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Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT relating to the protection of children and for
matters related thereto

THE CHILDREN BILL, 2012

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The Bill seeks to repeal and replace the Children Act, Chap. 46:01.

PART I—Preliminary

Clause 1 would provide for the short title and the commencement of the Bill.

Clause 2 would provide for the Act for which this is the Bill to have effect even though inconsistent with sections 4 and 5 of the Constitution.

Clause 3 would provide for its interpretation.

PART II—Prevention of cruelty to children

Clause 4 would provide for the offence of cruelty to children.

PART III—Offences in relation to begging, risk of burning, firearms and ammunition

Clause 5 would provide for the offence of begging, the burden of proof being placed on the person charged, once it is proved that the child was in a street, premises or place for any of the purposes outlined in this section.

Clause 6 would provide for the offence of exposing children to the risk of burning and would make a distinction in the penalties between harm and serious or grievous bodily harm.

Clause 7 would provide for the offence of injury or death by a firearm or ammunition.

Clause 8 would provide for the offence of giving, selling or renting a firearm or ammunition to a child.

PART IV—Offence of Female Genital Mutilation

Clause 9 would provide for the offence of female genital mutilation.

Clause 10 would provide for the offence of aiding, abetting, counselling or procuring a girl to engage in female genital mutilation.

PART V—*Abuse of children through prostitution*

Clause 11 would provide for the offence of allowing children to frequent brothels. This provision would not affect the liability of such a person to be charged under section 21 of the Sexual Offences Act.

Clause 12 would provide for the offence of causing or encouraging the seduction, prostitution or sexual penetration of a child. If the offence is committed with the knowledge of a parent or guardian of the child, the Court may require the parent or guardian to enter into a recognizance for a period of not more than eight years.

Clause 13 would provide for the offence of procuring whether for oneself or another person, the sexual services of a child and before procuring those services, he makes or promises payment for those services or knows that another person has made or promised such payment.

Clause 14 would provide for the offence of causing or inciting a child to become a prostitute in Trinidad and Tobago or elsewhere.

Clause 15 would provide for the offence of controlling a child prostitute in any part of the world.

Clause 16 would provide for the offence of arranging or facilitating child prostitution in any part of the world.

Clause 17 would provide for the definition of “prostitute”.

PART VI—*Other sexual offences*

Clause 18 would provide for the offence of sexually penetrating a child. The penalty is life imprisonment.

Clause 19 would provide for the offence of sexual “touching” of a child, as defined in clause 3 of the Bill.

Clause 20 would provide for the defence of consent.

Clause 21 would provide for the offence of causing or inciting a child to engage in sexual activity with another person. It also provides for more severe penalties where the touching amounts to sexual penetration.

Clause 22 would provide for the offence of causing or inciting a child to engage in sexual activity with an animal.

Clause 23 would provide for the offence of engaging in sexual activity in the presence of a child.

Clause 24 would provide for the offence of causing a child to watch a sexual act for sexual gratification.

Clause 25 would provide for the offence of meeting a child following sexual grooming.

Clauses 26 and 27 would provide for the marriage exceptions.

Clause 28 would provide for proceedings with respect to marriage exceptions.

Clause 29 would provide for stringent penalties where persons are in a position of trust with the child or have a familial relationship with the child and who commits an offence under this Part.

Clause 30 would provide a list of the categories of persons who, for the purposes of the Bill, would be considered to be in positions of trust in relation to a child and clause 31 would further define those positions.

Clause 32 would provide for the interpretation of “familial relationships” for the purposes of the Bill.

Clause 33 would provide the constable with the power of arrest for offences under sections 18 and 19(3).

Clause 34 would provide that the Court may, with respect to any child who has been the victim of an offence under the Act, make certain orders for the welfare of the child.

PART VII—*Offences relating to dangerous drugs, tobacco and alcohol*

Clause 35 would provide for the offence of exposing a child to a dangerous drug.

