

MEMORANDUM CIRCULAR NO. 07
Series of 2007

**STANDARD OFFICE PROCEDURES IN EXTENDING
LEGAL ASSISTANCE TO CHILDREN IN CONFLICT
WITH THE LAW (CICL) UNDER REPUBLIC ACT NO.
9344 AND OTHER RELATED LAWS**

ARTICLE I
PURPOSE

Section 1. Purpose - This circular is issued for the purpose of defining and consolidating the policies and rules to be observed by the Public Attorneys in providing legal assistance to Children in Conflict With the Law (CICL), consistent with the principles of the Convention on the Rights of the Child, the United Nations Minimum Rules for the Administration of Juvenile Justice, Republic Act No. 9344 (otherwise known as the Juvenile Justice and Welfare Act of 2006), and other related laws and rules.

ARTICLE II
DEFINITION OF TERMS

Sec. 1. Terms used – The definition of terms provided under Section 4 of Republic Act No. 9344, Republic Act No. 9262, Republic Act No. 7610 as amended, Presidential Decree No. 603 (Child and Youth Welfare Code, as amended), and other laws affecting CICLs, is hereby adopted.

AGE OF CRIMINAL RESPONSIBILITY – is from above fifteen (15) years of age but **below** eighteen (18) years, where the CICL commits an offense with discernment. A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. A child is deemed to be fifteen (15) years of age on the day of the fifteen anniversary of his birthdate.

BAIL - is the security given for the release of the person in custody of the law, furnished by him/her or a bondsman, to guarantee his/her appearance before any court. Bail may be given in the form of corporate security, property, bond, cash deposit, or recognizance.

CHILD - is a person who is below 18 years of age, or over but is unable to fully take care of himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

CHILD AT RISK - is a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to the following:

1. being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or unable to provide protection for the child;
2. being exploited including sexually or economically;
3. being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;
4. coming from a dysfunctional or broken family or without a parent or guardian;
5. being out of school;
6. being a street child;
7. being a member of a gang;
8. living in a community with a high level of criminality or drug abuse and;
9. living in situations of armed conflict.

CHILD IN CONFLICT WITH THE LAW (CICL) - is a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

COURT – is a family court or, in places where there are no family courts, any regional trial court.

CUSTODIAL INVESTIGATION – is that particular stage where the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect who has been taken into custody by the police to carry out a process of interrogation that lends itself to eliciting incriminating statements. It shall include the practice of issuing an “invitation” to a person who is investigated in connection with an offense he is suspected to have committed.

DEPRIVATION OF LIBERTY - is any form of detention or imprisonment, or to the placement of a child in conflict with the law in a public or private custodial setting, from which the child in conflict with the law is not permitted to leave at will by order of any judicial or administrative authority.

DISCERNMENT – is the mental capacity to understand the difference between right and wrong and its consequences.

DISPOSITION MEASURES – is a program prepared by a local social welfare officer or the court-appointed social worker appropriate to the personal and peculiar circumstances of the CICL.

DIVERSION - is an alternative child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background without resorting to formal court proceedings.

DIVERSION PROGRAM – is the program that the child in conflict with the law is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings.

INITIAL CONTACT WITH THE CHILD - is the apprehension or taking into custody of a CICL by law enforcement officers or private citizens. It includes the time when the child alleged to be in conflict with the law receives a subpoena under Section 3(b) of Rule 112 of the Revised Rules of Criminal Procedure or summons under Section 6(a) or Section 9(b) of the same Rule in cases that do not require preliminary investigation or where there is no necessity to place the child alleged to be in conflict with the law under immediate custody.

INTERVENTION – is a series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of an individual treatment program, which may include counseling, skills, training, education, and other activities that will enhance his/her psychological, emotional and psycho-social well-being.

JUVENILE JUSTICE AND WELFARE SYSTEM – is a system dealing with children at risk and children in conflict with the law, which provides child-appropriate proceedings including programs and services for prevention, diversion, rehabilitation, re-integration and aftercare to ensure their normal growth and development.

LAW ENFORCEMENT OFFICER – is the person in authority or his/her agent as defined in Article 152 of the Revised Penal Code, including a *barangay tanod*.

OFFENSE - is any act or omission whether punishable under special laws or the Revised Penal Code, as amended.

PROBATION - is a disposition alternative under which a CICL is released and permitted to remain in his home after conviction and sentence. The CICL is subject to conditions imposed in the sentence and to supervision by the court and a probation officer who has a duty to return the CICL to the court in case of violation of a condition of his/her probation.

