

TREATMENT OF JUVENILE OFFENDERS

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INTRODUCTION

The administration of juvenile justice in Ghana would be appreciated better within the context of our judicial and historical developments. The system does not exist in isolation; rather it forms an integral part of the whole judicial structure.

The available evidence suggests that our traditional system or customary law does not have structures for administration of juvenile justice. Some writers however maintain that our chiefs and elders administered some form of juvenile justice system based on our traditional values before the advent of the white man in the country.

Be that as it may, it must be emphasized at the outset that because of our colonial heritage the bulk of our laws which was inherited has some links with the English. This has had considerable influence on our judicial and historical development.

HISTORICAL DEVELOPMENT

It is the legal system which we inherited from the British with whom the contact was established in 1874 which has addressed itself to this problem. The first comprehensive legislation concerning the treatment of the juvenile came into force in 1945. Before then, there were no special provisions our statute books for the treatment of juvenile offenders. The only provision was contained in the 1936 ordinance (Child and Reformation). This law empowered the judges and magistrates to commit by a special mandate, children under sixteen (16) years of age to a training school for boys administered by the Salvation Army in Mampong-Akuapem, if they were found guilty of offences which if committed by adults would be punishable by imprisonment without the option of a fine.

There were no statutory provisions for regulating the conduct and the period of training at

school. Under this ordinance, the police were not given any power to handle Juveniles who had committed specific criminal offences. As a result they were selective in the type of cases they referred to the courts.

The first legislation came out in 1944 to improve the situation. The welfare section of the Department of Social Welfare and Community Development was given the responsibility of handling the treatment aspects of juvenile delinquency, but as there were no trained officers in the Department at the time to operate this scheme, the laws did not become operative until 1946.

The forerunners of the present statute relating to treatment of juvenile offenders were:

- (a) Probation of Offenders' Ordinance of 1944.
- (b) Probation Officers and committee Regulation, 1945.
- (c) Industrial Schools and Institutions Ordinance of 1945.

THE PROBATION OF OFFENDERS ORDINANCE OF 1944

This ordinance empowered all courts of competent jurisdiction (excluding native courts) to make probation orders in criminal cases where in view of the offender's youthful age, character, antecedents, home surroundings, health, and mental conditions or of the nature of the offence or any extenuating circumstances under which the offences were committed, it was expedient to suspend the sentence.

THE COURT (AMENDMENT) ORDINANCE 1944

This ordinance completely revolutionized the judicial treatment of juvenile as a person under sixteen. (This was raised to seventeen under the Criminal Procedure Code (Act 30), 1960). This empowered the governor to constitute from time to time, special courts which exercised jurisdiction similar to those of District Magistrate's Courts for hearing cases involving juveniles. The ordinance also made provision for the appointment by the governor at his pleasure of a panel of juvenile magistrates.

This monumental ordinance further made provision for the procedure and jurisdiction of cases including remand of cases to fit persons or remand of homes. Later in 1946, another enactment was passed to prepare the way for the treatment by juvenile courts of all categories of juveniles. This legislation opened a new era in Ghana on the community's

responsibility towards the minor citizen. It did not only define the status of the child in the community, but went further to define the role played by the state and the legal parents or guardian in the child's welfare and development. For the first time in the history of judicial handling of juveniles in Ghana, non offenders—orphanded and destitute, neglected, ill-treated, wandering and begging children or any other exposed to some form of moral or physical danger were to become the subject of official judicial consideration.

The next legislation was:

THE INDUSTRIAL SCHOOLS AND INSTITUTION ORDINANCE 1945

This provided for the establishment of industrial schools where juveniles might be detained and trained. It also provided for Borstal Institutions where "young persons" (aged 17-21) might likewise be detained and trained. The ordinance further provided, inter alia, for the establishment of remand homes for temporary custody of juveniles and young persons after care by parents and guardians towards the upkeep and training of detained juveniles, young person etc.

THE CRIMINAL PROCEDURE CODE ACT 30 1960

In 1960 the Criminal Procedure Code was passed. The enactment repealed all earlier statutes and consolidated all that they were contained in the previous ordinances. The age of the juvenile was raised from sixteen (16) to seventeen (17).

The criminal Procedure Code, 1960 (Act 30) provided for a juvenile or young offender to be dealt with in a manner different from an adult but this was found to be inadequate in many respects. The main object of the Juvenile Justice Act 2003, Act 563 is to provide a juvenile justice system to protect the rights of children and provide for young offenders in accordance with international standards in the convention on the Rights of the child and the UN standard Minimum Rules for the Administration of juvenile justice.

The Criminal Justice Act deals mainly with the following.

- (a) Definition and meaning of a juvenile.
- (b) The criminal responsibility of the juvenile.
- (c) Detailed procedure for dealing with an offending Juvenile.

