The Juvenile Justice System and Diversion Program in Puerto Rico: A therapeutic or anti-therapeutic system?

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Throughout many cultures around the world it has long been believed that children, adolescents and young adults are the future. Puerto Rico can be considered among these cultures, which believe children are the future and hope of a country battling different social and economic problems. In 2009, the statistics demonstrated that 11,468 faults where committed by minors\(^1\) in class A and B faults.\(^2\) Some of the most shocking stories of the past years have involved minors committing horrible crimes.\(^3\) Thus, the overall criminal activity that minors have engaged has become a devastating social problem. Therefore, we must analyze the laws that deal with correcting the errors that these children, adolescents or young adults commit within the context of a criminal situation in Puerto Rico. The foundation of the juvenile system in Puerto Rico is the legislative piece Ley de Menores de Puerto Rico.\(^4\) This law establishes the fundamental philosophy and function which the Juvenile system must carry out.

Within the context of this paper I will analyze how this law is either therapeutic or anti-therapeutic. I will evaluate the rehabilitation program also known as the “desví os system” (hereinafter diversion system) that has been established within the law. There is a manual available that establishes “las Normas y Procedimientos” to guide the diversion program. The actual manual used today in the process of diversion is not public information therefore; I will analyze the 1990 manual. I will compare the Puerto Rican diversion system with other countries that have implemented a more therapeutic view on how to deal with minors in a criminal context and finally how we could convert the juvenile system in Puerto Rico into a more therapeutic

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\(^2\) Clase A faults are faults committed against a person such as homicide, assault, aggression etc. Class B faults are those faults committed against the property such as Car theft, Arsine.


\(^4\) Ley de Menores de Puerto Rico, Ley Num. 88 de 9 de 1986, según enmendada 1987, 34 LPRA §§ 2201-2238
system for both the children who come into direct contact with the system and the community in general.

I. **How therapeutic or anti-therapeutic is La Ley de Menores de Puerto Rico?**

When analyzing if a law or a system can be considered as therapeutic or anti-therapeutic one must evaluate how other factors than the mere law are taken into consideration in evaluating the persons particular situation. We must also observe how the process might affect the actors that are involved within the situation “[t]herapeutic jurisprudence focuses our attention on this previously underappreciated aspect, humanizing the law and concerning itself with the human, emotional, psychological side of law and the legal process.” In the particular case of minors and the juvenile system we must take into account how the process affects the minor, the victim, and overall society. Grisel Hernandez Arocho establishes an essential point in her article when she mentions [e]ach country tries to temper his social reality to a juvenile justice system that meets the needs of protection of minors and of each member of society. In Puerto Rico, juvenile criminality has been one of the numerous social problems effecting the island “[t]he profile of young men in the custody of the Juvenile Institutions Administration includes the ages ranging from 15-19 years of age, 25% are in the juvenile institutions due to violation of the control substance law, 9% for aggravated assault, 8% for violation of the gun law, and 5% for theft. As for women, the faults mostly committed are: 27% for assault, 16%-17% illegal appropriation of a controlled substance.” Hence, the legislative power in Puerto Rico does exactly what Grisel

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7 El 100% de que cometen crímenes han sido víctima de maltrato, ya sea por negligencia, maltrato o emocional o violencia domestica, el 100% ha sido desatado en algún grado escolar durante los anos cursados y el 90% ha utilizado drogas. En cuanto a las féminas 100% reporto ser desertora escolar y 100% reporto ser sexualmente activa.- Presentación sobre el perfil psicométrico de los jóvenes transgresores de la Administración de Instituciones
Hernandez Arocho establishes in her article by establishing Law Number 88 of July 9, 1986 more commonly known as La Ley de Menores (hereinafter referred to La Ley de Menores). Law number 88 of July 9, 1986 establishes as one of its main purposes to help the minor who has come into direct contact with the system the opportunity to rehabilitate. The preamble of this law establishes:

esta ley adopta como marco filosófico del Sistema de Justicia Juvenil el humanismo dentro de un enfoque ecléctico de acción e intervención, donde se compatibilicen la propuesta rehabilitadora y el poder y responsabilidad posible inherente al Estado de brindarle toda oportunidad rehabilitativa, así como exigirle al menor un quantum de responsabilidad para dirigir sus actos y responder por éstos. El clamor por reconocimiento de mayor número de derechos constitucionales al menor hace necesario que se observe una mayor formalidad en la solución de los asuntos que llegan ante el Tribunal. Por ello, esta ley incorpora los derechos básicos que se han ido extendiendo al ámbito juvenil con el propósito de garantizar un procedimiento justo, rápido y eficaz sin que por ello se altere el carácter especial del proceso. En la medida en que el menor no será considerado convicto y su conducta no constituirá delito, se conservará la exclusión de los derechos de fianza, juicio público y juicio por jurado, los cuales no tienen cabida en el sistema por los intereses jurídicos que siguen protegiendo la supervisión del menor con fines rehabilitativos y la confidencialidad del proceso por el que se le juzga.

Following an examination of the text of the preamble, we appreciate the existence of various concepts “1) rehabilitative purpose / requirement of criminal responsibility, 2) recognition of some basic constitutional rights / greater formality in processes 3) unique character of the process.” From the very beginning we are able to distinguish the first aspect of the law that can be considered as anti-therapeutic, the preamble. It focuses on providing rehabilitation but at the

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8 Ley de Menores de Puerto Rico, Ley Núm. 88 de 9 de Julio 1986, según enmendada 1987, 34 LPRA § 2201. Year after its approval it was amended by Ley Num. 34 del 19 de Junio de 1987. This amendment included the exclusion of jurisdiction which was incorporated in a general way without taking in consideration the social, education or rehabilitation needs of the minor.
9 Id. at Preamble
same time it reinforces and implements the notion of full responsibility upon the minor for his or her actions.

We can perceive how this law tries to take into account certain factors of rehabilitation but emphasizes primarily the idea that a minor must take full responsibility and accept the full consequences of their actions. It sets forth a tone of “rehabilitation and punishment at the same time.”

The preamble also establishes a greater formality in the process, flexibility is an idea, which cannot be accepted even though it is established in the preamble that this process has a unique character. As a consequence of the unique character of the process, I would consider that the legislative power would want to make it a flexible system for the minors to be able to seek rehabilitation and emphasize the attitude of change instead of punishment. Another aspect of the preamble, which is anti-therapeutic, is that it does not mention the importance of taking into account certain factors that the minor might have a particular need of such as educational, emotional or physical. Therefore, his law can be interpreted in a manner that treats all minors the same no matter what the needs might be of that particular minor or his/ her situation.

Article 2 of the Ley de Menores establishes the purposes of this law; the same anti-therapeutic problems established and analyzed in the preamble are once more repeated and emphasized in this section:

This chapter shall be interpreted according to the following purposes:

(a) To provide for the care, protection development, habilitation and rehabilitation of minors and to protect the well-being of the community.

(b) To protect the public interest by treating minors as persons in need of supervision, care and treatment, while at the same time they are required to be responsible for their actions.

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12 Id. at 272.
13 Ley de Menores, supra note 4, Preamble
(c) To guarantee fair treatment, due process of law and recognition of their constitutional rights to all minors.  

II. The rehabilitation o diversion program established in la Ley de Menores

The law establishes that one of its primary purposes is rehabilitation of the minor. Therefore, it is of great importance to analyze the rehabilitation process or as it is referred to in the law “desvío” (hereinafter diversion) to verify if the process that is being offered to these minors is really one that can be considered as therapeutic, which takes in consideration the needs of the minors. Article 21 and 24 of the Ley de Menores establishes the requirements, which are necessary for the minor to be able to be part of the diversion program:

After a complaint has been filed and before the adjudication of the case, the Prosecutor may request the court to refer the minor to an agency or a public or private body if the following circumstances exist:

(1) If it is a Class I offense or a first time offender in a Class II offense.