RECOGNIZANCE - refers to an undertaking in lieu of a bond assumed by a parent or custodian who shall be responsible for the appearance in court of the child in conflict with the law, when required.

RESTORATIVE JUSTICE - refers to a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim, reconciliation of the offender, the offended and the community, and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention of strategies.

STATUS OFFENSE - refers to offenses which discriminate only against a child, while an adult does not suffer any penalty for committing similar acts. These shall include curfew violations, truancy, parental disobedience and the like.

SUSPENDED SENTENCE – is the holding in abeyance of the service of the sentence imposed by the court upon a finding of guilt of the CICL who will undergo rehabilitation.

VICTIMLESS CRIMES - refer to offenses where there is no private offended party.

YOUTH DETENTION HOME - is a 24-hour child-caring institution managed by accredited local government units (LGUs) and licenses and/or accredited non-government organization (NGOs) providing short-term residential care for children in conflict with the law who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.

YOUTH REHABILITATION CENTER - is a 24-hour residential care facility managed by the Department of Social Welfare and Development (DSWD), LGUs, licenses and/or accredited NGOs monitored by the DSWD, which provides care, treatment and rehabilitation services for children in conflict with the law. Rehabilitation services are provided under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them into their families and communities as socially functioning individuals. Physical mobility of residents of said centers may be restructured pending court disposition of the charges against them.

ARTICLE III CLIENTELE

Sec. 1. Clients – Pursuant to the mandate under the Administrative Code of 1987 and in relation to Presidential Decree No. 1, Republic Act No. 6035, and Republic Act No. 9406, the Public Attorneys shall represent, free of charge, CICLs who have passed the Indigency test set forth under Memorandum Circular No. 18, Series of 2002.

Sec. 2. Prohibition – The Public Attorneys are prohibited from assisting the following CICLs:

- a) Those already represented by de parte counsel except, CICLs covered by Executive Order No. 633 dated July 16, 2007;
- b) Those who do not pass the Indigency Test; and
- c) Those whose defense gives rise to conflict of interests.

ARTICLE IV LEGAL ASSISTANCE TO CICLs

Sec. 1. Legal Assistance Includes – The legal assistance that the Public Attorneys shall afford to qualified CICLs, includes, but not limited to the following:

- a) Appearing as counsel for the CICL on initial contact or during custodial investigation, and before the courts, prosecutor's office, and other quasi-judicial bodies;
- b) Preparation of pleadings, affidavits, sworn statements, and the like, necessary in the defense of the CICL;
- c) Coordinating with the Department of Social Welfare and Development, the Local Social Welfare Officers in the Local Government Units, and other concerned government agencies to procure the immediate release of the CICL placed under detention or who is otherwise suffering from deprivation of liberty, to demand the prompt submission of the assessment report on determination of discernment and intervention or rehabilitation programs for the CICL, and to prevent

any delay in the diversion of the case in the barangay level; and

- d) Such other action/s relative to the foregoing.

Sec. 2. Provisional Legal Assistance – Pending the qualification on the Merit and Indigency Tests, the Public Attorneys shall provide legal assistance to CICLs in the following instances:

- a) When placed under detention or otherwise deprived of liberty, and is in immediate need of counsel;
- b) When placed under custodial investigation without the assistance of a member of the BAR;
- c) When the Public Attorney is designated, as counsel de officio for purposes of arraignment, pre-trial, or promulgation of decision and suspension of sentence; and
- d) Other cases of similar nature.

ARTICLE V STAGES IN THE RENDITION OF LEGAL ASSISTANCE

CHAPTER I On Initial Contact

Sec. 1 - When the CICL is qualified for legal assistance - In the course of his/her regular visitation in police stations, jails and other detention centers, or upon receipt of the information that a CICL has been arrested or is in the custody of the police, the Public Attorney shall determine if the CICL is represented by a counsel. If he/she is not represented by a counsel, the Public Attorney shall, as soon as possible:

- a) Conduct the initial interview on the CICL, advising him/her of his/her rights under existing laws, and exert efforts to ascertain his/her actual age through his/her parents, guardians or the social worker concerned;

a.1 In ascertaining the age of the CICL, the Public Attorney shall request the production of the birth certificate, baptismal certificate, or any other pertinent documents. The age of the CICL may

also be determined from the testimonies of other persons, the physical appearance of the child, his/her medical records or dental records and other relevant evidence available at the time.

