

2023/03/07

### OBJECTS AND REASONS

This Bill will make provision for

- (a) the reform of the criminal law applicable to children; and
- (b) the repeal of the
  - (i) *Juvenile Offenders Act*, Cap. 138; and
  - (ii) *Reformatory and Industrial Schools Act*, Cap. 169.

*Arrangement of Sections*

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## **BARBADOS**

A Bill entitled

An Act to provide for the reform of the criminal law applicable to children and the repeal of the

- (a) *Juvenile Offenders Act*, Cap. 138; and
- (b) *Reformatory and Industrial Schools Act*, Cap. 169.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Child Justice Act, 2023*.

**Interpretation**

- 2.(1) In this Act,

“acknowledge responsibility” means an admission of responsibility for an offence by a child without a formal admission of guilt;

“apprehension” means where a police officer arrests a child in conflict with the law;

“appropriate adult” means

(a) a member of the family of the child; or

(b) a custodian or guardian of the child,

who has attained the age of 18 years, but excludes a parent of the child;

“assessment” means the assessment of a child by a probation officer conducted in accordance with section 8;

“attorney-at-law” has the meaning assigned to it by the *Legal Profession Act, Cap. 370A*;

“child” means a person under the age of 18 years;

“Child Protection Authority” means the Authority established by section 8 of the *Child Protection Act, 2023 (Act 2023-)*;

“Child Justice Board” means the Board appointed in accordance with section 72(1);

- “child care centre” has the meaning assigned to it by section 2 of the *Child Protection Act, 2023* (Act 2023-);
- “child in conflict with the law” means a child who is alleged to have committed an offence;
- “community based service” means work for a community organisation or other work of value to the community performed by a child without payment;
- “community based sentence” means a sentence referred to in section 53;
- “compulsory school attendance order” means an order requiring a child to attend school for a specified period of time, which attendance is to be monitored by a suitable person designated by the Court;
- “correctional supervision” means the sentence referred to in section 56 requiring a child to be placed under the supervision and guidance of a probation officer;
- “Court” means the Magistrate’s Court or the Criminal Division of the High Court where applicable;
- “Director” means the Director of a secure residential facility appointed under section 74;
- “Director of Child Protection” means the Director in accordance with section 12 of the *Child Protection Act, 2023* (Act 2023-);
- “detention” includes confinement in a prison, secure residential facility or a place of safety;
- “diversion” means the removal of cases of children alleged to have committed an offence from the formal court procedures and the adoption of informal procedures in relation to such children, pursuant to Part V;
- “diversion option” means a plan or programme with a specified content and duration set out in three levels under section 36;
- “family group conference” means a gathering convened by a probation officer as a diversion or sentencing option under section 55;

“family time order” means an order requiring a child to spend a specified number of hours with his family;

“good behaviour order” means an order requiring a child to abide by an agreement made between the child and his family to comply with certain standards of behaviour;

“initial inquiry” means the procedure conducted in accordance with Part V, which takes place after an assessment and before trial in a court;

“natural father” includes a man who has been adjudged to be the biological father of a child;

“natural mother” means a woman who gave birth to a child;

“natural parent” means a natural mother or a natural father;

“parent” includes

- (a) a natural parent or adoptive parent who has the parental responsibility of the child;
- (b) a person, who has stood in *loco parentis* to a child for a period of not less than 12 months and who has a continuing relationship with the child; or
- (c) a legal guardian of the child who has custody or guardianship rights in relation to the child,

but does not include a person acting as a care giver on behalf of the Child Protection Authority;

“parental responsibility”

- (a) means the duties, powers, responsibilities and authority; and
- (b) includes the rights and obligations

which by any relevant enactment in force, the parent of a child has in relation to that child;

“place of assessment” means a place or institution selected by a probation officer to conduct an assessment;

“place of safety” means

- (a) a child care centre designated by the Child Protection Authority;
- (b) a hospital;
- (c) an institution or a place designated as a place of safety by the Child Protection Authority;
- (d) an institution or a place where the person in charge will temporarily receive and take care of a child in conflict with the law and which, in the opinion of the Court, may be a safe and secure place to keep such a child; or
- (e) a residential protection and treatment centre

but does not include a secure residential facility or a prison;

“police officer” means a member of the Police Service;

“Police Service” has the meaning assigned to it by the *Police Act*, Cap. 167;

“positive peer association order” means an order requiring a child to associate with a person whom the probation officer has reason to believe can contribute to the positive behaviour of the child;

“prison” has the meaning assigned to it by the *Prisons Act*, Cap. 168;

“probation officer” means an officer appointed under the *Probation of Offenders Act*, Cap. 146;

“prosecutor” shall refer to the Director of Public Prosecutions in relation to indictable offences or a police prosecutor in relation to summary offences;

“Reintegration Board” means the Board established in accordance with section 94;

“reintegration order” means the order granted by the Reintegration Board pursuant to section 103;

“residential requirement” means compulsory residence in a secure residential facility, prison or a place other than the home of the child;

“residential protection and treatment centre” has the meaning assigned to it by section 2 of the *Child Protection Act, 2023* (Act 2023-);

“reporting order” means an order requiring a child to report to a person specified by a magistrate at a time specified in such order so as to enable the person to monitor the behaviour of the child;

“restorative justice” means the promotion of reconciliation, restitution and responsibility through the involvement of a child, the parents of a child, the members of family of the child, the victim and the community;

“secure residential facility” means a residential facility described under section 68;

“social media” means websites or applications that enable users to create and share content or to participate in social networking;

“supervision and guidance order” means an order placing a child under the supervision and guidance of a mentor or peer in order to guide the behaviour of the child; and

“symbolic compensation” means the giving of an object owned, made or bought by a child to a person, or group of persons or an institution as compensation for the harm caused by the child.

(2) For the purposes of this Act, where a “place of safety” is determined to be a place of detention, it shall be a place that

- (a) is suitable for the detention of a child;
- (b) provides for a child to be detained separately from an adult; and
- (c) provides for a female child to be detained separately from a male child.

**Purpose**

3. The purpose of this Act shall be to ensure compliance with
- (a) the United Nations Convention on the Rights of the Child;
  - (b) the Universal Declaration of Human Rights;
  - (c) the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”);
  - (d) the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and
  - (e) the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).

PART II

APPLICATION AND CRIMINAL RESPONSIBILITY

**Application of Act**

4. This Act shall apply to
- (a) a child who is alleged to have committed an offence and who at the time of commission of that offence was under the age of 18 years; or
  - (b) a person referred to in paragraph (a) who attained the age of 18 years before proceedings that were instituted against him, pursuant to this Act, have been concluded.

**Age of criminal responsibility**

5. A child under the age of 12 years is not capable of committing a criminal offence.

**Principles to be applied when dealing with children**

**6.(1)** The Court or a person performing any function pursuant to the provisions of this Act shall be guided by the following principles:

- (a) the safety, welfare and well-being of the child shall be the paramount consideration;
- (b) a child shall, as far as possible, be given an opportunity to respond before any decision is taken which affects the child;
- (c) a child shall be addressed in a manner appropriate to his age, maturity and intellectual development;
- (d) a child shall be treated in a manner which takes into account his beliefs;
- (e) all procedures to be carried out pursuant to this Act shall be conducted and completed in a timely manner;
- (f) the parents and families of a child shall have the right to assist the child in proceedings under this Act and, wherever possible, to participate in decisions affecting the child;
- (g) all consequences arising from the commission of an offence by a child shall be proportionate to the
  - (i) circumstances of the child;
  - (ii) nature of the offence; and
  - (iii) interests of society,

and a child shall not be treated more severely than an adult would have been in the same circumstances;

- (h) a child lacking in family support, educational or employment opportunities shall have equal access to available services; and
- (i) every effort shall be made to ensure that a child receives equal treatment in relation to other children who have committed similar offences.

(2) A Court shall consider the following principles when making a decision regarding the release of a child in detention:

- (a) preference shall be given to the release of the child into the care of a parent or an appropriate adult, with or without the imposition of conditions;
- (b) where the release of a child into the care of a parent or an appropriate adult is not feasible, the release of the child on bail or a bond, upon the recommendation of the prosecutor, shall be considered; or
- (c) where the child must be detained as a measure of last resort, the least restrictive form of detention appropriate to the child and the offence shall be selected.

(3) A child who is detained under this Act

- (a) shall be detained
  - (i) separately from adults;
  - (ii) with children of the same sex; and
  - (iii) in conditions which will reduce the risk of harm to that child, including the risk of harm caused by other children;
- (b) shall have the right
  - (i) to adequate food and water;
  - (ii) to medical treatment;
  - (iii) to a reasonable number of visits by a
    - (A) parent;
    - (B) appropriate adult;
    - (C) attorney-at-law;
    - (D) social worker;
    - (E) probation officer;

- (F) health worker;
- (G) religious counsellor;
- (iv) of access to reading material;
- (v) to adequate exercise;
- (vi) to access to recreational activities;
- (vii) to access suitable equipment and assistive devices where the child has a disability; and
- (viii) to adequate clothing.

(4) For the purposes of this section, “disability” includes a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder a person from fully and effectively participating in society on an equal basis with others.

### PART III

#### ASSESSMENT OF A CHILD

##### **Apprehension**

7.(1) A police officer on apprehending a child shall promptly notify the parent of the child, or if the parent cannot be found, an appropriate adult, of the apprehension of the child.

(2) Where a police officer has notified a parent or an appropriate adult of an apprehension, that police officer shall inform the child and a parent or appropriate adult in the presence of the child of the right of the child

- (a) to be informed of the nature of the offence or offences alleged to have been committed by the child;
- (b) to seek the advice of an attorney-at-law;

- (c) to have a parent or an appropriate adult present where the child is questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed by the child;
- (d) to remain silent; and
- (e) to be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force.

(3) The police officer who has apprehended a child, or any other police officer shall not later than 24 hours after the apprehension, inform a probation officer of the apprehension.

(4) The police officer responsible for the investigation of a case with respect to a child, apprehended in accordance with subsection (1), shall ensure that the child is assessed by a probation officer, before the commencement of the initial inquiry into the offence alleged to have been committed by the child.

(5) Where

- (a) the police officer is unable to inform the probation officer of the apprehension as required under subsection (3); or
- (b) the police officer responsible for the investigation of a case is unable to have the child assessed as required under subsection (4),

a written report shall be submitted to a magistrate at the initial inquiry stating the reasons for non-compliance.

(6) Where a child, who is accused of an offence referred to in the *First Schedule* has not been released from police custody before appearing at an initial inquiry, the police officer who apprehended the child shall provide a magistrate with an oral report, pending a submission of a written report, stating the reasons why the child could not be released.

- (7) A police officer shall not apprehend a child under the age of 12 years who is alleged to have committed an offence but
- (a) shall inform a probation officer and the Director of Child Protection of the following particulars of the child:
    - (i) the name of the child;
    - (ii) the age of the child;
    - (iii) the offence alleged to have been committed by the child; and
    - (iv) the name, address and telephone number of the parent or appropriate adult; and
  - (b) may remove the child to a place of safety where the police officer has reason to believe that it is necessary to do so for the safety of the child and he may arrange for proceedings to be commenced under the *Child Protection Act, 2023* (Act 2023-).

### **Assessment**

- 8.(1)** Where a probation officer who receives a notification from a police officer that a child has been apprehended in accordance with section 6, the probation officer shall assess the child in a place of assessment within 96 hours prior to the child appearing at an initial inquiry relating to that child.
- (2) A probation officer may select a place of assessment for the temporary reception of a child in conflict with the law, prior to or pending an initial inquiry regarding the child.
- (3) Where a probation officer conducts an assessment of a child in conflict with the law, he shall collect the information required for the preparation of the assessment report set out in subsection (4).

(4) At the end of an assessment, a probation officer shall complete an assessment report which shall include

- (a) the following particulars in relation to the child
  - (i) the name of the child;
  - (ii) the age of the child;
  - (iii) the offence alleged to have been committed by the child;
  - (iv) the name, address and telephone number of the parent or appropriate adult;
  - (v) the name, address and telephone number of the attorney-at law representing the child;
  - (vi) whether the child
    - (A) has been released into the custody of a parent or appropriate adult;
    - (B) is being detained in a place of safety; or
    - (C) is being detained in a secure residential facility; and
- (b) any information concerning the child which will assist the magistrate at the initial inquiry in determining
  - (i) the prospects of diversion;
  - (ii) the possible release of the child into the care of a parent of the child or an appropriate adult, if the child is in detention;
  - (iii) the placement, where applicable, of the child in a particular secure residential facility or in a place of safety,

giving due consideration to the age, physical and mental status of the child and the degree of the alleged offence.

(5) Where it appears to the probation officer that the child does not intend to acknowledge responsibility for the alleged offence, this information shall be included in the assessment report.

(6) The probation officer shall submit the assessment report to the magistrate conducting the initial inquiry prior to the commencement of the initial inquiry.

**Persons to attend assessment**

**9.(1)** Subject to subsections (3) and (6) of section 10, the parent of the child or an appropriate adult shall attend the assessment of the child.

(2) A child shall be present at his assessment.

(3) The following persons may attend the assessment of a child:

(a) a prosecutor;

(b) the attorney-at-law representing the child; or

(c) a police officer.

**Powers and duties of probation officer prior to assessment**

**10.(1)** A probation officer may at any time before the assessment of a child issue a notice in the prescribed form to the parent of the child or to an appropriate adult to appear at the assessment.

(2) A notice issued pursuant to subsection (1) shall be delivered by a police officer on the request of the probation officer in the prescribed manner.

(3) A person notified pursuant to subsection (1) may apply to the probation officer for permission to be absent or excluded from the assessment, and where the probation officer grants such permission, the permission shall be in writing.

(4) A probation officer may request a police officer to

(a) obtain any documentation required for the completion of the assessment of a child;

(b) locate the parent of a child or an appropriate adult; and

- (c) provide transport, in order to secure the attendance of the child and his parent or an appropriate adult, for the assessment.
- (5) A probation officer shall make every effort to locate a parent of the child or an appropriate adult for the purposes of concluding the assessment of the child.
- (6) Where all reasonable efforts to locate a parent of the child or an appropriate adult have failed, the probation officer shall conclude the assessment in the absence of such persons.