Clause 36 would provide for the offence of giving or causing a child to be given a dangerous drug, except upon the order of a medical practitioner.

Clause 37 would provide for the offence of using a child or causing a child to be used as a courier in order to sell, buy or deliver a dangerous drug.

Clause 38 would provide for the circumstance where a constable reasonably believes that the child or person whom he reasonably believes to be a child is in possession of tobacco products or alcohol, is smoking tobacco products or drinking alcohol. The constable would have to notify the Children’s Authority immediately. The child or person must comply with the caution or request for information made by the constable.

Clause 39 would provide for the interpretation of certain terms used in this Part.

PART VIII—*Child pornography*

Clause 40 would provide for the offence of child pornography.

Clause 41 would provide for the offence of exposing a child to pornography.

Clause 42 would provide for inciting or facilitating child pornography.

PART IX—*Provisions for the safety of children*

Clause 43 would provide that a constable, a person referred to in section 48(2)(a) or (b), or a person authorized by a Court may take a child to a place of safety where any offence under the Act has been or there is reason to believe it has been or is likely to be committed and such persons should notify the Authority forthwith.

Clause 44 would provide for arrangements for a child by order of the Court where a person having custody, charge or care of a child has been convicted of committing an offence under the Act in respect of a child, or has been committed for trial for any such offence or bound over to keep the peace towards such a child.

Clause 45 would provide for the control of the child who is placed in the care of a person under an order of the Court.

Clause 46 would provide for the maintenance of a child placed in the care of a person.

Clause 47 would require that the Court take into consideration the religious persuasion of persons into whose care a child is to be placed.

Clause 48 would provide that the Court may order the attendance before it, of any parent or guardian where a complaint on oath is made by a public officer experienced or qualified in social work; an employee or a person employed on contract by the Government who is experienced or qualified in social work, or a person who, in the opinion of the Court, is acting in the interest of the child, where a child has suffered or is suffering or is likely to suffer such harm so as to cause concern for the welfare of that child.

PART X—*Child Offenders*

Clause 49 would provide for the release on bail, in accordance with the Bail Act, of an offender under the age of eighteen years, where the offender cannot be brought forthwith before a Court.

Clause 50 would provide for the custody of an offender under the age of eighteen years and who is not discharged on bail after arrest, to be placed in custody at a Community Residence until he can be brought before the Court.

Clause 51 would provide that where a child has been placed in a Police Station, arrangements should be made by the Commissioner of Police to prevent the child from associating with an adult charged with or convicted of an offence.

Clause 52 would provide that the Court shall order that a child, who has been remanded or committed for trial but not released on bail, be placed in a Community Residence named in the order for the period for which he is remanded or until he is brought before the Court.

Clause 53 would provide for the attendance of a parent or guardian of a child who is charged with an offence or brought before a Court under the Act, for which this is the Bill, during Court proceedings, unless the Court is satisfied that it would be unreasonable or impractical to require such attendance.

Clause 54 would provide the Court with power to order the parent to pay any fine, damages or costs if a child is charged and brought before a Court for an offence that attracts a fine, damages or costs.

Clause 55 would provide that, if the Court is of the view a parent or guardian of a child who has been convicted of an offence, has failed to exercise reasonable care of or supervision over a child to ensure that the child does not commit an offence, the Court may call upon the parent or guardian to show cause why he should not be required to pay a fine, in addition to that which is to be paid by the child by Order of the Court.

Clause 56 would provide for the limitation of costs.

Clause 57 would provide for determination of sentence.

Clause 58 would impose restrictions on the sentencing of children with respect to imprisonment and conditions of detention. It would also give the Court power to make alternative orders.

Clause 59 would provide that the death sentence shall not be pronounced on or recorded against a person convicted of an offence if, at the time when the offence was committed, he was under the age of eighteen years.

Clause 60 would provide for the placing of child offenders in a Community Residence in the case of certain crimes committed by them, for example, attempted murder, wounding with intent and intent to do grievous bodily harm.

