LEGALITY: JURNAL ILMIAH HUKUM

Journal homepage: http://www.ejournal.umm.ac.id/index.php/legality

Reforming Malaysia's Juvenile Justice System: A Critical Analysis of Pre-trial Diversion within the Framework of International Standards

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Article

Keywords:
Juvenile Justice System; Pre-trial Diversion; International Standards

Article History
Received: Mar 19, 2025;
Reviewed: Apr 5, 2025;
Accepted: Nov 7, 2025;
Published: Nov 17, 2025.

Abstract

This paper aims to scrutinise the Malaysian juvenile justice system and the negative consequences of the lack of pre-trial alternative measures in dealing with children. Juvenile delinquency is a social problem that has attracted numerous discussions from different quarters. One of the primary issues in this area is how to respond to complex, multifaceted problems involving children in conflict with the law. Through doctrinal analysis and comparative frameworks with international standards and legal practice in England and New Zealand, this study highlights the positive impact of diversionary approaches on recidivism, rehabilitation, and restorative justice. Malaysia's heavy reliance on formal adjudication is inconsistent with several international standards. This paper advocates amending the Child Act 2001 and the Criminal Procedure Code to implement pre-trial diversion, with police and prosecutorial discretion to encourage restorative justice alternatives in minor and non-violent cases. This change would align Malaysia's system with international norms, improve children's rights, and advance the justice system toward greater rehabilitation and restoration.

INTRODUCTION

Regardless of a country's socio-economic conditions, Malaysia's population is bound to increase. UNICEF estimates the child population in 2023 at 2,415,319,658, representing 25% of the global population. Children also seem to be the most vulnerable members of the population, as a consequence of their physical, psychological, emotional, and social immaturity. They need protection, care, and attention to help them nurture and reach their full potential, and, in the process, ensure their well-being and the protection of their rights. Concerning the protection of children, one of the most important aspects that needs to be addressed is the involvement of children in criminal activities. The engagement of children in criminal activities is one of the most complicated issues from both a legal and ethical standpoint in any legal system. With that being said, most juvenile justice systems emphasise the need to create appropriate legal responses to children in conflict with the law, particularly in relation to the various levels of the juvenile justice processes.

Alongside the growing challenges associated with the treatment of children in conflict with the law, the policymakers, judiciary, and law enforcement of Malaysia have systematically worked to resolve some issues. A closer examination reveals that the current approach to juvenile justice in Malaysia still overwhelmingly relies on formal adjudication, focusing more on legal punishment than on retrogressive rehabilitation and restoration. (Mustaffa, 2016). There is continuous and growing criticism regarding the treatment of children in the juvenile legal system of Malaysia. The most pertinent basis for this critique is the high volume of juvenile cases recorded, the increasing rate of recidivism, and the escalating number of child offenders confined in detention centres and prisons. The Department of Social Welfare of Malaysia (2016, 2019, and 2023) reported that in 2015, Malaysia recorded 4,569 criminal cases involving children, rising to 5,342 in 2020 and then decreasing to 3,013 in 2022. The data indicates that the recorded cases of children who have committed a crime remain significantly high, with the slight reduction in 2022 being somewhat worrying.

Concerning the sentencing, the data indicate an alarming number of children who are held in detention centres and prisons. According to the Department of Social Welfare's 2019 report, 724 children were held in prisons, approved schools and the Henry Gurney Schools. The 2022 statistical record further indicates that as many as 520 children were confined in prisons, approved schools, and the Henry Gurney Schools (Department of Social Welfare, 2022). Despite the efforts to rationalise detention in prisons and centres, research has shown that contact with such institutions has profound negative impacts on children's self-esteem and their emotional and

mental health (Junger-Tas & Dünkel, 2009). The effect of such treatment on children is, without a doubt, worse and more lasting. The effects are apparent across numerous contexts, primarily in the psychological, emotional, educational, and socio-cultural aspects of children.

Numerous studies indicate an association between child detainees and the trauma and stress they undergo (Smith, 2020). Stress in children can manifest in the form of severe mental and emotional issues, including anxiety, depression, and post-traumatic stress disorder (PTSD). In addition, the assumption of the term and label offenders might impose a stigma that blocks resources and support, including access to mental health care (Dmitrieva et al., 2012; Singer, 2003). It may reduce the possibility of their reintegrating into the community and society. The risk of recidivism is likely very high, posing a threat not only to the individual but also to society (Craig et al., 2020). Worse still, the prison environment may promote the commission of other criminal offences and lead to further imprisonments, thus establishing an even more endless recidivism cycle. There is, however, an even more troubling aspect to the cycle that has been suggested in the literature that concerns the prediction of future offences that comes from the fact that children are imprisoned (Green et al., 2020). It contributes to the educational gap, thereby repeating the cycle (Aizer & Doyle, 2015).

