

Reoffending among the Child Offenders in Malaysia: It's Time to Open Our Doors to Theories Underpinning Diversionary Measures

¹Nadzriah Ahmad, ²Abdul Ghafur Hamid and ³Saodah Wok

¹Faculty of Law, Universiti Teknologi MARA (UITM), Shah Alam, Selangor, Malaysia

²Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, Selangor, Malaysia

³Kulliyah of Islamic Revealed Knowledge and Human Sciences,
International Islamic University Malaysia, Selangor, Malaysia

Abstract: The increasing numbers of child offenders serving sentence in the institutions across Malaysia is worrying. However, the effectiveness of the current system in reforming and rehabilitating the child offenders remain an open question because of the rates of reoffending among child offenders. The objectives of this paper are to examine such issues by highlighting theories underpinning diversionary measures that call for the departure from the retributive system that is already entrenched in the juvenile justice system in Malaysia. A mixed quantitative and qualitative approach has been adopted to identify the rates of reoffending among 432 child offenders who participated in the study. The findings revealed that despite undertaking rehabilitative programmes in the institutions while serving sentence, the rates of child offenders who reoffended are increasing.

Key words: Reoffending, child offenders, diversion, diversion theories, justice

INTRODUCTION

In Malaysia, the court for children is vested with the powers to impose sentencing orders on child offenders by virtue of Part X of the Child Act 2001 (hereinafter known as the 2001 Act). In addition, the criminal procedure code is relied upon when making sentencing orders in order to determine the punishable offences committed by the child offenders. The 2001 Act vested the powers in the court for children to send child offenders either to the Henry Gurney School or the Approved School (hereinafter collectively known as the institutions) when the child is found guilty of committing criminal offences under Section 91 (f) of the 2001 Act.

The 2001 Act provides that the aims of sending child offenders to the institutions are to give them the opportunity to be reformed, rehabilitated and for the purpose of repression of crime. However, the increasing rates of reoffending among child offenders is worrying because it calls into question the effectiveness of the aims of sending child offenders to the institutions. Therefore, it is imperative to examine the theories underlying the diversionary measures that call upon the need to divert child offenders from the traditional juvenile justice system in Malaysia and to subject the child offenders to diversion programmes. Drawing lessons from other countries in particular New Zealand, diversion

programmes have proven to be an effective tools in reducing the rate of reoffending among child offender (Maxwell *et al.*, 2004). At present, there is scarce literature in this area that highlights the need to examine the theories behind the implementation of diversionary measures among child offenders in order to prevent the adverse effects of the juvenile justice system on them.

The aims of this study are as follows; identify the rates of reoffending among child offenders; to examine the trends of criminal offences perpetrated by child offenders; to analyse the relevant theories underpinning diversionary measures that can reduce the rates of reoffending among child offenders and to propose reforms in the law in order to incorporate suitable mechanisms that can reduce the rates of reoffending among child offenders (Ajzen, 2005).

MATERIALS AND METHODS

The findings discussed in the article are derived from the mixed methodology approach that has been adopted in order to meet the research objectives highlighted above. Such approach is specifically chosen to ensure that the representative's opinions from the child offenders as well as the stakeholders are obtained and they both can add an overall strength to the study.

For quantitative study, cluster and stratified sampling were chosen in order to ensure that the findings obtained are representative of the population of child offenders in Malaysia. The 432 child offenders who were serving sentence across Malaysia participated in the cross-sectional survey and they were all below 18 year of age.

In relation to qualitative study, 25 officers from nine 9 different sectors had been identified as most suitable to take part in the semi-structured interviews due to their expertise in the field of juvenile justice system. The advantages of using mixed methods are that it provides a holistic view of the juvenile justice system in Malaysia by taking into account the views of both the child offenders and the stakeholders. Hence, the adoption of mixed methods adds an overall strength to the study conducted. The findings of this research are based upon both the primary and secondary data. In obtaining the primary data for qualitative study, the research instrument used is the interview schedules and the interviews were digitally recorded and were analysed in detail according to various coding and themes. On the other hand, survey was adopted when quantitative study fieldwork was undertaken with child offenders who were serving sentence in institutions located in peninsular Malaysia including Sabah and Sarawak (Hayes and Daly, 2003).