**Powers and duties of probation officer at assessment**

**11.(1)** A probation officer shall

- (a) explain the purpose of the assessment to
  - (i) the child; and
  - (ii) the parent of the child or an appropriate adult;
- (b) inform the child of his right to
  - (i) be informed of the nature of the offence or offences alleged to have been committed;
  - (ii) seek the advice of an attorney-at-law;
  - (iii) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;
  - (iv) remain silent; and
  - (v) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force;
- (c) explain the procedures to be followed under this Act to
  - (i) the child; and
  - (ii) the parent of the child or an appropriate adult; and

- (d) inquire from the child whether he intends to acknowledge responsibility for the offence in question.
- (2) The probation officer, shall, at any stage during the assessment,
  - (a) consult individually with any person at the assessment;
  - (b) contact or consult any person who is not present at the assessment and who may have information relating to the assessment and where such information is obtained, the child shall be informed of the information.
- (3) Where a child is accused with another child, the probation officer may conduct the assessment of the children simultaneously.
- (4) The probation officer shall encourage participation of the child during the assessment process.

#### PART IV

#### SECURING ATTENDANCE OF A CHILD AT INITIAL INQUIRY

##### **Methods of securing attendance of a child at initial inquiry**

- 12.(1)** The methods which may be used by a police officer for securing the attendance of a child in conflict with the law, at an initial inquiry, are by
- (a) apprehension;
  - (b) a summons; or
  - (c) a written notice.
- (2) Before a police officer uses any of the methods for securing the attendance of a child in conflict with the law referred to in subsection (1), the police officer shall consult with the prosecutor as to whether or not the matter should be set down for an initial inquiry.

**Summons**

**13.(1)** A summons issued in respect of a child shall specify the place, date and time of the initial inquiry.

(2) A copy of the summons relating to the alleged offence by the child shall be served on the parents of the child or on the appropriate adult.

(3) A police officer shall,

(a) not later than 24 hours after the service of the summons referred to in subsection (1) inform a probation officer of the service of the summons in the prescribed manner;

(b) as soon as is reasonably possible, but prior to the commencement of the initial inquiry, inform the child

(i) of the nature of the offence or offences alleged to have been committed;

(ii) of his right to

(A) seek the advice of an attorney-at-law;

(B) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;

(C) remain silent; and

(D) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force.

**Written Notice**

**14.(1)** A police officer may direct a child to appear at an initial inquiry at a specified time, on a specified date, and to remain in attendance at the initial inquiry relating to the offence in question.

- (2) A police officer who directs a child pursuant to subsection (1), shall
  - (a) direct the parent of the child or an appropriate adult to bring the child or cause the child to appear at the initial inquiry and to have the child remain in attendance at the initial inquiry relating to the offence in question; and
  - (b) complete and hand to the child and to the parent of the child or to an appropriate adult, a written notice on which shall be entered
    - (i) the offence in respect of which the initial inquiry will be conducted; and
    - (ii) the time and place at which the child shall appear.
- (3) The notice referred to subsection (2)(b) shall be written in a manner that can be understood by a child.
- (4) Pursuant to subsection (2)(b), the police officer shall
  - (a) when he hands the written notice to a child, the parent of the child or an appropriate adult, inform them of
    - (i) the nature of the offence or offences alleged to have been committed;
    - (ii) the child's right to
      - (A) seek the advice of an attorney-at-law;
      - (B) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;
      - (C) remain silent;
      - (D) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force; and

- (b) not later than 24 hours after handing the written notice to the child, the parent of the child or the appropriate adult inform a probation officer that he has done so.

### **Uncertainty as to age of person**

**15.** Where a police officer is uncertain as to the age of a person suspected of having committed an offence but has reason to believe that the age would render a person a child, the police officer shall treat the person as a child for the purposes of this Part, subject to the ascertainment of the age of the person at the initial inquiry.

### **Release of child into care of the parent or the appropriate adult before the initial inquiry**

**16.(1)** A police officer shall release a child who is in detention in police custody and who is accused of an offence referred to in the *First Schedule*, into the care of the parent of the child or an appropriate adult, before the child appears at the initial inquiry unless

- (a) exceptional circumstances warrant detention;
- (b) the parent of the child or an appropriate adult cannot be located or is not available and all reasonable efforts have been made to locate the parent or appropriate adult; or
- (c) there is a substantial risk that the child may be a danger to any other person or to himself.

(2) A police officer may, in consultation with the prosecutor, release a child who

- (a) is accused of an offence referred to in the *First Schedule* but who has not been released pursuant to subsection (1); or
- (b) is in detention in police custody and who is accused of an offence referred to in the *Second Schedule*,

into the care of a parent of the child or an appropriate adult on any one or more conditions referred to in subsection (3).

(3) A child may be released pursuant to subsection (2) on the condition that the child

- (a) appears at a specified place and time for assessment;
- (b) does not
  - (i) interfere with a witness;
  - (ii) tamper with evidence; or
  - (iii) associate with a person or group of people specified by the police officer in consultation with the prosecutor; and
- (c) resides at a particular address.

**Director of Public Prosecutions may authorise the release of a child**

**17.(1)** Notwithstanding the decision of a police officer under section 16(1), the Director of Public Prosecutions may, authorise the release of a child from detention in police custody into the care of the parent of the child or an appropriate adult on any of the conditions referred to in section 16(3).

(2) Where a release is authorised under subsection (1), the written notice referred to in section 14, shall be handed to the child and to the person into whose care the child is released.

**Duty of police officer and person into whose care a child is released**

**18.** A police officer who releases a child from detention in accordance with section 16 or who releases a child on the direction of the Director of Public

Prosecutions in accordance with section 17, and places the child in the care of a parent or an appropriate adult, shall

- (a) at the time of release of the child, complete and hand to the child and to the person into whose care the child is released, a written notice in the prescribed form on which shall be entered the
  - (i) offence in respect of which the child is being accused;
  - (ii) conditions relating to the release of the child; and
  - (iii) place, date and time at which the child shall appear for the initial inquiry;
- (b) direct a parent of the child or appropriate adult to bring the child or cause the child to appear at the initial inquiry at a specified place, date and time and to remain in attendance and, if any conditions referred to in paragraph (a) have been imposed, to ensure that the child complies with the said conditions; and
- (c) direct the child to appear at the initial inquiry at a specified place, date and time and to remain in attendance and, if any conditions referred to in paragraph (a) have been imposed, to comply with those conditions.

**Release of child on recognizance prior to initial inquiry**

**19.(1)** Where a child is taken into police custody with or without a warrant, and cannot be brought before a magistrate immediately, the police officer in charge of a police station to which the child is brought shall inquire into the matter and shall in any case

- (a) unless the child is accused of an offence referred to in the *Third Schedule*; or
- (b) unless it is necessary in the interest of the child to remove him from association with any undesirable person,

release the child on recognizance, with or without sureties, for such an amount as will, in the opinion of the police officer, secure the attendance of the child at the initial inquiry.

(2) The recognizance provided pursuant to subsection (1) may require the attendance at the initial inquiry of the parent or the appropriate adult and the child.

(3) The Commissioner of Police may, after consultation with the Director of Public Prosecutions, issue directives regarding the conditions to be set for recognizance of bail.

(4) The Director of Public Prosecutions may, in consultation with the police officer charged with the investigation with respect to a child, authorise the release of a child accused of an offence referred to in the *Second Schedule* on recognizance prior to the appearance of the child at the initial inquiry, subject to reasonable conditions where the release of the child into the care of a parent of the child or an appropriate adult is deemed appropriate.

#### **Child accused of certain offences not to be released from detention**

**20.** Subject to section 21, a police officer shall not release a child accused of an offence referred to in the *Third Schedule* from detention.

#### **Detention in a secure residential facility**

**21.** Where a child cannot be released, pursuant to section 20,

- (a) into the care of a parent or an appropriate adult; or
- (b) on recognizance,

the child shall be detained in a secure residential facility.

#### **Death, injury or illness of a child in police custody**

**22.(1)** Where a child in detention in police custody complains that he is ill or that he has sustained an injury during apprehension or whilst in detention, the police officer to whom such complaint is made shall report the complaint to the police officer in charge of the police station where the child was apprehended,

and the police officer in charge of the police station shall delegate a police officer to

- (a) take the child to a medical doctor for examination; and
- (b) notify the parent or appropriate adult of the child

as soon as possible but not later than within 24 hours of the complaint.

(2) The report of the medical doctor in respect of a child who is injured while in detention in police custody shall be included in the appropriate police docket in the police station where the child was apprehended and the report may be examined by a magistrate, an attorney-at-law representing the child or the Director of Public Prosecutions.

(3) Where a child in detention in police custody dies the police officer in charge of the police station shall immediately notify

- (a) the Coroner; and
- (b) the parent or appropriate adult of the child.

#### **Register of children waiting to attend an initial inquiry**

**23.(1)** The police officer in charge of a police station shall keep a register regarding the children who are to attend an initial inquiry.

(2) The register referred to in subsection (1) shall contain the following particulars:

- (a) the name of the child;
- (b) the age of the child;
- (c) the offence alleged to have been committed by the child;
- (d) the name, address and telephone number of the parent or the appropriate adult;
- (e) the name and number of the attorney-at-law representing the child;

- (f) whether the child
  - (i) is being detained in a secure residential facility;
  - (ii) is being kept at a place of safety; or
  - (iii) has been released into the custody of a parent or an appropriate adult.
- (3) The register referred to in subsection (1) may be examined by a magistrate, an attorney-at-law representing the child or the prosecutor.

## PART V

### INITIAL INQUIRY AND DIVERSION

#### **Nature and objectives of an initial inquiry**

- 24.(1)** An initial inquiry shall be held in respect of a child after an assessment is completed pursuant to Part III.
- (2) The appearance of a child at an initial inquiry before a magistrate shall be the equivalent of a first appearance before a Court.
  - (3) The objectives of an initial inquiry are to
    - (a) establish whether the matter can be diverted before a trial;
    - (b) identify a suitable diversion option, where applicable;
    - (c) provide an opportunity for the prosecutor to assess whether there are sufficient grounds for the matter to proceed to trial;
    - (d) ensure that all available information relevant to the child, his circumstances and the offence are considered in order to make a decision on diversion and placement of the child;
    - (e) ensure that the views of all persons, required to be present pursuant to section 25(1), shall be considered before a decision is taken;



- (3) Where an initial inquiry proceeds in the absence of the probation officer who conducted the assessment of the child, the assessment report shall be made available at the initial inquiry.
- (4) The following persons may attend an initial inquiry
- (a) the attorney-at-law representing the child;
  - (b) a police officer;
  - (c) any other person whose attendance may be considered necessary by the magistrate conducting the inquiry.

**Procedure relating to an initial inquiry**

- 26.(1)** At the commencement of an initial inquiry a magistrate shall
- (a) determine the age of the child;
  - (b) explain the purpose of the initial inquiry to the child;
  - (c) inform the child of the nature of the offence or offences alleged to have been committed;
  - (d) inform the child of his right
    - (i) to seek the advice of an attorney-at-law;
    - (ii) to have a parent or an appropriate adult present at the initial inquiry; and
    - (iii) to be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force; and
  - (e) explain to the child the immediate procedures to be followed pursuant to this Act.
- (2) A prosecutor shall ensure that the magistrate has a copy of the assessment report, if available.

- (3) A prosecutor or a probation officer attending an initial inquiry may submit to the magistrate information regarding a previous diversion or conviction of the child concerned.
- (4) A child, the attorney-at-law representing the child, the parent of the child, an appropriate adult and the prosecutor, shall each be given an opportunity to question the probation officer who prepared the assessment report on the child or any other person sharing information at the initial inquiry.
- (5) Where the child in respect of whom an initial inquiry is being conducted, is a co-accused with another child, a joint initial inquiry may be held.
- (6) Where a joint initial inquiry is held pursuant to subsection (5), different decisions may be made in respect of each child.
- (7) Where a child does not acknowledge responsibility for the offence with which he is being charged, no further questions regarding the offence may be put to the child and the prosecutor may set the matter down for trial in the Court.
- (8) Information furnished at an initial inquiry shall not be used in subsequent proceedings, against the person who furnished the information.
- (9) A magistrate shall keep a record of all proceedings relating to an initial inquiry.

#### **Powers and duties of a magistrate with respect to an initial inquiry**

**27.(1)** A magistrate shall conduct all initial inquiries and discuss all relevant considerations of a child's case with the probation officer who prepared the assessment report in respect of the child before making a decision pursuant to this Part.

- (2) A magistrate may
  - (a) summon or cause to be summoned any person whose presence is necessary for the conclusion of an initial inquiry;
  - (b) permit the attendance of any other person who may be able to contribute to the initial inquiry;

- (c) request any further documentation or information which may be necessary or relevant to the initial inquiry;
  - (d) after consideration of the information contained in an assessment report, elicit any information from any person attending the initial inquiry to supplement or clarify the information in the assessment report;
  - (e) take such steps as may be necessary to establish the truth of any statement or the correctness of any submission; and
  - (f) where the conduct of the proceedings of the initial inquiry or any aspect of it is in dispute, rule on the conduct of the initial inquiry in a manner consistent with this Act.
- (3) Where a child has not been assessed at the commencement of the initial inquiry, the magistrate shall make arrangements with the Chief Probation Officer to have the assessment conducted in the manner set out in section 8.
- (4) The magistrate may dispense with the assessment if it is in the best interests of the child to do so.
- (5) A magistrate shall ensure that the child, the attorney-at-law representing the child and the parent of the child or an appropriate adult
- (a) know of the recommendations in the report prepared by the probation officer; and
  - (b) are informed of any diversion option and the aims and content of such option.
- (6) The probation officer who prepared the assessment report in respect of a child shall be present at the initial inquiry of that child and the magistrate may request him to explain, elaborate upon or justify any recommendation or statement made in the assessment report, and he may also be asked to provide additional information.

(7) A magistrate shall consider the reports regarding the apprehension of the child and the detention in police custody provided by the police officer who apprehended the child.

**Failure to appear at an initial inquiry**

**28.(1)** A parent or an appropriate adult, who has been directed to appear at an initial inquiry and who fails to do so, is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 12 months or to both.

(2) Subsection (1) shall apply with the changes required by the context and subject to sections 56 and 57 to a child who has been released in the care of his parent or an appropriate adult and who fails to comply with the direction contained in the written notice referred to in section 14 or with any condition imposed pursuant to section 16(3).

