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**MENTAL HEALTH SCREENING IN CHILD JUSTICE
SYSTEMS: A COMPARISON BETWEEN MALAYSIA AND
SELECTED JURISDICTIONS**

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ABSTRACT

Mental health is an important aspect at every stage of life, from childhood to adolescence and to old age. It is crucial to people's overall well-being. In various studies that have been conducted, it has been found that a significant number of child offenders experienced some form of mental health problem or issue. This awareness has led to many countries adopting mental health screening as a part of the admission procedure into juvenile institutions. It has been argued that such a practice can benefit child offenders as it not only allows for the early detection of any underlying mental health issues but also assists the relevant authorities in personalising rehabilitation programmes that are unique for each child offender. Little is known about the regulatory approach taken by Malaysia and whether or not the existing practice, if any, is in line with other experienced jurisdictions at the international level. Hence, this article examines the laws and policies regarding mental health screening for child offenders admitted into

juvenile institutions in Malaysia with a comparison made with other selected jurisdictions namely the United States of America, New Zealand, and the Netherlands. This study found that significant differences exist between Malaysia and selected jurisdictions such as the timing of mental health screening or the mental health screening tools utilised, and therefore, proposes some measures that can be learned and adopted by Malaysia to improve its child justice system and ensure the well-being of child offenders admitted into juvenile institutions.

Keywords: Child justice system, child law, mental health screening, child offenders.

INTRODUCTION

In 2019, it was found that 970 million individuals worldwide suffered from a mental illness, with anxiety and depression being the most prevalent (World Health Organization, n.d.). Economically speaking, it is projected that mental health issues will cost the global economy \$16.1 trillion between 2010 and 2030, with anxiety and depression alone accounting for \$1 trillion of lost productivity yearly (Mental Health First Aid International, n.d.; The Lancet Global Health, 2020). Despite mental health being such a pressing issue, a significant gap exists in the field of mental health care, depriving many people of access to quality care. This disparity is frequently caused by a lack of mental health specialists and resources (Wainberg et al., 2017; Moitra et al., 2023). Given the global reach of mental health issues, it is essential for different nations to work with one another as well as learn from each other on what are the best practices to identify and deal with mental health issues amongst different societal groups and Malaysia is no exception. Thus, this paper aims to determine the steps the Malaysian child justice system can take when it comes to identifying the mental health needs of child offenders upon their entry into juvenile institutions. This is done through library research being conducted on the practice of mental health screening adopted by the child justice systems of various international jurisdictions.

LITERATURE REVIEW

According to UNICEF (2021), it is estimated that 1 in 7 (14%) of those between the ages of 10 – 17 experiences a mental health condition.

The most prevalent mental health condition amongst adolescents is emotional disorder, where according to estimates, 2.8 percent of adolescents aged 15 to 19 and 1.1 percent of adolescents aged 10 to 14 experience depression. Moreover, 3.6 percent of adolescents aged 10 to 14 and 4.6 percent of those aged 15 to 19 are thought to suffer from an anxiety disorder. On the other hand, the prevalence of attention deficit hyperactivity disorder (ADHD) is estimated to be 3.1 percent amongst those aged between 10 to 14 and 2.4 percent amongst those aged between 15 to 19. A similar prevalence rate was also estimated for those experiencing conduct disorders (3.6% for 10 to 14-year-olds and 2.4% for 15 to 19-year-olds). Focusing on Malaysia, according to the National Health and Morbidity Survey 2019 by the Ministry of Health Malaysia (2020), the prevalence rate of mental health problems amongst children was 7.9 percent.

After understanding the prevalence of mental health problems amongst adolescents worldwide and in Malaysia, it is imperative to understand how this prevalence exists amongst institutionalised child offenders, considering their vulnerability. Based on a study conducted in the United States by Harzke et al. (2012) on juveniles, 98 percent of them have been diagnosed with a mental illness, with conduct disorder accounting for the largest number at 83.2 percent. Ensuring this were substance abuse disorders (75.6%), bipolar disorders (19.4%), attention-deficit/hyperactivity disorder (18.3%) and depressive disorders (12.6%). This is seen to be supported by a literature review done by Development Services Group (2017) that has found a significant number of youths involved with the child justice system have one or even multiple diagnosable mental health disorders where the common diagnosis includes substance use disorders, mood disorders, ADHD, anxiety disorders, and behaviour disorders. Moreover, when it comes to the Netherlands, 43 percent of the total number of residents in specialist forensic custodial institutions for young people (FYCI) consists of young offenders who have been placed under the 'Placement in an Institution for Juveniles' (PIJ) measure. It must be noted that a PIJ measure can be imposed by the courts on any individual aged between 12 to 23 years old who has a psychological or developmental disorder upon being involved with a serious crime, and if the measure is regarded to be required to ensure the safety of people or property, and the measure is thought to be in the child offender's best interests in terms of their future development (Reef et al., 2023). When it comes to New Zealand, research has

shown that out of a sample of 204 young individuals who are admitted into youth justice residences, 66 percent of them were identified to have drug/alcohol issues, 30 percent of them were anxious/depressed, 30 percent of them have reported somatic complaints, 24 percent of them have indicated thought disturbance (only for the boys) whereas suicidal ideation was reported by 17 percent of them. It must be noted as well that in this cohort, co-morbidity was common, with half of the young individuals scoring outside of the normal range for two or more behavioural or mental health issues (McArdle & Lambie, 2015, as cited in Lambie, Krynen & Best, 2016).