The secondary data in this research involved both primary and secondary sources obtained via library-based research. The primary sources include the 2001 Act and the criminal procedure code while articles from academic and referred journals, books, policies, online databases and documents collected from the stakeholders made up the secondary sources for this research.

MATERIALS AND METHODS

The roles of detaining institutions for child offenders in Malaysia: The court for children is vested with the powers to send child offenders to institutions across Malaysia as part of its sentencing powers by virtue of section 91 of the 2001 Act. Currently, the two detaining institutions that are established for child offenders who are serving sentence are the approved schools and the henry gurney schools. While the former is run for child offenders who are above 10 year of age and committed crimes that are less serious in nature, the latter is for child offenders whose age is above 14 year old and perpetrated crimes that are more serious in nature. The law seeks to ensure that by sending child offenders to the approved schools, the child offenders may be rehabilitated after undergoing certain programmes. On the other hand, one of the roles of Henry Gurney Schools is to ensure that

child offenders who are serving sentence will experience some form of reformation and for their repression of crime.

It is argued that the roles of the institutions as envisaged by the 2001 act may not be met in view of the numbers of child offenders who reoffended after they were released from these institutions. It is suggested that institutions such as the approved schools or the henry schools need to provide need based programmes for child offenders to ensure that the interventions programmes provided to child offenders help to meet their personal needs and can prevent them from reoffending (Shapland *et al.*, 2011).

Theories underlying diversionary measures: Scholars recognised the multiple dimensions of meaning given to the term diversion (Lynch, 2012). However, scholars seem to concur that the term diversion is associated with a process where child offenders are channeled away from the formal justice system to undertake programmes that can address the offender's criminal behaviour (Hasseltine and Howells, 2012). Through a comprehensive diversion mechanism, new zealand has succeeded in consistently keeping the prosecution rates at its lowest in the past 20 year where the police exercise diversion by issuing warnings, cautions and undertake alternative actions when dealing with the child offenders. In addition, the types of diversion that can be carried out may consists of making apology and paying compensation to the victims, perform a specified number of hours for community service work or to complete a development programmes and therapeutic treatment for drugs and alcohol addictions among others. Some of these types of diversion may consist of restorative justice elements where not only the needs of child offenders are addressed, the victims and the society's needs are also taken into account (Ajzen, 2005).

The rationale for implementing diversion programmes for child offenders is to ensure that they have the least minimum contact with the formal justice system in order to prevent them from experiencing the adverse effects of coming into contact with the criminal justice system. Advocates of labelling and the differential association theories believe that these theories lend support to the need to divert child offenders away from the formal justice system. The basic tenet that underpins the operation of labelling theory is that criminal labels that are attached to child offenders may increase the chances of reoffending among them because of its stigmatizing effects and consequently, the feeling of isolation they may experience as a result of labelling. In addition, the labelling theory also advances the proposition that once labelled by

an authority, the child offenders may experience self fulfilling prophecy that they are in fact criminals or deviants and this may lead them in becoming a lifetime criminals (McLaren, 2011).

The need to implement diversionary measures is also substantiated by the differential association theory that affirms child offenders are more likely to demonstrate antisocial behaviour if they are associating with others who display similar criminal behaviour patterns. Hence, when the child offenders are placed in the detaining institutions, these “schools of crime” expose them to an environment where they can have close associations with other child offenders. As a result, most likely the child offenders will experience more difficulty in the reintegration process with the society upon being released from the institutions. Closely related to the differential association theory is the social learning theory, advanced by scholars. This theory asserts that child offenders can follow the acts of others in two ways.

Firstly, child offenders may follow the action of others when they anticipate that certain rewards or punishment await them. Secondly, child offenders may also take the lead from others through observation they make.

In light of the theories discussed above, it can be submitted that the rate of reoffending may be reduced among child offenders if they are diverted from the formal justice system. Coming into contact with this system may contribute to them developing antisocial behaviour as a result of their contact and close association with other child offenders (Anonymous, 2015, 2014, 2013).

RESULTS AND DISCUSSION

Findings for quantitative study: Some pertinent preliminary findings are highlighted below in relation to child offender’s rate of reoffending and the types of offences committed by the child offenders.

