocational skills, religious studies, even further studies at higher levels, all for the betterment of their future in getting back into society to be a part of it, the same mentality should be adopted when the law is dealing with a child in prior processes, particularly the police force. The rights of a child must be properly attended to and accorded.

Changes should be made by the police force in ensuring that the treatment of a child in the course of their investigations should not fuel hate in the already supposedly

deviant child. With a general lifespan of 67 years for the average individual of the world<sup>264</sup>, an even more deviant child could do more damage to society. Which is better? Punishing and ostracizing a child or leading and rehabilitating the child? The writer is of the opinion that it certainly is the latter.

<sup>264</sup> Source: Encyclopedia Britannica



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**STATISTIC OF TOTAL CRIME CASES COMMITTED BY CHILD BY – STATE FROM 2011 – 2014 (JAN-JULAI)**

State	2011	2012	2013	2014 (Jan – July)	Total
Selangor	926	358	1,370	1,256	3,910
Kuala Lumpur	379	509	756	515	2,159
Kedah	423	327	893	563	2,206
Sarawak	418	320	513	360	1,611
Kelantan	348	356	666	392	1,762
Sabah	431	178	361	287	1,257
Johor	364	248	1,306	888	2,806
Terengganu	246	415	506	322	1,489
Perak	306	310	723	468	1,807
Pulau Pinang	314	83	558	384	1,339
Pahang	209	187	719	507	1,622
Negeri Sembilan	202	119	423	353	1,097
Melaka	129	75	399	207	810
Perlis	80	124	149	76	429
Total	4,775	3,609	9,342	6,578	24,304

- Source- Statistics & Operation Division (D4), Criminal Investigation Department, Royal Malaysian Police.



**STATISTIC ON TYPE OF CASES COMMITTED BY JUVENILE FROM 2011 – 2014 (JAN – JULY)**

State / Type of Cases	2011		2012		2013		2014 (Jan – July)		Total	
	Violent Crime	Property Crime	Violent Crime	Property Crime	Violent Crime	Property Crime	Violent Crime	Property Crime	Violent Crime	Property Crime
Selangor	293	633	171	187	566	804	449	807	1,479	2,431
Kuala Lumpur	96	283	205	304	347	409	255	260	903	1,256
Kedah	62	361	65	262	225	668	165	398	517	1,689
Sarawak	108	310	116	204	153	360	98	262	475	1,136
Kelantan	65	283	68	288	119	547	84	308	336	1,426
Sabah	95	336	59	119	115	246	70	217	339	918
Johor	139	225	82	166	478	828	343	545	1,042	1,764
Terengganu	39	207	104	311	100	406	60	262	303	1,186
Perak	61	245	102	208	214	509	120	348	497	1,310
Pulau Pinang	72	242	33	50	178	380	104	280	387	952
Pahang	71	138	41	146	117	602	93	414	322	1,300
Negeri Sembilan	43	159	35	84	139	284	154	199	371	726
Melaka	51	78	11	64	136	263	72	135	270	540
Perlis	16	64	34	90	49	100	18	58	117	312
Total	1,211	3,564	1,126	2,483	2,936	6,406	2,085	4,493	7,358	16,946

• Source- Statistics & Operation Division (D4), Criminal Investigation Department, Royal Malaysian Police.



**CASES MOST OFTEN (INDEX CRIME\*) INVOLVING CHILD OFFENDERS IN IPD DANG WANGI AND AMPANG JAYA**

YEAR	2011		2012		2013		2014 (JAN – JULY)	
VIOLENT CRIME (PENAL CODE)	DANG WANGI	AMPANG JAYA	DANG WANGI	AMPANG JAYA	DANG WANGI	AMPANG JAYA	DANG WANGI	AMPANG JAYA
Murder S.302 PC	0	0	0	0	0	2	0	0
Rape S.376 PC	0	8	0	7	2	5	1	3
Gang robbery with firearm S.395/397 PC	0	0	0	0	4	0	3	0
Gang robbery without firearm S. 395 PC	8	9	14	5	11	15	5	4
Robbery with firearm S.392/397 PC	0	0	0	0	0	0	0	0
Robbery without firearm S.392 PC	1	1	4	0	1	0	2	0
Cause Injury S.324, 325 & 326 PC	1	4	3	8	2	1	2	2
Total Violent Crime	10	22	21	20	20	23	13	9
PROPERTY CRIME (PENAL CODE)								
Thefts S.379, 380 & 381 PC	26	7	19	10	25	6	16	8
Theft of lorry/van/heavy machine S.379A PC	0	0	0	0	0	0	0	0
Theft of motorcar S.379A PC	0	1	0	0	0	2	0	3
Theft of motorcycles and scooter S.379A PC	0	14	1	26	2	18	0	22
Theft grazing S.379 PC	1	1	1	1	0	4	0	0
House breaking and theft S.457PC	0	6	0	15	0	9	0	3
Total Property Crime	27	29	21	52	27	39	16	36
Violent Crime + Property Crime	37	51	42	72	47	62	29	45