Moreover, a high number of recidivisms recorded among child offenders reflects a significant weakness of the current Malaysian juvenile justice system. The rate is one of the key indicators that the system is not effectively rehabilitating child offenders or addressing the root causes of their criminal behaviour. In the context of juvenile justice in Malaysia, the high number of recidivisms among child offenders is alarming. Based on data from the Department of Statistics Malaysia, an estimated 4,569 juvenile cases were recorded in 2015, of which 417 were recidivists (Department of Social Welfare, 2016). By 2020, this number had grown to 5,342 recorded juvenile cases, of which 426 were repeat offenders with criminal records (Department of Social Welfare, 2021). The recorded figures on recidivism as an indicator of system effectiveness suggest a profound lack of insight, as well as effectiveness, about the issues underpinning criminal activity in child offenders.

The previous studies have dealt with the legal issues and challenges in the juvenile justice system in Malaysia, especially regarding the treatment of children who come into conflict with the law. Unlike Malaysia, which still relies on formal adjudicative processes in a juvenile justice system, many other countries have shifted to a more flexible approach. More importantly, many legal systems have come to realise that punitive measures should come secondary to preventive, restorative and rehabilitative options. Such an approach makes far greater sense, especially in light of Malaysia's worrying statistics on juvenile offending. Further, the absence of any attempt within the justice system – be it pre-trial or trial – to divert children away from

formal processes reinforces the concern that the juvenile justice system in Malaysia is still caught in a 'one size fits all' paradigm.

The current Malaysian juvenile justice system lacks pre-trial processes that may offer children in conflict with the law restorative justice opportunities. The current law regarding children in conflict with the law remains adjudicative and formal, with no flexible ancillary processes available. Under the existing legal framework, the pre-trial criminal proceeding is conducted on a formal basis, without regard to the type, nature, or gravity of the offence. Children undergo the same criminal pre-trial processes as adults, a practice which is justified on the grounds of the need to protect society, even though they remain highly underdeveloped in physical, mental and psychological aspects.

The Children Act 2001 and the Criminal Procedure Code, as primary legislations form the framework for the criminal justice process, stipulate that every child accused of committing an offence is subjected to pre-trial procedures in a similar manner as adults, which include the process of arrest, remand, detention, interogation, search, investigation, and prosecution of a criminal case, without a statutory option for diversion or other alternative measures. The framework does not seem to differentiate between serious offences and petty or non-violent offences, and, thus, risks stigmatising children and exposing them to criminogenic risks. This position and approach deliberately contravene the international norms and practices. For example, the Convention on the Rights of the Child (CRC), the Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and the Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) provide the basis for this position.

The CRC, as a children's rights treaty, stipulates that state parties shall, as far as is suitable and desirable, avoid the use of the judicial process whenever possible, and in all matters involving children (Article 40.3(b)). The CRC advocates the use of informal processes to address children who commit offences. There is a clear expectation that state parties will develop child-centred juvenile justice legislation and policies. Additionally, the Beijing Rules stress, with the necessity of informal legal proceedings in dealing with juvenile delinquency to avoid the risk of negative legal socialisation, criminalisation, and the associated stigma (para 11). It recommends the use of other alternative measures, in place of formal adjudication, such as reprimand, education and training, fine, restitution, community service, discharge and binding over (Para 18). As with the Riyadh Guidelines and the Havana Rules, both advocate diversion in handling children in conflict with the law. Guideline 52 of the Riyadh Guidelines emphasises the use of diversion as the primary approach throughout criminal proceedings. It calls upon all jurisdictions across the world to, as much as is

practicable, substitute formal legal actions with informal ones in the entire juvenile justice systems

