

**SAINT VINCENT AND THE GRENADINES  
CHILD JUSTICE ACT 2019  
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SAINT VINCENT AND THE GRENADINES

ACT NO. 29 OF 2019

I ASSENT

[L.S.]

SUSAN DOUGAN  
Governor-General  
31st December, 2019.

ANACT to establish a judicial process for children accused of committing offences that aims at protecting the rights of children and for other related matters.

[BY PROCLAMATION]

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

**PART I**

**PRELIMINARY**

- |  |                              |
|--|------------------------------|
| 1. (1) This Act may be cited as the Child Justice Act, 2019.   | Short title and commencement |
| (2) This Act comes into force on a day to be fixed by the Governor-General by Proclamation published in the Gazette.               |                              |
| 2. In this Act, unless the context otherwise requires—   | Interpretation               |
| “acknowledging responsibility” means an admission of responsibility for an offence by a child without a formal admission of guilt; |                              |
| “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 eighteen years, but excludes a parent;

“assessment” means the assessment of a child by a designated officer pursuant to Part VI;

“assessment centre” means any place established, designated or certified by the Minister under section 8 to receive a child in conflict with the law;

“attorney-at-law” means an individual who is duly admitted and entitled to practice law in Saint Vincent and the Grenadines;

“child” means a person under the age of sixteen;

“child in conflict with the law” means a child who is alleged to have committed an offence;

“Child Justice Committee” means the Child Justice Committee established under section 6;

“Commissioner of Police” means the Commissioner of Police appointed pursuant to section 85 of the Constitution;

“community service” means work for a community organisation or other work of value to the community performed by a child without payment;

“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 specified person;

“correctional supervision” means a community based sentence referred to in section 56;

Cap. 25

“Court” means the Family Court established under section 3 of the Family Court Act;

“detention” includes confinement in a police cell, lockup, place of safety or other secure residential facility;

Cap. 225

“Director” means the person appointed under section 6 of the Children (Care and Adoption) Act to perform the functions of Director responsible for child care and protection;

“designated officer” includes a social worker, a probation officer or any public officer whose duties include the performance of the functions of probation officer or social worker;

“Director of Public Prosecutions” means the Director of Public Prosecutions appointed under section 81 of the Constitution;

Cap. 10

“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 VIII;

“diversion option” means a plan or programme with a specified content and duration set out in three levels under section 41;

“family group conference” means a gathering convened by a designated officer as a diversion or sentencing option pursuant to section 58;

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

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

“initial inquiry” means a procedure referred to in Part VII which takes place after an assessment and before trial in a court;

“judicial officer” means a person appointed as judicial officer pursuant to section 5 of the Family Court Act, or where the context requires a judge of the High Court, the Court of Appeal, or any other court of competent jurisdiction;

“Minister” means the Minister charged with responsibility for family and child services;

“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 or the biological mother of a child;

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

“parent” includes—

- (a) a natural or adoptive parent who has the parental responsibility of the child;

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 access to available services; and
- (i) every effort shall be made to ensure that children receive equal treatment to other children when having committed similar offences.

(2) A judicial officer presiding in the Court or the Director or the members appointed to the Child Justice Committee pursuant to section 6, 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) if 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 shall be considered;
- (c) if 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 in detention in police custody:

- (a) shall be–
  - (i) detained separately from adults;
  - (ii) detained with children of the same sex;
  - (iii) detained 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 reasonable visits by a parent, a guardian, an attorney-at-law, a qualified social worker, a



probation officer, a health worker and a religious counsellor;

- (iv) of access to reading material;
- (v) to adequate exercise; and
- (vi) to adequate clothing.

## PART II

### APPLICATION AND CRIMINAL RESPONSIBILITY

4. (1) Subject to subsections (2) and (3), this Act shall apply to— Application of Act
- (a) a person who is alleged to have committed an offence and who was under the age of sixteen years at the time of the alleged commission of the offence; and
  - (b) a person referred to in paragraph (a) who attained the age of sixteen years before proceedings that were instituted against him or her, pursuant to this Act, have been concluded.

(2) The Criminal Procedure Code shall apply to any person referred to in subsection (1), except in so far as this Act provides for different procedures in respect of that person. Cap. 172

(3) The Director of Public Prosecutions, in the circumstances described in subsection (4), may direct that this Act shall apply to a person who is alleged to have committed an offence and who, at the time of the alleged commission of the offence, was sixteen years or over but under the age of eighteen years.

- (4) A direction referred to in subsection (3) may be issued if—
- (a) there are several co-accused and the majority of them are under the age of sixteen years;
  - (b) the person commits a further offence while serving a residential sentence imposed pursuant this Act and after having reached the age of sixteen years; or
  - (c) in the opinion of the Director of Public Prosecutions, any other circumstance merits the issuance of a direction under that subsection.

(5) The existing laws shall, as from the date of the commencement of this Act, be construed with such adaptations as may be necessary to bring them into conformity with this Act.

(6) For the purposes of subsection (5) the expression “existing laws” means any Act, subsidiary legislation or other instrument which has effect as part of the laws of Saint Vincent and the Grenadines immediately before the commencement of this Act.

Criminal  
responsibility

5. From the date of commencement of this Act a child under the age of twelve years shall not be capable of or guilty of committing a criminal offence.

### PART III

#### CHILD JUSTICE COMMITTEE

Establishment of  
Child Justice  
Committee

6. (1) There is established a Child Justice Committee which shall be responsible for exercising the powers and discharging the duties conferred on it pursuant to this Act.

(2) The Child Justice Committee shall consist of the members appointed by the Minister as follows—

- (a) a magistrate or an attorney-at-law of at least seven years practice; and
- (b) two social workers.

(3) A magistrate or an attorney-at-law appointed pursuant to subsection (2) shall be a person who has experience or training in child psychology or child welfare.

(4) A social worker appointed pursuant to subsection (2) shall be a person who is or was actively involved in health, education or welfare activities pertaining to children.

(5) The term of office of a member of the Child Justice Committee and other matters of appointment including resignation shall be as prescribed.

(6) The appointment of a member of the Child Justice Committee shall be terminated by the Minister where the member—

- (a) has been convicted of an offence punishable by imprisonment or by a fine exceeding five thousand dollars; or
- (b) fails to attend proceedings of the Child Justice Committee for three consecutive meetings without any valid reason.

(7) The appointment of a magistrate, pursuant to subsection (2), shall be made with the concurrence of the Chief Justice.

7. (1) The Child Justice Committee may meet at such times as may be necessary or expedient for the dispatch of its business, but shall meet at least once per month.

(2) The Child Justice Committee shall observe such rules of procedure as may be prescribed by the committee in regard to the transaction of any business at its meetings.

