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Department of Social Welfare and Development

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Subject : Guidelines in the Conduct of Diversion for Children in Conflict with the Law

I. Rationale

When we work with children, we need to ensure that their rights are respected and their best welfare given paramount consideration. This applies even to children in conflict with the law (CICL) especially because we look at them not as offenders but as individuals who need special protection and assistance. For this reason, we shifted from retributive to restorative justice in handling CICL.

Restorative justice holds the offender accountable for the harm caused by the offense committed. It repairs severed relationships to the extent possible with the maximum participation of the victim and the community as it enables the CICL to become a better person. It gives emphasis on the just reparation of the damage rather than on punishment especially through imprisonment.

To apply the principle of restorative justice, Sec. 22.b of Republic Act 9344 or the Juvenile Justice and Welfare Act of 2006 mandates the conduct of diversion in the case of a CICL above 15 but below 18 years old and was assessed to have acted with discernment. Diversion is a child-appropriate process of determining the responsibility and treatment of a CICL with consideration to his/her needs and circumstances without resorting to formal court proceedings.

The diversion of a child to appropriate programs is an imperative as a therapeutic adjunct to the principle of restorative justice. The justification of diversion as an alternative process to formal litigation lies mainly on the fact that it provides restorative justice and community based responses to child's misbehavior that may work effectively for the best interest of the child than the strong arm of the law or punishment. Diversion would also prevent destructive labeling. The practice serves to hinder the negative effects of subsequent proceedings in the juvenile justice administration such as stigma of conviction and sentence.

Diversion definitely gives the child a chance to develop into a responsible adult.¹

Further, Rule 40 and 104.e. of the Implementing Rules and Regulations (IRR) of RA 9344, mandates the DSWD to formulate rules and guidelines that should be followed during the diversion proceedings for CICL who acted with discernment, to protect them from coercion, intimidation, harm, or other actions detrimental to the child.

This is based on the principle that the CICL are victims of circumstances beyond their control and should not be treated as criminals, but as individuals with problems who need help/appropriate assistance and services.

To ensure that the real essence of diversion is applied, the Department of Social Welfare and Development hereby issues this guideline for social workers and other authorities responsible in the conduct of diversion for children in conflict with the law.

II. Objectives

This Guideline is issued to ensure that diversion is appropriately conducted by social workers, law enforcement officers, prosecutors and other stakeholders.

Specifically, it aims to provide a standard procedure in:

1. the conduct of diversion proceedings where the parties agree to a settlement that benefits the CICL, the victim, and the community as well;
2. the development and implementation of diversion program that will not punish but rehabilitate and modify the CICL's behavior, enhance parental skills, as well as increase community awareness, thereby prevent re-offending as well as facilitate healing and sense of justice for the victim;
3. supervision and monitoring of compliance to diversion contract;
and
4. termination of diversion program

¹ MC No. 9 Series of 2004 "Guidelines in the Pilot Testing of the Community-Based Diversion Program for Children in Conflict with the Law (CICL)"

III. Coverage

This guideline covers the case of a CICL who:

1. Is above 15 but below 18 years of age;
2. Has acted with discernment; and
3. Has allegedly committed an offense with an imposable penalty of not more than six years of imprisonment if diversion is conducted at the Katarungang Pambarangay level, law enforcement level and prosecutor's level and not more than 12 years of imprisonment if diversion is resorted to by the court.

It covers the various diversion levels namely: Katarungang Pambarangay, the Law Enforcement Officer; and the Prosecutor.

It will also cover the diversion conducted by the Local Social Welfare Officer with children who allegedly committed victimless crimes and the imposable penalty is not more than six years of imprisonment.

IV. Definition of Terms

1. **Child In-Conflict with the Law (CICL)** – refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.
2. **Diversion** – refers to an alternative, child-appropriate process of determining the responsibility and identifying ways of managing a child in conflict with the law without resorting to formal court proceedings. Diversion is resorted to when the CICL is above 15 but below 18 years old, is assessed to have acted with discernment, and has allegedly committed a crime with imposable penalty of not more than six years.
3. **Diversion Program** – refers to the community-based program that the CICL is required to undergo after she/he is found responsible for an offense without resorting to formal court proceedings.
4. **Law Enforcement Officer** – refers to the person in authority such as police and barangay tanod.
5. **Victimless Crime** – refers to offenses where there is no private party offended.
6. **Barangay/Local Council for the Protection of Children (B/LCPC)** – is the council that ensures the protection and the provision for proper development of children in the barangay. It ensures that children fully enjoy their rights and are brought up in a society which provides

safety, health, good moral environment and facilitates wholesome development²

7. **Local Social Welfare and Development Officer (LSWDO)** – refers to the City/Municipal Social Welfare and Development Office social worker who attends to cases of CICL in their juridical area.

V. **Diversion Procedure**

RA 9344 provides that a child who is above 15 but below 18 years of age, assessed to have acted with discernment and has allegedly committed an offense with imposable penalty of less than six (6) years shall undergo diversion.

