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## At-Risk or Already Lost? “Children Beyond Control” in Malaysia: A Proposal for Reform

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**ABSTRACT:** At present, Malaysia lacks a formal diversion program to deal with risky children, relying instead on “children beyond control” provision under section 46 and “children in conflict with the law” under Part X of the Child Act 2001 to manage juvenile delinquency. However, this reactive and punitive approach has proven insufficient in addressing the root causes of child offending. This article analyses “children beyond control” (CBC) provision under Child Act 2001 (Act 611) as a preventive measure against juvenile delinquency and proposes the necessary amendments to the law to bring it in line with international standards. The methodology adopted for this research comprises of doctrinal legal research methodology by analyzing relevant statutes such as the Child Act 2001 and Penal Code and judicial interpretations of the law in relation to juvenile delinquency and offending. Secondary sources such as from journals, theses, textbooks and conference papers are also examined. Comparative benchmarking with the legal system in the US is made to adopt legal reform in the Malaysian law. The results obtained revealed that while it is theoretically preventive to enable early intervention for uncontrollable behaviors before criminality, this study identifies critical flaws such as stigmatisation from the beyond control’s label, net-widening of beyond control to normative adolescent criminalization, risks of institutionalization, and resources

*constraints. This study proposed amendments to section 46 of the Child Act 2001 to align with international standards and give more clarity to the law.*

**Keywords:** *children beyond control, institutionalization, restorative justice, diversion*

## I. INTRODUCTION (Calibri Light, 12 BOLD)

The Malaysian Child Act 2001 (Act 611) was enacted to safeguard the welfare, rights, and interests of children. It serves to unify various child protection laws into a single piece of legislation, establishing a legal structure to address issues such as abuse, neglect, and the protection of children's rights (Velkanthan et al., 2025). The Child Act 2001 abolishes the Juvenile Courts Act 1947 (Act 90), the Child Protection Act 1991 (Act 468), and the Women and Girls Protection Act 1973 (Act 106) (Nazeri, 2007). Child Act 2001 also seeks to harmonize local legislation to be aligned with the United Nations' Convention on the Rights of the Child 1989 (CRC), which Malaysia acceded in 1995 (Shariff, 2018). The CRC contains rights relating to every aspect of child life including the rights to life, survival, development, protection, and participation. Specifically, Article 3 of the CRC provides that "[i]n all actions concerning children, whether taken by public or private welfare institution, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration" (Kahar & Zin, 2011). The consideration for "the best interests of the child" is vital in matters relating to separation from parents, parental responsibilities for their children, deprivation of family environment, adoption, separation from adults in detention and presence of parents at court hearings of penal matters involving a child in conflict with the law (Ruggiero, 2022).

As far as juvenile delinquency is concerned, early intervention and prevention is essential to detect early disruptive behavior as persistent disruptive behavior may eventually lead to child delinquency or serious juvenile offending (Loeber, 2003). In the Malaysian context, this concern is particularly pressing, as studies have shown a rising trend in juvenile offenses, with contributing factors including peer influence, family dysfunction, and socio-economic challenges. A qualitative study by Musa and Rais (2023) highlight that many former child offenders in Malaysia were initially inclined into delinquency due to peer influence and the wants to get quick financial benefit. Through early intervention of at-risk children, the authorities and communities can divert these vulnerable children towards positive pathways, hence reducing their involvement in delinquency and recidivism (Farrington & Welsh, 2008). One of the measures under the Child Act 2001 to protect children from getting involved in delinquency is through the inclusion of the "children beyond control" (CBC) provision under section 46. This article seeks to critically analyze the role of section 46 as a preventive tool of juvenile delinquency and recommend several amendments for its betterment.

## II. METHOD (Calibri Light, 12 BOLD)

This study utilizes doctrinal legal research methodology (Bhaghamma, 2023) by systematically analyzing relevant legal principles such as the concept of "best interests of the child", "last resort", "parental liability" and "child welfare". Relevant statutes such as the Child Act 2001 and the Penal Code are also referred to explore the legal framework in

relation to children beyond control in Malaysia. The statutes provide a legislative basis for the implementation of the law. Besides, judicial decisions are examined to explore the interpretation of the law by the courts and to see if there is any disconnect between the law on paper and in practice.