Clause 61 would provide for the discharge of a child placed in a Community Residence, pursuant to the directions of the Court.

Clause 62 would provide that a child committed to a Community Residence by Order of the Court, shall be deemed to be in the legal custody of that institution.

Clause 63 would provide that an order of the Court may provide for the parent or guardian of the child to have access to the child and supervision and monitoring of the order.

Clause 64 would provide that the Minister may make rules, on the advice of the Authority, pertaining to places of detention.

Clause 65 would provide for procedures of Juvenile Courts.

PART XI—*Children's Attorney*

Clause 66 would provide for Children's Attorneys.

Clause 67 would provide that a Children's Attorney may be engaged on contract.

Clause 68 would provide for the independence of the Children's Attorney.

PART XII—*Evidence and Procedures*

Clause 69 would provide that, where the Court is satisfied that the presence of a child before the Court, in respect of offences under the Act, would place the child at risk or harm, the Court would have special power to take evidence from the child, in the form of a deposition or recorded evidence.

Clause 70 would provide for the admission into evidence of a deposition and recorded evidence of a child.

Clause 71 would provide for the admissibility of video recorded evidence of an interview between an adult, who is not the accused or one of the accused, and a child, subject to exceptions under subsection (3).

Clause 72 would provide for the cross-examination of a child by means of an electronic device linking the voice and imagery of the child witness.

Clause 73 would provide for a child to be called as a witness where a video recording is given in evidence.

Clause 74 would provide for video recorded evidence to be treated as direct oral testimony.

Clause 75 would provide for the definition of "child" for the purposes of sections 71 to 74.

Clause 76 would provide for a child under the age of ten years to give unsworn evidence in criminal proceedings but the unsworn evidence of a child may not be corroborated solely by the unsworn evidence of another child. Notwithstanding this, an accused person may be convicted on the uncorroborated evidence of a child provided that the Court warns the jury of the danger of convicting the accused on the uncorroborated unsworn evidence of a child.

Clause 77 would provide for special procedures for the examination of a child witness through an intermediary.

Clause 78 would provide for the power of a Court to proceed with and determine a case with respect to offences under the Act, in the absence of the child, once the Court determines that the child's presence is not essential.

Clause 79 would provide for the power of a Court to clear the Court whilst a child is giving evidence in certain cases.

Clause 80 would prohibit children being present in Court during the trial of other persons.

PART XIII—*Miscellaneous*

Clause 81 would provide for the Court to make an order for counselling in respect of a person convicted of an offence under Parts II to VIII.

Clause 82 would provide that where the perpetrator is a child, with respect to an offence under Part V or Part VI or Part VIII, that proceedings be not instituted except by or with the consent of the Director of Public Prosecutions.

Clause 83 would provide for the presumption and determination of age by the Court.

Clause 84 would provide for the recovery of penalties under the Summary Courts Act or any other Act.

Clause 85 would provide the Court with extraterritorial jurisdiction where the act constituting an offence under this Act is carried out wholly or partly in Trinidad and Tobago in particular circumstances.

Clause 86 would provide for the application of certain sections of the Sexual Offences Act, Chap. 11:28.

Clause 87 would provide for the repeal of the Children Act, Chap. 46:01 upon the coming into force of the Children Act, 2012, for which this is the Bill.

Clause 88 would provide for consequential amendments to various Acts.

THE CHILDREN BILL, 2012

Arrangement of Clauses

PART I

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BILL

AN ACT relating to the protection of children and for
matters related thereto

[, 2012]

WHEREAS it is enacted by section 13(1) of the Preamble Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

PART I
PRELIMINARY

Short title and commencement **1.**(1) This Act may be cited as the Children Act, 2012.
(2) This Act comes into operation on such date as is fixed by the President by Proclamation.

