ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER C33

CHILD JUSTICE ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 13/2021, in force 1 July 2021

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CHILD JUSTICE ACT

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CHILD JUSTICE ACT

PART 1

PRELIMINARY

Interpretation

1. In this Act—

"acknowledges responsibility" means admission of responsibility for an offence by a child without a formal admission of guilt;

"appropriate adult" means any adult member of the family of the child or a custodian of the child, but excludes a parent of the child;

"assessment" means the assessment of a child by a probation officer pursuant to Part 6;

"attorney-at-law" means an attorney-at-law registered pursuant to the Legal Professions Act;

"Board" means the Child Justice Board established pursuant to section 5;

"Chief Probation Officer" means Head of the Department of Probation;

"child" means a person under the age of 18 years;

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

"Commissioner of Police" means the Commissioner of Police of the Royal Anguilla Police Force;

"community service" means work for a community organisation or other work of value to the community performed by a child without payment, including as a result of a sentence by the court or a diversion measure ordered by the Board;

"compulsory school attendance order" means an order requiring a child to attend school every day 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 60;

"Court" means the juvenile court;

"designated prosecutor" includes a police prosecutor or a person authorised by the Attorney-General to act on his behalf;

"detention" includes confinement in a police cell, lock-up, safe house, Zenaida Haven or other residential facility;

"diversion" means the diversion of a child away from formal court procedures to the informal procedures established pursuant to Part 8;

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"diversion option" means an option as stated in section 45, as set out in three levels with level one comprising the least onerous option and level three the most onerous option;

"family group conference" means a meeting designated by the Board or a court either for the purposes of coming to an agreement for a plan of action suitable for diversion of a child or for sentencing a child in accordance with the objectives of this Act pursuant to section 45;

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

"foster carer" has the same meaning as under the Child Protection Regulations;

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

"Government" means the Government of Anguilla;

"initial inquiry" means a procedure by the Board referred to in Part 7 which takes place after an assessment and before trial by a court and which is taken to determine the suitability of the child for diversion;

"Minister" means the Minister responsible for Social Services;

"parent" includes—

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

(b) a person who has stood in *loco parentis* to a child for a period of not less than 1 year and who has a continuing relationship with the child; or

(c) a legal guardian of the child who has custody or guardianship rights in relation to the child,

but does not include a person acting as a caregiver on behalf of the social welfare authorities in Anguilla;

"police officer" has the meaning assigned to it in the Anguilla Police Act;

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

"prescribed" means prescribed by the Regulations;

"probation officer" means an officer appointed as such by the Public Services Commission;

"residential requirement" means compulsory residence in a secure residential facility or a place other than the home of the child;

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

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"safe house" means any place or institution, not being a police cell, lock-up or a prison, whereby the person in charge is willing to receive and take care temporarily of a child in conflict with the law and which, in the opinion of the Board, may provide refuge and safety for a child;

"secure residential facility" means any residential facility established by the Minister and designated to receive sentenced children;

"supervision and guidance order" means an order placing a child under the supervision and guidance of a mentor or peer in order to guide the behaviour of the child and may include a probation order;

"symbolic restitution" means the giving of an object owned, made or bought by a child to a person, or group of persons or an institution as symbolic compensation for the harm caused by the child; and

"Territory" means Anguilla.

Principles to be applied when dealing with children

2. (1) The Court or a person performing any function pursuant to this Act shall be guided by the following principles—

(a) the safety, welfare and well-being of the child shall be the paramount consideration;

(b) a child shall as far as possible be given an opportunity to respond before any decision is taken which affects the child;

(c) a child shall be addressed in a manner appropriate to his age and intellectual development;

(d) a child shall be treated in a manner which takes into account his beliefs;

(e) all procedures to be carried out pursuant to this Act shall be conducted and completed in a speedy manner;

(f) parents and families shall have the right to assist their children who are involved in proceedings pursuant to this Act and, wherever possible, to participate in decisions affecting their children; and

(g) all consequences arising from the commission of an offence by a child shall be proportionate to the circumstances of the child, the nature of the offence, the interests of society, and the age and development of the child.

(2) A Judge or Magistrate presiding in the Court or the members appointed to the Board pursuant to section 5, 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 his parent, or an appropriate adult when the parent is not available or suitable, with or without the imposition of conditions;

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(b) if the release of a child into the care of his parent or an appropriate adult is not feasible, the release of the child on bail 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 detained separately from adults;

(b) shall be detained in conditions which will reduce the risk of harm to that child, including the risk of harm caused by other children;

(c) shall be detained with children of the same sex;

(d) shall have the right—

(i) to adequate food and water,

(ii) to medical treatment,

(iii) to visits by parents, guardians, an attorney-at-law, registered social workers, probation officers, health workers and religious counsellors,

(iv) to access acceptable reading material,

(v) to adequate exercise, and

(vi) to adequate clothing.

PART 2

APPLICATION AND CRIMINAL CAPACITY

Application of Act

3. (1) Subject to subsections (2) and (3), this Act shall apply to any person in Anguilla irrespective of nationality, country of origin or immigration status, who is alleged to have committed an offence and who, at the time of the alleged commission of the offence, was under the age of 18 years.

(2) Where, in relation to subsection (1), this Act provides for procedures different to those laid down under the Criminal Code, this Act shall apply.

(3) The Attorney-General, under exceptional circumstances, 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 over the age of 18 years but under the age of 21 years.

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(4) The circumstances contemplated pursuant to subsection (3) shall include those where—

(a) there are several co-accused and the majority of them are under the age of 18; or

(b) a person commits a further offence while serving a residential sentence imposed pursuant to this Act and after having reached the age of 18 years.

Criminal capacity

4. (1) No child 12 years or under is capable or guilty of committing a criminal offence and no child of 12 years or under shall be prosecuted.

(2) A child between the ages of 12 and 14 is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission, he or she had the capacity to know that he or she ought not to do the act or make the omission.

(3) A child under the age of 14 shall be dealt with pursuant to the Child Protection Act, unless he is between the ages of 12 and 14 and determined to be criminally responsible.

PART 3

ESTABLISHMENT OF CHILD JUSTICE BOARD

Establishment of Child Justice Board

5. (1) There is hereby established a Child Justice Board, which shall have the powers conferred on it pursuant to this Act, and be responsible for exercising the powers so conferred and discharging the duties prescribed for the Board under this Act.

(2) The Board shall consist of three members including the following members—

(a) a Magistrate; and

(b) 2 social workers who shall be appointed by the Minister, and such social workers may be drawn from a pool approved by the Minister for any particular matter.

(3) 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 for a period of not less than 3 years.

(4) The term of office of the social workers appointed under subsection (2)(b) and other matters of appointment including resignation shall be prescribed by the Minister.

(5) The appointment of a member of the Board shall be terminated by the Minister where—

(a) the member is found guilty of misuse of power vested in him pursuant to this Act;

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(b) the member has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or the member has not been granted full pardon in respect of such offence; or

(c) the member fails to attend the proceedings of the Board for 3 consecutive months without any valid reason.

Procedure in relation to Board

6. (1) The Board shall meet at such times and observe such rules of procedure in regard to the transaction of any business at its meetings as may be prescribed by the Board.

(2) Subject to subsection (3), the Board may act notwithstanding the absence of any member of the Board except the Magistrate, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of any proceedings before the Board.

(3) There shall be at least 2 members of the Board present, including the Magistrate at the hearing of any proceeding by the Board.

(4) In the event of any difference of opinion among members of the Board 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 shall prevail.

Power of the Board

7. Notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, the Board shall have the power to deal exclusively with all initial inquiries pursuant to Part 7 relating to a child in conflict with the law.

