

# PROSECUTION OF DRUG CRIMES AGAINST YOUTH IN THAILAND

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**ABSTRACT:** The criminal law, which is used to punish offenders, is aimed at correcting and rehabilitating offenders, curbing a person from hurting others, discouraging others from imitating. To symbolize the sanctity of law, but only for a child or youth. United Nations Universal Declaration of Human Rights established the Convention on the Rights of the Child. There is an added philosophy of restoring help so that a child or youth can turn into good citizens and can continue to live together in society without causing further problems. Child drug litigation is a big deal, it is a matter to be very careful both in the law and the rules of treating the child. Principles of protection is to protect the best interests of children. This is a guideline for treating children and is an important value base that professionals as well as those involved in child protection must focus and follow. It is a core aspect of the United Nations Convention on the Rights of the Child, which, in judicial acts of youth courts. Judges must take into account the effects of various aspects not only legal consequences, but still need to take into account the impact on family relationships, relationships in a society in which children and youth have to live together with adults, families, schools, coexistence between children and youth. Judges have to look at the detriment of the impact on children and youth. If the court will punish the child in strict accordance with the law. The court will have to contemplate whether it is appropriate to do so or not, or should there be measures to make the child repent and return to society, be a good person to society without losing the child's future because imprisonment tacitly spoils the future of the child. Despite being acquitted, it has a lifelong history, but does not accept the society's acceptance of joining the work or living together of the people in society as they should. That is the impact of the force that has towards children and youth. The judicial process of juvenile cases under Thai law has been accepted since the beginning of the law reform to be universal. There must be a measure in the judgment of a case that is different from that of an adult. In the later stage, a specialized youth and youth court was established. However, the law on juvenile cases has been criticized as saying. There are a few things that are still inconsistent with the international law that Thailand is a member of. Therefore, the latest law has been amended to enforce the Juvenile and Family Court Act and Juvenile and Family Judicial Procedure B.E. 2553 (2010). In enforcing the law to protect children, it is imperative that the "rights of the child" always be taken into account with the maintenance of public order and good morals.

**KEYWORDS :** Criminal Law, Child or Youth, Human Rights, Children's Rights, The Best Interests of The Child

## 1. INTRODUCTION

Drug Criminal Prosecution Against Youth in Thailand which acts as the law states that is that fault. It is not limited to the objectives of general criminal prosecution but including finding the cause of the offense environment and conditions of children and youth which causes they did wrong. This is for the officer or the court to know the facts and find a suitable method for children and youth to change him to be a good person. Because each person's wrongdoing has different reasons, the solution must therefore be used appropriately for specific offenders. It doesn't always have to be the same methods or penalties. The criminal prosecution of drug cases against youth in the Thai Juvenile Court is therefore extremely important. As children and youths are citizens who will grow up to be the powers of society in the future, criminal prosecution of children and youths must have specific rules in order to protect and protect them from damages caused by criminal prosecution of children and youths as the accused or the future defendant.

In this article, the author will specifically analyze drug cases in protection of children's rights and practices in criminal prosecution of drug cases against children. However, the author does not want to mention criminal cases in other issues because the author found that Statistical data on the number and percentage of juvenile cases prosecuted by juvenile detention centers nationwide for fiscal year 2020 of the Department of Juvenile Observation and

Protection. The number of crimes across the country is likely to decline from a high of 44 thousand in 2010, but narcotics offenses remain the top cause of offenses for Thai children and youth over a period of 10 years. Year. In 2020, the number of good deeds for children and youth of 19,470 (Department of Juvenile Observation and Protection, 2020) were guilty of narcotics of 9,600 cases, representing 49.31% of the total cases from 7 groups. offense (offenses related to property offenses related to life and body sexual offenses relating to peace, liberty, reputation offenses relating to narcotics offenses relating to weapons and explosives and other offenses).

Procedures for criminal prosecution of drug cases against children and youth use the method to consider under the Constitution of the Kingdom of Thailand B.E. 2560, the Civil and Commercial Code, Criminal code, and the Child Protection Act 2003 and the Juvenile and Family Court Act and Juvenile and Family Judicial Procedure B.E. has set the procedure for prosecution to protect children or youth from defamation or unnecessarily restricted liberties. The arrest is therefore different from the general arrest of a person in a criminal case. Detention of children and youth mostly has done by the director of an observatory in a place other than a prison in order not to mix with other offenders. An investigation of a child or youth must be done as soon as possible as well as gathering facts about the child's body and environment and the causes of the offence. As for filing a lawsuit before the court, it is not always necessary to do so in all cases where there is evidence that a child or juvenile is an offender. The trial must be conducted in secret and conducted in a courtroom specially arranged in a manner that is friendly to the child or the juvenile in the court's judgment. The court will only punish as necessary, and the court may use juvenile methods instead of punishment, or will use parole or probation of a child or youth. This is to change and correct children and youth who are accused of committing wrongdoings not having to repeat the same offense again.