(2) An agreement is signed between the Prosecutor, the minor, his parents or guardian and the agency or body to which the minor is referred.

(3) The social report of the Family Relations Specialist is taken into consideration.

(4) There is an authorization of the court.

The agency or body to which the minor is referred in accordance with this section shall report to the Prosecutor and to the court whether the minor is complying with or has complied or not with the conditions of the agreement. In case the minor has complied with said conditions, the Prosecutor shall request the court to dismiss the complaint. In case the minor has not complied, the Prosecutor shall request a hearing to determine if the procedure should continue.

The first anti-therapeutic factor that can be distinguished in the process of diversion and which can be observed from the text of the law is that it does not establish a clear definition of the mechanism which is to be used in the process of diversion, it merely establishes what will be the

14 Id. at §2202.
15 Id.
16 Id. §2221.
judicial process which will be implemented in the court. The law does not specify or give options to what the diversion should be focused on, the goals, or the places where the minor can be part of this process.

To analyze more in depth the anti-therapeutic or therapeutic factors of the diversion program established in the Ley de Menores one must take in consideration what the Department of Justice of Puerto Rico has established in the manual of norms and procedures of 1990 for the program of Diversion established in the Ley de Menores.\(^\text{17}\) The description that is given at the beginning of the manual describes the program as one which ““seeks to prevent and reduce juvenile crime, this manual is designed for the purpose of preventing children from entering the regular judicial process and formal courts and for those who have come to enter the judicial system, not to reoffend.”” \(^\text{18}\) The diversion program establishes 14 important goals the program wants to accomplish, some of the most emphasized goals of the diversion program are:

1. Contribute to the prevention and control of juvenile delinquency in Puerto Rico through early intervention with juveniles who tend to demonstrate anti-social or criminal activity, and the diversion to appropriate treatment and rehabilitation.

2. Reduce the number of children who use and traffic controlled substances.

4. Reduce recidivism among juveniles who enter the system, especially those who begin committing faults of Class I (equivalent to misdemeanors).\(^\text{19}\)

The diversion program sets a standard of importance focusing upon the problem of drug abuse and drug substance. If a minor has had an issue with drug abuse or drug substance or the crime that he or she is being processed for is one that relates to either of these factors the diversion program could be a therapeutic way to deal with those problems.

\(^{17}\)See, PROGRAMA DE DESVÍO: MANUAL DE NORMAS Y PROCEDIMIENTOS, Departamento de Justicia Estado Libre Asociado de Puerto Rico: Oficin de Investigación y Procesamiento de Asuntos de Menores y Familia., Julio 1990. Preparado por: Elba Rivera de Baez. As informed by the Oficina de Investigación y procesamiento de asuntos de menores this manual was emended around 2000 but the current manual is not public information. (translation provided)

\(^{18}\)Id. at 13.

\(^{19}\)Id. at 25.
On the other hand the minor that does not have a problem with drug abuse or his or her crime does not have anything related to drugs. The diversion program can be considered as anti-therapeutic, most likely it will not help the minor in dealing with the problems that caused them to be in the situation they are in for example violence, economic problems, psychological problems, or anger management problems. Therefore, the diversion program is one, which focuses on drugs and drug rehabilitation and does not focus on other factors. Within the primary goals of the program it is clearly established that it looks to “reduce the incidence of those minors that become part of the system especially those that start off committing crimes that are considered class I, which would be equivalent of misdemeanors.”\textsuperscript{20} Henceforth, there would be more attention to rehabilitating minors that commit less serious crimes. The important question is what happens to those minors that commit serious crimes the first time they are confronted by the juvenile system? Are they allowed into the diversion program or are they immediately discarded and have to go through the formal process?