Apart from that, reference to secondary data such as published government reports and statistics and scholarly works from journals, theses, textbooks and conference papers are also made to evaluate the problems and prospects of the CBC provision as a preventive tool of juvenile delinquency and reforms needed to improve the existing law. Comparative analysis of “children beyond control” law in the US was also made to identify the differences in legal approaches, child protection tools, and the incorporation of restorative justice principles in Malaysia and the US.

### III. LITERATURE REVIEW

Section 46 of the Child Act 2001 contains provision concerning children beyond control (CBC) in Malaysia. This provision allows parents or guardians who are unable to manage a child's behavior to file an application to the Court for Children for the child to be detained in appropriate institution. This provision has led to continues debate among scholars, child rights proponents, and lawmakers, especially with Regard the effectiveness of the law in reducing juvenile delinquency and its compatibility with international human rights instruments.

Mohamad and Yusoff (2015) in “The legal concept of children beyond control: A global perspective” explained the legal concept of CBC and its similarity with status offenses. The study underscored the practice in other countries in interpreting and manage CBC. In some jurisdictions, CBC are regarded as children in need of care and protection while in other jurisdiction, CBC are treated like child offenders and subject to criminal penalties. It was recommended for the Malaysian legal system to incorporate restorative justice to support rehabilitation of CBC. In “Jurisdiction of Court for Children Relating to Children Beyond Control in Malaysia: A Historical Development” Mohamad and Yusoff (2020) provided a historical background of the jurisdiction of the Court for Children as regards CBC. The article also highlighted the shift from punitive approach to a more supportive inclination towards restorative justice in recent Years. Besides, the study also emphasized that CBC cases often involved family issues thus there is a need for a clear legal standard to define CBC. The study also recommended for a more child-centric approach in dealing with CBC.

In another study entitled “Pelaksanaan lencongan dalam kes kanak-kanak terkawal (Implementation of diversion in cases of children beyond control)”, Mohamad and Yusoff (2020) highlighted the lack of clear statutory criteria to determine whether a child is controllable or not. This would lead to subjective and inconsistent judicial decisions by the Court for Children. The authors also suggested for diversion programs to be implemented instead of institutionalization of CBC in detention which would affect adversely affect the CBC. In a subsequent study entitled “The Child (Amendment) Act 2016: towards the betterment of children beyond control's welfare”, Mohamad (2021) discussed about the 2021 amendment to the Child Act 2001 on CBC provision. The amendment was intended to emphasize family-based care as the primary option in CBC

cases. The study compared the legal position pre-and-post 2016 amendment and concluded that the formal recognition of out-of-institution orders are critical despite the challenges in resources, lack of personnel, and insufficient support systems for families.

Mohamad and Yusoff (2019) in an article entitled “Rehabilitation of Children Beyond Control in Malaysia: Towards Deinstitutionalization” studies the challenges faced by CBC who were detained in juvenile institutions such as approved and Henry Gurney schools, probation hostels, places of refuges, and privately-owned care centers. The study also highlighted the negative impacts of institutionalization to CBC emotionally and psychologically. The 2016 amendment, which aimed to shift the heavy reliance on institutional placement to family-based care, was commended. In “Protection of children beyond control in the IR 4.0 era: The role of international conventions”, Mohamad et al. (2020) wrote about the importance of the CBC provision to be aligned with international human rights instruments, particularly the UN CRC, Beijing Rules, and Riyadh Guidelines. The article emphasized that despite its non-criminal nature, CBC are often subjected to punitive measures similar to child offenders. The contradiction of CBC provision and practice with the international standards should be reviewed to ensure its compatibility with global practice. In “Comparative analysis of international and Malaysian legal frameworks on the treatment on uncontrollable children: is there any inconsistency?”, Manaf (2023) lauded the 2016 amendment to Child Act 2001 in bringing the Malaysian legal system on CBC closer to international standards by prioritizing family-based care and separating CBC from juvenile offenders. This categorization is essential to avoid negative stigma towards CBC. However, the study also noted that the term CBC lacks a clear legal definition in Malaysian law, which may lead to inconsistent application and treatment.