**Release of child into care of parent or appropriate adult**

**29.(1)** A magistrate shall release a child who is in detention, into the care of the parent of the child or an appropriate adult where

- (a) the initial inquiry is not disposed of at the first appearance of the child before a magistrate; and
- (b) it is in the interest of justice to release the child.

(2) In considering whether or not it would be in the interest of justice to release a child into the care of the parent of the child or an appropriate adult, a magistrate shall have regard to the recommendation made by the probation officer and other relevant factors, including

- (a) the best interests of the child;
- (b) whether the child has any previous convictions;
- (c) the availability of the parent of the child or the appropriate adult;

- (d) the likelihood of the child returning to the initial inquiry for a further appearance;
  - (e) the period for which the child has already been in detention since apprehension;
  - (f) the imposition of a curfew on release;
  - (g) the probable period of detention of the child until conclusion of the initial inquiry;
  - (h) the risk that the child may be a danger to himself or to any other person;
  - (i) the state of health of the child;
  - (j) the reason for any delay in the disposal or conclusion of the initial inquiry and whether such delay was due to any fault on the part of the Government or on the part of the child or his attorney-at-law;
  - (k) whether detention would prejudice the child in the preparation of his case;
  - (l) the likelihood that, where the child is found guilty of the offence he will be detained for a substantial period; and
  - (n) the receipt of a written confirmation by the Director of Public Prosecutions that he intends to charge the child with an offence referred to in the *Third Schedule*.
- (3) A magistrate may, in releasing a child pursuant to subsection (1), require the child
- (a) to appear before the magistrate at a specified place and time;
  - (b) to report periodically to a specified person or place;
  - (c) to attend a particular school;
  - (d) to reside at a particular address;
  - (e) to be placed under the supervision of a person specified by the magistrate; or

- (f) not to interfere with a witness, tamper with any evidence or associate with any person or group of persons specified by the magistrate.
- (4) Where a magistrate releases a child into the care of a parent of the child or an appropriate adult, the magistrate shall direct the parent or the appropriate adult, as the case may be, to bring the child or ensure that the child appears at a specified time and place and, where a condition has been imposed pursuant to this section, to ensure that the child complies with the condition.
- (5) A parent or an appropriate adult into whose care a child is placed who fails to comply with a direction issued under subsection (4) is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 12 months or to both.
- (6) Where a child has been released into the care of his parent or an appropriate adult and the child fails to comply with a condition imposed pursuant to subsection (3), the magistrate may direct that the child be detained in a secure residential facility.
- (7) A magistrate may, after consideration of the facts release a child on bail or recognizance having regard to the factors referred to in subsection (2) and subject to one or more of the conditions referred to in subsection (3).
- (8) A magistrate may refuse to release a child on bail where
  - (a) the magistrate is satisfied that there are substantial grounds for believing that the child, if release on bail, whether subject to conditions or not, would
    - (i) fail to surrender to custody;
    - (ii) commit an offence; or
    - (iii) interfere with witnesses; or
  - (b) the child is charged with an offence alleged to have been committed while he was released on bail.

**Detention of child after first appearance before a magistrate**

**30.(1)** A magistrate may direct the detention of a child in a secure residential facility where

- (a) the proceedings of the initial inquiry are postponed pursuant to section 31 or 32;
- (b) the release of the child into the care of his parent or an appropriate adult is for any reason not possible; or
- (c) the child is to appear for trial pursuant to section 41.

(2) A magistrate shall have regard to the recommendations made by the probation officer when deciding where to place the child pursuant to subsection (1).

(3) A child of 14 years or older who is charged with an offence referred to in the *Third Schedule* shall be detained in a prison where a magistrate feels there is a substantial risk that the child may cause harm to other children in a secure residential facility.

(4) Where a magistrate issues a direction that a child be detained in prison, the magistrate shall record the reasons for issuing such a direction.

(5) Where a magistrate issues a direction for the detention of a child pursuant to subsection (1)(c), the child shall appear before the Court at a time and place to be determined by the Court.

(6) Where a child appears before a Court pursuant to subsection (5), a magistrate shall

- (a) determine whether or not the detention remains necessary;
- (b) where ordering further detention of the child, record the reasons for his decision;
- (c) consider a reduction of the amount of bail or recognizance, where applicable;

- (d) inquire whether or not the child is being properly treated and kept under suitable conditions; and
- (e) where he is satisfied that the child is not being properly treated and kept under suitable conditions, inspect and investigate the treatment and conditions and make appropriate remedial recommendations to the Minister.

### **Postponement of an initial inquiry**

**31.(1)** A magistrate may postpone the proceedings of an initial inquiry for a period not exceeding 14 days for the purposes of

- (a) securing the attendance of a person necessary for the conclusion of the initial inquiry;
- (b) obtaining information necessary for the conclusion of the initial inquiry;
- (c) establishing the attitude of the victim regarding diversion;
- (d) planning a diversion option;
- (e) finding alternatives to pre-trial residential detention;
- (f) assessing the child, where no assessment has previously been undertaken and it is found that assessment is required;
- (g) noting a confession;
- (h) noting an admission;
- (i) holding an identity parade;
- (j) securing an attorney-at-law to represent the child; or
- (k) any other matter which a magistrate deems necessary.

(2) Where the proceedings of an initial inquiry are postponed pursuant to paragraphs (g), (h) or (i) of subsection (1), a magistrate shall inform the child of his right to have his parent or an appropriate adult present during the proceedings.

(3) Where the initial inquiry is not concluded within 14 days and subject to section 32, the inquiry shall be closed and the prosecutor shall set the matter down for trial in the Court.

### **Postponement of initial inquiry for a more detailed assessment**

**32.(1)** A magistrate may postpone the proceedings of an initial inquiry for a period not exceeding 14 days where there are exceptional circumstances warranting a further assessment of the child, and where these circumstances relate to

- (a) the possibility that the child may be a danger to others or to himself;
- (b) the fact that the child has a history of repeatedly committing offences or absconding;
- (c) the social welfare history of the child;
- (d) the possible admission of the child to counselling, a substance abuse programme, a therapeutic treatment programme or other intensive programme; or
- (e) the possibility that the child may be a victim of sexual or other abuse.

(2) A magistrate may order that a psychiatrist be appointed to conduct the assessment referred to in subsection (1) and that assessment shall be conducted in the home of the child, unless this is not in the best interests of the child, or is impossible, in which case the assessment may be conducted at a secure residential facility or a place of assessment.

### **Decision regarding diversion**

**33.(1)** A magistrate shall ascertain whether a matter before him may be diverted after consideration of the following:

- (a) any recommendations made by the prosecutor;
- (b) the assessment report;

- (c) the views of all persons required to be present, pursuant to section 25(1), at the initial inquiry and any information provided by those persons;
  - (d) any information requested pursuant to section 27(2)(c); and
  - (e) the willingness of the child to acknowledge responsibility for the offence.
- (2) Where a magistrate decides that the matter may be diverted, the magistrate shall issue a direction for diversion in the prescribed manner in respect of the child concerned.
- (3) In addition to the diversion options stated in section 36, a magistrate may, after consultation with the persons present at the initial inquiry, develop an individual diversion option which meets the purposes of and standards applicable to the diversion set out in section 36.

#### **Purposes of diversion**

- 34.** The purpose of diversion is to
- (a) encourage the child to be accountable for the harm which he has caused;
  - (b) meet the particular needs of the child;
  - (c) promote the reintegration of the child into the family and the community;
  - (d) provide an opportunity to those affected by the harm caused by the child, to express their views on how the harm has impacted them;
  - (e) encourage the rendering to the victim of some symbolic benefit or the delivery of some object as compensation for the harm caused by the child;
  - (f) promote the reconciliation between the child and the person or community affected by the harm caused by the child;

- (g) prevent stigmatising the child and the adverse consequences flowing from being subject to the criminal justice system; and
- (h) prevent the child from having a criminal record.

### **Child to be considered for diversion under certain circumstances**

**35.** A child shall be considered for diversion where

- (a) the child and his parent or an appropriate adult, consent to the diversion and the diversion option;
- (b) the child understands his right to remain silent and has not been unduly influenced to acknowledge responsibility for an alleged act or omission; and
- (c) there is sufficient evidence to prosecute the child.

### **Levels of diversion options**

**36.(1)** At the initial inquiry, a magistrate, in directing a diversion option in respect of a child, may direct a level one, level two or level three diversion option and in selecting the level that is appropriate for the child, a magistrate shall consider the

- (a) age and developmental needs of the child;
  - (b) background of the child;
  - (c) educational level, cognitive ability and the environmental circumstances of the child;
  - (d) proportionality of the option recommended or selected to the circumstances of the child; and
  - (e) nature of the offence and the interests of the community or society.
- (2) A level one diversion option referred to in subsection (1) includes
- (a) an oral or written apology to a specified person or institution;

- (b) a formal caution in the prescribed form with or without conditions;
  - (c) placement under a supervision and guidance order in the prescribed form for a period not exceeding 3 months;
  - (d) placement under a reporting order in the prescribed form;
  - (e) the issue of a compulsory school attendance order in the prescribed form for a period not exceeding 3 months;
  - (f) the issue of a positive peer association order in the prescribed manner in respect of a specified person in a specified place for a period not exceeding 3 months;
  - (g) the issue of a family time order in the prescribed form for a period not exceeding 3 months;
  - (h) the issue of a good behaviour order in the prescribed form;
  - (i) the issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place in the prescribed form;
  - (j) referral to counselling or therapy for a period not exceeding 3 months;
  - (k) compulsory attendance at a specified place for a specified vocational or educational purpose for a period not exceeding 5 hours each week, for a maximum of 3 months;
  - (l) symbolic compensation to a specified person or an institution; and
  - (m) restitution of a specified object to a specified victim of an alleged offence where the object concerned may be returned or restored.
- (3) A level two diversion option referred to in subsection (1) includes
- (a) the options referred to in subsection (2), except that the maximum periods referred to in that subsection, shall for the purposes of this subsection, be 6 months;

- (b) compulsory attendance at a specified institution for a vocational or an educational purpose for a period not exceeding 8 hours each week, for a maximum of 6 months;
  - (c) the performance of some service without remuneration for the benefit of the community under the supervision or control of an organisation, institution, or a specified person or group identified by a probation officer effecting the assessment, for a maximum period of 50 hours, and to be completed within a maximum period of 6 months;
  - (d) provision of some service or benefit to a specified victim in an amount which the family of the child is able to afford; and
  - (e) where there is no identifiable person to whom restitution or compensation may be made, provision of some service or benefit or payment of compensation to an organisation, charity or welfare organisation for the benefit of the community.
- (4) A level three diversion option referred to in subsection (1) includes
- (a) a referral to a programme which does not exceed 6 months and which has a residential requirement that must not exceed 35 days in total and 21 consecutive days during the operation of the programme;
  - (b) the performance of some service without remuneration for the benefit of the community under the supervision and control of an organisation, institution, or a specified group of persons, identified by a probation officer and for a period not exceeding 160 hours which shall be completed within 12 months and no more than 35 hours per week;
  - (c) where the child is not attending formal schooling, compulsory attendance at a specified place for a specified vocational or educational purpose for a period not exceeding 6 months and no more than 35 hours per week; and
  - (d) referral to counselling or therapeutic intervention in conjunction with any of the options listed in this subsection.

(5) A level three diversion option shall apply to a child who is the age of 14 years or older where the relevant enactment under which the offence is committed imposes a sentence of detention.

(6) On the selection of a diversion option, the Court shall designate a probation officer or other suitable person to monitor the compliance of the child with the selected diversion option and where the child fails to comply with any condition of the diversion option, the probation officer or other suitable person shall notify the Court of the failure.

### **Minimum standards applicable to diversion and diversion options**

**37.(1)** A child may be required to perform community services as an element of diversion, with due consideration being given to the age and development of the child.

(2) A diversion option shall

- (a) promote the dignity and well-being of the child, and the development of his sense of self worth and ability to contribute to his community and society;
- (b) not be exploitative, harmful or hazardous to the physical or mental health of the child;
- (c) be appropriate to the age and maturity of the child; and
- (d) not interfere with the education or schooling of the child.

(3) The Chief Probation Officer shall keep a register of all of the children who have been subjected to diversion.

### **Failure to comply with diversion direction**

**38.(1)** Where a child fails to comply with a diversion option, a magistrate shall, on being notified of such failure in the prescribed manner, issue

- (a) a warrant for the apprehension of the child; or
- (b) a written notice to the child to appear before a magistrate.

(2) Where a child appears before the magistrate pursuant to subsection (1), a magistrate shall inquire into the reasons for the failure of the child to comply with the diversion direction and unless the prosecutor decides to proceed with the prosecution of the child concerned, a magistrate may, after consideration of the views of any person present at the initial inquiry

- (a) apply the same diversion option with altered conditions;
- (b) apply any other diversion option; or
- (c) issue an appropriate direction that will assist the child and his family to comply with the diversion option initially applied.

(3) Where the prosecutor decides to proceed with the prosecution of the matter, the matter shall be set down for trial in the Court and section 43 shall apply with the necessary changes required by the context.

#### **Development of diversion options**

**39.** The Minister may make regulations to develop other suitable diversion options.

#### **Protection proceedings**

**40.(1)** Where it appears during proceedings at an initial inquiry that a child is in need of care and protection as described in section 5(1) of the *Child Protection Act, 2023* (Act 2023-), and that it is desirable to deal with the child under the provisions of that Act, a magistrate shall stop the initial inquiry and deal with the matter as if it were commenced under the *Child Protection Act, 2023*.

(2) Notwithstanding the generality of subsection (1), a magistrate shall stop the initial inquiry and deal with the matter as if it were commenced under the *Child Protection Act, 2023* where a child

- (a) has previously been assessed on more than one occasion with regard to minor offences that were committed to meet the basic need of the

child for food and shelter and in the initial inquiry in question it is again alleged that the child has committed such offences;

- (b) is allegedly abusing dependence producing substances; or
- (c) does not live at his family home or in an appropriate child care service and is alleged to have committed a minor offence, the purpose of which was to meet the basic need of the child for food and shelter.