## **2. UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE RIGHTS OF THE CHILD**

United Nations Universal Declaration of Human Rights On December 10, 1948, United Nations member states adopted the Universal Declaration of Human Rights. "Human Rights (Universal Declaration of Human Rights: UDHR)" by the United Nations General Assembly. It is considered to set international human rights standards in which Thailand is one of the participating countries.

Human rights refers to the rights that all human beings have equality with human dignity, rights, liberties and equality of persons who are guaranteed both ideas and Acts without harassment by being protected under the Constitution of the Kingdom of Thailand and international treaties [1].

1. Human dignity refers to the qualities, minds, and individual rights that are reserved for all human beings and maintain it to prevent other people from harassing violation of human dignity therefore requires protection and justice by the state.

2. Reasons that human rights must be protected born of human beings, everyone is born and has rights in itself. A social animal have the dignity of being born as a human being. Everyone is born with unequal status.

3. The most important principle of human rights is that all human beings have equal human dignity, [2] has certified the dignity of human beings and requiring governments, government agencies, and state agencies to perform their duties in accordance with their powers and duties with due regard for the human dignity of all people.

4. Protection of human rights, a society where different races, religions, ethnicities can live together peacefully. Participation in the protection of human rights education that develops knowledge, skills, human rights protection values, promote and develop one's own potential personality and human dignity to the fullest participate in the activities of the nation freely effective exercise of political, economic and social rights.

Thailand's international obligations on human rights are parties to human rights treaties. The United Nations treaties are comprised of seven major treaties: 1) the Convention on the Rights of the Child; 2) the Convention on the Elimination of All Forms of Discrimination against Women; and 3) International Covenants; 4) International Covenant on Economic, Social and Cultural Rights; 5) Convention on the Elimination of All Forms of Racial Discrimination; cruel, inhuman; 6) Convention Against Torture and Cruel, Inhuman Treatment or Punishment or humiliate; and 7) the Convention on the Rights of Persons with Disabilities [3].

A Study of Drug Prosecution Against Juveniles in the Thai Juvenile Court, the authors have begun to study the origin or need for the protection of the best interest of the child, the meaning, scope and conditions for applying the best interest of the child in various cases. It is to find ways to apply the best interest of the child in Thai law properly and can enhance the effectiveness of protection of children's rights under civil, criminal and other laws. Because at present, Thailand has given importance to enacting laws to protect children in various fields, whether it is the protection of fundamental rights including general welfare protection as a child. Child protection is an important force that will be the future of the nation. Child protection will be implemented under a critical concept known as "The Best Interests of the Child" Children are not isolated in society, but children are part of the family. community and country in enforcing laws to protect children, it is imperative to take into account the "scope" and "balance" of protecting the "rights of the child" while maintaining public order and good morals. Always ensure consistency and does not affect the principle "Equality" and "Non-Discrimination" principles always.

1. Convention on the Rights of the Child (Convention.on.the.Rights.of.the.Child).

As a human rights law, the United Nations Universal Declaration of Human Rights basic human rights healing Protection of human rights. In Thailand has established the Convention on the Rights of the Child according to human rights treaties to which Thailand is a party. To make Thai society aware of the rights of children, it is the dissemination of this Convention as widely and widely known as the provisions of the Convention. [4] is an important agreement that various countries all over the world united to make the promise that it will protect the rights of children. It is an international agreement adopted by the United Nations General Assembly on 20<sup>th</sup> November 1989, and can be used on 2<sup>nd</sup> September 1990. It contains 54 items provisions and is the most endorsed in the world in 196 [5] countries except the United States. With this agreement, leaders around the world have come together to make a promise to children to provide full and equal care and protection however, there are still children and millions of young people around the world are still missing out on the fundamental rights that countries have pledged due to factors such as poverty, violence against children and inequality. Get a chance to play a role, get involved or be heard. Even if it is directly related to them, the Convention on the Rights of the Child describes the definition of "children" as those who must be protected in various fields. The duties and responsibilities of the state, with all rights being interconnected, are of equal importance and cannot be deprived of the child. Thailand signed the accession to certify on February 12, 1992, that means Governments are obligated to ensure that all children in the country, regardless of who they are entitled to equal rights under the Convention as well as a progress report to the United Nations Committee on the Rights of the Child.

Children have the right to care and support, both in the family environment and in other upbringing, on the basis of ethnic and social cultural traditions and values. The main principle is "Non-discrimination and the best interests of the child", which comprises 54 items which aim to protect the rights of children in four areas: 1) the right to survival; 2) the right to protection; 3) the right to develop; 4) the right to participate by various rights. It must be based on the principle of non-discrimination and in the best interests of the child.