Source- Statistics & Operation Division (D4), Criminal Investigation Department, Royal Malaysian Police

\* - Index crime in Malaysia refers to (14) types of crime that occur with sufficient regularity and significance that they collectively serve as a meaningful index to the overall crime situation. Source: <http://www.pemandu.gov.my/gtp/upload/700b658c-6706-4a5a-959e-2f25f2913a34.pdf>. (Retrieved 3 September 2014).



( Soalan Temubual kepada Kanak-Kanak yang ditahan oleh Polis )

Nama Juvana / No Kad Pengenalan : .....

Umur : ..... Jantina : Lelaki / Perempuan

Tarikh / Masa Temubual : .....

Lokasi Temubual : .....

**Soalan****Persetujuan**

1. Adakah anda bersetuju untuk ditemubual berkenaan dengan pengalaman yang anda hadapi sepanjang anda ditahan di lokap polis?
2. Adakah anda dipaksa, diugut atau dijanjikan apa-apa supaya anda bersetuju untuk ditemubual?

**Latarbelakang**

1. Adakah anda masih bersekolah dan apakah nama sekolah anda?
2. Sekiranya jawapan di soalan 1 adalah tidak bersekolah, apakah pekerjaan anda sekiranya ada? Sudah berapa lama anda tidak bersekolah dan apakah tingkatan terakhir anda?
3. Adakah anda tinggal bersama dengan keluarga atau saudara mara?
4. Anda merupakan anak yang ke berapa dalam keluarga anda?
5. Adakah ibubapa anda masih tinggal bersama atau telah bercerai?
6. Bagaimana prestasi anda di sekolah?

**Perkara-Perkara Berhubung dengan Tangkapan**

1. Dimanakah anda ditangkap oleh pihak polis?
2. Apakah jenis kesalahan yang anda ditangkap?
3. Adakah pihak polis berpakaian seragam penuh semasa menangkap anda?



4. Adakah pihak polis menggunakan apa-apa bentuk kekerasan untuk menangkap anda? Sekiranya ada, apakah bentuk kekerasan yang pihak polis gunakan?
5. Adakah anda cuba melarikan diri apabila pihak polis menghampiri dan menangkap anda?
6. Adakah anda cuba melawan balik semasa ditangkap oleh polis?
7. Selepas anda ditangkap adakah anda digari oleh polis? Sekiranya ada, adakah tangan anda digari di depan atau di belakang?
8. Adakah sebelum ini anda pernah ditangkap oleh polis dan atas kesalahan apa? Sekiranya ada, sudah berapa kali anda ditangkap oleh polis dan jenis kesalahannya?
9. Adakah anda mengalami gangguan psikologi selepas anda ditangkap oleh polis? Contoh: Memalukan, hilang semangat dan lain-lain. Sila nyatakan/
10. Adakah kenderaan yang digunakan oleh polis semasa menangkap anda itu mempunyai lambing polis atau tidak?
11. Adakah anda dimaklumkan alasan tangkapan oleh pihak polis dan dalam bahasa apa? Adakah anda faham tentang alasan yang diberikan?
12. Adakah pihak polis membenarkan anda untuk berhubung dengan keluarga, kawan atau pengamal undang-undang (peguam) bagi memaklumkan dimanakah anda berada?
13. Adakah sepanjang penahanan anda di balai polis, anda berpeluang berjumpa dengan peguam anda atau keluarga?
14. Adakah anda dibawa ke hadapan seorang majistret dalam masa 24 jam setelah anda ditangkap?
15. Adakah anda diwakili oleh peguam pilihan anda atau mana-mana peguam yang dilantik oleh Yayasan Bantuan Guaman semasa prosiding reman diadakan?
16. Sepanjang penahanan anda di dalam lokap polis, adakah anda berpeluang untuk berinteraksi dengan pesalah dewasa?
17. Adakah lokap dimana anda ditahan berada dalam bangunan yang sama dengan lokap pesalah dewasa?
18. Adakah semasa anda keluar masuk ke dalam lokap, anda berpeluang berjumpa dengan pesalah dewasa?