### **Referral of matter for trial and detention pending trial**

**41.(1)** Where a child has been charged with an offence listed in the *Third Schedule* the child shall appear in the Criminal Division of the High Court in accordance with the *Supreme Court of Judicature Act, Cap. 117A*.

(2) In relation to offences that are triable summarily or on indictment as listed in the *Second Schedule*, the magistrate shall determine that the offence be tried summarily.

(3) Any information obtained

- (a) by a probation officer during the assessment of a child; or
- (b) during the initial inquiry in respect of a child,

shall not be admissible in any court proceedings against the child pursuant to this Act.

(4) The magistrate may conduct proceedings to determine whether a child should be detained in a secure residential facility pending trial for offences listed in the *First Schedule* or the *Second Schedule*, where diversion has not taken place and the matter has not been handled in the manner specified by section 40.

(5) A child referred to in subsection (1) shall be detained in a secure residential facility pending trial.

PART VI

COURT PROCEEDINGS

**Conduct of proceedings relating to child in Court**

- 42.(1)** At the commencement of the proceedings, the Court shall
- (a) inform the child of the nature of the allegations against him;
  - (b) inform the child of his right to
    - (i) legal representation by an attorney-at-law;
    - (ii) the presence of his parent or appropriate adult at the proceedings;
    - (iii) remain silent; and
  - (c) explain to the child the procedures to be followed pursuant to this Act or any other relevant enactment

**in a manner that can be understood by a child.**

- (2) The proceedings in the Court shall be conducted in an informal manner in order to encourage maximum participation by the child and his parents or an appropriate adult.
- (3) Where a child refuses to have his parent or an appropriate adult present at the proceedings referred to in subsections (1) and (2), or where a parent of a child or an appropriate adult is not present or cannot be traced and an attorney-at-law is not available, the police officer in charge of the investigation relating to the child, shall request a person to act as an independent observer and such independent observer shall be present at the proceedings.
- (4) For the purposes of this section an “independent observer” means a social worker, a child protection officer or such other person as may be authorized by the Court.

**Treatment of a child in Court**

**43.(1)** A child shall not be subjected to the wearing of leg irons when appearing in the Court, and handcuffs may only be used where there are exceptional circumstances that warrant their use.

(2) A child held at a police station or a Court shall be kept separate from adults and shall be treated in a manner and kept in conditions which take into account the age of the child.

(3) A female child shall be kept separate from a male child.

(4) Where a child is transported to and from the Court he shall be transported separate from adults.

(5) The Commissioner of Police shall issue directives concerning the treatment and conditions of a child while being held in detention at Court.

**Criminal responsibility**

**44.(1)** The criminal responsibility of a child shall be proved by the prosecution beyond reasonable doubt.

(2) The prosecutor or the attorney-at-law representing the child may request the Court to order an evaluation of the child by a suitably qualified person.

(3) The evaluation referred to in subsection (2) shall be conducted at the expense of the Government.

(4) Where an order has been made by the Court pursuant to subsection (2), the person identified to conduct an evaluation of the child shall furnish the Court with a written report of the evaluation within 30 days of the date of the order.

(5) The evaluation shall include an assessment of the cognitive, emotional, physical, psychological and social development of the child.

(6) The person who conducts the evaluation may be called to attend the Court proceedings and to give evidence and, if called, shall receive remuneration from the Government.

**Separation and joinder of trials involving child and adult**

**45.(1)** Where a child and an adult are alleged to have committed the same offence, they are to be tried separately unless it is in the interest of justice to join the trials.

(2) An application for joinder of trials under subsection (1) shall be made to the Court and the child shall appear after notice is given to him in the prescribed manner.

(3) Where the Court grants an application for a joinder of trials, the matter shall be transferred to the relevant Court, and that Court shall afford the child concerned all such benefits conferred on a child under this Act.

**Time limits relating to conclusion of trials**

**46.(1)** The Court shall conclude the trial of an accused child within a period not exceeding 6 months and shall ensure that adjournments of the trial are limited in number and duration.

(2) Sections 29 and 32, shall apply, with the necessary changes required by the context, to the Court where the child is appearing in the Court for the first time is in detention.

(3) Where a child remains in detention and the trial of the child is not concluded within 6 months from the date on which the child has pleaded to the charge, the child shall be released from detention, unless he is charged with an offence listed in the *Third Schedule*.

**Court may divert matter**

**47.(1)** Where at any time before the conclusion of a case for the prosecution it comes to the attention of the Court that a child acknowledges or intends to acknowledge responsibility for an alleged offence, the Court may make an order for diversion in respect of the child where the prosecutor indicates that the matter may be diverted.

- (2) Sections 33 to 38 shall apply with the changes required by the context where the Court makes an order for diversion.
- (3) Where the Court makes an order for diversion, it shall postpone the proceedings pending the compliance of the child with the diversion order.
- (4) The Court shall, acquit the child of all charges in question, on receipt of a report from a probation officer or suitable person referred to in section 36(6) that a child has successfully complied with a diversion order.
- (5) An acquittal of the child may be made in the absence of the child.
- (6) Where a child fails to comply with a diversion order, section 38 shall apply with the necessary changes required by the context.

**Privacy and confidentiality**

**48.** A person shall not be present at a sitting of the Court in a matter relating to a child unless

- (a) the presence of the person is necessary in connection with the proceedings of the Court; or
- (b) the Court has granted the person permission to be present.

**Prohibition of the publication of certain matters**

**49.(1)** A person shall not publish any information which reveals or may reveal the identity of a child or of any witness under the age of 18 years appearing at any proceedings before the Court.

(2) Subject to subsection (3), a probation officer, pursuant to this section, shall not preclude

- (a) access to information pertaining to a child where such access would be in the interest, safety or welfare of the child;

- (b) the publication, in the form of a report, of

    - (i) information for the purpose of reporting any question of law relating to the proceedings in question; or
    - (ii) any decision or ruling given by the Court on such a question; or
  - (c) the publication, in the form of any report of a professional or technical nature, of research results and statistical data pertaining to a child where such publication would be in the interest, safety or welfare of the child or children in general.
- (3) The reports referred to in subsection (2)(b) and (c) shall not mention
- (a) the name of the person charged;
  - (b) the person against whom or in connection with whom the offence in question is alleged to have been committed;
  - (c) any witness at such proceeding; or
  - (d) the place where the offence in question was alleged to have been committed.
- (4) Subject to subsection (5), in relation to any proceedings in any Court
- (a) no newspaper report, radio broadcast, television broadcast or post on a social media site in relation to proceedings under this Act shall reveal the name, address or school, or include any particulars calculated to lead to the identification of any child in respect of whom the proceedings are taken, or as being a witness in the proceedings; and
  - (b) no picture shall be published of any child so concerned in the proceedings.
- (5) The Court may, in any case, where satisfied that it is in the interest of justice or the public to do so, by order dispense with the requirements of this section to such extent as may be specified in the order.

(6) A person who publishes in a newspaper, broadcasts by radio or television, posts on a social media site or shares via a messenger application any matter in contravention of this section, is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 2 years or to both.

## PART VII

### SENTENCING OF A CHILD

#### **Child to be sentenced in accordance with this Part**

**50.(1)** The Court shall, after a finding of guilt in relation to a child, impose a sentence on the child in accordance with this Part.

(2) Where the provisions of this Act regarding sentencing options, conflict with those provided for pursuant to any other relevant enactment, the sentencing options under this Act shall prevail.

#### **Pre-sentence reports**

**51.(1)** Prior to the imposition of sentence on a child, the Court shall

- (a) request a pre-sentence report prepared by a probation officer; and
- (b) hold a pre-sentence conference with the probation officer, where all considerations relevant to the child's case and possible sentencing options are discussed.

(2) Pursuant to subsection (1), the probation officer shall complete the report, as soon as possible, but no later than 8 weeks following the date upon which such report was requested.

(3) The Court may dispense with a pre-sentence report where

- (a) a child is convicted of an offence referred to in the *First Schedule*; or
- (b) requiring such a report would cause undue delay in the conclusion of the case to prejudice the child,

but the Court shall not impose a sentence with a residential requirement unless a pre-sentence report has been received and considered by the Court.

(4) Where a Court imposes a sentence involving detention in a secure residential facility, the Court shall certify on the warrant of detention that a pre-sentence report has been received and considered by the Court prior to the imposition of the sentence.

(5) For the purposes of subsection (3), “a sentence with a residential requirement” includes a sentence where the residential requirement is suspended.

### **Purposes of sentencing**

**52.** The purposes of sentencing pursuant to this Act are to

- (a) encourage the child to understand the implications of and be accountable for the harm caused;
- (b) promote an individualised response which is appropriate to the circumstances of the child and proportionate to the circumstances surrounding the offence;
- (c) promote the reintegration of the child into the family and community; and
- (d) ensure that any necessary supervision, guidance, treatment or services which form part of the sentence, assist the child in the process of reintegration.

### **Community based sentences**

**53.(1)** The Court may, as a requirement in relation to a penalty for an offence, sentence a child to imprisonment for an initial period and thereafter require the child to serve the remainder of the period of the sentence providing a service in the community.

(2) A sentence which allows a child to remain in the community and which may be imposed pursuant to this Act includes

- (a) any of the options referred to in section 36(3);
- (b) placement under a supervision and guidance order in the prescribed form for a period not exceeding 3 years;
- (c) in cases that warrant such specialised intervention, referral to counselling or therapy in conjunction with any of the options listed in this section for a period of time as the Court considers fit;
- (d) where the child is over the age of compulsory school attendance, and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose, for no more than 35 hours per week;
- (e) performance of some service without remuneration for the benefit of the community under the supervision or control of a specified person or institution identified by the Court for a maximum period of 160 hours and which shall be completed in 12 months; and
- (f) any other sentence, subject to section 59, which is appropriate to the circumstances of the child and is in keeping with the principles of this Act and which, where it includes a period of time, shall not exceed 12 months.

(3) Before a child from the age of 12 years to 14 years is sentenced pursuant to subsection (2)(e), due consideration must be given to the age, development and compulsory school attendance of the child.

### **Restorative justice sentences**

**54.(1)** Where the Court makes a determination of guilt with respect to a child, the Court may refer the matter to a family group conference for a written recommendation.

- (2) Section 55 shall apply where the Court has referred a matter to a family group conference.
- (3) On receipt of the written recommendation from a family group conference, the Court shall
  - (a) confirm the recommendation by making it an order of the Court; or
  - (b) substitute or amend the recommendation and make it an appropriate order.
- (4) Where the Court does not agree to the terms of the plan made at a family group conference, and imposes a sentence that is different in a material respect from that agreed to or decided upon at the family group conference, the Court shall note the reasons for deviating from the plan on the record of the proceedings.
- (5) Where a child who has been sentenced in accordance with an order arising from a family group conference fails to comply with that order, the probation officer shall notify the Court of the failure as soon as possible and the Court shall issue a warrant for the apprehension of the child, and where the child appears before the Court pursuant to such warrant, the Court shall impose an appropriate sentence on the child.

### **Family group conference**

**55.(1)** Where a child has been referred to appear at a family group conference pursuant to section 54, a probation officer shall be appointed by a Court to conduct the family group conference and he shall within 14 days, but not later than 21 days after such appointment, convene the family group conference by setting the time and place for such conference, and taking all necessary steps to ensure that all persons who are to attend the conference are adequately notified of the time and place of the conference.

- (2) The following persons shall attend a family group conference
  - (a) the child and the parent of the child or an appropriate adult;
  - (b) any person reasonably requested by the child;

- (c) the probation officer;
  - (d) a police officer;
  - (e) the victim of the alleged offence which the child committed and where the victim is under the age of 18 years, the parent of the victim or an appropriate adult;
  - (f) the attorney-at-law representing the child where applicable;
  - (g) a member of the community in which the child resides recommended by the probation officer; and
  - (h) any person authorised by the probation officer to attend the family group conference.
- (3) The participants in a family group conference shall follow the procedure agreed upon by them and may agree to a plan in respect of the child pursuant to subsection (4) as they deem fit.
- (4) A plan referred to in subsection (3)
- (a) may include
    - (i) the application of any option contained in section 36(2) or (3); or
    - (ii) any other plan that is appropriate for the child, his family and the circumstance except that such a plan shall be consistent with the principles contained in this Act; and
  - (b) shall
    - (i) specify the objectives for the child and the period within which they are to be achieved;
    - (ii) contain the details of the services and the assistance to be provided for the child and for a parent of the child or an appropriate adult;
    - (iii) specify the persons or organisations to provide the services referred to in subparagraph (ii);

- (iv) state the responsibility of the child and the parents of the child or an appropriate adult; and
  - (v) include such other matters relating to the education, recreation and welfare of the child as are relevant.
- (5) The probation officer shall record the details of and reasons for any plan agreed to at the family group conference and shall furnish a copy of the record to the Court.
- (6) Where a child fails to comply with any condition of the plan agreed to in a family group conference, the probation officer shall notify the Court in writing of such failure, and the Court may impose a sentence under section 56 or 58.
- (7) Where the participants of a family group conference fail to agree on a plan, the probation officer shall close the family group conference and refer the matter back to the Court for consideration of another diversion option.
- (8) The proceedings of a family group conference shall be confidential and no statement made by a participant in the family group conference may be used as evidence in any subsequent court proceedings.

**Sentences involving correctional supervision**

- 56.(1)** The Court may impose a sentence of correctional supervision for a period not exceeding 3 years on a child over the age of 12 years.
- (2) The whole or any part of the sentence imposed pursuant to subsection (1) may be postponed or suspended, with or without conditions referred to in paragraphs (a), (b), (c), (d), (e), (f), (h) and (i) of section 60(3).

**Sentence with a compulsory residential requirement**

**57.(1)** A sentence involving a compulsory residential requirement shall not be imposed on a child unless the Court is satisfied that such a sentence is justified by

- (a) the seriousness of the offence, the protection of the community and the severity of the impact of the offence on the victim; or
- (b) the previous failure of the child to respond to non-residential alternatives.

(2) A Court imposing any sentence involving a compulsory residential requirement on a child, shall note the reasons for the sentence on the record and explain them to the child in a language which the child can understand.

(3) A sentence involving a compulsory residential requirement shall include referral to

- (a) a secure residential facility, subject to section 58; or
- (b) a prison, subject to section 59.