2. The rights of the child and the principle of safeguarding interests or the principle of protection for "The Best Interest of The Child"

This is a guideline for treating children and is an important value base that professionals and those involved in child protection care must focus on and uphold which has been established to certify this principle in the Convention on the Rights of the Child, in Article 3(1), with the principle that all acts involving children whether acted by the state or private. The best interests of the child must be considered first [6]. This consideration of the best interests of the child is used in the protection of child rights cannot be used alone. However, there must be various factors take into consideration for determining what is in the child's best interests is assessing the situation and making decisions in the child's best interests. By taking into account all necessary factors or facts that are specific to each child or group of children, for example, the relationship between the child and the family member, physical development Children's mind and emotions culture of society environment around children including the needs or desires of the child, etc., the best interests of the child. It can change over time. This may result in the child's best interests may change as well. Therefore, it is necessary to re-evaluate the situation. The decision-making process must be based on international law that protects and ensures the child's right to survival and safety and the right to be fully developed which calls for every decision. The authority must weigh the appropriateness of actions involving children. It takes into account all relevant factors and will be used in cases where it is important to the lives of children now and in the future [7].

In this Convention on the Rights of the Child In addition to the protection of children under human rights, special protection from abuse and exploitation including from any action that would impede the child's full growth and development with the main aim of protecting. Therefore, this principle of best interest of the child must be regarded as the principle of the best interest of the child. It is important to treat children as a duty that everyone must uphold, whether in the public or private sectors.

### **3. PROBLEMS IN THE FACTS OF DRUG CRIMINAL PROSECUTION AGAINST YOUTH IN THAILAND**

1. Problems related to narcotics offenses of children and youth in Thailand

for Thailand. Many juvenile crimes are based on theory. Most of the imitation behavior whether it is imitation of friends, parents or from various media such as print, radio, television or video games, etc., are factors that cause children and youth to commit crimes in drug-related crimes [8], for example: Curiosity to try sex most burglary and drug offenses because drugs are easy to find, know the way to buy. side of friendship found that friendship teenagers want to have a lot of friends. Friends will invite people to mix up, persuaded to experiment with drug addiction which friends have a huge influence on I want my friends to accept me in the group. The media also has a huge influence on drug addiction or addiction, such as new drug methods, drug combinations, drug postures or imitations. Moreover, nowadays there is a problem of adults using children as a tool to commit drug crimes through many channels. Children in many countries are forced or tempted to engage in illegal activities such as using,

procuring or offering children for activities illegal especially for the production and transportation of drugs[9]. The 1988 United Nations Convention Against Trafficking in Narcotics and Psychotropic Drugs states that children are used to smuggle drugs and psychotropic substances causing immeasurable disaster. It therefore requires states parties to take the necessary measures to make intentional acts in relation to such drugs a criminal offense under their own law, which is an important problem that affects children and youth's behavior. In a way that is not appropriate and causes offenses in various ways, which can be divided into consideration as follows:

(1) The nature of the offense between an adult and a juvenile [10] can be involved either directly, i.e., the act of committing an offence as a co-offender or as a co-offender, including in Characteristics of users, whether jointly committing an offense or having to share duties, for example, allowing children to be the viewer of the source while they commit the offense or in an offense relating to the distribution of narcotics. An adult takes the child to a place where drugs are sold or traded and he or she watches from a distance by sending the child to commit the crime instead. When a child commits an offense, it pays a reward as compensation to the child, etc. Indirectly, that is, does not participate in the commission of an offense against the child directly, but involved in the offence of the child may be in the form of an advocate, or in the form of a person who encourages children to commit crimes such as buying thieves from children teaching or showing children how to commit crimes and giving children weapons or equipment to commit crimes. This includes instilling in children the perception that wrongdoing is easy, has high rewards, and allows them to absorb that the offense can be done and the desire to commit it, etc.

(2) Forms of inducing a child to participate in criminal acts, bribery or reward, violence or coercion, mayhem sexual harassment bullying, torture or abuse; deception by first giving gifts and rewards to children. When the child receives it, he then forces the child to commit an offense in return. Family influence in many cases, crime is driven by family due to various environments and situations such as poverty, parental neglect and child abuse. Children are not cared for and have no good role models in their lives or by absorbing bad behaviors from family members and imitating them. The study found that most children were forced to participate in the offence. However, these children are still the final decision on whether to participate in the offense or not. In which most children decide to commit crimes in hopes of getting rewarded.

Most of the cases were offenders who did not live with their parents or their parents were separated more than those who lived with their families, namely cases in which the offenders who did not live with their parents or parents were separated, amounting to 15,042 cases, representing a hundred. 66.77 per case of all cases [11]. The more prevalent drug problem among children and youth is between the ages of 12-17 (National Institute for Drug Addiction Treatment and Rehabilitation) Boromarajonani [12], which is an age that is at high risk for drug use, start stepping into adolescence as a period of adjustment. The information from the Department of Observation and Protection of Children and Youth indicates that although the number of new cases received in the judiciary Nationwide, it is likely to decline from a high of 44 thousand cases in 2010. However, narcotics remains the top cause of crimes among Thai children and youth. It is considered both the most violent social problem among adolescents and young people. Compared to the population in other age groups, in 2018 [13] found that there were approximately 40 percent of all drug-related offenders and drug treatment recipients. There were found to be Groups under 25 years of age, with children and youth arrested and sent to a detention center Juvenile cases prosecuted of the 20,003 offenses related to narcotics in 2019 [14], and half of them were 10,634 offenses related to narcotics in 2019, and in Year 2020 9,600 cases.