a.2 If the age of the CICL is contested prior to the filing of the information in any appropriate court, the Public Attorney shall file a case in a summary proceeding before the Family Court or in its absence, before the appropriate Regional Trial Court .

b) Demand for the immediate release of the CICL and refer his/her case to the local social welfare officer for the conduct of an intervention program, in case he/she is fifteen (15) years of age or below the age of criminal responsibility at the time of the commission of the offense;

In accordance with the provision of Section 58 of Republic Act No. 9344, the Public Attorney shall also demand the immediate release of a CICL who is charged, or arrested/apprehended for the following acts:

- i. Vagrancy and Prostitution under Article 202 of the Revised Penal Code;
- ii. Mendicancy under Presidential Decree No. 1563; and
- iii. Sniffing of rugby under Presidential Decree No. 1619.
- iv. Violation of curfew ordinances and other status offenses.

c) Ensure that the CICL is detained separately from adults;

d) Ascertain if there was due execution by the enforcement officer of the duties imposed under Sections 21 and 22 of Republic Act No. 9344 in the conduct of the initial investigation;

In case of violation, the Public Attorney shall immediately make representation or file appropriate administrative action before the proper forum.

For fast determination on whether there was due execution of said duties, and to curtail infringement of the rights of the

CICL, the Public Attorney shall maintain a checklist which shall be attached to the case history (PAO Form No. 4).

- e) Ensure that the taking of the statement of the child shall be conducted in his/her presence, his/her parents, guardian, or nearest relative, and the local social worker.

In the absence of the child's parents, guardian, or nearest relative, and the local social welfare and development officer, the Public Attorney shall make certain that the initial investigation shall be conducted in the presence of a representative of a non-government organization, religious group, or member of the Barangay Council for the Protection of Children (BCPC).

- f) Require the referral, in proper cases, of the CICL for diversion before the barangay under Sections 23 and 24 of Republic Act No. 9344; and
- g) Secure from the DSWD or the local social welfare officer, or court-appointed social worker, a copy of the case study report on the CICL, if one is available.

Sec. 2 – Compliance with Executive Order No. 633 dated July 16, 2007 – The Public Attorneys duly notified or informed thereof shall immediately file the necessary *“MOTION FOR IMMEDIATE RELEASE PURSUANT TO R.A. No. 9344 IN RELATION TO E.O. No. 633”* of children who are fifteen (15) years of age and below at the time of the commission of the crime and who are detained in prison facilities of the Bureau of Jail Management and Penology, Bureau of Corrections, provincial jails, and other detention cells, in cases pending trial before the courts, or while undergoing inquest investigation before the Prosecutor's Office.

For prisoners who are detained by reason of final judgment and who were fifteen (15) years of age and below at the time of the commission of the crime, the Public Attorney concerned shall file a *“PETITION FOR IMMEDIATE RELEASE PURSUANT TO R.A. No. 9344 IN RELATION TO E.O. No. 633”* on behalf of such inmates before the appropriate court that last disposed of the case. (PAO Memorandum Circular No. 04, Series of 2007).

CHAPTER II

During Custodial Investigation

Sec. 1. Representation of the CICL - Upon information of the taking of a CICL into custody, the Public Attorney shall, at all times, be present while the CICL is under investigation by the authorities, and shall

assist in the protection of his/her rights under Section 2 of Republic Act No. 7438 (otherwise known as An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations thereof).

Sec. 2. Remedy in case of violation - In case of any violation by the investigating officer in the conduct of the custodial investigation, the Public Attorney shall immediately make proper manifestation before the concerned office to which the erring investigating officer belongs, and/or file the appropriate action against the said officer.

CHAPTER III

During Inquest Proceedings and Preliminary Investigation

Sec. 1. Claim for torture or ill-treatment; Action to be taken - During the conduct of inquest proceedings or preliminary investigation, where an allegation of torture or ill-treatment was made at the time of the arrest or detention of the CICL, the Public Attorney shall immediately make the proper manifestation and recommend the investigation of the same to the prosecutor.

