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ACKNOWLEDGEMENT

**REFORM OF JUVENILE CRIMINAL JUSTICE
- A SPECIAL FOCUS ON THE EFFECTIVENESS OF
CORRECTIONAL TREATMENT IN APPROVED SCHOOLS**

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ABSTRACT

It is now an old adage that juvenile justice reform is no sport for the short-winded. Juvenile law reform is both an incomplete achievement and an ongoing process, where the more progressive and the regressive forces of the different professionals and citizen groups skirmish between soft-line and hard-line extremes, contesting the need for further legal checks and balances.

The violence of some juvenile offenders in this country is arousing growing concern. Concerns about the welfare of the young have too often been seen as in conflict with the aims of protecting the public, punishing offences and preventing offending. This confusion creates real practical difficulties for practitioners and has contributed to the loss of public confidence in the juvenile justice system. Policy makers are caught in the crossfire between society's desire to nurture its youth and the imperative to punish its criminals. It is especially difficult to choose between rehabilitation and 'get tough approaches'. To reform juvenile criminal justice in this country, which is approximately 55 years old, it is imperative to respond to public safety concerns and simultaneously advance improved treatment for juvenile offenders.

This research project addresses the above concern. It discusses general patterns and trends in crimes committed by children – trends revealed by arrest data and other sources. It reviews the historical context of the juvenile justice system and analyses recent legislative reforms that give rise to a new justice system for children. It reviews the search for a new 'rehabilitative ideal' that could provide a foundation for a new system of correctional treatment for juveniles who had to be institutionalised. This research project has a special focus on the correctional treatment in approved schools and their operations in more detail. This is a field that demands our attention.

ABSTRAK

Kenyataan bahawa pembaharuan pengadilan juvena tidak sesuai bagi mereka yang kurang kesabaran kini merupakan satu pepatah lama. Pembaharuan undang-undang juvena adalah satu proses yang tiada penyelesaiannya dan sentiasa berterusan, di mana pihak-pihak progresif dan regresif daripada kumpulan-kumpulan profesional dan golongan-golongan masyarakat yang berbeza, masing-masing berpegang kepada pendapat ekstrim yang bercanggahan. Ini menimbulkan keperluan untuk semakan dan imbagan undang-undang selanjutnya.

Keganasan di kalangan sesetengah pesalah juvena di negara ini sedang menimbulkan kebimbangan umum. Kebimbangan tentang kebijakan golongan remaja seringkali dianggap sebagai bertentangan dengan matlamat memberi perlindungan kepada orang awam, menghukum pesalah dan mencegah penjenayahan. Kekeliruan ini menimbulkan kesulitan secara praktik bagi pihak penguatkuasa dan telah menyumbang kepada kehilangan keyakinan masyarakat terhadap system pengadilan juvena. Penggubal dasar adalah terperangkap diantara keinginan masyarakat untuk membimbing golongan remaja dan keperluan untuk menghukum pesalah-pesalah. Sememangnya amat sukar untuk membuat pilihan diantara pemulihan dan 'pendekatan-pendekatan berat' (get tough). Bagi memperbaharui pengadilan jenayah juvena di negara ini, yang kini telah menjangkau 55 tahun, perlunya diambil kira kebimbangan keselamatan masyarakat dan pada masa yang sama mempertingkatkan rawatan kepada pesalah-pesalah juvena.

Projek penyelidikan ini memberi perhatian kepada isu-isu diatas. Projek ini membincangkan corak-corak umum dan tren dalam kesalahan jenayah yang dilakukan oleh kanak-kanak – tren yang ditunjukkan oleh data tangkapan dan data daripada punca-punca lain. Projek ini mengkaji aspek sejarah berkaitan system keadilan juvena dan menganalisa pembaharuan perundangan baru yang menghasilkan satu system pengadilan baru bagi kana-kanak. Projek ini juga mengkaji pencarian pemulihan baru yang unggul (rehabilitative ideal) yang boleh dijadikan sebagai asas kepada system rawatan pemulihan baru bagi juvena yang perlu dimasukkan ke institusi. Projek penyelidikan ini memberi tumpuan khas kepada rawatan pemulihan dan pentadbiran di sekolah-sekolah akhlak secara terperinci. Bidang ini memerlukan perhatian kita bersama.

TABLE OF CONTENTS

TOPIC	PAGE
ACKNOWLEDGEMENT	
ABSTRACT	
TABLE OF STATUTES	i
TABLE OF CASES	i
LIST OF TABLES	ii
INTRODUCTION	1 - 9
<u>CHAPTER 1: OVERVIEW OF JUVENILE DELINQUENCY</u>	
1.1 Patterns and Trends in Juvenile Crime	10 – 16
1.2 Development of Delinquency	17 – 19
<u>CHAPTER 2: THE JUVENILE JUSTICE SYSTEM</u>	
2.1 A Brief Historical Perspective	20 – 22
2.2 Beginning of Juvenile Justice in Malaysia	22 – 24
2.3 Legal Context of the Juvenile Justice System	25 – 32
<u>CHAPTER 3: NEW JUSTICE SYSTEM FOR CHILDREN</u>	
3.1 The Juvenile Court in Search of the Child	33 – 36
3.2 Legislative Changes	36 – 43
3.3 Model for the Future – Treating the Whole Child	43 – 46
<u>CHAPTER 4: EFFICACY OF REHABILITATION</u>	
4.1 Does Rehabilitation Works?	47 – 49
4.2 What Works? - A Summary of Research Findings	50 – 53

TOPIC	PAGE
<u>CHAPTER 5: THE APPROVED SCHOOL</u>	
5.1 Approved Schools in Malaysia	54 – 56
5.2 Sekolah Tunas Bakti, Taiping	
5.2.1. Profile	56 – 57
5.2.2. Importance of Effective Programs	58 – 61
5.2.3. Evaluation of Effectiveness	61 – 64
5.3. The Need for Benchmarking	64 – 68
CONCLUSION	69 – 72
BIBLIOGRAPHY	1 – 3
APPENDIX I: CORRECTIONAL PROGRAMS IN APPROVED SCHOOLS	4 – 8
APPENDIX II: PROFILE OF INMATE POPULATION IN STB TAIPING AS AT 31 OCTOBER 2002	9

TABLE OF STATUTES

1. Penal Code
2. Juvenile Courts Act 1947 (Act 90) - now repealed
3. Evidence Act 1956 (Act 56)
4. Children and Young Persons (Employment) Act 1966 (Act 350)
5. Age of Majority Act 1971 (Act 21)
6. Women and Girls Protection Act 1973 (Act 106) - now repealed
7. Child Protection Act 1991 (Act 468) - now repealed
8. Child Act 2001 (Act 611)

TABLE OF CASES

1. Cheng Thomas v PP, [2001] 1 SLR 285
2. Koay Teng Soon & Anor v PP, [2000] 1 CLJ 677
3. Lim Hang Seoh v PP, [1978] 1 MLJ 68
4. PP v Mohamed Zairi b Abu Bakar & Anor, [1985] 2 MLJ 308
5. PP v Nazarudin bin Ahmad & Ors, [1993] 2 MLJ 9
6. PP v Saiful Afikin bin Mohd Firus, [1996] 4 MLJ 309
7. PP v The Offender, [1998] 4 MLJ 152
8. Re Johari bin Ramli, [1956] 1 MLJ 56
9. Sia Yik Hung v PP, [1998] 1 MLJ 451
10. Teoh Ah Kow v PP, [1961] 1 MLJ 75

LIST OF TABLES

TABLES	PAGE
Table I: Juvenile Arrest By Age And Year	11
Table II: Juvenile Arrest By Gender, Race And Year	11
Table III: Juvenile Cases By Type Of Offences And Year	12
Table IV: Juvenile Cases By State And Year	13
Table V: Probation Reports Requested On Juveniles By Type Of Offences And Year	14
Table VI: Applications Of Beyond Control By Court Dispositions And Year	15
Table VII: Court Dispositions On Juvenile Cases [Where Probation Reports Were Requested] By Year	16
Table VIII: List Of Approved Schools, Capacity And Inmate Population As At End Of December 2001	55

INTRODUCTION

No one whose opinion is worth considering now believes that a child who does wrong ought as a matter of moral necessity to expiate his wrong by suffering.

- Professor Glanville Williams ¹

Few would doubt that crime and anti-social behaviour by children represent one of the more serious problems facing modern society. ² Concern about the extent of juvenile crime is intense and widely shared by government officials and by the public. However, concern about the behaviour of the young is not peculiar to the 21st century. There hardly seems to have been a time when the criminal activity of young people has not been a cause of major public concern. The public seem to be repeatedly told, not least by the media, that crime among young people is a serious and ever worsening problem, often in contrast to a previous golden age when youth posed no great threat to public order and safety. A check through the historical record revealed that at the time of the supposed golden age people were saying exactly the same thing. Many thousand years ago, an Egyptian priest carved on a stone the following words, "*Our earth is degenerate ... Children no longer obey their parents.*" ³ Socrates (470 - 399 BC), in an often-quoted paragraph, chastised the children of his days for their errant ways: ⁴

¹ Quoted by Allen, Rob, *Children and Crime: Taking Responsibility*, Institute for Public Policy Research, (1996), 17.

² In a survey on issues highlighted by the major newspapers in the country for the period between 1994 and 1995 [undertaken by the Ministry of National Unity and Social Development], it was found that issues relating to adolescents were given top priority. Misdeeds of adolescents like running away from home, truancy, drug addiction, indiscipline in schools, loafing and sexual promiscuity were constantly being brought to our notice.

³ Conger, John Janeway and Petersen, Anne C., Adolescence and Youth: Psychological Development in A Changing World, (3rd Ed., 1984), 612.

⁴ Quoted in The Penguin Book of Children, Rosen M, [Ed], (1994).

From the day your baby is born, you must teach him to do without things. Children today love luxury too much. They have execrable manners, flaunt authority, have no respect for their elders. They no longer rise when their parents or teachers enter the room. What kind of awful creatures will they be when they grow up.

In the 1980s and early 1990s, as a reaction to the increase in violent offences, juvenile offenders in the United States were described as super-predators (Bennett, DiIulio, and Walters, 1996) and stone-cold predators (DiIulio, 1996). The image of the juvenile delinquent underlying these phrases is of an animal stalking its prey, but for pleasure rather than survival. Defining the child as evil has shown itself in revision of practices in state juvenile justice system in the country - the move to determinant and mandatory sentencing in the juvenile court and in the transfer of youth to adult court. In generalising the 'evil' of juvenile offending to all juveniles, every youth who has committed an offence - from running away from home to larceny theft, from vandalism to drug abuse - is included in the solution.⁵

Stanley Cohen's (1972) construction of folk devils and the mobilisation of the moral panic surrounding the Mods and Rockers' phenomenon became a sociological truism when the British press co-opted his terminology in the narration of the James Bulger incident.⁶ Within the tabloid media, instances of juvenile crime and delinquency are mapped together and 'narrated' under the all-encompassing symbolic cloak of the Bulger affair. The revulsion that is stimulated by this particularly exceptional and gruesome crime is remobilised in each apparent confirmation of the 'juvenile threat'. Within such moral panic discourses, each event is seen as symptomatic of a generalized

⁵ Triplett, Ruth, *The Dramatization of Evil: Reacting to Juvenile Delinquency During the 1990s*, in *Of Crime and Criminality*, Simpson, Sally S, [Ed], (2000), 121 – 138.

⁶ James Bulger, a two-year-old child was abducted from the Strand Precinct in Bootle, Merseyside by two ten-year-old children. His body was found gruesomely murdered by the side of a railway line in a nearby suburb of Liverpool. Two ten-year-old children were charged and subsequently convicted for his abduction and murder.

crisis of familial authority, maternal responsibility and, hence, of the moral and social fabric of society.⁷

The field of juvenile justice is one of those in which the opinion of the public - or more accurately in most cases the opinion most forcefully transmitted by the media - is a major factor. Although juvenile offenders in Malaysia have not been described as super-predators and stone-cold predators or construed as folk devils, juvenile and crime violence provide the impetus again for most of the current public anxiety and political responses. The topic of escalating violent juvenile crimes has received widespread media attention. Typical is the story of a 16-year-old schoolgirl who was found dead in Merlimau, Melaka, believed to have been raped and sodomised just about 100 meters from her home. In another tragic event, a five-year-old girl was found dead in Sandakan, Sabah, buried in a muddy swamp, also believed to have been molested. Both cases involved juveniles as the offenders.⁸ The perception and the reality of juvenile violence have ignited public fear, evoked strong rhetoric about 'getting tough' with juvenile offenders, and led to demands for change in the way juvenile offenders are charged, punished and treated.⁹ Such violent juvenile crimes became the focus of policy debates on the *philosophy of the juvenile justice system* and the *efficacy of rehabilitation*.

⁷ Hay, Colin, *Mobilization Through Interpellation: James Bulger, Juvenile Crime and the Construction of a Moral Panic*, (1995), 197 - 223, in Nigel, South, [Ed], *Youth, Crime, Deviance and Delinquency*, (Vol. 1, 1999).

⁸ Akmar Nordin, *Solving juvenile delinquency*, *New Straits Times*, 18 August 2001, 10.

⁹ See newspaper reports:

Sharon Kam, *Should we jail young offenders? - Recent spate of crime by teens sparks debate*, *The Sun*, 29 July 2001, 14.

Syed Mohazri Syed Hazri, *No justice in this punishment*, *New Straits Times*, 1 August 2001, 11.

Sandhya S. Kumaran, *We cannot allow juvenile criminals to escape justice*, *New Straits Times*, 7 August 2001, 15.

V. K. Chin, *View punishment of juveniles in perspective*, *The Star*, 9 August 2001, 21.

The Court signalled its own 'get-tough' stance when High Court Judge, Datuk S. Augustin Paul, suggested that the provisions in the Juvenile Courts Act barring a juvenile from being sentenced to death be reviewed, stating that 'sometimes the juveniles acts are worst than adults.' The learned judge made this comment when delivering his decision on an 18-year-old juvenile who was ordered to be detained at the pleasure of the Yang di-Pertuan Agong for trafficking in 18g of cannabis.¹⁰ In an earlier case, Judicial Commissioner, V.T. Singham, dismissed an appeal by a 20-year-old offender against his prison sentence. His Lordship stated that the principle in *Tukiman Taib v Public Prosecutor*, decided in 1955, that youthful first offenders be spared prison sentences should also be reviewed. His Lordship reiterated that 'there were too many cases of crimes committed by young offenders and it was not in the interest of the public to release them with a light sentence, fine or a binding over.'¹¹ The decisions of the courts indirectly placed violent juvenile offenders at the centre of an ideological debate between proponents of the juvenile justice philosophy and its rehabilitative dispositions, and advocates of a retributive or punishment-based system whose purposes are to deter and incapacitate offenders.