(d) Treatment of juvenile offenders

Part II concentrates on the Juvenile court

Part II on Juvenile Courts replicates Part IX of the Criminal Procedure code on Procedure in Juvenile Courts. Section 19, which is on the presumption and determination of age, is an improvement on section 343 of the Code which did not provide adequate guidance for the court. The new provision mirrors section 122 of the Children's Act 1998 (Act 560). Section 344 of the Code, on the remand of juveniles did not specify the length of remand. This has been taken care of in section 23 of the Act. The maximum period of a remand warrant is seven days and the total period is not to exceed three months or six months in the case of a capital offence. The requirement of a social enquiry report is novelty in section 24. This is a report to be taken into account by the court before a probation or detention order is made. If the proposals are not followed by the court. Reasons are to be given. The purpose of the report is to ensure that whatever probation or detention order is made is in the best interest of the juvenile. The inclusion of the principle of diversion whereby a juvenile is dealt with outside the criminal justice system is an innovation. Sections 25-27 provide for this if it is in the best interest of the juvenile to do so. The principle was enunciated in the Children's Act 1998. (Act 560) and the child panels were setup in Sub-Part 1 of Part II of Act 560 to mediate in civil and criminal matters in an extra-judicial manner. The Act entrenches the concept in the judicial system to avoid the stigmatization of the Juvenile. Details of the principle will be spelt out in regulations.

Parents may give security to the court where a juvenile is charged with an offence (section 28) and after conviction (section 29). Other methods of dealing with an offender in section 29 have been culled from section 346 of the Code. The juvenile may also be put on probation, (section 31). General provisions on court orders remain unchanged, section 38.

Cases concerned with juveniles are to be dealt with expeditiously and section 33 stipulates that if a case is not completed within six months of the first appearance in court, the juvenile is to be discharged. This is a new provision.

The issue of previous convictions is dealt with in section 37 which provides that convictions should be expunged in certain circumstances once again, this is to protect the juvenile from stigmatisation.

Part III of the Act is on Junior Correctional Centres and Senior Correctional Centres. This was formerly referred to as Industrial Schools and Borstal Institutions under the Code. The Junior Centres are for juveniles and the Senior Centres are for young offenders and special juvenile offenders.

The Part highlights the new system of punishment. The punishment regime in the Code encourages juveniles to inflate their ages to be treated as adults in the criminal justice system. This is because under section 378 of the Code, the detention order of a juvenile or young offender ordered to be sent to a school or institution is for a period of three years irrespective of the offence. An adult, meanwhile, can be kept in custody for a lesser period for the same offence. In order to avoid the three-year mandatory period in an institution, juveniles inflate their ages and end up in adult prisons contrary to their best interests. Inspection by the Commission on Human Rights and Administrative Justice has revealed that there are many juveniles in adult prison, hence the need for legislative reform.

The Act effects changes in punishment to reflect the new thinking that children do not have to be in an institution to learn a trade and that the detention of children in a corrective institution should be a last resort.

The provisions in section 46 follow the principle that, as a juvenile matures to adulthood, the juvenile should increasingly be held responsible for any action taken, more especially with the increase in the age of criminal responsibility in section 4 of the Criminal Code (Amendment) Act 1998 (Act 554). Detention for a juvenile offender under the age of the sixteen years is not to exceed three months. For a juvenile of or above sixteen years but under eighteen years the detention period is six months. The period of detention for a young offender is twenty-four months. The detention period for a capital offence is three years. The clause is explicit in sub-section (6) that no juvenile or young offender is to be detained in an adult prison. Other amendment and repeals.

AMENDMENT AND REPEALS

The Criminal Procedure Code 1960 Act 30 is amended as follows;

- (a) by the repeal of section 295, 300(4), 314, and paragraph (f) of section 367.
- (b) by the repeal of paragraph IX section 340-351 and Part IX section 370-393 and in section 414 the deletion of the definition of

- (i) "borstal institution"
- (ii) "industrial school"
- (iii) "juvenile"
- (iv) "remand home"
- (v) "young offender"
- (vi) "young person"

I will like to comment on one or two provisions of the Juvenile Justice Act before I conclude this presentation. Section 17 on Exclusive jurisdiction and transfer.

S17(4) "A charge against a juvenile for an offence if committed by an adult would be punishable by death shall be heard by a court of summary jurisdiction other than a juvenile court."

Can a murder case be tried summarily? It is a first degree felony and Article 19 of the Constitution states that it must be tried by a judge and jury.

S18(2) Where a juvenile is tried for an offence punishable by death by a court of summary jurisdiction and is convicted by the court, the court of summary jurisdiction shall remit the juvenile to a juvenile court for sentence.

These concerns have been raised in this presentation in order to provoke a discussion when you retire into groups you make known your views on these matters.

Thank you.