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(as of May 2012)

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# LEGAL ADVISORIES



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## CHILD IN CONFLICT WITH LAW (CICL)

Recently, TV networks reported series of incidents involving minors as suspects. The most publicized was a video covering the murder of a doctor of philosophy committed by minors. Every news of this kind end with a clamor to amend RA 9344 or the Juvenile Justice and Welfare Act of 2006 impliedly citing that the law encourages juvenile delinquency.



Taken from:  
[Durianpost.wordpress.com](http://Durianpost.wordpress.com)

RA 9344 sets the new minimum age of criminal responsibility to 15 years and one day and above compared to the nine years and above age set by the Revised Penal Code. With this development, and few months after NAPOLCOM, PNP and UNICEF jointly published the “Police Manual on the Management of Cases of Children In Conflict With The Law (CICL)”, the Supreme Court enacted Administrative Matter No. 02-1-18-SC known as the Revised Rule On CICL. The two laws

are the governing laws when it comes to procedures in handling CICL.

For this month, the PNP Legal Service will suggest how the PNP should deal with CICL in addition to the procedures prescribed in the abovementioned PNP manual.



**Q:** When a CICL is brought to the police station, what should a police officer do?

**A:** First, he must make an inquiry as to the circumstances of the arrest of the child. If the child is arrested not in accordance with the rules on warrantless arrest, he must release the child and prepare the documents for regular filing of the case at the Prosecutor's office or refer the case to the Barangay for conciliation. Second, if the arrest is lawful, he must make an inquiry as to the age of the child. Third, make an intelligent conclusion as to what crime the child has committed. Lastly, if it is determined that the child is criminally liable, prepare the documents for inquest at the Prosecutor's Office.

**Q:** What are the requirements before the case involving CICL could be filed at the prosecutor's office?

**A:** 1. In case of Inquest, a certification of discernment from the DSWD if the CICL is charged with a non-serious offense. If the offense is serious, no need.  
2. In case of filing for regular preliminary investigation, the case could be filed with or without the certification of

discernment depending on the availability of the CICL for the DSWD Officer to examine.

### Child aged 15 years and below

**Q:** What is the effect if it is ascertained that the child is aged 15 years and below?

**A:** He is exempted from criminal liability. Hence, the child cannot be detained. But, such exemption does not include exemption from civil liability.

**Q:** What is the remedy of the victim of child aged 15 years and below?

**A:** The law says, it shall be enforced in accordance with the provisions of Article 221 of the Family Code in relation to Article 101 of the Revised Penal Code and Rule 111 of the Revised Rules on Criminal Procedure. If the act or omission of the child involves a quasi-delict, Article 2180 of the Civil Code shall apply.

### Explanation:

Art. 221 (FC), Art. 101 (RPC) and Art. 2180 (NCC) provide the rule that Parents or Guardians shall be civilly liable for the injuries or damages caused by the acts or omissions of their children under their parental control unless it appears that there was no fault or negligence on the part of such parents or guardians. Rule 111 (Criminal Procedure) provides that the victim must file a civil case for damages in order to enforce the civil liability of the child aged 15 years and below.

**Q:** What is the procedure in handling a child aged 15 years and below?

**A:** 1. The Authority who had initial contact with the child shall immediately release



the child to the custody of the mother or father. In their absence, to the nearest relative, to the Brgy Official or to the DSWD in that order of preference; and,  
 2. Notify the local DSWD.

**Q:** Why is there a need to notify the DSWD?

**A:** For the DSWD to determine the appropriate intervention program to be applied to the child or to file a petition for involuntary commitment under PD 603 if the child or the parents will not consent to the intervention program.

**Q:** What is an "intervention program"?

**A:** "Intervention program" refers to a series of individualized treatment activities or programs designed to address issues that caused the child to commit an offense. These may include counselling, skills training, education, and other activities that are aimed to improve and enhance the child's psychological, emotional and psycho-social well-being.



