

The Law on Juvenile Justice System A New Paradigm - A New Mindset

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Urgency of revising Law no. 3 of 1997 on Juvenile Court

- Social change
- Developing issues and school of thoughts on Human Rights
- Shift of paradigms in addressing the issue of Children in Conflict with the Law
- Enactment of Law no. 23/2002 on Child Protection
- Weaknesses of Law no. 3/1997

Weaknesses in implementing Law no. 3/1997

- Failure of the criminal justice system to produce 'justice' for children
- Crime and recidivism rates of children remain unchanged
- Tendency to implement '*Get tough policy*'
- The justice system fail to treat children in conflict with the law appropriately
- The dominance of incarceration as the final disposition of the courts
- Highly Legalistic approach

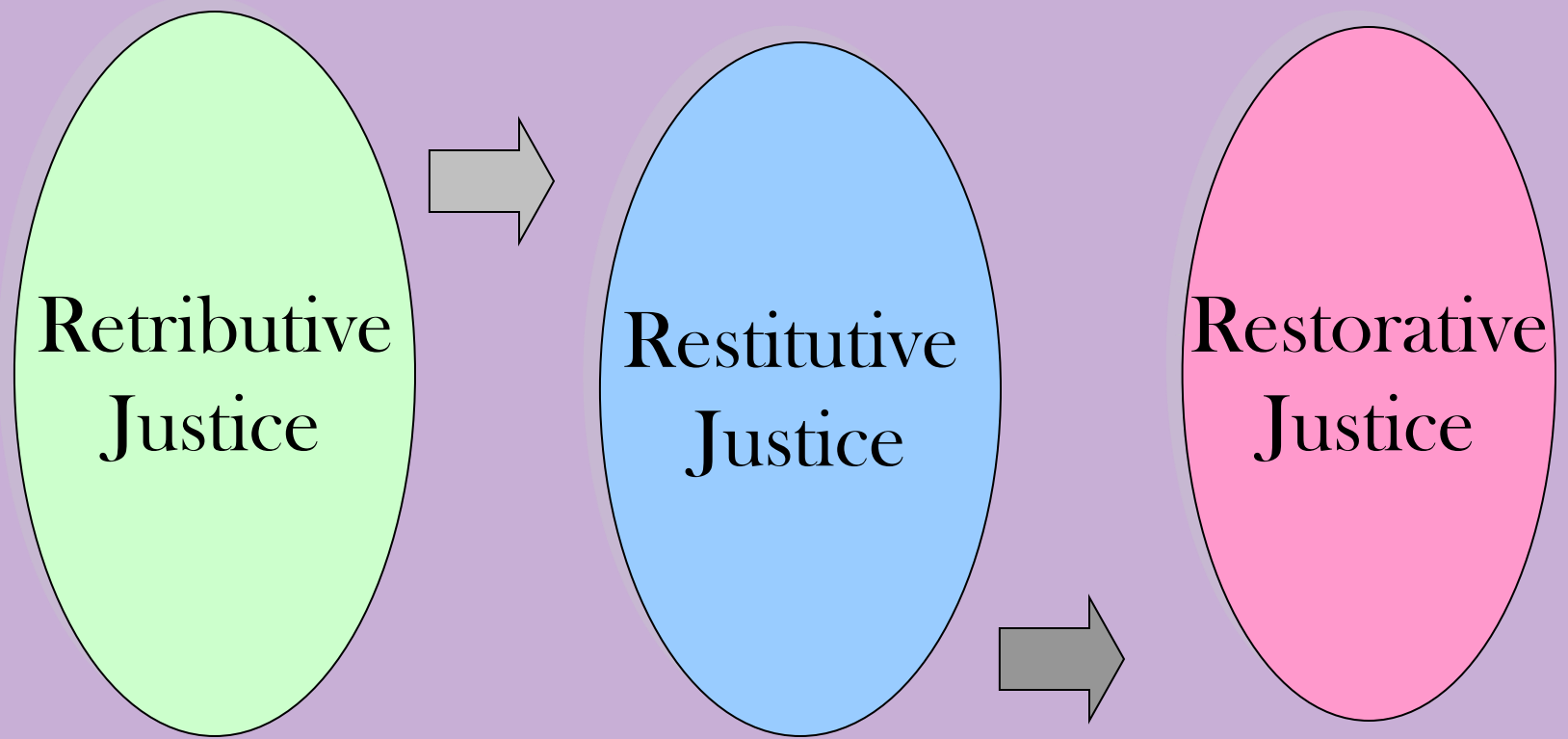
The New Law no. 11/2012

- Emphasizing principles in CRC and Beijing Rules
- Increasing the age of criminal responsibility from 8 to 12
- Specific stipulation that the of use deprivation of liberty shall only be ‘measure of the last resort’
- Mandatory use of diversion and restorative justice for children committing criminal acts carrying a maximum 7 years of imprisonment
- Stipulation of the rights of the child in conflict with the law at various stages of the legal process

Primary Changes in the new law...

