

ALTERNATIVE PUNISHMENT FOR JUVENILE OFFENDERS IN MALAYSIA AND AUSTRALIA

By

DINA KARHANI BT. KAMARUDIN	2007294524
EYZA FARIZAN BT. DATO' MOKHTAR	2007296508
IRNA SHAHANA BT. SAMSUDIN	2007294448
MOHD HAFIZUDDIN B. MOHD IDRIS	2007294118

**Submitted in Partial Fulfillment of the Requirements
for the Bachelor of Legal Studies (Hons)**

**Universiti Teknologi MARA
Faculty of Law**

October 2009

**The students/authors confirm that the work submitted is their own and that appropriate credit has
been given where reference has been made to the work of others.**

ACKNOWLEDGEMENT

This research project was undertaken by a team which had included Dina Karhani, Eyza Farizan, Irna Shahana and Mohd. Hafizuddin. All chapters in this paper were completed as a result of the joint effort of all four members of the team. On a personal level, Dina Karhani contributed by updating Chapter 1 for congruity with the rest of the paper and the preparation of interview questions. Eyza Farizan's personal contributions include the review and editing of Chapters 2 and 3, and formatting of the research paper. Irna Shahana personally contributed by reviewing and editing Chapter 4 and conducting the interview with Tuan Horman Hussain. Mohd. Hafizuddin personally contributed his time and effort in terms of field work in preparation for the interview we conducted in Sekolah Henry Gurney. Lastly, the crucial section of this project paper, Chapter 5, is again the result of equal joint effort of all members of the team.

First of all, we would like to thank God for his grace and blessings in providing us with the strength, time and opportunity to complete our research in an orderly and timely manner despite all the complications we encountered and the restrictive time limit. It is worth noting that the successful completion of this project paper would not have been made possible without the careful guidance from our supervisor, Prof. Madya Siti Hajar Mohd. Yasin. We would like to take this opportunity to express our utmost gratitude for her patience and quiet resolve in painstakingly guiding us through each chapter.

Furthermore, we would like to convey our deep appreciation to our respondents, namely Tuan Horman Hussain from the Magistrate Court of Teluk Datok; the Department of Prison, Malaysia for allowing us to conduct a visit and interview of the staff and inhabitants of Sekolah Henry Gurney, Telok Mas in Melaka with a special thanks to the Deputy Director of Sekolah Henry Gurney Telok Mas and the Counsellor, Tuan Haji Ismail and Tuan Azman Mat Yashim, for the time they spent in dispensing invaluable information which we have incorporated into our research. Last but not least, we would like to express our gratitude to our family and friends for their boundless support, without which the completion of this project paper would not have been possible.

ABSTRACT

The rise in juvenile rates in recent history has become a national concern. The constant change in the economic conditions are forcing parents to leave their children unattended and without supervision making more room for error. Most other countries have amended their provisions regarding juvenile punishment to accommodate current needs and socio-economic changes. Malaysia heavily relies on the *Child Act 2001* for juvenile punishment. However, the steady increase in the rate of juvenile illustrate that the forms of punishment currently available are no longer serving its function, especially in terms of deterring and rehabilitating youth offenders. This research focuses on the forms and benefits of alternative punishment adopted by other countries, with a specific focus on Australia. It is hoped that the dissemination of the information on the methods of alternative punishment in other countries will aid the judges in Malaysia to further exercise their judicial discretion in meting out punishment for juvenile offenders. The final outcome from this research is that the laws in Malaysia in terms of juvenile punishment are sufficient. However, support from the Federal Government in terms of support, financially and through provision of adequate facilities and infrastructures, is necessitated to ensure the efficiency of the incorporation of alternative juvenile punishment in the juvenile justice system in Malaysia.

TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
List of Cases	vi
List of Statutes	vi
CHAPTER ONE: INTRODUCTION	
1.0 Introduction	1
1.1 Problem Statement	4
1.2 Objective of the Study	5
1.3 Conceptual Features	5
1.4 Literature Review	6
1.5 Research Methodology	10
1.6 Scope and Limitations of the Study	11
1.7 Contribution of the Study	12
CHAPTER TWO: JUVENILE PUNISHMENT	
2.0 Introduction	13
2.1 Juvenile	14
2.1.1 Definition of ‘Juvenile’	14
2.1.2 Juvenile in Australia	15
2.2 Juvenile Punishment	16
2.2.1 History of the Juvenile Justice System	16
2.3 Position in Malaysia	18
2.3.1 The <i>Child Act 2001</i>	19
2.3.2 Juvenile Punishment in Malaysia	19
2.4 Concluding remarks	24
CHAPTER THREE: BENEFITS OF ALTERNATIVE JUVENILE PUNISHMENT	
3.0 Introduction	25
3.1 Alternative Punishment	25
3.2 Benefits of Alternative Punishment	28
3.2.1 The “Root Causes” Approach	29
3.2.2 A Revolution in the Criminal Justice System	29
3.2.3 Benefiting Delinquents and Society	30
3.2.4 The Moral Appeal of Alternative Punishment	31
3.3 Alternative Punishment in Practice	32
3.3.1 Alternative Punishment in the United States of America	32
3.3.1.1 Homeschooling	33
3.3.1.2 House Arrest	37
3.3.2 Alternative Punishment in Australia	38

3.3.2.1	Restorative Justice	39
3.3.2.2	Community Service	42
3.4	Concluding Remarks	43

CHAPTER FOUR: PROSPECT OF ADOPTING ALTERNATIVE JUVENILE PUNISHMENT

4.0	Introduction	45
4.1	Suitability of Adopting the Alternative Punishment	46
4.1.1	Homeschooling	46
4.1.2	House Arrest	47
4.1.3	Restorative Justice	48
4.1.4	Community Service	49
4.2	Obstacles in Adopting Alternative Juvenile Punishment	49
4.2.1	System of Implementation	50
4.2.2	Capacity Restraints	51
4.2.2.1	Human Resources	51
4.2.2.2	Procedural Restraints	52
4.3	Methods on Adopting Alternative Punishment	53
4.4	Concluding Remarks	55

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.0	Introduction	57
5.1	Legal Approach	57
5.1.1	<i>Child Act 2001</i>	57
5.1.2	<i>Criminal Procedure Code</i>	58
5.2	Alternative Punishment Based on the Australian Practice	58
5.2.1	Restorative Justice	58
5.2.2	Community Service	59
5.3	Infrastructural Requirement	60
5.3.1	Funding	60
5.3.2	Human Resources	61
5.3.3	Encouragement from Other Organisations	61
5.4	Conclusion	62

Bibliography	64
--------------	----

Appendices

Photos from visit to Sekolah Henry Gurney, Telok Mas
Correspondence with the Department of Prison
Interview Questions
Relevant Sections of the <i>Child Act 2001</i>
Section 293 of the <i>Criminal Procedure Code</i>