Diversion may be conducted at the:

- a. Katarungang Pambarangay level led by the Punong Barangay;
- b. Police investigation stage led by the law enforcement officer; or
- c. Inquest or preliminary investigation stage led by the prosecutor

The local social welfare and development officer (LSWDO) shall assist in the conduct of the diversion proceeding. However, when the alleged offense committed is victimless and the imposable penalty is less than six (6) years, the LSWDO shall lead the process and shall be assisted by the BCPC.

Diversion may also be resorted to by the court if the alleged infraction committed has an imposable penalty of more than six (6) years but below twelve (12) years.

Diversion process includes conduct of diversion proceedings, formulation of diversion program, contract signing, implementation of the diversion program, monitoring and supervision of the CICL undergoing diversion, and termination. The CICL, his/her family and the community must participate during the whole process, that is, from formulation to implementation and termination of the diversion program. The victim and his/her family are also encouraged to participate to better facilitate behavioral change and when possible, reconciliation.

The organization of a Diversion Committee shall be the main strategy in the implementation of diversion program. The Committee shall be organized by the authority conducting the diversion. They shall be responsible in convening the dialogue between the CICL, his/her parents/guardians, victim and identify the appropriate program for the CICL and his/her family.

² CWC 2001

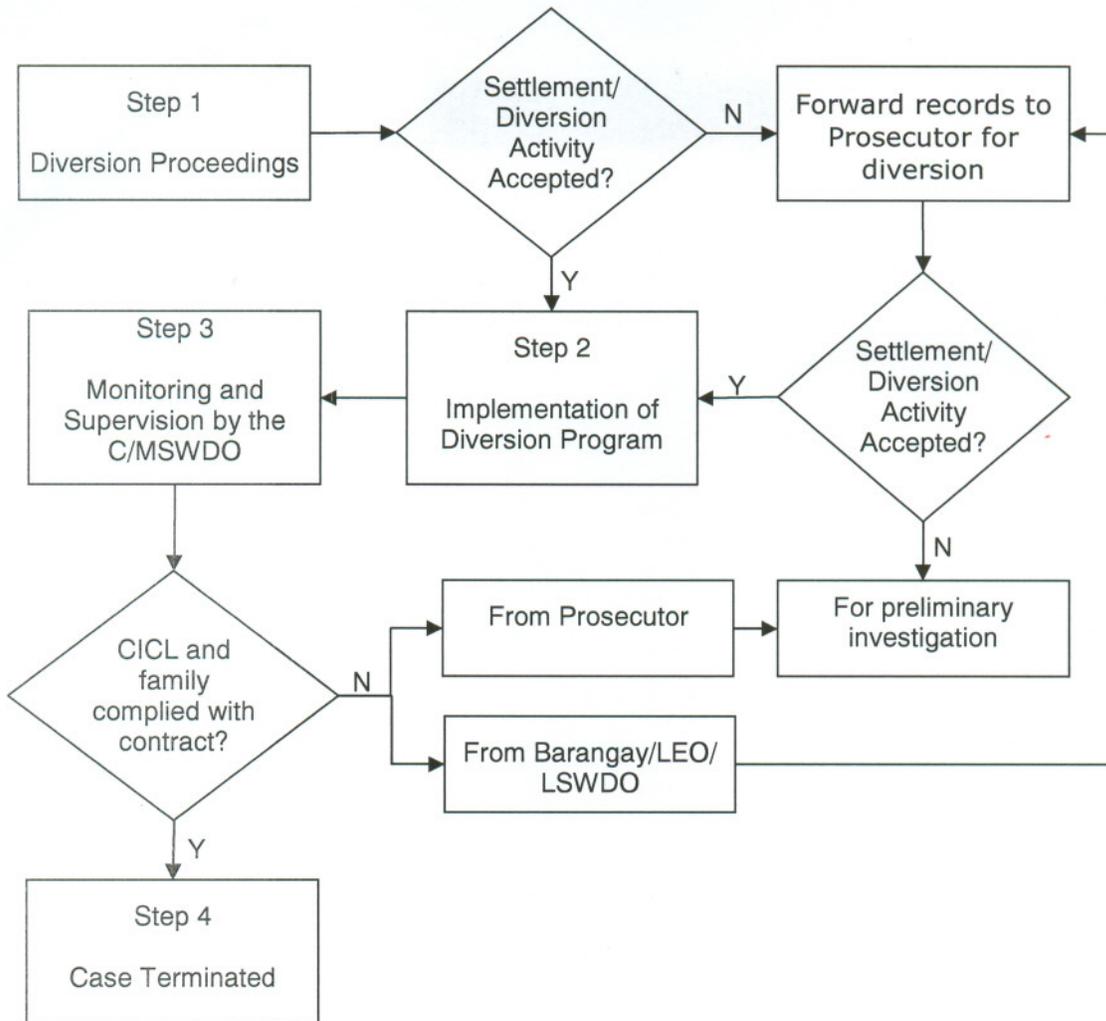
The Diversion Committee shall also come up with a directory of programs or services being implemented by GOs, NGOs, POs, schools and faith-based organization in their locality, which they could avail of to maximize the diversion program. The members of the Committee may include but not be limited to the following:

- a. Katarungang Pambarangay
Chair: Punong Barangay
Members: Barangay Kagawad (Chairperson on Committee on Children, Women and Family)
Chief Tanod
Sangguniang Kabataan Chairperson
PTA President
NGO representative
Faith-based organization representative
Local Social Welfare and Development Officer
- b. Law Enforcement
Chair: Law Enforcement Officer
Members: Barangay Council for the Protection of Children (BCPC) member
Sangguniang Kabataan Chairperson
NGO representative
Faith-based organization representative
People's organization representative
Local Social Welfare and Development Officer
Public Attorney's Office lawyer
- c. Prosecutor
Chair: Prosecutor
Members: BCPC member
Sangguniang Kabataan Chairperson
NGO representative
Faith-based organization representative
People's organization representative
Local Social Welfare and Development Officer
Public Attorney's Office lawyer

The authority monitoring and supervising the implementation of the diversion program shall also provide periodic reports to the said Committee for their consolidation. Said consolidated report shall form part of the periodic report which the LCPC shall submit to the Juvenile Justice and Welfare Council through the Department of the Interior and Local Government.

As soon as the appropriateness and applicability of diversion is established, the authority conducting diversion shall undertake different steps as indicated in the flowchart and elaborated thereafter.

FLOWCHART OF DIVERSION



Step 1 – Diversion Proceedings

Diversion proceedings refer to a meeting or series of meetings facilitated by either the *Punong Barangay*, law enforcement officer, prosecutor or a judge, depending on the level of diversion conducted, with a view to having the parties involved in the offense come up with an agreement that will benefit the concerned parties. The LSWDO shall assist in the conduct of the diversion proceedings in all levels. The process would include conflict resolution/mediation, formulation of diversion program, and acceptance and signing of contract of diversion.

Rule 47.a of the IRR provides that the authority conducting the diversion proceedings shall:

1. Explain to the CICL and his/her family the objective and value of the diversion as well as the consequences of not undergoing the process;
2. Ask the CICL of the circumstances of the offense, the motives or purpose of the offense and the factors that have led the child to commit the offense;
3. Ask the CICL of his/her personal circumstance including his/her parents, family, peers and educational status;
4. Make the CICL understand the consequences of his/her actions and the corresponding responsibilities;
5. Make the CICL understand and realize his/her accountability, be remorseful of his/her actions and take on the responsibility in repairing the harm done in lieu of filing a formal case in the court

This is also the stage where the authority conducting diversion shall determine if diversion is appropriate based on the following factors (Section 29):

1. Nature and circumstance of the offense charged;
2. Frequency and severity of the act;
3. Circumstances of the child (e.g., age, maturity, intelligence, etc.)
4. Influence of the family and environment on the growth of the child;
5. Reparation of injury to the victim;
6. Weight of the evidence against the child;
7. Safety of the community; and
8. Best interest of the child

When the CICL voluntary admits commission of the act during the conduct of diversion proceedings, his/her admission shall be considered only as consent to undergo the diversion program and shall not be considered a plea of guilt. Further, such admission shall not be used against the child in any subsequent judicial, quasi-judicial or administrative proceedings. Neither shall the child be denied of privileges and opportunities, be discriminated, or be imposed of any form of liability or punishment by reason of his/her admission.

Diversion proceedings should be conducted at a time that shall not interfere with the CICL's attendance in school and at a neutral place where identities of the CICL and the parties concerned are kept confidential. Therefore, said venue shall have enough privacy to avoid unnecessary interruptions, distractions and/or participation of other unconcerned persons.

While diversion proceeding has not yet started, the custody of the CICAL shall be given to the parents, guardians or relatives. However, should the parents/guardians/relatives be assessed to be unable to provide the needed care and supervision of the CICAL or the safety of the child is in danger in view of the alleged offense committed, encourage parents/guardians/relatives to request for temporary custody of the child. In the event that the parents/guardian/relatives do not agree to the request for temporary custody of the child, involuntary commitment shall be filed by the LSWDO so as to place the CICAL to any other responsible person or institution in the community, taking into consideration the best interest of the CICAL.

a. Conflict Resolution

This is the initial stage of diversion where authority attempts to settle dispute among the CICAL, CICAL's parents/guardian and the offended party (the victim and his/her parents if the victim is minor) using mediation, conferencing, conciliation or any indigenous mode of conflict resolution. (Please refer to Annex A for phases and processes of mediation.)

The authority conducting the diversion shall summon the CICAL and his/her parents/guardians and the offended party to provide opportunities for dialogue so that both parties could talk about the offense, their views and feelings, share information and come up with the decision to develop a mutually satisfactory written restitution agreement.

During the process, the authority conducting the diversion proceeding should use child-friendly language that are easily understood by the CICAL. Thereby, allowing the CICAL and the child victim to fully express their thoughts and feelings. The authority conducting the diversion should be guided by the guidelines in interviewing children. (Annex B)

However, a victim who is not ready to speak should be given the choice to decline from retelling his/her story of abuse and seeing her/his perpetrator to avoid cyclic victimization. Victim's inability to talk or refusal to participate, however, should not prevent the diversion to be conducted.

Protocols in the Conduct of Conflict Resolution attached as Annex C shall further guide the authority in the conduct of conflict resolution.

b. Formulation of a diversion program

The program is composed of community-based interventions at the barangay level to prevent re-entry of the CICL into the formal juvenile justice system. It is an alternative child appropriate process of determining the child's responsibility for an offense or misdemeanor without resorting to formal court adjudication. The services shall restore the child's social functioning and transform them into useful and productive members of the society through provision of diversion/programs and services. The diversion programs and services shall provide opportunities for the CICL for learning new experiences that will eventually lead to positive behavioral change or actions.