**Child aged 15 years and one day but below 18 years old**

**Q:** Who is a child in conflict with the law (CICL)?

**A:** A CICL refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws (RA 9344).

**Q:** What is meant by the phrase "age of criminal responsibility"?

**A:** "Age of criminal responsibility" is the age when a child, fifteen (15) years and one (1) day old or above but below eighteen (18) years of age, commits an offense with discernment.

**Q:** What should a police officer do if it is determined that the suspect is a CICL?

**A:** The police dealing with the child must determine if the child committed a non-serious (with six years and below imprisonment) or serious (with more than six years imprisonment) offense.

**If the child committed a non-serious offense**

**Q:** What are the effects if the police find out that the child committed a non-serious offense?

**A:** The following are the effects:

1. Outside court diversion is allowed. **Caveat:** Although diversion is allowed at the PNP station level, it is safer to pass this responsibility to the DSWD Officer.
2. It is the DSWD that will preliminarily determine if the CICL acted with or without discernment;
3. The case could be filed only if the DSWD certified that the CICL acted with discernment.
4. If the DSWD will declare that the CICL acted without discernment, the case will be disposed or the child will be treated similar to that of a minor aged 15 years and below;



**Q:** Could the Authority who had initial contact with the child aged 15 years and one day but below 18 years old, and who acted with discernment, immediately release the child to the custody of the mother or father?

**A:** No. This time, it is the Court alone which could order the release of the child to the parents, etc (Sec. 25, AM No. 02-1-18-SC).

**Note:** This is the reason why the PNP has to file the case even if there is outside court diversion. Once the case has been filed, the Prosecutor has no option but to conduct inquest proceedings and file the case in court so that the court could acquire jurisdiction over the case and it could order the release of the accused on recognizance. The success or failure of the outside court diversion does not have any effect on the filing of the case. Whatever the result of the outside court diversion will be noted in the court docket as the outcome of the case.

**The release on recognizance of any person under detention may be ordered only by a Court (Espiritu vs Jovellanos, 280 SCRA 579, 1997).**

**Q:** What are the requirements so that the CICL could be released to the parents, etc.?

**A:** The following are the requirements:

1. The release must be on recognizance;
2. only after hearing for that purpose;
3. upon favorable recommendation of the DSWD;
4. with conformity of the prosecutor; and,
5. with conformity of the private complainant.

**Q:** What is an Order of Recognizance?

**A:** It is an order of the Court placing an accused under the custody and subject to the authority of a responsible citizen in the community who, while the case is pending, accepts the responsibility of producing the accused before the Clerk of Court of the court hearing the case periodically as mandated by such Court.

### **If the child committed a serious offense**

**Q:** What are the effects if the police find out that the child committed a serious offense?

**A:** The following are the effects:

1. Certification of Discernment from the DSWD is no longer necessary;
2. It is the Court that will determine if the child acted with or without discernment;
3. If the Court will declare that the child acted without discernment, the case will be disposed or the child will be treated similar to that of a suspect aged 15 years



and below;

4. It is the Court alone which could order the release of the child to the parents, etc., on bail as a matter of right.
5. No child charged with an offense punishable by reclusion perpetua or life imprisonment shall be admitted to bail when evidence of guilt is strong. The child shall be committed to a youth detention home or in its absence, in jail.
6. Court Diversion is allowed only if the child is charged with offenses the penalties of which do not exceed six years and one day to 12 years.

**Q:** Is there a need to notify the DSWD if it is determined that the CICL committed a serious offense?

**A:** Yes. In all child cases, the DSWD has to be notified not only for purposes of determination of discernment but to see to it that the rights of the CICL is respected, and the law enforcers observed the "best interest of the child" rule.



**Q:** Does the Revised Rule on Children in Conflict with the Law (Administrative Matter No. 02-1-18-SC) apply to child combatants?

**A:** Yes. In case a child is arrested for reasons related to armed conflict, he will be released on recognizance within 24 hours to the DSWD or any responsible member of the community as determined by the Court. **Note:** LEGAL ADVICE 24/7 does not know the wisdom behind treating child combatants different from CICL who committed serious offense; and, of setting new reglementary period (24 hours) in releasing a combatant.