- Paradigm shift on the Philosophy of the Juvenile Justice System
- Reaffirmation of the Rights of the Child in the Juvenile Justice System
- Definition of “child”
- Age of criminal responsibility
- Elimination of categories of Criminal Child, State Child and Civil Child
- Introduction of *Restorative Justice Approach*
- Obligation to conduct Diversion at each stage of the process
- Deprivation of Liberty as *measure of the last resort*

The Paradigm Shift



Changing the Mindset through changing the Names

- Elimination of the term 'delinquent children'
- Child Correctional Institution □ Special Institution for the Treatment of Children
- Detention Center □ Temporary Placement Center for Children
- Law on Juvenile Court □ Law on Juvenile Justice System (which includes Diversion)
- Legalistic Approach □ Restorative Justice Approach

Child's Rights in the Juvenile Justice System

- To be treated humanely while taking into account his/her needs according to his/her age
- To be separated from the adults
- To be provided by legal council and other assistance effectively;
- To have recreational activities;
- To be free from torture and other inhuman, cruel and degrading treatment or punishment
- To be free from capital punishment and life imprisonment
- Not to be arrested, detained or imprisoned unless as a measure of the last resort and in a shortest possible time

- Access to justice before an objective, impartial and closed court proceeding
- Not to have his/her identity published;
- To be accompanied by his/her parents, legal guardian or other people whom they trust
- To have social advocacy;
- To have his/her privacy protected;
- To have access, especially for the disabled;
- To have educational services;
- To have health services, and
- To have other rights as stipulated by other laws and regulations.

The Rights of Children deprived of Their Liberties

- a. To have a reduction of sentences;
- b. To have assimilation measures;
- c. To have a family visit leave;
- d. To have provisional release;
- e. To have leave before release; and
- g. To have other rights stipulated in other laws and regulations

Principles from the Convention on the Rights of the Child

1. non-discrimination
2. the best interest of the child
3. right to be heard

Defining 'A Child'

1. A child is a person under the age of 18 but after the age of 12.
2. Children in conflict with the law consists of children who commits, is victimized by, and witnesses, a crime
3. Does not include children who violates the living law in the community
4. Marital status
5. Those under 12 shall not be prosecuted
6. Those under 14 shall not be detained

Children under 12 committing a crime...

- Shall be examined by the Professional Social Worker, Police Officer and Social Officer
- Case dispositions:
 - Returning the child to his or her parents or guardian
 - Referring the child to the State (institutions) to be undergo education, treatment or training sessions for a maximum of 6 months

- The institutions shall submit monthly report to the Social Officer
- Based on the Social officers's analysis, the time could be extended for another 6 months

Restorative justice approach

- A shift from *lex talionis* or *retributive justice approach*
- Emphasizing measures to restore to previous condition
- Taking into account the victim's interest
- Providing opportunities for the perpetrator to express his/her regrets for causing harm to the victims
- Opening space for perpetrator and victims to interact and reduce *animosity*
- Returning societal balance

Through **DIVERSION** which is intended.....

- a. To achieve peaceful solution between the victim and the child
- b. To settle the case outside the court proceeding
- c. To prevent deprivation of liberty of the child
- d. To encourage community members to participate in settling cases
- e. To instill a sense of responsibility to the child perpetrator

The Diversion Process

- Conducted through a conference involving the Child and his/her parents or legal guardian, the victim, the Social Officer, the professional Social Worker, and the legal officers
- This process shall take into account:
 - a. victim's interest;
 - b. welfare and responsibility of the Child;
 - c. evasion of negative stigma;
 - d. prevention of retribution;
 - e. Social harmony; and
 - f. Appropriateness, decency and social order

Who is eligible for Diversion?

A child who commits a crime :

- a. Subject to a criminal sanction of a maximum of 7 (seven) years of imprisonment
- b. not a repeated offender

Victim's consent

Agreement of Diversion shall obtain victim's consent except on :

- a. Misdemeanors;
- b. Non serious crimes;
- c. Victimless crimes; or
- d. Damages does not exceed the values of provincial minimum salary