PART 4

ESTABLISHMENT OF ASSESSMENT FACILITIES AND SECURE RESIDENTIAL FACILITIES

Assessment facilities

8. (1) The Minister shall make provision for the establishment of assessment facilities for the temporary reception of any child in conflict with the law, pending an initial inquiry regarding the child pursuant to this Act.

(2) An assessment facility under subsection (1) may be established pursuant to an agreement with a voluntary organisation, and arrangements shall be made by the Minister for the maintenance of such a facility.

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

(4) An office in the Department of Probation is automatically deemed an assessment facility.

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(5) The Minister may make rules to provide for the management of assessment facilities, including the standards to be applied to the child and the circumstances under which and the manner in which the certification of an assessment facility may be granted or withdrawn.

(6) A child in conflict with the law shall be sent to an assessment facility for the purpose of permitting a probation officer to observe and assess the child, taking into account his age and the seriousness of the offence he is alleged to have committed.

Secure residential facility

9. (1) The Minister shall establish and maintain, either by his 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 in accordance with this Act, the Minister may certify such institution as a secure residential facility.

(3) 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 the secure residential facility which are necessary for the rehabilitation or reintegration of a child.

(4) The rules made pursuant to subsection (3) may also provide for the management, classification and separation of a child in conflict with the law on the basis of age and the nature of the offence committed by the child and his physical and mental status.

PART 5

METHODS OF SECURING ATTENDANCE OF CHILD AT INITIAL INQUIRY

Method of securing attendance of child

10. (1) Where a police officer reasonably believes that a child has committed an offence, the police officer may, subject to subsection (2), use the following methods for securing the attendance of the child at an initial inquiry before the Board—

(a) apprehension;

(b) summons; or

(c) a written instruction.

(2) The child may not be brought before the Board for an initial inquiry until the police officer has made provision for the child to be assessed by a probation officer in accordance with this Act.

Apprehension

11. (1) An order of apprehension approved by a person of the rank of Superintendent of Police or above, as prescribed, shall direct that the child be brought to appear at an initial inquiry before the

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Board, but no child shall be arrested for an offence as stated in Schedule 1, unless there are compelling reasons justifying an arrest.

(2) The police officer apprehending a child shall immediately notify the parent of the child or an appropriate adult of the apprehension.

(3) After notifying the parent of the child or an appropriate adult of the apprehension of the child in conflict with the law, the police officer who apprehended the child shall, in the presence of the parent or appropriate adult—

(a) inform the child of the nature of the allegation against him or her;

(b) inform the child of his 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 Act.

(4) The Commissioner of Police shall issue directives with respect to the procedures to be followed when notifying the parent of a child or an appropriate adult pursuant to subsection (2).

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

(6) A child who has been apprehended shall be taken by a police officer to appear at an initial inquiry within 72 hours after the apprehension.

(7) Subsection (6) applies even where there has been a failure to assess a child as required under section 23.

(8) If the police officer is unable to inform the probation officer of the apprehension pursuant to subsection (5), he shall submit a written report to the Board at the initial inquiry, in the prescribed manner, giving reasons for the non-compliance.

(9) Where a child who is accused of an offence referred to in Schedule 1 has not been released from detention in police custody before appearing at an initial inquiry, the police officer who apprehended the child shall provide the Board with a written report giving the reasons why the child could not be released from detention.

(10) A police officer shall not apprehend a child of 12 years or under who is alleged to have committed an offence, but may remove the child to a safe house if he has reason to believe that it is necessary to do so for the safety of the child.

Summons

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

(2) A copy of the summons served to the child shall be served on a parent of the child or an appropriate adult.

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(3) A police officer shall—

(a) not later than 24 hours after the service of the summons inform the probation officer of the serving of the summons;

(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,

(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 Act.

Written instruction

13. (1) A police officer who reasonably believes that a child has committed an offence may, after liaising with a probation officer appointed by the Senior Probation Officer, instruct that child to appear at an inquiry at a specified time on a specified date and to remain in attendance at the proceedings relating to the offence in question.

(2) A police officer who, through a probation officer instructs a child pursuant to subsection (1), shall instruct the parent of the child 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.

(3) Where a police officer instructs a child pursuant to subsection (1), a probation officer shall complete and hand to the child and to the parent of the child 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, or a statement saying that he will be informed of the day and time of the initial inquiry within 48 hours.

(4) Pursuant to subsection (3), a probation officer shall, when he hands the written notice to the child, the parent of the child or an appropriate adult as the case may be—

(a) inform the child, the parent of the child or an appropriate adult of the nature of the allegation against the child;

(b) inform the child, the parent of the child or an appropriate adult of the rights of the child in the prescribed manner; and

(c) explain to the child, the parent of the child or an appropriate adult the immediate procedures to be followed pursuant to this Act.

Uncertainty as to age of child

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 estimation of the age of the person at the initial inquiry.

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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 stated in Schedule 1, into the care of the parent of the child or an appropriate adult before the child appears at the initial inquiry unless—

(a) exceptional circumstances as may be prescribed by warrant detention;

(b) the parent of the child or an appropriate adult cannot be located or is not available and all reasonable efforts have been made to locate the parent or appropriate adult; or

(c) there is a substantial risk that the child may be a danger to any other person or to himself.

(2) A police officer may, in consultation with a person of the rank of Superintendent or above, release a child who—

(a) is in detention in police custody and who is accused of an offence referred to in Schedule 2; or

(b) is accused of an offence referred to in Schedule 1 but has not been released pursuant to subsection (1),

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

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

(a) appear 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 people; and

(c) reside at a particular address.

Attorney-General may authorise the release of child

16. The Attorney-General or a designated prosecutor may—

(a) notwithstanding the decision of a police officer to the contrary under section 15, authorise the release of a child from detention in police custody into the care of the parent of the child or an appropriate adult upon any of the conditions referred to in that section, and if such release is authorised, 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; or

(b) 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 bail prior to the appearance of the child at an initial inquiry, subject to reasonable conditions, if the release of the child into the care of the parent of the child or an appropriate adult is deemed appropriate.

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Duty of police officer and 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 upon the direction of the Attorney-General in accordance with section 16, and places the child into the care of the parent of the child or an appropriate adult, shall 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—

(a) the offence in respect of which the child is being accused;

(b) any conditions relating to the release of the child, warning him that he must comply; and

(c) the place, date and time at which the child shall appear for the initial inquiry.

Prescription for bail

18. The Commissioner of Police may issue directives regarding the conditions that may be set for bail for the release of children pursuant to this Act.

Child accused of certain offences not to be released from detention

19. Subject to sections 20 and 34, a police officer shall not release a child accused of murder, treason or an offence referred to in Schedule 3 from detention in police custody.

Detention in safe house in lieu of detention in police custody

20. If a child cannot for any reason be released into the care of his parent or an appropriate adult, or cannot be released on bail, the child shall, in lieu of detention in police custody, be detained in a safe house.

Duty of police officer in respect of child

21. (1) Where a child in detention in police custody complains of an injury sustained during apprehension or whist in detention, the police officer to whom such complaint is made shall report the complaint to the police officer in charge of the police station where the child was apprehended or detained, and the police officer in charge shall delegate a police officer to take the child to a medical doctor for examination as soon as is reasonably possible.

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

Register of children in detention in police cell

22. (1) The police officer in charge of a police station shall keep a register in which details as prescribed by the Commissioner of Police regarding the detention in police cells of all children shall be distinctively recorded.

(2) The register may be examined by such persons as may be prescribed.