Under the section Nature of the Falta (Nature of the Crime) committed the manual states that “[t]he more serious the offense the less chance of being considered for diversion.”\textsuperscript{21} This is clearly anti-therapeutic; it does not take into account any other factor, which might have lead, the minor to commit the crime. It closes the doors for the minor to have an opportunity to get the help needed. It does not take in consideration if it is the first time the minor commits an offense or if the minor has a long record of committing small offenses. In that particular situation, it is interesting to analyze that a minor who committed a grave offense would probably not be considered for diversion but a minor who has continually committed small offenses could be considered for the program.

\textsuperscript{20} Id
\textsuperscript{21} Id. at 34.
Under the same section, point 6 establishes "[h]our in which the infringement occurred: Midnight to 6:00 AM should be considered more serious the child's participation and reduced the possibility of a detour." 22 Point 8 establishes, offenses related to organized crime such as the theft of a vehicle, if subsequently the minor knew or came to knowledge of dismantling of the car to be used in the activity of resale or sale of parts etc., shall not be considered for diversion. 23 These points are anti-therapeutic in the process of rehabilitation of the minor, once more point 6 and 8 demonstrate there is no consideration or analysis of the context of the situation of the particular events that lead the minor to be in that situation. For example, point 6 does not establish what type of offense must have been committed therefore, we can understand that a minor offense committed during these hours or a first time offense will have less chance of receiving rehabilitation. Point 8 completely shuts down the opportunity for diversion.

A primary factor in being able to be considered for diversion is that if the child denies the facts, the case cannot be referred to the diversion program. 24 “If the minor admits the commission of the offense, such admission given in the evaluation process of diversion, may not be used by the Juvenile Prosecutor or any person other personal of his office or the police against the minor.” 25 This requisite has left much to be interpreted from a literal reading of the requirement you can come to the conclusion that the minor must accept that he or she is responsible for the acts they are being accused of committing. The anti-therapeutic factor is present in the essence that it does not give the minor any other way to be able to benefit from the diversion program other than saying they are responsible for committing the fault. The question which this presents is what happens to that minor that feels that he or she is not guilty or simply

22 Id. at 35.
23 Id.
24 Id. at 28.
25 Id.
does not feel like they should have to declare that they are guilty of the offense? These minors would clearly not benefit from the diversion and would have to go through the official process, which would be one of immense stress. A more therapeutic approach to this request is considering that a minor that is confronting a process within the juvenile system must be confronting problems or needs and most likely will have to get help sooner or later. Therefore, giving some type of diversion to these kids would be the most therapeutic way instead of making the declaration of guiltiness an essential factor.

Another example of an anti-therapeutic factor of the program of diversion is established in point 4 of the legal criteria for the program “if it is a case that presents constitutional questions of legal interpretation or that could set a precedent the case should be discussed with the prosecutor in charge of the office or the office manager at the central level to determine whether to proceed with the formal process, in order to get clarification from the court. As can be observed from the text it does not establish that the minor, the family or the legal representation of the minor be consulted in the process. Therefore, they do not take into account the mental or emotional harm that submitting a minor through a formal process can cause instead of putting that minor in the diversion program for that minors benefit. We can observe how setting a constitutional reference or establishing a precedent is more important than the consequences that it might have on the minor.

Finally, when the minor has been able to participate in the diversion program and accomplishes the terms that are established by the judge successfully the manual for procedures and norms of the diversion program establishes a “Plan para el Seguimiento” or a Plan to Follow. The program mainly consists of an agent who will be assigned to the case. This agent will give

26 See, Id at 29.
the minor, his parents or custodians a number of a social worker which they can reach in moments of crisis. The agent will be in communication with them once every 4 months for a period of 9 months. If the minor and his custodian voluntary accept it and if the minor wants to continue with additional help or the agent establishes that it would benefit the minor to continue with additional help the agent and the minor will discuss this option and the advantages with his parents or custodians. The plan has an overall therapeutic effect, although there is space for improvement, it does set out some foundation for the minor to continue to rehabilitate and look for help.