Act inconsistent with Constitution **2.** This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation **3.**(1) In this Act—

“ammunition” has the meaning assigned to it under section 2 of the Firearms Act;

Chap. 16:01 “Authority” means the Children’s Authority established under the Children’s Authority Act;

Chap. 46:01 “bodily orifice” means anus, vagina, urethra, mouth, ear or nostril;

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

“child pornography” means a photograph, film, video or other visual representation, whether or not made by electronic,

mechanical, artistic or other methods, that shows, for a sexual purpose—

- (a) a child engaging in explicit sexual activity or conduct;
- (b) a child in a sexually explicit pose;
- (c) parts of a child’s body pasted to visual representations of parts of an adult’s body or *vice versa*; or
- (d) parts of a child’s body which have been rendered complete by computer generated images or by other methods of visual representation,

but does not include any visual representation produced or reproduced for the purpose of education, counselling, the promotion of reproductive health or as part of a related criminal investigation and prosecution;

“Children’s Attorney” means an Attorney-at-law appointed in accordance with section 66;

“Children’s Home” has the meaning assigned to it under section 2 of the Children’s Community Residences, Foster Homes and Nurseries Act;

Act No. 65 of 2000

“cohabitant” has the meaning assigned to it under section 2(1) of the Cohabitational Relationships Act;

Chap. 45:55

“Community Residence” has the meaning assigned to it under section 2 of the Children’s Community Residences, Foster Homes and Nurseries Act;

“Convention” means the United Nations Convention on the Rights of the Child;

“Court” includes a Magistrate;

“dangerous drug” has the meaning assigned to it under section 3(1) of the Dangerous Drugs Act;

“family matter” means any cause, matter or legal proceeding—

(a) concerning maintenance, guardianship, wardship, access, custody, care, adoption or welfare of children excluding probate and the administration of estates; and

(b) arising out of a written law and connected with a matrimonial, familial or other domestic relationship;

“fit person” has the meaning assigned to it under section 3 of the Children’s Authority Act;

“firearm” has the meaning assigned to it under section 2 of the Firearms Act;

“guardian” in relation to a child, includes any person who has, in the opinion of a Court having cognizance of any case in relation to the child, responsibility for the child;

“Juvenile Court” means—

(a) a Court where charges against a child who is at least fourteen years of age are heard; or

(b) a Court where applications relating to a child referred to in paragraph (a) are heard;

“legal guardian” in relation to a child, means a person appointed to be his guardian by deed or will, or by order of a Court of competent jurisdiction;

“medical practitioner” means a person registered under the Medical Board Act; Chap. 29:50

“Minister” means the Minister to whom responsibility for children is assigned;

“penetration of a child” includes—

(a) the insertion of any body part or any object into a child’s bodily orifice; or

(b) the insertion of a part of a child’s body into a person’s bodily orifice,

and “penetrates” in relation to a child, shall be construed accordingly;

“penis” includes scrotum;

“place of safety” means a Reception Centre established under section 14 of the Children’s Authority Act, a Community Residence or any place appointed by the Authority to be a place of safety for the purpose of the Act;

“public place” includes any public park, garden, wharf, jetty, street or bus terminus, and any ground or place to which the public for the time being has or is permitted to have access, whether on payment or otherwise;

“Rehabilitation Centre” has the meaning assigned to it under section 2 of the Children’s Community Residences, Foster Homes and Nurseries Act;

“responsibility” includes custody, charge, care and control;

“street” has the meaning assigned to it in the Highways Act; Chap. 48:01

“touching” in relation to a child, includes—

- (a) bringing a part of a person’s body or an object into contact with a part of the child’s body; or
- (b) causing a part of a child’s body to come into contact with a part of a person’s body,

whether or not through clothing or any other material;

“vagina” includes vulva;

“video recording” means any recording on any medium from which a moving image may by any means be produced, whether or not accompanied by a sound track; and

“visual representation” includes a photograph, film or video, whether or not it was made by electronic, mechanical or artistic means.

