

# INTERSECT

## QUICK FACTS

# CHILDREN AND THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY (MACR): WHY THE MACR SHOULD NOT BE LOWERED

The Minimum Age of Criminal Responsibility (MACR) is the lowest age at which children in a given country can be prosecuted in court. In the Philippines, under the Juvenile Justice and Welfare Act of 2006 (JJWA) or Republic Act 9344 as amended by Republic Act 10630, the MACR is set at 15 years old. This means that “a child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program.”

As of September 2016, several bills have been filed in the 17<sup>th</sup> Congress to lower the MACR from 15 years to 9 years old.

In this issue of *Intersect Quick Facts*, we provide information on the profile and common misconceptions on children in conflict with the law (CICL), present arguments on why the MACR should not be lowered, and cite some good practices in implementing the JJWA.

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## THE JUVENILE JUSTICE AND WELFARE ACT

The Juvenile Justice and Welfare Act (JJWA) of 2006 is a law that creates a separate justice system for children in the country. Guided by the principles of Restorative Justice, it covers different stages involving children at risk (CAR) and children in conflict with the law (CICL) from prevention, diversion, and rehabilitation to reintegration.

“ ‘CHILD IN CONFLICT WITH THE LAW’ refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.”

Section 4  
Republic Act 9344  
Juvenile Justice and Welfare Act

In the 1st quarter of 2016, **1,297 CICL** were served by City and Municipal Social Welfare and Development Offices (C/MSWDO) in 15 regions. These CICL underwent community-based intervention, diversion, and after care programs.



There are also **755 CICL** housed in Bahay Pag-asa and other youth facilities.

SOURCE: DATA ON CICL, JUVENILE JUSTICE AND WELFARE COUNCIL (JJWC)

### A TYPICAL CICL ...



is male and between 14 and 17 years old



has low educational attainment and has stopped schooling



uses drugs and alcohol



belongs to a family of six



is charged with property-related crimes (e.g. theft)

### CICL MAY COME FROM FAMILIES THAT ARE ...



poor or without stable income (57.7%)



with separated parents (28.6%)



characterized by family or domestic violence (23.8%)

SOURCE: SITUATION OF THE FILIPINO CHILDREN, 2012, COUNCIL FOR THE WELFARE OF CHILDREN (CWC)

SOURCE: JJWC (2016 DATA FROM REGIONAL REHABILITATION CENTERS FOR THE YOUTH FROM THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT FIELD OFFICES)

# MYTHS VS FACTS

## SOME SAY:

Children are different nowadays. With the availability of information around them, they know the difference between right and wrong and they fully understand what they are doing.

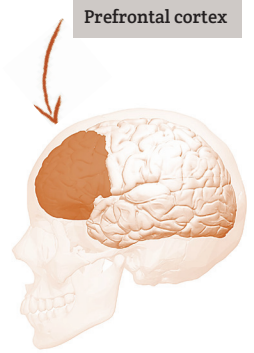
## FACT:

Children do not have the same psychosocial and decision-making capacity as adults. The developmental immaturity of young people lessens their criminal culpability.

Scientific research on child and adolescent development and juvenile delinquency provides evidence that:

*"The child/adolescent brain is still under development. Significant changes in brain anatomy and activity are still taking place in the (prefrontal) regions that govern impulse control, decision-making, long-term planning, emotion regulation, and evaluation of risks and rewards. These abilities, which are involved in criminal behavior, do not fully form until young adulthood, making young people especially vulnerable to engaging in risky behaviors. Although young people may be able to discern right from wrong action, it is their capability to act in ways consistent with that discernment that is undermined."*

SOURCE: PSYCHOLOGICAL ASSOCIATION OF THE PHILIPPINES, "POSITION PAPER ON HB 002 OR THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY ACT" (24 AUGUST 2016); IMAGE FROM WIKIMEDIA COMMONS



## SOME SAY:

Crime is rampant in our society and many children commit crimes at an early age. We have to arrest even these child offenders to curb crime.

## FACT:

Children commit a small fraction of total crimes in the Philippines.

According to the Philippine National Police (PNP), from 2006-2012, almost 98% of all crimes were committed by adults while

**CHILDREN COMMIT ONLY 2% OF THE TOTAL CRIMES.**

SOURCE: PNP ANNUAL COMPARATIVE STATISTICS CICL VS ADULTS IN NUMBER AND PERCENTAGE FROM JAN 2002-DEC 2012

While any decrease in the crime rate, however small, is desirable, there are more restorative ways in handling cases of children who offend without criminalizing them. These include providing children with intervention, rehabilitative services, and mentoring from positive role models. Criminalizing children will only result in discrimination against them and lower their chances to have a better future.

## SOME SAY:

Crime syndicates use children in their illegal operations to get away with crimes. We should lower the MACR so they will be discouraged from using children.

## FACT:

Children used by crime syndicates are victims of exploitation and abuse. We should focus on catching the adults and syndicates that victimize children.