Criminal history of child offenders: Table 1 depicts the overall rates of reoffending committed by child offenders who were serving sentence in the institutions. The said table demonstrates that 64.4% of child offenders had committed offences against property (i.e., lurking house trespass or house breaking, theft of motor vehicles, gang robbery, robbery, theft and assisting in the concealment or disposal of stolen property) followed by 12.4% of them who were involved with drugs related offences. However, a lower percentage of them were involved with offences against persons (6.8%).

The types of crimes demonstrated in Table 1 highlighted above are similar with the results obtained

Table 1: Criminal history of child offenders

Criminal history of child offenders	Previous convictions	
	Frequency	Yes (%)
Offences against property	47	64.4
Drugs related offences	9	12.4
Offences against persons	5	6.8
Total	*	*

Table 2: Sentencing orders imposed by the courts

Types of offences	Sentencing imposed by the courts	
	Frequency	Yes (%)
Offences against property	431	99.8
Drugs related offences	68	15.7
Offences against persons	47	10.0
Total	*	*

Nadzriah Ahmad december-march 2014-statistics of child offenders who are serving sentence in the institutions and have previous convictions before multiple response

from offenders who were convicted and serving sentence for the second time at the time when the survey was conducted as illustrated in Table 2.

Table 2 shows the types of offences that were committed most by the child offenders when the courts made sentencing orders against them. For instance, the highest number of child offenders were found guilty for committing offences against property (99.8% of the child offenders committed theft) followed by those who were involved with drug related offences (15.7% of child offenders were guilty for self-administered drugs) and the lowest percentage demonstrate the percentage of child offenders perpetrated offences against persons (10% of the child offenders were serving sentence for committing statutory rape).

In light of the findings depicted in Table 1, it can be inferred that child offenders who were serving sentence at the institutions when the survey was conducted already had previous convictions and they were not first time offenders. The rates of reoffending demonstrated in Table 1 above are congruent with the findings conducted in new zealand that provided child offenders who had undertaken diversionary measures committed less act of reoffending compared to those who went through the formal justice system (Maxwel *et al.*, 2002). Similarly, findings obtained from other jurisdictions such as the United states, united kingdom and Australia demonstrate lower reoffending rates among child offenders who had undertaken programmes under diversionary programmes (Latimer *et al.*, 2005).

Drawing from the studies undertaken in other jurisdictions, particularly in new zealand, the types of offences committed by child offenders demonstrate similar trends that is most of them committed property related offences (Maxwell *et al.*, 2002). These studies are affirmed by the committee on the convention on the rights of the

child 1989 (hereinafter referred to as the committee on the CRC) in general comment No. 10 entitled "Children's Rights in Juvenile Justice" (hereinafter referred to as general comment 10) that highlights the need to implement diversion programmes child offenders in view of the fact that the majority of them committed minor property related offences.

Findings for qualitative study: In support of the theories highlighted above, the officers who participated in the semi-structured interviews highlighted the following important points; child offenders felt stigmatized by the pre-trial process (from the point they were arrested until they were brought to the Court for the first time); similarly, the child offenders also felt stigmatized during the trial process because of the negative perceptions from the society and child offenders were exposed to school of crime while serving sentence at the institutions when they were associating with other child offenders.

The officers were also of the opinion that most of the child offenders were unaware of the reasons behind them being sent to the institutions and demonstrate no changes in their attitude after spending some time in the institutions. These findings lend support to the proposition advanced by scholars who affirmed, child offenders who had undergone diversionary measures feel more accountable for their criminal behaviour and hence, the rate of reoffending among them is lower compared to child offenders who came into contact with the formal justice system (Zehr, 1998).

Juvenile justice system in Malaysia the way forward: The increasing rates of reoffending among child offenders in Malaysia give a strong signal to the Malaysian government to respond to the calls made by the international community for the implementation of diversionary measures, especially when Malaysia has ratified the Convention on the Rights of the Child 1989 (hereinafter referred to as the CRC). Study 40 (3) (b) of the CRC advocates for member states to develop alternative measures such as diversionary measures for child offenders who come into contact with the criminal justice system in Malaysia. The committee on the CRC in its general comment no. 10 provides general guidelines on how Member States can implement diversionary measures when dealing with child offenders.