Diversion program shall be formulated during diversion proceedings where the CICL and his/her parents are asked of what they could do to solve the problems. The offended party may also be allowed to suggest solutions including how he/she could help in the monitoring of the implementation of the diversion program.

The following factors shall be considered in formulating the diversion program:

1. The child's feelings of remorse for the offense committed;
2. The parents' or legal guardians' ability to guide and supervise the CICL;
3. The victim's view about the propriety of the measures to be imposed; and
4. The availability of community-based programs for the rehabilitation and reintegration of the CICL as well as the availability of support from peers;
5. Record of prior offense, if any;
6. The CICL's circumstance including but not limited to his/her health condition, physical capacity as well as economic, cultural and religious circumstance.

If possible, the CICL and the offended party shall altogether identify appropriate services that the different agencies, organizations and stakeholders may provide for the CICL's rehabilitation. Should there be difficulty in identifying diversion programs, they could refer to the kinds

of diversion program as provided in RA 9344 herein attached as Annex D.

LSWDO shall assist in the identification/formulation of appropriate community-based diversion program. In case of victimless crime, the LSWDO shall be the lead in its identification/formulation in coordination with schools, LCPC, youth organization and other concerned agencies.

c. Acceptance and signing of diversion contract

When agreement is finally reached, the CICL, and his/her parents shall sign a written diversion contract (refer to Annex E) attested by the authority who conducted the diversion proceedings as well as the LGU social worker. Said contract shall indicate the individualized diversion program as well as the rights, responsibilities and accountabilities of the CICL, his/her parents or guardians and the offended party, when applicable.

The authority conducting the diversion proceedings shall endeavor to obtain agreement of the offended party in the formulation of the individualized diversion program. However, the victim's acceptance of or agreement to the diversion program is not required for a contract to be valid.

Diversion proceedings at any level must be completed within forty-five (45) days from referral. Agreements on the appropriate diversion program shall be reached within the said period.

If no agreement has ^{is} been reached within the prescribed period or the CICL and his/her family do not consent to a diversion program, the proceedings shall be terminated. Hence, ^{The} authority conducting the proceedings shall certify to this effect and submit the case to the prosecutor (Annex F). The prosecutor shall conduct a diversion, ^{proceeding} again but if efforts still fail, the case shall now be submitted to the court for ^{the} determination whether to conduct a diversion in its level or proceed to the trial of ^{the} case.

Step 2 – Implement the diversion program based on the diversion contract.

The authority who conducted the diversion proceeding shall be responsible in ensuring that the agreed diversion program is implemented. LSWDO shall also assist in the identification and implementation of diversion support services or referral to concerned entities to avail of its services like community services of Pag-asa Youth

Association of the Philippines (PYAP), Sanguniang Kabataan (SK) and Local Council for the Protection of Children (LCPC).

To assist in the implementation of the diversion program, community volunteers shall be organized in the community. These volunteers maybe parents, barangay workers, youth organizations, people's organization and other concerned citizens who are child advocates in the community. They maybe tasked to assist the BCPC and LSWDO in the monitoring and follow-up of CICL undergoing diversion. The volunteers may also be tapped to conduct socio-civic activities, community education and crime prevention campaigns to make the community understand the plight if CICL and to be able to draw out support for the community diversion program. The local government unit may provide minimal assistance to the community volunteers which maybe in cash or in kind e.g., traveling expenses and/or food allowance during monitoring visits to the CICL, scholarship for their children or nay member of their families, among others.

Support services may also be provided to the families of the CICL such as family counseling, economic opportunities, capability-building activities. The Committee shall also tap/coordinate with the NGOs/POs/GOs in the community to make the services available to the CICL and his/her family.

Meanwhile, the LSWDO shall provide or refer the victim to appropriate agencies for any of the following services:

- Protective services for minors
- Psychosocial services
- Educational services
- Livelihood/skills training
- Capital assistance
- Job placement

Implementation of diversion program should not exceed 2 years. However, when found out that the diversion contract has not been implemented at early stage (maximum of one month), certificate of failure to comply shall be prepared by the LSWDO and the CICL shall be subjected for another round of diversion proceeding at the next level (another 45-day duration)

Step 3 – Supervise and monitor the implementation of the diversion program

Though supervision of the diversion program at the Katarungang Pambarangay level shall be done by the Punong Barangay with assistance of the BCPC, the LSWDO is mandated to supervise and monitor the progress of the diversion program at all levels (Annex G). The C/MSWDO shall ensure that the CICL and his/her parents comply

with the agreements stipulated in the diversion contract in all levels of diversion.

The social workers should consider the CICL cases as special cases which would need thorough monitoring and application of case management principles and techniques. The social worker must conduct frequent visit to the C/MSWDO's home and school to monitor the C/MSWDO's compliance to the diversion contract.

The social worker may avail of the services of community volunteers such as the local youth organizations, the Sanguniang Kabataan, or other community leaders or faith based organizations to monitor and supervise the progress of the C/MSWDO.