Furthermore, a study conducted on 105 participants from five different juvenile prisons in Malaysia revealed that 93.3 percent of the juveniles experienced, at a minimum, one diagnosable psychiatric disorder, with 76.2 percent of them even having two or more. At 59 percent, conduct disorder was found to be the most prevalent disorder, while substance abuse disorder was shown to be the most common co-morbid disorder (Aida et al., 2014). Mental health issues are also shown to be common amongst child offenders in Malaysia in other studies. According to a study by Wazir et al. (2016), out of 100 juveniles, 56 percent of them were found to suffer from a psychiatric disorder. Disruptive behaviour disorders and depressive disorders were the most common psychiatric disorders, accounting for 40 percent and 30 percent of the cases, respectively. In addition, a study conducted by Ghazali et al. (2018) revealed that in comparison to non-delinquent youths (which numbered 120), 20.8 percent of juveniles (out of 207) had symptoms of post-traumatic stress disorder and 52.7 percent had depressive symptoms.

Moving on, Underwood and Washington (2016) have conducted a review of several studies and discovered that affective disorders, anxiety disorders, bipolar disorder, substance use disorders, psychotic disorders (although there is limited evidence), depression, post-traumatic stress disorder, attention deficit hyperactivity disorder, and bipolar disorder are common mental health disorders found amongst young offenders. Additionally, nearly two-thirds of juveniles experience co-morbidity of disorders, where they exhibit symptoms of two or more disorders. It was also found that these mental health disorders contribute to their aggressive behaviours and involvement in criminal activities. Furthermore, a meta-analysis of 30 studies by Livanou et al. (2019) indicates that emerging personality disorders were widespread amongst juveniles of both genders, lending more credence

to this idea. In this research, gender disparities were noteworthy when it came to the frequency of mental health issues. Women reported a greater rate of depression, suicide, and separation anxiety disorder, whereas men reported a higher rate of conduct disorder and nascent antisocial personality disorder. Given the prevalence of mental health issues amongst child offenders, it has been mooted that mental health screening for this group of individuals is needed where various jurisdictions have already implemented such a step in their respective child justice systems. A study by Christian (2023) highlights the importance of mandatory mental health screening as a national priority in the United States. This is in consideration of the fact that less than half of the states (24 out of 50) require children involved in the child justice system to undergo mental health screenings.

The aim of mental health screening for child offenders is to assist in recognising their mental health needs when they enter the juvenile justice system. This includes two main objectives, which are, to quickly identify youths who require immediate attention as well as individuals who may require care due to their risk of developing potential problems (Vincent, 2012). Furthermore, scholars have contended that early mental health screening for child offenders in the legal system has numerous benefits. Firstly, information gleaned from mental health screenings can help agencies decide on how much security is necessary and how intense a course of treatment should be given to child offenders. Consequently, this makes it possible to allocate resources well, such as mental health treatment or placements, to those who most need them, such as high-risk offenders, in an effort to lower the likelihood of them reoffending (Vincent, 2012). Secondly, the screenings also offer insight into the plausible risk factors such as family issues or exposure to traumatic events, as well as the mental health and welfare needs of child offenders. This insight is crucial for the effective implementation of policies and the improvement of juvenile justice system procedures, given the varying mental health needs present in different individuals.

LEGISLATION ON MENTAL HEALTH SCREENING IN MALAYSIA AND SELECTED JURISDICTIONS

This section examines the relevant international standards that are seen to be related to child offenders, followed by the incorporation of mental health screening procedures within the child justice system in

a few selected international jurisdictions, namely, the United States of America, the Netherlands and New Zealand as well as Malaysia through the lens of legal legislation. The specific international jurisdictions are chosen for this study due to their experience in the implementation of mental health screening in their respective child justice systems. Besides, it is also important to discuss this matter in a Malaysian context, considering the worrying numbers of institutionalised child offenders who are experiencing mental health issues highlighted previously.

International Standards

Each nation possesses the liberty to craft its own domestic legislation. However, the nations would need to adhere to specific international standards. Thus, such standards would need to be scrutinised first before exploring the domestic laws of the various nations. Amongst such international standards that are relevant to child offenders are the Beijing Rules and the United Nations Rules for the Protection of Children Deprived of Liberty.

The United Nations General Assembly adopted the Beijing Rules on November 29, 1985. These rules serve as guidelines as to how children should be treated while being in the criminal justice system. In particular, Rule 26.2 is vital to highlight as it looks at how all the needs of juveniles must be considered and addressed by institutions to promote their rehabilitation (United Nations, 1985).

In addition to the mentioned, there is also the United Nations Rules for the Protection of Juveniles Deprived of their Liberty which was adopted by the United Nations General Assembly on December 14, 1990. This guideline establishes the minimum standards accepted by the United Nations for the protection of juveniles who are deprived of their liberty in any form, including arrest, detention, imprisonment, and placement in institutions by court order or any other means. In particular, Rule 50 and Rule 51 note how imperative it is for any child justice system to emphasise not just the prompt identification and appropriate treatment of physical health issues but also the mental health issues of institutionalised child offenders (United Nations, 1990). Thus, the onus is upon the relevant authorities to take the necessary measures, whether in terms of manpower or even resources, for the provision of such services to institutionalised child offenders.