While the above studies highlight the legal framework of CBC and the challenges in its implementation, the literature largely critiques the punitive nature of CBC provisions but does not sufficiently explore how CBC mechanisms—if reformed—could serve as early intervention tools to prevent juvenile delinquency. On diversion programs, while the above studies advocate for diversionary measures including counselling, family group conferencing, and school activities, there is a lack of empirical data evaluating their effectiveness in the Malaysian context. Most recommendations are conceptual or based on international models, without localized outcome-based assessments. To ensure a high-quality product, diagrams and lettering MUST be either computer-drafted or drawn using ink.

#### IV. FINDINGS AND DISCUSSION

##### *Children Beyond Control and Socio-Legal Theories*

Rooted in Article 3(1) of the UN Convention on the Rights of the Child (CRC), the principle of “the best interest of the child” states that in all actions concerning children, the primary consideration shall be the best interests of the child (George & Awal, 2019). It challenges the current punitive approach in interpreting “children beyond control” provision and provides a guidance through which State intervention must be evaluated in cases on uncontrollable behavior. For this study, this doctrine serves as a primary legal benchmark in evaluating the Malaysia’s current legal framework on “children beyond



control. "Restorative justice" theory on the other hand, is founded on the notion that justice should focus on healing, accountability, and reintegration rather than punishment (Braithwaite, 2003). In this research, this theory provides an alternative theoretical and operational model for dealing with children beyond control through non-punitive, rehabilitative interventions.

On the other hand, social control theory argues that weakening of social bonds such as family, peers and school increases the risk of delinquent behavior (Wiatrowski, 1978). Therefore, by adapting a legal response that focuses on family and school functions, it provides a basis for legal response that supports community-based settlements. By integrating these three theories, legal reform is necessary. When existing provisions of "children beyond control" violate the "best interests of the child" principle; the "restorative justice" concept offers an alternative model in dealing with uncontrollable children; and "social control" theory explains the risk factors of delinquency and the need for an early prevention strategy.

#### *Children Beyond Control: Unclear Definition and Criteria*

According to Section 2(1) of the Child Act 2001, a "child" is defined as anyone below the age of 18. However, in the context of criminal proceedings, the term specifically refers to individuals who have reached the minimum age of criminal responsibility, which is set at above ten years old under Section 82 of the Penal Code. Unlike other classifications of children, the term "children beyond control" (CBC) is not explicitly defined in any legal statute, including the Child Act 2001 (Mohamad & Yusoff, 2015). While Section 17 outlines the definition of a child in need of care and protection, Section 38 addresses children requiring protection and rehabilitation, and Section 41 refers to children in urgent need of protection, there is no definition provided for CBC under Section 46. The Social Welfare Department refers beyond control behaviors as "those which are "unruly, disobedient, and ungovernable" that would lead to criminal or moral danger if not contained" (Mohamad, 2019). BCB can generally be understood as children who disobey parental orders, skip school without a valid reason, return home late, or are involved in immoral activities such as having free sex, giving birth to a child out of wedlock, or consuming alcohol or drugs (Akram, 2007). Children are considered beyond control when they repeatedly disobey the instructions of their parents or guardians, which result in major problems for themselves, their guardians or the environment they live in (Baumrind, 1966).

In determining whether a child is uncontrollable or not, there are several conditions must be fulfilled; namely, first, the behavior must be done repeatedly. Secondly, the behavior must be disruptive or dangerous such as refusing to comply with school disciplinary regulations. In contrast, if the child refuses to eat vegetables or sleep at the time set by the parents, this is insufficient to be regarded as beyond-control behavior. Thirdly, the instructions given by parents must not be unlawful, such as telling children to commit crimes. These conditions ensure that such a label is not applied arbitrarily or in response to minor behavioral issues but rather is reserved for situations involving serious and persistent challenges to parental authority and the child's welfare (Theoharis, 2023). In

