

AN ANALYSIS OF DIVERSION PROCEDURE UNDER SECTION 90 AFTER PARTITION IN JUVENILE DELINQUENCY CASES

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Abstract

This study aimed (1) to explore problems and obstacles affecting the enforcement of the diversion procedure after partition in juvenile delinquency under the Section of the Juvenile and Family and Juvenile and Family Case Procedure B.E. 2553 and (2) to analyze the direction to manage problems as well as present the process-driven model to enforce the rehabilitation plan on the juvenile offender for maximum benefit and the highest efficient results. A qualitative study was conducted by engaging the in-depth interview with 59 judges and experts in Juvenile delinquency. Data were analyzed by a triangulation test process.

The findings suggested that the major problems and obstacles were divided into 4 categories, namely, 1) the victim refused to give consent in making the plan, 2) both sides disagreed on the compensation amount, 3) the offender had no mental strength to stand firm on complying with the plan's conditions, and 4) the complication in the operational procedures. Then, the results were crystalized into the directions for managing problems and introduced a process-driven model, a circle of revival with solutions to the problems. Regarding the victim's consent, the victim should be allowed to appoint a representative and give consent through e-Service. On damages compensation, fund should be set up to remedy the victim of the juvenile offender. The problem concerning juvenile offender failing to commit to the set conditions can be solved by constructing psychological scale to measure the offender's remorse level prior the plan preparation. Lastly, the complication during the operation should be solved by promoting the operator's skills regularly and opening all sectors for integrated collaboration in problem-solving.

KEYWORDS: DIVERSION PROCEDURE, JUVENILE OFFENDER, REHABILITATION PLAN, AFTER PARTITION.

Introduction

According to the Act on Juvenile and Family Courts and Juvenile and Family Procedures, B.E. 2553 (2010), the new and specific measures

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for juvenile proceedings to serve the suspect before and after trial as the alternative and diversion for a fair trial. This approach must be done paralleling with the Juvenile and Family Court regular judicial process, aiming to divert the first-time or harmless offenders from the main judicial proceeding. This is done by enrolling these youth offenders in the rehabilitation program with community firm involvement due to the serious consequences that stigmatized youth from being former offenders and may lead them to repeat the same offense.

One of the important measures in lieu of criminal proceedings and rehabilitation of juveniles in the justice system is applying special measures in lieu of criminal proceedings on the juvenile offender as enacted in Section 90 of the Juvenile and Family Court and Procedure Act B.E. 2553 (2010), instead of using criminal proceedings after court case. It is intended to quickly divert cases of conscientious juveniles from court proceedings through the existing rehabilitation plan originated by all involved parties, namely, children or youth, parents, and injured persons. In some cases, it may include the community representative who inevitably receives the impact of youth offensive actions.

The main principle of section 90 is that the court may order juvenile rehabilitation subjecting to the criteria and conditions that the juvenile who committed such an offense must face the highest court sentencing, not exceeding 20 years imprisonment, with or without imposing a fine.

In the case of multiple different offenses or an offense violating several provisions of the law, this should carry the highest penalty provided that the child or youth had never been imprisoned by the court's final sentence unless the offense was committed by negligence or misdemeanor. Moreover, the child or youth must have a sense of action as well as the injured person agree to the offender's rehabilitation plan with no objection, including the court trial clearly stating that such circumstance has not posed a serious threat to society. This indicates the youth offender's intention to modify behavior for being a good person, and the injured person is likely to receive proper compensation. In the case where there are multiple youth defendants in the same case, the court may judge as a single case for each offender. Hence, the court may order the making of the rehabilitation plan for children, youth, and those involved to be presented to the court. If the court approved the plan, the case may be temporarily disposed of, and once the rehabilitation plan had been followed completely, the court would order striking the case out of the case list by law to end the right to bring the lawsuit, so there is no need for the children and juvenile to enter the court proceedings. Judging from the significant impact of implementing special measures in lieu