Should there be failure of compliance, the LSWDO certifies such failure of compliance (Annex H) and the authority conducting the diversion shall refer the case to the law enforcement officer or prosecutor for appropriate action.

Step 4 – Terminate the Diversion Program

The diversion program shall be terminated when the agreements set in the contract have been complied with by all parties concerned and when the C/MSWDO has been rehabilitated. A terminal report about the diversion program shall be prepared by the C/MSWDO (Annex I), and should be submitted to the LGPC.

The C/MSWDO shall provide aftercare services for six months to the C/MSWDO after the termination of the diversion program.

II. Institutional Arrangement

A. Department of Social Welfare and Development

1. Conduct orientation and capability building activities to implementers and other stakeholders;
2. Undertake research and develop a data-base for the C/MSWDO for the use of all concerned, including LGUs in documentation and data retrieval; and
3. Provide necessary technical assistance to LGU and NGOs in the development of community-based programs for interventions, diversion and rehabilitation.

B. Local Government Units

1. Develop and implement a Local Intervention Program for C/MSWDO;

2. Allocate one percent (1%) of the internal revenue allotment (IRA) of barangays, cities and municipalities for the strengthening and implementation of the programs of LCPC;
3. Institute community-based programs for intervention, diversion and rehabilitation;
4. Conduct an inventory and mapping of local resources for children in conflict with the law; and
5. Conduct baseline survey of CICL and children and youth at risk of coming in conflict with the law;

C. Local Social Welfare and Development Officer

1. Assist the Local Chief Executives (LCEs) in organizing/reactivating the LCPC and other local structures;
2. In coordination with LCPC, implement the community-based diversion program for cases that falls at the LSWDO level, as well as support services to all CICL, their families and victims;
3. Assist in diversion program implementation at all levels using casework and group work methods;
4. Advocate for the acceptance of diversion program at the local level, and for local funding support;
5. Provide technical assistance to LCPC in monitoring the case of CICL that falls at LSWDO level;
6. Enable CICL and the family to participate in the diversion program implementation and advocacy;
7. Prepare and submit accomplishment reports to DSWD Field Office for eventual submission to CO; and
8. Prepare diversion terminal report at all levels.
9. Coordinate with other concerned agencies providing services for the youth e.g, Department of Education, TESDA, DOLE, etc.

D. Provincial Social Welfare and Development Officer (PSWDO)

1. Provide technical assistance to LSWDOs in implementing the guidelines, to include conduct of related training activities; and
2. Assist the City/Municipal LGU in cases where there is no available social worker to handle the case of the victim.

E. Local Council for the Protection of Children (LCPC)- (Based on Rule 15.d., of the IRR of RA 9344)

1. Coordinate with the Sangguniang Kabataan in the formulation and implementation of juvenile intervention and diversion programs in the community;
2. Assist the Punong Barangay in conducting diversion proceedings;
3. Assist the LSWDO in the development of the appropriate diversion program;
4. Institute together with schools, youth organizations and other concerned agencies the community-based programs on juvenile justice and welfare initiated by LGUs;
5. Conduct capability building programs to enhance knowledge and skills in handling children's programs;
6. Establish and maintain a database on children in the local government. Specifically, the LCPC shall maintain a database of CICL, which shall include the children who undergo interventions, diversion and rehabilitation programs and after-care support services;
7. Document best practices on juvenile intervention and prevention;
8. Advocate and recommend local legislations promoting child survival, protection, participation and development, especially on the quality of television shows and media prints and coverage, which are detrimental to children, and with appropriate funding support;
9. Conduct an inventory of all NGOs serving children in conflict with the law and mobilize them as resources; and
10. Review existing policies of units providing services to children in conflict with the law, determine the barriers to access to these services, and take the necessary action to improve access to these services;

F. Members of the Barangay Council for the Protection of Children (BCPC): (Rule 15.e. of the IIR of RA 9344)

1. Encourage the proper performance of the duties of parents, and provide learning opportunities on the adequate rearing of children and on positive parent-child relationship;

2. Assist parents, whenever necessary in securing expert guidance counseling from the proper governmental or private welfare agency;
3. Hold classes, seminars on the proper rearing of children. It shall distribute to parents available literature and other information on child guidance. The council shall assist parents, with –behavioral problems whenever necessary, in securing expert guidance counseling from the proper governmental or private welfare agency;
4. Coordinate the activities of organizations devoted to the welfare of children in coordination with the Sanguniang Kabataan and source their cooperation; and
5. Take steps to prevent juvenile delinquency and assist parent of children with behavioral problems so that the can get expert advise.

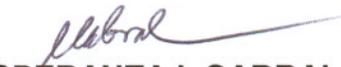
G. Sanguniang Kabataan (SK)

1. Coordinate with the LCPC in the formulation and implementation of juvenile intervention and diversion programs in the community;
2. Initiate programs that complement the intervention and diversion programs initiated by the LGUs through LCPCs as well as those implemented by national agencies;
3. Consult and coordinate with all youth organizations in the barangay for the formulation of policies and implementation of programs on juvenile intervention and diversion;
4. Assist in the monitoring of CICAL's performance of diversion program;and

III. EFFECTIVITY

This guideline shall take effect immediately and revokes all other guidelines contrary to it.