## **2. Laws relating to drug criminal prosecution against youth in Thailand**

### **2.1 Relevant laws under the Convention on the Rights of the Child**

Thailand has enacted several internal laws to comply with the principles of Conventions on the Rights of the Child, such as the Constitution of the Kingdom of Thailand B.E. 2560 (2017), the Civil and Commercial Code criminal code The Child Protection Act B.E. 2546, the Juvenile Court Act and Juvenile Judicial Procedure B.E.2553.

2.1.1 The Constitution of the Kingdom of Thailand B.E. 2560, Children with different commandments with details about the reform. The process of justice and promoting the effectiveness of the judicial process for children in Section 16 of the 2017 National Reform Plan Announcement [15].

2.1.2 Civil and Commercial Code has established the principle of a child as a minor in 2 parts: verse 1 on the person and verse 5 on the family has laid down the principles of child protection in Title 2 concerning parents and children by determining the status of a child, father and mother, rights and duties of parents and children appointment of guardians by court order. The exercise of custody of a minor child, especially the power to determine residency a reasonable punishment for reprimanding Retrieving a child from another person who is unlawfully detained including the power to manage assets. However, the parental power of parents will end when the child reaches the age of majority or the exercise of parental power is revoked by the court or the child is being adopted by another person.

2.1.3 The Criminal Code stipulates procedures for a child in the event that a child commits an offence by allowing the child's actions to remain an offense under the law but the child may be impunity and use child methods instead of criminal punishment. In the event that a child is an injured person, in the criminal law, the offense and the penalty are prescribed is separate from the general offense to prevent any person from committing an offense

Criminals against children based on their innocence lack of experience and maturity, such as the offense of rape of a child, section 277, etc.

2.1.4 The Child Protection Act B.E. 2546 was conceptualized from the Constitution of the Kingdom of Thailand B.E. 2540 and the Economic Development Plan and the 9th National Society (2002-2006), including the Convention on the Rights of the Child 1989, which Thailand has been bound by as a member [16] by the Child Protection Act B.E. It means "children" referring to persons under the age of 18, but not including those who have reached the age of majority by marriage, by defining principles and focusing on the procedures and methods of dealing with children to prevent the use of children as a means of exploitation Prevent child abuse by parents by establishing standard procedures in foster care to protect and promote the security of family institution as well as to prevent children from being abused or being instrumental in exploitation or discrimination. The Child Protection Act focuses on ensuring the most effective protection of children, therefore, there are specific competent officials appointed by the Minister to act. Duties under this Act Moreover, in Article 26 [17], if there is an act that violates the protection of the child as provided for in the perpetrators are subject to criminal penalties. Therefore, the Child Protection Act B.E. The Convention on the Rights of the Child will also enhance the protection of children in Thailand in line with international standards.

2.1.5 Juvenile and Family Court Act and Juvenile and Family Judicial Procedure B.E. 2010. This Act was amended after achieving the objective of establishing Juvenile and Family Courts in all provinces throughout Thailand by defining the key principles in giving Protection and rights how to treat children and youth and their families to be consistent with the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women, [18] in all its forms has the status of juvenile procedural law. A child is defined as a person under 15 years of age and a youth is a person over 15 but not yet 18 years of age. It is related to the Criminal Code and to prevent underage children or young people from entering the criminal justice system in the same manner as adult criminal justice [19]. Age at the date the offense was committed a multidisciplinary team is required to participate in all juvenile proceedings. Determine the format of the proceedings in domestic violence protection cases under the Domestic Violence Victim Protection Act, B.E. 2550 (2007). , 2008) and the unlawful treatment of children under the Child Protection Act B.E. 2546 as well.

2.1.6 Other laws with current child protection provisions, there are quite a few laws within Thailand that indirectly protect children and youth although such laws are primarily intended to establish principles or provide protection in other matters, but these laws have also laid down the rules that protect children's rights. Some of them include the interesting laws are:

- The Prostitution Prevention and Suppression Act, B.E. 2539 Criminal offenses against a person who commits maltreatment or any other act for the purpose of masturbation of himself or another person in a prostitution or seduction business for prostitution, whether others agree or not, or who are involved in the business of prostitution in the case of an act against a child, a heavier penalty will be imposed. In the case where a parent or guardian has participated in the commission of an offense. The law has given the court the power to withdraw its jurisdiction.

- The Labor Protection Act 1997 laid down the principle of child labor by not employing children under 15 years of age. If a child is under 18 years of age, employers must prepare a memorandum of employment conditions and determine the nature of work and an appropriate period of time so as not to affect the child's development, as well as to prohibit claiming for work guarantees from the child employee.

- The Domestic Violence Victim Protection Act 2007 provides protection for family members, including children, as part of the family from domestic violence by receiving measures to assist in the welfare protection law measures to support families and children's education and to improve relationships to maintain good relations of the family.

