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# **Diversionsary Measures in Juvenile Justice: A Comparative Juridical Analysis of Special Measures in Thailand, New Zealand, and Japan**

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## **Abstract**

The Juvenile and Family Court and Juvenile and Family Court Procedure Act B.E. 2553 (2010) in Thailand has two major limitations: (1) families only play a limited role as informants, and state officials have ultimate authority in decisions; and (2) the mandatory consent requirements in Articles 86 and 90 make it difficult for young people to participate in corrective rehabilitation procedures. Family Group Conferences (FGCs), which are a familycentred approach in New Zealand's system, provide families (whānau) the authority to establish their own plans without requiring victim consent; however, victims are encouraged to be involved. By contrast, Japan's system emphasises youth accountability by integrating traditional approaches to mediation with official family court proceedings. By comparison, the research suggests reforming the Thai system by applying the principles of family empowerment, through changing the role of officials from planners to facilitators, and replacing absolute consent conditions with restorative mediation processes between offenders and victims. Such reforms would make the Thai juvenile justice system more effective and achieve real rehabilitation goals.

**Keywords:** Family, consent, rehabilitation

## **1. Introduction**

Diversionsary Measures in Thailand (under the Act on Establishment of and Procedure for Juvenile and Family Court B.E. 2553) are directly related to Sections 86, 90, and 132. Thai law designates the family merely as a participant providing information, not as the direct planner, and primary discretion remains with the Director of the Observation and Protection Centre or the court. Furthermore, the "consent of the victim" is established as a mandatory legal prerequisite for using these measures under Sections 86 and 90. This creates practical problems, causing youth who deserve the opportunity for rehabilitation to lose that chance. According to the key findings, it is evident that New Zealand (Oranga Tamariki Act 1989) grants central decision-making power to the family to create a plan through a Family Group Conference (FGC), without requiring victim consent as a mandatory condition. Meanwhile, Japan mainly focuses on Juveniles' repentance and does not require the victim's consent as a condition for formulating a rehabilitation plan. Therefore, this research aims to analyze the shortcomings in the Thai Justice system, utilizing the issues of family roles and victim consent as key points in comparison. The goal is to lead to legal reforms aligning with the rehabilitative spirit of the Convention on the Rights of the Child (CRC).

### 1.1 Research Objective

1. To analyse the limitations of the Thai Juvenile and Family Court and Juvenile and Family Court Procedure Act B.E. 2553
2. To examine and compare the juvenile justice models of New Zealand, Japan and Thailand
3. To evaluate how family empowerment and restorative mediation practices
4. To propose legal and procedural reforms for Thailand

## 2. Literature review

### Conceptual Framework and Special Measures in Thailand's Juvenile Justice Process

The reform of the juvenile justice process in Thailand, through the Act on Establishment of and Procedure for Juvenile and Family Court B.E. 2553, marked a paradigm shift from a Punitive Justice approach to a Welfare-oriented Model. This aligns with the Convention on the Rights of the Child, which emphasizes "The Best Interest of the Child" as the primary consideration (Senate of Thailand, 2010). The fundamental philosophy of this law rests on the belief that Juveniles are, by nature, still malleable and easily reformed, much like a "white cloth" (pha khao), who, if properly guided, can return to society as good citizens (Rattanakiatikarn, 2015). For this reason, the justice process should not solely focus on stigmatization but should be an apparatus in providing opportunities and supports for those in reintegrating into the society as law abiding citizens (Sanguanphan, n.d.; Kamdara, n.d.). Section 86 of the Juvenile and Family Court Act B.E. 2553 is the primary mechanism for Pre-Prosecution Diversion, designed to prevent juveniles from entering the formal court trial system. It applies to offenses with a maximum imprisonment term not exceeding 5 years, with a condition that such youth must not have been previously sentenced to imprisonment by a final judgment (except for offenses committed by negligence or petty offenses). The process begins with the Director of the Observation and Protection Centre considering the youth's age, background, behavior, and the cause of the offense. If it is deemed that the youth can be reformed without prosecution, a "Rehabilitation Plan" is formulated, which is the core of the Section 86 process (On-ta, 2016). This plan requires the cooperation of a "Multi-disciplinary Team," including experts such as psychologists and social workers, to ensure the assessment and planning are comprehensive and appropriate for the individual child (Surindra Rajabhat University, 2022; Office of the Information Commission, n.d.; Suan Dusit University, n.d.). The plan is then submitted to the Public Prosecutor for approval (Rittipichaiwat, 2013; On-ta, 2016) and subsequently reported to the court (On-ta, 2016). At this stage, the court's role is supervisory, ensuring the process is lawful and protects the rights of all involved parties (Ramkhamhaeng University Law Journal, n.d.). If the youth successfully completes the plan, the case is concluded, and the youth will not have a criminal record, thus achieving the measure's ultimate objective (Sanguanphan, n.d.). Because every child has rights and freedoms that must be protected by law. The Juvenile and Family Court Act B.E. 2553 also provides for Post-Charge special measures in two sections. Section 90 offers an opportunity to divert the case even after it has entered to the court proceedings, applicable to offenses with a maximum imprisonment term not exceeding 20 years. This diversionary measure requires two key conditions: the genuine remorse must be explicitly demonstrated, and the victim must consent to the juvenile in order to enter the rehabilitation process (Khon Kaen University, n.d.). If these

two conditions are met, the court will order a rehabilitation plan and may temporarily dispose of the case. If the youth completes the plan, the court will dismiss the case from the docket without a judgment of guilt (On-ta, 2016). Section 132 is also a special mechanism "In Lieu of Judgment" (Punyawoj, 2021). It is utilised after the court has heard all the evidence but deems it inappropriate to impose a sentence. This is an option when non-custodial measures may be insufficient, yet a conviction could do more harm than good (Journal of Education and Social Development, 2019). The court may issue an order under Section 132, paragraph two, to send the juvenile into special measure for training or vocational work, prohibit certain associations or behaviors, or mandate treatment for substance abuse or physical/mental illness at a specific place and for a set duration (On-ta, 2016). Once the juvenile completes the court's conditions, the court will dismiss the case without a conviction, as stipulated in Section 133 (Journal of Education and Social Development, 2019).

