

## **CHILD JUSTICE BILL 2018**

### **EXPLANATORY NOTE: A SUMMARY OF KEY AREAS OF LEGISLATIVE REFORM**

(FOR INFORMATION AND DISCUSSION ONLY)

- **APPLICATION OF THE LAW (CLAUSE 4):**

The provisions of the Child Justice Bill will apply to:

- (a) all persons under eighteen years alleged to have committed a crime and includes any person who attains the age of eighteen years before the proceedings that were instituted against him or her have been concluded;
- (b) persons over eighteen but under twenty-one on the Direction of the Director of Public Prosecutions (DPP) in special circumstances outlined in the Bill.

*Under the current law (The Juveniles Act which will be repealed on the commencement of this new law):*

- Child- means a person under the age of fourteen;
- Juvenile-means a person under the age of sixteen;
- Young person-means a person who has attained the age of fourteen and is under the age of sixteen.

- **AGE OF CRIMINAL RESPONSIBILITY (CLAUSE 5):**

The Bill proposes to move the age of criminal responsibility from eight **(8)** years of age to twelve **(12)** years of age. That is to say, a child under twelve shall not be prosecuted for an offence that he or she is alleged to have committed.

A child aged twelve but under the age of fourteen **(14)** shall be presumed not to have the capacity to appreciate the difference between right and wrong unless this is proved otherwise.

Clause 48 of the Bill makes provisions for establishing criminal responsibility (whether a child age twelve and under fourteen is capable of appreciating right from wrong).

Prosecution of a child aged twelve and under fourteen must be on the basis of a certificate of the DPP.

*Under the current law:*

It shall be conclusively presumed that no child under the age of **eight** can be guilty of any offence.

- **ESTABLISHMENT OF THE CHILD JUSTICE COMMITTEE (CJC) (CLAUSE 6):**

The Committee will be responsible for exercising the powers and discharging the duties conferred on it under the Bill. The CJC shall comprise of a Magistrate, a minister of religion and two social workers.

- **ESTABLISHMENT OF ASSESSMENT CENTRES AND A RESIDENTIAL FACILITY (CLAUSES 8 AND 9):**

The Minister shall establish and maintain or agree to the establishment and maintenance of assessment centres and a secure residential facility for the reception, evaluation or rehabilitation of a child.

*Under the current law:*

Approved Schools- may only be there for a maximum three years if a child under fourteen or two years if under sixteen and only up to age sixteen.

- **SECURING ATTENDANCE AT AN INITIAL INQUIRY (PART V- CLAUSES 10 TO 22):**

Sets out the methods to be used by the police in securing attendance of a child for an initial inquiry.

By the process of:

- ❖ an apprehension,
- ❖ a summons, or
- ❖ a written notice.

The Bill provides at for the instances where each process may be used.

- **ASSESSMENT OF A CHILD (PART VI-CLAUSES 23 TO 26):**

The Bill provides in this Part for the powers and duties of designated officers in relation to the assessment of a child who is in conflict with the law.

An assessment must be completed and a report submitted to the DPP prior to the initial inquiry before the CJC. For example, under **Clause 23** a designated officer who receives notification from a police officer that a child has been apprehended, served with a summons or issued with a written notice, shall assess the child before he or she appears at the initial inquiry before the CJC.

An assessment is intended to make recommendations regarding such matters as the release of the child, the possibility of diversion, the placement in a secure residential facility.

The information obtained at the assessment is not admissible in court proceedings against the child.

- **INITIAL INQUIRY IN RESPECT OF A CHILD IN CONFLICT WITH THE LAW (PART VII-CLAUSES 27 TO 30):**

The proceedings shall be informal.

Allowance for attendance by the child, the parent or an appropriate adult, the DPP, the designated officer who conducted the assessment, the representing attorney-at-law.

Consequences of failure to attend an initial inquiry are set out in this Part of the Bill.

The decisions of the CJC which include such decisions regarding diversion, referrals to the Director responsible for child care and protection under the Children (Care and Adoption) Act, referrals for trial in the Family Court.

- **DIVERSION (PART VIII-CLAUSES 40 TO 43):**

“diversion” refers to 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.

The Bill sets out conditions for diversion and the diversion options available.

The purposes of diversion options are to:

- (a) encourage the child to be accountable for the harm 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 its impact on 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 prevent adverse consequences flowing from being subject to the criminal justice system; and
- (h) prevent the child from having a criminal record.