of criminal proceedings on the juvenile offender mentioned earlier, it is apparent that the Juvenile and Family Court and Family Case Procedure Act B.E. 2553 (2010) has attempted to apply the special measures instead of acting on court proceedings based on Section 90 of such Act leading to juvenile rehabilitation, aiming for the highest standard in children benefits and protection through rehabilitate mechanism on resolutions of all involved parties. From 2016-2018, the statistical record suggested increasing the use of special measures before and during the trial of the Juvenile and Family Court, having 11,827 cases in 2016, 13,646 cases in 2017, and 17,881 cases in 2018, respectively (Office of Secretary of the National Commission for Justice System Development, 2019). Nonetheless, there are many flaws in the rehabilitation process that may impact the plan's effectiveness, especially in the surrounding contexts that involved many persons and may affect the discretion and procedures that may prevent the use of discretion effectively. Therefore, the research entitled, "Analysis of Implementation on Rehabilitation in lieu of Judicial Proceeding Post Trial based on Section 90" aims to study the details of the facts involving the enforced implementation of special rehabilitation measures in lieu of judicial proceeding post-trial, as well as analyzing problems and barriers to the trial in all dimensions, including the recommendations to proceed with the most effective implementation of juvenile rehabilitation for the maximum benefits.

Research Questions

- 1) Are there any problems and obstacles affecting the enforced implementation of special measures in lieu of criminal proceedings on the juvenile offender post-trial based on Section 90 of the Juvenile and Family Court and Family Case Procedure Act B.E. 2553 (2010)?
- 2) What type of designs are appropriate to implement rehabilitation plans for juvenile offenders, aiming for the most effective and maximum benefit?

Research Objectives

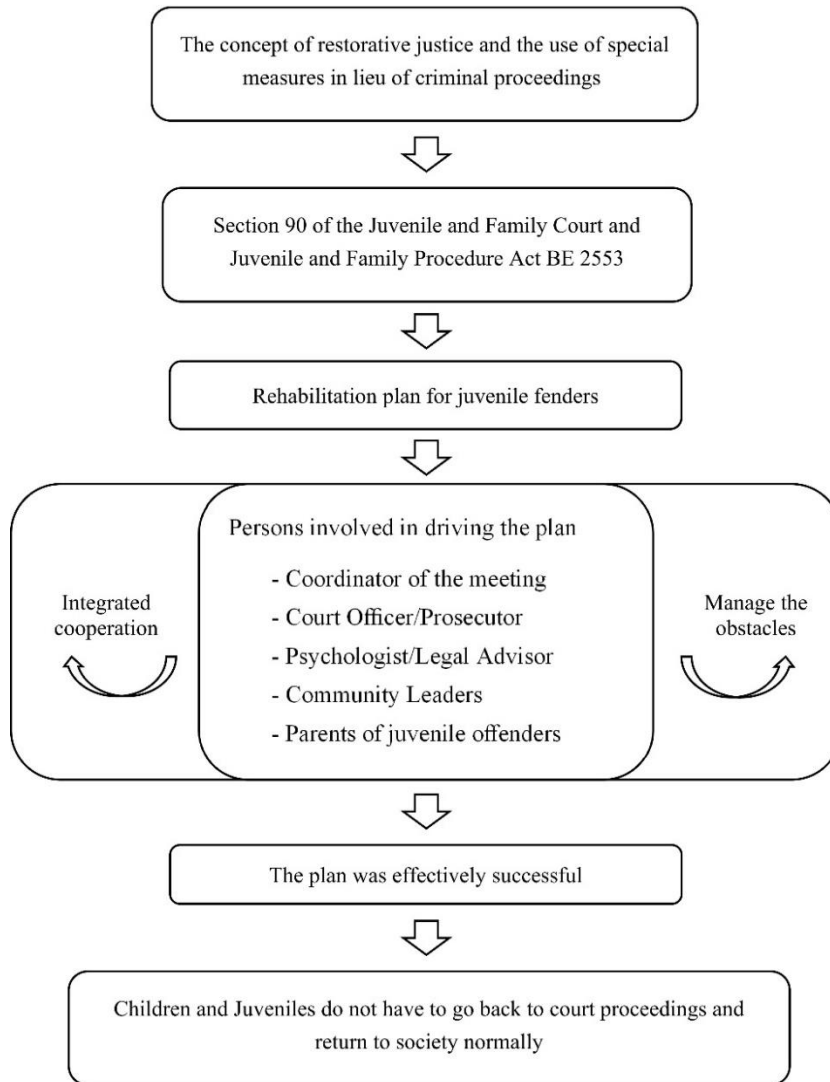
- 1) To study problems and obstacles affecting the enforced implementation of rehabilitation in accordance with specific measures in lieu of criminal proceedings post-trial based on Section 90 of the Juvenile and Family Court and Family Case Procedure Act B.E. 2553 (2010).
- 2) To analyze the direction of problem-solving, and recommend the designs to implement rehabilitation plans for juvenile offenders, aiming for the most effective and maximum benefit.