**Referral to secure residential facility**

**58.(1)** A sentence which involves residing in a secure residential facility shall not exceed 3 years.

(2) A child shall not be required to reside in a secure residential facility beyond the age of 18 years.

(3) A person detained at a secure residential facility shall not be automatically transferred from a secure residential facility to a prison upon attaining the age of 18 years.

**Referral to prison**

**59.(1)** A sentence of imprisonment shall be used as a sentence of last resort and the sentence shall not be imposed unless

- (a) the child is the age of 14 years or older at the time of the commission of the offence;
- (b) substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include
  - (i) conviction of an offence referred to in the *Second Schedule* or the *Third Schedule*; or
  - (ii) a previous failure to respond to alternative sentences, including sentences with a residential requirement; and
- (c) the Court is of the opinion that none of the other methods in which the case may legally be dealt with is suitable,

and the Court may sentence the child to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 years or over, as may be specified in the sentence.

(2) A sentence of imprisonment shall not be imposed on a child in respect of an offence referred to in the *First Schedule*.

(3) Where the Court imposes a sentence of imprisonment, the Court shall announce the term of imprisonment in open Court and the coming into effect of the term of imprisonment shall be antedated by the number of days that the child has spent in a secure residential facility prior to the sentence being announced in the Court.

(4) A child sentenced to imprisonment shall not be accommodated with adult prisoners.

(5) Corporal punishment, severe or frightening measures shall not be inflicted on a child detained in a prison pursuant to this section.

**Postponement or suspension of passing sentence**

**60.(1)** The passing of any sentence may be postponed, with or without one or more of the conditions referred to in subsection (3), for a period of 3 months.

(2) The whole or any part of any sentence may be suspended, with or without one or more conditions referred to in subsection (3), for a period not exceeding 12 months.

(3) The conditions referred to in subsections (1) and (2) may be any condition appropriate to the circumstances of the child which is in keeping with the principles of this Act and which promotes the reintegration of the child into his community or society and may include

- (a) restitution, compensation or symbolic compensation;
- (b) an apology;
- (c) the obligation not to commit a further offence of a similar nature;
- (d) good behaviour;
- (e) regular school attendance for a specified period;
- (f) attendance at a specified time and place of a family group conference;
- (g) placement under the supervision of a probation officer;
- (h) a requirement that the child shall appear before the Court on a date or dates to be determined by the Court for a periodic progress report; and
- (i) referral to any diversion option referred to in paragraphs (d), (e), (f), (g), (h), (i), (j) or (k) of section 36(2).

(4) Where the Court has postponed the passing of a sentence pursuant to subsection (1) on one or more conditions, the Court may request the probation officer concerned to submit regular reports indicating the compliance of the child with the conditions referred to in this section.

(5) The conviction of a child in respect of whom passing of a sentence has been postponed shall be expunged from any record where the child has met all the conditions imposed or at the expiration of the period in question, as the case may be.

### **Penalty in lieu of fine or imprisonment**

**61.** Where the Court convicts a child of an offence for which a fine or imprisonment is stated by an enactment as the penalty, the Court may impose any one of the following penalties in place of that fine or imprisonment

- (a) symbolic compensation to a specified person or institution;
- (b) payment of compensation not exceeding \$5 000 to a specified person or institution if the child or his family is able to make that payment;
- (c) an obligation on the child to provide a service or benefit or to pay compensation to a specified organisation identified by the child or by the Court, where there is no identifiable person to whom restitution or compensation could be made; or
- (d) any other sentence as stated in this Act, except imprisonment.

### **Prohibition on certain forms of punishment**

**62.(1)** The sentence of death shall not be pronounced on a child, recorded against a child or imposed on a child.

- (2) A sentence of life imprisonment shall not be imposed on a child.
- (3) A sentence of flogging or whipping shall not be imposed on a child.

**Notice to parent of child**

**63.(1)** Where it appears to a Court that finds a child guilty of an offence relating to property or against the person of another, on evidence admitted or submissions made in the case against the child

- (a) that wilful failure on the part of a parent of the child or an appropriate adult to exercise proper care of, or supervision over, the child was likely to have substantially contributed to the commission of the offence; and
- (b) that compensation may be paid to a person for any
  - (i) loss caused to the person's property, whether the loss was an element of the offence charged or happened in the course of the commission of the offence; or
  - (ii) injury suffered by the person, whether as the victim of the offence or otherwise, because of the commission of the offence,

the Court, on its own initiative or on application by the prosecutor, may decide to call on the parent or an appropriate adult to show cause, as directed by the Court, why the parent of the child or an appropriate adult should not pay the compensation.

(2) The Court may call on the parent of the child or an appropriate adult who is present in Court to show cause during the proceedings.

(3) The Court in all cases, instead of acting under subsection (2), may cause the Registrar of the Court to give written notice to the parent of the child or an appropriate adult to show cause why the parent of the child or an appropriate adult should not pay the compensation.

(4) Where the Court calls on the parent of a child or an appropriate adult under subsection (2) or the Registrar of the Court issues a notice under subsection (3),

- (a) the Court shall put its reasons for so doing in writing; and

- (b) a copy of the reasons for so doing shall be given, in accordance with the direction of the Court to the parent of the child or an appropriate adult within a reasonable time before the proceedings to show cause.

### **Proceedings to show cause**

- 64.**(1) At the proceedings to show cause referred to in section 63,
- (a) evidence and submissions in the case against the child are to be treated as evidence and submissions in the proceedings to show cause;
  - (b) further evidence may be given and submissions made;
  - (c) the parent of a child or appropriate adult may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and
  - (d) the parent of a child or an appropriate adult may require any fact stated in submissions mentioned in paragraph (a) to be proved.
- (2) Subject to subsection (1),
- (a) the determination of the issues at the proceedings to show cause shall be by way of fresh hearing on the merits; and
  - (b) the Court shall not be bound by a determination made by it pursuant to section 62.
- (3) Where the parent is called on to show cause on the prosecution's application, the prosecution shall be a party to the proceedings to show cause.
- (4) Where the parent is called on to show cause on the Court's own initiative, the prosecutor may at the proceedings
- (a) appear and give the Court the assistance it may require; or
  - (b) intervene as a party with the permission of the Court.
- (5) Where on consideration of the evidence and submissions mentioned in subsection (1)(a) and (b), a Court is satisfied beyond reasonable doubt of the

matters mentioned in section 63(1)(b)(i), the Court may make an order requiring the parent to pay compensation.

- (6) An order made pursuant to subsection (5) shall direct that
- (a) the amount shall be paid by a time specified in the order or by instalments specified in the order; and
  - (b) the amounts shall be paid to the Registrar of the Court.
- (7) In determining the amount to be paid by a parent by way of compensation, the Court shall have regard to the capacity of the parent to pay the amount, which shall include an assessment of the effect that any order would have on the capacity of the parent to provide for his child.
- (8) The Court shall proceed under this section in the absence of the parent where the Court is satisfied that the parent has been given notice of the proceedings to show cause under section 63.

## PART VIII

### LEGAL REPRESENTATION

#### **Child to be provided with legal representation**

**65.** A child shall be provided with legal representation by the Government at all of the stages of any administrative or criminal proceedings under this Act.

#### **Requirements to be complied with by attorney-at-law**

- 66.** An attorney-at-law representing a child shall
- (a) conduct the best defence for the child at all of the stages of any administrative or criminal proceedings under this Act taking into account the best interests of the child;

- (b) allow the child, as far as is reasonably possible, to give independent instructions concerning the case;
- (c) inform the child of his right to
  - (i) be informed of the nature of the offence or offences alleged to have been committed;
  - (ii) seek the advice of an attorney-at-law;
  - (iii) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;
  - (iv) remain silent;
  - (v) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force;
- (d) promote diversion where appropriate, but may not influence the child to acknowledge responsibility; and
- (e) make reasonable efforts to ensure that the trial is conducted without delay.

## PART IX

### GENERAL PROVISIONS AS TO PROCEEDINGS IN COURT

#### **Extension of power to take depositions**

**67.(1)** Subject to subsection (2), where the Court is satisfied by the evidence of a medical practitioner that the attendance before the Court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to his life or health, any deposition of the child taken under this Part shall be admitted in evidence either for or against the accused child without further proof if it is signed by the Judge or magistrate before whom it was taken.

- (2) The deposition taken pursuant to subsection (1) shall not be admissible in evidence against the accused child unless it is proved that
- (a) reasonable notice of the intention to take the deposition has been given to him; or
  - (b) it was taken in the presence of the accused child; and
  - (c) his attorney-at-law had the opportunity to question the child making the deposition.

## PART X

### SECURE RESIDENTIAL FACILITY

#### **Secure residential facility**

- 68.** For the purposes of this Part, a “secure residential facility” means
- (a) a residential facility designated under this Act for the purposes of the
    - (i) assessment under section 8;
    - (ii) detention of a child prior to or after an initial inquiry is conducted under this Act;
    - (iii) detention of a child pending trial pursuant to section 40;
    - (iv) reception and rehabilitation of a child who has been sentenced to a term of imprisonment under this Act; and
  - (b) residential protection and treatment centre for the purposes of reception and rehabilitation of a child who requires psychiatric or psychological treatment or treatment for substance abuse pursuant to section 40 and section 70.

**Designation of a secure residential facility**

**69.** The Minister may by order designate and cause any lands or buildings that he may think fit to be used as a secure residential facility, and any lands or buildings authorised to be so used shall be subject to this Act.

**Designation of the Government Industrial School as a secure residential facility**

**70.(1)** The Government Industrial School is designated as a secure residential facility for the purposes of this Act.

(2) In this section, the Government Industrial School refers to the school situate at Dodds Plantation in the parish of Saint Philip.

**Detention of a child**

**71.** A child shall not be detained in custody in a secure residential facility unless that child

- (a) is being detained before the making of an order or the imposition of a sentence by a judge or magistrate;
- (b) has been committed to custody or imprisonment by a sentence or an order of a judge or magistrate.

**Child Justice Board**

**72.(1)** The Minister shall appoint a Board to be known as the “Child Justice Board”.

(2) The constitution of the Child Justice Board and matters related thereto are those set out in the *Fourth Schedule*.

(3) The members of the Child Justice Board shall be paid such remuneration as the Minister determines.

**Functions of the Child Justice Board**

**73.(1)** The Child Justice Board shall be responsible for the formulation of the policy of the secure residential facilities and shall give directions to the Director of a secure residential facility on the following:

- (a) the management and supervision of the secure residential facility;
- (b) the welfare of the children, including their education, training, recreation, conduct and safety;
- (c) the welfare and conduct of the staff at a secure residential facility; and
- (d) the proper maintenance of the secure residential facility.

(2) The Child Justice Board shall immediately notify the Minister of any abuses taking place at a secure residential facility of which the Board has knowledge.

**Appointment of a Director**

**74.(1)** The Minister shall appoint a Director of a secure residential facility designated as such under this Act.

(2) The Principal of the Government Industrial School shall for the purposes of this Act be considered to be a Director.

(3) The Director shall be the chief administrator and shall be responsible for the operation, maintenance, management and inspection of that secure residential facility.

**Staff**

**75.(1)** The Director shall be provided with such staff appointed in accordance with subsection (2), as is required for the purpose of carrying out the functions of a secure residential facility.

(2) The staff required for the purposes of subsection (1) shall be appointed in accordance with the *Public Service Act*, Cap. 29.

### **Status of certain officers of a secure residential facility**

- 76.(1)** An officer of a secure residential facility, who is in charge of
- (a) any child who is sent to that facility under this Act for the purpose of conveying him to or from the facility; or
  - (b) bringing a child back to the facility in case of his escape or refusal to return,

shall, for such purpose and while engaged in the duties set out in paragraph (a) and (b), have all such powers, authorities, protection and privileges of a constable under the *Police Act*, Cap. 167.

- (2) For the purposes of subsection (1), an “officer” is a person appointed or employed in the manner set out in section 75(2).

### **Maintenance of records**

- 77.(1)** The Director shall keep in a secure place all records pertaining to a child who is or has been detained in custody in the secure residential facility.
- (2) The Director and staff shall keep the records of a child who is or has been detained in custody in the secure residential facility confidential and shall not disclose those records unless required by an enactment or by an order of the court.
- (3) A person who contravenes subsections (1) or (2) is guilty of an offence and is liable to a fine of \$5 000 or to imprisonment for 12 months or to both.

### **Establishment of secure residential facility programmes**

- 78.** A Director shall establish and operate the following programmes:
- (a) a curriculum appropriate to the needs of each child in accordance with the provisions of the *Education Act*, Cap. 41;
  - (b) voluntary recreational programmes that are appropriate for children;

- (c) voluntary social and entertainment programmes that are appropriate for children;
- (d) voluntary religious services;
- (e) counselling programmes;
- (f) medical and dental treatment programmes;
- (g) visiting programmes; and
- (h) compulsory or voluntary work programmes.

### **Medical or Psychiatric Treatment**

**79.(1)** Where a child is moved from a secure residential facility to a

- (a) hospital facility;
- (b) psychiatric facility; or
- (c) residential protection and treatment centre

for examination or treatment, the child is not discharged from custody and, during the time the child is hospitalized or treated, the child shall be deemed to be in the custody of the Director of the secure residential facility in which the child was detained before hospitalization or treatment.

(2) The time spent by a child in a hospital, a psychiatric facility or residential protection and treatment centre is considered to be the same as if the child had spent that time in the secure residential facility in which the child was detained before hospitalization or treatment.

(3) Where the date for the discharge of a child from a secure residential facility arises while the child is hospitalized or being treated, the child shall be discharged from custody of the secure residential facility on that date, and the Director of the secure residential facility in which the child was detained before hospitalization or treatment shall take the necessary steps to remove the child from custody of the a secure residential facility at that time.

(4) Notwithstanding subsection (3), no child who is hospitalized in a psychiatric facility shall be discharged from that psychiatric facility except in accordance with the provisions of the *Mental Health Act*, Cap. 45.

(5) The Director shall notify the

- (a) parent of a child or an appropriate adult; and
- (b) Director of Child Protection

where a child is moved from a secure residential facility to a hospital, a psychiatric facility or residential protection and treatment centre for examination or treatment.

(6) The Director may consent to medical treatment for a child who is detained in custody in a secure residential facility where the

- (a) person is under the age of 16 years and requires medical treatment;
- (b) consent of a parent of a child or an appropriate adult is required by an enactment and is refused or otherwise not obtainable.