A typical view that emerged is that the juvenile justice system of old, designed to guide wayward juveniles onto the right path, is out-of-date and ineffective in dealing with the growing serious, violent nature of juvenile crime. Yet other experts remain staunch in their belief that traditional juvenile justice approaches provide an appropriate response for the vast majority of offenders. Government policy on juvenile delinquency must often struggle with the appropriate balance of concern over the healthy development of children

¹⁰ S. Tamarai Chelvi, *Review Juvenile Act, says judge*, The Sun, 10 October 2001, 3.

¹¹ Humayun Kabir, *Judge: Jail young offenders*, The Sun, 24 July 2001, 3.

and adolescents who violate the law and a public desire to punish criminals. This tension between rehabilitation and punishment when dealing with children and adolescents who commit crimes results in an ambivalent orientation towards young offenders. Criminal acts must be suppressed, condemned and punished. Nevertheless, children and adolescents who commit criminal acts must be educated and supported in a growth process that should be the objective of government policy for all young people, including young offenders.

A number of cognitive and social features of childhood and adolescence influence the content of juvenile crime policy in this country. Children under the age of ten have been considered below the age of reason, and therefore unable to formulate the criminal intent necessary to be held accountable for criminal offences.¹² Between the ages of 10 and 12, a child may be convicted if the prosecution can prove that he knew that what he was doing was morally or legally wrong,¹³ and a boy under the age of 13 cannot be committed of rape or attempted rape.¹⁴ By the age of eighteen, most adolescents are deemed to have sufficient cognitive capacity and life experience to be held accountable for intended wrongful acts.¹⁵ The issue faced in juvenile crime policy is how to deal appropriately with those who commit crimes between the ages of 10 and 18. Adolescence is a period of dating, driving and expanding social networks - all choices that can produce positive or negative consequences for the adolescent and the community. Public policies in the area of education, medical care, alcohol beverage control and juvenile crime reflect

¹² s 82, Penal Code.

¹³ s 83, Penal Code.

¹⁴ s 113, Evidence Act 1950, [Act 56].

¹⁵ Age of Majority Act 1971, [Act 21].

beliefs that adolescents have not acquired the abilities or capacities necessary for adult status. Juvenile justice programmes and strategies are therefore best understood against a backdrop of the history of the juvenile justice system and its handling of children.

A juvenile justice system separate from the adult system was established in Malaysia more than half a century ago with the goal of diverting children and young offenders from the destructive punishment of criminal courts. In practice, there was always a tension between social welfare and social control i.e. focussing on the best interest of the individual child versus focussing on punishment, incapacitation and protecting society from certain offences. To require the juvenile court to consider both age and acts creates such a tension. As can be seen, this tension has shifted over time and still remains today. Society becomes caught up from time to time in an old argument: whether childhood should confer special regard and protection despite behaviour, or whether acts that confirm to principles of criminal liability should be punished without regard to the tender age of the perpetrator. Although the Juvenile Courts Act 1947 (Act 90) has been on the books for 55 years, it has never been properly internalised or understood.

To best answer the questions of how to deal with young offenders requires knowledge of factors that influence the development of delinquent behaviour; of the types of offences committed by young people; and the types of interventions that can most efficiently and effectively prevent offending in the first place or prevent its recurrence. This research project reviews literature in these areas to provide an objective view of juvenile crime and the juvenile justice system in the country. At the time of this writing,

the Child Act 2001 [Act 611] had just been implemented.¹⁶ The said act made basic changes in juvenile justice philosophy and policy. Whether the recent modifications in law and in practice will impact on the fate of children have yet to be established. However, it is imperative that mandated reforms prompt us to carefully examine the juvenile justice system's strengths and weaknesses and to undertake leadership in establishing programs which can deter and treat so that we will once again, not live in fear of our children.

Scope of the Research Project

The **first part** of the project provides a general perspective on the historical legacy that continues to dominate contemporary thinking about juvenile justice in Malaysia. It discusses the underlying philosophy of the new Child Act 2001 (CA), and seeks to explain why the rehabilitative model embodied in the Juveniles Court Act 1947 (JCA)¹⁷ has not lost ground to punitive models that focus mainly on the offences committed. It explains how the introduction of new legislative reforms will impact on children who offend and make parents more responsible for their children's offending.

The **second part** of the project reviews the debate regarding the 'rehabilitative ideal' and identifies effective techniques of rehabilitation that can have an impact on the rehabilitation of young offenders. With the continuing expression of support for rehabilitation as a principle that should guide much of the new Act's implementation, the effectiveness of treatment and rehabilitation in the approved schools, one of the main

¹⁶ The Child Act was published in the Gazette on 1 March 2001 as Act 611. Gazetted date of implementation was 1 August 2002, through P.U. (B) 229/2002.

¹⁷ Act 90 had since been repealed on the coming into force of Act 611.

forms of juvenile correctional institutions, will be analysed in greater detail. A comprehensive review of all juvenile correctional institutions is beyond the scope of this project.

Methodology

News reports and articles in the local newspapers provide information on the debate and controversies surrounding the concern on juvenile crimes in the country. An overview of the general trend of juvenile delinquency in the country is obtained by analysing data from the Royal Malaysian Police and the Department of Social Welfare Malaysia. The analysis on legislative reforms involves the study of the various provisions of Act 90, in comparison to the new provisions of Act 611, as well as other related statutes. Local as well as Singaporean cases were relied on to substantiate certain arguments and highlight certain points of law.

The analysis on the effectiveness of treatment and rehabilitation involves the study of the various field research data and information available. Insights into the practical aspects of the rehabilitation process were obtained by studying the administration and implementation of programs in one of the approved schools in Malaysia i.e. Sekolah Tunas Bakti, Taiping, Perak (STB, Taiping). Interviews were conducted with the Deputy Director-General (Operational) from the Department of Social Welfare Malaysia who is directly involved in rehabilitation policies at the national level as well as with the Principal of STB, Taiping. Without such input, this project would be inaccurate and devoid of any practical reality.

Materials on the subject matters covered in this project were also sourced from various monographs, articles in various law journals and debate reports of Parliament.

Definitions Used In This Report

The term *juvenile delinquency* in this report refers to acts by a juvenile that would be considered a crime if committed by an adult, as well as to actions that are illegal only because of the age of the offender. The term *juvenile crime* refers specifically to the former and offences include for example, theft, robbery, homicide, and assault. The term *juvenile offending* is used synonymously with juvenile crime.

CHAPTER 1: OVERVIEW OF JUVENILE DELINQUENCY

Juvenile delinquency is like an illness – but an illness of the society and not of the boy or girl considered to be delinquent. We must state strongly that society has to assume the consequences of delinquency. And this is a truly revolutionary concept.

Paolo Basurto¹⁸

1.1. Patterns and Trends in Juvenile Crime

There is a general perception, sometimes correct and sometimes unjustified, that juvenile offending rates are increasing constantly and significantly, and that ever more serious and violent crimes are being committed by ever-younger children. Such a perception needs to be examined more closely. In light of recent controversies on juvenile offending, it is imperative to assess whether there is a 'juvenile crime wave' that is happening at our doors. This chapter summarises what is known about the trends in delinquency over the past five years and considers what focus can be made about juvenile crime in the country. It draws some parallel to the problem of delinquency on an international level and looks at some of the risk factors and characteristics that have been associated with the development of juvenile delinquency.

Official crime rates are based on data reported to Police agencies. To fully understand trends in the prevalence of juvenile offending, it is necessary to examine arrest rates for juveniles independently of adult arrest rates. For the five-year period covering 1997 - 2001, 28,966 juveniles were arrested for committing a total of 18,881 offences (see *Table I* and *Table III*). Official figure suggests a declining number of juvenile offending

¹⁸ Quoted in Children and the System of Juvenile Justice: Prevention, Protection and Rehabilitation, Report of the Eight Innocenti Global Seminar, Florence, 12 - 22 October 1997.

in recent years. There appears to be an increase in the numbers of arrest from 1997 to 1999 but a drop in arrests for the next two years (*Table I*).

TABLE I: JUVENILE ARREST BY AGE AND YEAR

	1997	1998	1999	2000	2001
7 - 12	229	300	264	224	165
13 - 15	1,984	1,636	1,977	1,851	1,444
16 - 18	3,574	4,084	4,297	3,754	3,183
TOTAL	5,787	6,020	6,538	5,829	4,792

Source: Royal Malaysian Police

In terms of age category, of the total arrested for the stated five-year period, 4.1% were from the 7 - 12 years age group; 30.7% from the 13 - 15 years age group; and the greater percentage (65.2%) from the 16 - 18 years age group. As can be seen in *Table II*, males have consistently higher arrest rates than females, accounting for 98.4% of total arrests. Compared to other ethnic groups, Malay juveniles constitute 62.9% of juvenile arrests, perhaps in proportion to their larger number in the population.

TABLE II: JUVENILE ARREST BY GENDER, RACE AND YEAR

	1997		1998		1999		2000		2001	
	L	P	L	P	L	P	L	P	L	P
MALAY	3,419	59	3,888	52	3,882	56	3,604	52	3,142	66
CHINESE	182	12	904	15	1,117	12	937	19	524	19
INDIAN	656	18	768	6	922	15	745	7	576	11
OTHERS	433	8	382	5	530	4	453	12	449	5
TOTAL	5,690	97	5,942	78	6,451	87	5,739	90	4,691	101

Source: Royal Malaysian Police

TABLE III: JUVENILE CASES BY TYPE OF OFFENCES AND YEAR

	1997	1998	1999	2000	2001
Violent Crimes					
302	25	26	19	16	19
307	1	3	0	2	0
395 / 397	1	29	17	21	22
395	11	27	19	21	11
397	30	40	50	64	53
392	66	24	66	36	42
376	117	80	124	96	117
324 / 326	357	244	263	232	223
Sub Total (A)	608	473	558	488	487
Property Crimes					
454	204	200	193	197	134
457	319	316	453	428	518
379	289	416	633	526	443
379A	776	852	971	1,028	1,172
380 / 381	453	401	269	324	217
Sub Total (B)	2,041	2,185	2,519	2,503	2,484
Other Crimes					
147 / 148	123	163	190	125	131
352 / 354	54	53	68	37	46
384 / 385	45	36	24	27	11
411	1	1	4	0	3
420	8	4	6	9	1
425 / 426	8	4	6	4	7
Gambling	89	56	97	33	8
DDA	150	46	5	1	3
Sub Total (C)	478	363	400	236	210
Other Cases	501	595	599	599	554
GRAND TOTAL	3,628	3,616	4,076	3,826	3,735

Source: Royal Malaysian Police

The concern in recent years over juvenile crime has centred on violent crime. Data for the five-year period showed that the rate of violent juvenile crimes constitute 13.8% of total juvenile cases. Of this percentage, 50.5% were for the offence of voluntary causing

hurt or grievous hurt by dangerous weapons or means; 20.4% for the offence of rape; 9.1% for the offence of robbery when armed or with attempt to cause death or grievous hurt and 9% for robbery. However, there has been no drastic increase in the number of violent crimes committed by juveniles; on the contrary, there has been a decrease in the year 2000 and 2001 as compared to 1999. Property crimes continue to make up the majority of juvenile offending (62.1%), remaining fairly constant over the years. 40.9% of juvenile property crimes involve the theft of motor vehicles; 19.7% for the offence of theft and 17.3% for house trespass by night or housebreaking (*Table III*).

Table IV shows that juvenile cases also differs by states with the majority of cases recorded in Johor (16%), followed by Selangor (13.7%), Pulau Pinang (10.7%), Perak (9.1%), Kedah (8.1%) and Kuala Lumpur (7.1%).

TABLE IV: JUVENILE CASES BY STATE AND YEAR

	1997	1998	1999	2000	2001
PERLIS	63	77	70	45	34
KEDAH	324	364	328	259	252
PULAU PINANG	310	424	438	470	375
PERAK	261	336	482	418	223
KUALA LUMPUR	282	336	291	230	200
SELANGOR	522	491	567	506	498
NEGERI SEMBILAN	231	195	190	200	112
MELAKA	120	109	99	68	85
JOHOR	617	399	466	584	961
KELANTAN	170	177	182	164	175
TERENGGANU	161	150	192	217	287
PAHANG	147	174	265	229	163
SABAH	252	212	272	282	213
SARAWAK	168	172	234	154	157
TOTAL	3,628	3,616	4,076	3,826	3,735

Source: Royal Malaysian Police

Data compiled by the Department of Social Welfare (DSW) also serves as general indicators of juvenile offending. For the five-year period studied, 27,094 probation reports (or pre-sentence reports) were prepared on juveniles who committed various offences, on request by the Courts (*Table V*).

**TABLE V: PROBATION REPORTS REQUESTED ON JUVENILES
BY TYPE OF OFFENCES AND YEAR**

	1997	1998	1999	2000	2001
Against Property	2,932	3,950	3,790	3,401	3,060
Against Persons	341	586	497	467	524
Sexual Offences	53	84	84	98	70
Gambling	132	139	88	98	131
Traffic Offences	287	522	427	389	327
Breach of detention ordinance	38	65	68	22	43
Others *	807	992	746	809	1,027
TOTAL	4,590	6,338	5,700	5,284	5,182

* Drugs/Weapons and Firearms

Source: Department of Social Welfare Malaysia

There has been an increase in the number of reports requested by the courts, from 2,480 in 1970 to 3,087 in 1980, 3,876 in 1990 and 5,284 in the year 2000. A comparison of offences committed in 1990 to that committed in the year 2000, showed that sexual offences increased by 151.3% (39 cases in 1990); offences against people increased by 65% (283 cases in 1990); and offences against property increased by 20.1% (2,831 cases in 1990).