Overall, he 1990 program for diversion seems to have both therapeutic and anti-therapeutic factors, although it does seem at times that there are more anti-therapeutic factors than therapeutic factors it does open the door for us to analyze and consider what factors can we change of this program and La Ley de Menores to make it more therapeutic. Although this manual was emended around 2000 I was unable to make a comparison with the new manual to analyze if the system has become more therapeutic, the new manual is not public information. Taking into account that this new manual is not public information we can perceive an anti-therapeutic aspect, the public does not know what the program of desvío consist of for minors. There are various countries around the world that have taken a therapeutic view on the way they deal with the minors and their Juvenile System which can serve as an example for Puerto Rico to insert some of these methods into our own system.

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27 See, Id. at 55.
28 See, Id.
29 See, Id. at 56.
30 Interview with oficiales at the Departamento de Justicia: Oficina de Investigación y Procesamiento de Asuntos de Menores y Familia – October 1, 2012.
III. Examples of other Jurisdictions with a Therapeutic System

Many countries around the world have either taken a more therapeutic approach on the way they view minors before the Juvenile Justice System through there legislation or the way they provide a more therapeutic way to achieve rehabilitation. In Latin American countries such as Brazil, Peru, Guatemala, Honduras, Nicaragua, Bolivia, El Salvador and Costa Rica have established within legislation obstacles to process minors under the age of 12\textsuperscript{31}. In places such as Spain it was established with its Ley Organica 5/2000 del 12 de Enero\textsuperscript{32} that criminal responsibility will not be imposed on minors below the age of 14.\textsuperscript{33} These countries took upon their legislative bodies to impose limits to where the Juvenile Justice System should begin. Countries such as Colombia, Germany and Portugal have been taken a more therapeutic approach in offering a rehabilitation system for the minor that has come into contact with their juvenile systems.

a. **Germany**

Germany takes various approaches when dealing with minors in a criminal context. The German Juvenile System is considered as one of the most advanced in terms of rehabilitation measures is concerned\textsuperscript{34}, available for rehabilitation are educational measures, disciplinary, juvenile, and safety improvement.\textsuperscript{35} A minor under the age of 14 is not criminally liable.\textsuperscript{36} In cases where a minor between the ages of 14- 21 does commit an act that is against the law there

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\textsuperscript{31} See, Juan Sabino Ramos, Inimputabilidad de menores de edad: ficción de la realidad penal contemporánea (2003)- Juan Sabino Ramos en el 2003, Juez de primera instancia del Tribunal de Niños Niñas y adolescentes de la Republica Dominicana. Cursaba maestría en la Escuela de Derecho de la Universidad de Puerto Rico. (translation provided)

\textsuperscript{32} Ley Orgánica 5/2000 de 12 de enero, Regulador de la responsabilidad de los menores. (translation provided)

\textsuperscript{33} Id. at art 1.

\textsuperscript{34} See, Grisel Hernandez Arocho, supra note 6, at 94.

\textsuperscript{35} See, Id.

\textsuperscript{36} §19 StGB
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are various ways which the minor can be dealt with.\textsuperscript{37} For example, in the rehabilitation process or the Diversion program the minor can be order to attend programs or any measure imposed by the court accompanied with his or her parents,\textsuperscript{38} in a case where there is to promote reconciliation with the victim the minor can be required to attend a program alongside the victim.\textsuperscript{39} The minor can be imposed to attend programs that consist of social training.\textsuperscript{40} A criminal penalty would be imposed on the minor when the diversion programs or the educative systems are not sufficient for the minor to rehabilitate or understand the consequences of the acts committed.\textsuperscript{41}