#### **Transfer of a child to another secure residential facility**

**80.** The Director may apply to the Court for an order to transfer a child from one secure residential facility to another.

#### **Emergency**

**81.(1)** The Director may declare a situation to be an emergency where there is the occurrence of fire, riot or disturbance, contagious disease or a natural disaster.

(2) Where an emergency is declared by the Director under subsection (1), the Director may

- (a) call off-duty staff to work;
- (b) require on-duty staff to remain on-duty;

- (c) give and enforce orders respecting the security and control of the secure residential facility to all persons who are on the premises during an emergency;
- (d) confine children to their rooms or to such other places as the Director considers appropriate and necessary; and
- (e) take such other steps and make such other orders as the Director considers appropriate and necessary in order to ensure that the secure residential facility remains secure and that the emergency is safely and satisfactorily dealt with.

### **Notification of death, injury or serious illness**

**82.(1)** Where a child who is detained in a secure residential facility dies, the Director shall immediately notify

- (a) the parent or the appropriate adult in respect of that child; and
- (b) the Coroner and the Police Service.

(2) Where a child who is detained in a secure residential facility is injured or becomes seriously ill, the Director shall

- (a) immediately notify the parent or the appropriate adult in respect of that child; and
- (b) seek the appropriate medical treatment in respect of that child.

### **Resources of the secure residential facility**

**83.** The resources of the secure residential facility are such money as Parliament may provide for the purpose of operating the secure residential facility.

### **Responsibilities of a child in custody**

**84.(1)** A child shall, upon being admitted to a secure residential facility, be informed of the provisions of this Part and of the disciplinary action that may be

taken for violation of or failure to comply with a provision of this Part governing the conduct of a child detained in custody in a secure residential facility.

- (2) A child who is detained in a secure residential facility
- (a) is subject to the rules of conduct and discipline as set out in this Act or regulations made under this Act; and
  - (b) shall participate in the programmes devised by the Director under the authority of this Act or regulations made under this Act.

### **Infractions**

- 85.(1)** A child who is detained in a secure residential facility shall
- (a) maintain the living and work areas in a clean and tidy condition;
  - (b) be prompt in the performance of regular duties of work that may be assigned to the child;
  - (c) comply with all reasonable instructions given by a member of staff;
  - (d) maintain a high level of personal cleanliness;
  - (e) respect the rights and dignity of other children in the facility; and
  - (f) make reasonable efforts to avoid behaviour that interferes with or is disturbing to any other person in the facility.
- (2) A child who is detained in a secure residential facility and who violates or fails to comply with subsection (1) commits an infraction.

### **Misconduct**

- 86.(1)** No child detained in a secure residential facility shall
- (a) assault or threaten to assault another person;
  - (b) engage in sexual contact;
  - (c) damage private or public property;
  - (d) have possession of drugs or deal in drugs with any other person;

- (e) bring drugs into or take drugs out of a place of secure custody;
- (f) escape or be unlawfully at large from a place of secure custody;
- (g) give or offer a bribe or reward to any other person or receive a bribe or reward from any other person;
- (h) disobey or fail to obey a reasonable order of a member of staff;
- (i) refuse or fail to do assigned work;
- (j) waste food;
- (k) damage equipment or material;
- (l) commit an indecent act by gesture, actions or in writing toward another person;
- (m) gamble;
- (n) create or incite a disturbance likely to endanger the security of a secure residential facility;
- (o) use loud, indecent, abusive, profane or insulting language;
- (p) fail or refuse to observe fire safety rules and regulations or alter, damage or interfere with any fire procedure, fire exit or equipment;
- (q) interfere with the work performance of another child detained in a facility;
- (r) take, or convert for personal use or for the use of another person, any property without the consent of the rightful owner of the property;
- (s) leave an assigned area without proper authority;
- (t) obstruct an investigation conducted or authorized by the Director;
- (u) fail to abide by any term or condition of a reintegration order;
- (v) fail to participate actively in a compulsory programme;

- (w) violate or fail to comply with any enactment governing the conduct of a child detained in a secure residential facility;
  - (x) counsel, aid or abet another person to commit an act that constitutes a violation of or a failure to comply with any enactment;
  - (y) have in his possession an implement made, adapted for use or used for the purpose of facilitating his escape or the escape of another child;
  - (z) have in his possession an implement made, adapted for use or used for the purpose of causing or inflicting injury on another person in the facility; or
- (aa) attempt to do anything referred to in paragraphs (a) to (y).

(2) A child detained in a secure residential facility who violates or fails to comply with subsection (1) commits an act of misconduct.

(3) A member of staff may report a child in relation to an act of misconduct by delivering to the Director a written incident report.

(4) Where a child is accused of committing an act of misconduct, the Director shall

- (a) advise the child of the nature of the accusation;
- (b) conduct an investigation in respect of the accusation; and
- (c) determine whether the child has committed an act of misconduct.

**Power of the Director to impose discipline on a child in a secure residential facility**

**87.(1)** Corporal punishment, severe or frightening measures shall not be inflicted on a child in a secure residential facility.

(2) The Director may impose disciplinary action on a child in a secure residential facility for any violation of or failure to comply with a provision of this Act or regulations made under this Act governing the conduct of the child in a secure residential facility.

(3) A Director who, after considering the circumstances, determines that a child in a secure residential facility has committed an infraction shall impose one or more of the following forms of disciplinary action:

- (a) verbal warning;
- (b) reduction or suspension of privileges for a definite period of time.

(4) A Director who, after considering the circumstances, determines that a child in a secure residential facility has committed an act of misconduct shall impose one or more of the following forms of disciplinary action:

- (a) verbal warning;
- (b) reduction or suspension of privileges for a definite period of time;
- (c) payment of part or all of the cost of repairing the damage done by the child;
- (d) performance of additional work; or
- (e) confinement for a definite period of time to an area assigned by the Director.

(5) Notwithstanding subsection (4), a Director may recommend to the Director of Public Prosecutions that a court proceeding be instituted against a child in a secure residential facility.

(6) A Director who has taken disciplinary action against a child in a secure residential facility shall advise the child of the appeal procedures.

### **Searches**

**88.(1)** An officer may conduct a search of a child in a secure residential facility where

- (a) the child is being transferred from one part of a secure residential facility to another part of that facility; or
- (b) the child is entering or departing from a secure residential facility.

(2) Where an officer believes, on reasonable and probable grounds, that a child has possession of or access to drugs, weapons or stolen property, the officer may at any time conduct a search of

- (a) all or any part of a secure residential facility;
- (b) a child detained in secure residential facility; or
- (c) the property of a child detained in a secure residential facility.

(3) Where a Director believes, on reasonable grounds, that a member of staff or a visitor to a secure residential facility

- (a) has possession of drugs, weapons or stolen property; or
- (b) is bringing or attempting to bring drugs, weapons or stolen property into or is taking or attempting to take drugs, weapons or stolen property out of the secure residential facility,

the Director may authorize a search of the member of staff, visitor or the property of the member of staff or visitor, including a vehicle in the care and control of the member of staff or visitor, that is located on the premises of the secure residential facility.

(4) No child detained in custody in a secure residential facility shall be searched by a person of the opposite sex.

(5) A child detained in a secure residential facility who refuses to be searched or resists a search may be separated from other children in the facility until the child submits to the search or until there is no longer a need for the search.

(6) For the purposes of this section, an “officer” is a person appointed or employed in the manner set out in section 75(2).

#### **Maintenance of order in secure residential facility**

**89.(1)** An officer of a secure residential facility shall maintain control of the facility by employing such means of reasoning, delaying tactics and other methods that do not involve the use of force against a child detained in a facility.

(2) Notwithstanding subsection (1), officer of a secure residential facility may take the appropriate action necessary

- (a) enforce maintain order within the secure residential facility;
- (b) prevent the child from escaping from the secure residential facility or returning a child to the secure residential facility from which he escaped;
- (c) protect the child or another person;
- (d) prevent the child from damaging property; or
- (e) conduct a search pursuant to section 88,

and such action shall be reasonable and not excessive having regard to the nature of the threat posed by the child and all other relevant circumstances of the case.

(3) An officer shall, where possible and practicable, arrange to have another officer present when taking any action pursuant to subsection (2).

(4) Where an officer takes any action against a child detained in secure residential facility pursuant to subsection (2), within 24 hours of the incident, that officer shall file a written report with the Director indicating the nature of the threat posed by the child and all other relevant circumstances of the case.

(5) For the purposes of this section, an “officer” is a person appointed or employed in the manner set out in section 75(2).

### **Grievance procedures**

**90.(1)** Where a child detained in a secure residential facility believes that a member of staff has treated him in an unreasonable, unjust, oppressive, improperly discriminatory, arbitrary, unfair, unduly harsh or inappropriate manner, that child, his parent, appropriate adult or his attorney-at-law may file a grievance with the Director in the prescribed form within 10 days after the occurrence of the incident that gave rise to the grievance.

- (2) Within 5 days after receiving the grievance referred to in subsection (1), the Director shall
- (a) hold a meeting with the child, his parent, appropriate adult or his attorney-at-law and the child shall be given an opportunity to explain the circumstances and the grounds of the grievance;
  - (b) make a decision with respect to the grievance;
  - (c) deliver to the child, his parent, appropriate adult or his attorney-at-law, in writing, the original and a copy of the decision, including reasons; and
  - (d) indicate to the child, parent, appropriate adult or attorney-at-law that the appeal procedure under subsection (3) is available.
- (3) A child who is aggrieved by a decision made under subsection (2) may appeal to a Judge in Chambers.
- (4) Where the Director or a member of staff of the secure residential facility was involved in the incident that gave rise to the grievance, the child, his parent, appropriate adult or his attorney-at-law may appeal to a Judge in Chambers.

#### **Discharge of child from a secure residential facility**

- 91.(1)** The Director shall discharge a child from a secure residential facility where
- (a) a magistrate or judge orders the discharge;
  - (b) the term of the order or the custodial portion of the sentence made by a magistrate or judge has expired; or
  - (c) the term of imprisonment has expired; or
  - (d) the Minister approves the discharge pursuant to section 92.
- (2) When a child is discharged from a secure residential facility, the Director
- (a) may deliver to the child the remaining quantities of any medication currently being taken by the child; and

- (b) shall deliver to the child any sums of money belonging to the child that are under the Director's control.
- (3) Sums of money referred to in paragraph (2)(b) may be delivered to the child in the form of a cheque made jointly payable to the child and to an appropriate co-payee chosen by the Director.
- (4) A Director may issue clothing to a child who is being discharged and who does not have suitable clothing.
- (5) A Director may reimburse a child upon discharge in an amount that the Director considers fair and reasonable for any property of the child that has been lost or damaged by the secure residential facility.
- (6) Where reasonably possible, upon a child's discharge the Director shall deliver to the child, parent or appropriate adult all of the child's property that is located in the secure residential facility.
- (7) A child, parent or appropriate adult, as the case may be, shall upon request give to the Director a receipt for all medication, sums of money, clothing or other property received under this section.
- (8) A Director may disburse funds in order to transport a child to the child's destination upon discharge.

#### **Discharge approval by Minister**

**92.** The Minister may approve the discharge of a child from a secure residential facility on application made to him in writing where that child has served two-thirds of his sentence or term of the order or the custodial portion of the sentence made by a magistrate or judge.

#### **Appeal**

**93.** A person who is aggrieved by a decision made under this Part may, within 14 days of the decision, appeal to a Judge in Chambers.

PART XI

REINTEGRATION

**Establishment of Reintegration Board**

**94.**(1) There shall be a Board to be known as the "Reintegration Board".

(2) The *Fifth Schedule* has effect with respect to the constitution of the Reintegration Board and otherwise in relation thereto.

**Functions of the Reintegration Board**

**95.** The functions of the Reintegration Board are to

- (a) hear and consider an application for a reintegration order;
- (b) grant, revoke or suspend a reintegration order;
- (c) assign conditions to a reintegration order;
- (d) maintain a register of its decisions;
- (e) keep statistical and other records in relation to its work; and
- (f) make annual reports to the Minister concerning its work.

**Remuneration of the members of Reintegration Board**

**96.** The members of the Reintegration Board shall be paid such remuneration as the Minister may determine.

**Staff**

**97.** The Reintegration Board may appoint and employ such other officers and employees as it deems necessary, on such terms and conditions as it thinks fit.

**Expenses**

**98.** The expenses of the Reintegration Board shall be defrayed out of the moneys voted for the purpose by Parliament.

**Confidentiality**

**99.(1)** All documents, information or matters disclosed in the discharge of the functions of the Board shall be regarded as secret and confidential and shall not be disclosed by a member of the Reintegration Board or any person concerned with the Reintegration Board except where those disclosures are made in compliance with

- (a) an order of the High Court; or
- (b) the Laws of Barbados.

(2) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both.

**Protection of members of the Reintegration Board**

**100.** No action, suit, prosecution or other proceeding shall be brought or instituted personally against any member of the Reintegration Board in respect of any act done *bona fide* in pursuance or execution or intended execution, of the provisions of this Act.

**Eligibility for grant of reintegration order**

**101.(1)** A child detained at a secure residential facility or a prison who has completed two-thirds of his sentence and has a record of good behaviour, shall be eligible for the grant of a reintegration order.

(2) The Director of a secure residential facility or the Superintendent of Prisons shall, at the end of each month or within such period as the Reintegration Board

shall determine, submit to the Reintegration Board, a list of the children who will be eligible for the grant of a reintegration order.

(3) The Director of a secure residential facility or the Superintendent of Prisons shall give written notice of eligibility for the grant of a reintegration order to the child, parent or appropriate adult or attorney-at-law of the child who is the subject of the reintegration order within 2 months of the eligibility of the relevant child.

### **Application for a reintegration order**

**102.**(1) A child who is eligible for the grant of a reintegration order under section 101, may apply in the prescribed manner to the Reintegration Board for the grant of that order.

(2) An application under subsection (1) shall contain the following particulars:

- (a) the full name and age of the applicant;
- (b) the nature of the offence of which the applicant was convicted and sentenced;
- (c) any other information on which the applicant relies in support of his application; and
- (d) any other information which may be requested by the Reintegration Board.