The current Malaysian juvenile justice system lacks provisions for diversionary and alternative measures, including at the pre-trial stage. Pre–trial diversionary measures allow police to avoid being in direct contact with the children they handle as law offenders in formal criminal processes. The primary focus of this alternative measure is to shield low-risk children from any adverse consequences likely to arise from direct contact with the formal adjudication process (Lipsey, 2009). Instead of going through formal processes, prosecutors and police are empowered to give either a simple reminder or a warning to the child or to stop the investigation altogether. In cases where children are accused of minor offences or non-violent offences, the authorities may refer the matter to the youth council for further deliberation. Several scholars have argued that any action which is likely to be taken in the early stages of the court process is vital if a child is to be protected from the consequences of court adjudication. McCord et al. (2001) described how, at this stage, decisions shifted more toward the needs of the child than toward the offence. Pre-emptive and restorative forms of justice include enabling children to make decisions and to exercise life options (Smith, 2017; Zane et al, 2016). All decisions, in the end, must focus on the needs and situation of the child, with no biases, simplifications, or competing assumptions (Syahr et al., 2023).

Also, within the above, attention should be given to reducing recidivism, promoting rehabilitation, and addressing inequities in construction (Barrett et al. 2019; Wiley & Esbenson 2016; Wilson et al. 2018). The pre-trial stage of criminal proceedings is one such stage which Di Gennaro (2021) describes as a golden opportunity to commence tackling the more pressing issues afflicting children. In a deeply troubling development, Balqis et al. (2025) observed that diversion in the juvenile justice system is one of the most seriously overlooked aspects in Malaysia. Much doctrinal and empirical research has shown how diversion operates and the benefits it delivers to the juvenile justice system. Diversion, in the words of Dünkel (2009) and Smith (2017), seeks to avoid the negative consequences of crime labelling. Moreover, Wilson & Hoge (2013) posit that diversion programmes affect recidivism, while Green et al. (2019) note the need to address police discretion and the broader system that supports diversion. The legal gap in juvenile matters in Malaysia remains unexplored, particularly the impact of the absence of a pre-trial diversion system.

Hence, this paper examines the pre-trial stage of the Malaysian juvenile justice system. It aims to answer the primary question of how 'the balancing of the rights and interests of a child in conflict with the law, and the objectives of the Malaysian juvenile justice system, is achieved'. Next, 'what additional reforms does the pre-trial diversionary system of the Malaysian juvenile justice framework require to align with the international standards?' The preceding queries require an analysis of the country's

juvenile justice system and its animating principles, and whether those principles genuinely adhere to the CRC and other international instruments and foundational principles that relate to the rights and best interests of the child. This is necessary in the formulation of any law or policy intended to further and protect the rights of any human being, particularly children. The legislative gaps relating to implementing diversionary pre-trial approaches, especially those that bring children and the criminal justice system together, are just as deplorable. It must, however, be stressed that the children's legislative and social policy plight is such that meeting their basic requirements will tend to stigmatise them, become a source of psychosocial trauma, and increase the chances of reoffending in the future.

In light of the above, this paper suggests that the enhancement of responsive restorative justice, rehabilitation, and reintegration, especially in relation to children, should be incorporated into the Child Act of 2001(CA) to include strategically responsive pre-trial procedures. Through case studies of England and New Zealand, the paper illustrates how legal safeguards for children's welfare and best interests can be achieved through contextually tailored prosecutorial and police discretion. The Malaysian juvenile justice system, this paper suggests, is in dire need of reform to move from the punitive, retributive, and rigid approaches to rehabilitation, restorative, and reintegration.

METHODS

This research employs a qualitative methodology that combines doctrinal legal research with comparative analysis. Doctrinal legal research involves the systematic and analytical study of relevant legal concepts, laws, and case law (Hutchinson et al., 2012). It applies to this study because it entails evaluating the legal policy and framework governing the pre-trial processes operating in the Malaysian judicial system. This method allows the researcher to systematically assess the laws, identify any missing legal provisions, and develop an appropriate response to the legal problem.

Moreover, the research examines correspondence, divergence, and the optimal collection of various legal systems using comparative law. It examines the comparative legal study of pre-trial criminal proceedings in the Malaysian juvenile legal system, juxtaposed with the international standards set out in relevant international legal instruments. It also analyses the law, legal doctrine, and case law of other jurisdictions, specifically England and New Zealand, focusing on the pre-trial criminal process. This research aims to enhance the Malaysian juvenile justice system by offering constructive recommendations that conform to the preferred international benchmarks and practices.