Another category of offences monitored by the DSW that affects only juveniles is status offences - acts that are considered unlawful only because of the age of the offender. Juveniles who commit such offences are legally classified as 'beyond control' and courts can intervene when parents or guardians of these juveniles make formal applications to the courts to do so. A total of 1,829 applications of beyond control were handled by the

Department during the period studied, with 44.6% of these juveniles ordered by the courts to be institutionalised (*Table VI*). Juveniles who commit status offences are more likely to be sent for rehabilitation as compared to those who commit criminal offences (8.9% as shown in *Table VII*). It is interesting to note that a higher proportion of female delinquents (36.9%) are brought before the courts on such non-criminal matters or for being in moral danger (only 1.6% of girls are arrested for criminal offences as shown in *Table II*). This may be due to “a unique and intense preoccupation with girls’ sexuality and their obedience to parental authority” (Chesney-Lind and Shelden),¹⁹ but it could also reflect a greater concern for their safety. The media’s exposure of the ‘boh-sia’ activities of young girls in the country in 1994 is a reflection of such concern.²⁰

**TABLE VI: APPLICATIONS OF BEYOND CONTROL
BY COURT DISPOSITIONS AND YEAR**

	1997		1998		1999		2000		2001	
	L	P	L	P	L	P	L	P	L	P
Application withdrawn	52	29	50	35	88	47	45	17	28	32
Bond of parents/guardians	65	11	26	10	16	6	42	1	56	16
Care of Fit Person	7	6	5	1	1	5	7	1	3	1
Supervision	38	22	19	16	37	24	34	22	80	13
Approved School/Institutions	106	81	93	76	96	66	68	62	93	74
TOTAL	268	149	193	138	238	148	196	103	260	136

Source: Department of Social Welfare Malaysia

¹⁹ Chesney-Lind, M., & Shelden, R.G, *Girls, Delinquency and Juvenile Justice*, (1998), 135.

²⁰ See newspaper reports:

Kamarulzaman Salleh, *Boh-sia woes: Ministry proposes curfew on those below 18*, *New Straits Times*, 8 October 1994.

Survey on student 'boh-sia' activities, *New Straits Times*, 22 October 1994.

Please, I am not boh-sia, *New Straits Times*, 22 October 1994.

TABLE VII: COURT DISPOSITIONS ON JUVENILE CASES [WHERE PROBATION REPORTS WERE REQUESTED] BY YEAR

	1997	1998	1999	2000	2001
Admonished and discharged	322	478	345	330	495
Released on bond without supervision	1,639	2,408	2,262	1,917	2,054
Released on bond with supervision	396	554	510	429	298
Probation Order	105	151	155	167	95
Approved School	392	520	496	392	317
Henry Gurney School	301	274	277	214	147
Fine/Compensation/Cost	603	1,172	881	857	873
Imprisonment	380	507	407	309	237
Others *	452	274	367	669	666
TOTAL	4,590	6,338	5,700	5,284	5,182

* Imprisonment and fine/Immigration/Drug Rehabilitation Centre/Caning

Source: Department of Social Welfare Malaysia

On the basis of the above analysis, it would not be wrong to surmise that the data on general trends in juvenile delinquency in the country do not portray a very alarming picture, contrary to what we have been led to believe by the mass media. The number of juveniles arrested in the year 2000, for example, represented only 0.14% of all those aged 10 - 18 years in Malaysia.²¹ It should be noted here that arrest data from the Police Department includes offenders as young as seven years old (those below the age of criminal responsibility), and should rightfully be excluded from the juvenile justice system. However, the type of juvenile offending should serve as an adequate indication for the development of services, facilities and courts that can match the evolving situation. In this respect, juveniles who commit status offences, as shown by data from the DSW, has also been included in the analysis.

²¹ The population of those aged 10 - 18 years in the year 2000 is 4,229,400, Source: Statistic Department, Malaysia.

1.2. Development of Delinquency

Obviously, crime by young people is a concern for countries throughout the world. The seemingly universal nature of delinquency has been commented upon by Hartjen and Kethineni, who suggest that "young people everywhere seem to engage in similar kinds of behaviour with strikingly similar demographic distribution (1996, 161). A 12-country study of self reported delinquency also found remarkable similarity among the countries (Junger-Tas, 1996, 13):²²

Box I: Similarities of Delinquency Around the World

Junger-Tas (1996), reporting results from an International Self-report Delinquency Study in 12 countries, summarised the similarity in delinquency as follows:

- Boys, in all countries, are 2 to 4 times more likely than girls to commit violent offences.
- Boys, in all countries, are 1.5 to 2 times more likely than girls to commit property offences.
- The peak ages for committing particular crimes are similar in most countries. For example, 14 - 15 for vandalism, 16 - 17 for property crimes, 18 - 20 for violent crimes.
- In all countries, there was less delinquent behaviour when the relationship with parents was close.
- Parental supervision is a powerful predictor of delinquency in all the countries - the less supervision the more delinquent behaviour.

Sociologists tend to perceive the term *delinquency* within a framework of social disorganisation,²³

including conflicts in basic values, a variety of social stratification influences including differentials in availability of legitimate means to attainment of cultural goals, widespread disrespect for law and order, the growing bureaucratisation and impersonality of 'mass society', and the racial and ethnic cleavages of a nominally democrat society.

²² Philip, L. Reichel, Comparative Criminal Justice System – A Topical Approach, (2nd Ed., 1994), 296.

²³ Gibbons, Don C, Society, Crime, and Criminal Careers, (2nd Ed., 1973), 198.

These factors present a sensible cause and effect framework for the concept of juvenile delinquency. Over the past, delinquency theorists have developed a number of increasing complex models to explain the involvement of youths in delinquent activities. Strain theorists²⁴ believe that delinquency occurs primary among lower-income groups who are frustrated by their inability to satisfy needs and aspirations through legitimate means. Control theorists²⁵ argue that the restraining influences exerted by a juvenile's bonds with the conventional community institutions such as family, school and church prevent delinquent behaviour. Social learning theorists²⁶ view the decision whether or not to engage in delinquent behaviour as the result of the net effect of all the perceived rewards and punishments associated with a particular pattern of behaviour.

Many leading theorists now favour integrated or interactional models²⁷ which combine the effects of strain, control, social learning, and other theories based on inherited physiological or psychological phenomena. Many also believed that the chain of causality between primary risk and protective factors (substance abuse, association with delinquent peers, attachment to school, and so on) is not unidirectional or consistent over time. For example, not only will the weakening of bonds increase delinquency, but participation in delinquent acts is also likely to reduce the strength of bonds to conventional institutions. As youths mature, the influence of parental bonding declines while that of peers is likely to increase.

²⁴ Cohen A. K, Delinquent Boys: The Culture of the Gang, (1955).

²⁵ Hirschi T, Causes of Delinquency, (1969).

²⁶ Bandura A, Principles of Behaviour Modification, (1968).

²⁷ Thornberry T.P, Toward an interactional theory of delinquency, *Criminology* (1987), 25: 863-91.

The similarity in behaviour by delinquents is not repeated by the justice agencies in their respective countries. Each country's response reflects the history and culture of its citizens. It is of necessity for each country to analyse the risk factors at the individual, social and community level that are most likely to interact in complex ways to promote antisocial and delinquent behaviour in juveniles. Unfortunately, there is no comprehensive research evidence in this country that indicates which particular risk factors alone, or in combination, is most important to delinquency. Strengthening the knowledge base through the systematic collection of such data is essential to ensure effective programming.

CHAPTER 2: THE JUVENILE JUSTICE SYSTEM

The Government will, as a matter of urgency, attend to the tragic and complex questions of children and juveniles in detention and prison. The basic from which we will proceed from now onwards is that we must rescue the children of the nation and ensure that the system of criminal justice must be the very last resort in the case of juvenile offenders.

- Nelson Mandela ²⁸

2.1. A Brief Historical Perspective

In order to appreciate the present dilemmas, controversies, and conflicts in juvenile justice, it is important to view it from an historical perspective. The idea of a lighter punishment for young offenders than for adults has long been well established. As historical records suggest, the separation of juveniles and adult offenders for disposition purposes dates back almost 2500 years: ²⁹

As early as the fifth century B.C., solicitude for young offenders was exhibited. [Under Roman law, the] Twelve Tables (c. 488-451 B.C.) made the theft of crops at night a capital crime; but an offender under the age of puberty could escape with a fine double the value of damage and a flogging at the praetor's discretion.

Brutal though this punishment may seem, the philosophy behind it was considerably more humane than the eye-for-an-eye approach that dominated primitive society, regardless of an offender's age. The idea that an offender's punishment should relate to his motives - the question of whether his act was intentional or unintentional - was totally foreign to a society where private vengeance was the only response to crime. Thus, a fourteen-year-old who pilfered a neighbour's food supply to feed a younger brother might be punished as viciously as an organized band of robbers.

²⁸ Quoted by Ann Skelton in *South Africa: A Promise for a Better Way of Dealing with Children Accused of Crimes*, International Association of Youth and Family Judges and Magistrates Chronicle, No. 1, (Vol. 9, 2000), 7.

²⁹ F.J.Ludwig, *Youth and the Law*, (1955), 12.

As societies became more organized, and responsibility for maintaining law and order moved from the shoulders of the individual citizen to social authorities, the distinction between intentional and unintentional criminal acts was gradually recognized. Early Roman law, under the influence of Greek and ecclesiastical philosophy, was the first legal system in the framework of European civilization to judge the offender on his motives as well as the nature of his crime. Not until the first half of the eleventh century, however, was the classical doctrine of *mens rea* (criminal intent) first introduced. Subsequently, through the interaction of state and church law, the relationship between criminal responsibility and moral guilt was firmly established. The *mens rea* concept, clearly, suggested both the justification for and the necessity of treating juvenile offenders differently than their adult counterparts.

The longstanding tradition involving state intrusion into the parent-child relationship is rooted in English common law. Implicit in this is the power of the state to intervene in families and to remove children in order to protect the interests of the larger community. Simply stated, this is the court operating on a *parens patriae* basis, the philosophical spirit of juvenile justice since its inception. Hence with the guiding philosophy of *parens patriae*, juvenile justice was formally born. *Parens patriae* refers to the rights of the state to act as a parent on behalf of those who are unable to care for themselves. In the case of delinquent juveniles, this meant that the court system would assume responsibility for their development and training if it found that either the child or his family was not able to do this adequately. The founders of the system believed that, given the right support and attention, children could be diverted from a life of crime.³⁰

³⁰ Ellis, Rodney A., & Sowers, Karen M., Juvenile Justice Practice: A Cross-Disciplinary Approach to Intervention, (2001), 145.

Contrary to widespread misconception, juvenile justice is not founded on a 'lenient' approach as such but on responses to juvenile offending that encourages a process of behavioural change by helping the child or young person to feel accountable for his or her actions and understand their impact on others and to foster integration rather than alienation. The system seeks to avoid the involvement of the formal court system and, above all, to purely punitive responses such as deprivation of liberty wherever possible, and give special importance to community-based solution. It is quite apparent that today's variety of approaches represents a major advance towards the cause of salvaging the youthful offender for society. Early law was concerned with vengeance, not humanitarian concern: today, the goal is individualised justice and rehabilitation for the youthful offender.³¹

2.2. Beginning of Juvenile Justice in Malaysia

In the early society of this country, the concept of childhood and adolescence was captured by Frank Swettenham when he wrote that 'the boy of 1874 ran wild and did a deal of mischief, much of which was regarded as proper exhibition of spirit'.³² About the same period in time a British child was subjected to discipline in the strictest of manner. Children were taken to witness public hangings for disobedience and after which they were soundly whipped so that 'they might remember the example they had seen' (Jo Manton, 1976, 3). A child of nine was sentenced to death for pushing a stick through a cracked window and pulling out some printers' colours, the value of which was two pence (Parliamentary Debate, U.K, 3rd Ser., Vol. 2 Col. 278). Generally it can be said that filial

³¹ Eldefonso, Edward and Hartinger, Walter, Control, Treatment, and Rehabilitation of Juvenile Offenders, (1976).

³² Swettehham, Frank, British Malaya, (1948).

piety played a strong role in the method of socialising of children in the various communities of Malaysia. The children grew under the watchful eye of their parents. The joint and extended family system of the various communities provided the support and sanctions for the proper socialisation of these children.

The juvenile justice system in Malaysia was only introduced after the Second World War. Before that, the laws were geared towards controlling the few recalcitrant youth, especially those who were involved in secret society activities, by means of punitive measures such as caning, the imposition of fines on parents or guardians or the like. The initial disruption of the traditional social balance experienced by the communities in Malaysia came in with the Second World War when juvenile delinquency arose as a problem. To stabilise the society from the upheavals of war, various social services and social welfare services were introduced. Along with this, various legal instruments were introduced for the protection of children at risk. The JCA was introduced essentially to prevent and salvage children and adolescents from taking to a life of crime.³³

The 1947 Act³⁴ was designed to facilitate the integration of legal and social provisions for the care and control of children and was premised on the concept of prevention, treatment and rehabilitation. Influence of social science, which gave hope that the lives of children and young persons could be changed for the better through

³³ M. Kandiah, *Juvenile Rule-Breakers, Patterns in their Social Background and Rehabilitation Approaches*, *Social Welfare Journal*, Vol. 4, No. 1, (1983), 7.

³⁴ The Juvenile Courts Ordinance 1947 was enforced on the 1st December 1949 [see the Annual Report of the Judicial Department, Federation of Malaya, 1949]. This ordinance was subsequently amended fifteen times until 30th May 1975 when a major amending statute, the Juvenile Courts (Amendment) Act 1975, [Act A297] was enforced. Subsequent to this amendment, Parliament passed a few minor amendments [see Act 160, Act A354 and Act A434].

enlightened social service interventions motivate the development of a separate system for treating juvenile offenders. The philosophy of the juvenile justice system was that children and young persons who broke the law were not totally responsible for their criminal conduct and therefore should be shielded from punishment normally reserved for adults. Striving to implement this goal of rehabilitation, the Act set forth the following as its purpose:

An Act to provide for the care and protection of children and young persons and the establishment of Juvenile Courts.

The creation of the juvenile court allows a juvenile who broke the law to be dealt with by the state not as a criminal, but as a child or young person needing care and protection. The juvenile court's rehabilitative ideal rested on several sets of assumptions about youthfulness and criminal responsibility.

The act gave the court jurisdiction over delinquent children aged 10 to below 18. The focus of the court was rehabilitation rather than punishment. Records of the court were to be confidential to minimise stigma. The act required separation of juveniles from adults when incarcerated and barred the detention of children under age 14 in jails. The act also provided for informality in procedures within the court. From their inception, juvenile courts have authority not only over children and adolescents who committed illegal acts, but also over those who defied parental authority or social conventions by such acts as running away from home, skipping school or engaging in sexual behaviour. These children and adolescents were deemed to be out of control and in need of guidance.

2.3. Legal Context of the Juvenile Justice System

Juvenile justice is an umbrella term, variously used to refer to a novel jurisprudential approach to young miscreants; to the juvenile court, the institutional linchpin of this innovation; and to a stream of affiliated institutions that carry responsibilities for control and rehabilitation of the young, including the police, the juvenile court itself, its auxiliary staff, prosecuting and defence attorneys, juvenile detention centres, and juvenile correctional facilities.³⁵ The juvenile justice system is thus the most important judicial response to children in trouble with the law or at risk of being neglected. When the criminal justice system deals with children, it reflects their special status in various ways - with additional legal safeguards, children courts, separate sentences and penal legislation.