Research Conceptual Framework

Based on a review of relevant criminological theories and concepts, international law principles relating to measures to rehabilitate juvenile delinquents, laws in Thailand relating to juvenile justice, and

special measures in lieu of criminal prosecution after prosecution, can be defined as a research conceptual framework as follows:

Figure 1 Research Conceptual Framework



Method of Study

This study used a qualitative research method by selecting a specific key informant on purposive sampling combined with the use of a snowball technique to obtain a certain number of informants and be able to analyze the content in full accordance with the research goals and objectives.

1) In-depth Interview: A group of 40 key informants for the in-depth interview, using the position characteristics of key informants to act as the representative in the provision on important qualitative information of the in-depth interview, which are classified into 5 categories as follows: Chief Judge of the Provincial Juvenile and Family Court, Prosecutor, Associate Judge / Director of the Children and Youth Protection Center, Counselor or legal counsel in juvenile cases, Court psychologist/Social worker

2) Focus group: A group of 19 key informants for the focus group conversation using position characteristics of key informants as the representative to provide qualitative important information in focus group conversations. Group discussion is divided into subgroups, consisting of: Chief Judge of the Provincial Juvenile and Family Court, The Prosecutor, Associate Judge/Director of the Children and Youth Protection Center/Coordinator of the Meeting, Counselor or legal counsel of the juvenile cases, Court psychologist, community leaders and parents of juvenile offenders.

This study used social science research methodology to analyze qualitative data by using Content Analysis process and Data Triangulation with a theoretical content analysis process, in-depth interviews, and brainstorming through group discussions in order to find and prove the details, information, facts to realize the problems and obstacles affecting the implementation of the rehabilitation plan and management guidelines making the drive process of the operation achieve flexibility and defining the model to drive the implementation of the plan as well as proposing operational guidelines that will lead to the success of the plan effectively

Problems and Obstacles affecting the enforcement of diversion plan for specific rehabilitation instead of criminal trial after partition under Section 90 of the Juvenile and Family Court and Juvenile and Family Court Procedure Act B.E. 2553

1)Major obstacle in preparation of rehabilitation plan under Section 90

The findings suggested having 4 problem areas as follows: 1) The victim refused to give consent in preparing the plan 2) the unsettled for damages that were unable to compromise 3) the mental strength of the offenders who were unable to withhold determination in following the conditions of the plan and 3) the complexity of problems in the implementation of specific measures instead of a criminal proceeding. This finding coincides with the study result of Juthamas and Arjaree (2023) regarding the operational problems of using specific measures instead of a criminal trial for recidivism of drug offenses when the state is the victim that is not entitled to use the specific measure instead of using the criminal proceeding and the

children remorse when committed the drug offenses is rather difficult to prove. The findings are in accordance with findings reported by Supranee and Soontharee (2022) that the remorse in committing a crime, the law has no concrete criteria that can be measured in numbers as the evidence.

2) Managing direction when encountering limitations in the Operational Plan

The study results on managing direction when encountering limitations in the operational plan under Section 90 indicated 2 incidents, namely, 1) the reduction of conditions in the operation plan, and 2) changing the method using specific measures instead of criminal proceedings which mainly operated according to Section 132. This finding is in line with the diversion plan of the children and youths offenders in the court session in which Pranee (2018) proposed that although the children and youths went through a normal court trial if the court did not want to detain the children and youth offenders, the court may order the children and youths to follow the court plan or enter the certain program as the court sees fit.