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PART 6

ASSESSMENT OF CHILD

Duty of probation officer to assess child

23. (1) A probation officer who receives notification from a police officer that a child has been apprehended, served with a summons or issued with a written notice, shall assess the child before he appears at the initial inquiry relating to the child.

(2) The police officer who issued the notice under subsection (1), or any police officer so designated by the Commissioner of Police, may participate in the assessment under subsection (1).

Place where assessment is to be conducted

24. (1) The assessment of a child shall take place in any assessment facility pursuant to section 8.

(2) The place identified pursuant to subsection (1) shall be conducive to privacy.

Persons to attend assessment

25. (1) A child shall be present at his assessment.

(2) Subject to subsection (3), a parent of the child or an appropriate adult shall attend the assessment of the child.

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

(a) the Attorney-General or a designated prosecutor or his designate;

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

(c) the police officer referred to under section 23(2);

(d) any person whose presence the probation officer believes is necessary or desirable for the assessment, or whom the probation officer believes should attend in the best interests of the child.

Powers and duties of probation officer prior to assessment

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

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

(3) A person notified pursuant to subsection (1) may apply to the probation officer to be absent from the assessment, and, if the probation officer exempts the person from attending, such exemption shall be in writing.

(4) A person who has received notice pursuant to subsection (1) and is not exempted pursuant to subsection (3) who fails to attend the assessment commits an offence and is liable on conviction to a fine of $1,000 or to a term of imprisonment of 1 month.

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(5) A probation officer may request a police officer to—

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

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

(c) provide transport in order to secure the attendance at the assessment of the child, and his parent or appropriate adult in accordance.

(6) The probation officer shall make every effort to locate a parent, guardian, or appropriate adult for the purposes of concluding the assessment of a child.

(7) If all reasonable efforts to locate a parent of the child or an appropriate adult have failed, the probation officer shall conduct the assessment in the absence of such persons.

Powers and duties of probation officer at assessment

27. (1) A probation officer shall—

(a) explain to the child the purpose of the assessment;

(b) inform the child of his rights in the prescribed manner;

(c) explain to the child the immediate procedures to be followed pursuant to this Act; and

(d) inquire from the child whether he intends to acknowledge responsibility for the offence in question.

(2) The probation officer shall at any stage during the assessment—

(a) consult individually with any person at the assessment;

(b) contact or consult any person who is not present at the assessment and who may have information relating to an assessment and if such information is obtained, the child shall be informed of it.

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

(4) The probation officer shall encourage participation of the child during the assessment process.

(5) The probation officer shall complete an assessment report at the end of the assessment and shall provide recommendations with respect to—

(a) the prospects of diversion;

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

(c) the placement, where applicable, of the child in a particular safe house or a secure residential facility.

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

(7) The probation officer shall submit the report referred to in subsection (6) to the Attorney-General prior to the commencement of the initial inquiry.

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

PART 7

INITIAL INQUIRY

Nature and objectives of initial inquiry

28. (1) The Board shall hold an initial inquiry in respect of a child after an assessment pursuant to this Act.

(2) The appearance of a child at an initial inquiry before the Board shall be regarded as equivalent to a first appearance before a court as contemplated pursuant to the Criminal Code.

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

(a) establish whether the matter can be diverted before plea;

(b) identify a suitable diversion option, where applicable;

(c) provide an opportunity for the Attorney-General or a designated prosecutor to assess whether there are sufficient grounds for the matter to proceed to trial should diversion fail;

(d) ensure that all available information relevant to the child, such as his circumstances and the offence the child is alleged to have committed, 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 Board;

(f) encourage the participation of the child and his parent or an appropriate adult in decisions concerning the child; and

(g) determine the release or placement of the child pending—

(i) conclusion of the initial inquiry, or

(ii) appearance of the child in Court.

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

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(5) The Board shall conduct the proceedings in an informal manner by asking questions, interviewing persons at the hearing and obtaining information.

Persons to attend initial inquiry

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

(a) the child;

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

(c) the probation officer who conducted the assessment of the child, except where the Board gives permission for his absence;

(d) the Attorney-General or a designated prosecutor; and

(e) any other person as may be deemed necessary by the Board pursuant to section 31.

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

(3) If an initial inquiry proceeds in the absence of the probation officer who conducted the assessment of the child, the assessment report shall be made available at the initial inquiry unless assessment has been dispensed with pursuant to section 31(2).

(4) The following persons may attend an initial inquiry—

(a) the attorney-at-law representing the child;

(b) a police officer; and

(c) any other person the Board deems appropriate pursuant to section 31.

Procedure relating to initial inquiry

30. (1) At the commencement of an initial inquiry—

(a) the Board shall determine the age of the child;

(b) the Board shall—

(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 rights, and

(iv) explain to the child the immediate procedures to be followed pursuant to this Act.

(2) The Attorney-General or a designated prosecutor shall ensure that the Board has a copy of the assessment report prepared pursuant to section 27(5), if available.

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

(4) A child, the attorney-at-law representing the child, the parent of the child or an appropriate adult, the Attorney-General or a designated prosecutor, shall be given an opportunity to question the probation 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 assessed together 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 which he is alleged to have committed, no further questions regarding the offence may be put to the child and the Attorney-General or a designated prosecutor may set the matter down for plea and trial in the Court.

(8) Information furnished at an initial inquiry shall not be used in subsequent proceedings against the person who furnished such information.

(9) The Board shall keep a record of all proceedings relating to an initial inquiry.

Powers and duties of the Board with respect to initial inquiry

31. (1) The Board may—

(a) subpoena or cause to be subpoenaed any person whose presence is necessary for the conclusion of an initial inquiry or whose attendance is in the best interests of the child;

(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 proceedings;

(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 proceedings in a manner consistent with this Act.

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

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(3) The Board shall ensure that the child, the attorney-at-law representing the child, the parent of the child or an appropriate adult—

(a) knows of the recommendations in the report prepared by the probation officer; and

(b) is informed of any diversion option and the aims and content of such option.

(4) During the initial inquiry, the Board may request the probation officer to explain, elaborate upon or justify any recommendation or statement made in the assessment report, or to provide additional information.

(5) The Board shall consider the reports regarding the apprehension of the child and the detention in police custody provided by the police officer who apprehended the child.

Failure to appear at initial inquiry

32. (1) A child or his parent or an appropriate adult who has been instructed to appear at an initial inquiry by a police officer pursuant to section 13, and who fails to do so, commits an offence and is liable on summary conviction to a fine of $5,000 or to a term of imprisonment of 3 months.

(2) Subsection (1) shall apply with the changes required by the context and subject to section 66 and section 67 to a child who has been released in the care of his parent or an appropriate adult and who fails to comply with the direction contained in the written notice referred to in section 17 or with any condition imposed pursuant to section 15(3).

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

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

(a) the initial inquiry is not disposed of at the first appearance of the child before the Board; 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 of the child or an appropriate adult, the Board shall have regard to any recommendations made by the probation officer and other relevant factors, including—

(a) whether the child has any previous convictions;

(c) the availability of the parent of the child 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 probable period of detention of the child until conclusion of the initial inquiry;

(g) the risk that the child may be a danger to himself or to any other person;

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(h) the state of health of the child;

(i) 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 Territory or on the part of the child or his attorney-at-law;

(j) whether detention would prejudice the child in the preparation of his case;

(k) the likelihood that, if the child is found guilty of the offence he will be detained for a substantial period;

(l) the receipt of a written confirmation by the Attorney-General that he intends to charge the child with murder, treason or an offence referred to in Schedule 3.