United States of America

The Juvenile Justice and Delinquency Prevention Act of 1974 explicitly lays down federal legislation on mental health screening in juvenile facilities. 34 U.S. Code § 11103 (37) (A) defines ‘screenings’ as a brief process that is intended to identify youths who have behavioural health, substance abuse, mental health, or other needs that warrant additional attention, intervention, and evaluation. Furthermore, as stated in 34 U.S. Code § 11103 (37) (B), the goal of screenings is to promptly identify youths who require additional assessments pertaining to their needs for mental health, substance misuse, behavioural health, or other issues. Moreover, 34 U.S. Code § 11133 (30) (A) emphasises the necessity of a state plan, which revolves around the efficacy of juvenile justice interventions and delinquency prevention programmes, to outline the conduct of mental health and substance abuse screening, assessment, referral, and treatment through the use of evidence-based methods. 34 U.S. Code § 11133 (30) (A) (iii) further mentions that this includes juveniles detained for more than 24 hours in a secure facility, where an initial screening is provided.

The Massachusetts Youth Screening Instrument-Version 2 (MAYSI-2) is one of the most widely utilised mental health screening tools in the United States. This instrument is extensively employed in 46 states’ juvenile detention facilities, correctional programmes, and probation. It has also been modified for use by several other nations, most notably the Netherlands and Switzerland (National Youth Screening & Assessment Partners, 2019).

The following section further examines the policies and statutes pertaining to mental health screening for both juvenile detention centres and juvenile correctional facilities in three selected states in the United States, namely Colorado, Florida, and Texas.

Colorado

The Division of Youth Services (DYS) of the Colorado Department of Health Services manages 15 secure youth centres for pre-adjudicated and committed youths. The State of Colorado introduced Policy S 12.3 A, which provides for the regulations of mental health screening services at the youth centres for detention and treatment. Youths who

arrive at a DYS Youth Centre are required to undergo screenings within four hours, as per Section 4 (D) of the policy. Should any mental health-related issues be found, the youth centre will not allow the individuals to be admitted until they receive medical clearance. Subsection 5 of Section 4 (E) also stipulates that screenings for all youths should, at the very least, cover a range of areas where parts (h), (k), and (l) address mental health screening. Additionally, as stated in Section 4 (E) subsection 7, the intake staff should perform a suicide risk assessment for the youths at the point of admission using the Columbia Suicide Severity Rating Scale (Colorado Division of Youth Services, 2023).

The Colorado Revised Statutes (2023) provides for the creation of a mental health screening tool as well as the methods of its implementation. Specifically, subsection (2) of § 16-11.9-102 states that “the judicial department, the division of youth services within the department of human services, the unit responsible for child welfare services within the department of human services, the office of behavioural health in the department of human services, the division of criminal justice within the department of public safety, and the department of corrections shall cooperate in developing a standardised screening procedure for the assessment of behavioural or mental health disorders in juveniles who are involved in the juvenile justice system.” The process should include determining or developing a standardised screening tool as well as the phases at which the youths in contact with the juvenile justice system will be screened for behavioural or mental health disorders in accordance with subsections 2(a) and (c). Furthermore, subsection (1) of § 19-2.5-1516 permits the executive director of the department of human services to implement a mental or behavioural disorder screening for adjudicated juveniles housed in detention facilities. The screening method and instrument that will be employed are in accordance with § 16-11.9-102. It is worth noting that MAYSI-2 is the mental health screening instrument reportedly utilised at the facilities (Wachter, 2015).

Florida

The Department of Juvenile Justice in the State of Florida oversees 21 secure detention centres that are spread across 21 counties housing pre-adjudicated youths. At the same time, the Department of Juvenile Justice’s Bureau of Monitoring and Quality Improvement oversees contracted private providers that run residential services for

adjudicated youths, which differ depending on the programme type, degree of restriction, and gender (Florida Department of Juvenile Justice, 2021).

Chapter 5 of the department's Mental Health and Substance Abuse Services Manual outlines the mental health screening procedures that must be followed in the centres. In accordance with subsection 2(A), a trained juvenile probation officer or contracted intake person may use MAYSI-2 or Positive Achievement Change Tool (PACT) to screen youths for mental health issues and substance abuse at the time of their initial intake into the juvenile justice system. This screening can take place at the detention centre, law enforcement agency, juvenile assessment centre, or case management unit. Additionally, this includes the Department of Juvenile Justice Suicide Risk Screening tool. The same tool is also administered to youths when admitted into detention centres, where certain portions are administered by the detention officer and the detention centre nurse or mental health clinical staff member administers certain portions. Furthermore, as stipulated in subsection 2(B), youths admitted to residential facilities are required to have the Clinical Mental Health/Substance Abuse Screening or the MAYSI-2 administered to them upon entry. On the day of the youth's admission, a member of the facility's trained staff will administer the MAYSI-2 (Florida Department of Juvenile Justice, 2006).

Section 985.135 of the 2023 Florida Statutes, titled Juvenile Assessment Centers, provides for the availability of such screenings during the intake stage. As per subsection 4, it is mentioned that "Each centre shall provide collocated central intake and screening services for youth referred to the department. The centre shall provide sufficient services needed to facilitate the initial screening of and case processing for youth, including, at a minimum, delinquency intake; positive identification of the youth; detention admission screening; needs assessment; substance abuse screening and assessments; physical and mental health screening; and diagnostic testing as appropriate. The department shall provide sufficient staff and resources at a centre to provide detention screening and intake services."