(3) Subject to subsection (4), the Child Justice Committee may act notwithstanding the absence of any member of the Child Justice Committee and no order made by the Child Justice Committee shall be invalid by reason only of the absence of any member during any stage of any proceedings before the Child Justice Committee.

(4) A quorum at the hearing of any proceeding by the Child Justice Committee shall consist of the magistrate or the attorney-at-law and one other member.

(5) In the event of any difference of opinion among members of the Child Justice Committee in the interim or final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the magistrate or the attorney-at-law shall prevail.

(6) The Chief Justice may make rules relating to the proceedings before the Child Justice Committee.

Procedure in  
relation to Child  
Justice  
Committee

#### PART IV

#### ESTABLISHMENT OF ASSESSMENT CENTRES AND SECURE RESIDENTIAL FACILITY

8. (1) The Minister shall establish and maintain, either by his or her Ministry or pursuant to an agreement with a voluntary organisation, an assessment centre for the temporary reception of any child in conflict with the law prior to or pending the completion of an initial inquiry regarding the child pursuant to this Act.

(2) Notwithstanding subsection (1) the Minister may temporarily designate any suitable place as an assessment centre for the purposes of this Act

(3) Where the Minister is of the opinion that any institution other than an assessment centre referred to subsection (1), is fit for the temporary reception of a child in conflict with the law prior to or pending the completion of an initial inquiry regarding the child, the Minister shall certify such institution as an assessment centre for the purposes of this Act.

(4) The Minister may make rules to provide for—

Assessment  
Centre

- (a) the management of an assessment centre including the standards and the various types of services to be provided by it; and
- (b) the circumstances under which and the manner in which the certification of an assessment centre may be granted or withdrawn.

(5) Where a child in conflict with the law is not placed under the charge of a parent and is sent to an assessment centre, the child shall be initially kept in a reception unit of the assessment centre for initial assessment, care and classification, giving due consideration to the age, physical and mental status of the child and the degree of the alleged offence.

(6) An assessment centre established, designated or certified under this section shall, as far as possible, be conducive to privacy.

Secure residential  
facility

9. (1) The Minister shall establish and maintain, either by his or her Ministry or pursuant to an agreement with a voluntary organisation, a secure residential facility as may be required for the reception and rehabilitation of a child who has been sentenced in accordance with this Act.

(2) Where the Minister is of the opinion that any institution other than a secure residential facility established pursuant to subsection (1), is fit for the reception of a child who has been sentenced, the Minister shall certify that institution as a secure residential facility.

(3) In order to provide for the rehabilitation and social integration of a child the Minister may make rules to provide for the management of a secure residential facility including the standards and various types of services to be provided by that facility.

- (4) The rules made under subsection (3) may also provide for-
  - (a) the management, classification and separation of a child on the basis of age, gender, the nature of the offence committed by the child and his or her physical and mental status;
  - (b) the circumstances under which and the manner in which the certification of a secure residential facility may be granted or withdrawn.

## PART V

METHODS OF SECURING ATTENDANCE OF CHILD AT  
INITIAL INQUIRY

10. (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—

Method of  
securing  
attendance of  
child

- (a) apprehension;
- (b) summons; or
- (c) a written notice.

(2) Before a police officer uses any of the methods referred to in subsection (1), the police officer shall consult with the Director of Public Prosecutions as to whether or not the matter should be set down for an initial inquiry.

11. (1) Unless there are compelling reasons justifying an apprehension, a child shall not be apprehended for an offence stated in Schedule I.

Apprehension  
Schedule I

(2) A warrant to apprehend issued pursuant to the Criminal Procedure Code, in respect of a child, shall direct that the child be brought to appear at an initial inquiry.

Cap. 172

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

(4) Where a police officer has notified a parent or an appropriate adult of an apprehension pursuant to subsection (3), the police officer shall in the presence of a parent or appropriate adult—

- (a) inform the child of the nature of the allegation against the child;
- (b) inform the child of his or her rights, in the prescribed manner; and
- (c) explain to the child the immediate procedures to be followed pursuant to this Act and any other relevant law in force in Saint Vincent and the Grenadines.

(5) The police officer who has apprehended a child, or any other police officer shall not later than twenty four hours after the apprehension, inform a designated officer of the apprehension in the prescribed manner.

(6) If the police officer is unable to inform the designated officer of the apprehension and comply with the requirements of subsection (5), he or she shall submit a written report to the Child Justice Committee at the initial inquiry in the prescribed manner giving reasons for the non-compliance.

(7) A child who has been apprehended shall, whether a preliminary assessment of the child has been effected or not, be taken by a police officer to appear at an initial inquiry within forty eight hours after the apprehension.

(8) The police officer responsible for the investigation of a case with respect to a child shall ensure that a preliminary assessment is conducted, before the commencement of the initial inquiry of the offence alleged to have been committed by the child.

(9) Where a child who is accused of an offence referred to in Schedule I, has not been released from police custody before appearing at an initial inquiry the police officer who apprehended the child shall provide the Child Justice Committee with a written report in the prescribed manner giving the reasons why the child could not be released.

(10) A police officer shall not apprehend a child under the age of twelve years who is alleged to have committed an offence but—

- (a) shall inform a designated officer of the particulars of the child as may be prescribed; and
- (b) may remove the child to a place of safety if the police officer has reasons to believe that it is necessary to do so for the safety of the child.

#### Summons

12. (1) A summons issued pursuant to the Criminal Procedure Code, 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 parent or an appropriate adult.

(3) A police officer shall—

- (a) not later than twenty four hours after the service of the summons referred to in subsection (1) inform a designated officer of the serving of the summons in the prescribed manner;

- (b) as soon as is reasonably possible, but prior to the commencement of the initial inquiry, explain the following to the child—
  - (i) the nature of the allegation against him or her;
  - (ii) the rights of the child, in the prescribed manner; and
  - (iii) the immediate procedures to be followed pursuant to this Act or any other relevant law in force in Saint Vincent and the Grenadines.

13. (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. Written notice

(2) A police officer who directs a child, pursuant to subsection (1), shall—

- (a) direct the parent or an appropriate adult to bring the child or cause the child to be brought 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 the parent or an appropriate adult, as the case may be, a written notice on which shall be entered the offence in respect of which the initial inquiry will be conducted and the time and place at which the child shall appear.
- (3) Pursuant to subsection (2) (b), the police officer shall—
- (a) when he or she hands the written notice to a child, the parent or an appropriate adult, as the case may be—
    - (i) inform the child, the parent or appropriate adult of the nature of the allegation against the child;
    - (ii) inform the child, the parent or appropriate adult of the rights of the child in the prescribed manner; and
    - (iii) explain to the child, the parent or appropriate adult the immediate procedures to be followed pursuant to this Act; and

- (b) not later than twenty four hours after handing the written notice to the child, inform a designated officer that he or she has done so.