(3) The Board may, in releasing the child pursuant to subsection (1), impose one or more of the following conditions, namely that the child—

(a) appear before the Board at a specified place and time;

(b) report periodically to a specified person or place;

(c) attend a particular school;

(d) reside at a particular address;

(e) be placed under the supervision of a specified person; or

(f) not interfere with a witness, tamper with any evidence or associate with any person or group of specified people.

(4) If the Board releases the child into the care of a parent of the child or an appropriate adult, the Board shall instruct the parent or the appropriate adult, as the case may be, to bring the child to appear 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 such condition.

(5) A person into whose care a child is placed who fails to comply with subsection (4) commits an offence and is liable on conviction to a fine of $2,000 or to a term of imprisonment of 1 month.

(6) Subject to section 66, if a child has been released into the care of his parent or an appropriate adult and fails to comply with a condition imposed pursuant to this section, the Board may direct that the child be detained in a safe house or residential facility until the conclusion of the initial inquiry.

(7) The Board may, after consideration of the facts, release a child on bail subject to one or more of the conditions contemplated in subsection (3).

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Detention of child after first appearance before the Board

34. (1) The Board may order the detention of a child in a safe house or a secure residential facility where—

(a) the proceedings of the initial inquiry are postponed pursuant to section 35 or 36;

(b) the release of the child into the care of his parent or an appropriate adult is for any reason not possible; or

(c) the child is to appear for plea and trial pursuant to section 40.

(2) If a safe house or a secure residential facility is not available, the child shall be detained in a police cell as long as the detention facilities at the police station are suitable for the detention of children and provide for children to be detained separately from adults.

(3) The Board shall have regard to the recommendations made by the probation officer when deciding where to place the child pursuant to subsection (2).

(4) A child of 14 years or older who is charged with murder, treason or an offence referred to in Schedule 3 may be detained in a prison if the Board feels that there is a substantial risk that the child will cause harm to other children in a safe house or a secure residential facility, provided that the child is separated from adults.

(5) Where the Board makes an order that a child be detained in prison, the Board shall record the reasons for making such an order.

(6) If the Board makes an order for the detention of a child pursuant to subsection (1)(c), a probation officer shall make periodic visits to the child to ensure that the child is being properly treated and kept under suitable care.

(7) If, pursuant to subsection (6) probation officer is of the view that the child is not being properly treated and kept under suitable conditions, the probation officer shall make an appropriate remedial order to the persons in charge of the facility where the child is being detained and further report the matter to the Board for it to consider making an order to remove the child from harm.

Postponement of initial inquiry

35. (1) The Board may postpone the proceedings of an initial inquiry—

(a) for a period not exceeding 3 days for the purposes of—

(i) securing the attendance of a person necessary for the conclusion of the initial inquiry,

(ii) obtaining information necessary for the conclusion of the initial inquiry,

(iii) establishing the attitude of the victim regarding diversion,

(iv) the planning of a diversion option,

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(v) finding alternatives to pre-trial residential detention,

(vi) assessing the child, where no assessment has previously been undertaken and it is found that assessment may not be dispensed with,

(vii) noting a confession,

(viii) noting an admission,

(ix) holding of an identity parade, or

(x) obtaining legal presentation for the child;

(b) for a period not exceeding 7 days if there are exceptional circumstances warranting a further detailed assessment of the child, and if these circumstances relate to—

(i) the possibility that the child may be a danger to others or to himself or herself,

(ii) the fact that the child has a history of repeatedly committing offences or abscondment,

(iii) the social welfare history of the child,

(iv) the possible admission of the child to a sexual offender's programme, substance abuse programme or other intensive programme,

(v) the possibility that the child may be a victim of sexual or other abuse, or

(vi) the need to conclude a family group conference.

(2) If the proceedings of an initial inquiry are postponed pursuant to subsections (1)(a)(vii), (viii), (ix), the Board shall inform the child of his right to have his parent or an appropriate adult present during such proceedings.

(3) Where the initial inquiry has been postponed pursuant to subsections 1(a) or (b), it may be further postponed for a period of 48 hours if the postponement is likely to increase the prospects of diversion, after which if the initial inquiry is not concluded and subject to section 37, the initial inquiry shall be closed and the Attorney-General or a designated prosecutor shall set the matter down for plea and trial in the Court.

Postponement of initial inquiry for detailed assessment

36. A detailed assessment pursuant to section 35(1)(b) 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 an assessment facility.

Decision regarding diversion

37. (1) The Board shall ascertain whether a matter before it may be diverted after consideration of the following—

(a) any recommendations made by the Attorney-General or a designated prosecutor;

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(b) the assessment report unless this has been dispensed with pursuant to section 31(2);

(c) the views of all persons present at the initial inquiry and any information provided by any such person;

(d) any information requested pursuant to section 31(1)(c); and

(e) the willingness of the child to acknowledge responsibility for the offence.

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

(3) In addition to the diversion options established pursuant to Part 8, the Board 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 diversion set out pursuant to that Part.

(4) If the Board during diversion proceedings at the initial inquiry determines that the child is innocent of the offence being alleged, the Board shall order the release of the child without making a diversion order and shall further make a recommendation to the Attorney-General that the child not be prosecuted.

Failure to comply with diversion direction

38. (1) If a child fails to comply with a diversion direction, the Board shall, upon being notified of such failure in the prescribed manner, issue a warrant of apprehension for the child or a written notice to the child to appear before the Board.

(2) Where a child appears before the Board pursuant to subsection (1), the Board shall inquire into the reasons for the failure of the child to comply with the diversion order and, unless the Attorney-General or a designated prosecutor decides to proceed with the prosecution of the child concerned, the Board may, after consideration of the views of any person present at the inquiry—

(a) apply the same option with altered conditions;

(b) apply any other diversion option; or

(c) make an appropriate order which will assist the child and his family to comply with the diversion option initially applied.

(3) If the Attorney-General or Police Prosecutions decides to proceed with the prosecution of the matter, the matter shall be set down for trial and plea in the Court and section 40 shall apply with the necessary changes required by context.

Referral of matter to Commissioner of Social Development

39. (1) If it appears during proceedings at an initial inquiry that a child is in need of care and protection pursuant to the Child Protection Act, and that it is desirable to deal with the child pursuant to that Act, the Board shall stop the proceedings and transfer the matter to the Commissioner of Social Development to be dealt with in accordance with the Child Protection Act.

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(2) Referral of a matter to the Commissioner of Social Development shall be considered by the Board if a child—

(a) has previously been assessed on more than one occasion with regard to minor offences committed to meet the basic need of the child for food and shelter and in the initial inquiry in question it is again alleged that the child has committed such an offence;

(b) is allegedly abusing dependence-producing substances; or

(c) does not live at his family home or in appropriate substitute care, and is alleged to have committed a minor offence, the purpose of which was to meet the basic needs of the child for food and shelter.

Procedure upon referral of matter for plea and trial

40. (1) If diversion has not taken place and the child has not been transferred to the Commissioner of Social Development pursuant to section 39 upon the conclusion of the initial inquiry, the Attorney-General, Police Prosecutions or a designated prosecutor, where he makes a decision to prosecute the child, shall inform the Board of the place, date and time when the child shall appear for plea and trial in the Court.

(2) The Board shall, if the child is not legally represented, explain to the child and the parent of the child or an appropriate adult, as the case may be, the provisions of Part 11 regarding legal representation.

(3) If a child is—

(a) in detention, the Board shall inform the child of the place, date and time of his appearance in Court, and shall instruct the parent of the child or an appropriate adult to attend the proceedings at the specified place and time; or

(b) not in detention, the Board—

(i) may alter or extend any condition imposed pursuant to section 16(a) or 33(3), and

(ii) shall instruct the child and his parent or an appropriate adult, as the case may be, to appear in Court at a specified place, date and time.