- The Prevention and Suppression of Trafficking in Persons Act, B.E.2551 [20] Detain, confine, arrange for inhabitant or accept any person by threatening, coercion, kidnapping, fraud, deceit, abusive use of power, or abusing power to dominate a person on the grounds of being unlawful in physical, mental, educational or any other way. Threats to abusive legal proceedings or to provide money or other benefits to the parent or guardian of the person. to allow parents or caregivers to give consent to the offender in the exploitation of the person he or she cares about or on business if the act was done with the intent of exploitation. If the person commits a human trafficking offense, the law on human trafficking trial shall also apply mutatis mutandis to the trial of forced labor or service and Thai youth to apply such principles to various laws to be effective in protecting the best interests of children.

## 2.2 Legal problems in the Criminal Code

2.2.1 The problem of criminal liability of children and youths who repeat offenders found that the measures and penalties in accordance with the laws applicable to children and youths who repeat offenders are not appropriate and consistent with the problem conditions and the offenders make children and youth not afraid of measures or penalties under the law. Therefore, it is necessary to enact laws to come into force in order to help organize and control people in society to coexist peacefully and for the law to be effectively enforced, it is necessary to amend the law to be appropriate, up-to-date, up to date with events and situations.

2.2.2 The problem of criminal liability of parents or guardians of children and youth who commit crimes found that the problem of crimes of children and youth is partly caused by family problems that are not supervised. Training and teaching as they should must share responsibility for the actions of children and young people if there is an offense being in a society or environment that is not suitable is another reason why children and youth commit crimes or perhaps out of ignorance. The inferiority of experience is being influenced, used, and deceived. It is imperative for the government to seriously address the problem of child and youth offenders with concrete and effective enforceable laws. Measures can prevent solving the problem of crimes of children and youths including amending the law for those who will be jointly responsible for the crimes of children and youth under their custody or supervision to be a guarantee of safety for society and benefit children and youth.

2.2.3 The problem of criminal liability laws of children and youths in Thailand found that the crimes of children and youths were more serious and serious. The laws governing measures and penalties are not yet appropriate for children and young people. The offender and the condition of the past problems Thailand has amended the Penal Code with respect to penalties or measures of law applicable to child and youth offenders. In the part that was not considered appropriate in 2008, there was an Act to amend the Penal Code (No. 21) B.E. Persons under ten years of age committing an offense shall not be punished (Section 73), while those over ten years of age but not over fifteen years shall not be punished, but the court shall proceed as prescribed by law or may set a requirement for the father, the mother or guardian shall be careful not to cause any mischief at all times as determined by the court must not exceed three years and the father. The mother or guardian must pay to the court not more than ten thousand baht each time when the child commits an offense (Section 74) and the person who is over fifteen years old but under eighteen years old. The court may determine the punishment by restraining it at a place of judgment or a place where the court deems appropriate for correction and rehabilitation, or if the court deems it appropriate to inflict punishment, it may reduce the punishment by half or deal with it in accordance with (Section 75).

2.2.4 Legal problems in the case of children and youth whose age at the time of committing the offense is not yet eighteen years old if the offense is committed again, the law stipulates that the former offense cannot be taken as a reason to increase the penalty regardless of the repeated offense. If the age at the time of committing the offense is less than eighteen years still using the same measures for children and youth who commit crimes. Some offenders were prosecuted. I don't know how many times and how many times. I don't feel remembered which the current criminal law stipulates that cases of children and youth who is less than eighteen years old at the time of committing the offense is unable to take the former offense as a cause to increase the penalty because children at this age, the law is strictly assumed to be ignorant, therefore has no ability to do evil and according to Thai law cannot take any action. with children of this age, liability under the Penal Code for acts of a child under ten years of age committing an act which is stipulated by the law as an offence of a child shall not be punished, but the law requires the inquiry official to refer the offending child to the competent official under the law on child protection to carry out welfare protection under the law on that matter.

### 2.3 Legal problems in various relevant Acts

Declining Child and Youth Offender Statistics Such actions occur because children and young people have less "misconduct" or arise because of problems in the performance of the justice process. related to children and youth experiencing problems in the performance especially the police department, which is the source of justice is affected by the enforcement of the Juvenile Courts Act and the family and the Juvenile and Family Trial Procedures 2010 made it impossible to work. The most effective related to juvenile offenders is the arrest and prosecution of juveniles. In addition, one important approach to the treatment of juvenile offenders is the diversion of juvenile cases from the justice system. One of the main intentions of the issuance of the said Act to want children and youth to receive more protection of their rights, but how will Thailand have a way to divert children and youth cases out of the justice system in order to for the justice process to be effective.