In Germany, unlike other juvenile systems imposing a harsh penalty upon the minor is usually considered as a last resort, unless the minor has committed serious offenses like murder, in that situation the minor would be referred to a youth chamber at a district court.\textsuperscript{42} In other situations where the minor committed a less serious offense the juvenile system tries to help the minor with a process of rehabilitation or finding other ways to manage the problem that he or she may be dealing with that lead them to their situation such as formative difficulties in education.\textsuperscript{43}

b. Colombia

In Colombia the constitutional court has established that “[t]he responsibility, but differentiated, is shared by the family, society and the State. The state has an obligation to assist and protect the child to ensure harmonious and integral development and the full exercise of their

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\item\textsuperscript{37} See, Grisel Hernandez Arocho, \textit{supra} note 6 at 86.
\item\textsuperscript{38} See, Health Promotion for young prisoners, 1-23 http://hpyp.eu/DOCS/Presentations/HPYP%20literature%20review%20Germany.pdf (last visited Oct. 28, 2012).
\item\textsuperscript{39} \textit{Id.} at 9; see also § 45, §47 of The Juvenile Justice Law (JGG)
\item\textsuperscript{40} \textit{Id.} at 9.
\item\textsuperscript{41} Grisel Hernandez, \textit{supra} note 6, at 87; see Art. 5 JGG
\item\textsuperscript{42} Health Promotion, \textit{supra} note 31, at 6.
\item\textsuperscript{43} Grisel Hernandez, \textit{supra} note 6, at 87.
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These agents are responsible for “ensuring the observance of the rights, quality of life and ultimately, happiness of children and adolescent Colombians and foreigners residing in the country.” The principle of responsibility sets the active participation of the three estates without interference or disclaimers. In article 19 of the Colombian Código de la Infancia y Adolescencia it establishes that “[l]os niños, las niñas y los adolescentes que hayan cometido una infracción a la ley tienen derecho a la rehabilitación y resocialización, mediante planes y programas garantizados por el Estado e implementados por las instituciones y organizaciones que éste determine, en desarrollo de las correspondientes políticas públicas.” In Colombia minors between the ages of 12-18 can be held responsible of their acts but only minors between the ages of 16-18 can be institutionalized. Institutionalization, as established within Colombian law shall be seen as a last resort “[c]hildren, and adolescents may not be arrested or deprived of their liberty except on such grounds and in accordance with the procedures previously defined in this code.”

If taken the measure of institutionalizing “[l]a privación de la libertad de adolescentes, en los casos que proceda, se cumplirá en establecimientos de atención especializada en programas del Sistema Nacional de Bienestar Familiar, siempre separados de los adultos. En tanto no existan establecimientos especiales separados de los adultos para recluir a los adolescentes privados de la libertad, el funcionario judicial procederá a otorgarles, libertad provisional o la detención domiciliaria.” Deprivation of liberty is only appropriate “for children between the

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44 CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 44.
45 Id.
46 Id.
47 CÓDIGO DE LA INFANCIA Y LA ADOLESCENCIA (COD.INF. ADOL.)[herinafter Codigo de Infancia]
48 Id. art 139; see also Codigo de la Infancia y la Adolescencia versión comentada, UNICEF http://www.cinde.org.co/PDF/codigo-infancia-comentado.pdf at 89.
49 Código de Infancia supra note 47, at art 21.
50 Id. at art 162.
ages of fourteen (14) and (18) years, the deprivation of liberty can only proceed as a pedagogical measure.”51 It has also been established the deprivation of liberty in a “specialty care center will only be imposed on minors between the age of 16-18 and the lapse of time of institutionalization in prison will not be longer than 6 years.”52

A very interesting factor within the Colombian law is that crimes, which are committed by minors in a case where a minor has a parent or a guardian the adults will have the responsibility before the victim and will be held responsible for the actions, committed by the minor.53 If a minor does take responsibility for the criminal offense they have rights which have been granted to them, some of the most therapeutic points are the following:

1) Ser mantenido preferentemente en su medio familiar siempre y cuando este reúna las condiciones requeridas para su desarrollo. 3) Recibir servicios sociales y de salud por personas con la formación profesional idónea, y continuar su proceso educativo de acuerdo con su edad y grado académico. 7) A que su familia sea informada sobre los derechos que a ella le corresponden y respecto de la situación y los derechos del adolescente.54

c. Portugal

In Portugal the Juvenile System known as “proceso tutelary educativo”55 established by la Ley núm. 166/99, de 14 de septiembre56 later on it was approved “"Lei Tutelar Educativa" (which came into force on 1.1.2001). This Act, together with Law no. 147/99, of September 1 (Lei das Protecção Crianças e Jovens em Perigo), are the two basic texts of the reform "das crianças Direito" held in Portugal in the late nineties of the last century, and whose central idea was to articulate properly and complement intervention between two distinct systems: an

51 Id. at art 161.
52 Id. at art.187.
53 Id. at art. 170.
54 Id. art. 180.
55 See, Pablo Grande Seara, El principio de oportunidad reglada en el proceso penal de menores portugués (proceso tutelar educativo), Revista para el análisis del Derecho (InDret), 1-41 (2011). (translation provided)
56 See, Id. at 4.
intervention "educational" for juvenile perpetrators of criminal acts, and intervention "protection" for children at risk or vulnerability, something that did not occur until the Juvenile Organization.\footnote{Id. at 4.}

La Lei Tutelar Educativa only applies to minors between the ages of 12 and 16 who have committed a criminal offense found within the Penal law\footnote{Id. at 5; see also footnote 5 in article.} the objective is to determine “whether or not to apply any of the educational measures provided for in art. 4 of that law. Which are to address the child's education to the right and its insertion, in a dignified and responsible community life.”\footnote{Id at 5; see also art. 2.1 LTE} The Portugal system establishes as its philosophy:

As we know, the whole juvenile justice system should be aimed at finding the best for the child, for rehabilitation or resocialization, which requires incorporating the juvenile criminal adaptations or a series of procedural specialties that allow criminal response to juvenile delinquency which are in the interest of the child in each case, i.e. for taking appropriate decisions and actions more beneficial for Juvenile Reeducation in consideration of their personal circumstances, educational and social. It's called the principle of opportunity.\footnote{Id at 9}

To be able to qualify for the educational measures established in the law the minor must be between the age of 12-16, must have committed a criminal offense established in penal law, and must be present the necessity to educate the minor on the offense committed.\footnote{Id. at 6.} Within this process the law provides for the Prosecutor to be able to archive the case against the minor if after doing the investigation, which will be no longer than 3 months\footnote{Id. at 12} during this time the prosecutor can ask for help from “social reintegration services to perform skills and prepare reports on personality and socioeconomic status, family and education of the children accused (Articles 75.1 and 71 LTE), and may also seek cooperation in this respect of any entity public or

\begin{itemize}
\item \footnote{Id. at 4.}
\item \footnote{Id. at 5; see also footnote 5 in article.}
\item \footnote{Id at 5; see also art. 2.1 LTE}
\item \footnote{Id at 9}
\item \footnote{Id. at 6.}
\item \footnote{Id. at 12}
\end{itemize}
private”63 Within this law it “sets the conditions under which you can make use of this discretion.”64

If the prosecutor establishes that the minor needs a “medida no institucional” there will be a preliminary hearing in which it will be required for the minor, legal representation of the minor, parents or legal guardians, victims to be present at the hearing.65 Within the hearing, the judge must establish the purpose of the hearing using a vocabulary that the minor will be able to understand.66 When there is to be imposed a “medida” there must be a consensus within all of the parts for the “medida” to be established, therefore the judge must agree upon it as well as the Prosecutor, the victim and the minor.67 When a consensus has finally been met the judge must take in consideration “that the medida is one that has the purpose of educating the minor, therefore he must take in consideration the actual state of education of the minor and the necessity that the minor has.”68 The medida tutelar should be:

Proportionate to the seriousness of the act and the need of the child, when deciding on which “medida” should apply, the court must address the child's current educational necessities, i.e. existing at the time of the decision, and which could have not existed at the time he committed the crime.69

The law also establishes the opportunity for the medida that has been imposed on the minor to be revised “review of measures is a clear manifestation of the principle of regulated opportunity, and which allows to perform a periodic assessment of the child's educational necessities during the execution of the measure and, where appropriate, adapt this to such needs updated.”70

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63 Id.
64 Id at 10
65 See, Id at 26.
66 See, Id. at 27.
67 See, Id. at 28.
68 Id. at 30.
69 Id.
70 Id. at 31.
primary reasons for seeking a revision of a medida imposed are “revision causes obey, basically three reasons namely the impossibility of execution of the measure, or not attributable to lower the gaps in the extent to changing the child's educational necessity, or the excessive character of the medida applicable in the light of new developments.”

Within the description of the various causes for revision it establishes “[t]he activity that the child has been assigned to perform for his or her medida tutelar can be modified if this activity, for example community service or community activities to improve his or her situation, seriously impairs the child's school performance.”

Portugal seeks a way to educate the minor over the offense committed and help make the minor understand why it was an offense, instead of just institutionalizing the minor without taking in consideration the minor’s needs. Portugal also takes into consideration various factors that could have caused the minor to be in the situation of committing a crime such as social, economic and educational factors. The biggest contribution that I consider that Portugal sets as an example is having all the parts involved in the decision making of the medida tutela. The system in Portugal is set out to help the minors, but at the same time it, also helps the victim, the parents, the prosecutor and judge come to a consensus. All the parties effected by the situation are able to confront each other and be part of the system, and not feel excluded or that their needs where ignored during the making of important decisions.

In countries such as Dominican Republic and Argentina their respective Penal codes puts responsibility upon the parents or guardians of a minor that commits a criminal offense. Thus, as observed in different systems responsibility not only falls upon the minor but also upon the

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71 Id. at 31.
72 Id. at 32.
73 See, Grisel Hernandez, supra note 6, at 91-92.
family, as it is considered that the family is an important aspect to a minors life and present condition and not only are rehabilitation programs available for the minor but they are also available for the family in general.

**IV. Conclusion**

Although Puerto Rico’s Juvenile System might have certain aspects that can be considered as therapeutic there are many ways, which this system can improve greatly on the way minors, are treated. Taking into consideration what other countries have done with their juvenile system and the approaches that each one has taken I consider that for Puerto Rico to become a more therapeutic system in both its laws and its diversion process it must impose educative measures which demonstrate to the minor where they went wrong and how to improve, not just directly impose a severe penalty. I also consider that if the Puerto Rican system took into account the specific situation of the minor that comes into the system and not generalize every minor as it presently does that could help in improving the diversion program to help attend the specific needs of the minor’s. We should also take into consideration what other countries have established, which is the importance that the family must have in the rehabilitation process since it is considered that the family is central to the minor’s life. We should engage not only with the minor but also with the family and make the family a part of the process of rehabilitation.

Examples of countries like Portugal, which make all the actors of the system an integral part of the process, should be imposed in Puerto Rico. For example, the situation in which all the parties must come into an agreement on the rehabilitation process would be an essential factor in converting the juvenile system into a more therapeutic system, not only is the minor and his or her needs being attended but also the victim and the family can feel like they are as well
contributing to the system and helping the same be more affective. Overall, the Puerto Rican system has much to improve but if taken into consideration the therapeutic theory, the examples of other countries that have modified their legislation or implemented a therapeutic approach into the rehabilitation process and applying it to our juvenile system we could help these minors become enriched adults. Instead of marking them as child offenders and help modify the juvenile system in Puerto Rico into a therapeutic system, which not only helps in resolving the needs of Puerto Rican minors but can also become an example for other countries that are looking to modify their system into a more therapeutic approach.