Uncertainty as to age of person

14. If 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 parent or appropriate adult before initial inquiry

15. (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 Schedule I, into the care of the parent or an appropriate adult, before the child appears at the initial inquiry unless—

Schedule 1

- (a) exceptional circumstances, as may be prescribed, 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 or herself.

(2) A police officer may, in consultation with the Director of Public Prosecutions, release a child who—

- (a) is accused of an offence referred to in Schedule 1 but 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 Schedule 2

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

Schedule 2

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

- (a) appears at a specified place and time for assessment;
- (b) does not interfere with a witness, tamper with evidence or associate with a person or group of specified persons; and
- (c) resides at a particular address.



16. (1) Notwithstanding the decision of a police officer to the contrary, the Director of Public Prosecutions may, in accordance with section 15, authorise the release of a child from detention in police custody into the care of the parent or an appropriate adult on any of the conditions referred to in that section.

Director of Public Prosecutions may authorise the release of child

(2) If a release is authorised under subsection (1), the written notice referred to in section 17, shall be handed to the child and to the person into whose care the child is released.

17. A police officer who releases a child from detention in accordance with section 15, or who releases a child on the authorisation of the Director of Public Prosecutions pursuant to section 16 and places the child in the care of a parent or an appropriate adult shall—

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

- (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 offence in respect of which the child is being accused, any conditions relating to the release of the child and the place, date and time at which the child shall appear for the initial inquiry;
- (b) direct a parent or appropriate adult to bring the child or cause the child to be brought to appear at the initial inquiry at a specified place, date and time and to remain in attendance and, if any of the 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 of the conditions referred to in paragraph (a) have been imposed, to comply with those conditions.

18. (1) If a child is taken into police custody with or without a warrant, and cannot be brought forthwith before the Child Justice Committee, 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—

Release of child on recognisance prior to initial inquiry

- (a) unless the child is accused of an offence referred to in Schedule 3;
- (b) unless it is necessary in the interest of the child to remove him or her from association with any undesirable person; or

Schedule 3

(c) unless the police officer has reason to believe that the release of the child would defeat the ends of justice;

release the child on recognisance, with or without sureties, for such an amount as will, in the opinion of the officer, secure the attendance of the child at the initial inquiry related to the charge upon the hearing of the charge, being entered into by him or her or by his or her parent or appropriate adult.

(2) The recognisance 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 amounts to be set for recognisance of bail.

(4) The Director of Public Prosecutions or a designated prosecutor may, in consultation with the police officer charged with an investigation with respect to a child pursuant to this Act, authorise the release of a child accused of an offence referred to in Schedule 2 on recognisance prior to the appearance of the child at the initial inquiry, subject to reasonable conditions if the release of the child into the care of a parent or an appropriate adult is deemed appropriate.

Schedule 2

Child accused of certain offences not to be released from detention Schedule 3 Detention in place of safety

19. Subject to section 20, a police officer shall not release a child accused of an offence referred to in Schedule 3 from detention in police custody.

20. If a child cannot for any reason be released—

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

the child may be detained in a place of safety.

Report of injury sustained by child

21. (1) If a child in detention in police custody complains of an injury sustained 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 is detained, and the police officer in charge of the police station shall delegate a police officer to take the child to a medical doctor for examination as soon as is reasonably possible and in any event within twenty-four hours after the receipt of the complaint..

(2) The report of the medical doctor shall be included in the appropriate police docket.

22. (1) The police officer in charge of a police station shall keep a register in which shall be distinctively recorded prescribed details regarding the detention of a child in a police cell.

Register of children in detention in police cell

(2) The register referred to in subsection (1) may be examined by such persons as may be prescribed.

## PART VI

### ASSESSMENT OF A CHILD

23. (1) A designated officer who receives notification from a police officer pursuant to Part V that a child has been apprehended, served with a summons or issued with a written notice, shall assess the child before the child appears at the initial inquiry pursuant to part VII.

Duty of designated officer to assess child

(2) The assessment of a child shall take place in an assessment centre established, designated or certified pursuant to section 8.

24. (1) Subject to section 25 (2) and (3), the parent or an appropriate adult shall attend the assessment of the child.

Persons to attend assessment

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

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

- (a) the Director of Public Prosecutions;
- (b) the attorney-at-law representing the child;
- (c) a police officer; and
- (d) any other person permitted by the designated officer to attend.

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

Powers and duties of designated officer prior to assessment

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

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

(4) A designated officer may in the prescribed manner, request a police officer to—

- (a) obtain any documentation required for the completion of the assessment of a child;
- (b) locate the parent or an appropriate adult; and
- (c) provide transport in order to secure the attendance of the assessment of the child, and his or her parent or appropriate adult.

(5) A designated officer shall make every effort to locate a parent or an appropriate adult for the purposes of concluding the assessment of a child.

(6) If all reasonable efforts to locate a parent or an appropriate adult have failed, the designated officer shall conclude the assessment in the absence of such parent or appropriate adult.

Powers and duties  
of designated  
officer at  
assessment

26. (1) A designated officer shall—

- (a) explain the purpose of the assessment to—
  - (i) the child; and
  - (ii) parent or an appropriate adult;
- (b) inform the child of his or her rights in the prescribed manner;
- (c) explain the procedures to be followed under this Act to—
  - (i) the child; and
  - (ii) the parent or an appropriate adult; and
- (d) inquire from the child whether he or she intends to acknowledge responsibility for the offence in question.

(2) The designated 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 an assessment and if such information is obtained, the child shall be informed of the information.

(3) Where a child is accused with another child, the designated officer may conduct the assessment of the children simultaneously.

(4) The designated officer shall—

(a) encourage participation of the child during the assessment process;

(b) complete an assessment report at the end of an assessment in the prescribed manner and shall provide recommendations with respect to—

(i) the prospects of diversion;

(ii) the possible release of the child into the care of a parent or an appropriate adult, if the child is in detention; or

(iii) the placement, where applicable, of the child in a particular place of safety or an assessment centre.

(5) If it appears to the designated officer that the child does not intend to acknowledge responsibility for the alleged offence, this shall be indicated in the assessment report.

(6) The designated officer shall submit the report referred to in subsection (4) (b) to the Director of Public Prosecutions prior to the commencement of the initial inquiry.

(7) Any information obtained by a designated officer during the assessment of a child shall not be admissible in any court proceedings against the child.

## PART VII

### INITIAL INQUIRY

27. (1) An initial inquiry shall be held in respect of a child after an assessment pursuant to Part VI.

(2) The appearance of a child at an initial inquiry before the Child Justice Committee shall be the equivalent of a first appearance before a court as contemplated under the Criminal Procedure Code.