In terms of references, this research draws on both primary and secondary sources. Among the primary sources referred to are the Child Act 2001, the Criminal Procedure Code, the Oranga Tamariki Act of 1989, England's Crime and Harassment

Act of 1988, the Convention on the Rights of the Child (CRC), the Standard Minimum Rules for the Administration of Justice (the Beijing Rules), the Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), and the Guidelines for the Prevention of Delinquency (the Riyadh Rules). It also employs a range of secondary sources, including reports from the Department of Social Welfare Malaysia and other policy documents, academic articles, periodicals, and assorted compilations, to underscore the necessary contextual frameworks.

RESULTS AND DISCUSSION

The CA, the outcome of legal framing following the adoption of the CRC in 1995, is the main statute governing the Malaysian juvenile justice system (Mustaffa and Kamaliah, 2010). There is no doubt that the introduction of the Act has resulted in the development of a more systematic legal framework, raising the bar for Malaysian juvenile justice. Nevertheless, a close scrutiny of the Act reveals that it is not all-encompassing, as there are areas that require further refinement. Regarding the procedure at the pre-trial stage of criminal proceedings, it is pertinent to note that the CA continues to emphasise the formal adjudication process. Even though the Act recognises the need for a separate criminal process for children, it still essentially maintains that children are subjected to formal adjudication in criminal matters. Except for a few significant exceptions, the criminal procedures are the same as those for adults. It does not offer separate procedures or discretionary options for the pre-trial process. It means that any child suspected of committing a criminal offence is required to undergo a process similar to that of adults, comprising arrest, remand, investigation, search, and interrogation, along with other procedures. A legal distinction between children and adults for the criminal pre-trial stage of the judicial process, especially from the perspective of juvenile justice, is lacking. The current procedure is also imbalanced, as all child suspects are treated the same, irrespective of the type, nature and gravity of the offence. It lacks an understanding that children are still in the process of development and, therefore, are more susceptible to influence, manipulation, or other forms of coercion or undue pressure.

Limited power of the police and the Public Prosecutor

It is worth noting that the current CA does not include the exercise of discretionary power by police officers or public prosecutors to remove children from the formal criminal process, particularly in petty, non-violent criminal cases (Mustaffa, 2016). In this context, both are guided by the general provisions of the Criminal Procedure Code (CPC), the main statute that regulates criminal procedure in Malaysia (Sidhu, 2022). An in-depth analysis of the CPC indicates that police officers and public prosecutors exercise their discretion regarding children, and that this discretion is minimal, especially during the pre-trial phase.

Sections 108 and 109 deal with the police powers for investigating seizable and non-seizable offences. Section 108 of the CPC defines non-seizable offences and describes the processes to be followed. As for "non-seizable" offences, police "refer the complaint to the Magistrate for further action" (Section 108(1) of the CPC). The Magistrate, upon receiving the complaint, may act under sections 133 to 136 of the CPC (Mustaffa et al., 2024). In both instances, "Every police officer who is not below the rank of sergeant, or any person holding charge of a police station, may investigate seizable offences without an Order to Investigate" (Section 109 of the CPC). In any of these instances, an Investigating Officer who is informed of the offence is obliged to "send the First Information Report to the Public Prosecutor (PP) and then go to the crime scene to start the investigation" (Section 110 of the CPC). In addition to these, the police may also decide, in two particular circumstances, not to investigate at all. First, the police may discontinue the investigation if the criminal offence is not severe enough to require investigation. Second, the police may decide to close an investigation when there is insufficient evidence to justify further steps. In these circumstances, the police officer is obliged to state the rationale for not pursuing further investigation in the report. It allows the police to avoid investigating discretionarily when the case concerns a minor, involves a less serious criminal offence, and lacks evidence to support prosecution. It is essential to highlight that this provision is very general and applies to all matters which fall within the province of either children or adults.

Following the reasoning in the previous paragraph, the law, as it stands, allows the police to exercise their discretion. If the offence is minor or the evidence is scant, they may choose not to pursue the investigation. Furthermore, the police are bound to pursue all criminal matters involving children, including those involving allegations against an adult. In this regard, the police's decision is general and does not address the child's special circumstances. As regards to the public prosecutors, they are responsible for initiating and pursuing legal proceedings against an accused individual. In the Malaysian legal system, the role of Public Prosecutors is extensive and multifaceted. Article 145 of the Federal Constitution grants the Attorney General discretionary power, at their discretion, to commence, conduct, and discontinue any proceedings concerning an offence, other than those which fall under the jurisdiction of the Syariah Court, the native court, or the court martial. In addition, subsection 376 of the CPC assigns the role of Public Prosecutor to the Attorney General, thereby bestowing them with unparalleled and complete authority and supervision over all criminal prosecutions and proceedings conducted under the CPC (Sidhu, 2022).