other jurisdictions, there were attempts to clarify beyond control status through statutory definitions. For instance, in the UK, section 2 of the Anti-social Behavior, Crime and Policing Act 2014 defines “anti-social behavior” as any actions that have caused, or are likely to cause, harassment, alarm, or distress to others; are likely to disturb or irritate someone in connection with their use or enjoyment of their home; or may lead to nuisance or annoyance related to housing, affecting any individual (Edwards, 2015). In Georgia, the US, section 15-11-2(11) defines a “child in need of services” to include a child who is a truant; habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or legal custodian and is ungovernable or places himself or herself or others in unsafe circumstances; a runaway; a child who has committed an offense applicable only to a child; a child who wanders or loiters about the streets of any city or in or about any highway or any public place between the hours of 12:00 Midnight and 5:00 A.M.; a child who disobeys the terms of supervision contained in a court; or a child who patronises any bar where alcoholic beverages are being sold, unaccompanied by his or her parent, guardian, or legal custodian, or who possesses alcoholic beverages.

Since the Child Act 2001 does not define CBC, the interpretation of the term is left to the judicial interpretation, which may not be consistent in every case. In *Superintendent of Pulau Jerejak v Wong Cheng Ho* [1980] 1 MLJ 154, the Federal Court observed that, depending on the circumstances of each case, it is up to the Executive to determine whether the child needs care or protection, and has fallen into bad company, is exposed to moral danger, or is beyond control. No other reported cases in Malaysia have addressed the interpretation of “children beyond control”. In the UK, few cases highlight judicial interpretation of CBC. In *M v Birmingham City Council* [1994] 2 FLR 141, S (the child) suffered from learning difficulties and by the age of 13 had developed a wayward, uncontrollable and disturbing disposition, periodically violent and frequently making unfounded allegations of a serious nature against those in close proximity to her, which were found to be untrue. In June 1990, she lied that an 11-year-old cousin had burnt her with a cigarette. In September 1991, she often ran out of school, telling teachers she had overdosed. At school, she made a false complaint in 1992/93 of bullying and teasing about her sister's misfortunes and being assaulted by taxi drivers. When S decided, she would not return to school, she alleged that a boy off the school premises had forced her to have sexual intercourse at the school. Later on, this allegation was withdrawn. She often complained of illness, mainly stomach-ache, that doctors found untrue. The court was satisfied that her behavior was uncontrollable. In the case of *Re K (a child) (post-adoption placement breakdown)* [2012] EWHC 4148 (Fam), the court found glaring evidence of beyond-control behavior. The child had run away from home, was angry with her parents, stolen and lied, struggled when unsupervised, was poor at choices and had poor judgment. She could get in a lot of trouble with inappropriate comments to peers. The parents also admitted that they had run out of strategies to manage the child. In *WBC v A* [2016] Lexis Citation 582, the child's conduct was attributed to beyond-control behaviors as he had sexually assaulted his mother and numerous children. During an interview with his school, he revealed a detailed account of his sexual fantasies toward

his mother. It was satisfied that the mother could not control him and was at risk of further danger and assault.

This study suggests for section 46(1) of the Child Act 2001 to be amended to define “beyond control behavior” as “a pattern of persistent and serious misconduct by a child, wherein the child habitually refuses to comply with the reasonable and lawful directions of a parent, guardian, or lawful authority, to the extent that such conduct poses a risk to the child's welfare, development, or the safety of others, and cannot be corrected through ordinary parental care or discipline”. This definition is important to guide the Court for Children, parents, and other stakeholders in determining whether a child is uncontrollable or not. The definition can be broken down into five components:

- (a) “A pattern of persistent and serious misconduct by a child”. This requires that the child’s behavior is not just a one-time act of rebellion or mischief. It shall involve ongoing defiance, such as repeated truancy, running away, verbal or physical aggression, or refusal to follow household or school rules. The persistence indicates that typical parenting strategies are not working.
- (b) “Habitually refuses to comply with the reasonable and lawful directions”. This requires proofs that the child consistently ignores lawful and reasonable instructions such as order to stay at home or go to school.
- (c) “Of a parent, guardian, or lawful authority”. The child’s behavior is directed to those who have a legal or custodial responsibility for the child such as parents, legal guardians, and school authorities.
- (d) “To the extent that such conduct poses a risk”. The child’s actions must go beyond mere disobedience—they must threaten the child’s welfare, development, or the safety of others. This reflects the threshold of harm necessary before state or judicial intervention becomes appropriate.
- (e) “And cannot be corrected through ordinary parental care or discipline”. Before a child is deemed legally “beyond control,” it must be shown that reasonable efforts to help the child have failed. This includes counselling, school interventions, family conferencing, or social work involvement. This protects against misuse of the label and encourages rehabilitative rather than punitive responses.

### *Children Beyond Control and Prevention of Delinquency*

A large number of criminal studies highlight that early delinquent behavior is a primary predictor for later offending, where antisocial and disruptive behavior patterns strongly correlate to police contact and serious offenses (Baldry & Winkel, 2001). Early prevention focuses on risk factors before delinquent behavior begins. Factors such as family conflict and dysfunction, abuse, neglect and maltreatment are among the strongest predictors of juvenile delinquency (Aazami et al., 2023). Conversely, protective factors such as strong family bond, academic achievement, and positive peer relationships can significantly leave positive impacts in a child’s behavior and reduce the likelihood of delinquent behavior (Lösel & Farrington, 2012). Early intervention requires the authority to focus on risk-based prevention strategy to identify youth who exhibit risk factors for delinquency and to provide targeted interventions onto them (Case, 2006). Once at-risk youth are

identified, interventions are designed to address their specific needs and risk profiles (Campbell et al., 2019). This may include family-based intervention such as therapy and family counselling, which is critical in addressing underlying issues like family abuse, domestic violence, communication failure, socio-economic issues, and intergenerational trauma, which are often associated to delinquent behaviors (Toews et al., 2024). The social and child welfare services also play a fundamental role in supporting at-risk children through primary intervention focusing on prevention and early identification of risk factors and secondary interventions by addressing emerging issues through targeted support such as developing community-based programs that emphasize rehabilitation, reintegration, and diversion rather than punitive action. These programs often include counselling, skills training, and family reintegration support (Fabre et al., 2016).

This study argues that CBC provision in the Child Act 2001 serves the preventative function in the Malaysian juvenile justice system. Section 46(1) is reproduced as follows:

“An application in writing may be made to the Court for Children to detain a child in a probation hostel or center-

(a) by a parent or guardian of a child, on the ground that the parent or guardian is unable to exercise proper supervision and control over the child and the child is falling into bad association; or

(b) by a Protector in the case of a child who has no parent or guardian or has been abandoned by his parent or guardian and after reasonable inquiries the parent or guardian cannot be found, on the ground that the child is not under proper supervision and control and the child is falling into bad association.”

Section 46(1) of Malaysia’s Child Act 2001 establishes a mechanism for pre-emptive intervention by the Court for Children in circumstances where a child is perceived to be at risk of negative influences and lacks adequate parental supervision. This provision enables applications to be made either by a parent or guardian who concedes their inability to exercise effective control over the child, or by a child protector in cases involving abandoned children or those without identifiable guardianship. Notably, the application does not require the child to have committed any criminal offense; rather, the Court must be satisfied that the child is in danger of falling into undesirable associations and that the parent or guardian is demonstrably incapable of providing proper supervision. According to the MyGovernment portal (2024), the CBC provision under the Act serves two primary objectives: first, to rehabilitate children involved in criminal or immoral behavior through structured interventions; and second, to foster the development of positive attitudes, strong moral character, and essential life skills that support the child’s reintegration as a productive and independent member of society. The CBC framework thus acknowledges the structural and familial challenges that may hinder effective child supervision and offers a legal avenue for early intervention. In doing so, it empowers child protectors and the judiciary to act in the best interests of vulnerable children, particularly those without parental care, thereby preventing further exposure to harmful environments.