### 2.4 Other related rules and regulations such as ministerial regulations

The researcher recognizes the importance of the principle of protection of interests or the principle of protection. For "the best interest of the child" Although Thailand has been a party to the Convention on the Rights of the Child since 1992, awareness of the importance of protecting the rights of the child has only just begun to emerge. It became clear after the Child Protection Act was promulgated in 2003 with guidelines for interpreting the term. "The best interests of the child" in the Ministerial Regulation Prescribing Guidelines for Considering What Action is for the Child's Best Interest or Unfair Discrimination Against the Child, B.E. 2549. There are still many problems and obstacles in the interpretation of legal provisions in accordance with the Convention on the Rights of the Child to be applied to domestic law. The main cause of the ineffectiveness of child protection under Thai law is a lack of knowledge understanding of scope meaning and guidelines for applying such criteria properly. In addition, under the Thai way of life that is highly unique in terms of "family institution" and "senior system" will result in The "conceptual bias" of child protection has a different perspective from the context of Western society or Asian society in other countries.

#### **4. LEGISLATIVE PROBLEMS IN THE SUBSTANTIVE**

##### **1. Problems of law used in the level of investigators and prosecutors**

Law enforcement issues [21] consist of problems with understanding the principles and intentions of the law among different judicial personnel. Problems in interpreting the same law and operating criteria. Problems in the balance between preventing and correcting offences of children and youth through crime control and protecting the rights of suspects or offenders (due process), a law that aims to restore, correct, cure and provide opportunities. Children and youth who commit crimes have returned to society too much, the nature of the law that is not suitable for the Thai social context and problems related to the implementation of the Act. Some of the judicial process faced problems in prosecuting children and youth, namely:

- Police officer trouble arresting juveniles Police made arrests of juveniles without discrimination between juveniles. The problem is not being able to arrest the offending juveniles due to legal requirements police officer unable to arrest children and young people who commit crimes because he did not see any wrongdoing behavior in his face arrest warrant issue. The problem of police officers being physically attacked. The problem cannot be restrained against the offending juveniles with violent behavior. The problem is forbidden to ask testimony of the catcher. The problem police officers do not want to arrest the offending juveniles, the problem is even the arrest of the offending juveniles but unable to prosecute, there is a problem of dark figure in the offence of juveniles. The statistics of juvenile offenders are less than the reality, cost problems in prosecuting juveniles and detention of offenders. In addition, there were problems that the investigators faced, such as the difficulty in bringing children and youth to the court for investigation of their arrest within 24 hours. Shortage of legal advisors and shortage of operating budgets especially the budget. The investigating officer must pay the legal counsel. Problems in contacting parents of offending children and youth Problems in the performance of work in accordance with the requirements of the law Children and youths know the law and use law evasion as an important tool in committing crimes and submitting investigative cases in prosecution to prosecutors.

- Legal Advisor if you encounter problems, you will need to be trained to be a legal advisor. As a result, lawyers with expertise in the practice of juvenile cases are unable to perform their duties including the problem of notifying legal advisors who cannot work nationwide and the problem of unpaid work that has resulted in the shortage of legal advisors and the protection of children and youth rights suspect.

- Prosecutor faced with related problems from the police, namely the urgency of investigating the cases of children and Youth of police officers who messed up the investigation file sent to the public prosecutor which may eventually lead to the dismissal of the lawsuit Including the problem that police officers arrest children and youth less than reality. As a result, the cases of juveniles entering the public prosecutor's level are less realistic. Problems related to legal counsel experiencing. There is a shortage of investigations into juvenile offenders including the problem of arranging the prosecution that the investigator sent the case to the public prosecutor in time to file a lawsuit within 30 days Problem of procrastination that is too short due to the complex nature of juvenile cases and the problems faced by the prosecutor. There is no real role in diverting the case against children and youth including public prosecutors. A part of the sample group faced the problem of the nature of the law that aims to restore, correct, heal and give too many opportunities for children and youth who commit crimes to return to society.

- Courts consist of a problematic criterion for uniform performance on the issue of 24-hour arrest investigations, procedures for children and youths in late arrests. Especially after the arrest is over 18 years of age, the trial is a secret trial. The Court's Discretion in Different Juvenile Cases Emphasis on treatment of children and youth Protecting the rights of children and youth is the main priority. There is no effective process for identifying children and young people. Problems in post-judgment procedures, such as the lack of support for juvenile judgments, consideration of rehabilitation treatment plans for children and youth Lack of support for child and youth probation Characteristics of laws that are not suitable for Thai social context unclear. It was found that there was a redundancy in the operation. The police or courts did not inform the arrest of children and youth who failed the arrest screening resulting in inability to submit legal proceedings within the specified period of time. The lack of a bail process in court has resulted in some children and youth not reporting themselves using different judges' discretion in juvenile cases although children and youth showed good behavior, the court did not change the judgment of the child and youth. The problem of ordering children and youth to be detained in places other than the Department of Juvenile Observation and Protection which has no real expertise in caring for children and youth Problems in treating children and youth according to rehabilitation and rehabilitation plans that are not truly practicable experiencing problems with the requirements that the victim consent is required. There is no agency to support rehabilitation plans and children and youth must enter the mainstream justice system. Therefore, they will receive rehabilitation treatment which is not a way to truly protect the rights of children and youth. Problems in requesting to change the punishment for children and youth who show that a person who has good behavior after being acquitted. The problem of reporting child and youth behavior modification to the court for acknowledgment in order to change the judgment, which is the discretion of the local court only, but must submit a report to the court that is responsible for adjudicating the court case acknowledged and encountered problems that cannot be managed independent rehabilitation therapy for children and

youth after judgment. It is because the Department of Juvenile Observation and Protection does not have specific laws to support the actual operation but has jurisdiction and administrative powers that are related to and affect the independence of work and the rehabilitation and rehabilitation of offending children and youth. In order to protect the rights of children and youth who violate the spirit of the Juvenile and Family Court Act and the Juvenile and Family Trial Procedure B.E.2553.