Issued in Quezon City this 27th day of April, 2008


ESPERANZA I. CABRAL

Secretary 

DSWD – OSEC



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PHASES AND PROCESSES OF MEDIATION

PHASES OF MEDIATION

The mediation process can have two distinct phases:

1. **First phase** – the mediator talks with the offender and victim separately, with the intention of helping to reach a point where they are prepared to meet face to face, to search together for some solution to their conflict.
2. **Second phase** – there is direct negotiation between the offender and the victim, but the mediator is often present as an unbiased facilitator.

THE MEDIATION PROCESS

1. Preparing to work on disputes
 - Clarify issues and options
 - Who should attend
 - Preparation of both parties
 - Neutral venue
2. Setting the scene
 - Welcome both parties
 - Seating arrangements
 - Ground rules
3. Session
 - Invite Party A
 - Invite Party B
 - Summaries/clarifies
 - Exploring issues
 - Focus on present
 - Focus on interest
4. Building Agreements
 - Look at options
 - Look at most achievable
 - Written agreement –clear and concrete
 - Timetable for action
 - Sign agreement
5. Closure and follow-up
 - Thank each party
 - May arrange for follow-up session

Guidelines in Interviewing Children

- Rephrase misunderstood questions.
- Use a language or other ways of communicating that the child can easily understand.
- We need to know that their world is different from ours.
- Always welcome the interviewees with a warm greeting.
- Use active listening
- Avoid asking “why”
- Repeat, rephrase and paraphrase to ensure that every information is understood correctly.
- An interview is a 2-way communication; however, it should be controlled by the interviewer.
- It is always better to take notes during interview.
- Give attention to non-verbal communication.
- Assure confidentiality.
- Don't judge or censure
- Say thank you after the session.

Protocols in Conducting Diversion Proceedings

Be neutral. The mediator shall be neutral, impartial and independent during the entire mediation process. Remember that the role of mediator is to assist the disputing parties in settling their differences.

Send Message Clearly. Use a language that is understood by all. Avoid words and expressions that have different meanings to different people and non-verbal communication like facial expression that may not be acceptable to other people. Avoid long and winding explanations.

Focus on the issue. Focus on the issue of resolving the conflict or case. Remember that the mediator is there not to satisfy his/her own curiosity or the desire to satisfy his/her need for information.

Be calm. Focus on the issue i.e. what the offense and its effect, and what both parties could do to reach a win-win solution.

Listen Generously. Show interest by listening sincerely and attentively. Listening will help you gather adequate information in order to correctly guide parties in reaching agreements. Before expressing your comments, impressions and conclusions, make sure that you have understood the whole situation.

Never use offensive words. Do not use degrading words.

Observe confidentiality at all times. All discussions during the diversion proceedings should not be divulged orally or in written form to anybody who is not involved in the case.

Respect the one speaking. Allow time for each party for their own story to be heard fully, and tell them to let other person finish talking before batting in.

Maintain proper decorum. At the start of the conference, make it a ground rule not to make name calling and shouting. Provide an atmosphere where both sides could talk properly and in subdued manner.

Allow both parties to share their sides. Remember that the main purpose of the proceeding is for both parties to talk about the crime and repair the hurts/harms brought by the crime committed by the C/CL. Advice, possible options/directions could be given to both parties after the dialogue.

Paraphrase and acknowledge. It helps in understanding the situation if the authority conducting the mediation paraphrases the words/spoken language to a more understandable and gentle/subtle manner. Both parties can be better understood by listening actively, acknowledging and paraphrasing their arguments. Express views without provocations or aggravating the situation. This is an effective tool to “disarm” or calm both parties while understanding their point of view.

Be patient. Being the one who controls the procedural aspects and determines the course of the activity, the success of the proceeding is basically dependent on your mood/ disposition.

Reminder for Authority Conducting the Mediation

Don'ts	Dos
<u>Do not take sides</u>	<u>Be neutral.</u> The mediator shall be neutral, impartial and independent during the entire mediation process. Remember that the role of mediator is to assist the disputing parties in settling their differences.
<u>Do not gossip</u>	<u>Focus on the issue.</u> Focus on the issue of resolving the conflict or case. Remember that the mediator is there not to satisfy his/her own curiosity or the desire to satisfy his/her need for information.
<u>Do not instigate</u>	<u>Be calm.</u> Focus on the issue i.e. what the offense and its effect, and what both parties could do to reach a win-win solution.
<u>Do not cut people off</u>	<u>Respect the one speaking.</u> Allow time for each party for their own story to be heard fully, and tell them to let other person finish talking before batting in.
<u>Do not allow name calling and shouting</u>	<u>Maintain proper decorum.</u> At the start of the conference, make it a ground rule not to make name calling and shouting. Provide an atmosphere where both sides could talk properly and in subdued manner.
<u>Do not lecture or give advice while dialogue is on process</u>	<u>Allow both parties to share their sides.</u> Remember that the main purpose of the proceeding is for both parties to talk about the crime and repair the hurts/harms brought by the crime committed by the CICL. Advice, possible options/directions could be given to both parties after the dialogue.
<u>Do not rush</u>	<u>Paraphrase and acknowledge.</u> It helps in understanding the situation if the authority conducting the mediation paraphrases the words/spoken language to a more understandable and gentle/subtle manner. Both parties can be better understood by listening actively, acknowledging and paraphrasing their arguments. Express views without provocations or aggravating the situation. This is an effective tool to "disarm" or calm both parties while understanding their point of view.
<u>Do not be emotionally affected</u>	<u>Be patient.</u> Being the one who controls the procedural aspects and determines the course of the activity, the success of the proceeding is basically dependent on your mood/ disposition.