The mechanism for the Court for Children to better understand the facts and circumstances of the case is provided under section 46(3). In inquiring the circumstances of the child's case, the Court shall order the probation officer to prepare a report and make recommendations as to the appropriate order to be made. Besides, the Court may also order the child to be temporarily detained in a probation hostel or center, if necessary. The requirement of probation report ensures that the Court will make fair decisions after fully considering the child's background, behavior, and surrounding. Courts often attach significant weight on the findings and recommendations in the probation report although they are not duly bound to follow those suggestions. For instance, in PP v SAK (the child) [2021] MLJU 1707, after evaluating the probation report which unveiled that the child had stopped schooling since Form Two and he worked as a security guard and collected metal scraps to support himself, it was clear to the court that he was treated like an adult at a young age. Hence, the court ordered the child to be sent to Henry Gurney school. Having said that, the value of the probation report depends heavily on the training, resources, and objectivity of probation officers. Inconsistencies in report quality could lead to unequal treatment of children across different jurisdictions (Mohamad & Azman, 2018). While the provision under section 46 also allows for temporary detention in a probation hostel or center, but only if it is necessary. This ensures that children are not prematurely or unnecessarily institutionalised, while still allowing for protective custody in urgent or high-risk situations. However, although temporary detention is framed as a last resort, in practice, it may be overused due to limited community-based alternatives, potentially leading to unnecessary institutionalization.

The statistics for CBC in Malaysia from 2021 to 2023 according to ethnic groups genders are as follows:

Table 1 Statistics of children beyond control in Malaysia, 2021 – 2023

Ethnic groups	Year	Total	Male	Female
Total	2021	107	29	78
	2022	175	45	130
	2023	260	76	184
Bumiputera	2021	93	23	70
	2022	148	37	111
	2023	233	65	168
Chinese	2021	6	4	2
	2022	10	3	7
	2023	8	3	5
Indians	2021	7	2	5
	2022	6	2	4
	2023	15	6	9
Others	2021	1	–	1
	2022	11	3	8
	2023	4	2	2

Source: Department of Social Welfare, Malaysia. (2024). Children Statistics.

The total number of "beyond control" children surged by 143% from 2021 (107 cases) to 2023 (260 cases). This sharp rise suggests escalating social challenges requiring urgent policy intervention. Females consistently outnumber males (2021: 73% female, 2023: 71% female). This contradicts typical juvenile delinquency patterns and warrants investigation into gender-specific risk factors such as early marriage and risky immoral behaviors. Besides, Bumiputra's disproportionate representation (89% of 2023's total increase) signals potential systemic issues like rural poverty and limited social services. The economic shocks post-COVID 19 recoveries should also be considered in explaining the surge of cases of CBC between 2021 to 2023. The sharp rise in cases of children categorized as "beyond control" underscores the urgent need for early prevention strategies that address the root causes of behavioral issues before they escalate into legal interventions.

## Parental Liability and Children Beyond Control

Section 46(2) of the Child Act 2001 further provides that upon receiving the application under paragraph 1(a), the Court for Children shall ascertain that the parent or guardian understands the nature and consequences of the application and that he agrees to proceed with the application. This ensures informed consent of the parent and guardian and prevents them from being coerced into legal proceedings and ultimately sending their children to child institutions. This is aligned with Article 12(2) of the CRC on parental involvement in legal process. This process acknowledges parents and guardians as key stakeholders in the child's welfare. Besides, this section also reduces frivolous applications where parents seek to punish rebellious children rather than addressing genuine risks of uncontrollable children. This process encourages reconciliation prior to court intervention. Despite that, section 46(2) does not make it mandatory for the Court for Children to explain the nature and consequences of the application to the child. This potentially violates Article 12 of the CRC which requires State Parties to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. Since the child will be directly affected by section 46 application, his opinions and views shall also be considered.

The element of parental responsibility is also attached via section 46(7) of the Act. In making an order under paragraph (5), the Court may attach conditions and directions including:

- (a) The parent or guardian shall visit the child on regular basis as determined by the Court;
- (b) The parent or guardian shall accompany the child to attend interactive workshops organized at designated centers;
- (c) The parent or guardian shall accompany the child to counselling sessions; or



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(d) If the child is in an educational institution, the parent or guardian shall consult with the teacher or principal once a month.