3) Differences from the operation based on specific measures and the highlights of the Diversion Plan under Section 90

The findings regarding the differences from the operation based on specific measures for rehabilitation plan under Section 90 indicated that the Juvenile and Family Court and Juvenile and Family Court Procedure B.E. 2553 had identified specific measures to replace criminal proceedings for the Juvenile and Youths after partition under Section 90 and Section 132. The major differences between both measures are setting up of maximum punishment rate, displaying the victim's consent, compensating the victim, planning timeline, and the nature of cases meeting the criteria of planning which coincided with the Beijing Rules, No. 11.1. It had identified that in the appropriate case, the juvenile offender was entitled to proper treatment in which to avoid the regular criminal proceedings.

The findings on the highlight of preparation for rehabilitation plan under Section 90 indicated equal attention was given to both the offender and the victim by opening the opportunity for both sides to compromise, which is considered fair treatment. A similar pattern of the result was obtained in the concept of Restorative Justice (RJ) that focus on managing the direct impact of criminal wrongdoing, namely, the victim, the community, and the offender who had collaborated in managing and rectifying the impacts, including the rehabilitation and provide a remedy or pay for damages to the victim.

4) Influential parties on the preparation of the Diversion Plan under Section 90

The findings from the study of those related to each section of preparation for rehabilitation plan for the children and youths offenders revealed 4 key persons handling the important roles, namely, 1) the court which included the whole judge quorum who considered the case, 2) the consult officers at the Center providing advice, 3) the meeting coordinator, and 4) the plan administrator. The results are consistent with the study of Maneerut (2020) on the role of a person who handled RJ process of the Juvenile and Family Court. In this case, the lay judge is the mediator appointed by the court to facilitate and reconcile through conflict within RJ, so-called the meeting coordinator.

Managing Guidelines for problems and model of driving for the most efficient and beneficial diversion plan to rehabilitate children and youth offenders

1) Process for driving the diversion plan under Section 90

The findings on the diversion plan under Section 90 indicated if the process starting from the court consideration has met the criteria and conditions of plan preparation. Later, those involved were asked to prepare the plan for court consideration. After the court approved the plan, the operation was performed according to the specified procedures and measures as the conditions during the operation, with the follow-up process and providing advice periodically to control the offenders 'to follow the set conditions. After the operation was completed, the report must be prepared to submit to the court once again. And if the court considers the successful plan, the court would ask to take the case out of the case registrar, as well as inform the involved parties of such matter. If the plan turned out to be unsuccessful, then, the court may order the use of other measures. The finding is consistent with the study result of Punyawat (2019) on the use of specific measures instead of criminal proceedings before a lawsuit and court case consideration. This is done through the focus group discussion, including work collaboration of multidisciplinary groups by focusing on agencies' participation, inside and outside the judicial process realm.

2) Integrated collaboration between the related agencies and the roles of each agency

The study involved integrated collaboration between the related agencies to make the preparation plan for the rehabilitation of juvenile offenders under Section 90 successfully, it was found that the Juvenile Detention Center played a major role in mediating between the court and psychologist. As for other agencies, it is the support based on the duty to make the operation run smoothly, and the finding also

coincided with the study of Nanthapus Siva and Ajcharawan (2016) who found that the specific measure empowers the court to make a decision, but it required the personnel's understanding, and coordinating work with the state and private agencies, otherwise, after completing the measure, it cannot tell if the children and youth turn out good or bad.

3) Developing the potential, skills, and expertise of the operator

The findings from the study on developing the potential, skills, and expertise of the operator in accordance with the diversion procedure under Section 90 suggested that the operator must develop essential skills in work coordination and negotiation, including the ability to persuade all participants to join in by sharing experiences through online social media, e-learning or open channel for consultation of operational problems, but these process must be done regularly. A similar conclusion was reached by Metvadee and Nirumon (2022) who found one of the success factors in operating according to the rules to rehabilitate youths involved constantly improving manual and increasing knowledge and understanding among those responsible for the operation.