Taken from:  
[amakiqip.wordpress.com](http://amakiqip.wordpress.com)

### Frequently Asked Questions:

**Q:** A Child aged 15 years and below was accused of committing rape to a 14-year old child. The father of the

victim collared the suspect and brought him to the police station. The DSWD argued that the child must be released to the parents. The father argued to detain the suspect. It was determined that the incident happened three days ago and the father learned of the incident only on that day. The WCCD PNCO asked legal advice from this Office (LEGAL ADVICE 24/7).

**A:** Release the child because he was not arrested in accordance with the rule on warrantless arrest.

**Q:** With the same facts, out of fear, the parents of the suspect executed a waiver of detention and begged from the PNP personnel to detain the child to avoid possible revenge of the father or relatives of the victim. Do the police have to detain the child?



**A:** No. The police should not allow the detention of the child. There is no ground to detain the child because he was not arrested in accordance with the rules on warrantless arrest and the execution of waiver of detention is premised on a valid warrantless arrest.

**Q:** In Mindanao, a 17-year old child committed carnapping with frustrated murder. The case was filed before the Prosecutors Office within the reglementary period. Pending resolution of the case at the Prosecutor's Office, the child was with the custody of the local DSWD Officer who decided to lock the child in the detention cell of the PNP. On the 43<sup>rd</sup> day of the child's detention, the case was not yet filed in Court and the Prosecutor was in Manila attending MCLE. Personnel from the Commission on Human Rights (CHR) intervened and coerced the PNP personnel to release the child. Out of fear of legal repercussions from the CHR personnel, and with the approval of the DSWD, the PNP released the CICL.

The WCCD PNCO inquired from the LEGAL ADVICE 24/7 as to the propriety of releasing the Child.

**A:** The child should have been released pursuant to a release order to be issued by the prosecutor. Under those circumstances, your decision to release the child is the best option although the claim of CHR personnel is without bases in law and in equity.

**Q:** The mother of a 16-year old boy approached the police and informed her that her son has a standing warrant of arrest for rape he committed when he was still 13 years old. The mother asked what to do with her son considering that under new laws, her son is not criminally liable.

**A:** Arrest the child and deliver the child to the court that issued the warrant and seek proper disposition thereat. It is unbelievable that the court will issue a warrant if indeed the age of the child was determined to be 13 years old. Even if it will be true that the child is indeed 13 years old when he committed the offense, the case is now with the court hence, the PNP cannot decide for the court.



**Q:** Same facts as in the immediately preceding question except that the crime was committed by a child when he was more than 16 years old and the victim is a demented child. Pending issuance of formal order from the court as to where the child will be detained, should the arresting PNP unit detain the child or release the child to the DSWD?

**A:** Just detain the child and wait for the order of the court. Considering the gravity of the offense, and the age of the child when he committed the offense, he could not even post a bail for his liberty.

**Q:** The Prosecutor claimed that he will elevate the case to the court only if the CICL will not qualify for diversion. Is this correct?

**A:** That is correct if the case is filed for regular preliminary investigation and not during inquest because the CICL is not detained and if the CICL is charged with non-serious offense.

**Q:** What is the appropriate charge to a CICL caught sniffing rugby?

**A:** None. Section 21 of AM No. 02-1-18-SC provides that no information shall be filed against a child for sniffing rugby. Likewise prostitution under section 202 of the RPC cannot be filed against a child.



**Q:** Sir, we are planning to adduce as evidence the blotter entries of a suspect aged 25 years old which were entered in our blotter when he was then a minor, is it okay?" said a caller of LEGAL ADVICE 24/7.

**A:** It will be excluded by the Court because of "confidentiality" provision of RA 9344. It seems that legally, there is no more child recidivist.



**NOTE:** Please visit our website: "[www.legalservice.org.ph](http://www.legalservice.org.ph)" for more informative articles about police works.