19. Semasa anda dibawa ke mahkamah untuk tahanan reman, adakah anda berpeluang bergaul dengan pesalah dewasa?
20. Semasa anda berada di lokap mahkamah, adakah anda berpeluang bergaul dengan pesalah dewasa?
21. Sepanjang anda ditahan oleh polis, adakah pihak polis menggunakan apa-apa bentuk kekerasan samada dari segi fizikal atau bahasa kasar ke atas anda? Sekiranya ada sila nyatakan secara terperinci.
22. Sepanjang anda di tahan di lokap polis adakah anda berpeluang dilawati oleh ahli keluarga atau peguam anda? Sekiranya ada berapa kali anda dilawati dan untuk tempoh berapa lama setiap lawatan?
23. Sepanjang anda di tahan di lokap polis adakah anda dibekalkan dengan bahan bacaan yang sesuai dengan umur anda?
24. Semasa anda disoal siasat oleh pihak polis adakah anda bercampur dengan pesalah dewasa atau anda ditempatkan di satu bilik khas?
25. Pada pendapat anda adakah polis yang menjalankan soal siasat keatas anda itu mengambilkira sensitivity anda selaku kanak-kanak?
26. Adakah anda bersetuju untuk butiran peribadi anda dimasukkan atau didedahkan dalam penyelidikan ini?
27. Adakah maklumat yang anda beritahu diatas adalah benar?

.....  
Tandatangan Orang yang Ditemubual

.....  
Tandatangan Orang yang Menemubual

( Soalan Temubual untuk Pegawai dan Penolong Pegawai Penyiasat Jenayah )

Nama / No KP : .....

Umur : ..... Jantina:      Lelaki / Perempuan

Tarikh / Masa Temuduga: .....

Tempat Temuduga : .....

**Soalan**

**A      Persetujuan**

1. Adakah anda bersetuju untuk ditemubual berkenaan dengan pengalaman tugas anda sepanjang perkhidmatan di dalam Pasukan Polis Diraja Malaysia?
2. Adakah anda dipaksa, diugut atau dijanjikan apa-apa supaya anda bersetuju untuk ditemubual?

**B      Latarbelakang dan Pengalaman Bertugas**

1. Berapa lamakah anda telah berkhidmat di dalam PDRM dan apakah tahap pendidikan anda pada masa ini?
2. Apakah jawatan anda sekarang dan apakah skop tugas anda?
3. Sila nyatakan secara ringkas pengalaman tugas anda sepanjang anda bertugas di dalam PDRM.
4. Berapa lamakah anda telah bertugas sebagai Pegawai Penyiasat Jenayah?
5. Apakah jenis kes yang biasa anda menyiasat?
6. Adakah anda mempunyai pengalaman dalam penyiasatan kes yang melibatkan suspek kanak-kanak? Sekiranya ada, berapa tahun anda berpengalaman di dalam bidang ini?
7. Secara purata berapa banyak kes yang melibatkan suspek kanak-kanak yang anda menyiasat dalam masa sebulan (Anggaran)?



8. Jika dibahagikan mengikut bilangan 10 kes, berapakah kes kanak-kanak dan berapakah kes-kes lain yang anda menyiasat:
- (a) Kes kanak-kanak : \_\_\_\_\_ Kes Lain-lain: \_\_\_\_\_
9. Adakah anda pernah diberi sebarang kursus khusus bagi mengendalikan kes yang melibatkan saspek kanak-kanak?
10. Sekiranya ada bagaimana kursus itu membantu anda semasa menjalankan siasatan melibatkan saspek kanak-kanak?
11. Adakah anda mengetahui apakah undang-undang yang digunakan sekiranya seorang saspek kanak-kanak ditangkap? Adakah anda mengetahuinya dengan terperinci dan bagaimana anda mengetahuinya?
12. Adakah anda mengetahui atau pernah mendengar tentang dokumen-dokumen antarabangsa iaitu:-
- Konvesyen Hak Kanak-Kanak ( Convention on the Rights of the Children );
  - United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 ( The "Beijing Rules" );
  - The United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 ( The "Havana Rules" ); dan
  - The United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 ( The "Riyadh Rules" )?

Ya	Terangkan Pemakaiannya	Tidak
CRC		
The Beijing Rules		
The Havana Rules		
The Riyadh Rules		

13. Adakah anda mengetahui saspek kanak-kanak mempunyai hak-hak yang khusus semasa ditangkap, disiasat dan ditahan polis?