In the realm of criminal prosecution, the prosecutor is afforded a wide range of discretionary authority, which includes determining whether to charge a suspect with an offence or not, what type of offence to charge, and which statute to charge the suspect under, as well as in which court the suspect is to be charged. Moreover, the

prosecutor has the authority to designate the court in which a particular case is to be pursued and to discontinue any criminal proceedings they have initially instituted. It lies beyond the power of courts to meddle with or compel the prosecutor to initiate or discontinue any criminal action (*Long Bin Samat & Ors v the Public Prosecutor, 1974*). The Prosecutor, within their allocated autonomy, is expected to act in the interest of justice. With the foregoing power, the expectation is rationality, proportionality, and effectiveness in achieving the expected outcome, and decisiveness that is not unduly prejudicial to all parties. Unfortunately, for a child in conflict with the law, it appears the prosecution has not been given the power and authority to pursue diversionary options. The current law is silent on the legal framework relating to informal and diversionary alternatives. Accordingly, the prosecutor is not conferred with any discretionary power to divert any child suspect to informal or alternative measures. Thus, the decisions animated by the punitive reasoning and taken at this stage regarding child suspects are assumed to operate and be treated the same way as the reasoning applied to adult suspects.

The Absence of Diversion: Legal and Policy Implications

It is necessary to note that the current Malaysian juvenile justice system, particularly the pre-trial stage, is overly and excessively bound to a formal criminal adjudication system. Any child alleged to have committed an offence is subject to the pre-trial criminal processes comprising arrest, remand, search, investigation, interrogation, and a plethora of others, as stated in the CA and CPC. Within the current legislative framework, no provisions exist that empower enforcement officers to handle or channel children to informal diversionary or alternative measures. The formalistic position taken by the law is that all offences must be dealt with in the same manner, without differentiating between the type or gravity of the offence —severe, trivial, non-violent, or low-order. This rigidity in the legal position is the very opposite of one of the key principles of juvenile justice: proportionality. Failing to disregard this process by claiming that all offences are serious, trivial or otherwise, gives children no choice but to lose the opportunity to be dealt with more appropriately. In fact, certain behaviours of delinquency can be appropriately dealt with through counselling, community work, and family-centred interventions. The ironic, counterintuitive, and counterdevelopmental position taken is that children in all categories, irrespective of the supposed offence, are the most formally adjudicated.

In other words, the current law, which emphasises formal adjudication, has been misapplied and overused in cases involving children. It is punitive in nature. This current position highlights the fundamental shortcomings of the juvenile justice system in Malaysia. It is the opposite of what has been outlined in the international instruments, as expressed in the Beijing Rules, the CRC, the Riyadh Guidelines, and the Havana Rules, which emphasise the need for avoidance and proportionality in engagement at both the community and juvenile legal system levels. As a result, the

need for restorative changes to the Malaysian juvenile justice framework goes beyond mere preference. It reaches the level of a priority to bring balance to the juvenile's order and the public order at the same time.

Comparative perspective: Lessons learnt from England and New Zealand

A close examination of juvenile justice systems worldwide reveals that they have become widely recognised and utilised alternatives for addressing juvenile delinquency. Pre-trial diversion programs are types of diversion programs that include mediation, reconciliation, family conferences, community service, and other programs aimed at restoring and rehabilitating the individual and helping them change the negative aspects of their life. Pre-trial diversion, as in wide-ranging programs, seeks to provide resources and assistance as needed, allowing the child to become socialised and reintegrated as responsible, law-abiding citizens. General diversion, and more specifically pre-trial diversion, has received widespread support from policymakers, practitioners, and child advocates as a more humane and practical approach to the juvenile justice system (Dünkel, 2009; Smith, 2020; Green et al., 2020).

In practice, many juvenile legal systems have adopted diversion at all stages. References to countries such as England and New Zealand indicate that their diversion laws are comprehensive and well-structured. The laws provide comprehensive provisions covering various aspects of diversion, including principles, procedures, facilities, programs, and enforcement. It ensures that diversionary methods and strategies can be applied at all stages of the cases, especially pre-trial, for children, effectively eliminating the need for trial proceedings (Wilson & Hoge, 2013).