(2) For the purposes of this Act, penetration, touching or any other activity is sexual if—

- (a) it is not done for medically recognized purposes; and
- (b) a reasonable person would consider that—
 - (i) whatever its circumstances or any person’s purpose in relation to it, it is, because of its nature, sexual; or
 - (ii) because of its nature it may be sexual and because of its circumstances or the purposes of any person in relation to it, or both, it is sexual.

(3) For the purposes of this Act—

- (a) any person who is the parent or legal guardian of a child or who is legally liable to maintain a child is presumed to have responsibility for the child, and, any such person shall not be deemed to have ceased to

have responsibility for the child by reason only that he has deserted, or otherwise does not reside with the child;

- (b) any person to whose charge a child is committed by any person who has responsibility for the child is presumed to have charge of the child; and
- (c) any other person having actual possession or control of a child is presumed to have the care of the child.

PART II

PREVENTION OF CRUELTY TO CHILDREN

4. (1) Where a person who is sixteen years of age and over has responsibility for a child, and the person wilfully assaults, ill-treats, neglects, abandons or exposes the child, or causes or procures the child to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause the child suffering or injury to his physical, mental or emotional health, that person commits the offence of cruelty to a child.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for ten years.

(3) For the purposes of subsection (1), a parent or other person who is legally liable to maintain a child, shall be deemed to have neglected him in a manner likely to cause injury to his health—

- (a) if having been able to provide adequate food, clothing, medical aid or lodging for the child, he fails to so provide; or
- (b) if having been unable otherwise to provide adequate food, clothing, medical aid or lodging for the child, he failed to take reasonable steps to procure what is

provided under any written law applicable to his circumstances.

(4) Where a person is charged with the offence of neglecting a child in a manner likely to cause injury to his health under subsection (1), it is a defence for him to prove that, at the material time, he was unable to adequately provide for the child because he suffered from an infirmity of the mind or body.

(5) A person may be convicted of an offence under this section notwithstanding that actual suffering or injury to health, or the likelihood of such suffering or injury to health was obviated by the action of another person.

(6) Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child to administer reasonable punishment to such child.

(7) Reasonable punishment referred to in subsection (6), in relation to any person other than a parent or guardian, shall not include corporal punishment.

PART III

OFFENCES IN RELATION TO BEGGING, RISK OF BURNING, FIREARMS AND AMMUNITION

Begging

5. (1) A person who—

(a) causes or procures any child; or

(b) having responsibility for a child, allows that child,

to be in any street, premises, or other place for the purpose of begging or receiving alms or inducing the giving of alms, without the written approval of the Authority, commits an offence and is liable on summary conviction to a fine of three thousand dollars and to imprisonment for six months.

(2) A person commits an offence under subsection (1) whether or not the child engaged in or pretended to engage in any singing, playing, dancing, performing, offering anything for sale or otherwise.

(3) Where a person having responsibility for a child is charged with an offence under this section and it is proved that the child was in any street, premises or other place for any such purpose stated in subsection (1), the person charged is presumed to have allowed the child to be in the street, premises or other place for that purpose stated in subsection (1) unless the contrary is proved.

6.(1) Where a person who has responsibility for a child under the age of twelve years fails to take reasonable precaution to protect the child from the risk of being burnt or scalded, and by reason thereof the child is injured or harmed, that person commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

Exposing children to risk of burning

(2) Nothing in this section shall be taken as preventing proceedings from being brought against any person in respect of an indictable offence under any written law.

7.(1) Where a person has possession of a firearm or ammunition, and fails to take reasonable precautions to guard against the risk of a child having access to the firearm or ammunition, and by reason thereof, the child has access to the firearm or ammunition and injures himself or another, that person commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for ten years.