### **C** **Beban Tugas dan Sokongan Logistik**

1. Apabila anda menyiasat satu kes yang melibatkan tangkapan saspek kanak-kanak adakah anda ada melakukan perkara-perkara seperti dibawah:-



	<b>Tindakan</b>	<b>Ya</b>	<b>Tidak</b>
1	Memberitahu kanak-kanak itu bahawa ia boleh berkomunikasi dengan saudara atau kawan (Seksyen 28A(2)(a) Kanun Prosedur Jenayah dan seksyen 87(a) Akta Kanak-Kanak 2001)		
2	Memberitahu kanak-kanak itu bahawa ia boleh berkomunikasi dengan pengamal undang-undang pilihannya (Perkara 5 Fasal 3 Perlembagaan Persekutuan dan seksyen 28A(2)(b) Kanun Prosedur Jenayah)		

2. Sekiranya jawapan anda di soalan (1) diatas adalah "Tidak" maka apakah tindakan anda seterusnya tentang hak kanak-kanak yang ditangkap itu?
3. Sekiranya setelah diberitahu hak-hak yang dinyatakan di soalan (1) diatas, anda mendapati saspek kanak-kanak itu tidak berupaya mendapatkan khidmat seorang pengamal undang-undang pilihannya maka apakah tindakan anda seterusnya tentang tersebut?
4. Adakah anda bertanggungjawab memaklumkan kepada YBGK sekiranya saspek atau keluarga kanak-kanak tidak berupaya melantik seorang peguam pilihannya? Apakah prosedurnya sekiranya anda membantu?
5. Adakah anda ada memaklumkan kepada pegawai kebajikan masyarakat setelah saspek kanak-kanak ditangkap? Ada apa-apa permasalahan yang anda hadapi dalam perkara ini?
6. Sekiranya terdapat kes di mana saspek kanak-kanak memohon hendak berjumpa peguam dan peguam memaklumkan bahawa ia memerlukan masa untuk hadir maka apakah tindakan anda? Sila jelaskan sekiranya ada.
7. Berapa lama anda sanggup menunggu untuk peguam saspek kanak-kanak itu sampai sebelum anda memulakan penyiasatan anda (Merakamkan percakapan atau penyoalan keatas kanak-kanak itu)?
8. Pada kebiasaannya adakah semua saspek kanak-kanak akan ditahan reman di bawah seksyen 117 Kanun Prosedur Jenayah? Sekiranya ya apakah jenis kesalahan dan sekiranya tidak mengapa dan dalam keadaan apa?
9. Apakah mekanisma kawalan yang ada di IPD Dang Wangi berhubung dengan tahanan reman seorang saspek kanak-kanak? Siapakah yang akan menentukan saspek kanak-kanak itu akan ditahan reman atau tidak?



10. Berapakah hari reman yang anda akan perolehi sekiranya saspek adalah seorang kanak-kanak dan kes yang terlibat adalah kes jenayah hartabenda?
11. Apakah permasalahan yang anda seringkali hadapi semasa permohonan reman keatas pesalah kanak-kanak yang terlibat dalam kes jenayah hartabenda?
12. Adakah anda mempunyai apa-apa masalah berhubung dengan wartawan dari pihak media yang akan mengambil kesempatan untuk merakamkan gambar saspek kanak-kanak semasa proses reman di mahkamah?
13. Sekiranya terdapat wartawan dari pihak media yang ingin merakamkan gambar saspek kanak-kanak semasa permohonan reman atau dibawa untuk pertuduhan di mahkamah maka apakah tindakan anda?
14. Adakah anda akan membenarkannya atau tidak dan mengapa?
15. Apakah anda menghadapi sebarang masalah semasa mengendalikan kes-kes yang melibatkan saspek kanak-kanak?
16. Adakah peruntukkan undang-undang menjadi penghalang kepada anda semasa anda mengendalikan kes-kes sebegini? Sila jelaskan sekiranya ada
17. Adakah terdapat satu pasukan khas untuk mengendalikan kes-kes yang melibatkan saspek kanak-kanak? Sekiranya ada, berapa ramai pegawai penyiasat yang berada dalam pasukan tersebut?
18. Kemudahan lokap untuk saspek kanak-kanak di IPD Dang Wangi:-

	Kemudahan Lokap	Ya	Tidak
1	Lokap khas untuk menahan saspek kanak-kanak		
2	Lokap kanak-kanak diasingkan dengan lokap orang dewasa		
3	Berapakah jarak lokap kanak-kanak dengan lokap dewasa		
4	Saspek kanak-kanak dalam lokap boleh berinteraksi dengan saspek orang dewasa		

19. Adakah semasa pergerakan saspek kanak-kanak keluar masuk lokap akan berpeluang berjumpa dengan saspek orang dewasa?
20. Adakah sokongan logistik dari segi tenaga manusia, kenderaan atau lokap yang sedia ada mencukupi?