1. England

The primary statutes governing diversion in England are the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Crime and Disorder Act 1998. These Acts allow diversion to be implemented at any phase of the juvenile legal procedure. These Acts provide a well-organised and well-structured legal framework for implementing diversion.

The Crime and Disorder Act 1998 provides a comprehensive, systematic, and organised procedure and guidelines for implementing diversion from the outset to its conclusion. Individuals and organisations involved in running the systems are systematically assigned specific tasks to ensure the diversion's primary objectives are effectively implemented (Section 37 of the Crime and Disorder Act 1998). Briefly, each local authority is given a mandate and the authority to organise youth justice services within its area. The local authority, in collaboration with the Police, the Secretary of State, and the provider of Probation Services, is required to set up Youth Offending Teams (YOTs) (Section 37(1)). The YOTs are mandated to design, coordinate, and implement youth justice services and the youth justice plan for all children under their jurisdiction (Sections 37 & 39 (7)).

Regarding pre-trial diversions, the Legal Aid Sentencing and Punishment of Offenders Act 2012 confers on the police the power to issue a caution or a conditional caution to a child who commits, or admits committing, a crime, even though there is sufficient evidence to charge them. Sections 135-137 state three circumstances in which the police may opt not to charge the child and divert the child from the formal judicial system. Firstly, the police may drop any charge against the child after the interview reveals that the child is not blameworthy for committing the offence. Secondly, the police may also choose to discontinue criminal action against the child if the offence is categorised as a minor or petty case. Lastly, the police may exercise their discretion to reprimand or issue final warnings to the child, taking into account the nature and extent of the offences and the circumstances of the case. In addition to issuing a final warning, the police will refer the child to the Youth Offending Team (YOT) to prevent further issues. The YOT shall assess the case and determine the appropriate diversionary program for the child. The diversionary program aims to educate children and reintegrate them into society. It also seeks to prevent them from reoffending.

The studies disclosed that diversion programs have been successfully implemented in England. The report revealed impressive data on juveniles. It mentions that 103,100 children were stopped and searched, as recorded in the year ending March 2024 (Justice Board, 2024). Out of that number, 78% of cases resulted in 'No Further Action'. There were 58,900 arrests of children for offences recorded up to the year ending March 2024. The number indicates a 46% decrease compared to the year ending March 2014. The report further revealed an impressive fact about children first entering the youth justice system. It disclosed that the number of first-time entries into the Youth Justice System in 2024 was 8,300. It represents a 3% decrease compared to the recorded cases in 2023. The report also reveals that the number of children who received cautions or sentences in the year ending March 2024 was 13,700, a 67% decrease from 10 years prior (Justice Board, 2024). Overall, this report demonstrates that the diversionary programs implemented in Wales and England were effective in addressing children's needs. It has recorded a sharp decrease in the number of children referred to the formal adjudication process under the juvenile legal system. The report highlights that the decline is mainly attributed to the implementation of various diversionary programs adopted by the system.

2. New Zealand

Restorative justice practices have been embedded in New Zealand's juvenile legal system for several years now. One of the primary legal documents concerning the involvement of children and their families is the 1989 Oranga Tamariki Act. The Act is now referred to as the Children's and Young People's Well-being Act and is part of New Zealand's youth justice system. The Act has revolutionised the youth justice system by shifting the framework from a punitive to a restorative one. The aims of the

youth justice system have also changed, now including reducing system expenditures, increasing diversion and restorative justice, empowering victims, strengthening families and communities, and implementing culturally appropriate practices in the youth and community justice systems. The 1989 Oranga Tamariki Act remains the most relevant legislation within New Zealand's youth justice system. The Act aims to strengthen community and family ties, empower victims, and develop culturally relevant diversionary strategies to reduce reliance on diversionary justice. It encourages young people to critically reflect on their conduct to participate in restorative justice processes that centre on rebalancing and healing broken relationships through restorative rehabilitation.

The objectives are to improve the situation of young people without compromising the public order and safety by reducing their engagement with the formalisation of the justice process (Cleland & Quince, 2014). Article 5 of the Act states that, in all cases, criminal proceedings should not be commenced if the case may be resolved by other means, except when this would be against the public interest. There is also the option of pre-trial diversion, which is discretionary in nature (Section 209) and may be offered by the police. As to pre-trial diversion, the Act permits police to exercise certain powers in relation to children at the primary school level. The police officer who is said to be within the contemplation stage of the process of instituting judicial proceedings against a minor or adolescent, either based on an alleged lie or a confession, is also a person in whom some level of discretion is exercised. It is reasonable to argue that the only option is to exercise caution, at least if the situation is not entirely anomalous, the crime in question is severe, and the minor is a first-time offender (Section 208).