(3) The objectives of an initial inquiry are to—

Nature and objectives of initial inquiry

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- (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 Director of Public Prosecutions 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 or her circumstances and the offence is considered in order to make a decision on diversion and placement of the child;
- (e) ensure that the views of all persons present are considered before a decision is taken by the Child Justice Committee;
- (f) encourage the participation of the child and his or her parent or an appropriate adult in decisions concerning the child; and
- (g) determine the release or placement of the child pending—
  - (i) the conclusion of the initial inquiry; or
  - (ii) the appearance of the child in Court.

(4) An initial inquiry shall be held in such place as the Child Justice Committee may determine having regard to privacy and confidentiality.

(5) The Child Justice Committee shall conduct the proceedings in an informal manner by asking questions, interviewing persons at the initial inquiry and obtaining information.

Persons to attend  
initial inquiry

28. (1) The following persons shall attend an initial inquiry—

- (a) the child;
- (b) the parent or an appropriate adult;
- (c) the designated officer who conducted the assessment of the child;
- (d) the Director of Public Prosecutions or a designated prosecutor; and
- (e) the attorney-at-law representing the child;

(f) any other person as may be considered necessary by the Child Justice Committee.

(2) The Child Justice Committee may exclude the parent or an appropriate adult from attending the initial inquiry if their presence at the initial inquiry is not in the best interest of the child.

(3) If an initial inquiry proceeds in the absence of the designated officer who conducted the assessment of the child, the assessment report shall be made available at the initial inquiry unless the assessment has been dispensed with pursuant to section 30 (2).

(4) The Child Justice Committee may permit the following persons to attend an initial inquiry—

- (a) a police officer; and
- (b) any other person as may be considered by the Child Justice Committee.

29. (1) At the commencement of an initial inquiry the Child Justice Committee shall—

Procedure  
relating to initial  
inquiry

- (a) determine the age of the child;
- (b) in the prescribed manner—
  - (i) explain the purposes of the initial inquiry to the child;
  - (ii) inform the child of the nature of the allegation against him or her;
  - (iii) inform the child of his or her rights; and
  - (iv) explain to the child the immediate procedures to be followed under this Act.

(2) The Director of Public Prosecutions or a designated prosecutor shall ensure that the Child Justice Committee has a copy of the assessment report prepared pursuant to section 26 (4) (b), if available.

(3) A person attending an initial inquiry may submit to the Child Justice Committee information regarding a previous diversion or conviction of the child concerned.

(4) A child, the attorney-at-law representing the child, the parent, an appropriate adult, the Director of Public Prosecutions or a designated prosecutor, shall be given an opportunity to question the designated officer who prepared the assessment report on the child or any other person giving evidence at the initial inquiry.

(5) If the child in respect of whom an initial inquiry is being conducted, is a co-accused with one or more children, 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) If a child does not acknowledge responsibility for the offence with which he or she is being charged, no further questions regarding the offence may be put to the child and the Director of Public Prosecutions or a designated 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) The Child Justice Committee shall keep a record of all proceedings relating to an initial inquiry.

30. (1) The Child Justice Committee shall conduct all initial inquiries pursuant to this Part relating to a child in conflict with the law.

(2) The Child Justice Committee may—

- (a) subpoena or cause to be subpoenaed 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.

Powers and duties  
of the Child  
Justice  
Committee with  
respect to an  
initial inquiry



(3) If a child has not been assessed at the commencement of the initial inquiry, the Child Justice Committee may dispense with the assessment if it is in the best interests of the child to do so.

(4) The Child Justice Committee shall ensure that the child, the attorney-at-law representing the child, the parent or an appropriate adult—

- (a) know of the recommendations in the report prepared by the designated officer; and
- (b) are informed of any diversion option and the aims and content of such option.

(5) If the designated officer is present at the initial inquiry, the Child Justice Committee may request him or her to explain, elaborate upon or justify any recommendation or statement made in the assessment report, and provide additional information.

(6) The Child Justice Committee 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.

31. (1) The Child Justice Committee shall release a child who is in detention, into the care of the parent or an appropriate adult if—

- (a) the initial inquiry is not disposed of at the first appearance of the child before the Child Justice Committee; and
- (b) it is in the interest of justice to so 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 or an appropriate adult, the Child Justice Committee shall have regard to the recommendation made by the designated 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 or an 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;

Release of child  
into care of  
parent or  
appropriate adult  
at initial inquiry  
and on  
recognisance or  
bail

- (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 herself 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 State or on the part of the child or his or her attorney-at-law;
- (k) whether detention would prejudice the child in the preparation of his or her case;
- (l) the likelihood that, if the child is found guilty of the offence he or she will be detained for a substantial period; and
- (m) the receipt of a written confirmation by the Director of Public Prosecutions that he or she intends to charge the child with an offence referred to in Schedule 3.

## Schedule 3

(3) The Child Justice Committee may in releasing a child pursuant to subsection (1) require the child—

- (a) to appear before the Child Justice Committee 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 specified person; or
- (f) not to interfere with a witness, tamper with any evidence or associate with any person or group of specified persons.

(4) If the Child Justice Committee releases a child into the care of a parent or an appropriate adult, the Child Justice Committee 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, if a condition has been imposed pursuant to this section, to ensure that the child complies with the condition.

(5) If a child fails to comply with a condition imposed pursuant to subsection (3) the Child Justice Committee may direct that the child be detained in a place of safety.

(6) The Child Justice Committee may, after consideration of the facts release a child on bail or recognisance having regard to the factors referred to in subsection (2) and subject to one or more of the conditions referred to in subsection (3).

32. (1) The Child Justice Committee may direct the detention of a child in a place of safety if—

- (a) the proceedings of the initial inquiry are postponed pursuant to section 33 or 34;
- (b) the release of the child into the care of his or her parent or an appropriate adult is for any reason not possible; or;
- (c) the child is to appear for trial pursuant to section 37.

(2) The Child Justice Committee shall have regard to the recommendations made by the designated officer when deciding where to place the child pursuant to subsection (1).

(3) If a place of safety is not available the child shall be detained in a suitable facility designated by the minister for the safe detention of children.

(4) A decision to place a child in a facility designated pursuant to subsection (3) shall—

- (a) make provision for the child to be detained separately from adults;
- (b) make provision for males to be detained separately from females;
- (c) take into account the particular vulnerability or special needs of the child.

(5) A child of fourteen years or older who is charged with an offence referred to in Schedule 3 shall be detained in prison if the Child Justice Committee feels there is a substantial risk that the child may cause harm to other children in a place of safety.

(6) Where the Child Justice Committee issues a direction that a child be detained in prison, the Child Justice Committee shall record the reasons for issuing such a direction.