If parents or guardians fail to comply with the conditions imposed by the Court above, they may be liable to a fine not exceeding RM5,000 under section 46(8). This framework under section 46(7) and 46(8) of the Child Act 2001 is intended to promote active parental involvement in CBC cases by making it mandatory for them to visit the child, to accompany them to attend interactive workshops and counselling sessions, and to consult with the school authority regarding the child's academic progress and achievement. Fines for non-compliance is also an essential feature to serve as a deterrence and a reminder of parental legal duty of care that parentes owe to their children (Ikhsan et al., 2024).

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#### Institutional Placement vs. Family-based Care

Section 46(5) of the Child Act 2001 lists out the orders that the Court for Children may impose upon finding that a child is a CBC. The Court may make an order:

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(a) placing the child in the care of a fit and proper person;

(b) placing the child in a center;

(c) to detain the child in a probation hostel;

(d) placing the child under the supervision of a probation officer or any person appointed by the Court.

This provision gives flexibility to the Court to make an appropriate order whether to choose family-based option, in less serious cases, or to send the child to juvenile institutions, in more serious cases. This would enable the Court to match the intervention with the child's specific needs and circumstances instead of applying a one-size-fits all solution in Every case (Mohamad, 2019). Furthermore, the option given to the Court to place a child under the supervision of a probation officer or any appointed person also reflects that monitoring mechanism is essential to support family-based care (Mohamad & Yusoff, 2020). Placing in a centre or probation hostel may still be necessary if the child comes from a harmful or neglectful home environment so that their safety and welfare are safeguarded (Bragg, 2003). Institutional placement should only be invoked as the last resort to prevent unnecessary incarceration (Ikhsan et al., 2023).

This study submits that despite the availability of non-institutional orders under section 46(5), the guiding criteria to determine the appropriate order is still lacking. This vagueness may result in inconsistent application by the Court or overly punitive

outcomes. There is also concern over Court's orders which disregard the recommendations in the probation officer's report. The absence of placement standards may also lead to CBC being sent to inappropriate places such as orphanages or shelters for abandoned children which environments are not designed to rehabilitate CBC (Mohamad & Yusoff, 2020). By sending CBC to juvenile institutions, they may end up feeling unloved and abandoned by their family, thus causing family reintegration more challenging. They may end up learning worse behavior from other children living in the institution (Ministry of Women, Family and Community Development & UNICEF Malaysia, 2013; Think of Us, 2021). The negative effects of placement towards children's physical, emotional, mental wellbeing are also well documented (Child Frontiers, 2013; Mohamad & Yusoff, 2019). These findings underscore the urgent need for systemic reform and the prioritization of alternatives that are more conducive to positive youth development. Without clear statutory guidance, the effectiveness and fairness of section 46(5) orders remain highly dependent on the discretion of individual judges and the availability of placement facilities.

In response, diversion programs have gained immense global support as an alternative to formal court proceedings and institutional placement (Mohamad & Yusoff, 2020). The diversion programs are intended to redirect children away from formal punitive justice system toward community-based interventions that can address the root causes of their misbehavior and rehabilitate them (Stanton & Meyer, 1998). This evidence-based approach has consistently demonstrated success in reducing recidivism rates as compared to conventional sentencing practice (Hodge & Wilson, 2013). Tailored to align with international legal standards such as Article 11 (formal judicial proceedings as last resort) and Articles 18 and 19 (promotion of community-based responses such as supervision, counselling and adoptive care), diversion programs do not only uphold children's rights but also foster more sustainable outcomes for both the individual and society.

In embedding diversion into the CBC provision of the Child Act 2001, it is recommended that after application by either the parent/ guardian or child protector under section 46(1), the Court for Children shall direct the case to social welfare officer for evaluation. If the officer determines that diversion program is suitable, the case shall proceed with activities such as group counselling, individual counselling, family conferences, family programs at schools, or court-sanctioned after care programs. Only when these methods are reported to have failed by the supervising officer, the case is forwarded to the Court for Children where orders under section 46(5) can be made. (Mohamad & Yusoff, 2020). The recommended addition of new subsections are as follows:



“Section 46(2A) Upon application by a parent, guardian, or child protector under paragraph (1), the Court for Children shall, before making any order under paragraph (5), direct that the matter be referred to a Social Welfare Officer for evaluation of the child’s suitability for diversion.”