The evidence supporting the pre-trial diversionary tactic as practised in New Zealand is remarkable. With the advent of this practice, the overwhelming majority of juvenile cases resolved were not adjudicated judicially. As reported, Polglase & Lambie (2024) indicated that the youth crime rate dropped dramatically from 743 per 10,000 in 2010 to 312 in 2018, representing a decrease of 58%. There was also a reported 73% reduction in the number of children and minors prosecuted and charged in court between 2008 and 2018. Moreover, the 2024 report from the Ministry of Justice indicated that the majority of cases involving children and youth were resolved by police caution or youth aid diversion. The youth or children's court prosecution rate also seems low, at 75 per 10,000 children, as reported (Youth Court of New Zealand, 2024). Overall, the data reveal that diversionary strategies evidently succeed in reducing the prosecution of young and child offenders by police through prosecution diversion programs.

Other studies have explained how England and New Zealand case studies corroborate the extent to which pre-trial diversion policies have been implemented. In particular, the outcome metrics confirm that the model works and that the number of

children formally processed as 'criminals' has decreased significantly. Other studies argue that restorative and rehabilitative diversionary programs extend to primary and secondary offenders, addressing the underlying justice issues. In this instance, this applies only to children who have been formally adjudicated in litigation, particularly in severe protective offence cases. Such cases may involve grievous bodily harm, sexual offences or other nefarious deeds. There is very positive data on children in this category. It indicates that there are more flexible and creative ways to deal with juveniles in trouble with the law. Such approaches, which include the rehabilitative and restorative community model, are positive. This case also carries significance for other contexts, particularly Malaysian ones. It is a country where juvenile justice systems are still being developed. Malaysia, alongside other nations, needs to integrate pre-trial diversion, advocate for other diversionary systems, and make it the centrepiece of the juvenile justice system.

Reforming the Malaysian juvenile justice system: pre-trial diversionary framework

The value of the juvenile legal framework in Malaysia is irrefutable in the context of harmonising the system with contemporary international norms. On a global scale, the law remains stagnant; other countries have adopted pre-trial diversionary policies. These policies fulfil the targeted population's differentiated requirements while reasonably justifying state intervention. It centres on the child, guaranteeing their legal rights, safety, and opportunities for maximum development within the sociopolitical system. The works of psychologists and other scientists on the cognitive development of the child ought to be given adequate regard in the formulation of the law. The fact that children have deficiencies in the physical, psychological, and mental domains, as well as in maturity, must be recognised when drafting relevant legislation to address them.

Furthermore, the pre-trial diversionary approach enables more customised and developmentally appropriate interventions for diverse situations. It is understood that not all offences are of the same gravity; lesser and non-violent offences ought to be treated differently from felonies. Such an approach ensures the reaction is tailored to the child's distinct scenario. Moreover, the comprehensive consequences of primary and secondary contact with a legal system, including the pronounced stigma, trauma, and labelling, with an adjudication system on children, should be the subject of profound and thoughtful consideration, including possible recidivism. Lastly, pre-trial diversion programs generally have greater monetary value than programs involving detention or formal court proceedings. This value is derived from diversion programs that detention facilities offer. Community programs provide more value than keeping youth in detention facilities.

Given this, it is implied that the present law on juvenile justice, the CA, should be amended by adding a new chapter on pre-trial diversion. The latest chapter should

include detailed guidelines on pre-trial diversion, allowing police and prosecutors to exercise discretion in diverting children from formal prosecution in cases involving minor, non-violent offences. The pertinent aspects of this new chapter on the CA are outlined in Figure 1.