Options:

Level one options include:

- ❖ an oral or written apology to a specified person or institution,
- ❖ a formal caution with or without conditions,
- ❖ placement under a supervision and guidance for a specified period,
- ❖ the issue various order including a family time order,
- ❖ referral to counselling or therapy for a specified period,
- ❖ payment of “symbolic compensation” to a specified person or an institution (that is to say the giving of an object owned, made or bought by a child ),
- ❖ restitution of a specified object to a specified victim of an alleged offence where the object concerned may be returned or restored.

Level two options include:

- ❖ all of the level one options with specified periods where applicable,
- ❖ community service without payment,
- ❖ provision of some service or benefit to a specified victim in an amount which the family of the child is able to afford

Level three options include:

- ❖ referral to a programme with a residential element
- ❖ community service without payment,
- ❖ where the child is not attending formal schooling, compulsory attendance at a specified place vocational or educational purpose

- **SENTENCING (Part X):**

The Bill contains provisions for a wider range of sentencing options, such as:

- (a) community based sentences
- (b) restorative justice sentences which refers to sentences which promotes *'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'*
- (c) sentences involving correctional supervision
- (d) sentence to be imposed on a child with a compulsory residential requirement
- (e) referral of a child to a secure residential facility
- (f) referral of a child to prison
- (g) a penalty in lieu of a fine or imprisonment (Such penalty includes a symbolic compensation which is the giving of an object owned, made or bought by the child to a person, or group of persons or an institution as compensation for the harm caused by the child)
- (h) compensation to be paid by the parent of a child

**Note:** It is to be noted that a sentence of capital punishment, life imprisonment, or corporal punishment shall not be imposed on a child. **Clause 66**

*Under the current law:*

The Corporal Punishment Act will be repealed in respect to its application to a child.

- **LEGAL REPRESENTATION (CLAUSE 69):**

If no legal representative is appointed by the parent or an appropriate adult a child must be provided with legal representation by the State.

- **SCHEDULE OF OFFENCES**

Offences are listed in three categories under Schedules 1, 2 and 3.

The Bill sets out the manner in which the alleged commission of an offence is treated. For example, offences listed in **Schedule 1** include:

- (a) assault where grievous bodily harm **has not** been inflicted;
- (b) malicious injury to property where damage does not exceed five thousand dollars;
- (c) trespass;
- (d) any offence under any law in force in the State relating to the illicit possession of dependence producing drugs where the value involved does not exceed five thousand dollars;
- (e) theft, where the value of the property does not exceed five thousand dollars;

In respect to Schedule 1 offences the Bill sets out:

- ❖ in clause 11 that there must be compelling reasons justifying an apprehension for any offence listed in Schedule 1
- ❖ in clause 15 that only in exceptional circumstances should a child be kept in detention in police custody for a Schedule 1 offence
- ❖ in clause 63 that a sentence of imprisonment shall not be imposed in respect to a Schedule 1 offence.

Similarly the Bill sets certain conditions with respect to **Schedules 2 and 3** offences. For instance, there are provisions in the Bill for:

- ❖ consultation with the DPP for the release of the child into the care of the parent or an appropriate adult;
- ❖ (except for Schedule 3 offences) release on recognisance, with or without sureties
- ❖ detaining of a child and the provision of a place of safety (no release in case of Schedule 3 offences)
- ❖ the exceptional circumstances where a child may be detained in prison rather than a place of safety (clause 33)
- ❖ (except for certain Schedule 3 offences) time limit for the conclusion of the trial
- ❖ A time limit of six months, from the date the child has pleaded to the charge, is set for the conclusion of the trial (except in cases of a charge for murder, robbery or rape).

- ❖ restrictions on referrals to prison (clause 63)
- ❖ (except for Schedule 3 offences) records of conviction and sentences to be erased/ wiped from the records (clause 73)

Offences listed in Schedule 2 include:

- (a) Assault involving the infliction of grievous bodily harm
- (b) Arson
- (c) Robbery
- (d) Theft
- (e) Any offence under any law relating to the illicit possession of dependence drugs where the value involved does not exceed one hundred thousand dollars
- (f) Forgery or fraud, where the amount concerned does not exceed one hundred thousand dollars

Offences listed in Schedule 3 include:

- (a) Murder.
- (b) Rape.
- (c) Robbery:
  - where there are aggravating circumstances;
  - involving the taking of a motor vehicle.
- (d) Indecent assault involving the infliction of grievous bodily harm.
- (e) Indecent assault on a person under the age of eighteen years.
- (f) Any offence pursuant to the Drug Trafficking Offences Act or the Drugs (Prevention of Misuse) Act if:
  - the value of the dependence producing substance in question is more than one hundred thousand; or
  - the value of the dependence producing substance in question is more than one hundred thousand and the offence was committed by a person, group of persons, acting in the execution or furtherance of a common purpose or conspiracy.