4) Supporting the availability of equipment and instrument for the related agencies' performance

The results from the study on the said matter suggested that the support for the availability of the equipment and instrument for the relevant agencies' operations, especially in the integrated collaboration between agencies, budget allocations, and limited, insufficient number of equipment. In the case of force majeure such as a natural disaster, COVID-19 Pandemic, or immediate event in the field, the agencies may not prepare a budget plan that covers expenses for all cases. The result ties well with the previous study by Kwanrien (2019) on the implementation of electronic equipment with children and youth offenders would help reduce social inequality, and congestion in Juvenile Detention Centers, reduction of labeling offenders as well as decrease long-term state expenses. Therefore, there is a proposal on setting up specific measures to use electronic equipment with the children and youths in the case of temporary release and after partition so that they could return to society.

5) Follow-up process on the operational plan in each period and operational success indicators

The findings from studying the follow-up on the operational plan in each phase and the indicator of successful operation indicated that the operation efficiency might not be measured from short-term operation only, but rather required reasons and components suitable for such cases. This can be done by having the indicators for qualitative operation such as gestures, facial expression, eyes expression,

speeches, or the responsive actions to different activities of the offenders, victims, or guardians, and to consider the operation succeeded as planned with good quality, both the offenders and victims must reconcile and coexist in society happily. This finding is consistent with the study results of Metvadee and Nirumon (2022) on one of the outside factors affecting success in performing the plan, namely, the timeline in the operation plan, Implementation of the follow-up model on children and youths, and update arranging process model to fit the present situation.

6) Differences from implementing other specific measures and the highlight of preparation for diversion plan under Section 90

The Juvenile and Family and Juvenile and Family Procedure Act B.E. 2553 stipulated specific measures instead of criminal proceedings for juvenile offenders after partition under Section 90 and Section 132 in which the detailed operations revealed the differences in many issues. The differences between both Sections are as follows:

Table 1 Operation Differences between Section 90 and Section 132

Issues	Section 90	Section 132
Maximum Penalty	Not exceeding 20 years	Not specified
Victim's Consent	The victim must give consent and the plaintiff must not object on the matter	The court is only made the inquiry on the victim.
Compensation to the victim	The victim received appropriate compensation.	The victim must file the civil lawsuit separately
Plan Timeline	Suitable timeline, no limitations	Not exceeding the time of the juvenile age 24 years old exactly
Nature of the cases	Most cases can be compromised such as sexual assault, bodily harm, and stealing properties	Operatable in all cases

Furthermore, the highlight in the preparation of rehabilitation under Section 90 is focusing on the well-being of both the offender and victim in which the juvenile offender could avoid detaining in the Juvenile Detention Center, be enabled to maintain the educational opportunity, and not be subjected to social stigma. The victim would receive an apology, mental healing, and suitable compensation for damages.

7) Key person on Diversion Plan Operation under Section 90

The related parties in each responsible section prepare the diversion plan for juvenile offenders and have the major roles as follows: 1) The court is included the judge quorum who have considered and given the order to prepare the plan if it matches the set criteria, 2) the officer at the center acts as the counselor to gather related data for appointment of the meeting coordinator, 3) the meeting coordinator makes an appointment for those involved with plan preparation to present to the court within 30 days and to ensure the smooth meeting and 4) the plan administrator must continue monitoring the juvenile offenders 'habits to see if they have made any progress and accomplished the set objectives.

The direction on managing problems and mobility model for the enforcement of diversion plan for juvenile offenders with maximum efficiency and benefit

1) Operation mobility in accordance with diversion plan under Section 90 must be done under the set criteria that strictly stipulated in the law, starting from the court consideration whether it had met the criteria of making plan. Later, the court ordered the responsible parties to prepare the plan to present to the court. When the court approved the plan, the operation then carried out as stipulated in the conditions, and during the operation, there is the follow-up and consultation processes to control the offenders to strictly obey the rules. And when the operation completed, the report was prepared to be presented to the court again. Once the court considered the plan accomplished, the court would then order the case removed from the court case register, as well as informing the responsible parties. If the plan failed, the court may order the use of other measures.

2) Integrated collaboration between the relevant agencies and each agency's roles.