Almost by definition, the juvenile justice system was guided by a developmental perspective. The central premise of the juvenile court is that children should be treated differently from adults. The court's jurisprudence assumes that adolescents possess somewhat less responsibility for their actions and need protection. Many cases are handled on the basis of the 'least restrictive alternative' with a strong preference for informal versus formal dispositions of minor offences. Criminologist Franklin Zimring (1977) compares the juvenile court to a 'learner's permit' in that society expects young people to make mistakes and wants them to learn from these indiscretions without exacting full adult criminal penalties. This assumption is supported by research on

³⁵ Rosenheim, Margaret K., Juvenile Justice: Organisation and Process, Encyclopaedia of Crime and Justice, Vol.3, 969.

delinquency suggesting that most youths mature out of illegal behaviours (Wolfgang, Figlio, & Sellin, 1972).³⁶

From its conception, the juvenile court had a broad child-saving mission. The juvenile court is the symbol and focus of juvenile justice. In the courtroom, and in the activities surrounding it, a new legal approach to handling children was instituted. The juvenile court was intended as a significant reform of criminal justice as it was being applied to children and youths. Yet, this modern innovation itself has not escaped criticism. The sense that the juvenile court is at odds with itself is reflected in the multiplicity of objectives and purposes one finds in the laws establishing the juvenile court. Typically, the juvenile court is asked both to protect the public and to be a guardian of wayward children. The court is urged to preserve families, whenever possible, as well as to provide necessary care and guidance. Juvenile courts also must hold youths accountable for their behaviour; however, this accountability must be tempered by the unique circumstances of the child. The court must be fair and uniform in its dispositions, and yet judicial officials are directed to individualise their dispositions to meet the special needs of their clients. Juvenile courts were not merely to dispense 'justice', as that term was traditionally understood in legal circles, but to 'civilise' their clients through a concerted effort at moral rehabilitation.

Critics often summarise the difference between juvenile and adult courts as "rehabilitation" versus "punishment." In retrospect, the most distinctive feature of the original juvenile court concept may have been the quasi-civil legal authority that gave the court broad discretion to intervene despite the quality of evidence against a youth. This

³⁶ Krisberg, Barry, & Austin, James F., *Reinventing Juvenile Justice*, (1993), 4.

allowed the court to provide individualised supervision and flexible, creative dispositions. Contemporary policy debates frequently omit this aspect of the juvenile court concept, but it is a critical factor in explaining why the juvenile court idea was just as popular with judges and police officers as it was with social reformers.

With public focus now on the seriousness of the offences rather than the needs of the individuals and the call for a legal shift to punish young offenders as adults, it is critical to examine whether it is necessary to impose full criminal responsibility on juveniles and young adult offenders, or to continue to emphasise the importance of age and youthful immaturity as an important limitation on criminal responsibility. These are valid concerns because society has always sought to produce reasonable opportunities for children to become resourceful citizens. Considerations of public safety and appropriate treatment should not be confused. While a youth's instant offence may be a useful indicator of his potential risk to the community, it is not a good indicator of what kind of programming is required to change his behaviour. Available evidence suggests that juvenile courts require a broad array of dispositional options to achieve an optimal balance between effective treatment, accountability and community protection.

Sentences of the Courts may reflect the extent to which criminal justice policy seeks to punish, rehabilitate or more recently, to seek restoration.³⁷ In *Teoh Ah Kow v PP*,³⁸ the Court stated that the purpose of juvenile disposition was to "give the offender another chance". In a much earlier decision, the Court pointed to the greater scope for the

³⁷ For cases on sentencing of juveniles, see 5 Mallal's Digest (4th Ed, 1994 Reissue) para 1647 – 1655.

³⁸ [1961] 1 MLJ 75.

rehabilitation of even young adult offenders.³⁹ *Wilkinson J*, held that incarceration may not be beneficial to certain young offenders. Even though the accused had six previous convictions, the learned judge chose an order of binding over instead of imprisonment with the following comment:

I would like to take this opportunity of pointing out to Magistrates the great importance of a careful selection of sentence in regard to young men of this type who having a criminal record going back to an early age can still be looked upon, although over-age, as juvenile delinquents. There are often circumstances in which short terms of imprisonment have to be imposed, but it should be borne in mind that a series of short terms of imprisonment has very little effect in reforming wrongdoers and often has a tendency to convert them into habitual criminals.

In *PP v Mohamed Zairi b Abu Bakar & Anor*⁴⁰ *Wan Yahya J*, held that:

Sending a juvenile to a place of detention which is not merely more rigorous but which unfortunately also exposes the child to the company of indurated and mature offenders may not be in the best interest of the juvenile.

The Court relayed similar sentiments many years later in *PP v The Offender*,⁴¹ when it substituted the minimum punishment under s 39A(2) of the Dangerous Drugs Act 1952 with a committal to a reform school under section 12(1) of the Juvenile Courts Act 1947. Conceding to the seriousness of the offence, *KC Vohrah J*, however maintained that s 15(2) of the Juvenile Courts Act should have been taken into account, as the accused was a young person. The learned judge also held that he took into account the probation report, which was not adverse to the accused, but "in fact it points out that an accident which gave him a serious head injury and which had to be operated upon twice affected his behaviour subsequently".

³⁹ *Re Johari bin Ramli*, [1956] 1 MLJ 56.

⁴⁰ [1985] 2 MLJ 308.

⁴¹ [1998] 4 MLJ 152.

In calculating whether public interest outweighs the interest of the offenders, the Court of Appeal, in a recent case,⁴² emphasised that in a serious offence, which resulted in death, there should be proportionality between offence and sentence. Even though the appellants were of tender age at the time of the commission of the offence, *Haidar Mohd Noor J*, sentenced the appellants to nine years imprisonment each, citing the judgement of *Sharma J* in *Tan Bok Yeng v PP*, [1972] 1 MLJ 214 at p 215:

I am quite aware that the law does provide for a lesser sentence or no sentence at all imposed upon persons of young age. There has, however, emerged in recent years in our society certain species of crimes which the alacrity of mind and body, the dare, dash and defiance of the youth alone is capable of performing and producing. Law cannot, in my view, remain merely a static and a meaninglessly passive, if ornamental and an orthodox instrument of justice, ineffective in its results and application. The social needs of the times have to be met and effectively met. It is not merely the correction of the offender which is the prime object of punishment. The considerations of public interest have also to be borne in mind. In certain types of offences a sentence has got to be deterrent so that others who are like-minded may be restrained from becoming a menace to society.

Whether or not the risk of additional crime posed by allowing particular categories of youths to remain in the community can be justified by the reduction in their recidivism rate can be determined only by assessing both of these parameters and weighing them carefully. The same calculation can be made for youths who are considered violent and chronic offenders and deserve punishments befitting adults. Such a calculation was used in a recent High Court case in Singapore⁴³ in which the young appellant who was described as "of so unruly a character" was given a sentence of reformatory training instead of a custodial sentence. The Court held that the abusive and deprived childhood of the appellant, as well as his age, must be taken into account at sentencing. *Yong Pung How CJ*, reiterated a decision he made in an earlier case in 1999 which stated that:

⁴² *Koay Teng Soon & Anor v PP*, [2000] 1 CLJ 677.

⁴³ *Cheng Thomas v PP*, [2001] 1 SLR 285.

Rehabilitation is the dominant consideration where the offender is 21 years and below. Young offenders are in their formative years and chances of reforming them into law-abiding adults are better. The corrupt influence of a prison environment and the bad effects of labelling and stigmatisation may not be desirable for young offenders. Compassion is often shown to young offenders on the assumption that the young don't know any better and they may not have had enough experience to realise the full consequences of their actions on themselves and on others. Teens may also be slightly less responsible than older offenders, being more impressionable, more easily led and less controlled in their behaviour.

The sentencing philosophy embedded in the juvenile justice system and the orders made by the courts at the dispositional stage have important consequences for the juvenile offenders.

Public opinions suggest that the average citizen holds conflicting and sometimes confusing views about the goals of the juvenile court. The most typical cases in which the juvenile's court vague understanding about adolescent development is severely tested are when youngsters commit violent crimes. Neither political nor judicial agreement exists on exactly where to draw the appropriate boundaries between adult responsibilities versus the mitigated accountability of young people. There are those who support the idea of letting the pendulum of juvenile justice swing back towards the traditions that were prevalent when it began, in other words, abandoning today's rehabilitative model for yesterday's retributive model. This may not solve the problem of juvenile crime, enhance juvenile justice or ensure public safety. Instead there is a need to devise a system which will deal effectively and quickly with children who commit offences, recognise that the objective must not simply be to punish or to appease public opinion but to change the child's future behaviour. In the long term, the public wants a system which works. An approach, which makes children aware of the consequences of their offences and concentrate on changing their future behaviour, holds up the greatest prospect of reducing juvenile crime. Visu

Sinnadurai J, ⁴⁴ quoting the sentencing principle stated by Thomas in his book, *Principles of Sentencing* [1st Ed], reiterated as follows:

In the case of a young offender there can hardly ever be any conflict between the public interest and that of the offender. The public have no greater interest than that he should become a good citizen. The difficult task of the court is to determine what treatment gives the best chance of realising that object. That realisation is the first and by far the most important consideration.

As can be seen, the origin of the juvenile court reflects an abiding tension between safeguarding children and protecting society. This tension has been present historically and continues to be present today in the policy debates dealing with the juvenile justice system. The balance between rehabilitative goals and concerns about the 'best interests of the child', on the one hand, and punishment, incapacitation, and protecting public safety, on the other, has shifted over time. There has never been a single dominant vision of how to deal with delinquent children in law or in practice. There is also no research done in this country on the significant determinants of legal decision-makings regarding young offenders. Trends in juvenile courts' dispositions in this country showed that the Courts have tended to select dispositional alternatives that impose the least restraint in the juvenile's liberty, consistent with the best interests of the child and the community. For the five year-period studied, only 4.6% were imprisoned and 8.9% were detained in correctional institutions [6.1% in approved schools; 2.8% in Henry Gurney Schools]. The majority [47.2%] were released on bond and put on probation order. A total of 9.6% were given admonitions and discharged while 16.8% were ordered to pay fine, compensation or cost (see *Table VII*). In determining the appropriate level of restraint, the Courts usually take into consideration the seriousness of the offence, the degree of the child's culpability, the totality of the underlying circumstances, and the juvenile's prior record, if any. In

⁴⁴ *PP v Nazarudin bin Ahmad & Ors*, [1993] 2 MLJ 9.

addition to the goal of protecting the public, the least restrictive alternative requirement also takes into account a disposition which is most likely to effect rehabilitation of the juvenile offender.

After providing a brief historical background and the philosophy that influences Courts decisions, it is now necessary to examine the new legal and policy changes that have taken place and the implications of such changes on juveniles caught up in the juvenile justice system. Today's juvenile justice system has been shaped by a number of influences. The need to save troubled juveniles from a life of crime and imprisonment is one of those influences. Society's need to be protected from delinquent acts and future criminal behaviour is another. As society and its idea change, the juvenile justice system also changes.

CHAPTER 3: NEW JUSTICE SYSTEM FOR CHILDREN

Children who come in conflict with the law have the right to treatment that promotes their dignity and self-worth, and also takes the child's age into account and aims at his or her reintegration into society. Children in such cases are entitled to basic guarantees as well as legal or other assistance for their defence and judicial proceedings and institutional placements shall be avoided wherever possible.

- Article 40 CRC

3.1. The Juvenile Court in Search of the Child

The juvenile court has been a part of the Malaysian institutional landscape for more than half a century with the first of such courts established in 1949. It formally recognises that childhood should exist in the eyes of the criminal law. Youth can partly excuse even violent misbehaviour and always permits hope for rehabilitation. In light of recent public outcry over violent crimes committed by juveniles, is such a historic commitment now obsolete? At this juncture, this project will look at juvenile justice reforms that have emerged under Malaysian law and develop the argument in the local context. Only substantive changes in the new CA, which have relevance to the scope of the project, will be highlighted.

It is said that as society changes, so must the justice system.⁴⁵ With rampant social problems affecting the country's children and youth such as child abuse, child prostitution, child pornography, child pregnancy, child delinquency, phenomena of running away from home, activities of free sex (*bohsia/bohjan*), culture of loafing (*lepak*), etc, the Government became increasingly concerned to find the best possible ways of

⁴⁵ There have been other suggestions for a review of the Juvenile Courts Act 1947, see Development in Malaysian Law, (1992), 49.

overcoming such social ills. The concern of the Government is evident by the establishment of the Cabinet Committee for the Eradication of Social Problems (*Jawatankuasa Kabinet bagi Membanteras Masalah Sosial*) in 1996, chaired by the honourable Deputy Prime Minister of Malaysia. Adopting one of the recommendations of the National Social Action Plan (*Pelan Induk Tindakan Sosial [PINTAS]*),⁴⁶ a Special Committee to Review Social Laws (*Jawatankuasa Khas Mengkaji Undang-Undang Sosial*) was established. The task set before the committee was to review the weaknesses in existing social laws that have relevance to children and youth, the philosophy and approach that need to be taken to introduce new laws, and their implications.

After a careful study of the JCA, Women and Girls Protection Act 1973 [Act 106] and Child Protection Act 1991 [Act 468], a decision was made to amend and consolidate the three statutes and thus the CA was drafted. The Act, which received Royal Assent on 15 February 2001,⁴⁷ can be considered the most comprehensive piece of legislation which Parliament has ever enacted about children. It draws together and simplifies existing legislation to produce a more practical and consistent code. It integrates the law relating to the responsibilities of public authorities, in particular the social welfare department, towards children. It strikes a new balance between family responsibilities and the protection of children.

The new reforms have developed in a way which makes the law child sensitive. The preamble is self-expressive of the key principles underlying the new Act and is in

⁴⁶ Document prepared by the Ministry of National Unity and Social Development, and approved by Cabinet in 1997.

⁴⁷ The Child Act was published in the Gazette on 1 March 2001 as Act 611.

conformity with the basic principles of the Convention on the Rights of the Child (CRC).⁴⁸ It recognizes and acknowledges that:

- i. a child is not only a crucial component of a society but also the key to its survival, development and prosperity;
- ii. a child, by reason of his physical, mental and emotional immaturity, is in need of special safeguards, care and assistance, after birth, to enable him to participate in and contribute positively towards the attainment of the ideals of a civil Malaysian society;
- iii. every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status;
- iv. the family is the fundamental group in society which provides the natural environment for the growth, support and well-being of all its members, particularly children, so that they may develop in an environment of peace, happiness, love and understanding in order to attain the full confidence, dignity and worth of the human person;

⁴⁸ An international protection law for children, of which, Malaysia is a signatory. On February 10, 1995, Malaysia ratified the 54-Article Convention and became one of the 187 member countries of the United Nations to have signed this Convention. On February 25, 1999, the country withdrew some of the twelve reservations originally reserved upon and now only maintains reservations on 7 articles:

Article 1: Definition of a Child

Article 2: Non-discrimination

Article 7: Name and Nationality

Article 13: Freedom of Expression

Article 14: Freedom of Thought, Conscience and Religion

Article 15: Freedom of Association

Article 28 1(a): Compulsory Education

Article 37: Torture and Deprivation of Liberty

- v. the role and responsibility of the family is important in society, and that they be afforded the necessary assistance to enable them to fully assume their responsibilities as the source of care, support, rehabilitation and development of children in society.