Texas

In the state of Texas, the Texas Juvenile Justice Department (TJJD) maintains five secure facilities namely Ron Jackson, Evins, Giddings,

Gainesville, and McLellan County (Texas Juvenile Justice Department, 2022). The General Administrative Policy Manual or GAP.380.8505 (c) (1) states that, within 24 hours of admission and before being assigned to dormitories in the Orientation and Assessment Unit, appropriate staff members must screen youths for medical and mental health conditions. The screenings consider factors like (i) suicide risk, (ii) history of substance abuse, (iii) psychiatric history, and others (Texas Juvenile Justice Department, 2017). GAP.380.9183 (e) (6) (C), which states that youths will receive a mental health screening and evaluation upon admission to TJJD, further supports this (Texas Juvenile Justice Department, 2021). In addition, the Institution Health Services Procedure Manual or HSP.06.02 (a) specifies that a registered nurse must conduct a mental health screening on a youth transferred intra-systemically to a TJJD facility (Texas Juvenile Justice Department, 2014). Meanwhile, statutes concerning mental health screenings in these types of facilities are found under 37 Tex. Admin. Code § 343.604 (a) (2023), which emphasises that each resident will undergo a health screening within two hours of admission. The scope of the screening is further defined by subsection (d), which covers the following: (1) mental health condition and treatment, which includes any hospitalisations; (2) observations of specific aspects, such as (i) general appearance and (ii) behaviours, such as erratic, appropriate, or disorderly; and (iii) use of illegal drugs or alcohol, among many other things.

Upon admission, pre-adjudicated juveniles are seen to undergo screenings at a number of locally run juvenile detention facilities (Lubbock & Judge Mario E. Ramirez, Jr.) (Lubbock County, Texas, 2023; Hidalgo County, Texas, n.d.). Moreover, every young person who enters the Lynn W. Ross Juvenile Detention Center, which is managed by the Tarrant County Juvenile Services, must undergo screening to determine whether they have emotional or mental health issues. The Psychological Services Division of the Tarrant County Juvenile Services employs licensed mental health professionals to perform mental health screenings at the detention facility (Tarrant County, Texas, 2021). Regarding mental health screenings being required to be done in secure pre-adjudicated detention facilities, 37 Tex. Admin. Code § 343.404 (2023) can be referred to. According to subsection (a) (1), within 48 hours following a resident's admission, the facility “(A) shall administer a mental health screening instrument approved by TJJD” or “(B) provide a clinical assessment by a mental

health provider". This only "applies to residents who are released from detention before the 48-hour time limit" as per subsection (a) (2). Besides, subsection (a) (3) further mentions that despite the 48-hour time limit, within 2 hours after a resident's admission, the mental health screening instrument should be administered in consideration of the instrument being used by the facility to fulfil the requirement of suicide screening under § 343.340. Furthermore, 37 Tex. Admin. Code § 351.4 (k) (2023) mandates that within the first hour of admission to a short-term detention facility, health screenings encompassing (i) mental health problems, (ii) suicide risk, (iii) alcohol and drug use, and other areas, must be performed on each resident. 37 Tex. Admin. Code § 351.4 (m) (2023) further emphasises that the TJPC Standard Screening Tool must be utilised on each resident upon their admission to the short-term detention facility. The MAYS-2 is reportedly used as the mental health screening instrument in correctional and short-term detention facilities (Wachter, 2015).

Table 1

Table of Comparison between the States of Colorado, Florida and Texas

Factor	State	Colorado	Florida	Texas
Period of screening		Pre-adjudicated Within 4 hours.	Adjudicated Upon entry.	Pre-adjudicated Within 48 hours (secure pre- adjudicated detention facilities). Within the first hour (short term detention facilities).
Policies or laws on screening		Both.	Both.	Laws. Both.
Tools used		Columbia Suicide Severity Rating Scale. MAYSI-2.	MAYSI-2. Positive Achievement Change Tool (PACT). MAYSI-2.	TJPC Standard Screening Tool (Short term detention facilities. MAYSI-2. Department of Juvenile Justice Suicide Risk Screening tool.

New Zealand

The Oranga Tamariki Act 1989, also known as the Children's and Young People's Well-Being Act 1989, is the primary piece of legislation in New Zealand that looks at various aspects in order to "promote the well-being of children, young persons, and their families, *whanau, hapu, iwi* and family groups", where this is highlighted in Section (1) of the Act. The Act's role in youth justice is further emphasised in Part 4.

New Zealand has five youth justice residences, which are under the purview of the Oranga Tamariki Ministry for Children, spread across the nation. This includes Korowai Manaaki and Whakatakapokai in South Auckland, Te Maioha o Parekarangi in Rotorua, Te Au rere a te Tonga in Palmerston North and Te Puna Wai ō Tuhiapō in Christchurch (Oranga Tamariki Ministry for Children, 2023). These facilities serve young people who are:

- i. arrested and placed in the care of the ministry until they go to the Youth Court;
- ii. remanded by the Youth Court and are required to stay at the facility until the settlement of the case;
- iii. sentenced by the Youth Court for 3 to 6 months; and/or
- iv. sentenced to prison, whereby some time of the sentence can be done through admission to such facilities (Oranga Tamariki Ministry for Children, 2023).