PART 8

DIVERSION

Purposes of diversion

41. The purposes of diversion are to—

(a) encourage the child to be accountable for the harm which he has caused;

(b) meet the particular needs of the child;

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(c) promote the reintegration of the child into the family and the community;

(d) provide an opportunity to those affected by the harm caused by the child to express their views on its impact on them;

(e) encourage the rendering to the victim of some symbolic benefit or the delivery of some object as compensation for harm;

(f) promote the reconciliation between the child and the person or community affected by the harm caused by the child;

(g) prevent stigmatising the child and prevent adverse consequences flowing from being subject to the criminal justice system; and

(h) prevent the child from having a criminal record.

Child to be considered for diversion under certain circumstances

42. A child shall be considered for diversion by the Board if—

(a) the penalty for the offence with which the child is charged is no more than 10 years imprisonment;

(b) the child voluntarily acknowledges responsibility for the offence;

(c) the child understands his right to remain silent and has not been unduly influenced to acknowledge responsibility;

(d) there is sufficient evidence to prosecute; and

(e) the child and his parent or an appropriate adult, consent to the diversion and the diversion option.

Minimum standards applicable to diversion and diversion options

43. (1) A child shall not be excluded from a diversion programme due to an inability to pay any fee required for such a programme.

(2) 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.

(3) A diversion option shall —

(a) promote the dignity and well-being of the child, and the development of his sense of self-worth and ability to contribute to society;

(b) not be exploitative, harmful or hazardous to the physical or mental health of the child;

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

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

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(4) A diversion option presented to the Minister by a government department or a non-governmental organisation, which meets the requirements as stated pursuant to subsection (3), 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 and may be considered as a diversion option by the Board.

(5) A diversion option may also be comprised of an agreement to pursue a plan of action arising out of a family group conference pursuant to section 46.

(6) The Chief Probation Officer shall keep a register, in the prescribed manner, of all children who have been subject to diversion.

Development of diversion options

44. The Minister, upon consultation with the Board and the Chief Probation Officer, shall develop suitable diversion options as contemplated in this Part.

Diversion options

45. (1) In selecting a specific diversion option for a child at an initial inquiry, the Board shall give consideration to—

(a) the selection of a diversion option from an appropriate level pursuant to this section;

(b) the background of the child;

(c) the educational level, cognitive ability and the general circumstances of the child;

(d) the proportionality of the option recommended or selected to the circumstances of the child, the nature of the offence and the interests of society; and

(e) the age and developmental needs of the child.

(2) Level one diversion options include the following—

(a) an oral or written apology to a specified person or institution;

(b) a formal caution in the prescribed manner with or without conditions;

(c) placement under a supervision and guidance order in the prescribed manner for a period not exceeding 3 months;

(d) placement under a reporting order in the prescribed manner;

(e) the issue of a compulsory school attendance order in the prescribed manner for a period not exceeding 3 months;

(f) the issue of a positive peer association order in the prescribed manner in respect of a specified person in a specified place for a period not exceeding 3 months;

(g) the issue of a family time order in the prescribed manner for a period not exceeding 3 months;

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(h) the issue of a good behaviour order in the prescribed manner;

(i) the issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place in the prescribed manner;

(j) referral to counselling or therapy for a period not exceeding 3 months;

(k) compulsory attendance at a specified place for a specified vocational or educational purpose for a period not exceeding 5 hours each week, for a maximum of 3 months;

(l) symbolic restitution 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) Level two diversion options include the following—

(a) the options referred to in subsection (2), save however that the maximum periods contemplated in that subsection shall for the purposes of this subsection be construed as 6 months;

(b) compulsory attendance at a place approved by the Board for a specified vocational or educational purpose for a period not exceeding 8 hours each week, for the length of the programme;

(c) performance without remuneration of some service for the benefit of the community under the supervision or control of an organisation or institution, or a specified person or group identified by the probation officer effecting the assessment, for a maximum period of 50 hours, and to be completed within a maximum period of 6 months;

(d) provision of some service or benefit to a specified victim in an amount which the family of the child is able to afford;

(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; and

(f) counselling.

(4) Level three diversion options shall apply only to children over the age of 14 years, in cases where the relevant law pertaining to the offence committed imposes a sentence of detention for a period exceeding 3 years but not exceeding 10 years, and include the following—

(a) referral to a programme which does not exceed 1 year;

(b) performance without remuneration of some service 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 probation officer and for a period of 250 hours which shall be completed within 1 year and no more than 35 hours per week;

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(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 1 year; and

(d) referral to counselling or therapeutic intervention in conjunction with any of the options listed in this subsection.

(5) Upon the selection of a diversion option, the Board or Court, as the case may be, shall select a probation officer or other suitable person to monitor the compliance of the child with the selected diversion option and, in the event of a child failing to comply with any condition of the diversion option, the probation officer or specified person shall notify the Board or the Court of such failure.

Family group conference

46. (1) If a child has been referred to appear at a family group conference whether by the Board or the Court, a probation officer shall be assigned to conduct the family group conference and he shall within 14 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 may 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 his parent or an appropriate adult;

(b) any person requested by the child and deemed appropriate by the Board or the Court;

(c) the probation officer;

(d) a police officer;

(e) the victim of the offence which the child admitted and, if the victim is under the age of 18 years, his parent or an appropriate adult;

(f) the attorney-at-law representing the child if applicable; and

(g) any person authorised by the probation officer to attend the family group conference.

(3) The participants in a family group conference shall follow the procedure agreed upon by them and may agree to a plan in respect of the child pursuant to subsections (4) and (5) as they deem fit.

(4) A plan contemplated pursuant to subsection (3)—

(a) may include—

(i) the application of any option contained in section 45(2) or (5), or

(ii) any other plan appropriate to the child, his family and their circumstances; provided that such plan shall be consistent with the principles contained in this Act; and

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(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 his 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 probation officer shall record the details of and reasons for any plan agreed to at the family group conference and shall furnish a copy of the record to the Board or Court as the case may be.

(7) Where a child fails to comply with any condition of the plan agreed to in a family group conference, the probation officer shall notify the Board or the Court, as the case may be, in writing of such failure, and section 38 shall apply.

(8) If the participants of a family group conference fail to agree on a plan, the probation officer shall close the family group conference and refer the matter back to the Board for consideration of another diversion option.

(9) The proceedings of a family group conference shall be confidential and no statement made by a participant in the family law conference may be used as evidence in any subsequent court proceedings.

PART 9

COURT PROCEEDINGS

Conduct of proceedings relating to child in Court

47. (1) At the commencement of proceedings against a child in any court, the Judge or Magistrate, as the case may be, 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 rights; and

(c) explain to the child—

(i) the further procedures to be followed pursuant to this Act, the Criminal Code or any other Act relating to criminal trial procedures, where not expressly overruled by this Act; and

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(ii) such other rules of procedure as are provided under section 1 of the Juvenile Courts Act.

(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 parents or an appropriate adult.

(3) The Magistrate or Judge, as the case may be, 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.

(4) Where in relation to any offence under the Criminal Code, proceedings are to be commenced within a certain time, time shall not begin to run or expire while an initial inquiry by the Board is pending under this Act.

Admissibility of confessions and admissions

48. (1) Evidence obtained as a result of a confession, or an admission that is admissible pursuant to the Criminal Code, shall only be admissible as evidence in a court hearing a matter against a child if the parent of the child, or an appropriate adult, or the attorney-at-law representing the child is present.