## **5. COMPARE THE LAW STATUTES AND METHODS OF FOREIGN COUNTRIES AND THE LAWS OF THAILAND**

Comparison of criminal proceedings against children in the Civil Law System with the Thai legal system. The researcher conducted a research study and compared the laws relating to child and youth offences by comparison with the United Kingdom (England), the French Republic, Republic of Singapore, United States and Japan. Therefore, the results obtained from the comparison were analyzed as follows:

1. Thai law in the case of children under 10 years of age committing such an offense. The law stipulates that punishment is not required. As for the laws of most foreign countries, children at this age are considered incapable of committing crimes. A court may order a parent or guardian to pay a fine or to attend training or take part in child rehabilitation, but this is not required by Thai criminal law.

2. Thai law in the case of an offender over the age of 10 years but not more than 15 Years committing offenses do not have to be punished. Under international law, in some countries, minor offenses may be punished with fines or auxiliary penalties instead. In some jurisdictions, physical punishment is imposed by beating (floating) in some countries for the intent of murder or certain sexual offences. For example, rape can be sentenced to the same prison sentence as an adult.

3. Under the law of Thailand, persons over 15 years of age but under 18 years of age, if committing an offense, may have training measures or put in place surveillance measures to prevent further offences, if the court will punish the punishment by half compare with foreign countries In some countries, those at this age may be punished by beatings (floats), and offenders may order prison terms, but are less likely to be sentenced to half the extent of the law imposed on adults. If the offense is committed twice or more or is a serious offense. The court may give a sentence of imprisonment and, if committing an offense punishable by law, the death penalty will be converted to a life penalty instead. In foreign countries, if an offense is committed, the court may order a fine even if it is the first offense. Adjustment orders are calculated according to the income base. Those with high incomes who commit crimes pay large fines. Those with low incomes must pay a small fine for suitability according to status and economy. In some countries, if the defendant is poor, the court may reduce the fine, but not less than what is required by law. which may allow the defendant to pay the fine or have the defendant work in social services instead of the fine.

4. cases of recidivism for persons under 18 years of age, Thai law forbids them to be combined with new penalties. In order to increase the penalties under international law, in some countries repeat offenders aged 16 to 18 who commit the second or more offenses are sentenced to imprisonment as adults and in some countries. It has been stipulated that violent or repeat offenders are punished in such a way as to be close to the maximum penalty in the law.

5. Liability of a parent or guardian in the event of a child or youth committing an offense in accordance with Thai law, courts may put in place surveillance measures to prevent a child or youth from committing another offense within three years or may allow them to participate in remediation of the child or youth. In foreign countries, in respect of the liability of the parents or guardians in the event of a child or youth committing an offense, the court may order the parent or guardian to pay the fine. The court will look at the financial abilities or circumstances of the parent or guardian before ordering the payment of the fine. [22] The court shall, in its discretion, impose a fine on the basis of income, economic position and burden responsibility, including the circumstances surrounding the commission of an offense, the court will order the person liable to show income first and the adjustment may be increased or decreased according to the financial status of that person if the defendant is poor, the court may reduce the fine, but not less than the amount prescribed by law, by allowing the defendant to pay the fine or have the defendant work in social services in lieu of the fine or the court may order the parent or guardian to undergo training to establish the responsibility of the parent or guardian, or the court may require the parent or guardian of the child committing the offense can participate in the care and rehabilitation of children.

6. Drug Offenses considered a specific offense in which the case of offenses against children and youth is a serious offense and has a huge impact on society as a whole. Moreover, it is the government's policy that wants to prevent and suppress such offenses in particular, thus prescribing heavy and severe penalties for those offenders in particular. If children and youth are used as tools in drug-related offenses such as manufacturing, transporting and participating in the drug trafficking process or smuggling of illegal goods. As a result, children and youth behave in an inappropriate way and result in other offenses such as sex offences offenses related to property, etc. For Thailand, from the study, it can be seen that the statistics of offenses of children and youth in drug-related offenses are on an



ever-increasing trend heavily in order to deter and prevent such offences. According to the various laws that have been studied, there are guidelines for punishing child users for drug-related offenses as follows:

- Under the Oklahoma Criminal Code, Section 856.1 provides a separate sanction against juveniles for drug offences from other offenses by requiring the inducement of minors to participate in the process trafficking drugs or committing an offense relating to narcotics whether in the process of distributing, producing or transporting drugs shall be liable to imprisonment for a term not exceeding twenty years, which is a high penalty and is appropriate for the seriousness of such offence.