(7) If the Child Justice Committee issues a direction for the detention of a child pursuant to subsection (1) (c), the child shall appear before the Child Justice Committee at a time and place to be determined by the Child Justice Committee.

Detention of  
child after first  
appearance  
before the Child  
Justice  
Committee

Schedule 3

(8) Where a child appears before the Child Justice Committee pursuant to subsection (6), the Child Justice Committee shall—

- (a) determine whether or not the detention remains necessary;
- (b) if ordering further detention of the child, record the reasons for its decision;
- (c) consider a reduction of the amount of bail or recognisance, if applicable;
- (d) inquire whether or not the child is being properly treated and kept under suitable conditions; and
- (e) if satisfied that the child is not properly treated and kept under suitable conditions, inspect and investigate the treatment and conditions and make appropriate remedial recommendation to the Minister.

Postponement of  
initial inquiry

33. (1) The Child Justice Committee may postpone the proceedings of an initial inquiry for a period not exceeding fourteen 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) the planning of 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 may not be dispensed with;
- (g) noting a confession;
- (h) noting an admission;
- (i) holding of an identity parade;
- (j) securing an attorney-at-law to represent the child; or
- (k) any other matter which the Child Justice Committee deems necessary.

(2) If the proceedings of an initial inquiry is postponed pursuant to subsection (1) (g), (h) or (i), the Child Justice Committee shall inform the child of his or her right to have his or her parent or an appropriate adult present during the proceedings.

(3) If the initial inquiry is not concluded within the period specified in subsection (1) and subject to section 34, it shall be closed and the Director of Public Prosecutions or a designated prosecutor shall set the matter down for trial in the Court.

34. (1) The Child Justice Committee may postpone the proceedings of an initial inquiry for a period not exceeding seven days if there are exceptional circumstances warranting a further assessment of the child, and if these circumstances relate to—

Postponement of  
initial inquiry for  
detailed  
assessment

- (a) the possibility that the child may be a danger to others or to himself or herself;
- (b) the fact that the child has a history of repeatedly committing offences or abscondment;
- (c) the social welfare history of the child;
- (d) the possible admission of the child to a sexual offender's programme, substance abuse programme, 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 detailed 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 place of safety or an assessment centre.

35. (1) The Child Justice Committee shall ascertain whether a matter before it may be diverted after consideration of the following—

D e c i s i o n  
r e g a r d i n g  
d i v e r s i o n

- (a) any recommendations made by the Director of Public Prosecutions or a designated prosecutor;
- (b) the assessment report, unless this has been dispensed with pursuant to section 30 (2);
- (c) the views of all persons present at the initial inquiry and any information provided by such persons;

- (d) any information requested pursuant to section 30 (2) (c); and
- (e) the willingness of the child to acknowledge responsibility for the offence.

(2) If the Child Justice Committee decides that the matter may be diverted, the Child Justice Committee shall issue a direction for diversion in the prescribed manner in respect of the child concerned.

(3) In addition to the diversion options in section 41, the Child Justice Committee 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 that section.

Failure to comply  
with diversion  
direction

36. (1) If a child fails to comply with a diversion direction, the Child Justice Committee shall on being notified of such failure in the prescribed manner, issue a warrant for the apprehension of the child or a written notice to the child and the parent or appropriate adult directing the child to appear before the Child Justice Committee.

(2) If a child appears before the Child Justice Committee pursuant to subsection (1), the Child Justice Committee shall inquire into the reasons for the failure of the child to comply with the diversion direction and unless the Director of Public Prosecutions or a designated prosecutor decides to proceed with the prosecution of the child concerned, the Child Justice Committee may, after consideration of the views of any person present at the initial inquiry—

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

(3) If the Director of Public Prosecutions decides to proceed with the prosecution of the matter, the matter shall be set down for trial in the Court and section 41 shall apply with the necessary changes required by the context.

Referral of  
matter to the  
Director

37. (1) If it appears during proceedings at an initial inquiry that a child is in need of care and protection under the Children (Care and Adoption) Act, and that it is desirable to deal with the child under the provisions of that Act, the Child Justice Committee shall stop the

proceedings and transfer the matter to the Director to be dealt with in accordance with the Children (Care and Adoption) Act.

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(2) Referral of a matter to the Director shall be considered by the Child Justice Committee if 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 warmth 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 or her 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 warmth.

38. (1) If diversion has not taken place and the matter has not been transferred to the Director pursuant to section 37 on the conclusion of the initial inquiry, the Director of Public Prosecutions or a designated prosecutor shall inform the Child Justice Committee of the place, date and time when the child shall appear for trial in the Court.

Procedure upon  
referral of matter  
for trial

(2) The Child Justice Committee shall, if the child is not represented by an attorney-at-law, explain to the child and the parent or an appropriate adult, as the case may be, the provisions of Part XI regarding legal representation.

(3) If a child is in detention, the Child Justice Committee shall inform the child of the place, date and time of his or her appearance in Court and shall direct the parent or an appropriate adult to attend the proceedings at the specified time and place.

(4) If a child is not in detention, the Child Justice Committee may alter or extend any condition imposed under section 15 (3) or section 31 (3), and shall direct the child and his or her parent or appropriate adult, to appear in Court at a specified place, date and time.

**PART VIII**  
**DIVERSION**

Purposes of diversion

39. The purposes of diversion are to—
- (a) encourage the child to be accountable for the harm which he or she has caused;
  - (b) meet the particular needs of the child;
  - (c) promote the reintegration of the child into the family and the community and to encourage the family to take an active role in the rehabilitation of the child;
  - (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 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

40. A child shall be considered for diversion if—
- (a) the child and his or her parent or an appropriate adult, consent to the diversion and the diversion option;
  - (b) the child understands his or her 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

41. (1) At the initial inquiry, the Child Justice Committee, 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, the Child Justice Committee shall consider—



- (a) the background of the child;
- (b) the educational level, cognitive ability and the environmental circumstances of the child;
- (c) the proportionality of the option recommended or selected to the circumstances of the child;
- (d) the nature of the offence and the interests of the community or society; and
- (e) the age and developmental needs of the child.

(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 six 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 six 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 six months;
- (g) the issue of a family time order in the prescribed form for a period not exceeding six 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 six months;

- (k) compulsory attendance at a specified place for a specified vocational or educational purpose for a period not exceeding five hours each week, for a maximum of six 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 nine months;
  - (b) compulsory attendance at a specified vocational or educational purpose for a period not exceeding eight hours each week, for a maximum of nine months;
  - (c) performance of some service without remuneration for the benefit of the community under the supervision or control of an organisation or institution, or a specified person or group identified by a designated officer effecting the assessment, for a maximum period of fifty hours, and to be completed within a maximum period of nine 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;
  - (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) referral to a programme which does not exceed six months and which has a residential element that must not exceed thirty five days in total and twenty one

consecutive days during the operation of the programme;

- (b) performance of some service without remuneration for the benefit of the community under the supervision and control of an organisation or institution, or a specified group of persons, identified by a designated officer and for a period of two hundred and fifty hours which shall be completed within one year and no more than thirty five 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 six months and no more than thirty five 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 fourteen years or older in cases where the relevant law under which the offence is committed imposes a sentence of detention for a period not exceeding six months.

