



Republic of the Philippines  
Supreme Court  
Office of the Court Administrator  
Manila

OCA CIRCULAR NO. 113-2009

TO : ALL JUDGES

SUBJECT : STRICT OBSERVANCE OF THE PROVISIONS  
OF R.A. 9344, PARTICULARLY ON THE CUSTODY  
OF A CHILD IN CONFLICT WITH THE LAW  
AND EXECUTION OF JUDGEMENT

It has come to the attention of this Office that there remain a number of courts that fail to strictly observe pertinent provisions of Republic Act No. 9344 entitled "*An Act Establishing A Comprehensive Juvenile Justice And Welfare System, Creating the Juvenile Justice and Welfare Council under the Department Of Justice, Appropriating Funds Therefor and for Other Purposes.*"

Accordingly, Family Courts and single-sala courts handling cases involving children in conflict with the law are REMINDED to STRICTLY OBSERVE the provisions of R.A. 9344. Quoted hereunder are the pertinent provisions, which the courts should not disregard:

**"SEC. 34. Bail.** - For purposes of recommending the amount of bail, the privileged mitigating circumstance of minority shall be considered.

**"SEC. 35. Release on Recognizance.** - Where a child is detained, the court shall order:

- (a) the release of the minor on recognizance to his/her parents and other suitable person;
- (b) the release of the child in conflict with the law on bail; or
- (c) the transfer of the minor to a youth detention home/youth rehabilitation center.

The court shall not order the detention of a child in a jail pending trial or hearing of his/her case.

**"SEC. 36. Detention of the Child Pending Trial.** - Children detained pending trial may be released on bail or recognizance as provided for under Sections 34 and 35 under this Act. In all other cases and whenever possible, detention pending trial may be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. Institutionalization or detention of the child pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

Whenever detention is necessary, a child will always be detained in youth detention homes established by local governments, pursuant to Section 8 of the Family Courts Act, in the city or municipality where the child resides.

In the absence of a youth detention home, the child in conflict with the law may be committed to the care of the DSWD or a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court. The center or agency concerned shall be responsible for the child's appearance in court whenever required.

**"SEC. 37. *Diversion Measures.*** - Where the maximum penalty imposed by law for the offense with which the child in conflict with the law is charged is imprisonment of not more than twelve (12) years, regardless of the fine or fine alone regardless of the amount, and before arraignment of the child in conflict with the law, the court shall determine whether or not diversion is appropriate.

**"SEC. 38. *Automatic Suspension of Sentence.*** - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided, however,* That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

**"SEC. 39. *Discharge of the Child in Conflict with the Law.*** - Upon the recommendation of the social worker who has custody of the child, the court shall dismiss the case against the child whose sentence has been suspended and against whom disposition measures have been issued, and shall order the final discharge of the child if it finds that the objective of the disposition measures have been fulfilled.

The discharge of the child in conflict with the law shall not affect the civil liability resulting from the commission of the offense, which shall be enforced in accordance with law.

**"SEC. 40. *Return of the Child in Conflict with the Law to Court.*** - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

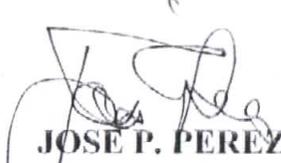
If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

**“SEC. 41. *Credit in Service of Sentence.*** - The child in conflict with the law shall be credited in the services of his/her sentence with the full time spent in actual commitment and detention under this Act.

**“SEC. 42. *Probation as an Alternative to Imprisonment.*** - The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of his/her sentence taking into account the best interest of the child. For this purpose, Section 4 of Presidential Decree No. 968, otherwise known as the "Probation Law of 1976", is hereby amended accordingly.”

For strict compliance.

August 20, 2009.

  
**JOSE P. PEREZ**  
Court Administrator