If crime syndicates or adults use children in their illegal activities, clearly, the children are victims. They should be rescued, not criminalized. Syndicates that victimize children should be the ones arrested and penalized. Lowering the MACR to 9 years old will not stop syndicates from using children in their operations. It might further encourage them to victimize even younger children.

**FROM JULY-AUGUST 2016, 66 OF THE CHILD SURRENDEREES UNDER THE GOVERNMENT'S "WAR ON DRUGS" ARE USED AS DRUG COURIERS.**

SOURCE: PHILIPPINE CENTER FOR INVESTIGATIVE JOURNALISM (PCIJ) CITING DATA FROM THE PNP

The Psychological Association of the Philippines explains: "Children and adolescents are vulnerable to coercion. As minors, young people lack the freedom that adults have to assert their own decisions and extricate themselves from criminal situations."

SOURCE: PSYCHOLOGICAL ASSOCIATION OF THE PHILIPPINES, "POSITION PAPER ON HB 002 OR THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY ACT" (24 AUGUST 2016)

## SOME SAY:

Victims do not get justice because child offenders are not punished.

## FACT:

Under the JJWA, children in conflict with the law are held responsible for their actions, but in a restorative manner.

The JJWA holds CICL accountable for their offenses, but in a different manner from adults. If the JJWA is properly implemented, children who commit crimes will not go "scot-free."

**A 9-YEAR OLD CHILD WHO IS CHARGED WITH THEFT MAY BE EXEMPTED FROM CRIMINAL LIABILITY BUT NOT FROM CIVIL LIABILITY.**

The child, supported by his/her parents, will still have to pay for the damages resulting from the offense. The child will also have to undergo an intervention program supervised by a social worker.

The JJWA lays out specific measures to handle children who are exempt from criminal responsibility and who commit serious offenses and repeat offenders.

## SOME SAY:

The Juvenile Justice and Welfare Act is difficult to implement. It does not address the problem of children committing crimes.

## FACT:

The JJWA has sufficient measures that address offenses committed by children while enjoining the whole community to guide the youth. The rights of children should not be compromised merely on the basis of expediency. What is needed is to strengthen the institutions implementing the JJWA and to provide the necessary resources to make these institutions effective. Instead of lowering MACR, strengthen the implementation of JJWA.

## WHAT HAPPENS TO SERIOUS OR REPEAT OFFENDERS BELOW THE MACR?

Children who are above 12 up to 15 years old who commit serious or repeat offenses shall be placed in a Bahay Pag-asa and will undergo intensive juvenile intervention program (Sec. 20 A and B, RA 10630).

For children 12 years old and below, "the authority which will have initial contact with the child... shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to (sic) the person having custody over the child" (Sec. 20, RA 9344).

As with other laws, there are challenges in implementing the JJWA that must be effectively addressed. However, difficulties in implementing the law cannot be used to justify lowering the MACR. This would compromise children's rights merely on the basis of expediency. Lowering the MACR violates the right of the child to genuine protection.

The JJWA provides sufficient measures to hold children accountable for their wrongdoings, while taking into consideration their age and developmental capacities. Measures to assist children under the JJWA include:

- ✓ PREVENTION
- ✓ INTERVENTION
- ✓ DIVERSION
- ✓ REHABILITATION
- ✓ REINTEGRATION TO THE COMMUNITY

The 2015 *Evaluation of the Intervention and Rehabilitation Program in Residential Facilities and Diversion Programs for Children in Conflict with the Law*, including Bahay Pag-asa, showed that **THERE IS WEAK COMMITMENT OF THE LOCAL GOVERNMENT UNITS (LGUs)** to the implementation of the JJWA which significantly affected the delivery of programs for CICL.

SOURCE: UNITED NATIONS CHILDREN'S FUND (UNICEF), JUNE 2015

“Bahay Pag-asa” refers to a 24-hour child-caring institution established, funded and managed by local government units (LGUs) and licensed and/or accredited nongovernment organizations (NGOs) providing short-term residential care for children in conflict with the law who are above fifteen (15) but below eighteen (18) years of age who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction. ... Each province and highly-urbanized city (the LGUs) shall be responsible for building, funding and operating a 'Bahay Pag-asa' within their jurisdiction following the standards that will be set by the DSWD and adopted by the JJWC.”

RA 10630 amending RA 9344  
Juvenile Justice and Welfare Act (JJWA)



35 of the 114 mandated number of **BAHAY PAG-ASA** (in 81 provinces and 33 highly-urbanized cities) are operational as of September 2016.

Three (3) are operated by provincial governments, 8 by highly-urbanized cities, 3 by non-governmental organizations (NGOs), and 21 are run by other municipalities and cities.

SOURCE: STATUS OF BAHAY PAG-ASA, JJWC

## SOME SAY:

We should jail child offenders to prevent them from re-offending and becoming hardened criminals.

## FACT:

Detention of children in jails or prison-like facilities, especially if they are very young, exposes them to criminal elements which may lead them to become hardened offenders.



“Detention of children should be the last resort, not the first and only option.”