“Section 46(2B) The Social Welfare Officer shall conduct an assessment of the child’s circumstances and determine whether a diversion program is appropriate, taking into account the best interests of the child and the objectives of rehabilitation and reintegration.”

“Section 46(2C) Where the Social Welfare Officer determines that diversion is suitable, the child shall be directed to participate in one or more of the following:

- (a) Group counselling sessions;
- (b) Individual counselling;
- (c) Family group conferences;
- (d) School-based family support programs; or
- (e) Court-sanctioned aftercare or community rehabilitation programs

for a period as may be specified by the Social Welfare Officer but not more than twelve months.”

“Section 46(2D) The Social Welfare Officer shall supervise the implementation of the diversion measures and submit periodic reports to the Court for Children on the child’s progress and compliance on a period as determined by the Court.”

“Section 46(2E) Where the Social Welfare Officer submits a report indicating that the diversion measures have been unsuccessful or are no longer deemed appropriate, the matter shall thereupon be remitted to the Court for Children for further proceedings in accordance with paragraph (5)”

The period of twelve months is opted for diversion programs due to several reasons. First of all, behavioral interventions, especially those involving counselling, family therapy, and school-based programs, require sustained engagement to produce meaningful change. A 12-month window allows for multiple phases of intervention, monitoring, and adjustment, which is often necessary for children with complex needs (National Collaborative on Workforce and Disability for Youth, 2018). Besides, studies also show that the majority of juvenile recidivism occurs within the first 12 months following an

offense or intervention. This makes the one-year mark a logical point to evaluate whether diversion has been effective or if further legal action is warranted (Gomez, 2023). Besides, the recommended amendment also obligates the social welfare officer to report the outcome of the diversion programs to the Court for Children. This ensures that the child's progress is tracked not only internally by the Social Welfare Department, but also externally by the Court for Children. According to the National Association of Social Workers (NASW), consistent supervision and documentation are foundational to effective child welfare practice, enabling timely interventions and adjustments to care plans (NASW, 2013). By incorporating supervision and reporting into the existing system, it reinforces a child's right to appropriate care and protection. Additionally, the referral to the Court for Children if diversion programs fail to rehabilitate the child is also aligned with the principle of "court as the last resort" stipulated under the CRC and the Beijing Rules.

## V. CONCLUSION

Children Beyond Control (CBC) are not criminal offenders but are instead children exhibiting behavioral challenges that are beyond the parental capacity to manage or supervise. There is still wide potential for these types of children to be rehabilitated and reintegrated into the society as better individuals. The CBC provision under section 46 of the Child Act 2001 stays true to this pure intent to identify at-risk children at early stage of delinquency and divert them from potential involvement in criminal activities. Nonetheless, despite its preventive and rehabilitative purposes, the current provision presents several critical gaps such as: the lack of clear criteria defining CBC, the absence of right of the child to be heard, and inconsistent application of the power by the court. Moreover, the current legal structure tends to favor custodial measures over community-based alternatives, despite international standards, emphasizing that institutionalization should be a measure of last resort.

The 2016 amendments to the Child Act introduced some family-based care elements, but these have not been fully integrated into the legal framework. Therefore, this study recommends that diversion programs be formally incorporated into section 46 of the Child Act 2001. This would serve to clarify the legal position of CBC cases and provide a structured, rehabilitative pathway that prioritizes non-custodial interventions. Diversion programs have been shown to be more effective in addressing the root causes of behavioral issues while preserving the child's connection to their family and community. By embedding diversion into the statutory framework, Malaysia can move toward a more child-centered, rights-based approach that aligns with both international obligations and contemporary best practices in juvenile justice.

## VI. ACKNOWLEDGEMENTS

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