3.2. Legislative Changes

The new Act standardises the definition of a minor owing to the confusion created by various laws.⁴⁹ A 'child' is defined as a person under the age of eighteen years.⁵⁰ In relation to criminal proceedings, a child means a person who has attained the age of criminal responsibility [maintained at ten years] and there is no more reference to young person or juvenile, as contained in the JCA. This new definition points to a neutral and non-stigmatising terminology of juvenile justice and children in the criminal justice system. Henceforth, the term children justice system will be used.

The Juvenile Court has been renamed the Court For Children but the basic framework created by the first juvenile court remains largely intact. The Court for Children consists of a Magistrate of the First Class, to be assisted by two advisers, one of

⁴⁹ In Malaysia, "children" is a term of legal classification under the various statutes but it is more common to find the term being used to describe people under twenty-one, or under eighteen for some purposes. National laws provide for various ages of limitations in different circumstances, for example:

Age of Majority Act 1971 [Act 21] - the age of majority is set at 18 years.

Children and Young Persons (Employment) Act 1966 [Act 350] - defines a "child" as anybody who has not completed his fourteenth year of age and a "young person" as anyone, not being a child, has not completed his sixteenth year of age.

Child Protection Act 1990 [Act 468] - defines a child as anyone below the age of 18 years.

Women and Girls Protection Act 1973 [Act 106] - protection continues to be extended to women and girls under the age of 21 years.

⁵⁰ subsection 2(1), Child Act 2001.

whom shall be a woman.⁵¹ The new Act dramatically changed procedural and processing matters.⁵² This is to ensure that a child gets a fair trial. Although the powers of the Court For Children are broadly unchanged when compared to the JCA, the new provisions reflect a legislative movement toward balancing the court's traditional rehabilitative orientation with concerns for public welfare and sanctions for chronic offenders.⁵³ Whipping⁵⁴ of not more than ten strokes of a light cane for a male child is introduced as a new dispositional option⁵⁵ and the manner of executing whipping is clearly set out.⁵⁶

A probation order⁵⁷ is not permitted if a child is found guilty of any grave crime,⁵⁸ voluntarily causing serious hurt, rape, incest or outraging modesty or an offence under section 377B, 377C, 377D or 377E of the Penal Code. Children who commit crimes of such nature would have to be dealt with in other manner and not through supervision by a Probation Officer. Probation or diversion is the most reasonable option in many cases. However for youths with multiple risk factors (several prior arrests, drug or gang involvement, or parental problems), this dispositional option is also not effective. The unsuitability of probation order for homicide case is discussed in *PP v Saiful Afikin*

⁵¹ subsection 11(2) & (3), Child Act 2001.

⁵² s 90 of the Child Act 2001 sets out the procedures that apply in criminal proceedings in the Court For Children clearly and in detail.

⁵³ Dispositional options on proof of an offence are provided for in s 91 of the new Act.

⁵⁴ Article 37 of the CRC states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Malaysia still maintains reservation on the said article.

⁵⁵ subsection 91(1)(g), Child Act 2001.

⁵⁶ s 92, Child Act 2001.

⁵⁷ s 98, Child Act 2001.

⁵⁸ As defined under subsection 2(1) of the Child Act 2001.

bin Mohd Firus.⁵⁹ Revoking probation for more serious offences is also an indication of 'getting tough'. The new 'get tough' policy in dispositions can ensure that a child who has offended becomes more responsible or in the words of the United Nation Convention, that 'the child's respect for the human rights and fundamental freedom of others' is reinforced' (Article 40). This shift in the purpose of juvenile law is to include 'protection of the community' and 'imposition of accountability'.

A review of cases handled by the DSW shows that environment in the family has been a major contributory factor leading to juvenile delinquency in this country. Many young offenders come from homes where parental support and guidance is lacking. Parents were reported to be hostile, indifferent, permissive or indulgent. It is clear that in many cases young people can lead a busy nightlife without their parents caring or noticing. These adolescents have a lot of free time which is not spent in useful activities. They identify themselves strongly with peer groups. In the absence of parental role models, they turn to other adults or their contemporaries for emotional support or rebuild their lives on the fantasies presented by the electronic or print media. In a recent survey conducted by the National Population and Family Planning Board, 67% of juveniles in approved schools cited peer influence as a major factor for their involvement in criminal activities.⁶⁰ 49% of adolescents interviewed in the survey also cited their families as their main source of inspiration.⁶¹ The importance of family failure cannot be over-estimated as the root of high-risk behaviour lies within the family. Changes associated with adolescent development requires family systems to adjust and modify customary

⁵⁹ [1996] 4 MLJ 309.

⁶⁰ Kajian Tanda-Tanda Keluarga Bermasalah, Lembaga Penduduk dan Pembangunan Keluarga Negara, Malaysia, (2002), 13, (yet to be published report).

⁶¹ *Ibid*, 20.

interaction processes so that relationship are more consistent with the needs of the developing family members. Crime prevention begins in the home. When effective family control is lacking, children are more likely to grow up without self-discipline and a sense of concern for others. Parental responsibility for young offenders especially, should be enhanced because parents should know where their children are and what they are doing and be in a position to exercise some supervision over them. Good parenting was already incorporated into the law where punishment was being located within the family.⁶²

The role of the family continues to take centre stage in current efforts to manage delinquency. The Court For Children's powers and duties under the new Act also extend to the parents of the offender. The Court is required to order parents or guardians to attend court during all stages of the proceedings if their child is being prosecuted, unless it would be unreasonable to require this. Non-compliance with such a mandatory requirement is construed as a miscarriage of justice.⁶³ The CA now makes it an offence for parents or guardians who fail to attend as required and on conviction, they shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.⁶⁴ The Court may however require the withdrawal of parents and guardians from the Court if their attendances are undesirable and not in the best interest of the child.⁶⁵

⁶² In this respect, provisions in the JCA (now repealed), already empowers the court to compel parents to attend court if their children are in trouble; make parents responsible for the financial penalties incurred by their offspring because it bring home to them the reality of the consequences of their children's behaviour and the implications for their actions; and bind over parents as a strong incentive to improve their supervision of their children.

⁶³ *per Tee Ah Sing J*, in *Sia Yik Hung v PP*, [1998] 1 MLJ 451.

⁶⁴ s 88, Child Act 2001.

⁶⁵ s 89, Child Act 2001.

The order of bonds for parents or guardians to exercise care and guardianship over their children as provided for under s 12(1)(d) of the JCA is no longer an option. A new provision ⁶⁶ makes it mandatory now for the Court to bind over the parents of a child to exercise proper care and control in addition to any punishment it may imposed under subsection 91(1). The bond may be with or without security and with one or more of the conditions outlined in the Act and other necessary conditions to be specified by the Court. The conditions of the bond clearly indicate legislature's intention to encourage greater parental responsibility, in so far as family units are critical to social behaviour. In *PP v Nazarudin bin Ahmad & Ors*, ⁶⁷ *Visu Sinnadurai J*, in conceding to the request by the accused that he be sent to a prison which is nearer to his home reiterated that:

Visitation and constant contact by the family are crucial for a person of such young age serving a prison sentence. A term of imprisonment in such a situation without constant family contacts may have the adverse social problem of making a person of such youth and immaturity become a hard core criminal.

The parents or guardians risk the penalty of a fine not exceeding five thousand ringgit if there is a contravention of any of the conditions of the bond apart from the forfeiture of the security imposed. Such provisions have expanded the authority of Courts For Children over parents who can now be directed to participate in their children's treatment. ⁶⁸ Those who bring children into the world or assume a parenting role, but fail to effectively train, guide, teach and control them should be accountable at law. Those who need assistance and training should be aided. Those who neglect their parenting duties should be encouraged to be more diligent through criminal sanctions, if necessary. An enabling

⁶⁶ subsection 93(1), Child Act 2001.

⁶⁷ [1993] 2 MLJ 9.

⁶⁸ In a survey conducted by the Department of Social Welfare for the two-year period between 1995 and 1996, it was found that 24% of parents or guardians never visited their children in approved schools, 10.3% visit them once a year and only 23.9% visit them on a monthly basis.

legislation should encourage judges to punish by fine or jail sentence, adults who actively contribute to a child's delinquencies.

Normally, families are viewed as autonomous and granted wide deference in child rearing. However if there is an obvious and significant default of private responsibilities for caring for children, society, through its legal institutions, invariably steps in. When a child lacks a legal guardian, the court appoints one. When a marriage with children dissolves, the state ultimately decides who will have custody. When parents abuse or neglect a child, the state steps in to prevent future offences. In making dispositions of delinquency cases, the court is now asking the parents and guardians to assume responsibility to keep their children from offending. When the court makes dispositions that are designed to maintain connections between the child and his or her caretakers, the state is sharing the responsibility for custody and development with the caretakers. Rendering assistance to families, involving caretakers in family group counseling and imposing other duties on them as part of case dispositions is in line with the principles of the new Act as laid out in the preamble. Through the concerted emphasis on parental responsibility in the Child Act, the social philosophy behind the legislation would appear to be a reinforcement that the needs of children are most appropriately met by healthy, functional family life. It also articulates the centrality of the parental obligation to protect the public by controlling their children.

At the same time that the new legislation have become more punitive, innovative approaches to providing services within the children justice system have been introduced. Efforts are made to divert children and adolescents from institutionalisation and incarceration by raising the threshold for custody still further. Custodial sentences should

only be imposed on the recommendation of the Probation Officer, and when no other method of dealing with the offender is appropriate because either the offender was unable or unwilling to respond to non-custodial alternatives; the custodial sentence was necessary for the protection of the public; or the offence was so serious that a non-custodial punishment could not be justified.

Capital punishment remains prohibited on child offenders,⁶⁹ the only exception to this provision is when a child is charged with a security offence punishable with death.⁷⁰ Regulation 3(3) of the Essential (Security Cases) (Amendment) Regulations (ESCAR 1975) overrides the provision of s 16, Act 90,⁷¹ but no corresponding amendment was made to this regulation. In lieu of the death penalty, child offenders will be detained at the pleasure of the Yang di-Pertuan Agong, the Ruler or the Yang di-Pertua Negeri, as the case may be. A new provision introduced makes it compulsory for the Board of Visiting Justice for the prison to make a review of every such case at least once a year and to make recommendation to the relevant authorities on the early release or further detention of that particular case.⁷² With this new provision, a person who is fit to be considered for early release may have such opportunity and do not remain forever the 'forgotten prisoners'.⁷³ This new provision re-emphasised the underlying philosophy of the original juvenile

⁶⁹ subsection 97(1) & (2), Child Act 2001.

⁷⁰ *Lim Hang Seah v PP*, [1978] 1 MLJ 68.

⁷¹ Francis Ng Aik Guan, *Criminal Procedure*, (2000), 376.

⁷² subsection 97(4), Child Act 2001.

⁷³ See newspaper reports:

Sabry Sharif & R.V. Veera, *Plight of the 'forgotten prisoners'*, *The New Sunday Times*, 14 September 1997, 14.

Sabry Sharif, *Review cases of 'forgotten' prisoners, A-G urged*, *The New Sunday Times*, 15 September 1997, 5.

N.S. Mohamed, *'Forgotten' convicts case makes it timely for review of penal system*, *The New Sunday Times*, 19 September 1997, 13.

justice system. The labelling and tracking of child offenders deserving of incarceration in maximum-security institution does not end with their imprisonment. Rather it continues in the form of the system's education and control in preparation of the child's reintegration into society. The failure of the system to document the progress of the child's rehabilitation undermines the very existence of a separate children justice system and is contrary to the principle of the best interest of the child.

3.3. Model for the Future – Treating the Whole Child

The initiatives incorporated in the CA regarding the treatment of children who offend have a number of positive elements. A person's age is still significant to the question of criminal responsibility. Criminal responsibility for children depends on the decision making of more than one single official. In deciding the treatment of children, the law dictates that the principle of 'individualised justice' enters alongside of the principle of the offence. The guidelines imposed in the dispositional options available recognise some of the growing problems associated with children and delinquency and indicate an attempt to balance the treatment and punishment oriented interest of juvenile justice. It gives the Court For Children the added power, in appropriate cases, to sentence particularly recalcitrant offenders, notwithstanding their youth, in a manner which the public could recognise as deservedly tough.

The choices before the legal system need not be a choice between black and white categories only. The justice system for children under the new Act is a flexible system that takes into account both the characteristics of the child and the seriousness of his conduct when the time comes for the selection of an appropriate case disposition. One of

the primary goals of the juvenile justice system has always been the salvation of the minor from a self-destructive life of crime. In this respect, the Court For Children can function both as a bastion of social protection and social control. If children are neglected or under attack, the Court can assume a humanitarian face, compassionately shielding them from all sorts of harm. On the other hand, if society is under attack, the Court can present a tough face, forcibly shielding society from youthful sources of harm. The Court can give more attention to the more serious offences and mete out harsher and more appropriate dispositions when necessary. It is hoped that the Courts For Children will serve as viable but changed institutions, largely because of society's need. The important challenge is to ensure that all cases receive appropriate attention. Crime prevention is an elusive concept, difficult to identify and to measure. However, it is clear that one form of prevention is timely intervention in response to all acts of youthful delinquency. The response sends the message that the behaviour is not acceptable, that adults are concerned and that there will be accountability.

Taking into account the public's growing concern on violent juvenile offending and juvenile delinquency in general, it is more important now than ever for society to develop a greater understanding of not just the causes of juvenile offending and delinquency but also attempts made to control it. The rational response to delinquency must be based on some understanding of the legal dimension of the problem and the state of public opinion. The legal concept of delinquency recognises that children and adolescents will continue to be cognitively, emotionally, and socially different from adults. Although young people can approach decisions in a manner similar to adults under some circumstances, many decisions that children and adolescents make are under precisely the conditions that are hardest for adults – unfamiliar tasks, choices with

uncertain outcomes, and ambiguous situations. Further complicating the matter for children and adolescents is that they often face deciding whether or not to engage in a risky behaviour, such as taking drugs, shoplifting, or getting into a fight, in situations involving emotions, stress, peer pressure, and little time for reflection.