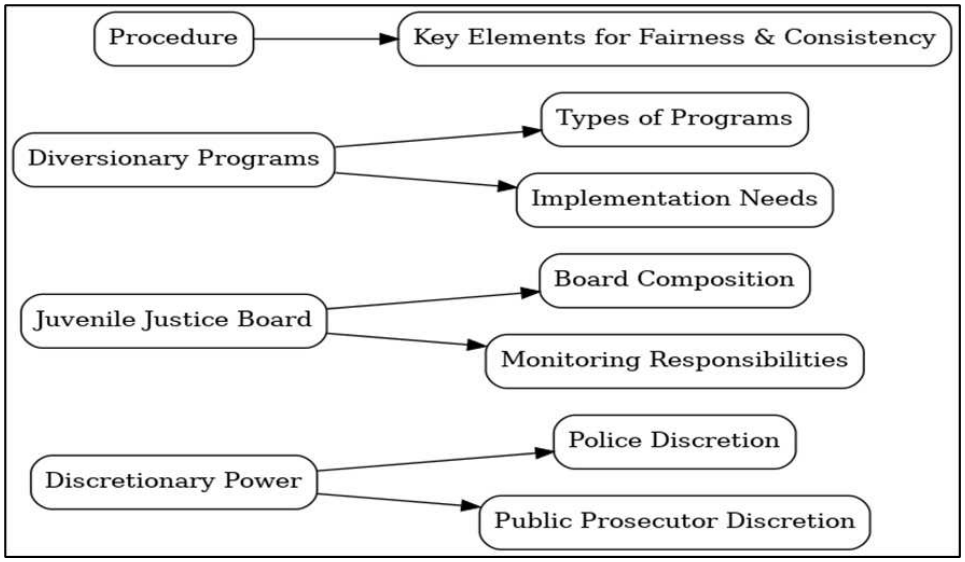

Figure 1. Proposed Legal Framework for Pre-trial Diversion

a. *Discretionary power of police and public prosecutor:* This proposed chapter should include stipulations on the powers of police and public prosecutors to divert children. As for the police's discretionary power, the proposed provisions should empower the police to divert children in certain situations and circumstances without referring them to the public prosecutor's office. In the same way, the proposed chapter must stipulate in detail the scope of the prosecutor's power. Such discretion should be exercised in accordance with specific criteria. In other words, the proposed chapter needs to define the the requirements for eligibility of diversion by both the public prosecutor and the police, such as the nature and type of offence which warrants diversion, the circumstances under which diversionary options may be employed, the conditions which must be met to justify diversion, the factors which should be taken into consideration in the decision-making process, victims' consideration, and the procedure to be used which may include the processes.
b. *Juvenile Justice Board:* The chapters should articulate which bodies are responsible for monitoring the implementation of pre-trial diversion programs. The proposed body should include relevant stakeholders, such as members of the judiciary, the public, law enforcement, NGOs, the community, and other relevant bodies. The proposed bodies' members' cooperation will permit a holistic, integrated collaborative approach to the diversion process. The proposed bodies will

monitor the implementation and operation of the pre-trial programs. In addition, the supplementary administrative bodies should be allocated an appropriate staff quota necessary to perform the applicable legal and administrative tasks.

c. *Diversionary programs:* There should be diversionary programs tailored to children that describe the pre-trial processes and the anticipated duration of each program. The programs are mediation and reconciliation, family conferences, probation, bail, counselling, vocational training, group and peer counselling, and mentorship. The challenge of personnel and facilities that are not adequately equipped and trained poses a significant barrier to implementing the programs. The integration of children into the programs outlined requires collaborative partnership with relevant agencies, such as the Department of Social Welfare of Malaysia and vocational training centres.
d. *Procedure:* The need within the pre-trial stage of criminal processes is the effective implementation of diversion. The practical implementation will facilitate diversion processes within programs.

The balance pre-trial diversion on the CA conditions will comply with Malaysia's international obligations. It will enhance Malaysia's legal system, which is humane, progressive, and child-friendly, further bolstering the system's protective mechanisms.

CONCLUSION

Revising the juvenile justice system in Malaysia will better protect children's rights. In addition, it will reduce the socio-economic costs associated with juvenile delinquency and improve the country's socio-economic conditions. Maintaining less punitive approaches to working with children in conflict with the law will continue to strengthen the global standing of the Malaysian juvenile justice system. By developing a more robust pre-trial diversion framework, the Malaysian juvenile justice system could take a significant step towards a more holistic and rehabilitative approach, aligning its laws and policies more closely with international best practices and restorative justice principles.

ACKNOWLEDGMENTS

This research was supported by the Ministry of Higher Education (MOHE) of Malaysia through the Fundamental Research Grant Scheme (FRGS/1/2023/SSI12/UNISZA/02/1).

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