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

(3) If a child refuses to have his parent or an appropriate adult present at the procedures contemplated pursuant to subsections (1) and (2), or where a parent or an appropriate adult is not present or cannot be traced and a legal representative is not available, the police officer in charge of the investigation relating to the child, shall request a person to act as an independent observer, and such independent observer shall be present at the procedure.

Child in detention at Court

49. (1) A child shall not be subjected to the wearing of leg irons when appearing in any court, and handcuffs may only be used where there are exceptional circumstances warranting their use.

(2) A child held in a cell at any 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 when in the custody of any court.

(4) Where a child is transported to and from any court he shall, if possible, be transported separate from adults.

(5) The Commissioner of Police shall issue directives for the treatment and conditions of children while in detention at any court in accordance with this Act.

Presumption of age of child

50. (1) Where a person is charged under this Act and it appears to the Court that that person is a child, or was a child at the date of the commission of the alleged offence, the Court shall make due enquiry and a determination as to the age of that person and shall take evidence as may be forthcoming for such purposes.

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(2) The person referred to under subsection (1) shall be presumed to be a child, or to have been a child at the time of the commission of the alleged offence unless the contrary is proved.

Establishment of criminal capacity for purposes of trial

51. (1) For the purposes of a criminal trial, the criminal capacity of a child over the age of 12 years but under the age of 14 years shall be proved by the Territory beyond a reasonable doubt and the Court shall hold an evaluation prior to the hearing of evidence for such purpose.

(2) For the purposes of the evaluation under subsection (1), the Court may order a suitably qualified person to evaluate the child, and the evaluation shall be conducted at the expense of the Territory.

(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 7 days of the date of the order.

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

Transfer where person is not a child

52. On the hearing of a charge against a person deemed to be a child pursuant to section 50, the Court shall, if it is discovered that the person in question is not a child, or was not a child at the time of the commission of the alleged offence, transfer the matter for trial as an adult, to the Magistrate Court or Supreme Court, as the case may be.

Separation and joinder of trials involving child and adult

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

(2) An application for such joinder shall be made to the Magistrate's Court or Judge of the court of trial, and where the application for joinder of trials is granted, the matter shall be transferred to the court in which the adult is being tried and the child shall appear after notice is given to him or her in the prescribed manner.

(3) Notwithstanding subsection (2), a matter may only be heard in the Supreme Court pursuant to this section if the offence for which the trial is being held is murder or treason.

(4) The court where the matter joined pursuant to subsection (2) is being heard shall afford the child concerned all such benefits relating to trial conferred upon the child pursuant to this Act.

Time limits relating to conclusion of trials

54. (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 33 and 35 shall apply to the Court, with the necessary changes required by context, where the child appearing in the Court for the first time is in detention.

(3) Where a child remains in detention in a safe house, a secure residential facility or a prison, and the trial of the child is not concluded within 6 months from the date upon which the child has

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pleaded to the charge, the child shall be released from detention, unless he is charged with murder, treason or an offence listed under item 2 or 3 of Schedule 3.

Court may divert matter

55. (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 Attorney-General, Police Prosecutions or a designated prosecutor indicates that the matter may be diverted.

(2) Part 8 applies, with the changes required by context, if the Court makes an order for diversion.

(3) Where the Court makes an order for diversion, it shall postpone the proceedings of the Court pending the compliance of the child with the diversion order.

(4) The Court shall, upon receipt of a report from a probation officer that a child has successfully complied with an order for diversion, 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 an order relating to diversion, section 39 shall apply, with the necessary changes required by the context.

Privacy and confidentiality for children in court

56. (1) 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 judge has granted the person permission to be present.

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

(3) Subject to subsection (4), this section 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 or 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.

(4) The reports referred to in subsection (3)(b) or (c) shall, to the extent possible, not mention the actual 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.

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PART 10

SENTENCING OF CHILD

Child to be sentenced in accordance with this Part

57. The Court shall, after a finding of guilt in relation to a child, impose a sentence on the child in accordance with this Part.

Pre-sentence reports

58. (1) The Court shall request a pre-sentence report to be prepared by a probation officer or any other suitable person prior to the imposition of sentence on a child.

(2) Pursuant to subsection (1), the probation officer or a person shall complete the report as soon as possible, but no later than 6 weeks following the date upon which such report was requested.

(3) The Court may dispense with a pre-sentence report where a child is convicted of an offence referred to in Schedule 1, or where requiring such a report would cause undue delay in the conclusion of the case, save however that the Court shall not impose a sentence with a residential requirement unless a pre-sentence report has been first obtained.

(4) For the purposes of subsection (3), "a sentence with a residential requirement" includes a sentence where the residential requirement is suspended.

(5) Where a Magistrate imposes a sentence involving detention in a secure residential facility, the Magistrate shall certify on the warrant of detention that a pre-sentence report has been placed before the Court prior to the imposition of sentence.

Purpose of sentencing

59. The purpose of sentencing pursuant to this Act shall be to—

(a) encourage the child to understand the implications of and be accountable for the harm caused;

(b) promote an individualised response which is appropriate to the circumstances of the child and proportionate to the circumstances surrounding the offence;

(c) promote the reintegration of the child into the family and community; and

(d) ensure that any necessary supervision, guidance, treatment or services which form part of the sentence, assist the child in the process of reintegration.

Community based sentences

60. (1) Sentences which allow children to remain in the community and which may be imposed pursuant to this Act are as follows—

(a) any of the options referred to in section 46(2);

(b) placement under a supervision and guidance order pursuant to the Probation Act for a period not exceeding 3 years;

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(c) in cases which 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 deems fit;

(d) where the child is over the age of compulsory school attendance, and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose, for a period not exceeding 1 year and for no more than 35 hours per week;

(e) performance without remuneration of some service 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 250 hours and which shall be completed in 1 year;

(f) committing the child to the care of any fit person, whether a relative or not, who is willing to undertake the care of him;

(g) ordering the parent of the child to enter into a recognisance for the good behaviour of such child.

(h) any other sentence, subject to section 69 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 12 months.

(2) Consent of any person to undertake the care of a child pursuant to an order made under subsection (1)(g) shall be proved in such manner as the Court may think sufficient to bind him.

(3) Before a child under the age of 14 years is sentenced pursuant to subsection (1)(e), special consideration shall be given to the age and development of the child.

Role of supervision

61. (1) Where a child has been placed under supervision pursuant to an order under section 60, that officer—

(a) shall, while the order remains in force, visit, advise and support him and, when necessary, endeavour to find him suitable employment; and

(b) may, if it appears necessary in the child's interest so to do, at any time while the order remains in force, bring him before a Juvenile Court and that court may, if it thinks it desirable in his interest so to do, commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care of him.

(2) Where a child is bound by a recognisance or order under the Probation Act pursuant to an order made by the Juvenile Court under this Act, the attainment by that child of the age of 18 years shall not deprive the court of jurisdiction to enforce his attendance and deal with him in any respect of any failure to observe the conditions of his recognisance, or order or of jurisdiction to vary or discharge the recognisance or order.

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Summons to inquire of fit person

62. (1) Where a child has been convicted of any offence and the Court is satisfied that it is in the best interests and welfare of the child to make an order committing him to the care of a fit person and ascertains on inquiry that such a person is available and willing to undertake the care of the child, the court shall have power to summon such fit person before it for the purpose of examining him as to his fitness for being so appointed.

(2) The Court, before making an order under this Act committing a child to the care of a fit person, shall endeavour to ascertain the religious persuasion of the child and shall, wherever possible, in making such order, take into consideration such religious persuasion.