Injury or death by firearm or ammunition

(2) Where a child is killed or suffers serious or grievous bodily harm, or kills or causes serious or grievous bodily harm to another person as a consequence of the circumstances referred to in

subsection (1), the person having possession of the firearm or ammunition commits an offence and is liable on conviction on indictment, to a fine of one hundred thousand dollars and to imprisonment for twenty years.

(3) Nothing in this section shall be taken as preventing proceedings from being brought against any person in respect of an indictable offence under any written law.

Giving, selling,
lending or renting
of a firearm or
ammunition to a child

8.(1) A person who gives, sells, lends or rents a firearm or ammunition to a child commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for ten years.

(2) Where any person gives, sells, lends or rents a firearm or ammunition to a child and the child is killed or suffers serious or grievous bodily harm, or kills or causes serious or grievous bodily harm to another person with that firearm, that person commits an offence and is liable on conviction on indictment to a fine of one hundred thousand dollars and to imprisonment for twenty years.

(3) Nothing in this section shall be taken as preventing proceedings from being brought against any person in respect of an indictable offence under any written law.

PART IV

OFFENCE OF FEMALE GENITAL MUTILATION

Offence of female
genital mutilation

9.(1) Subject to subsection (2), a person who excises, infibulates or otherwise mutilates the whole or any part of the labia majora or labia minora or clitoris of a child commits an offence and is liable—

(a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to imprisonment for twenty years.

(2) A person shall not be liable under subsection (1) if—

(a) the performance of a surgical operation on a child is necessary for her physical or mental health and the operation is performed by a medical practitioner; or

(b) the surgical operation is performed on a child who is at any stage of labour, or who has just given birth, for purposes connected with the labour or birth, and the operation is performed by a medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.

(3) For the purpose of determining whether an operation is necessary for the mental health of a child, it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

10. A person who aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris is liable on conviction on indictment to imprisonment for fifteen years.

Offence of aiding, abetting, counselling or procuring a girl to engage in female genital mutilation

PART V

ABUSE OF CHILDREN THROUGH PROSTITUTION

11. A person having responsibility for a child who allows that child to reside in or to frequent a brothel commits an offence and is liable—

Allowing children to be in brothels

(a) on summary conviction, to a fine of thirty thousand dollars and to imprisonment for five years; or

(b) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for ten years.

Causing or encouraging the seduction, prostitution or sexual penetration of a child

12.(1) A person having responsibility for a child who causes or encourages the seduction, prostitution or sexual penetration of that child commits an offence and is liable on conviction on indictment, to imprisonment for life.

(2) A person who—

(a) being the owner, occupier or manager of premises; or

(b) having control of premises or assisting in the management or control of premises,

permits a child to resort to or to be in or upon the premises for the purpose of causing or encouraging the seduction, prostitution or sexual penetration of that child commits an offence and is liable on conviction on indictment, for ten years.

(3) Where the child referred to in subsection (1) has been seduced, becomes a prostitute or has been sexually penetrated, the person having responsibility for that child shall be deemed to have caused or encouraged it, if he knowingly allowed the child to consort with, or to enter or continue in the employment of a prostitute, or person who controls prostitutes or a person of known immoral character.

(4) Where it is shown to the satisfaction of a Court, on the complaint of any person, that a child is, with the knowledge of the parent or guardian of the child, exposed to the risk of seduction or prostitution or being sexually penetrated or living a life of prostitution, the Court shall bring the child to the attention of the Authority and may—

(a) order that the parent or guardian of the child enter into a recognizance for a period

of not more than eight years to exercise due care and supervision in respect of the child; or

(b) make a Supervision Order under the Children’s Authority Act.

(5) The provisions of the Summary Courts Act with respect to recognizances to be of good behaviour, including the provisions as to the enforcement thereof, shall apply to recognizances under this section.

13.(1) Where a person procures for himself or any other person the sexual services of a child and he makes or promises payment for those services to the child or a third person, or knows that another person has made or promised such payment, he commits an offence and is liable—

Paying for sexual services of a child

(a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to imprisonment for twenty-five years.