For such an operation to accomplish and benefit both the offender and the victim, it is imperative to integrate collaboration between the responsible sectors, states, private agencies, and civil society by starting from liaising works between agencies in the judicial process. The Juvenile Detention Center has an important role in liaising between the court and psychologist. As for other agencies, it is the support through the assigned roles for smooth operation such as referral to a hospital with the expert or the psychologist, especially in certain cases where the juvenile offender has mental health problems. Then, collaboration with the community that the community children lived in should help monitoring and closely observing changes in their behaviors or participate in activities for juveniles to join in so that they could realize self-worth, capable of doing a good deed for society with

the heart support to commit with the rules, and strong determination to become a good citizen.

3) Developing potential, skills, and expertise of the plan's operator.

Developing the potential, skills, and expertise of the plan operator is one of the trends to increase operational efficiency, in work liaison, negotiation, and skills to persuade all sectors to join together for plan preparation in which the skills training would increase expertise among various group operators, provided that the technological innovation must be employed to assist learning through social media such as sharing experiences online, using e-learning, or opening online counseling channel to solve operational problems. Hence, the key issue in developing skills, and expertise is to arrange reviewing body of knowledge continuously and sharing operational technique least once or twice a year between the officers.

4) Supporting the availability of materials and equipment for operations of the relevant agencies.

The findings suggested that supporting the availability of materials and equipment for operations of the relevant agencies, especially in the accomplish of integrated missions between agencies, budget allocation and a limited number of equipment, insufficient for use, and in case of force majeure such as natural disaster, COVID-19 pandemic, or sudden field events. Although the agency may not prepare the budget allocation plan to cover all cases, the strong determination may drive the operation to accomplish as planned. Seeing the importance of such an operation, there is an allocation budget or acquisition of needed equipment for additional operation from an outside agency in which considered the operation runs smoothly and efficiently.

5) Follow-up on the diversion plan in each phase and the operational success indicators.

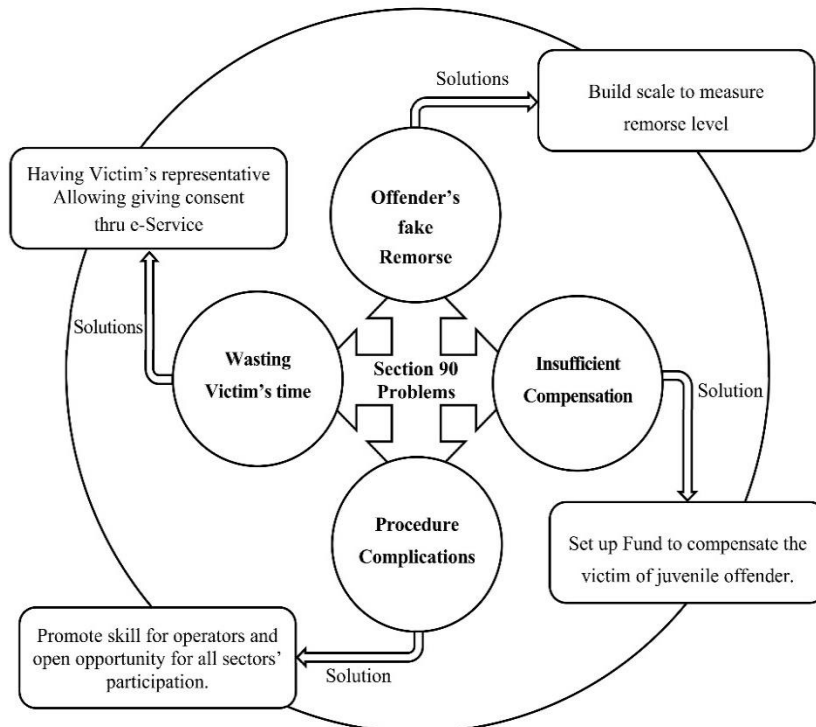
The successful accomplishment of the diversion procedure for the juvenile offender under Section 90 is the reflection of operational processes in which each phase requires follow-up and in-depth data with the readiness to solve problems risen from the operational risks. Nonetheless, the operational efficiency may not be able to measure in a short-term period only. It must take into consideration, the reasons, and suitable components for such a case. Hence, the qualitative operational indicators may conduct the assessment through gestures, postures, eyes contact, speeches or responses in different actions of the offender, victim, or guardian. However, for the operational outcomes to indicate if the plan succeeded with quality, both the offender and the victim must reconcile, live in harmony, and coexist in society happily.