Sec. 2. Responsibilities during inquest proceedings or preliminary investigation - In the event that diversion procedures fail and the prosecutor conducts an inquest proceedings or preliminary investigation because (a) the CICL does not qualify for diversion; (b) when the CICL, his/her parents or guardian does not agree to diversion as specified under Sections 27 and 28 of Republic Act No. 9344; and (c) when the prosecutor, after considering the assessment and recommendation of the social worker, determines that diversion is not appropriate for the CICL, the Public Attorney, upon having been informed of the service of the subpoena and the accompanying documents, shall:

- i. Obtain copy of the records and other documents relevant to the case;
- ii. Prepare the counter-affidavit and affidavits of his/her witnesses, and other supporting documents;
- iii. Obtain a copy of the birth certificate of the CICL from the Civil Registrar of the locality where the child was born or the National Statistics Office (NSO), if it has not been previously obtained;
- iv. Assist in the preparation of the Waiver required under Article 125 of the Revised Penal Code, when from the

circumstances surrounding the case and the defense of the CICL justify the conduct of a preliminary investigation;

- v. Make immediate and constant verification from the handling prosecutor of the status of the case in order that it be given preferential attention in its resolution;
- vi. Ensure the observance of procedural requirements during the investigation;
- vii. Appear as counsel for the CICL during clarificatory conference, if one is necessary, to ensure the protection of his rights.

Sec. 3. Dismissal of the case in the absence of criminal responsibility - When proper, the Public Attorney shall move for the dismissal of the case for which the CICL is undergoing inquest proceedings or preliminary investigation, under Sections 6 and 58 of Republic Act No. 9344.

CHAPTER IV Diversion

Sec. 1. Diversion when case is not yet filed in court - Where the CICL is above fifteen (15) years of age and the imposable penalty for the crime for which the CICL is charged is not more than six (6) years of imprisonment, and the case is undergoing investigation by law enforcement officers or inquest proceedings or preliminary investigation before the prosecutor's office, the Public Attorney shall, with the consent of the CICL's parents/guardian, move for the referral of the case to the Katarungan Pambarangay or the local social development and welfare officer for the conduct of diversion proceedings. The system of diversion as provided under Section 23 (a) and (b) of Republic Act No. 9344 shall apply, and the Public Attorney shall explain the same to the CICL and his/her parents/guardian, in the dialect known and understood by them.

Sec. 2. Diversion when the case is filed in court - Where the CICL is above fifteen (15) years of age and he acted with discernment and the imposable penalty for the crime for which the CICL is charged exceeds six (6) years but not more than twelve (12) years of imprisonment, regardless of the fine or fine alone regardless of the amount, and before arraignment, the Public Attorney shall file a motion before the court, for the holding of diversion proceedings. In all hearings conducted by the diversion committee, the Public Attorney shall be present to safeguard the rights of the CICL.

CHAPTER V

Filing of the Complaint or Information in Court

Sec. 1. Standard Procedures in the initial stage of the case - In all criminal cases where a CICL is involved, the Public Attorney, after examination of the records of the case shall:

- a) Ensure the immediate and prompt assignment of the case to a Family Court Branch;
- b) Move for the quashal or dismissal of the case, if the CICL is exempt from criminal responsibility under Sections 6 and 58 of Republic Act No. 9344;

The Public Attorney shall assist the CICL in an action for the summary determination of his age, and shall present evidence to substantiate the age of the CICL.

- c) File a motion for psychiatric evaluation of the CICL if at any time, the Public Attorney is convinced, through the manifestation of the CICL, that he is not fit to stand trial;
- d) Move for the immediate release of the CICL on recognizance to his/her parents or other suitable persons;
- e) Before arraignment, file a motion to refer case to diversion proceedings when the imposable penalty of the offense for which the CICL is charged is imprisonment of not more than twelve (12) years, regardless of the fine which may be imposed, or fine alone, regardless of the amount; and
- f) Move for the setting of the case for arraignment which shall be scheduled not later than seven (7) days from the time of the filing of the complaint or information, in accordance with Section 27 on the Rules on Juveniles in Conflict with the Law.

Sec. 2. Arraignment of the CICL – When the case of the CICL is called for arraignment, the Public Attorney shall:

- a) Manifest for the conduct of the arraignment in the chambers of the presiding judge, or in the court sala with the exclusion of the public;
- b) Move for the setting of the pre-trial conference on the earliest possible time in the calendar of the court, when a plea of not guilty is entered by the CICL;
- c) Invoke all available mitigating circumstances when a plea of guilty was made by the CICL, for the appreciation of the court in the imposition of the penalty.