21. Adakah pada pendapat anda sumber tenaga manusia yang sedia ada (bilangan IO dan AIO) di Bahagian Siasatan Jenayah mencukupi berbanding dengan beban kerja yang sedia ada?
22. Secara purata berapakah kertas siasatan yang anda mengendalikan dalam masa sebulan?
23. Apakah permasalahan yang anda akan hadapi sekiranya kes yang anda sedang menyiasat mendapat liputan media yang meluas dan pihak media menuduh tindakan yang diambil oleh polis adalah kejam?
24. Adakah pegawai penyiasat kanan (SIO) anda memberi taklimat atau panduan kepada anda bagaimana kes melibatkan saspek kanak-kanak harus disiasat?
25. Apakah cadangan yang anda boleh utarakan untuk menambahbaikkan sistem siasatan yang sedia ada yang melibatkan saspek kanak-kanak?
26. Adakah anda bersetuju untuk butiran peribadi anda dimasukkan atau didedahkan dalam penyelidikan ini?
27. Adakah maklumat yang anda beritahu diatas adalah benar?

.....  
Tandatangan Orang yang Ditemubual

.....  
Tandatangan Orang yang Menemubual



( Soalan Temubual untuk Pegawai Kebajikan Masyarakat / Pegawai Akhlak )

Nama / No KP : .....

Umur : ..... Jantina:      Lelaki / Perempuan

Tarikh / Masa Temuduga: .....

Tempat Temuduga : .....

**Soalan****Latarbelakang dan Pengalaman Bertugas**

1. Berapa lamakah anda telah berkhidmat di dalam JKM dan apakah tahap pendidikan anda pada masa ini?
2. Apakah jawatan anda sekarang dan apakah skop tugas anda?
3. Sila nyatakan pengalaman tugas anda sepanjang anda bertugas di dalam JKM.
4. Berapa lamakah anda telah bertugas sebagai Pegawai Akhlak pada masa ini dan adakah anda bertanggungjawab untuk semua kes tangkapan kanak-kanak di daerah Ampang Jaya?
5. Adakah anda ada menghadiri apa-apa kursus khusus bagi mengendalikan kes yang melibatkan saspek kanak-kanak? Sekiranya ada adakah kursus itu membantu anda semasa menjalankan tugas selaku Pegawai Akhlak?
6. Adakah anda mengetahui apakah undang-undang yang digunakan sekiranya seorang kanak-kanak yang terlibat dalam jenayah ditangkap?
7. Adakah anda mengetahuinya dengan terperinci dan bagaimana anda mengetahuinya?
8. Adakah anda mempunyai pengalaman selaku Pegawai Akhlak? Sekiranya ada, berapa tahun anda berpengalaman di dalam bidang tugas ini?
9. Berapa banyak kes-kes yang melibatkan saspek kanak-kanak yang anda pernah dirujuk sebelum ini (Anggaran)?



10. Adakah anda mengetahui atau pernah mendengar tentang dokumen-dokumen antarabangsa iaitu:-
- Konvesyen Hak Kanak-Kanak ( Convention on the Rights of the Children );
  - United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 ( The “Beijing Rules” );
  - The United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 ( The “Havana Rules” ); dan
  - The United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 ( The “Riyadh Rules” )?

Ya	Terangkan Pemakaiannya	Tidak
CRC		
The Beijing Rules		
The Havana Rules		
The Riyadh Rules		