### **Restorative Justice Models and Diversion in Foreign Countries**

1. New Zealand's Family Group Conference: Empowering the "Whānau" New Zealand's Family Group Conference (FGC) is rooted in Māori traditions that prioritize the "Whānau" (extended family and community) in taking collective responsibility for resolving conflicts and restoring relationships (The family group conference..., n.d.). This concept was codified in the Children, Young Persons, and Their Families Act 1989 (now the Oranga Tamariki Act 1989). Its core philosophy is to "transfer power" in decision-making to the family and community, who are believed to know and understand the child's problems best (The family group conference..., n.d.; Office for Victims of Crime, n.d.). The FGC process is systematic and distinct. Convening: Initiated by a neutral "Care and Protection Coordinator" who organizes and facilitates the meeting. Participants include the child or youth, their extended family (Whānau), the victim(s) and their supporters, a police representative, and relevant experts (Community Law, n.d.; Oranga Tamariki Act 1989 Private Family Consultation: After all parties share information about the incident and its impact to ensure a common understanding (Oranga Tamariki- Ministry for Children, n.d. b), the heart of the FGC begins. Other participants leave the room, allowing the family and youth to deliberate privately on how they will take responsibility for the offense and ensure the youth's future welfare (Community Law, n.d.; The family group conference..., n.d.). Agreement and Plan: The family presents their agreed-upon plan, aiming for unanimous acceptance. This legally binding plan covers two dimensions: "Accountability" (e.g., apologies, reparations) and "Welfare" (e.g., providing a mentor, accessing therapy) (Oranga Tamariki- Ministry for Children, n.d.-b).

2. Japan's Juvenile Justice Process: A Culture of Reconciliation The Family Court holds formal authority, its decisions are highly influenced by informal conflict resolution processes, which are accepted societal customs. This process includes key steps: 1) The juvenile confesses and expresses sincere remorse for their actions (ResearchGate, n.d. ). 2) The juvenile and their family must approach the victim to offer a formal, sincere apology and propose compensation for the damages (Haley, n.d.). 3) The victim's forgiveness, often signified by a "Letter of Pardon". While this letter has no direct legal effect, it carries significant weight in the deliberations of prosecutors and judge

### **3. Methodology**

This paper uses doctrinal legal research and comparative methods to investigate the relevant law in various countries. (Khonglamthan, et al., 2023) These methods could examine the

participation of family to determine the special measures placed for the rehabilitation of juveniles who conduct illegal acts instead of normal criminal penalties.

#### 4. Results

This section provides a comparative analysis of the systems in Thailand, New Zealand, and Japan. Thailand: State-Centric. Decision-making power is almost entirely centralized with state officials, such as the Director of the Observation and Protection Centre, the Public Prosecutor, or the Judge (Rittipichaiwat, 2013; On-ta, 2016; Punyawoj, 2021). The family and community are merely "participants" or "implementers" of a plan determined by the state; they do not have final decision-making authority. New Zealand's: Power is "transferred" from the state to the family (Whānau) (The family group conference..., n.d.). The core of the process is the private family deliberation to "create" their own plan (Community Law, n.d.). The state's role (via the coordinator) shifts from decision-maker to "Facilitator". Japan presents a more complex model. "Formally," the Family Court (a state organ) retains ultimate authority. However, "substantively," the court's decision is highly influenced by the outcomes of the informal process driven by the offender, family, and victim (Haley, n.d.). The state holds final power but often bases its use on community-level consensus.

Based on the lessons above and the analysis of problems in the Thai system, the following recommendations for legal and procedural reform are proposed: Sections 86 and 90 should be reformed by adapting a model inspired by New Zealand's FGC. The role of the Director or the Court should be changed from "plan-maker" to "facilitator" of a "Family and Community Group Conference" (Khon Kaen University, n.d.; Suan Dusit University, n.d.; Ramkhamhaeng University Law Journal, n.d.). This conference should mandate the participation of key stakeholders: the child, the family, the victim, and a community representative. The goal is to make the "family" primarily responsible for proposing and creating the rehabilitation plan themselves, with support and information from the multi disciplinary team. This change would enhance the plan's effectiveness in addressing the real problems and promote family responsibility. The victim's role should be shifted from a "consent-giver" to an "active participant". The requirement for absolute (yes/no) consent from the victim in Section 90 should be abolished. It should be replaced with a structured "Victim-Offender Mediation" process as a mandatory component of the Family and Community Group Conference. The goal is to create a safe space for dialogue, understanding, and a mutual agreement on reparation and relationship restoration. This change would align the process with restorative justice principles that emphasize dialogue and joint problem-solving, which are central to the systems in New Zealand and Japan.

#### 5. Conclusion

This report concludes that to fully achieve the objectives of the Act on Establishment of and Procedure for Juvenile and Family Court B.E. 2553, Thailand must move beyond its solely State-Centric paradigm. The future of sustainable juvenile justice lies in creating a Hybrid System that integrates state expertise with the wisdom and power of the family and community. Adopting the "family empowerment" principle from New Zealand, combined with valuing "direct reconciliation processes" as in Japan, will be key to developing a Thai juvenile justice system that is more effective, just, and genuinely restorative, bringing long-term benefits to the youth, the victims, and the society as a whole.

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