A study commissioned and published in 2016 by the Ministry of Social Development, now known as the Oranga Tamariki Ministry for Children, provides insight into the application of mental health screening at youth justice residences in New Zealand. One of the project's highlights, as stated in the report, is that all young people placed in the care of the Child, Youth and Family (CYF) should have assessments completed upon admission at secure youth justice residences. These assessments should be conducted using a variety of standardised tools to identify the needs of the youth, including those related to mental health and substance abuse. A number of tools, including the Substances and Choices Scale (SACS) and the MAYSI-2, have been recommended for use by secure residential care facilities with youth involved in the legal system. The report

noted that youths were offered risk screenings at the youth justice residences, which included aspects such as suicidal ideation, mental health problems, alcohol and drug issues, and psychological distress (Lambie et al., 2016).

A policy called “Working with *tamariki* and *rangatahi* in residences,” issued by the Oranga Tamariki Ministry for Children, provides support for the reported risk screenings that take place at the youth justice residences mentioned previously. This policy states that the residential case leader must make sure that certain measures need to be carried out right away when a *tamaiti* (child) or *rangatahi* (youth) arrives at a residence. One of the measures is to identify the risk factors and/or urgent needs using the Kessler and Suicide Screen (Oranga Tamariki Ministry for Children, 2022). This policy complies with the obligations under the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018, where Section 8 emphasises that a needs assessment must be completed as soon as reasonably possible after a young person or child enters custody or care. In addition, Section 10 (1) refers to the needs assessment covering a range of areas, including their health needs, which include both physical and psychological health as well as alcohol and drug misuse as per Section 13 (2). Furthermore, the policy complies with Section 14 (1) of the Oranga Tamariki (Residential Care) Regulations 1996, which stipulates that all children or young persons in a residence must receive adequate, prompt, and appropriate health care and services.

The SACS, Kessler and Suicide screens (SKS), which are carried out at the youth justice residences, are performed when:

- “mental health, suicide, and/or substance use are potential concerns;
- there is the presence of significant events, trauma, behaviours and/or risk factors;
- *tamariki* are held in police custody; and/or
- *tamariki* enter a residence, and at any time during the residential stay when mental health is identified as a concern or potential concern” (Oranga Tamariki Ministry for Children, 2019).

The three components of SKS screens comprise (i) the Substances and Choices Scale (SACS), which evaluates and monitors drug and

alcohol use and its effects; (ii) the Kessler screen, which flags potential mental health problems and psychological distress; (iii) and the suicide screen, which identifies instances of active suicidal thoughts in *te tamaiti*. It must be emphasised that the suicide screen does not determine the risk level; rather, it assists in determining whether a more thorough assessment is necessary (Oranga Tamariki Ministry for Children, 2019).

The youth forensic services under the District Health Boards or non-governmental organisations are responsible for conducting the screenings in all the facilities. It has been stated that the core responsibilities of these services include the triage and assessment of youth offenders who may be severely affected by alcohol and other drug (AOD) and/or mental health disorders, as well as the treatment of such youths. The guidelines for youth forensic services include, among other things, conducting mental health screenings for children and young adults at various stages of the youth justice system and referring those who are unmet in their physical and mental health needs to appropriate services (New Zealand Ministry of Health, 2011).

This is supported by the Southern DHB Child and Mental Health Services, which notes that referrals from Oranga Tamariki, the courts, and others are subject to triage and screening that takes into account a variety of factors, including current concerns or mental health concerns, a summary of the facts, and the criminal list obtained from the prosecution. It also outlines the role that the youth forensic services play in providing mental health services, including AOD and cultural assessments, treatments, and Section 333 reports, to youths who are involved with the legal system and need mental health screenings (Healthpoint Limited, 2023).

The Netherlands

The Dienst Justitiële Inrichtingen (DJI) oversees adult prisons and detention facilities in the Netherlands, as well as forensic psychiatric centres (FPC), special youth facilities known as Justitiële Jeugdinrichting (JJI), and detention facilities for foreign nationals. Within the Netherlands, there are five privately run Kleinschalige Voorzieningen Justitiële Jeugd (KVJJ) or Small-scale Judicial Youth Facilities, which are also under the DJI, compared to two privately run JJI facilities and three government-run JJI facilities (Judicial

Institutions Service, n.d.). The three Rijks Justitiële Jeugdinrichting (RJJI), or National Youth Justice Institutions, are:

- i. RJJI De Hartelborgt (for boys)
- ii. RJJI Den Hey-Acker (for boys)
- iii. RJJI De Hunnerberg (for boys and girls) (Judicial Institutions Service, n.d.).

These facilities house young people who have been admitted for criminal purposes and are undergoing preventive detention, night detention, juvenile detention, or a placement in an Institution for Juveniles (PIJ) measure (Judicial Institutions Service, n.d.). At the same time, the two facilities that are privately run are:

- i. JJI Lelystad
- ii. Teylingereind (Sassenheim) (Judicial Institutions Service, n.d.).

It has been noted that JJI Lelystad, which specialises in the “field of Slightly Mentally Disabled (MID) youngsters with complex psychological and psychiatric disorders,” is the location where pre-trial detention, juvenile detention, and PIJ measures are implemented (Pluryn, 2019). Conversely, Teylingereind (Sassenheim) is a JJI facility that houses boys aged 12–24 who have been ordered by a judge to be placed at the facility (Forensic Center Teylingereind, n.d.).

Furthermore, the five Small Scale Judicial Youth Facilities (KVJJ) function as a low-security facility for youths in youth detention, preventatively attached youths, or youths in the last stages of a PIJ measure (Judicial Institutions Service, n.d.). These facilities are:

- i. KVJJ Amsterdam;
- ii. KVJJ Noord;
- iii. KVJJ Rijnmond;
- iv. KVJJ South; and
- v. KVJJ The Hague (Judicial Institutions Service, n.d.).