### **Beban Tugas dan Sokongan Logistik**

#### **( Berhubung dengan Keperluan Seksyen 87(a) Akta Kanak-Kanak 2001)**

- Berhubung dengan keperluan seksyen 87(a) Akta Kanak-kanak 2001, bagaimana cara anda selaku Pegawai Akhlak menjalankan tugas anda? Sila huraikan secara terperinci.
- Adakah Jabatan Kebajikan Masyarakat mempunyai satu *Standard Operation Procedure* (SOP) berhubung dengan perkara ini?
- Apakah anda mengetahui mengapa dan sebab yang tersirat di dalam seksyen 87(a) Akta Kanak-kanak ini yang mewajibkan pihak polis untuk memaklumkan kepada Pegawai Akhlak tentang setiap tangkapan saspek kanak-kanak yang terlibat dalam kes jenayah?
- Apakah tindakan anda setelah dimaklumkan oleh pihak polis apabila terdapat tangkapan keatas saspek kanak-kanak yang terlibat dalam kes jenayah?
- Adakah anda selaku Pegawai Akhlak ada membuat lawatan terhadap kanak-kanak yang ditangkap itu sepanjang kanak-kanak tersebut ditahan polis? Sekiranya ada berapa kali lawatan dibuat dan apakah tujuan lawatan tersebut dibuat? Sekiranya tiada mengapa?
- Bagaimana cara anda dimaklumkan oleh pihak polis samada melalui panggilan telefon, fax atau surat menyurat?



20. Adakah terdapat situasi dimana pegawai polis tidak mengambil apa-apa langkah untuk menghubungi anda atau pegawai ahklak yang lain apabila terdapat kanak-kanak yang terlibat dalam kes jenayah ditangkap? Sekiranya ada berapa kerap dan bagaimana anda mengetahuinya?
21. Adakah pegawai atasan anda ada menerangkan atau memberi panduan kepada anda berhubung dengan keperluan yang anda perlu lakukan apabila dimaklumkan tentang kanak-kanak yang telah ditangkap atas kes jenayah?
22. Adakah anda selaku pegawai akhlak mengetahui bahawa keperluan yang tersirat di dalam seksyen 87(a) Akta Kanak-Kanak 2001 adalah berlainan dengan keperluan yang tersurat di dalam seksyen 90(13) Akta Kanak-Kanak 2001?
22. Apakah cadangan yang anda boleh utarakan untuk menambahbaik sistem pemantauan yang sedia ada di dalam perkara ini?
23. Adakah anda bersetuju untuk butiran peribadi anda dimasukkan atau didedahkan dalam penyelidikan ini?
24. Adakah maklumat yang anda beritahu diatas adalah benar?

.....  
Tandatangan Orang yang Ditemubual

.....  
Tandatangan Orang yang Menemubual

**Personal Information of "Child Offenders" from IPD Dang Wangi**

<b>Respondents</b>	<b>Name/IC*</b>	<b>Age</b>	<b>Age When Offence Committed</b>	<b>Address</b>	<b>Contact Number</b>
1	Yap Weng Yik, IC: 960906-56-5357	17	16	No 1, Jalan Damai Perdana 1/4A, Bandar Damai Perdana, Kuala Lumpur	012-2682865
2	Anonymous	18	17	Anonymous	Anonymous
3	Anonymous	18	17	Anonymous	Anonymous
4	Anonymous	18	17	Anonymous	Anonymous
5	Anonymous	17	16	Anonymous	Anonymous

**Indicator**

Anonymous - All personal information on the four "child offenders" are withheld by the writer due to confidentiality requested by the respondents.

\* - Identification Card Number.



**Personal Information of “Child Offenders” from IPD Ampang Jaya**

<b>Respondents</b>	<b>Name/IC*</b>	<b>Age</b>	<b>Age When Offence Committed</b>	<b>Address</b>	<b>Contact Number</b>
1	Leong Kin Weng, IC: 970429-14-6297	17	17	No 5, Jalan Bunga Dahlia 4, Taman Seraya, Kuala Lumpur	010-2528995
2	Sharul Nizam b. Matusin, IC: 000913-12-0841	15	14	D3-5-2, Jalan PutraPermai 3, Taman Equine, Seri Kembangan, Selangor.	0111-2244079
3	Anonymous	17	16	Anonymous	Anonymous
4	Anonymous	18	17	Anonymous	Anonymous
5	Anonymous	18	17	Anonymous	Anonymous
6	Anonymous	17	17	Anonymous	Anonymous
7	Anonymous	18	17	Anonymous	Anonymous
8	Anonymous	18	17	Anonymous	Anonymous
9	Anonymous	14	13	Anonymous	Anonymous
10	Anonymous	14	13	Anonymous	Anonymous
11	Anonymous	15	14	Anonymous	Anonymous

**Indicator**

**Anonymous** - All personal information on the nine “child offenders” are withheld by the writer due to confidentiality requested by the respondents.