6) Best Practice and Bad Practice Cases Studies.

The lessons learned from the cases study regarding the diversion plan instead of the court proceedings after partition under Section 90 of the Juvenile and Family Court and Juvenile and Family Court Procedure B.E. 2553, both Best and Bad practice cases have reflected that the reconciled agreements helped to facilitate the operation and leading to successful result. If both sides focus on the benefits received once the plan completed, the offender's habits would improve, with the chance to turn a good person, and be able to live in society with others peacefully. Meantime, the victim would receive the physical and mental remedies. Regarding the major obstacle that failed the plan is the offender not making firm commitment to follow the plan conditions, the victim refused to give consent and the victim asking too high compensation for damages beyond the offender or family ability to pay.

The successful outcomes of the research entitled. "Analysis of Diversion Procedure Under Section 90 After Partition in Juvenile Delinquency Cases" had crystalized into the body of knowledge on the process-driven enforcement on the efficient diversion plan and most benefit to the juvenile offender as shown in the so-called, " Circle of Revival" below:

Figure 2 Circle of Revival



Recommendations

Policies Recommendations

- 1) The Central Juvenile and Family Court and the responsible agencies should set up additional policies to allow the victim's representative giving consent in plan preparation, especially in the case without the direct victim or the victim deceased or unable to locate the victim.
- 2) The Central Juvenile and Family Court and the responsible agencies should set up more policies to study the possibility of establishing the fund to remedy the victim of juvenile offender, including the design of assistance principles to be in line with the related laws, and this fund is nowhere duplicating the existing funds.
- 3) The Central Juvenile and Family Court and the responsible agencies should set up the policies to allow different sectors, the state, private and civil society to participate in the process-driven enforcement to rehabilitate juvenile offender, with the follow-up on the operation continuously. And if any individual, a group of individuals or agencies help until accomplishing the good quality plan, there should be the open channel to honor them as to boost their morals and willingness to carry on with the operation for society.

Operational Recommendations

- 1) The Central Juvenile and Family Court and the responsible agencies should set up additional policies to allow the victim giving consent to the plan preparation without travelling to the court such as giving consent through regular mail, online or e-Service as to facilitate the process, provide convenience, reduce hassle and relief the burden of travelling expenses for the victim, especially the case with minor offence and the victim had gotten back the stolen properties, whether being the retrieved assets or compounded assets for evidence during arresting the suspect.
- 2) The Central Juvenile and Family Court and the responsible agencies should set up the criteria for assessing juvenile offender's remorse level as the empirical measurement by constructing the instrument or direction for judgment with scoring system or qualitative and quantitative indicators so that these gadgets can tell if the juvenile offender really feel remorse. This approach can help identify the operational direction accurately and it is highly likely to lead the operation successfully.
- 3) The Central Juvenile and Family Court and the responsible agencies should set up the project or activities to increase officer's skills and develop work potentials as training courses at least twice a year. Perhaps, during the focus group discussion, certain case studies or operational problems and obstacles may be selected as the discussed

subjects or seeking solutions together to achieve the efficient targeted goals.

Recommendations for Further Research

- 1) The assessment of a successful diversion plan for the juvenile offender after partition under Section 90 of the Juvenile and Family Court and Juvenile and Family Court Procedures Act B.E. 2553 should be arranged for further study.
- 2) There should be a comparison study on the use of specific measures instead of criminal proceedings for the juvenile offenders before and after partition so that the strong points of each approach can be integrated to achieve a good quality operation.
- 3) The possibility of setting up the funds to remedy the victim of a juvenile offender should be further investigated, including the principles and criteria to be in line with the relevant laws.
- 4) The study of direction for developing a psychologically measured scale to assess juvenile remorse level should be conducted, including the court discretion guidelines to weigh the reliability of juvenile offenders' testimony, leading to a more accurate assessment diversion plan.
- 5) Problems, obstacles, and limitations affecting the successful operation of the diversion plan under Section 90 should be studied by engaging in in-depth analysis to find the actual root of problems so that the problems can be solved with workable directions.

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