Emerging research using magnetic resonance imaging of the brain demonstrates the cognitive and emotional differences between adolescents and adults. Children and adolescents process emotionally charged information in the part of the brain responsible for instinct and gut reactions. Adults process such information in the 'rational' frontal section of the brain.⁷⁴ Children and adolescents may be physiologically less capable than adults or reasoning logically in the face of particularly strong emotions. In a recent study, it was found that the brain continues to develop and change through at least mid adolescence, with the most active parts of the brain changing during development.⁷⁵ These new insights on brain development may have implications for holding children and adolescents criminally responsible in the same way as adults.

Most of the legislative changes undertaken are too recent for research to provide much information about their impact either on practices regarding child offenders or on the children themselves. What is clear, however, is that the informal, social welfare approach of the original juvenile court has not been completely lost. This moderate approach to juvenile justice reform has produced a system that some critics contend is just a 'cut and paste law'. It must be emphasised that many of the changes are a good deal

⁷⁴ Baird (et al.), *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children*, Journal of the American Academy of Child and Adolescent Psychiatry, (1999), 38(2): 195 - 199.

⁷⁵ Thompson (et al.), *Growth Patterns in the Developing Brain Detected by Using Continuum Mechanical Tensor Maps*, Nature 404, (2000), (6774): 190 - 193.

more complex than some have depicted them to be. There is a need to develop a fuller appreciation for the specific nature of recent adjustments in the provisions and purposes of juvenile law with special attention to the manner in which that body of law is applied in the everyday of our judicial system. Fostering such awareness is the primary objective of this portion of analysis.

CHAPTER 4: EFFICACY OF REHABILITATION

Most young offenders believed that it was up to the individual to stop offending but felt that they needed considerable help from family, friends, prospective employers, and professional adults to do so. They hoped their voices would be heard and their ideas taken seriously – as one young person said: “Tell them so they listen”⁷⁶

4.1. Does Rehabilitation Works?

As used in the field of crime and justice, the word rehabilitation means the purposeful reduction or elimination of an offender's subsequent criminal behaviour through a program of planned intervention. This definition contains three elements, all of which are necessary parts of the core concept of rehabilitation. The purpose of rehabilitation is to reduce subsequent crime; its program is a planned intervention to do so; and its effect is the actual reduction or elimination of criminality in the offender's behaviour.⁷⁷ This approach expressed a definite attitude towards human beings: that they are modifiable for the better if given the proper opportunity, and held the hope that deterrence could be combined with a humane and crime-reducing policy towards offenders. Conformity to social norms is a result of concerted efforts on the part of parents, teachers, members of the community and the individual. One of the efforts that can be initiated to strengthen social bonds is through reformation or remedial training. This includes behavioural change on the part of ‘people at risk’ and ensures that they become more respectful of the law and less inclined towards offending, even when they can escape the negative consequences of offending. They would be better able to

⁷⁶ Extracted from *Tell them so they listen: focus group research for young people in custody*, Juliet Lyon (et al.), Home Office Research Findings No. 127, (2000) - <http://www/homeoffice.gov.uk/rds/index.htm>.

⁷⁷ Schwartz, Richard D., *Rehabilitation*, Encyclopaedia of Crime and Justice, Vol. 4, 1364.

understand and accept other members of the family or society, thereby improving (and strengthening) their relationship with others.⁷⁸

One domain within which rehabilitation has particular appeal is that of juvenile crime. The nature of adolescence is generally seen as justifying special handling, a concept institutionalised in the separate juvenile courts in which minors are tried. The most important feature of adolescence is that it is a formative period marked by behaviour that will not necessarily be continued into adulthood. A rehabilitative strategy that shapes the delinquent offender toward more pro social behaviour during this formative stage, therefore, is particularly attractive. Also, since youth have a potentially long adulthood before them, the payoff in reduced criminality over a lifetime resulting from effective preventive intervention at an early age can be substantial. An early proponent of rehabilitation, lawyer-sociologist, Anthony Platt, viewed crime as:⁷⁹

A kind of social pathology, and young people manifested the antisocial behavioural symptoms of criminality as a result of being exposed to it in their environment. The older the criminal, the more chronic the 'sickness' and chances of recovery were considered to be less than those for a young person.

Long the central goal of correctional policy, rehabilitation was subjected to searching re-examination during the 1970s. Robert Martinson and others expressed serious doubts as to whether the rehabilitation of criminal offenders is possible at all (Lipton, Martinson, and Wilks, 1975). They made a detailed examination of 231 separate studies involving interventions for both juveniles and adults. Martinson's widely quoted conclusion was that "with few isolated exceptions, the rehabilitative efforts that have been

⁷⁸ Abdul Hadi Zakaria, *The Role of Society in the Prevention of Crime*, paper presented at Seminar Yayasan Pencegahan Jenayah Malaysia Mengenai Suatu Pendekatan Bersepadu Ke arah Pencegahan Jenayah, Kuala Lumpur, (9 - 11 October 1995).

⁷⁹ Platt, Anthony M., *The Child Savers: The Invention of Delinquency*, (1969), 45.

reported so far have had no appreciable effect on recidivism" (1974:25). Greenburg, who updated the Lipton et al. Review, echoed that pessimism: "The blanket assertion that 'nothing works' is an exaggeration, but not by very much" (1977:141). Reviews that have focussed exclusively on delinquency treatment have reached similar conclusions. Romig (1978), for example, attempted to identify the characteristics of successful treatment of delinquents, cataloguing the available studies with a level of detail rivalling that of Lipton et al. In each category of treatment, however, he found relatively few convincing positive results to report.⁸⁰ It must be noted that Martinson himself retracted what he had said in his 1974 article in a latter article (Martinson, 1979: 244), stating that,

Contrary to my previous position, some treatment programs do have an appreciable effect on recidivism. Some programs are indeed beneficial; of equal or greater significance, some programs are harmful ... Indeed, it was misleading to judge criminal justice on the basis of these evaluation studies.

Martinson went on to point out that (as others were also finding), "The critical fact seems to be the conditions under which the program is delivered". Thus a treatment given to juvenile offenders in a group home may have different results to the same program delivered in a prison institution. He specifically "warns against confining juvenile offenders without some kind of treatment" (Martinson, 1979:256), stating that post-release parole supervision is of particular value and that it would be inadvisable to dispense with it (Martinson, 1979:257).⁸¹

⁸⁰ Lipsey, Mark W., *Juvenile Delinquency Treatment: A Meta-Analytic Inquiry into the Variability of Effects*, (1992), 119 - 121, in Cullen, Francis T., & Applegate, Brandon K., [Ed], Offender Rehabilitation - Effective Correctional Intervention, (1997).

⁸¹ Crow, Iain, The Treatment and Rehabilitation of Offenders, (2001), 59 - 60.

4.2. What Works - A Summary of Research Findings

For decades, juvenile justice has been dominated by the popular but erroneous view that "nothing works." Today, a considerable amount of information exists on programs and services that do work, which policymakers can use to improve juvenile justice systems. The most important development has been the rise of meta-analysis,⁸² which synthesise results of multiple program evaluations, as a technique for aggregating the continuously growing research literature.

In a meta-analysis of 400 research studies of programs for delinquency reduction, Lipsey (1995)⁸³ found that the average effect across all the programs studied was a 10 percent reduction in delinquency among participants in the program compared with a control group. There was wide variety from program to program but overall, programs that targeted behavioural change in a relatively structured and concrete manner had a greater effect on reducing delinquency than programs that targeted psychological change through traditional counselling or casework approaches. Lipsey also found that the length of program and how well it was planned and delivered affected how well the program reduced delinquency. Programs that were monitored to ensure that they were delivered as planned had larger effects than programs that were not monitored. In general, Lipsey recommended that programs should have 100 hours or more of total contact with the juvenile, delivered at two or more contacts per week, over a period of 26 weeks or longer.

⁸² Meta-analysis is a statistical technique (of second-order or secondary analysis) that allows the results of various primary studies (i.e., empirical studies) to be summarised. In other words the meta-analyst does not work directly with samples of individuals. Instead, the sample to be evaluated consists of studies carried out previously.

⁸³ Lipsey, M.W., *What do we learn from 400 research studies on the effectiveness of treatment with juvenile delinquents*, (1995), 63 - 78, in McGuire, J, [Ed], Reducing Reoffending: Guidelines from Research and Practice.

Continuity of programming after release may be a way to increase effectiveness. Of particular concern are programs that increased delinquency. Lipsey (1995:74) says about them:

Most notable are the deterrence approaches such as shock incarceration. Despite their popularity, the available studies indicate that they actually result in delinquency increases rather than decreases. Unfortunately, there are distressingly few studies in this category, making any conclusions provisional. The studies we do have, however, raise grave doubts about the effectiveness of these forms of treatment.

No program, however, is effective for all offenders. A variety of attempts have been made to match offenders to programs on the basis of assessed needs. Whether such matching can be the basis for improved results has been the subject of some debate. Andrews et al. found that what works is the delivery of appropriate correctional service, and appropriate service reflects three psychological principles: (1) delivery of service to higher risk cases, (2) targeting of criminogenic needs, and (3) use of styles and modes of treatment (e.g. cognitive and behavioural) that are matched with client need and learning styles. The effectiveness of correctional treatment is dependent upon what is delivered to whom in particular settings. Correctional treatment service is crucial supplement to a criminal justice approach that is preoccupied with avoiding stigma while delivering 'just' and 'innovative alternative' punishment. There is a reasonable solid clinical and research basis for the political reaffirmation of rehabilitation (Cullen and Gilbert, 1982). Institutions and group homes, however, remain important components of correctional systems and hence active but thoughtful service is indicated.⁸⁴

⁸⁴ Andrews, D.A. (et. al), *Does Correctional Treatment Works? A Clinically Relevant and Psychologically Informed Meta-Analysis*, (1990), 167 - 185, in Cullen, Francis T., & Applegate, Brandon K., [Ed], Offender Rehabilitation - Effective Correctional Intervention, (1997).

The 'what works' literature has also been reviewed by others. Gill McIvor (1990) endorsed a multi-faceted approach which uses more than one form of treatment, and stressed the importance of programs which involve community integration, suggesting that an investment in work training is especially worthwhile. Vennard et al. (1997) concluded that cognitive behavioural methods had been more successful than traditional counselling and therapy in changing offenders' patterns of thinking and behaviour. Nuttall et al. (1998:135) summarised as follows:⁸⁵

None of the initiatives identified as promising will reduce crime on its own. An effective crime reduction strategy is one in which an integrated package of best practice is developed and delivered consistently over time.

Francis Allen⁸⁶ believes that almost all of the characteristic innovations in criminal justice (like the juvenile court) in the 20th century are related to the rehabilitative ideal. The rehabilitative ideal, in this sense, refer to the notion that the sanctions of the criminal law should or must be employed to achieve fundamental changes in the characters, personalities, and attitudes of convicted offenders, not only in the interest of the social defence, but also in the interests of the well-being of the offender himself. It also makes a great deal of difference about how one views the techniques of rehabilitation. Those techniques have in the past included the use of the whip and the club. On the other hand, the techniques espoused have included depth psychology, or drastic therapies like psycho-surgery, behaviour modification, and the like. On still other occasions the rehabilitative techniques have included efforts to overcome illiteracy and training in job skills. It follows that although the general formula may be stated with some ease, there are

⁸⁵ *supra* at 81, 66 - 67.

⁸⁶ Allen, Francis A., *The Decline of the Rehabilitative Ideal in American Criminal Justice*, (1978), 143 - 151, in Andrew Rutherford, [Ed], *Criminal Policy Making* [Ed.], (1997).

many varieties of the rehabilitative ideal. Calling for steps to rehabilitate the rehabilitative ideal, he says:

We do not do very much by way of auditing the performance of regulatory schemes initiated by the law, with the result that often we literally do not know what we are doing. Nor are we doing much to find out.

Since, it is generally agreed, the best way to protect society is to rehabilitate young offenders, correctional institutions should provide as much assistance toward this hoped-for goal as their limitations permit: through individual casework with juveniles who need it, programs to encourage family and community involvement with inmates, education and training programs that have some relevance to the outside world, and enough built-in flexibility to respond to changing social conditions. In the wake of the new millennium, organisations in charge of the treatment of children in conflict with the law are facing many challenges. Efficient treatment and management of juveniles at risk of re-offending needs first attention. Any agency receiving children under court order must meet suitable standards of rehabilitative care. However, there is a lack of systematic information on this subject. How far the approved schools, one of the main correctional institutions for juveniles in this country is able to successfully uphold the 'rehabilitative ideal' will be further analysed.

CHAPTER 5: THE APPROVED SCHOOL

The right of children deprived of liberty are to be treated with humanity and respect, to be separated from adults, to maintain contact with family members and to have prompt access to legal assistance.

- Article 37 CRC

5.1. Approved Schools in Malaysia

Like the law, the approved school serves as an element in the wider struggle where the prospect of achieving rehabilitation through them is highly placed. Juvenile correctional institutions are set up to fulfil two general purposes. First, they provide custody for juvenile offenders when the court has determined that society must be protected from possible future violations while the delinquents take part in some kind of treatment program. Second, these institutions are supposed to rehabilitate delinquents as much as possible, to ensure that they will not repeat their offences. Applying this functional approach therefore, there is the need to ask what ends are to be achieved by a particular policy and recommending policies most likely to achieve the desired effects. It is crucial to determine how the approved school system can be reinvented to meet the challenges of the second half-century of juvenile justice in this country, in line with the philosophy and objectives of the new CA. The concern regarding the effectiveness of rehabilitating juveniles who have been ordered to approved schools was also raised by Parliamentarians debating the new legislation.⁸⁷

⁸⁷ Parliamentary Debates, Dewan Rakyat, Official Report, Tenth Parliament, Second Session, 17 October, 2000, 78.

Approved schools in Malaysia, operating under the less stigmatising name of ‘Sekolah Tunas Bakti’ (STB), represent one component of the treatment continuum. Such institutions were set up for the detention and rehabilitation of juveniles in conflict with the law and those who are beyond parental control.⁸⁸ Committals under court orders are for a mandatory period of three years.⁸⁹ Approved schools have always been administered as ‘open institutions’, maintaining full access to the community at large. At present, the Government runs eight approved schools throughout the country, six in Peninsular Malaysia, and one each in Sabah and Sarawak (see *Table VIII*).