**\*** - Identification Card Number.



9	Inspector Ngang Wei Seng, IC: G/21844	33	Investigation Officer (IO)	No B-16-4, Desa Aman 2, Perumahan Polis, Jalan Pantai Murni 6, Pantai Dalam, Kuala Lumpur.	016-2123096
10	Sergeant Mohd Syaufiq b. Suib, IC: RF/175379	28	Assistant Investigation Officer (AIO)	D-431, Apartment Idaman, Damansara Damai, Petaling Jaya, Selangor	013-3618249
11	Sergeant Shahrul Nizam b. Yapak, IC: RF/163073	33	Assistant Investigation Officer (AIO)	No 8A, Jalan Raja Ali, Kampung Baru, 50300, Kuala Lumpur	012-4630782
12	Sergeant Major Zulkepli b. Abdul, IC: RF/111637	50	Assistant Investigation Officer (AIO)	JKR, 4313/68, Tingkat 7, Berek Polis, Bukit Aman	013-3412784
13	Anonymous	49	Assistant Investigation Officer (AIO)	Anonymous	Anonymous
14	Anonymous	26	Assistant Investigation Officer (AIO)	Anonymous	Anonymous
15	Sergeant Mohd Shahril b. Saad, IC: RF/157743	34	Assistant Investigation Officer (AIO)	JKR 4697-2-8, Pusat Latihan Polis, 54100, Jalan Semarak, Kuala Lumpur	012-2317448

16	Sergeant Salmah bte Serin, IC: RF/90374	55	Assistant Investigation Officer (AIO)	No 7-2, Perumahan Polis Dang Wangi, Jalan Dang Wangi 50100, Kuala Lumpur	012-3705272
17	Sergeant Mohd Zulkarnain b. Hassan, IC: RF/142754	36	Assistant Investigation Officer (AIO)	JKR 4698/1-3, Block D, Pusat Latihan Polis, Jalan Semarak, Kuala Lumpur.	019-2612754
18	Anonymous	30	Assistant Investigation Officer (AIO)	Anonymous	Anonymous
19	Anonymous	29	Assistant Investigation Officer (AIO)	Anonymous	Anonymous
20	Anonymous	32	Assistant Investigation Officer (AIO)	Anonymous	Anonymous

**Indicator**

Anonymous - All personal information on the seven IO and five AIO are withheld by the writer due to confidentiality requested by the respondents. The sequence of the respondent's in Appendix 'I' above is the same as in Table C.

\* - Identification Card Number.



**Personal Information of the IO/AIO from IPD Ampang Jaya**

<b>Respondents</b>	<b>Name/IC*</b>	<b>Age</b>	<b>Current Position</b>	<b>Address (Residential)</b>	<b>Contact Number</b>
1	Inspector Mazlan b. Ali, IC: G/20771	29	Investigation Officer (IO)	No 15, Jalan Damai Budi, Alam Damai, 56000 Cheras, Kuala Lumpur.	013-2734070
2	Anonymous	31	Investigation Officer (IO)	Anonymous	Anonymous
3	Inspector Mohd Huzir b. Yahaya, IC: G/21960	27	Investigation Officer (IO)	No 4, Jalan 5/20, Taman Pandan Indah, Pandan Indah 68000, Ampang.	012-2941810
4	Inspector Mohamad Nazar b. Azhar, IC: G/20861	30	Investigation Officer (IO)	No 1, Jalan 21, Taman Sri Selok, 43000 Kajang, Selangor.	019-2217206
5	Inspector Ebby Firdaus b. Mansor, IC: G/21751	28	Investigation Officer (IO)	No 25, Jalan 16/146, Bandar Tasik Selatan, 57000 Kuala Lumpur.	019-5621751
6	Anonymous	30	Investigation Officer (IO)	Anonymous	Anonymous
7	Inspector Amir b. Othman, IC: G/21128	32	Investigation Officer (IO)	C1, Apartment Petaling Utama, 46000 Petaling Jaya, Selangor.	012-9645502

8	Anonymous	54	Assistant Investigation Officer (AIO)	Anonymous	Anonymous
9	Sergeant Shukri b. Othman, IC: RF/109927	50	Assistant Investigation Officer (AIO)	No 1-05-01, Berek Melur, Ibu Pejabat Daerah Polis Ampang Jaya, Jalan Dagang 68000 Ampang, Selangor	017-6087139
10	Sergeant Muhammad Shazwan b. Hamidon IC: RF/176634	27	Assistant Investigation Officer (AIO)	B-12-20, Glenview Villa Apartment, Jalan Kuari, Kampung Cheras Baru, 55100 Cheras, Kuala Lumpur.	017-7989634
11	Sergeant Mohd Nasiruddin b. Mohd Nasir IC: RF/179516	28	Assistant Investigation Officer (AIO)	No 4, Jalan Melur 33, Taman Melur, 68000 Ampang, Selangor.	017-5063164
12	Sergeant Jasfarizam b. Abu Hassan IC: RF/125432	43	Assistant Investigation Officer (AIO)	No 8-12A-5, Menara Sri Mahang, Jalan 27/56, Keramat Wangsa, 54200 Kuala Lumpur.	019-2154264
13	Anonymous	51	Assistant Investigation Officer (AIO)	Anonymous	Anonymous
14	Anonymous	55	Assistant Investigation Officer (AIO)	Anonymous	Anonymous