(3) Every order committing a child to the care of a fit person shall contain a declaration—

(a) as to the age and religious persuasion (if ascertained) of the child with respect to whom the order is made;

(b) where a contribution order has at the same time been made under section 78, stating the amount of such contribution and by whom it is payable.

Family group conference for sentencing

63. (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 to make a recommendation as to sentencing.

(2) Section 46 shall apply where the Court has referred a matter to a family group conference.

(3) Upon 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 material respect from that agreed to or decided upon at the family group conference, the Court shall note the reasons for deviating from the plan on the record of the proceedings.

(5) Where a child who has been sentenced in accordance with an order arising from a family group conference fails to comply with that order, the probation officer shall notify the Court of the failure as soon as possible and the Court shall issue a warrant of apprehension for the child, and where the child appears before the Court pursuant to such warrant, the Court shall impose an appropriate sentence on the child.

Sentences involving correctional supervision

64. (1) The Court may impose a sentence involving correctional supervision for a period not exceeding 3 years on a child over the age of 14 years.

(2) The whole or any part of the sentence imposed pursuant to subsection (1) may be postponed or suspended, with or without conditions contemplated pursuant to section 68(3).

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Sentence with residential requirement

65. (1) A sentence involving a residential requirement shall not be imposed on a child unless the Magistrate 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 Magistrate imposing any sentence involving a residential requirement on a child, shall note the reasons for the sentence on the record and explain them in language which the child can understand.

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

(a) programme with a periodic residence requirement where the duration of the programme does not exceed 1 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 66; or

(c) prison, subject to section 67.

Referral to secure residential facility

66. (1) Subject to subsection (2) a sentence involving a residential requirement shall not exceed 3 years.

(2) A sentence involving a residential requirement may be imposed for a period exceeding 3 years if the child is under the age of 14 years and he would have been sentenced to imprisonment due to the seriousness of the offence were it not for section 67(1)(a).

(3) Upon completion of a sentence pursuant to subsection (1) or upon attainment of the age of 18 years in the case of a child referred to in subsection (2), the child concerned may request permission in the prescribed manner from the Chief Probation Officer, after consultation with the Supervisor, to continue to reside at such facility for the purposes of completing his education.

Referral to prison

67. (1) No court in Anguilla may impose a sentence of imprisonment on a child unless—

(a) the child was over the age of 14 years of age at the time of commission of the offence;

(b) the offence for which the child is convicted is murder, treason or an offence listed under Schedule 3; and

(c) substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include a previous failure to respond to alternative sentences, including sentences with a residential element and where the court imposing sentence considers that no other sentence is appropriate.

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(2) Where a sentence of imprisonment is imposed on a child pursuant to subsection (1), that sentence shall be of a duration—

(a) not exceeding 3 years; or

(b) in the case of a child who commits murder, not exceeding 10 years.

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

(5) 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.

Postponement or suspension of passing sentence

68. (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 3 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 5 years.

(3) The conditions contemplated in subsections (1) and (2) may be any condition appropriate to the circumstances of the child which is in keeping with the objects of this Act and which promotes the reintegration of the child into society and may include—

(a) restitution, compensation or symbolic restitution;

(b) an apology;

(c) the obligation not to commit a further offence of a similar nature;

(d) good behaviour;

(e) regular school attendance for a specified period;

(f) attendance at a specified time and place of a family group conference;

(g) placement under the supervision of a probation officer;

(h) a requirement that the child shall appear before the Court on a date or dates to be determined by the Court for a periodic progress report; and

(i) referral to any diversion option referred to in section 45(2)(d), (e), (f), (g), (h), (i), (j) or (k).

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

Penalty *in lieu* of fine or imprisonment

69. (1) Notwithstanding any other law, 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—

(a) symbolic restitution to a specified person or institution;

(b) payment of compensation not exceeding $20,000 to a specified person or institution where the child or his family is in a financial situation to afford such an amount;

(c) an obligation on the child to provide a service or benefit or to pay compensation to a specified organisation identified by the child concerned 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.

PART 11

LEGAL REPRESENTATION

Child to be provided with legal representation

70. (1) A child shall be provided with legal representation by the Territory at the conclusion of an initial inquiry if no legal representative was appointed by the parent or an appropriate adult and if—

(a) the child is in detention pending plea and trial in the Court;

(b) the proceedings are postponed for plea and trial in the Court and it is likely that a sentence involving a residential requirement may be imposed if the child is found guilty of the offence in question; or

(c) the Attorney-General intends to prosecute a child pursuant to subsection (2).

(2) The Police Prosecutions or a designated prosecutor shall indicate to the Court whether he is of the opinion that the matter is a matter contemplated pursuant to subsection (1)(b) before the child is asked to plead and if so, a plea shall not be taken until an attorney-at-law has been appointed.

Requirements to be complied with by attorney-at-law

71. 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;

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(c) promote diversion where appropriate, but may not unduly influence the child to acknowledge responsibility; and

(d) ensure that the trial is conducted without delay.

PART 12

RECORDS OF CONVICTION AND SENTENCE

Expunging of records

72. (1) In respect of offences other than murder or treason, the Magistrate shall make an order regarding the expunging of the conviction and sentence of the child and shall note the reasons for the decision as to whether such record may be expunged or not after consideration of any relevant factor, including—

(a) the nature and circumstances of the offence; and

(b) the personal circumstances of the child.

(2) If an order has been made pursuant to subsection (1) that the record of conviction and sentence of a child shall be expunged, the Magistrate shall set a date upon which the record of conviction and sentence shall be expunged and such date shall not exceed 5 years from the date of the imposition of sentence.

(3) Where a date for expunging of the record of conviction and sentence has been set pursuant to subsection (2), the judge shall impose, as a condition of expunging, a requirement that the child concerned shall not be convicted of a similar or more serious offence between the date of the imposition of the sentence and the date of expunging.

(4) The order contemplated in subsection (1) and the condition referred to in subsection (3) shall be noted on the record of conviction and sentence of the child and shall be submitted to the Commissioner of Police who shall, upon the date set for expunging, cause such record of conviction and sentence to be expunged unless another conviction of a similar offence has been recorded before the date set for expunging.

(5) Where the judge makes a decision regarding the expunging of a record of a conviction and sentence pursuant to this section, he shall explain the decision and give his reasons for the decision, including any conditions relating to the expunging of such record, to the child.

(6) A decision by the judge not to expunge a record is subject to appeal.

(7) The conviction of a child in respect of whom passing of a sentence has been postponed pursuant to this Act 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.

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PART 13

MISCELLANEOUS – EVIDENCE AND PROCEDURE

Monitoring of Child Justice Act

73. (1) The Governor may make regulations regarding procedures to be put in place to monitor and assess the proper application of and compliance with this Act.

(2) The regulations made pursuant to subsection (1) shall direct that this Act be monitored by the Attorney-General in conjunction with any other relevant department, annually or at such other interval as may be prescribed, with the object of assessing the implications, effectiveness and proper application of and compliance with this Act.

Presence of child in Court

74. No child, other than an infant in arms, shall be permitted to be present in court during the trial of any other person charged with any offence, or during any proceedings preliminary to such trial, except during such time as his presence is required as a witness or otherwise for the purpose of justice, and any child present in court when under this section he is not so permitted, shall be ordered to be removed.

Child witness and the Oath

75. (1) Where, in any proceedings against any person for any offence, any child called as a witness does not in the opinion of the court, understand the nature of an oath, if in the opinion of the court, he is possessed of sufficient mental capacity to justify the reception of the evidence and understands the duty of speaking the truth and his evidence, though not given on oath, when taken and reduced into writing in accordance with the Juvenile Courts Act, or this Act, shall be deemed to be a deposition.