**TABLE VIII: LIST OF APPROVED SCHOOLS, CAPACITY AND INMATE POPULATION
AS AT END OF DECEMBER 2001**

INSTITUTION	MAXIMUM CAPACITY	INMATE POPULATION
1. STB Teluk Air Tawar (M) Butterworth, Pulau Pinang	150	265
2. STB Taiping (M) Perak	200	234
3. STB Sungei Besi (M) Kuala Lumpur	200	423
4. STB Sungei Lereh (F) Melaka	150	169
5. STB Jerantut (F) Pahang	200	97
6. STB Jerantut (M) Pahang	200	183
7. STB Kuching (M) Sarawak	150	230
8. STB Kota Kinabalu (M) Sabah	100	92
TOTAL	1,350	1,693

Source: Department of Social Welfare Malaysia

⁸⁸ Approved schools are established under s 65 of the Child Act 2001 and regulated by the Approved School Regulations, 1981, (currently being amended).

⁸⁹ subsection 67(2) Child Act 2001.

An inmate may be released on licence before the expiry of his/her rehabilitation period by the Board of Visitors subject to his/her progress but not earlier than 12 months from the date of admission [subsection 67(3) & (4) Child Act 2001].

Except for 3 institutions, the inmate population in the other approved schools had always exceeded the maximum capacity. The objective of such institutions is to re-educate juvenile offenders towards positive attitude and character building, promoting and improving their capacities so that they can be reintegrated back into the society as well and live a more independent and beneficial life. The programmes in these institutions are geared towards preparing the juvenile for his eventual reintegration back to his family and society (Refer to Appendix D).

This research project will focus on STB Taiping, which is undergoing a period of transition to becoming a more updated approved school, in harmony with modern childcare principles. It seeks to analyse whether traditional attitudes and new ideas tend to conflict with one another in its evolution and discuss in very practical terms the kinds of obstacles that confront efforts to change correctional institutions, and the focus of inertia that pull against intended reforms.

5.2. Sekolah Tunas Bakti Taiping

5.2.1. Profile

STB Taiping represents one of the pioneer approved schools in the country, having been in operation for 53 years. Known as the Taiping Boys Home when it first began operation in March 1947, the school was originally sited on a 2.83-hectare wide area. In October 1996, it was relocated to its new premise, covering an area of 10.52 hectare, with the government spending an estimated amount of RM8.3 million for its construction. The new complex is now able to accommodate 200 inmates, as compared to only 150 before

its relocation. It therefore serves as a model of an ancient institution in transition, at least in terms of its infrastructure, and rightly should be benchmarked as an innovative juvenile correctional institution capable of achieving the 'rehabilitative ideal' for salvaging children who comes into conflict with the law. As at end of October 2002, there are 174 inmates undergoing rehabilitation in this institution, 76.4% are Malays, 19.5% Indians, 3.4% Chinese and 0.6% of other ethnic origin. Majority of the inmates (51.1%), are from the 15 – 16 years age group, 35.6% from the 17 – 18 age group and 13.2% are from the 11 – 14 years age group. 18.4 % are status offenders compared to 81.6% who were committed for various criminal offences. In terms of educational attainment, 57.5% possessed lower secondary education, 36.8% primary education, 4% upper secondary education and 1.7% had never been to school (Refer to Appendix II). For the year 2002, the expenditure (inclusive of both administrative and operational cost) of this institution totalled RM 1,023,500.

Mr Teh Guan Bee,⁹⁰ principle of STB Taiping, admits that the well designed physical aspect of the institution is both attractive and highly functional and together with the conducive new surroundings, can help the staff achieve the objectives of the institution. However, bricks and mortar do not make an institution, the programs and the personnel are much more important than the building. General correctional programs such as care and protection, guidance and counselling, religious and moral education, as well as sports and recreation are standardised throughout the approved schools. However, the focus of vocational training in this institution is on cake and bread making, furniture making, electrical and mechanical works. In terms of educational programs, only basic teachings of the 3Rs for those who are illiterate are initiated.

⁹⁰ Interview with Mr Teh Guan Bee, principle of STB Taiping, on 2.12.2002.

5.2.2. Importance of Effective Programs

This project will further analyse two important programs that are considered crucial in approved schools. Academic training programs must respond to two problems: (1) Many of the juveniles will be educationally handicapped, or far behind their grade level in such basic subjects as reading and mathematics; and (2) each child must be assimilated into the academic program as he enters the institution, so he will probably be studying at a different level than others in his age group. Obviously, both of these problems demand that teachers offer children a lot of individual attention and that classes be kept as small as possible. The special nature of academic education in training school means that traditional evaluation techniques should not be applied to those juveniles. Thus, trained specialists who work for the state education departments should assist institution teachers in measuring the success of the academic programs. One factor that is likely to enhance the individual child's chance for educational growth is that schooling is a year round activity in correctional institution, because it is viewed as an integral part of the total treatment program.

Unfortunately, this has not been the case in most approved schools and only the basics are taught. Although a new academic block had been added to the new building in STB Taiping, there is till today no placement of teachers from the Ministry of Education in the institution. This is a long-standing problem that remains a major constrain towards educating delinquent children for today's world. Often it has been cited that the inmates of approved schools had not been successful in attaining higher vocational skills and securing jobs on their release due to their low academic achievements and illiteracy, which constitute a stumbling block. A careful analysis of present data revealed that many of the

children are in fact better qualified academically than before. In a survey done on boys and girls in approved schools in 1982,⁹¹ it was found that 5.4% had no schooling, 44.4% had primary education, 46.9% had lower secondary education and the remaining 1.4% had upper secondary education. In 1998, a survey on 381 boys and girls from reform schools showed that 2.1% had no schooling, 21% had primary education, 97.4% had lower secondary education and 9.4% had upper secondary education.⁹² As the children are now better qualified academically, the stumbling block has been shifted to the inability of policy makers to provide the necessary trained specialists to assist these children in honing their academic skills.

A fundamental assumption underlying the academic curriculum in the past is that basic skills have to be mastered before students are given more advanced tasks, such as problem solving, cognitive reasoning, reading comprehension and written communication. Current thinking challenges this concept. The new paradigm is based on the assumption that all students can succeed and that educationally disadvantaged students can profit from more challenging tasks. Teachers in correctional institutions should incorporate innovative teaching methods to stimulate incarcerated children to learn. Academic achievement is reinforced through incentives, including diplomas and certificates. Delinquents are often deficient in the cognitive-solving skills, moral reasoning and communication and social skills essential for successful functioning in daily life. Sound juvenile correctional education program enhance offenders' thinking and social skills while ameliorating their academic and vocational deficiencies.⁹³ In Canada, the

⁹¹ *supra* at 33.

⁹² *supra* at 60, 6.

⁹³ Gemignani, Robert J, *Juvenile Correctional Education: A Time for Change*, Juvenile Justice Bulletin, (October 1994).

development of the "cognitive model" of offender rehabilitation is a fairly recent innovation in correctional treatment.⁹⁴ The model is based on a substantial body of research indicating that many offenders do not seem to have acquired a number of cognitive skills essential to social adaptation. The cognitive model attempts to teach offenders relevant skills, such as thinking logically, objectively, and rationally without over-generalising or externalising blame, with the adoption of a social learning and educational approach. Within the Correctional Service of Canada, the Cognitive Skills Training Program is now a fundamental component of a broader Living Skills strategy for the personal development of offenders. Mr Teh strongly agrees that such a training program should be incorporated into the approved school's curriculum but is unable to do so without the proper trained personnel needed to carry it out.

Vocational training has become an important option for the committed child. In the past, vocational training was one of the institution's primary reasons for existence and children were instructed in particular trades, on the theory that learning a job skill would ensure their rehabilitation. The moral justification for this theory may be summarised by the old maxim that 'idle hands are the devil's work tools'. By the nineteenth century, it was clear that the value of this approach was reduced by the impracticality of the trades involved, and there is a need for vocational programs in today's correctional institutions to focus on more contemporary occupations. Since 1982, the DSW had implemented various initiatives to upgrade vocational training in the institutions through: (1) upgrading the skills of the institution's trainers; (2) allowing inmates to continue their training through placements in private organisations; and (3) enlisting the co-operation of the National Council for Vocational Training for accreditation of the institution's vocational training.

⁹⁴ Fabiano, Elizabeth A., (et. al), *Research Report on Rehabilitation through Clearer Thinking: A Cognitive Model of Correctional Intervention*, (1990) - <http://www.csc-scc.gc.ca/text/rsrch/briefs/b4/b04e.shtml>.

At present, STB Taiping has established such a strategic alliance with Prima Quality Industries Food where 8 inmates are placed for training in cake and bread making. These inmates will eventually be fully employed by the said organisation when they are released from the school. Such partnerships with employers can enhance current programs and provide post release support for the children but unfortunately the number involved is minimal. How effective reorientation of vocational training has been cannot be ascertained because there is no record of job placements and this is mainly due to the lack of feedback from the officers in the field.

5.2.3. Evaluation of Effectiveness

The test of success of institutional correction programs comes when offenders are released to the community. Whatever rehabilitation they have received, whatever deterrent effect their experience with institutionalisation has had, most upon release withstand difficulties of readjustment to life in society and reintegration into employment, family, school, and the rest of community life. This is the time when most of the problems from which offenders were temporarily removed must be faced again and new problems arising from their status, as ex-offenders must be confronted. Edwin H. Sutherland's well-known theory of differential association suggests that rehabilitation may be facilitated or inhibited by the social milieu to which the offender returns. If that milieu is similar to the one in which the pattern of criminal behaviour was originally learned, it is likely to reinforce a criminal pattern.⁹⁵

⁹⁵ Sutherland, Edwin H., and Cressey, Donald R., Criminology (1924).

It cannot be denied that the evaluation of ongoing programs in approved schools in the country has been almost non-existent. Perhaps the assessment of the relative effectiveness of institutional programs is difficult because adequate measures of performance have not been authoritatively established. In a follow-up study of 78 inmates released from reform schools undertaken by the Ministry of Welfare Services Malaysia and published in 1981,⁹⁶ it was found that nearly 40% of those released were reconvicted. Among those reconvicted, 9.7% were reconvicted during the period on licence; 48.4% were reconvicted after their licence period but during the period of aftercare; and 41.9% were reconvicted during the post licence and aftercare period. If recidivism rate was to be taken as the main indicator of the ineffectiveness of treatment and rehabilitation programs, it would not be wrong to say that the approved schools have not been able to deliver the objectives of rehabilitation as promised. No comprehensive survey has since been done and success rate has been determined through statistical data of those whose licence and aftercare period has terminated and has not been reconvicted. As rightfully pointed out by Mr. Teh, the number and period covered by the survey is not extensive enough to present a more balanced view. Recidivism is not the only indicator and it is necessary to look at profiles of those who have been successfully rehabilitated and also the system of aftercare services provided which may have contributed to the re-offending.

Though he believes in developing individualised programs that cater to the needs of the children under his care, constraints as outlined above, have been major factors preventing the achievement of such a goal. Program innovation is further affected by staff competence and integrity, an issue which sometimes prompts us to look in the other directions. New developments will continue to be unlikely occurrences in STB Taiping if

⁹⁶ P. Muniappan, A Follow-Up Study of Approved School Boys and Girls Released During the Period From 1.1.74 till 31.12.75, Ministry of Welfare Services Malaysia.

it continues to be understaffed as well as staffed by personnel who never were trained in their respective fields to work in correctional settings or who have no opportunities for in-service training. This is the major concern highlighted by the principle himself. If treatment programs in juvenile correctional institutions are evaluated in terms of the number of treatment professionals on the institutional staff, these programs might be considered a failure. Similarly, staff and administrators who fail to remain current with the literature in their field, who neglect treatment manuals/policies, and who fail to work the required hours certainly will not be at the forefront of correctional innovation.⁹⁷ Professionals in the approved schools, by their own admission, had never been exposed to current research or writings on the juvenile justice system or the efficacy of rehabilitation and neither are they aware or been invited for any discussions on the results of evaluations undertaken by the Department. As admitted by Mr Teh, even the audit report by the national audit team, undertaken in 2001, regarding the effectiveness of rehabilitation programs in institutions administered by the DSW was not made known to them.

The approved schools have come a long way and there is now a need for a different approach. The newer facilities are much better suited to fulfil the treatment and rehabilitative purpose of juvenile correctional institutions but as highlighted above, services to these children must be adaptable to the needs of the clientele group it serves and there must be ongoing evaluation of what really works in the Malaysian context. They must also provide measures to handle the small but growing number of difficult, unstable juveniles assigned to them, those who in the words of the principle, “comes from weak and complicated family environment” - they present an overwhelming challenge to

⁹⁷ Van Voorah, Patricia, *Correctional Effectiveness: The High Cost of Ignoring Success*, (1986), in Cullen, Francis T., and Applegate, Brandon K., [Ed], Offender Rehabilitation - Effective Correctional Intervention, (1997).

the treatment and custody staffs who must try to rehabilitate them. In line with the philosophy of the new Act, Mr Teh fully agrees that it is imperative for policy makers at the headquarters to set up a national Task Force to re-structure rehabilitation programs in the approved schools.

5.3. The Need for Benchmarking

In a pragmatic society, the concept of rehabilitation cannot stand without programs to implement it. Pragmatism in policy formation calls for the evaluation of programs and a selection of those that work. Without a demonstration that rehabilitation can work, it may lose its appeal as a major purpose. If this happens, society is less likely to try, and therefore less likely to learn, when, how, why and whether purposeful rehabilitation can succeed. The rehabilitative ideal requires sustained attention, not only for the sake of new knowledge but also because it expresses a significant attitude about the worth of human beings. The continuing search for effective rehabilitation expresses the belief.

In recent years, many individuals and groups concerned with the improvement of juvenile corrections in this country have looked towards the parent agency to develop benchmarking for the ideal approved school. It is agreed that the primary function of the parent agency is to direct, regulate, and co-ordinate all parts of the juvenile correctional program. In other words, this agency must establish policies and goals for handling delinquent minors placed in an institution and ensure that each individual institution provides the staff and services needed to carry out these policies within a limited budget. Frequent evaluation must be an integral part of every institutional program, and the public should be fully aware of both the problems and the accomplishments such evaluations

reveal. The regular evaluation procedures, carried out on a regular basis, will help ensure the revision or elimination of outdated, ineffective and harmful policies. Lacking consistent guidelines and the means to test program effectiveness, legislators continue to pass laws, executives mandate policies, and both cause large sums of money to be spent on ineffective corrective methods.