15	Anonymous	53	Assistant Investigation Officer (AIO)	Anonymous	Anonymous
16	Anonymous	34	Assistant Investigation Officer (AIO)	Anonymous	Anonymous
17	Sergeant Zulkipli b. Mohd Nor IC: RF/103764	52	Assistant Investigation Officer (AIO)	No 29A, Lorong Haji Baie 1, Kampung Paya Jaras, Sungai Bulih, 47000 Selangor.	019-6603764

**Indicator**

Anonymous - All personal information on the two IO and five AIO are withheld by the writer due to confidentiality requested by the respondents. The sequence of the respondent's in Appendix 'J' above is the same as in Table D.

\* - Identification Card Number.

**Personal Information of Probation Officers from “DSW”, Jalan Duta and  
Hulu Langat**

<b>Respondents</b>	<b>Name/IC*</b>	<b>Age</b>	<b>Current Position</b>	<b>Address (Residential)</b>	<b>Contact Number</b>
1	Anonymous	57	Head of the Probation Officer in “DSW”, Jalan Duta	Anonymous	Anonymous
2	Anonymous	40	Probation Officer in “DSW”, Jalan Duta	Anonymous	Anonymous
3	Hindon bte Wan Senik, IC: 700701-08-5252	45	Probation Officer in “DSW”, Hulu Langat	No 51, Jalan Puncak Saujana 5/1D, Taman Puncak Saujana, Kajang, Selangor	019-7313707

Indicator

Anonymous - All personal information on both probation officers are withheld by the writer due to confidentiality requested by the respondents.

\* - Identification Card Number.

“DSW” - Department of Social Welfare





JABATAN SIASATAN JENAYAH  
Ibu Pejabat Polis Daerah Ampang Jaya,  
Taman Dagang,  
68000 Ampang,  
Selangor.

No Tel : 03-42897222

## SURAT PEMBERITAHUAN YBGK

### Bahagian - Butir-butir Tangkapan :

1. Nama (Tangkapan) : MUHAMMAD HANAFI BIN MUHAMMAD SALLEH
2. No Kad Pengenalan : 000226141429
3. Butir-butir tangkapan :-
  - 3.1. Tarikh : 19/05/2014
  - 3.2. Masa : 20:49
4. Nama ahli keluarga / kawan : MUHAMMAD SALLEH
5. No telefon ahli keluarga / kawan : 013-3304087
6. Tempat Ditahan : AMPANG JAYA

### Bahagian - Butir-butir Siasatan :

1. Nama Pegawai Penyiasat : R176634 / SJN / MUHAMMAD SHAZWAN B HAMIDON (AIO)
2. No Telefon Pegawai Penyiasat : 017-7989634
3. No Laporan Tangkapan : PANDAN INDAH/011096/14
4. Disiasat Bawah Seksyen : Pecah Rumah Malam [457 KK]
5. Jabatan / Cawangan : Jabatan Siasatan Jenayah
6. Alamat IPK / IPD / Balai : Ibu Pejabat Polis Daerah Ampang Jaya, Taman Dagang, 68000 Ampang, Selangor.

### Bahagian - Tindakan :

Saya mengesahkan tangkapan akan :

1. Dibawa untuk reman Tarikh : 20/05/2014 Masa : 10:00 Mahkamah : MAJISTRRET AMPANG JAYA

**Bahagian - Pengecualian :**

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1. **Klausa Penafian dibawah Seksyen 28A (8) Kanun Tatacara Jenayah** : Tidak
- 1.1. **Borang Seksyen 28A (8) Kanun Tatacara Jenayah** : Tidak
2. **Tangkapan memilih peguam sendiri** : Tidak
- 2.1. **Nama Peguam** :
- 2.2. **No Telefon Peguam** :

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(Tandatangan)

R176634 / SJN / MUHAMMAD SHAZWAN

B. HAMIDON

Tarikh : 19/05/2014