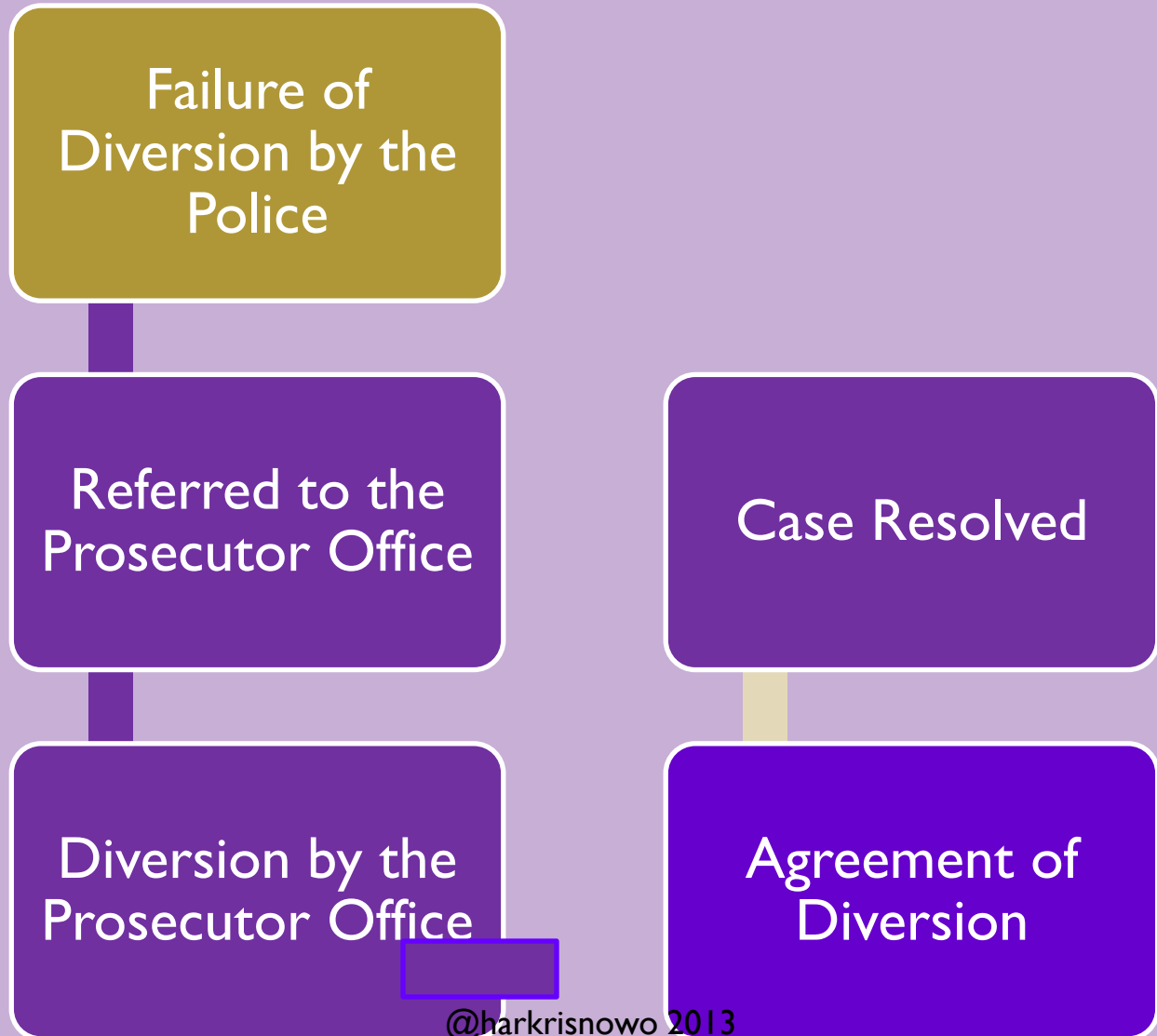
Agreement of Diversion

- a. Reconciliation with or without payment of damages;
- b. Medical and psychosocial rehabilitation;
- c. Returning the Child to his/her parents or legal guardian;
- d. Attending educational or training program in designated institution for a maximum of 3 (three) months
- e. Ordering to conduct social service for a maximum of 3 (three) months