Forms of diversion programs as indicated in R.A 9344

1. Restitution of property. Return of the property to the rightful owner.
2. Reparation of the damage caused. Repair of the damaged property by the CICL himself.
3. Indemnification for consequential damage. This includes the following:
 - Reimbursement of the expenses incurred by the owner in the repair or restoration of the damaged property or in mending the injury;
 - Payment of the actual cost of restoring the damaged property; and
 - Replacement of the lost/sold/broken property.
4. Written or oral apology. Oral and written apologies should include the promise of the CICL not to commit the same offense again and the acceptance of possible punishment for re-offending, to be agreed upon by the child, his/her parents/guardian and the concerned authority conducting the diversion proceedings.
5. Confiscation and forfeiture of the proceeds or instruments of the crime. Proceeds of the crime shall be given to the offended party, as part of the indemnification by the CICL.
6. Care, guidance and supervision orders. This includes giving advice to the CICL and her/his parents/guardians (when necessary) by the authority conducting the diversion proceedings; home/school visit by the representative of the LCPC/LSWDO; and reporting to the LCPC representative/ LSWDO based on the agreed schedule/duration.
7. Counseling for the child in conflict with the law and the child's family: It is helping the child and his/her family become aware of themselves, and the ways in which they react to the behavioral influences of their environment. Thus, finding better and more correct responses to the various circumstances in the environment. Individual and Family Group Counseling (FGC) Approach in may be an effective tool to use.
8. Attendance in trainings, seminars and lectures (conducted by LSWDO or other local agencies/organizations) on the following:
 - anger management skills;
 - problem solving and/or conflict resolution skills;

- values formation; and
 - other life skills which will aid the CICL in dealing with situations which can lead to repetition of the offense
9. Participation in available community-based programs/services including community service in coordination with school, Local Council for the Protection of Children, Sangguniang Kabataan and Pag-asa Youth Association of the Philippines;

Other forms of diversion program

- a Assist in caring infants and other children with special needs, the elderly and those with disabilities in government and non-government institutions;
- b Act as care-giver, tutor, reader, etc. to pre-school children in Day Care Centers, street children , senior citizens and other institutions;
- c Conduct tree planting, vegetable gardening, garbage collection, cleaning of surroundings, drainage of canals and other environmental sanitation activities;
- d Assist in the repair of center's facilities such as recreational and sports centers, furniture, kitchen, bedrooms and other significant structure;
- e Assist in the construction or repair of playground and sport facilities as well as initiate beautification projects such as painting, decorations of pathways, planting of ornamental plants, etc..
- f Access to other government agencies providing programs for the youth such as: the Department of Labor and Employment (DOLE) Department of Tourism (DOT), Department of Public Works and Highways (DPWH), Department of Health (DOH), Department of Environment and Natural Resources (DENR).

Republic of the Philippines
Municipality/City of _____

DIVERSION CONTRACT

Para sa pinakamabuting kapakanan ng bata na nagkasala sa batas na si _____ at ng buong komunidad, napagkasunduan ang mga sumusunod:

Para sa Batang Nagkasala sa Batas:

1. (Halimbawa: Maglilinis sa parke ng Barangay tuwing Sabado 8:00 ng umaga hanggang 11 ng umaga mula sa buwan ng Enero 200__ hanggang sa buwan ng Hunyo ng parehong taon.)
2. _____
3. _____

Para sa Kanyang Mga Magulang:

1. (Halimbawa: Sasamahan ang kanilang anak sa opisina ng social worker tuwing unang Lunes ng bawat buwan mula Enero hanggang Hunyo 2008.)
2. _____
3. _____

Social Worker:

1. (Halimbawa: Bibisita sa paaralan ng bata minsan sa loob ng isang buwan para malaman mula sa mga guro at kaklase nito ang mga pagbabago sa kanyang pagkilos at pakikisalamuha.)
2. _____
3. _____

Itong kontrata ay nilagdaan ngayong ika – _____ sa buwan ng _____ taong 200__.

Bata Mga Magulang Namumuno ng Diversion

Pinanukalaan ni: _____
Social Worker

Republic of the Philippines
Municipality/City of _____

DIVERSION CONTRACT

For the best interest of ____ (*name of CICL*) ____ and the community, the following shall be undertaken:

For the child:

1. (Example: Clean the Brangay Park every Sunday from 8 A.M. to 10 A.M. from January 200__ to June 200__.)
2. _____
3. _____

For the child's parents:

1. (Example: Accompany the child during his/her monthly session with the social worker to the latter's office every first Monday of the months from January 200__ to June 200__)
2. _____
3. _____

Social Worker:

1. (Example: Visit the child in his/her school once a month during the duration of the diversion program to ascertain whether or not he/she is behaving properly through interviews with teachers and other students.)
2. _____
3. _____

This contract has been signed on _____.