When a youth is in the custody of the police, the Child Protection Board uses the Basis Raads Onderzoek (BARO) screening tool. In addition, forensic diagnostic examinations are conducted in juvenile custodial institutions to assess the mental health requirements of the youths and additional diagnostic testing is then administered

for those who meet the screening criteria for specific psychiatric or behavioural disorders. When a young person is admitted to a juvenile custodial institution, the medical service, which is made up of a nurse and typically a psychiatric nurse, will perform a medical intake. Along with carrying out observations in the living unit (or obtaining information pertaining to the youths through group coaches) and reviewing the youths' care records, psychologists and pedagogues also administer screening tests, such as the Strengths and Difficulties Questionnaire (SDQ) and MAYSI-2 (International Juvenile Justice Observatory, 2011). It has been reported that a confirmatory factor analysis revealed that the Dutch MAYSI-2 replicated the original MAYSI-2's structure. With a few notable exceptions, the screening tool has also generally demonstrated convergent validity and internal consistency in assessing the mental health needs of juveniles across all ethnic groups (Colins et al., 2015).

The director of the institution draws up a perspective plan in accordance with Article 25 (1) of the "*Reglement justitiële jeugdinrichtingen*" (2022), also referred to as the "Regulations for Judicial Youth Institutions." Furthermore, subsection (2) adds that the group leader or mentor of the young person, a behavioural expert, and a teacher for youths in the institutions will also be involved in the drawing up and revisions. Besides that, in accordance with subsection (3), the child protection council and the youth probation service or probation service will be involved if a perspective plan is drawn up or modified for juveniles residing in institutions under criminal law. Moreover, subsection (4) further highlights that in the event that a juvenile has been placed in an institution pursuant to Article 6.2.2, second paragraph of the Youth Act, the institution shall consult with the relevant certified institution when creating or modifying the plan. Subsection (5) also emphasises that unless parents or guardians, stepparents, or foster parents specify that they do not intend to play a role or the juvenile's compelling interests prevent it, parents or guardians, stepparents, or foster parents will also be involved as much as possible in drawing up and modifying the plan. Additionally, Article 26 lists the different components of the perspective plan, including a diagnosis of the juvenile's issues, descriptions of the treatment, medical information, and many other components. Article 20 of the "*Beginselenwet justitiële jeugdinrichtingen*" (2020), also referred to as the "Principles Act for Juvenile Justice Institutions," further emphasises that the director of the institution must draw up

the perspective plan no later than three weeks following the juvenile's arrival. These provisions make it clear that, when developing a perspective plan, consideration is given to comprehending the mental health needs of child offenders through the use of a behavioural expert and perspectives from pertinent individuals in the child's life. Therefore, it can be observed that the previously discussed practice of conducting forensic diagnostic examinations in juvenile custodial facilities aligns with the provisions under discussion.

Malaysia

In Malaysia, there are seven Tunas Bakti schools (Malaysian Department of Social Welfare, 2023) and three Henry Gurney Schools (Malaysian Prison Department, 2021) to house institutionalised child offenders for rehabilitation. In order to understand whether mental health screening is carried out in the Malaysian child justice system, this study examined the Child Act 2001 (Act 611).

Section 20 (1) of the Child Act 2001 emphasises the Protector's responsibility to bring a child placed in temporary custody under Section 18 for a medical examination or treatment by a medical officer should the need for such care arise. This can even be done prior to the presentation of the child in front of a magistrate or court for children. The function of the assistant protector or a police officer in performing the same task prior to submitting the child to a protector is further explained in Section 20 (1A) of the Act. In addition, Section 21 of the Act delineates the responsibility of the medical officer to do a medical examination in order to diagnose the child's illness and, if required, to administer treatment.

It is also worth noting that a probation officer is required by Section 90 (12) of the Child Act 2001 to produce and submit a probation report for the Court for Children's consideration when determining how to handle a child. In accordance with Section 90 (13) of the Act, the probation officer is required to turn in the probation report within 30 days of the day on which the Court for Children issued the directive. Section 90 (13) (a) and (b) of the Act further emphasises what should be included in the probation report, where this encompasses information on the child's home environment, general conduct, medical history, and school record. Any written report from a registered medical practitioner, a social welfare officer or whoever

is deemed fit by the Court for Children may also be included. One may argue that even though mental health screening is not explicitly mentioned, it appears from the abovementioned provisions that the legal provision is rather general and may cover the obligations of the authorities to ensure that mental health is taken care of through the probation report. However, it is important to highlight that the current legal system does not provide for any clear measures that should be carried out to identify the mental health needs of child offenders. This is seen to be a problem as ensuring the clarity of the law is essential for individuals to quickly ascertain their obligations and rights, where this is provided for under the core concept of legal certainty when it comes to the rule of law (James & van Zyl Smit, 2022).

Based on these discussions, it can be said that, as with other selected countries, there is a similarity in the spirit of the child justice system adopted by Malaysia in ensuring the best interest of the child. However, it is apparent that differences remain when a comparison is made in terms of the establishment of explicit policies and statutory provisions on mental health screening, the timing of mental health screening, and the tools that should be employed by authorities, whereby these aspects are discussed in detail in the next section.