SOURCE: UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE

“... exposure to the criminal justice system, where the child will be labeled a criminal and where he or she is exposed to criminal models, will more likely establish the 'criminal identity' of the young person. Studies have shown that encounters with the justice system do not deter but rather result in greater subsequent crime for the young person.”

SOURCE: PSYCHOLOGICAL ASSOCIATION OF THE PHILIPPINES, POSITION PAPER ON HB 002 OR THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY ACT (24 AUGUST 2016)



Placing a child in detention or in an institution is more costly than implementing community-based or barangay-based intervention programs.

The cost of caring for a child in an institution in the Philippines is

**₱224.09 DAILY PER CHILD.**

A CICL could spend an average of 1,196 days or 3.28 years in institutional care from time of arrest through youth detention, and completion of rehabilitation and reintegration program. This amounts to a total of

**₱268,011.64 PER CHILD FOR THE WHOLE PERIOD.**

SOURCE: 2012 JJWC POLICY PAPER

The proposal to lower the MACR will require the infusion of a substantial amount of public funds into a system that will more likely create chronic criminals out of our children.

# GOOD PRACTICES IN DEALING WITH CHILDREN IN CONFLICT WITH THE LAW

## BY THE GOVERNMENT



### DAVAO CITY'S CHILDREN'S VILLAGE

The Children's Village in Bago Oshiro, Davao City is a Bahay Pag-asa that serves as a temporary shelter for CICL while their cases have been filed in court and are awaiting disposition. It started operations in 2014 and is one of the fully operational centers in the country. It also offers short-term residential care for offenders aged 13 to 17.

In Children's Village, children perform community volunteer work hours depending on the gravity of their actions. They write mandatory journal entries, undergo psychological intervention, and receive follow-up counselling. They may also be trained in vocational courses accredited by the Technical Education and Skills Development Authority (TESDA).

SOURCES: DAVAOCITY.GOV.PH / SUNSTAR DAVAO / RAPPLER.COM



### NAGA CITY'S COMPREHENSIVE LOCAL JUVENILE INTERVENTION PROGRAM

In 2015, the City of Naga approved and adopted a 3-Year Local Comprehensive Juvenile Intervention Program (LCJIP) for 2015-2017. The LCJIP is stipulated in RA 9344 to ensure that the LGU will include the juvenile intervention program in their annual budget. The City of Naga serves as the pilot LGU in the Bicol Region to develop a model of LCJIP covering children at risk (CAR) to prevent them from becoming CICL.

Based on the Comprehensive National Juvenile Intervention Program, the LCJIP focuses first on developmental aspects and on tracing the roots of offending; second on protective and preventive intervention; and third on addressing the needs of children in conflict with the law. Currently, the city has yet to construct a Bahay Pag-asa.

SOURCES: REGION V DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT / NAGACITY.GOV.PH / PHILIPPINE INFORMATION AGENCY (PIA)

## BY CIVIL SOCIETY



### HUMANITARIAN LEGAL ASSISTANCE FOUNDATION (HLAF)

HLAF is a non-governmental organization founded in 2001. It advocates for proper implementation of the JJWA. Through its Center for Restorative Action program, it has provided trainings in Quezon City, Malabon, and Navotas to strengthen Barangay Councils for the Protection of Children (BCPCs) in handling cases of CICL using the framework of Restorative Justice. Three years after continuous capacity-building activities in the barangays, its partner BCPCs reported that trainings on JJWA helped them in handling children in the community, especially those who tend to break the law.

SOURCE: HLAF.ORG.PH



### ACAY MISSIONS PHILIPPINES

ACAY Missions Philippines is a non-governmental organization founded in 1997. Its MVP Second Chance Program aims to protect and rehabilitate youth in detention. This program is divided into two parts: intervention in detention centers and reintegration. For the intervention portion, ACAY Missions Philippines regularly visits detention centers and rehabilitation centers in Metro Manila and Tanay, Rizal. Their visits include personal sharing, legal assistance, seminars in self confidence, self-discovery and personality development, and leadership training, among others. In 2010, the program was recognized as the "Best Practice for the Youth in Jail" by the Juvenile Justice and Welfare Council (JJWC). For the reintegration part, it offers formal education and training, professional assistance, psycho-social intervention, and family intervention. ACAY Missions reported that since 2005, 90% of the youth who underwent the program did not go back to prison.

SOURCE: ACAYMISSION.COM

This issue is prepared in partnership with:



PHILIPPINE ACTION FOR YOUTH OFFENDERS



CHILD RIGHTS NETWORK PHILIPPINES



CSC-CRC  
CIVIL SOCIETY COALITION ON THE CONVENTION ON THE RIGHTS OF THE CHILD INC.

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The John J. Carroll Institute on Church and Social Issues (JJCICSI) is a member of PAYO, CRN, and CSC-CRC.

Support our advocacy against lowering the minimum age of criminal responsibility.

Use the hashtag

**#ChildrenNotCriminals**

on Facebook and Twitter.

CHILDREN NOT CRIMINALS



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The present moment is crucial. The work to be done is urgent.

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