(3) The Director of a secure residential centre or the Superintendent of Prisons, as the case may be, shall furnish to the Reintegration Board,

- (a) a report prepared by him in respect of the conduct of the applicant while in the secure residential facility or a prison, as the case may be; and
- (b) a copy of a report containing an opinion by a psychiatrist or psychologist or any other person as may be designated by the Reintegration Board stating whether the applicant is fit to be released.

**Grant of a reintegration order**

**103.(1)** The Reintegration Board shall, in determining whether to grant a reintegration order may consider the following factors:

- (a) the conduct of the child while in a secure residential facility or a prison;
- (b) the availability of supervision and support for the child during the period stated in a reintegration order;
- (c) the likelihood that the child will fail to abide by any of the terms and conditions of a reintegration order;
- (d) the benefit of the reintegration order to the child, to the child's family or to other persons;
- (e) the risk to the public posed by the reintegration order being granted to the child;
- (f) the information contained in the reports referred to in section 101(3); and
- (g) such other factors as the Reintegration Board considers relevant.

(3) Within 14 days after receipt of an application under section 101(1) for a grant of a reintegration order, the Reintegration Board shall

- (a) advise the child, parent or appropriate adult or attorney-at-law of the child that is the subject of the reintegration order whether or not the reintegration order is granted;
- (b) indicate any terms and conditions, where the reintegration order is granted; and
- (c) give reasons where the reintegration order is not granted.

(4) The Reintegration Board may order the Director of a secure residential facility or the Superintendent of Prisons, as the case may be, to disburse funds to transport a child to and from the child's destination during the period covered in the reintegration order.

**Reintegration order**

**104.(1)** A reintegration order shall have effect for the period specified therein and shall require the holder of the reintegration order to submit during that period to the supervision of a probation officer appointed by the Chief Probation Officer and shall contain such requirements as the Reintegration Board considers necessary for securing the supervision and facilitating the rehabilitation of the holder of the reintegration order.

(2) Notwithstanding the generality of subsection (1), a reintegration order may include the following terms and conditions:

- (a) attend a school or any other educational or training institution;
- (b) obtain or continue employment or perform domestic or other duties required by the child's family;
- (c) participate in a programme specified by the Director of a secure residential facility or the Superintendent of Prisons that will enable the child to better carry out employment or improve his or her education or training;
- (d) attend an out-patient treatment programme where the child has a history of abusing drugs or alcohol or other like programme that would provide services that are suitable to addressing the child's needs; or
- (e) attend a community based service programme.

**Revocation or suspension of reintegration order**

**105.(1)** The Reintegration Board may suspend or revoke an authorization of reintegration order where the Director is satisfied, on reasonable grounds, that

- (a) the child is failing to abide by or is about to fail to abide by any of the terms and conditions of the reintegration order;
  - (b) the child has committed an offence while under the reintegration order;
- or

- (c) the revocation is necessary in order to protect the best interests of the child or the public.
- (2) Where the Reintegration Board intends to suspend or revoke a reintegration order, the Reintegration Board shall, within a reasonable time, give written notice of that intention to
  - (a) the Director of the relevant secure residential facility or the Superintendent of Prisons, as the case may be; and
  - (b) the child, parent or appropriate adult or attorney-at-law of the child that is the subject of the reintegration order.
- (3) Where the reintegration order has been suspended or revoked, the order shall cease to have effect and on completion of the notifications required under subsection (2) the child shall be returned to the relevant facility or prison.
- (4) Where the child is not returned to the secure residential facility, the Chairman of the Reintegration Board shall issue a warrant for the apprehension of the child, who shall, upon apprehension, be returned to the relevant facility or prison.
- (5) A parent or appropriate adult or attorney-at-law of the child who is the subject of the reintegration order who receives the notification referred to in subsection (2)(b) and fails to return the child to the relevant secure residential facility or prison is guilty of an offence and is liable on summary conviction to a fine of \$1 000 or to imprisonment for one year or to both.
- (6) Where a child who is the subject of a reintegration order is returned to the relevant secure residential facility or prison in accordance with subsection (3), the period spent by that child in the relevant secure residential facility or prison while his reintegration order is suspended or revoked, as the case may be, shall be counted as a part of the sentence in respect of which the reintegration order was granted and shall be taken into account for the purpose of determining the date of the expiration of that sentence.

**Forfeiture of reintegration**

**106.(1)** A child who during the period of the reintegration order is convicted of an offence punishable by imprisonment for 12 months or more thereby forfeits his reintegration and such forfeiture shall take effect from the date of conviction.

(2) Where there is an appeal against a conviction referred to in subsection (1) and the conviction is quashed, the forfeiture shall be set aside.

(3) The court before which the child referred to in subsection (1) is convicted shall state whether the sentence in respect of an offence referred to in subsection (1) shall be concurrent with or consecutive to the sentence in respect of which the reintegration is being forfeited.

**Reapplication**

**107.(1)** Where an application for a reintegration order was refused under section 101(3) the child may reapply to the Reintegration Board after 4 months from the date of the refusal.

(2) A child, in respect of whom a reintegration order has been suspended or revoked, may reapply for a reintegration order after 4 months from the date of suspension or revocation or such lesser period as may be determined by the Reintegration Board.

(3) A child who forfeits reintegration under section 104 shall not be entitled to reapply for a reintegration order in relation to the sentence in respect of which the reintegration was forfeited.

**Reintegration continuing education order**

**108.(1)** A child detained in a secured residential facility who will turn 18 years of age before the completion of his sentence, has a record of good behaviour and is seeking to continue or complete his education may apply to the Reintegration Board in the prescribed form for the grant of a reintegration continuing education order.

(2) The Director of a secure residential facility shall give written notice of eligibility for the grant of a reintegration order to the child, parent or appropriate adult or attorney-at-law of the child who is the subject of the reintegration continuing education order within 6 months of the eligibility of the relevant child.

(3) Sections 101 to 106 shall apply to a reintegration continuing education order with such adaptations or modifications as the circumstances require.

## PART XII

### MISCELLANEOUS

#### **Regulations**

**109.** The Minister may make regulations generally to give effect to this Act.

#### **Amendment of Schedules**

**110.** The Minister may by order amend the *First, Second, Third, Fourth* and *Fifth Schedules* to this Act.

#### **Transitional**

**111.(1)** Where proceedings for an offence were commenced under the *Juvenile Offenders Act, Cap. 138*, the offence shall, after the coming into force of this Act, be dealt with, tried and determined in accordance with this Act.

(2) Where under this Act the penalty or punishment is mitigated or reduced in relation to the penalty or punishment that would have been applicable had this Act not come into force, the provisions of this Act relating to penalty or punishment shall apply.

#### **Consequential amendments**

**112.** The enactments set out in Column 1 of the *Sixth Schedule* are amended in the manner specified in Column 2 of the *Sixth Schedule*.

**Repeal**

**113.** The

(a) *Juvenile Offenders Act, Cap. 138*; and

(b) *Reformatory and Industrial Schools Act, Cap. 169*

are repealed.

**Commencement**

**114.** This Act comes into force on a date to be fixed by proclamation.

**FIRST SCHEDULE**

*(Sections 7, 16, 41, 51, 59 and 110)*

1. Making use of threatening, violent or obscene language
2. Riotous, indecent, disorderly or insulting behaviour in any public place
3. Trespass
4. Praedial larceny
5. Offences under section 62 of the *Police Act*, Cap. 167
6. Offences under the *Road Traffic Act*, Cap. 295
7. Summary offences carrying a penalty of 5 years imprisonment or less

**SECOND SCHEDULE**

*(Sections 16, 19, 41, 59 and 110)*

1. Summary offences under the *Criminal Damage Act*, Cap. 113B
2. Summary offences under the *Drug Abuse (Prevention and Control) Act*, Cap. 131
3. Summary offences under of the *Firearms Act*, Cap. 179
4. Summary offences under the *Theft Act*, Cap. 155
5. Offences that are triable summarily or on indictment
6. Indictable offences carrying a penalty of over 5 years but not exceeding 14 years imprisonment

**THIRD SCHEDULE**

*(Sections 19, 20, 29, 30, 46, 59 and 110)*

1. Murder
2. Manslaughter
3. Indictable offences under the *Criminal Damage Act*, Cap. 113B
4. Indictable offences under the *Drug Abuse (Prevention and Control) Act*, Cap. 131
5. Indictable offences under the *Firearms Act*, Cap. 179
6. Indictable offences under the *Theft Act*, Cap. 155
7. Indictable offences carrying a penalty of 15 years imprisonment or more

**FOURTH SCHEDULE**

*(Sections 72 and 110)*

**Constitution of Child Justice Board**

1. The Child Justice Board shall consist of the Superintendent of Prisons or his nominee, a magistrate, the Chief Probation Officer or his nominee and 6 other members appointed by the Minister by instrument in writing.

**Tenure**

2.(1) The members of the Child Justice Board shall hold office for a period of 3 years but shall be eligible for reappointment.

(2) The Minister shall appoint a member of the Child Justice Board as Chairman and another member as Deputy-Chairman.

(3) If a vacancy occurs in the office of the Chairman or Deputy Chairman the Minister shall fill the vacancy as soon as possible from among the members of the Child Justice Board.

**Resignation of a member of the Child Justice Board**

3. A member may at any time resign his office by instrument in writing addressed to the Chairman, who shall forthwith forward the instrument to the Minister, and upon the receipt by the Chairman of the instrument the member ceases to be a member of the Child Justice Board.

**Resignation of the Chairman of the Child Justice Board**

4.(1) The Chairman may at any time resign his office by instrument in writing addressed to the Minister, and the Chairman's resignation shall take effect upon the receipt of the instrument by the Minister.

(2) Where the Chairman ceases to be Chairman, he also ceases to be a member.

**Publication in *Official Gazette***

5. The names of all members of the Child Justice Board as first constituted and every change in the membership thereafter shall be published in the *Official Gazette*.

**First meeting**

6. The first meeting of the Child Justice Board shall be held at one of the secure residential facilities not later than one month after all the members of the Child Justice Board have been appointed.

**Secretary**

7. The secretary shall be selected from among the members of the Child Justice Board.

**Quorum**

8. Five members of the Child Justice Board constitute a quorum.

**Meetings**

9.(1) The Child Justice Board shall regulate its own procedure.

(2) The Chairman may, at any time, call a meeting of the Child Justice Board and shall call a meeting within 14 days

(a) of a request for that purpose addressed to him in writing and signed by 3 members of the Child Justice Board; or

(b) of a direction to that effect addressed to him in writing and signed by the Minister.

(3) The Chairman, or, in his absence, the Deputy Chairman, shall preside at meetings of the Child Justice Board.

(4) In the absence of the Chairman or Deputy Chairman, or in the event that the Chairman or Deputy Chairman is unable to act, the members of the Child

Justice Board present and constituting a quorum shall elect one of their members to preside at that meeting.

(5) Subject to this Act, the functions of the Child Justice Board shall not be affected by any vacancy in the membership thereof.

**Minutes**

**10.** The Child Justice Board shall keep minutes of its proceedings and submit the minutes to the Minister within 2 weeks after each meeting.

**Visits to secure residential facilities**

**11.(1)** The members of the Child Justice Board shall pay frequent visits to the secure residential facilities and at least 2 members of the Child Justice Board shall visit at least once a month.

(2) Except at the request of the Child Justice Board, during a visit neither the Director of a secure residential facility nor the next senior member of staff shall accompany the members of the Child Justice Board.

(3) Subject to subparagraph (2), no person other than the Director of a secure residential facility or his nominee may be permitted to accompany members of the Child Justice Board.

**FIFTH SCHEDULE***(Sections 94 and 110)***Constitution of Reintegration Board**

1.(1) The President, by instrument under the Public Seal acting on the recommendation of the Minister shall appoint the members of the Reintegration Board.

(2) The Reintegration Board shall comprise the following persons:

- (a) a present or former member of the Judiciary;
- (b) the Permanent Secretary of the Ministry of Attorney-General or his nominee;
- (c) the Permanent Secretary of the Ministry of Home Affairs or his nominee;
- (d) the Superintendent of Prisons or his nominee;
- (e) the Chief Probation Officer or his nominee;
- (f) the Commissioner of Police or his nominee;
- (g) the President of the Barbados Bar Association or his nominee;
- (h) a psychiatrist;
- (i) a criminologist or social worker;
- (j) a psychologist;
- (k) a representative from a religious institution;
- (l) a representative from civil society; and
- (m) a representative of the youth.

(3) The member of the Judiciary referred to in subparagraph (2)(a) shall be the Chairman and the Deputy Chairman shall be elected from among the members of the Reintegration Board.

(4) For the purposes of this paragraph, “youth” means a person who is under the age of 30 years but older than the age of 18 years.

### **Tenure**

2.(1) A member of the Reintegration Board shall hold office for a period of 3 years and shall be eligible for reappointment.

(2) Where a vacancy is created by the death, resignation or removal from office of a member, a person may be appointed in accordance with paragraph 1(1) to fill that vacancy.

### **Resignation**

3.(1) The Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Minister and upon the date of receipt by the Minister of the instrument, the Chairman or Deputy Chairman ceases to be Chairman or Deputy Chairman and a member of the Reintegration Board.

(2) A member may at any time resign his office by instrument in writing addressed to the Chairman, who shall forthwith cause the instrument to be forwarded to the Minister and upon the date of the receipt by the Minister of the instrument, that member ceases to be a member of the Reintegration Board.

### **Publication in *Official Gazette***

4. The names of all members of the Reintegration Board as first constituted and every change in the membership thereafter shall be published in the *Official Gazette*.

**Meetings**

5.(1) The Reintegration Board shall regulate its own procedure and shall meet at least once every quarter and at such other times as may be necessary or expedient for the transaction of the business of the Reintegration Board.

(2) The minutes of the meetings of the Reintegration Board shall be kept in proper form.

(3) The decisions of the Reintegration Board shall be by majority vote and shall be issued in writing.

**Quorum**

6. Seven members of the Reintegration Board shall constitute a quorum.

**Minutes**

7. The Reintegration Board shall submit the minutes of the meetings of the Reintegration Board to the Minister as soon as possible after they have been approved by the Reintegration Board.