DISCUSSION

The previous section highlights the distinctions between the child justice systems in the United States, the Netherlands, New Zealand, and Malaysia in terms of the incorporation and requirement of mental health screening of juveniles as stated in the relevant policies and laws of the respective jurisdictions. This section further examines these distinctions and attempts to analyse what Malaysia can learn from the experience and approaches of the selected jurisdictions in ensuring the mental health and well-being of child offenders in Malaysia are better protected.

The Presence of Explicit Statutory Provisions and Policies on Mental Health Screening

As demonstrated in the preceding section, Malaysia's law, namely the Child Act 2001, requires a protector to bring the child for a medical examination should a need arise. One would argue that this provision

is sufficient enough as mental health screening can fall under the scope of ‘medical examination’. Nonetheless, the phrase ‘should a need arise’ could be problematic as it does not suggest that such a statutory responsibility ‘must’ be performed by the protector. One would argue that the existing provision in Malaysian law lacks clarity as compared to the other jurisdictions, for instance, in the United States, where state laws in Colorado, Texas, and Florida expressly emphasise the necessity of conducting mental health screenings for child offenders in institutions. It is also believed that this applies to the Netherlands in accordance with the relevant provisions of the Regulations for Judicial Youth Institutions and the Principles Act for Juvenile Justice Institutions, which deal with the creation of a perspective plan for young people placed in institutions. Furthermore, mental health screening for institutionalised child offenders is explicitly stated in policies by New Zealand’s Oranga Tamariki Ministry for Children, which abides by the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 and Oranga Tamariki (Residential Care) Regulations 1996.

One could argue that with the enactment of specific laws or policies, this measure guarantees that institutionalised child offenders will undergo mental health screenings and this will fulfil a few crucial purposes. The first benefit of such a law is that it can safeguard the individuals’, or in this case, the child offenders’, rights and liberties by shielding them from harm and discrimination (Bachelet, 2020). Adequate safeguards concerning the mental health of child offenders must be in place, given the possible negative effects of mental health problems on the rehabilitation process of institutionalised child offenders. Furthermore, the implementation of such a law contributes to the development of a judicial system that guarantees impartiality and fairness for every person, including child offenders (University of Lincoln, 2022). Since mental health screening is expressly mandated by law, this guarantees that all juvenile institutions in the jurisdiction follow the practice and do not depart from it by enacting their own procedures. This is because disparities of this kind in procedures may raise concerns about whether child offenders are receiving fair treatment across different institutions.

Timing of Mental Health Screening

In reference to the Child Act 2001 of Malaysia, as discussed previously, one may point out that it does not make any mention of

the need to conduct mental health screenings on child offenders upon their admission to juvenile institutions. Sections 20, 21, and 90 of the Child Act 2001 (Act 611) merely indicate that a determination of a child offender's mental health status may be made. However, this determination only takes place before or during the court process. This raises the question of whether the needs of the child offenders are being properly taken care of, considering the known detrimental effects of the child justice process on the mental health of such individuals.

Meanwhile, such a requirement is made explicit as stated in the state laws of Texas, Colorado, and Florida in the United States, whereby it is a must for the institutions in these states to perform mental health screenings on child offenders upon or shortly after their admission (within 1 hour to 48 hours). The policies developed by the departments in charge of these institutions in the various states further support this practice. Moreover, the policies of New Zealand's Oranga Tamariki Ministry for Children also appear to make it clear that mental health screenings must be completed when child offenders are admitted to juvenile institutions. In the Netherlands, a provision in the Principles Act for Juvenile Justice Institutions emphasises how urgent it is to ascertain a child offender's condition within the time limit provided, within three weeks, for creating a perspective plan (whereby a forensic diagnostic examination is included).

This shows that there is a gap in the way the Malaysian child justice system addresses the issues of mental health of child offenders, especially from the time of sentencing until the child is admitted into a juvenile facility. Given that admission into institutions means that a child has limited contact with the outside world, the existence of this gap raises concerns about potential psychological effects on the child offender. Therefore, one would argue that Malaysia should give the measure of incorporating the requirement of mental health screenings at the point of admission consideration as this will be able to aid authorities in identifying any psychological problems that may not have been identified previously and enable institutional staff to properly assist the child offender. Irrespective of whether it is used to channel the child for further evaluations or even in the creation of a more individualised treatment programme for the child, employing such a measure assures that no child is left behind when it is compulsory for every child to have their mental health screened and taken care

of by the respective authorities. Without a mandatory mental health screening taking place as the first step, many child offenders may go undiagnosed, leading to untreated mental health conditions that can exacerbate behavioural problems. This is seen to be in tandem with the research discussed previously by Aida et al. (2014), Wazir et al. (2016) and Ghazali et al. (2018), which found a significant amount of child offenders in Malaysian institutions experiencing mental health disorders. Coupled with the impacts of being institutionalised, this can lead to long-term consequences for the child.