(6) On the selection of a diversion option, the Child Justice Committee or the Court shall assign a designated officer or other suitable person to monitor the compliance of the child of the selected diversion option and in the event of a child failing to comply with any condition of the diversion option, the designated officer or specified person shall notify the Child Justice Committee or the Court of such failure.

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

(2) A diversion option must—

- (a) promote the dignity and well-being of the child, and the development of sense of self worth and ability to contribute to his or her community and society;
- (b) not be exploitative, harmful or hazardous to the physical or mental health of the child;

M i n i m u m  
s t a n d a r d s  
a p p l i c a b l e   t o  
d i v e r s i o n   a n d  
d i v e r s i o n   o p t i o n s

(c) be appropriate to the age and maturity of the child;  
and

(d) not interfere with the education or schooling of the child.

(3) A diversion option presented to the Minister by a government department, an agency or a non-governmental organisation, which meets the requirements of subsection (1), and which has a predetermined content and duration and which involves a service to children on a regular basis may be registered by the Minister in the prescribed manner.

(4) The Director shall keep a register in the prescribed manner of all children who have been subjected to diversion.

Development of  
diversion options

43. The Minister on consultation with the Child Justice Committee and the Director may develop any other suitable diversion options as contemplated in this Part.

#### PART IX

#### COURT PROCEEDINGS

Conduct of  
proceedings  
relating to child in  
Court

44. (1) At the commencement of the proceedings in the Court, the Judicial Officer shall in the prescribed manner—

- (a) inform the child of the nature of the allegations against him or her;
- (b) inform the child of his or her rights; and
- (c) explain to the child the procedures to be followed pursuant to this Act and the Criminal Procedure Code.

(2) The proceedings in the Court shall, with due regard to the procedural rights of the child, be conducted in an informal manner in order to encourage maximum participation by the child and his or her parents or an appropriate adult.

(3) The judicial officer shall protect a child from hostile cross examination where such cross examination is prejudicial to the well-being of the child or to the fairness of the proceedings.

Admissibility of  
certain evidence

45. (1) Evidence obtained as a result of a confession, or an admission that is admissible pursuant to the Criminal Procedure Code shall only be admissible as evidence in the Court if the parent or an

appropriate adult or the attorney-at-law representing the child was present when the confession or the admission was made.

(2) Subsection (1) shall also apply in cases where an identity parade has taken place.

46. (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 warranting their use.

Treatment of  
child at Court

(2) A child held in a cell at the 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 Court he or she shall be transported separate from adults and in a manner which protects the privacy, confidentiality and identity of the child.

(5) The Commissioner of Police shall issue directives on the treatment and conditions of children while in detention at Court.

47. (1) The capacity of a child twelve years and older to be criminally prosecuted shall be proved by the State beyond reasonable doubt.

Establishment of  
c r i m i n a l  
responsibility

(2) The Director of Public Prosecutions or the designated prosecutor or the attorney-at-law representing the child shall request the Court to order an evaluation of the child by a suitably qualified person to be conducted at the expense of the State.

(3) If 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 thirty days of the date of the order, or such further period as may be permitted by the Court.

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

(5) The person who conducts the evaluation may be called to attend the Court proceedings and to give evidence and, if called, shall be remunerated by the State, if not employed by the State.

48. (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.

Separation and  
joinder of trials  
involving child  
and adult

(2) An application for such joinder shall be made to the Court and the child shall appear after notice is given to the child and to the parent or an appropriate adult in the prescribed manner.

(3) If the Court grants an application for joinder of trials, the matter shall be transferred to the court in which the adult is being tried.

(4) The court in which the adult is being tried shall afford the child concerned all such benefits conferred on the child under this Act.

Time limits  
relating to  
conclusion of  
trials

49. (1) The Court shall conclude the trial of an accused child as speedily as possible and shall ensure that postponements are limited in number and duration.

(2) Sections 31 and 34 shall apply, with the necessary changes required by the context, to the Court where the child 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 six months from the date on which the child has pleaded to the charge, the child shall be entitled to bail except where bail is not permitted by law on a charge of murder or treason.

Court may divert  
matter

50. (1) If 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 if the Director of Public Prosecutions or a designated prosecutor indicates that the matter may be diverted.

(2) Sections 35, 36 and 39 to 43 shall apply, with the necessary changes required by the context, if 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, on receipt of a report from a designated officer that a child has successfully complied with a diversion order, acquit the child of all charges in question.

(5) An acquittal of the child may be made in the absence of the child.

(6) If a child fails to comply with a diversion order, section 36 shall apply with the necessary changes required by the context.

Privacy and  
confidentiality

51. A person shall not be present at a sitting of the Court in a matter relating to a child unless the presence of the person is necessary in connection with the proceedings of the Court or unless the Judicial Officer has granted the person permission to be present.

52. (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 eighteen appearing at any proceedings before the Court.

Power to prohibit publication of certain matters

(2) Subject to subsection (3), a designated officer, shall not preclude—

- (a) access to information pertaining to a child if such access would be in the interests, safety or welfare of the child;
- (b) the publication, in the form of a law 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 if such publication would be in the interests, safety or welfare of the child or children in general.

(3) The reports referred to in subsection (2) (b) and (c) shall not mention the name of the person charged or the person against whom or in connection with whom the offence in question is alleged to have been committed or any witness at such proceedings, and shall not mention 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 or radio or other broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of any child either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness in the proceedings;
- (b) no picture shall be published in any manner as being, or including a picture of, any child so concerned in the proceedings.

(5) The Court may, in any case, if satisfied that it is in the interests 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 or broadcasts by radio or any other medium any matter in contravention of this section, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding three months.

**PART X**

**SENTENCING OF CHILD**

Child to be sentenced in accordance with this Part

53. (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) A child sentenced pursuant to this part shall be informed of the consequences of failing to adhere to the conditions of the sentence.

Pre-sentence reports

54. (1) The Court shall request a pre-sentence report prepared by a designated officer prior to the imposition of sentence on a child.

(2) Pursuant to subsection (1), the designated officer shall complete the report as soon as possible, but no later than one calendar month following the date upon which such report was requested and shall give a copy to the child, the parent or an appropriate adult and the attorney-at-law representing the child.

(3) Where the Court imposes a sentence other than that recommended in the pre-sentence report it shall record the reason for the imposition of a different sentence.