## SIXTH SCHEDULE

(Section 112)

## CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Bail Act, Cap. 122A</i>	<p>In section 2 delete</p> <p>(a) the definition of the word "child" and substitute the following:</p> <p style="padding-left: 40px;">" "child" means a person under the age of 18;"</p> <p>(b) the definition of the word "young person".</p> <p>In section 5,</p> <p>(a) delete paragraph (b) of subsection (1) and substitute the following:</p> <p style="padding-left: 40px;">"(b) the court is satisfied that the defendant should be kept in custody</p> <p style="padding-left: 80px;">(i) for his own protection;</p> <p style="padding-left: 80px;">(ii) for the protection of the community; or</p> <p style="padding-left: 80px;">(iii) if he is a child, for his own welfare;"</p> <p>(b) in paragraph (b) of subsection (3) delete the words "or young person";</p> <p>(c) delete paragraph (c) of subsection (5) and substitute the following:</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Bail Act</i> , Cap. 122A - (Cont'd)	"(c) references to a defendant being kept in custody or being in custody include, where the defendant is a child being detained pursuant to the provisions of the <i>Child Justice Act, 2023</i> (Act 2023- );".

In section 12, delete subsection (5) and substitute the following:

"(5) If a parent or guardian of a child consents to be a surety for the child for the purposes of this subsection, the parent or guardian may be required to ensure that the child complies with any requirement imposed on him by virtue of subsection (4), but

- (a) no requirement shall be imposed on the parent or the guardian of a child by virtue of this subsection where it appears that the child will attain the age of 18 before the time to be appointed for him to surrender to custody; and
- (b) the parent or guardian shall not be required to secure compliance with any requirement to which his consent does not extend and shall not, in respect of those requirements to which his consent does extend, be bound in a sum greater than \$500."

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Bail Act</i> , Cap. 122A - (Concl'd)	In section 18, delete subsection (7).
2. <i>Community Legal Services Act</i> , Cap. 112A	In Part I of the <i>First Schedule</i> , delete item (f) and substitute the following:  <p style="margin-left: 40px;">"(f) all criminal and administrative proceedings involving a child as defined by the section 2 of the <i>Child Justice Act, 2023</i> (Act 2023- );".</p>
3. <i>Criminal Law (Arrestable Offences) Act</i> , Cap. 125A	In the <i>Schedule</i> , delete item 15 and substitute the following:  <p style="margin-left: 40px;">15. Section 76 of the <i>Child Justice Act, 2023</i> (Act 2023- ).".</p>
4. <i>Criminal Records (Rehabilitation of Offenders) Act</i> , Cap. 127A	In section 3 delete subsection (4) and substitute the following:  <p style="margin-left: 40px;">"(4) Notwithstanding subsection (2), where a person was under the age of 18 at the time of conviction of</p> <p style="margin-left: 80px;">(a) a summary offence or offences and has not been convicted of any other offences between the time of his eighteenth year and twentieth year; or</p> <p style="margin-left: 80px;">(b) an indictable offence or offences and has not been convicted of any other offence between the time of his eighteenth year and twenty-third year, then for the purpose of this Act, the person shall be treated as a rehabilitated person and the conviction shall be treated as spent."</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
4. <i>Criminal Records (Rehabilitation of Offenders) Act, Cap. 127A - (Concl'd)</i>	<p>In section 5(4) delete the words "<i>Reformatory and Industrial Schools Act</i>" and substitute the words "<i>Child Justice Act, 2023 (Act 2023- )</i>."</p> <p>In Part III of the <i>First Schedule</i> delete the words "Juvenile Correctional Centres and Places of Safety" and substitute the following:</p> <p style="padding-left: 40px;">"Child Correctional Centres, Places of Safety, Residential Protection and Treatment Centres and Secure Residential Facilities".</p>
5. <i>Drug Abuse (Prevention and Control) Act, Cap. 131</i>	<p>In section 2 delete</p> <p style="padding-left: 20px;">(a) the definition of the word "child" and substitute the following:</p> <p style="padding-left: 60px;">" "child" means a person under the age of 18;" and</p> <p style="padding-left: 20px;">(b) the definition of the word "young person".</p> <p>Delete all references in the Act to the words "or young person".</p>
6. <i>Education Act, Cap. 41</i>	In section 64B delete subsections (3) and (4).

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act</i> , Cap. 116A	<p>Delete all references to the word "juvenile court" and substitute the words "child justice court" throughout the Act.</p> <p>In section 2,</p> <p style="padding-left: 2em;">(a) in subsection (1),</p> <p style="padding-left: 4em;">(i) delete the definition of the word "child" and substitute the following:</p> <p style="padding-left: 6em;">" "child" means a person under the age of 18;"; and</p> <p style="padding-left: 4em;">(ii) insert the following definition in the appropriate alphabetical order:</p> <p style="padding-left: 6em;">" "child justice court" means a court sitting to hear charges against children."; and</p> <p style="padding-left: 2em;">(b) delete subsection (6).</p> <p>Section 51 is deleted and substituted by the following:</p> <p style="padding-left: 2em;"><b>"Summary trial of information against child for an indictable offence</b></p> <p style="padding-left: 2em;"><b>51.(1)</b> Where a child appears or is brought before a magistrate on an information charging him with an indictable offence, he shall be tried summarily unless</p> <p style="padding-left: 4em;">(a) he is charged with an offence mentioned in the <i>Third Schedule</i> to the <i>Child Justice Act, 2023</i> (Act 2023- ); or</p>

*Sixth Schedule - (Cont'd)*

*CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i></p>	<p>(b) he is charged jointly with a person who has attained the age of 18 and the magistrate considers it necessary in the interests of justice to commit them both for trial,</p> <p>and accordingly in a case falling within paragraph (a) or (b), the magistrate shall commit the accused for trial if either he is of the opinion that there is sufficient evidence to put him on trial or he has power under section 20 so to commit him without consideration of the evidence.</p> <p>(2) Where, in a case falling within subsection (1)(b), a magistrate commits a child for trial for an offence with which he is charged jointly with a person who has attained the age of 18, the magistrate may also commit him for trial for any other indictable offence with which he is charged at the same time, whether jointly with the person who has attained the age of 18 or not, if that other offence arises out of circumstances that are the same as or connected with those giving rise to the first-mentioned offence.</p> <p>(3) If on trying a person summarily in pursuance of subsection (1) the magistrate finds him guilty, he may impose a sentence in accordance with Part VII of the <i>Child Justice Act, 2023</i> (Act 2023- )."</p>

Delete the crossheading which states the words "Power to Remit Person Under 16 for Trial to Child Justice Court" and substitute the following:

**"Power to Remit a child for Trial to Child Justice Court".**

*Sixth Schedule - (Cont'd)*

*CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i></p>	<p>Delete section 56 and substitute the following:</p> <p><b>"Power of magistrate to remit a child for trial to a Child Justice Court in certain circumstances</b></p> <p><b>56.(1)</b> Where</p> <p style="padding-left: 40px;">(a) a child appears or is brought before a court other than a child justice court on information jointly charging him and one or more other persons with an offence; and</p> <p style="padding-left: 40px;">(b) that other person, or any of those other persons, has attained the age of 18,</p> <p>subsection (2) shall have effect.</p> <p>(2) Where</p> <p style="padding-left: 40px;">(a) the magistrate proceeds to the summary trial of the information in the case of both or all of the accused, and the older accused or each of the older accused pleads guilty; or</p> <p style="padding-left: 40px;">(b) the magistrate</p> <p style="padding-left: 80px;">(i) in the case of the older accused or each of the older accused, proceeds to inquire into the information as an examining magistrate and either commits him for trial or discharges him; and</p>

*Sixth Schedule - (Cont'd)*

*CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i></p>	<p>(ii) in the case of the child, proceeds to the summary trial of the information,</p> <p>then, if in either situation the child pleads not guilty, the magistrate may before any evidence is called in his case remit him for trial to the child justice court.</p> <p>(3) A person remitted to a child justice court under subsection (2) shall be brought before and tried by a child justice court accordingly.</p> <p>(4) Where a person is so remitted to a child justice court</p> <p style="padding-left: 2em;">(a) he shall have no right of appeal against the order of remission; and</p> <p style="padding-left: 2em;">(b) the magistrate may give such directions as appear to be necessary with respect to his custody or for his release on bail until he can be brought before the child justice court.</p> <p>(5) In this section "the older accused" means such one or more of the accused as have attained the age of 18."</p>

Delete the shoulder note of section 64 and substitute the following:

**"Restriction on fines in respect of a child".**

Section 71 is repealed.

*Sixth Schedule - (Cont'd)*

*CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i>	<p>Delete section 115 and substitute the following:</p> <p><b>"Enforcement of fines imposed where the offender is a child</b></p> <p><b>115.(1)</b> Where an offence has been committed by a child which involves a default consisting in failure to pay, or want of sufficient distress to satisfy, an amount adjudged to be paid by a conviction, the magistrate may, subject to the following provisions of this section, make</p> <p style="padding-left: 40px;">(a) an order requiring the defaulter's parent or guardian to enter into a recognizance to ensure that the defaulter pays so much of that amount as remains unpaid; or</p> <p style="padding-left: 40px;">(b) an order directing so much of that amount as remains unpaid to be paid by the defaulter's parent or guardian instead of by the defaulter.</p> <p>(2) An order under subsection (1) shall not be made in respect of a defaulter</p> <p style="padding-left: 40px;">(a) in pursuance of paragraph (a) of that subsection, unless the parent or guardian in question consents;</p> <p style="padding-left: 40px;">(b) in pursuance of paragraph (b) of that subsection, unless the magistrate is satisfied in all the circumstances that it is reasonable to make the order.</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i></p>	<p>(3) A magistrate shall not make an order under subsection (1) in consequence of a default of a child consisting in failure to pay or want of sufficient distress to satisfy an amount adjudged to be paid by a conviction unless the magistrate has since the conviction inquired into the defaulter's means in his presence on at least one occasion.</p> <p>(4) A magistrate shall not make an order under subsection (1) unless the magistrate is satisfied that the defaulter has, or has had since the date on which the amount in question was adjudged to be paid, the means to pay the amount or any instalment of it on which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected, to pay it.</p> <p>(5) An order under subsection (1) may be made in pursuance of paragraph (b) of that subsection against a parent or guardian who, having been required to attend, has failed to do so but, save as aforesaid, an order under that subsection shall not be made in pursuance of that paragraph without giving the parent or guardian an opportunity of being heard.</p> <p>(6) A parent or guardian may appeal to the High Court against an order under subsection (1) made in pursuance of paragraph (b) of that subsection.</p> <p>(7) Any amount ordered under subsection (1)(b) to be paid by a parent or guardian may be recovered from him in like manner as if the order had been made on the conviction of the parent or guardian of an offence.</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act</i> , Cap. 116A - (Concl'd)	<p>(8) In this section</p> <p style="padding-left: 40px;">"amount adjudged to be paid by a conviction" means any fine, costs, compensation or other amount adjudged to be paid by an order made on a finding of guilt, including an order made under the <i>Child Justice Act, 2023</i> (Act 2023- );</p> <p style="padding-left: 40px;">"guardian", in relation to a child, means a person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction."</p>
<i>In the Fifth Schedule</i>	
	<p>(a) in the column entitled "Number" delete the words "Cap. 169";</p> <p>(b) in the column entitled "Short title" delete the words "Reformatory and Industrial Schools Act"; and</p> <p>(c) in the column entitled "Proceedings to which section 85 applies" delete the words " section 43".</p>
8. <i>Penal System Reform Act</i> , Cap. 139	<p>In the long title</p> <p>(a) delete the semi-colon appearing after the words "powers of sentencing" and substitute a full-stop; and</p> <p>(b) delete the following:</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
8. <i>Penal System Reform Act</i> , Cap. 139 - (Cont'd)	"by an amendment to the <i>Juvenile Offenders Act</i> to raise the age of criminal responsibility; and for connected and incidental purposes."

In section 2 delete the definition of "custodial sentence" and substitute the following:

"custodial sentence" means a sentence of imprisonment or of detention in a secure residential facility or a residential protection and treatment facility as defined by the *Child Justice Act, 2023* (Act 2023- );".

Section 5 is repealed.

Delete section 10 and substitute the following:

**"Attendance centre orders**

**10.(1)** Where a court has the power to deal with a person under section 9 of the *Probation of Offenders Act*, Cap. 146 for failure to comply with any of the requirements of a probation order, the court may, if it has been notified by the Minister that an attendance centre is available for the reception of persons of that person's description, order that person to attend at such a centre, to be specified in the order, for such number of hours as may be so specified.

(2) An order under this section is referred to in this Act as an "attendance centre order".

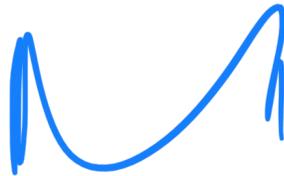
(3) An attendance centre order shall not be made in the case of an offender who has been previously sentenced to imprisonment."

*Sixth Schedule - (Concl'd)**CONSEQUENTIAL AMENDMENTS - (Concl'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
8. <i>Penal System Reform Act, Cap. 139 - (Concl'd)</i>	<p>In section 13</p> <p>(a) subsection (1), delete the word "16" and substitute the word "18";</p> <p>(b) delete subsection (2);</p> <p>(c) subsection (5), delete paragraph (b) and substitute the following:</p> <p style="padding-left: 40px;">"(b) be more than 240."</p> <p>In section 17(1) delete the word "16" and substitute the word "18".</p>
9. <i>Magistrate's Courts (Criminal Procedure) Rules, 2001 (S.I. 2001/98)</i>	<p>In rule 30, paragraph (1), delete</p> <p>(a) the semi-colon and the word "and" in sub-paragraph (j) and substitute a full-stop; and</p> <p>(b) sub-paragraph (k).</p> <p>In the <i>Second Schedule</i> delete the words "The fees payable by juveniles shall be in the discretion of the magistrate." and substitute the following:</p> <p style="padding-left: 40px;">"The fees payable by a person under the age of 18 years shall be in the discretion of the magistrate."</p>

Permanent Secretary  
Ministry of Home Affairs and Information

I hereby **CERTIFY** that the *Child Justice Bill, 2023*, a faired copy of which is at (9), is in order for submission to the Cabinet and, if approved without amendment, may be introduced into Parliament.



**DALE D. MARSHALL, S.C, M.P.**

Attorney-General

7<sup>th</sup> March, 2023