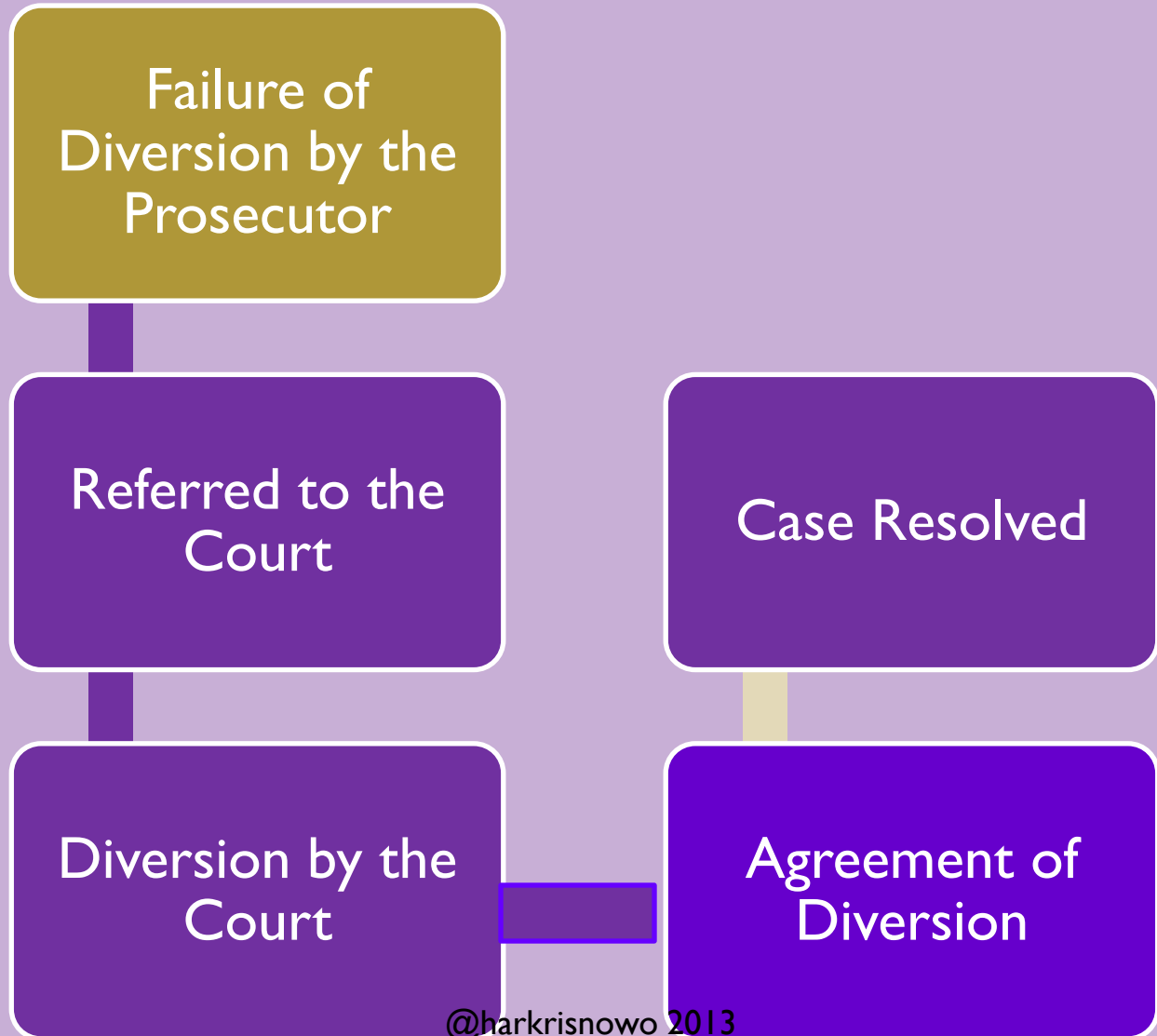
Diversion: a mandatory measure



At the Prosecutorial Stage



At the Trial Stage



Expected Implications

- Reduction of the number of children entering the criminal justice system
burden reduction in the CJS
- Reduction of the number of children deprived of liberty
- Increase of public participation in resolving crimes committed by children

The new Paradigm : minimizing detention

- Detention and imprisonment shall only be used as *measure of the last Resort*
- Detention and imprisonment could only be used for children over the age of 14
- Social inquiry conducted by the Social Officers serves as an important document as a basis for decision making by the law enforcement officers
- Alternatives to detention and imprisonment as a variety of measures for law enforcement officers to choose from

Penal sanctions

(1) Primary punishment :

A. Admonishment

B. Provisional Punishment :

1. non Institutional treatment;

2. social services; or

3. supervision

C. work training;

D. Institutional treatment; and

E. Imprisonment

(2) Additional punishment :

A. Confiscation of proceeds from crime

B. Fulfillment of customary sanction

And Various Measures....

- a. Being returned to parents or legal guardian;
- b. Referred to government institution;
- c. Referred to a person of substantial competence;
- d. Treatment in a mental hospital;
- e. Treatment in an institution;
- f. Attend a formal education and/or other trainings as properly designated
- g. Revocation of driving license;
- h. Rehabilitation of damages caused by the crime; and/or
- i. Restoration.

Requirements for all Law Enforcement Officers

- To have sufficient experiences in his/her profession
 - To have interests, dedication, attention and understanding of children; and
 - To have attended special education or training for Juvenile Justice, at least 120 credit
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- An integrated training* for this shall be coordinated by the Ministry of Law and Human Rights
 - necessity for a good training module
 - necessity for training methods

Thank You