(2) Notwithstanding subsection (1), where evidence admitted by virtue of that subsection is given on behalf of the prosecution the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating him.

(3) If pursuant to this section false evidence is received from a child in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall be guilty of an offence against this Act.

Rights and powers of fit persons

76. (1) The person to whose care a child is committed by an order made under this Act shall, while the order is in force, have the same rights and powers and be subject to the same liabilities in respect of the child's maintenance as if he were his parent, and the child so committed shall continue in his care notwithstanding any claim by a parent or other person.

(2) The court by which an order committing a child to the care of a fit person is made, may at any time, on the application of a Supervisor, order a child under the care of a fit person to be transferred to the care of some other person.

(3) Upon a child being transferred in accordance with subsection (2), the court shall cause notice thereof to be sent to the person liable to make contributions in respect of him.

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Escape from fit persons

77. (1) A child who runs away from a person to whose care he has been committed under this Act may be apprehended without warrant by any police officer or supervisor and brought back to that person if that person is willing to receive him, and if that person is not willing to receive him, the child may be detained and taken at the earliest opportunity before a Juvenile Court which may make an order in respect of him as if he had been brought before the court as being in need of care and protection under the Child Protection Act.

(2) Any person who knowingly assists or induces a child to run away from a person to whose care he has been committed, or harbours or conceals a child who has so run away and prevents him from returning, is guilty of an offence under this Act.

Contribution Order

78. (1) Where an order has been made by the Court committing a child to the care of a fit person, the court may at the same time make a contribution order on any person who is liable to make contributions in respect of the child, requiring that person to contribute such periodical payments in respect of each child, as the court having regard to his means thinks fit.

(2) A contribution order shall, unless varied or revoked, remain in force so long as the child remains in the care of the fit person and the Court when making such order shall have regard to any affiliation order in force in respect of the child.

(3) A contribution order may be varied or revoked on the application of either the contributor or the person to whom the contributions are payable.

(4) A contribution order shall be enforceable at the instance of the person to whom the contributions are payable, in the same manner as an affiliation order made under the Magistrate's Court Act.

(5) A person on whom a contribution order is made shall, if he changes his address, immediately give notice of the change to the persons to whom, immediately before the change, the contributions were payable, and, if he fails to do so, or if he knowingly gives false notice in any material particular, he is guilty of an offence against this Act.

Form for Contribution Order

79. An order, other than an interim order, committing a child to the care of a fit person, and a contribution order, shall be in the appropriate form set out in the Schedule 4 and such forms may be amended or revoked and different and additional forms may be prescribed by order made by the Governor.

PART 14

OFFENCES AND PENALTIES

Children prohibited in court

80. (1) A person shall not hinder or obstruct a police officer or a probation officer in the performance of their functions pursuant to this Act.

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(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $10,000 or to a term of imprisonment of 3 months.

(3) A person who—

(a) fails to comply with a notice issued pursuant to section 17;

(b) fails to comply with an instruction issued pursuant to section 13 or 40(3); or

(c) publishes information or reveals the identity of persons in contravention of section 56,

commits an offence and is liable on conviction to a fine of $20,000 or to a term of imprisonment of 2 years.

PART 15

MISCELLANEOUS

Powers of the Attorney-General under Constitution not to be fettered

81. Nothing is this Act shall be interpreted as restricting or fettering the power given to the Attorney-General in section 34 of the Anguilla Constitution.

PART 16

REGULATIONS AND CITATION[1]

Regulations

82. The Minister may make regulations with respect to any matter which is required or permitted by this Act to be prescribed.

Citation

83. This Act may be cited as the Child Justice Act, Revised Statutes of Anguilla, Chapter C33.

———————

[1] Part 16 of the Child Justice Act 2021 (Act 13 of 2021) included a Transitional Provision providing that this Act applies where an order made in respect of a child under a prior Act before 1 July 2021 is brought before the court for review. This provision was deleted in the 2022 Law Revision (since it is spent).

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SCHEDULE 1

(Sections 11, 15 and 58)

OFFENCES FOR WHICH A CHILD SHALL NOT BE ARRESTED

1. Assault where grievous bodily harm has not been inflicted.
2. Malicious injury to property where damage does not exceed $500.
3. Trespass.
4. Any offence under any law relating to the illicit possession of drugs where the quantity involved does not exceed 2 kilograms or is less than 1 litre in volume.
5. Theft, where the value of the property does not exceed $500.
6. Any statutory offence where the maximum penalty determined by that statute does not exceed $1,500 or imprisonment of up to 3 months.
7. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

_____

SCHEDULE 2

(Sections 15 and 16)

OFFENCES WHERE CHILD MAY BE CONDITIONALLY RELEASED INTO PARENTAL CARE

1. Assault, not involving the infliction of grievous bodily harm.
2. Arson.
3. Robbery, other than robbery with aggravating circumstances, if the amount involved does not exceed $2,500.
4. Theft, where the amount involved does not exceed $2,500.
5. Any offence under any law relating to the illicit possession of dependence inducing drugs where the quantity involved does not exceed 4 Kilograms or is less than 2 litres in volume.
6. Forgery or fraud, where the amount concerned does not exceed $5,000.
7. Any statutory offence where the penalty concerned does not exceed $2,500 or imprisonment of up to 6 months.
8. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

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SCHEDULE 3

(Sections 19, 33, 34, 54 and 67)

OFFENCES WHERE CHILD NOT TO BE RELEASED FROM DETENTION

1. Rape.
2. Robbery—
   (a) where there are aggravating circumstances;
   (b) involving the taking of a motor vehicle.
3. Indecent assault involving the infliction of grievous bodily harm.
4. Indecent assault on a person under the age of 18 years.
5. Assault involving the infliction of grievous bodily harm.
6. Any offence pursuant to sections 4, 5 or 6 of the Drug Trafficking Act, if—
   (a) the value of the dependence producing substance in question is more than $10,000; or
   (b) the value of the dependence drug producing substance in question is more than $10,000 and the offence was committed by a person, or 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 or 2 of this Schedule.

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SCHEDULE 4

(Sections 78 and 79)

FORM FOR CONTRIBUTION ORDER

ORDER COMMITTING CHILD TO CARE OF FIT PERSON

To:

WHEREAS ..... a child was brought before the Juvenile Court charged with an offence of .....

AND WHEREAS the said court considers it expedient and in the best interests of the welfare of the said child to make an order committing the said child to the care of a fit person who is willing to undertake the care of him:

Therefore, you, the said ..... are commanded to deliver the said child to .....
who has undertaken to care for the said child and you the said ..... are commanded to receive the said child into your custody and to keep him in accordance with and until he is released under the Child Justice Act.

IT IS HEREBY DECLARED THAT—

(a) The age of the said child is ..... years ..... months, being born on the ..... day of .....

(b) His religious persuasion is .....

(c) A contribution order in the sum of ..... a week payable by ..... being the ..... of the said child has been made.

Given under my hand this ..... day of ..... at .....

CONTRIBUTION ORDER

WHEREAS an order committing ..... a child to the care of ..... of ..... has this day been made by this court.

AND WHEREAS the said ..... has made application for a contribution order.

IT IS HEREBY ORDERED THAT ..... being the ..... of the said child shall pay to ..... the sum of ..... each month to be applied in accordance with the Child Justice Act, the first of such payments to be made on the ..... day of ..... so long as the said child remains in the care of the said ..... or until this order is varied or revoked in accordance with the Child Justice Act.

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