Conceding that the Department places great emphasis on the rehabilitation of child offenders, Mrs Shamsiah Abdul Rahman,⁹⁸ Deputy Director-General (Operational), who oversees the administration of all institutions run by the DSW, reaffirmed the immediate need for more impact studies to be undertaken “to help us to improve” delivery of services to the target group. However, over the years this has not been done as the department had focussed more on rehabilitation of other vulnerable groups like the handicapped. She is of the opinion that “the area of juvenile justice has been a neglected area”. Recently however, personnel from the department have been sent for training overseas in this particular field with the hope of keeping abreast with the latest developments in juvenile justice. The Department is fully aware that rehabilitation programs have to achieve a balance, while offenders should be equipped with academic and vocational skills to prepare them for their eventual return to society, programs that aim at behaviour modification is equally as important. Frequently, in trying to achieve the former, the need to rehabilitate the offending behaviour of children who gets caught up in the criminal justice system, is often neglected. More should be done than the usual traditional casework and group counselling. The lack of personnel, more so those who are skilled in the area of child psychology, for example, had been the biggest stumbling block towards effective rehabilitation.

⁹⁸ Interview with Mrs Shamsiah Abdul Rahman, Deputy Director-General (Operational) DSW on 16.1.2003.

With the implementation of the CA, the Department has been successful in getting 15 new counsellors to be based at state levels to plan programs that can have positive effects on offending children and their families. Provision which allows the court to mandate that child offenders and their families attend 'interactive workshops'⁹⁹ is seen as reforming a system where immediate families of offenders often feel that they need not play an integral part in the child's rehabilitation, often leaving it to "the institution to do the job". Even then, the problem of staffing has never fully been resolved through out the history of the approved schools, and this has directly affected the effectiveness of rehabilitation programs, as pointed out by the principle of STB Taiping. Mrs Shamsiah, however, is optimistic that the recently proposed reorganisation of the Department, which had already been submitted to the Public Service Department, will eventually solve this major problem. Without the full force of skilled personnel to fully implement programs, the hoped for goals of rehabilitation will remain a theoretical ideal. The Department will continue to implement programs on an ad hoc basis, depending on the generosity of some committed companies to help gain accreditation for some of the vocational training programs, which have proven to be highly successful but involving only limited number of offenders.

The Department is working towards establishing a benchmark for the "model approved school", though it was admitted that right now there is no standard physical or program design that has been evaluated as having the relevant criteria that can be followed successfully through out the country. It is hoped that new models like STB Taiping will eventually offer a good benchmarking for the Department. In an effort to upgrade approved schools to a particular standard, efforts are underway to build separate detention

⁹⁹ subsection 93(1)(b) Child Act 2001.

centres for the detention of pre-trial offenders, allowing the approved schools to be relieved of custodial duties, fully concentrating on rehabilitation efforts, in line with the original concept of an 'open institution'.

Alfred Weber (1950) makes an important distinction between culture and civilisation, culture being that which springs up anew as the spirit of a society, while civilisation consists of the material gains made, which can be built up slowly and cumulatively from generation to generation. If the treatment aim is to be seen as the way forward for the future, the crucial step will be the conversion of treatment from an aspect of the culture of the school, to part of its civilisation. This probably means that we need more established facts about the process of rehabilitation. These should be in the nature of scientific laws, and just as one scientist can stand on the shoulders of one who preceded him, so would one generation of approved school staff then be able to rely upon the lead given to them by the work of their predecessors.¹⁰⁰

It is unfortunate that despite more than half a century of existence, treatment and rehabilitation in approved schools in this country can still not be classified as part of its civilisation. Mrs Shamsiah is right when she pointed out that the rehabilitation of child offenders is not the prerogative of the DSW alone as there is a need for the "understanding of the roles of various agencies (even agencies which are not directly involve in juvenile justice, like the Education Department), as well as co-ordinated efforts made through such inter-agency approach to work towards the best interest of the child". Only then, can the system prevent the criminal mindset from taking hold of the country's children and youths, and in turn prevent adult criminals from coming into existence. It is critical to

¹⁰⁰ Jones, Howard, *The approved school: a theoretical model*, in Mays, J.B. [Ed], The Social Treatment of Young Offenders, (1995).

prevent such young offenders who were institutionalised for petty crimes from coming out as ‘hardcore criminals who invariably met their deaths at the hands of the law’, as was recently exposed in the local daily.¹⁰¹ Mrs Shamsiah agree that the time has come for the setting up of a national Taskforce to evaluate the approved schools and on a broader level, juvenile justice in this country.

¹⁰¹ Marhalim Abas & Azman Abdul Ghani, *Prisons: Rehab Centres or Crime School?*, The Malay Mail, 13 January 2003, 2 - 3.

CONCLUSION

The moral test of governments is how it treats those who are in the dawn of life, the children; those who are in the shadows of life, the sick, the needy, and the handicapped.

- Hubert H. Humphrey ¹⁰²

The way in which a society treats its children says something about the future of a society, its beliefs, and the viability of its beliefs. The way in which a society treats children, who deviate from the beliefs of that society, when those beliefs are expressed in laws, says something about its humanity, its morality, its resilience, and its ability to be self-correcting. In Vision 2020, children have been described as our future, our greatest resource and our hope for a better tomorrow. Boys and girls who are being processed through the children justice agencies today will be adults expected to contribute to the well being of the society. It is unlikely that society will have capable and responsible adult citizens in the years ahead if there are critical failures, gaps and problems in its sanctions of children and youth today.

An unfortunate reality of everyday life in contemporary society is that there is a category of serious juvenile offenders whose amenability to treatment within the juvenile justice system is low and whose threat to the lives and property of others is demonstrably high. The juvenile justice system becomes impotent when it encounters this arguably small portion of the juvenile offender population. Moreover, a strong argument can be made that the mingling of this category of offenders in typical types of juvenile treatment programs may undermine the ability of those programs to deal effectively with more

¹⁰² Quoted by Krisberg, Barry & Schwartz, Ira, *Rethinking Juvenile Justice*, in Thompson, William E & Bynum, Jack E, *Juvenile Delinquency: Classic and Contemporary Readings*, (1991), 585.

frequently encountered types of delinquents. However, the conduct of a violent few should not govern policies as to the continuing role of juvenile courts in this century. Although we may need immediate protection from such dangerous individuals, we also need to look for long-term, systemic answers to crime in our society. Prevention and rehabilitation remains the foundation of the new justice system for children. If we prevent the criminal mindset from taking hold of our children, then we, in turn, prevent adult criminals from coming into existence. If we rehabilitate those among them who have committed criminal acts, we are making ourselves safe both now and in the future. If we say "yes" to retribution, we have given up on the historical philosophy that dominate the beginning of juvenile justice in the country.

It is very apparent that there are no easy answers to any systemic problem/crisis or individual case that the children justice system confronts and that the key to our children justice system's preservation and empowerment may be a public recognition of that fact. The model of progress in children justice should be one of continuing inquiry, such as those, which characterise on on-going projects to eradicate disease, rather than on a retribution-based approach. The first part of this project had traced the development of the present system of children justice in Malaysia, which draws on more than half a century of legal traditions and continues to be honed as social values and imperatives emerge and abate. Hopefully, the new reforms in legislation undertaken is child centred enough to respond appropriately to the differing stages of development which characterise children who offend, with an objective of engendering a sense of responsibility among them.

As shown by the second part of the project, promoting change in correctional agencies in line with new reforms is a difficult business. There are many constituencies whose interests must be addressed, first among them the children and families these systems are mandated to serve. There is a need to work on ways of making the system innovative and accountable at the same time. The reaffirmation of rehabilitation in the new Act highlights the importance of appropriate correctional services especially in the approved schools. All publicly supported intervention programs like the approved schools should be evaluated for both safety and efficacy using scientifically credible methods for doing so. Adequate funding for such evaluation should be included in the public support of intervention programs. Funding for programs whose effectiveness is shown to be limited should be discontinued.

Although efforts to prevent juvenile delinquency in this country have a long history, generally they have not been subjected to scientific evaluation of their effects and as such, current public concern about juvenile crime should be used to encourage adequate, scientifically credible evaluations of the programs instituted to address that concern. To require the system to move from a child welfare model to an accountability model requires evidence based on research and not on assumptions and predictions of juvenile trends. This research project has shown that nothing much has been done to evaluate the impact of the juvenile justice system in this country, despite its long history. It is hoped that the analysis presented in this project paper will provide the impetus to policy makers to assess the impact of the new children justice system and establish a National Task Force to monitor the implementation of programs by the relevant agencies. It is recommended that a comprehensive, systematic, and long-term agenda for acquiring empirical knowledge to understand and meaningfully reduce problems of implementation

of the new children justice system be made a critical priority and that new funding should be set aside for this effort.

The different child justice agencies have different roles and in some cases different professional and statutory responsibilities to uphold. But all agencies dealing with child offenders also have a responsibility to deliver the aims of the new children justice system of which they are part. Preventing offending by children is a key aim: it is in the best interests of the child, young person and the public.

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CORRECTIONAL PROGRAMS IN APPROVED SCHOOLS

A. Care and Protection

Inmates learn to live together in dormitory style living quarters designed to meet their needs. The other facilities in the institution include the administrative buildings, workshops for vocational training, classes for academic studies, dining hall, bakery, indoor hall, and a seminar room. Approved schools are also with other facilities like library, computer room, gymnasium, sick Bay, TV room, washing area and 'surau' for prayers.

Balanced and nutritious food (menu approved by the Director-General of Social Welfare Malaysia), based on scales recommended by the Ministry of Health, are provided 6 times daily – breakfast, morning tea break, lunch, evening tea break, dinner and supper. Menus are changed on a six-month basis, a necessary requirement that have to be met by the administrators of the Approved Schools. Basic articles of clothing and personal items are also provided for (parents who can afford it are also allowed to furnish such articles to their children), and inmates are required to wash and keep their clothes clean as well as to observe personal hygiene, supervised by the House Master (a Welfare Assistant), who is in charge of each dormitory. In some schools, washing machines are provided. Daily pocket allowance (50 sen for those not schooling, and RM1.50 for those who are schooling), are provided by the Government. These allowances can be used to buy any necessities or their favourite foodstuff (on request of the inmates).

Inmates suffering from minor ailments are supervised in the sick bay while those suffering from serious illnesses are referred to the hospitals for further treatment. Dental treatment is provided for them in the government clinic. Medical and Health Units also pay regular visits to the schools to give medical and health services.

Discipline is enforced through a system of 'rewards and privileges'. Desirable behaviours are reinforced with rewards and privileges. Undesirable behaviours are punished through deprivation of such privileges. The system of behaviour modification allows for lost privileges to be earned back in a short period of time through performance of specific tasks. The forms of rewards and privileges tied up with the system are pocket money, home-leave, outings, film shows, family visits and correspondence, early release, etc.

B. Guidance and Counselling

Guidance and counselling are regarded as important components in the treatment program, undertaken with the objective of helping inmates overcome their emotional and psychological problems. Towards this end, regular individual and group counselling sessions as well as case conferences are held. The focus is also to enable the inmates to develop coping skills that will eventually help them discontinue inappropriate, damaging, destructive and dangerous behaviours when they reintegrate back to society.

C. Religious/Moral education

Religious instructions are provided for all inmates according to their faith and beliefs. Friday prayers in mosques are arranged for the Muslim inmates and a part-time religious teacher is employed to conduct classes for them. Non-Muslims inmates are also escorted to their places of worship for weekly prayers. Voluntary religious groups contribute to their religious and moral education within the institution from time to time.

D. Academic Studies

Education is an important component of rehabilitation in the Approved schools. It is mandatory for all inmates to be given some form of academic training in the institution. Inmates who are still schooling are allowed to continue their formal education either within the institution premise or to attend normal schools outside the institution. For those who are illiterate, academic classes, which focus on the basic 3M curriculum, are arranged for them in the institution. Inmates who have dropped out of normal schooling for some period of them before their institutionalisation, but show good potential are given the opportunity to continue their academic studies through correspondence courses and specially arranged tuition classes within the institution.

E. Vocational Training

Vocational Training constitutes another important component of rehabilitation. The objective of such training is to equip the inmates with some form of skills that will eventually allow them to secure employment when they are released from the institution. To a certain extent, the training program provided takes into consideration the inmates' level of education with due consideration given to their ability and preference.

Vocational training for Boys is provided in the following areas:

- ⇒ Carpentry/wood carving/cane furniture and work
- ⇒ Motor mechanics
- ⇒ Welding
- ⇒ Electrical wiring
- ⇒ Handcraft
- ⇒ Compressing bricks and bricks laying
- ⇒ Bread/cake making
- ⇒ Plumbing
- ⇒ Agriculture/Animal rearing

Vocational training for Girls is provided in the following areas:

- ⇒ Domestic work/cooking
- ⇒ Tailoring
- ⇒ Embroidery
- ⇒ Handcraft
- ⇒ Catering

As an innovative approach towards upgrading the standard of training in the institution, allowing for skills learnt to be marketable in the employment sector, smart partnerships have been undertaken together with the private sector. Private sectors are encouraged to help in the training of selected inmates through 'on the job' training in their companies and to later absorb the trained inmates as part of their work force. Inmates undergoing such training are paid a daily allowance of between RM15 to 20. So far, such

joint ventures have involved skills training in carpentry, motor mechanics and bread/cake making.

F. Sports and Recreation

Recreational and cultural activities are provided for the physical and mental health of the inmates. Inmates are encouraged to utilize their leisure time in activities provided to maintain good health, as well as to cultivate better relationships among themselves. Various outdoor and indoor games are organised daily and competition among approved schools or with children in normal schools are held from time to time to foster a spirit of comradeship with the local community. Cultural activities include the learning of modern and traditional instruments and dances. The inmates are also allowed access to entertainment via the radio and television during their leisure time. To inculcate the reading habit among them, newspapers, magazines and books are made available in the library.

APPENDIX II

PROFILE OF INMATE POPULATION IN STB TAIPING AS AT 31 OCTOBER 2002

BY RACE

MALAY	CHINESE	INDIAN	OTHERS	TOTAL
133	6	34	1	174

BY AGE

BY ACADEMIC QUALIFICATION

	NUMBER OF INMATES		NUMBER OF INMATES
18 Years	11	Primary (Standard 1 – 6)	64
17 Years	51	Lower Secondary (Form 1 – 3)	100
16 Years	50	Upper Secondary (Form 4 – 5)	7
15 Years	39	No Schooling	3
14 Years	16		
13 Years	6	TOTAL	174
11 Years	1		
TOTAL	174		

BY OFFENCE

	NUMBER OF INMATES
Fighting	4
Sexual	9
Attempted suicide	1
Theft of bicycle	1
Theft of motor	42
Drugs	3
Failure to produce identity card	1
Theft	34
Traffic	1
Possession of stolen property	6
Possession of stolen motorcycle	7
Possession of dangerous weapons	1
Shop/Building/House breaking	30
Extortion	2
Beyond control	32
TOTAL	174

Source: Sekolah Tunas Bakti Taiping