Sec. 3. Pre-trial - The Public Attorney shall afford protection to the rights of the CICL during plea-bargaining, and shall make certain that there is full comprehension on the part of the CICL and his parents or guardian of the consequences and results of any agreement or compromise that they may enter into.

Sec. 4. Trial - In all proceedings and hearings conducted in the case of the CICL, the Public Attorney shall afford protection to the rights of the CICL, most importantly, his right to privacy and to demand confidentiality of his records in accordance with Section 12 of Republic Act No. 8369 (An act establishing Family Courts, granting them exclusive original jurisdiction over child and family cases, amending Batas Pambansa Bilang 129, as amended, otherwise known as the Judiciary Reorganization Act of 1980, appropriating funds therefore and for other purposes). The Rule on Examination of a Child Witness shall also be observed by the Public Attorney when the CICL will testify in court.

Sec. 5. Promulgation of Judgment – During the promulgation of judgment, the Public Attorney shall:

- a) Move for the holding of the promulgation of judgment in the chambers of the presiding judge, or in the court sala with the exclusion of the public, and that no media coverage shall be permitted;
- b) Move for the presence of the parents/guardian of the CICL and a local social welfare officer or a court-appointed social worker during promulgation, whenever possible;
- c) Demand for the automatic suspension of sentence, or when applicable, for probation, when a verdict of conviction is meted against the CICL, in accordance with Presidential Decree No. 603 (otherwise known as the Child and Youth Welfare Code); and

- d) When suspension of sentence is not possible and while awaiting resolution on his probation, coordinate with a local social welfare officer or a court-appointed social worker for his commitment to a suitable youth rehabilitation center or youth detention home, and to this end, shall make proper representation in court for the transfer of the CICL.

Sec. 6. Discharge of the CICL – Upon favorable recommendation of a local social welfare officer or a court-appointed social worker, or in cases of CICL proceeded against in violation of Republic Act No. 9165, upon favorable recommendation of the Dangerous Drugs Board, the Public Attorney shall file with the Family Court a motion to dismiss the case and for the immediate issuance of an order of Final Discharge in favor of the CICL who has been issued disposition measures before he has reached eighteen (18) years of age. However, if the CICL failed to comply therewith, or has not been rehabilitated, and whenever practicable, before the execution of judgment, the Public Attorney shall make representation for another opportunity to be afforded to the CICL to comply with the disposition measures or to undergo rehabilitation.

After the lapse of two (2) years from the date of the Closure Order or the Final Discharge of the CICL, when there is no pending case involving moral turpitude filed against him during said period, the Public Attorney shall move for the permanent sealing of his records in court and in all other offices and agencies that dealt with the case.

ARTICLE VI RECORDING AND REPORTING OF CASES

Sec. 1. Office Logbook and recording system for cases involving CICL - Each PAO District Office shall maintain a separate logbook and recording system for cases involving CICLs. The logbook and recording system shall serve as a directory for this kind of cases handled by the Office. At the same time, it shall also be a guide/reference for Public Attorneys in accepting or declining acceptance of a case involving a CICL due to conflict of interests.

The Public Attorney shall cause to be entered in the said Logbook the following data:

- Entry No.
- Date Received
- Name and Address of the CICL
- Date and place of birth
- Gender
- Name and Address of the Plaintiff/Complainant

Name and Address of Parents/Guardian
Offense charged
Assistance Given/Remarks

Section 2. Reporting of cases - The Public Attorney shall include in his/her monthly performance report the termination of the case involving the CICL at the time of the promulgation of judgment or suspension of sentence, but the records of the case shall remain active in a SPECIAL FILE for this purpose until after the permanent sealing of the records has been ordered by the court.

ARTICLE VII SANCTION

Sec. 1. Imposition of sanction in case of violation – Willful and unjustified deviation from these Procedures on the part of the Public Attorney shall warrant the imposition of sanctions in accordance with existing office rules and the Civil Service Laws, Rules and Regulations.

ARTICLE VIII FINAL PROVISION

Sec. 1. Repealing Clause - Memorandum Circular No. 22, Series of 2002 on the Standard Office Procedures in Extending Legal Assistance to Juveniles in Conflict with the Law, and all circulars, issuances and memorandum or any portion thereof inconsistent herewith are hereby repealed and/or modified accordingly.

Sec. 2. Effectivity – This Memorandum Circular shall take effect on December 7, 2007.

Signed this 7th day of November 2007, Quezon City.

PERSIDA V. RUEDA-ACOSTA
Chief Public Attorney