Bata

Mga Magulang

Chair, Diversion
Committee

Noted by: _____
LSWDO

CERTIFICATION OF FAILURE OF DIVERSION PROCEEDINGS

This is to certify that _____ (*name of CICL*) who
committed the offense _____ (*type of offense*)

does not agree to undergo a diversion program

diversion is not appropriate and applicable to the case at hand

due to the following reasons:

1. _____
2. _____
3. _____

This certification is issued on _____ (*date*)

(*Name & Signature*)
Chair, Diversion Committee

Noted by: _____
LSWDO

PAGPAPATUNAY

Ito ay nagpapatunay na si _____ (pangalan ng CICL) na
nagkasala sa batas ng _____ (offense)

- hindi pumapayag na magpasailalim sa isang diversion program
- ang diversion ay hindi angkop o karapat-dapat sa kaso na ito

dahil sa sa sumusunod na kadahilanan:

1. _____
2. _____
3. _____

Ang pagpapatunay na ito ay ibinigay ngayong _____.

(Pangalan at Lagda)
Namumuno ng Diversion Committee

Pinanukalaan ni: _____
LSWDO

City/Municipality

Barangay

DIVERSION PROGRAM MONITORING FORM

Date _____

A. Basic Information:

Name of the CICL: _____
Birth Date _____ Age: _____ Sex: _____
School: _____ Grade/Level: _____
Address: _____
Father: _____ Mother _____ Guardian _____

B. The Case

Nature of the Offense: _____
Date of Contract Signing: _____
Agreed Day of Termination: _____

Type/Nature of Diversion Activity	Results (Include CICL's Compliance as well as Hindering and Facilitating Factors)	Recommendation
1.		
2.		
3.		
4.		
5.		

Name and Signature of the LSWDO

CERTIFICATION OF FAILURE OF DIVERSION

This is to certify that _____ (*name of CICL*) _____ who committed the offense _____ (*type of offense*) _____ has failed to comply with the diversion contract to which he/she entered into with the

- Katarungang Pambarangay
- Law Enforcement Officer
- Local Social Welfare and Development Officer
- Prosecutor

due to the following reasons:

1. _____
2. _____
3. _____

This certification is issued on _____ (*date*) _____

(*Name & Signature*)
LSWDO

PAGPAPATUNAY

Ito ay nagpapatunay na si _____ (pangalan ng CICL) na
nagkasala sa batas ng _____ (*offense*)

- Katarungang Pambarangay
- Law Enforcement Officer
- Local Social Welfare and Development Officer
- Prosecutor

dahil sa sa sumusunod na kadahilanan:

1. _____
2. _____
3. _____

Ang pagpapatunay na ito ay ibinigay ngayong _____.

(*Pangalan at Lagda*)

LSWDO

City/Municipality

Barangay

DIVERSION PROGRAM TERMINAL REPORT

Date _____

A. Basic Information:

Name of the Child: _____
Birth Date: _____ Age: _____ Sex: _____
Address: _____
Grade/Year: _____ School: _____
Father: _____ Mother: _____ Guardian: _____
Telephone/Mobile Number _____
Offense Committed: _____

B. The Offended Party:

Name: _____ Age _____ Sex _____
Address: _____ Telephone/Mobile #: _____

C. Summary of the Case/Offense:

D. Type of Diversion Program:

E. Assessment and Final Result of the Diversion Program Implementation
(include observable changes in the child's behavior):

F. Further Recommendations:

Prepared by:

Social Worker

B. Diversion Programs for CICL

Types of Diversion Program	Number by sex		Status						Remarks	
			On-going		Terminated					
	M	F	M	F	# Complied		# Not Complied			
					M	F	M	F		
1. Restitution of property										
2. Reparation of damaged caused										
3. Indemnification for consequential damage										
4. Written/oral apology										
5. Confiscation & forfeiture of proceeds and instrument										
6. Care, guidance and supervision orders										
7. Counseling										
8. Attendance in trainings & seminars										
a. Anger management										
b. Problem solving and conflict resolution										
c. Values formation										
d. Others										
9. Participation in community-based programs & services										
10. Others										
Total										

Under column for remarks, indicate the number of cases terminated due to non-compliance and referred to the next level for another round of diversion proceeding/program.

II. NARRATIVE REPORT

A. Facilitating Factors. (Indicate factors that helped

1. Conduct of Mediation
2. Formulation of Diversion Activity and Contract, and Signing
3. Provision of Support Services to both the CICL and Victim
4. Supervision, monitoring and Reporting
5. Terminal Report Preparation and Submission
6. Advocacy

B. Hindering Factors

1. Conduct of Mediation
2. Formulation of Diversion Activity and Contract, and Signing
3. Provision of Support Services to both the CICL and Victim
4. Supervision, monitoring and Reporting
5. Terminal Report Preparation and Submission
6. Advocacy

C. Recommendations

1. Conduct of Mediation
2. Formulation of Diversion Activity and Contract, and Signing
3. Provision of Support Services to both the CICL and Victim
4. Supervision, monitoring and Reporting
5. Terminal Report Preparation and Submission
6. Advocacy