(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 placed before the Court prior to the imposition of the sentence.

Purposes of sentencing

55. The main 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.

56. (1) The Court may impose as a requirement in relation to a penalty for an offence, that the child is sentenced to imprisonment for an initial period and thereafter is required to serve the remainder of the sentence providing a service in the community.

C o m m u n i t y  
b a s e d s e n t e n c e s

(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 41 (3) (a), (b), (c), (d) or (e);
- (b) placement under a supervision and guidance order in the prescribed form for a period not exceeding three 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 within the age of compulsory school attendance and is not attending formal schooling, compulsory attendance at a specified center or place for technical, vocational and educational purpose until the child has attained the age of seventeen years.
- (e) 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 technical, vocational and educational purpose, for a period not exceeding one year and for no more than thirty five hours per week;
- (f) 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 two hundred and fifty hours and which shall be completed in one year; and
- (g) any other sentence, subject to section 62, which is appropriate to the circumstances of the child and in keeping with the principles of this Act and which, if it

includes a period of time, shall not exceed twelve months.

(3) Before a child aged twelve years and older but under the age of fourteen is sentenced pursuant to subsection (2) (f), due consideration must be given to the age, development and compulsory school attendance of the child.

Restorative  
justice sentences

57. (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 58 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) If 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 designated 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

58. (1) If a child has been referred to appear at a family group conference pursuant to section 57, a designated officer shall be appointed by the Child Justice Committee to conduct the family group conference and he or she shall within fourteen days, but not later than twenty one 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 or an appropriate adult;
- (b) any person requested by the child;
- (c) the designated officer; and
- (d) the victim of the alleged offence which the child committed and if the victim is under the age of eighteen years, the parent or an appropriate adult;

(3) The following persons may attend a family group conference—

- (a) a police officer;
- (b) the attorney-at-law representing the child if applicable;
- (c) a member of the community in which the child resides; and
- (d) any person authorised by the designated officer to attend the family group conference.

(4) 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 (5) as they deem fit.

(5) A plan referred to in subsection (4)—

- (a) may include—
  - (i) the application of any option contained in section 41 (2) or (3); or
  - (ii) any other plan appropriate to the child, their family and the circumstances; 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 or an appropriate adult;
  - (iii) specify the persons or organisations to provide such services;
  - (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.

(6) The designated 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 Child Justice Committee.

(7) If the participants of a family group conference fail to agree on a plan, the designated officer shall close the family group conference and refer the matter back to the Child Justice Committee 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

59. (1) The Court may impose a sentence of correctional supervision for a period not exceeding three years on a child fourteen years and older.

(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 section 63 (3).

Sentence with a  
compulsory  
residential  
requirement

60. (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) programme with a periodic residence requirement where the duration of the programme does not exceed one year, and no portion of the residence requirement exceeds twenty one consecutive nights, with a maximum of sixty nights for the duration of the programme;

- (b) secure residential facility, subject to section 61; or
- (c) prison, subject to section 62.

61. (1) Subject to subsection (2) a sentence to a secure residential facility shall not exceed two years.

Referral to secure residential facility

(2) A sentence to a secure residential facility may be imposed for a period exceeding two years if the child is under the age of fourteen and he or she would have been sentenced to imprisonment due to the seriousness of the offence were it not for section 62 (1)(a).

(3) A child referred to in subsection (2) may not be required to reside in a secure residential facility beyond the age of sixteen.

(4) On completion of a sentence referred to in subsection (1) or on attainment of the age of sixteen in the case of a child referred to in subsection (2), that child may request permission in the prescribed form from the head of the secure residential facility to continue to reside at the secure residential facility for the purposes of completing his or her education.

(5) The sentence of a child who is detained in a secure residential facility shall be reviewed by the court when the child attains the age of sixteen years.

(6) On a review of the sentence referred to in subsection (5), the judicial officer may –

- (a) discharge the child from service of the remaining sentence,
- (b) impose conditions for the discharge of the sentence; or
- (c) transfer the child from a secure residential facility to a prison.

62. (1) A sentence of imprisonment shall not be imposed unless–

Referral to prison

- (a) the child was fourteen years or older at the time of commission of the offence; and
- (b) substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include conviction of an offence referred to in Schedule 3 or a previous failure to respond to alternative sentences, including sentences with a residential element.

Schedule 3

(2) A sentence of imprisonment shall not be imposed on a child –

Schedule 1

- (a) in respect of an offence referred to in Schedule 1; or
- (b) as an alternative to any other sentence specified in this Act.

(3) If a child fails to comply with a condition of a sentence imposed on him or her, the child may, in the prescribed manner be brought before the Court for reconsideration of the original sentence which may, subject to subsections (1) and (2), include a sentence of imprisonment.

(4) If the Court imposes a sentence of imprisonment, the Court shall announce the term of imprisonment in 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 prison prior to the sentence being announced in the Court.

Postponement or suspension of passing sentence

63. (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 not exceeding three years.

(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 five years.

(3) The conditions referred to in subsections (1) and (2) may be any condition appropriate to the circumstances of the child which are in keeping with the principles of this Act and which promotes the reintegration of the child into his or her 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 designated 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 section 41 (2) (d), (e), (f), (g), (h), (i), (j) or (k).

(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 designated 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 if the child has met all the conditions imposed or at the expiration of the period in question, as the case may be.

64. The Court convicting a child of an offence for which a fine or imprisonment is stated by law as the penalty, may impose any one of the following penalties in place of that fine or imprisonment—

Penalty in lieu of  
fine or  
imprisonment

- (a) symbolic compensation to a specified person or institution;
- (b) payment of compensation not exceeding five thousand dollars to a specified person or institution if the child or his or her 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, if 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.

65. (1) Notwithstanding any law to the contrary, as from the date of commencement of this Act a sentence of capital punishment, life imprisonment or corporal punishment shall not be imposed on a child.

Prohibition on  
certain forms of  
punishment

(2) A child who has been sentenced to attend a secure residential facility may not be detained in a prison or in police custody pending designation of the place where the sentence is to be served.

66. (1) If it appears to the 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—

Notice to parent

- (a) that wilful failure on the part of a parent 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 any person for—
  - (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 Director of Public Prosecutions, 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) If the parent or an appropriate adult is present in Court when the Court decides to call on the parent of the child or an appropriate adult to show cause, the Court may call on the parent to show cause by announcing its decision in Court.

(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 or an appropriate adult to show cause, as directed by the notice, why the parent of the child or an appropriate adult should not pay the compensation.

(4) If the Court calls on the parent or an appropriate adult under subsection (2) or the registrar of the Court issues a notice under subsection (3)—

- (a) the Court shall reduce 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, if any, to the parent of the child or an appropriate adult within a reasonable time before the proceedings to show cause.