Drawing lessons from other jurisdictions in particular New Zealand, diversionary measures can be implemented in Malaysia by implementing the following intervention measures that address the needs of the offenders, victims and the community:

- Offering apology to the victims
- Offering reparation to the victims
- Community work that address the specific needs of the offender
- Education programmes
- Counselling programmes
- Religious programmes
- Career development programmes
- Self-development and competency programmes
- Rehabilitation and treatment programmes that address drugs and alcohol addictions among the child offenders
- Rehabilitation and treatment programmes that address mentally ill issues among the child offenders
- Rehabilitation and treatment programmes that address sexual issues among the child offenders
- Family support system

It is submitted that the above recommendations can help to instil the feelings of accountability in child offenders and therefore, these programmes may facilitate to develop self-realization in child offenders that their anti-social behaviour is detrimental to the society (Braithwaite, 1989). However, for the above programmes to be successful in Malaysia, the religion, culture and race of the child offenders need to be taken into account in order for them to experience holistic changes that can help them becoming a responsible member of the society.

CONCLUSION

In line with the developments of diversionary measures that are taking place in the international community, it is indeed timely for Malaysia to move forward and implement these measures when dealing with the child offenders. The need to implement diversionary measures is imperative in order to prevent the adverse effects of coming into contact with the juvenile justice system on the child offenders in line with the theories highlighted above. The implementation of diversionary measures also provides a positive statement to the international community that as a member state to the CRC, Malaysia is committed in ensuring that the child offenders are protected from the detrimental effects of the formal justice system. Drawing from the best practice in other countries, particularly New Zealand the implementation of diversionary measures can help to reduce the rate of reoffending and contribute to an overall wellbeing of child offenders. These positive effects lend strong support to the theories advanced above.

ACKNOWLEDGEMENTS

This research was supported by Exploratory Research Grant Scheme (ERGS) that was obtained from the ministry of education and headed by associate professor Dr. Zaiton Hamin, faculty of law, universiti teknologi MARA, Shah Alam, Selangor.

REFERENCES

- Ajzen, I., 2005. Attitudes, Personality and Behavior. 2nd Edn., McGraw-Hill Education, Berkshire, UK.,.
- Anonymous, 2013. The same trend can be seen in child and youth prosecutions. Ministry of Justice, New Zealand.
- Anonymous, 2014. Trends in child and youth prosecutions, court statistics for 10-16 years old in 2014. Ministry of Justice, New Zealand.
- Anonymous, 2015. Similarly, there is also a decrease in trends in child and youth prosecutions. Ministry of Justice, New Zealand.
- Braithwaite, J., 1989. Crime, Shame and Reintegration. Cambridge University Press, Cambridge, England, UK., ISBN:0-521-35668-7, Pages: 229.
- Hasseltine, K. and K. Howells, 2012. Community-Based Corrections. Crime and Justice: A Guide to Criminology, Marmo, M., W.D. Lint and D. Palmer (Eds.). Thompson Reuters, Canada,-pp: 507.
- Hayes, H. and K. Daly, 2003. Youth justice conferencing and reoffending. Justice Q., 20: 725-764.
- Latimer, J., C. Dowden and D. Muise, 2005. The effectiveness of restorative justice practices: A meta-analysis. Prison J., 85: 127-144.
- Lynch, N., 2012. Youth Justice in New Zealand. Thomson Reuters Core Publishing, Canada.,
- Maxwell, G., J. Robertson and T. Anderson, 2002. Police youth diversion: Final report. New Zealand Police and Ministry of Justice, The Crime and Justice Research Centre, New Zealand.
- Maxwell, G., J. Robertson, V. Kingi, A. Morris and C. Cunningham, 2004. Achieving effective outcomes in youth justice: An overview of findings. Ministry of Social Development, Wellington, New Zealand.
- McLaren, K., 2011. Alternative actions that work: A review of the research on police warnings and alternative actions with children and young people. Police Youth Services Group, New Zealand Police National Headquarter, Wellington, New Zealand.
- Shapland, J., G. Robinson and A. Sorsby, 2011. The Offenders' Views: Reoffending and the Road to Desistance. In: Restorative Justice in Practice: Evaluating What Works for Victims and Offenders, Shapland, J., G. Robinson and A. Sorsby (Eds.). Taylor & Francis, Park Drive, Maldon, England, ISBN:978-1-84392-846-1, pp: 162-178.
- Zehr, H., 1998. Justice as restoration, justice as respect. Criminal Justice Stud., 11: 71-87.