- According to China's Criminal Code, Article 347, which is the offense provision and the penalty for drug-related offenses in paragraph six Requires those who use or incite youth to participate in drug-related offenses to be subject to heavier penalties. Article 53 of the Child Protection Law of China provides that those who commit or entice or force a minor to use or use drugs are subject to heavier penalties. It is the discretion of the court to impose more severe punishment on the offender according to the severity of the circumstances.

From all of the above, it can be seen that each country has different guidelines for punishing users for offending children according to the policies of each country. It may be defined as a new offense for using a child to commit an offence, or it may be defined as a serious act for the offender to be subject to a heavier penalty, or there may be both new offenses and heavier penalties.

## **6. CONCLUSION**

At present, many countries, including Thailand, face the problem of exploitation of children and youth in the use of children and youth as tools for criminal exploitation inducing children and youth to participate in the commission of an offense especially in drug and prostitution offenses. Due to its easy influence, the criminal justice system for children favors children with a focus on rehabilitation rather than punishment. These offenders therefore take advantage of such opportunities to induce children and youth to take part in the crime. Although Thailand currently has imposed penalties for such offenses. However, it is not appropriate and sufficient to solve such problems. Therefore, in order to protect children and youth from exploitation and use as a tool to commit crimes. When considering a comparative study of penalties for child users who commit offenses under foreign laws, it is deemed expedient to amend the provisions to prescribe guidelines for penalties for users to allow children and youth to commit crimes to be appropriate and consistent with the concept of child rights protection, taking into account the best interests of the child.

Moreover, the crimes of juveniles are serious and imitated in committing more crimes not afraid of the law remedial measures and penalties for offenders and juveniles are not appropriate for the offenders, and some of the youth offenders have not been rehabilitated in order to modify their behavior before being released into society. Therefore, it is another reason why children and youths can't be resolved as they should and found that family problems are one of the reasons why children and youth commit crimes in raising, educating, and taking care of children and youth. Their duty of the parents or guardians who are responsible, but the law in terms of measures and penalties that are applied to parents or guardians must be jointly liable for the offenses of such children and youth. There is no appropriate, so it is another reason why the father, the mother or guardian lacks proper care, which allows children and youth to easily commit crimes. One cause of offenses of children and youths when repeat offenses are not subject to additional or heavier penalties. Due to the laws of Thailand, there is a provision that prohibits the former punishment for offenders under the age of 18 years from being combined with the latter to increase the penalty. Consequently, the measures or penalties that recidivists receive are no different from the first offense as a remedial measure rather than a punishment. Thus giving children and youth the courage to commit the same offense again. Therefore, it should be amended in terms of measures or penalties for children and youth who commit repeated offenses. There are measures or penalties for parents or guardians in order to encourage them to be aware of the care and control not allowing children and youth to commit crimes.

1. From comparing the laws of Thailand with foreign laws, it was found that as for the measures and penalties used for offenders and youths and the criminal liability of the father, mother or guardian has both the same and different parts as the laws of Thailand. There are differences that can be applied, such as measures or penalties for repeat offenders, fines on parents or guardians of offending children and youths by calculating the fines according to the income base.

2. According to Section 94 of the Penal Code, it is prohibited to increase the punishment of children and youth. If it is the offence of a child, it should be emphasized on the part of the parent or guardian in the matter of upbringing and supervision. But in the case of youth, there should be more measures than punishment, prevention methods seriously edit Young offenders need training remedial to modify behavior. The liability of parents or guardians Consider the ability to supervise the moment when the youth commits an offense how much can be supervised and have used enough or not or prescribing rules for joint liability.

3. Punishing children and youth should take into account the rights of the child and the principle of safeguarding the best interests of the child. Although in the Convention no definition of the term "The best interests of

the child", but for the benefit of all children who are entitled to the benefit of being born and surviving within the framework of the Convention on the Rights of the Child. The protection of children and youth from all forms of exploitation especially from sexual exploitation drugs and from employment. It is also the duty of every institution whether family. The private sector and, most importantly, the government sector, must come together to help promote and push out various measures to comply with the said convention.

## 7. RECOMMEDATION

1. It is advisable to amend the Penal Code, Section 73, Section 74, Section 75 and Section 94 in respect of measures and penalties for children and youth and measures and penalties for parents or guardians.
2. It was agreed to amend the Juvenile and Family Court Act and the Juvenile and Family Trial Procedure B.E. 2010 and B.E. 2559 in part to the measure that would require parents or guardians to participate in remedial activities in rehabilitation of children and youths.
3. Additional provisions of Section 26 bis in the Child Protection Act 2003 with the contents as follows:  
"Whoever causes a child to commit an offense or violates the law by any means and whether the offense as it was used would have been committed or not. The user shall be liable to an additional penalty, but not more than twice the prescribed penalty for user offenses. Even if the status has changed from user to co-contributor or contributor by allowing the court to consider the seriousness of the circumstance impact on children relationship between user and user Characteristics and methods of committing an offense include punishment and taking into account the best interests of the child as a priority."

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