- (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 or appropriate adult may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and
- (d) the parent 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 under section 66.

(3) If the parent was called on to show cause on the prosecution's application, the prosecution shall be a party to the proceedings to show cause.

(4) If the parent was called on to show cause on the Court's own initiative the Director of Public Prosecutions, may at the proceedings to show cause–

- (a) appear and give the Court the assistance it may require;  
or
- (b) intervene as a party with the permission of the Court.

(5) If 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 66(1) (a) and (b), 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 any order would have on the capacity of the parent to provide for his or her child.

(8) The Court shall proceed under this section in the absence of the parent if the Court is satisfied that the parent has been given notice of the proceedings to show cause under section 66.

**PART XI**

**LEGAL REPRESENTATION**

Child to be provided with legal representation

68. A child shall be provided with legal representation by the State at the conclusion of an initial inquiry if no legal representative was appointed by the parent or an appropriate adult.

Requirements to be complied with by attorney-at-law

69. An attorney-at-law representing a child shall—

- (a) allow the child, as far as is reasonably possible, to give independent instructions concerning the case;
- (b) explain the rights and duties of the child in relation to any proceedings pursuant to this Act, in a manner appropriate to the age and intellectual development of the child;
- (c) promote diversion where appropriate, but may not unduly influence the child to acknowledge responsibility; and
- (d) as far as practicable, ensure that the trial is conducted without delay.

**PART XII**

**GENERAL PROVISIONS AS TO PROCEEDINGS IN COURT**

Power to proceed with case in absence of child

70. Where in any proceedings in relation to any offence, the Court is satisfied that the attendance before the Court of a child in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

Extension of power to take depositions

71. (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 or her 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 judicial officer 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 her; or
- (b) it was taken in the presence of the accused person; and
- (c) his or her attorney-at-law had the opportunity to cross-examine the child making the deposition.

### PART XIII

#### RECORDS OF CONVICTION AND SENTENCE

72. (1) The record of any sentence imposed on a child convicted of an offence referred to in Schedule 3 shall not be expunged. Expungement of records

(2) In respect of offences other than those referred to in Schedule 3, the judicial officer shall make an order regarding the expungement of the conviction and sentence of the child and shall note, the reasons for the decisions as to whether such record may be expunged or not where the judicial officer imposes the sentence after consideration of any relevant factor, including— Schedule 3

- (a) the nature and circumstances of the offence; and
- (b) the personal circumstances of the child.

(3) Where the judicial officer makes a decision regarding the expungement of a record of a conviction and sentence pursuant to this section, he or she shall explain the decision and give his or her reasons for the decision, including any conditions relating to the expungement of the record, to the child.

(4) A decision by the judicial officer not to expunge a record shall be subject to appeal.

## PART XIV

## OFFENCES AND PENALTIES

Offences and penalties 73. (1) A person shall not hinder or obstruct a police officer or a designated officer in the performance of his or her functions under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three months.

(3) A person who—

- (a) fails to comply with a notice issued pursuant to section 17;
- (b) fails to comply with a direction issued pursuant to section 13 or 42(3); or
- (c) publishes information or reveals the identity of persons in contravention of section 52;

commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding one year.

(4) A person who commits an offence under this act for which no penalty is provided shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three months.

## PART XV

## MISCELLANEOUS

Regulations 74. (1) The Minister may make regulations with respect to any matter which is required or permitted by this Act to be prescribed.

(2) Notwithstanding the generality of subsection (1) the Minister may make regulations regarding procedures to be put in place to monitor and assess the proper application of and compliance with this Act.

Consequential Amendment 75. The enactments included in the Schedule 4 are amended to the extent specified therein.

Repeal Cap. 231 76. (1) The Juveniles Act is repealed.

(2) The Corporal Punishment of Juveniles Act is repealed only in its application to a child under this Act.

Cap. 170

77. (1) As soon as practicable after the expiration of five years from its coming into force the Minister shall conduct a review of the operation and effectiveness of this Act and in the course of that review, the Minister shall have regard to –

Review

- (a) the attainment of the objects of the Act;
- (b) the effectiveness and operations of the Child Justice Committee, the assessment centres; and
- (c) such other matter as may be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on the review and as soon practicable after the report is prepared cause it to be laid before the House of Assembly.

#### SCHEDULE 1

Sections, 11, 15, 62

1. Assault where grievous bodily harm has not been inflicted.
2. Malicious injury to property where damage does not exceed five thousand dollars.
3. Trespass.
4. 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.
5. Theft, where the value of the property does not exceed five thousand dollars.
6. Any statutory offence where the maximum penalty determined by that statute does not exceed five thousand dollars or imprisonment of two years.
7. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

#### SCHEDULE 2

Sections 15, 18

1. Assault, involving the infliction of grievous bodily harm.
2. Arson.

3. Robbery, other than robbery with aggravating circumstances, if the amount involved does not exceed one hundred thousand dollars.
4. Theft, where the amount involved does not exceed one hundred thousand dollars.
5. Any offence under any law relating to the illicit possession of dependence providing drugs where the value involved does not exceed one hundred thousand dollars.
6. Forgery or fraud, where the amount concerned does not exceed one hundred thousand dollars.
7. Any statutory offence where the penalty concerned does not exceed one hundred thousand dollars or a maximum period of imprisonment of seven years.
8. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

### SCHEDULE 3

Sections 18, 19, 31, 32, 62 and 72

1. Murder.
2. Rape.
3. Robbery:
  - (a) where there are aggravating circumstances;
  - (b) involving the taking of a motor vehicle.
4. Indecent assault involving the infliction of grievous bodily harm.
5. Indecent assault on a person under the age of fifteen years.
6. Any offence pursuant to the Drug Trafficking Offences Act or the Drugs (Prevention of Misuse) Act if:
  - (a) the value of the dependence producing substance in question is more than one hundred thousand dollars; or
  - (b) the value of the dependence producing substance in question is more than one hundred thousand dollars and the offence was committed by a person, group of persons, acting in the execution or furtherance of a common purpose or conspiracy.
7. Any conspiracy or incitement to commit an offence referred to in this Schedule or an attempt to commit any of the offences referred to in Item 1, 2, or 3 of this Schedule.

**SCHEDULE 4**

## Section 75

**CONSEQUENTIAL AMENDMENTS**

1. Children (Care and Adoption) Act, Cap 225
  - (a) Section 2 is amended by deleting “Director of Family Services” and substituting “Director responsible for child Care and Protection”.
  - (b) Section 6 is amended by deleting “Director of Family Services” and substituting “Director responsible for child Care and Protection”.

Passed in the House of Assembly this 27th day of December, 2019.

**NICOLE HERBERT**  
Clerk of the House of Assembly.

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