Mental Health Screening Tools

Any institution or organisation, including juvenile institutions, can benefit greatly from having standardised practices. It is evident from the comparison in the preceding sections that in the under-studied jurisdictions, the relevant stakeholders have developed legislation or policies that clearly specify the tools that can be used for mental health screening. For instance, the state of Colorado adopted the Columbia Suicide Severity Rating Scale, the state of Florida adopted the MAYSI-2 or Clinical Mental Health/Substance Abuse Screening, and in New Zealand, the authority adopted the SKS screens on the national level, which comprise the SACS, Kessler screen, and suicide screen. Unlike these jurisdictions, one can argue that in Malaysia, due to a lack of explicit laws or policies on mental health screening, there is a lacuna in the specifications of the mental health screening instruments that should be utilised in Malaysian juvenile facilities despite there being a list of mental health screening tools that are proposed by the Ministry of Health Malaysia such as the DASS and PHQ (Ministry of Health Malaysia, n.d.). This poses problems to the standards of screening across the institutions as the utilisation of different instruments contributes to inconsistencies in determining mental health conditions, hindering accurate diagnosis and the development of a treatment plan. For instance, the DASS evaluates the present emotional and mental health conditions and identifies a range of issues such as depression, anxiety and stress, whereas the PHQ only checks for depression in terms of its existence and intensity (Ministry of Health Malaysia, n.d.).

There are several advantages to ensuring the standardisation of mental health screening instruments used in juvenile institutions. Firstly, it can lower the possibility of mistakes or oversights, as supported

by Paradis et al. (2021) which have indicated that standardised tools allow for the provision of holistic care through the selection of the best clinician to offer the specific type of care. When various juvenile institutions use different screening instruments to conduct mental health screenings, oversights are inevitable because the areas measured by the instruments may differ. As a result, there is a greater chance that the mental health conditions of institutionalised child offenders will become worse since the authorities will miss the opportune time for early detection of potential mental health issues in these offenders through such screenings.

Having a standardised mental health screening would also ensure accountability in observing the code and conduct expected of a mandated official (Renfro, 2023), with a crucial duty to protect and safeguard the well-being of juveniles and to assist with their rehabilitation and reintegration into society. This is seen to be in line with Rule 1.6 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), which states that “juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes” (United Nations, 1985). Action can be taken against officials in the institution who fail to use the recommended tool to screen for mental health issues due to their failure to adhere to established protocols. The effectiveness of the child offender’s rehabilitation relies on the appropriate officials implementing tailored treatment plans (Maillet, 2023). Therefore, to come up with such plans, it is contingent upon the officials to conduct an adequate inquiry to fully comprehend the child offenders’ needs.

Other Considerations Based on Malaysia’s Local Context

Based on the issues discussed, this study also proposes some recommendations that can be considered by the relevant authorities, which may be able to further complement and improve the implementation of required measures as discussed earlier.

Even though the comparative analysis suggests that Malaysia needs to introduce specific laws that provide clarity in the implementation of mental health screening in the country, it may be worthwhile to also consider the need to establish a particular committee at the ministerial

level to determine the readiness of the Malaysian child justice system to implement mental health screening. This committee can involve the relevant stakeholders such as legal experts, child mental health experts and others, to gain a comprehensive view as to how mental health screening can be legally and properly implemented for child offenders admitted into Malaysian institutions so that their needs can ultimately be properly taken care of.

In addition, it appears that there is a shortage of mental health specialists, such as psychologists, psychiatrists, and counsellors, to address the problems within the community. As of 2018, there were only 410 psychiatrists in Malaysia, with an average ratio of 1.27 psychiatrists per 100,000 people (Supramani, 2022). Hence, the public healthcare system would be further burdened if such resources were directed towards juvenile institutions to carry out mental health measures. It is therefore recommended as well to increase the number of mental health professionals in Malaysia by encouraging people to think about a career in the field. This can be achieved by increasing the accessibility and reach of mental health education and training programmes and by offering funding or scholarships to individuals enrolled in them.

In addition, it is also important for the authority to take into account the existence of stigma associated with mental health in the country. Mental health can be considered a taboo subject that people typically avoid discussing within certain segments of society. Given the cultural and religious context of Asian societies such as Malaysia, it is not uncommon for one to rely solely on a spiritual or supernatural intervention to address mental health problems (Hanafiah & Van Bortel, 2015; Hassan et al., 2018). Therefore, it is also important for Malaysian authorities to invest significant resources into public education programmes that educate the public at large on the importance of mental health (UNICEF, National Institutes of Health Malaysia & Burnet Institute, 2022), which would facilitate the acceptance of any mental health initiatives including mental health screening for child offenders.

CONCLUSION

Based on this comparative study between Malaysia and the under-studied jurisdictions, namely, the United States, the Netherlands,

and New Zealand, this study highlights some key issues related to the implementation of mental health screening in the child justice system in Malaysia. This study shows that the existing law, Child Act 2001, which provides protection for children in Malaysia, does have relevant statutory provisions that can be invoked to safeguard the mental well-being of child offenders. Nonetheless, these provisions are not primarily established to address the need for mental screening in juvenile institutions in the country. It, therefore, does not provide for a specific and clear implementation of mental health screening for child offenders. Also, the existing governance framework is not on par with the practice of the under-studied jurisdictions. Unlike the legislations established by the under-studied jurisdictions, there is no explicit statutory provision that clearly indicates the appropriate timing of mental health screening as well as the types of mental screening tools that should be employed by juvenile institutions in Malaysia. This raises a concern about the importance of developing a judicial system that guarantees fairness as well as standardisation of diagnosis and treatment. This study therefore, argues that there is a need for Malaysia to learn from the experience of the selected jurisdictions. Notwithstanding, it is also imperative to give special consideration to the local context, particularly the issues of human capacity in supporting the development of mental screening in the justice system, as well as the stigmatisation and societal attitude towards the issue of mental health. Further study and deliberation are required to examine in-depth the issues and challenges in establishing a comprehensive mental health screening in the child justice system in Malaysia that is on par with other jurisdictions.

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