(2) In this section, “payment” includes the discharge of an obligation to pay or the provision of goods or services.

(3) Notwithstanding subsection (1), where a person commits an offence under this section against a child and sexual penetration is involved, he is liable on conviction on indictment to imprisonment for life.

(4) Notwithstanding the penalties imposed in respect of the offences under subsections (1) and (3), the Court may—

(a) order that the offender be deemed in need of care and protection and referred to the Authority, which shall investigate and seek any appropriate order of the Court with jurisdiction in family matters;

- (b) order that the offender be referred to counselling;
- (c) order that any family members, members of the offender's household or persons connected to the offender be referred to counselling;
- (d) order that no conviction be recorded;
- (e) order that the proceedings be sealed and not divulged without an order of the Court with jurisdiction in family matters;
- (f) make a Supervision Order as described in section 25K of the Children's Authority Act; or
- (g) make any other order as the Court may deem fit.

Causing or inciting
prostitution

14. Where a person causes or incites a child to become a prostitute in Trinidad and Tobago or elsewhere, he commits an offence and is liable—

- (a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or
- (b) on conviction on indictment, to imprisonment for twenty-five years.

Controlling a child
prostitute

15. Where a person controls any of the activities of a child relating to that child's prostitution in Trinidad and Tobago or elsewhere, he commits an offence and is liable—

- (a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or
- (b) on conviction on indictment, to imprisonment for twenty-five years.

16. Where a person arranges or facilitates the ^{Arranging or facilitating child prostitution} prostitution of a child in Trinidad and Tobago or elsewhere, he commits an offence and is liable—

- (a) on summary conviction, to a fine of fifty thousand dollars or to imprisonment for ten years; or
- (b) on conviction on indictment, to imprisonment for twenty-five years.

17. In this Part, “prostitute” means a person who, ^{Prostitute: Definition} whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to that person or a third person and “prostitution” shall be construed accordingly.

PART VI OTHER SEXUAL OFFENCES

18. Subject to section 20, a person who sexually ^{Sexual penetration of a child} penetrates a child commits an offence and is liable on conviction on indictment, to imprisonment for life.

19. (1) Subject to section 20, where a person touches a ^{Sexual touching of a child} child and—

- (a) the touching is sexual; and
- (b) the child is under sixteen years of age,

the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or
- (b) on conviction on indictment, to imprisonment for twenty years.

(3) Where a person commits an offence under subsection (1), and the touching involves the placing of any body part or of an object onto the penis or bodily orifice of a child, that person is liable on conviction on indictment to imprisonment for life.

Defence of consent

20.(1) A person sixteen years of age or over but under twenty-one years of age is not liable under section 18 or 19 if—

- (a) he is less than three years older than the child against whom he is purported to have perpetrated the offence; and
- (b) the child is sixteen years of age or over and consents.

(2) If at a trial on indictment for an offence under section 18 or 19 the jury has to consider whether a person believed that a child was consenting to sexual penetration or sexual touching, the Judge shall direct the jury that the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether that person so believed.

Causing or inciting a child to engage in sexual activity with another person

21.(1) Where a person causes or incites a child to engage in an activity and—

- (a) the activity is sexual; and
- (b) the child is under sixteen years of age,

the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or
- (b) on conviction on indictment, to imprisonment for twenty-five years.

(3) Where a person commits an offence under subsection (1) and the activity caused or incited involved sexual penetration of a child, that person is liable, on conviction on indictment, to imprisonment for life.

22. A person who causes or incites a child to engage in sexual activity with an animal commits an offence and is liable on conviction on indictment to imprisonment for twenty-five years. Causing or inciting a child to engage in sexual activity with an animal

23. (1) Where a person engages in an activity and— Engaging in sexual activity in the presence of a child

(a) the activity is sexual; and

(b) for the purposes of obtaining sexual gratification, the person engages in it—

(i) when a child is present or when a child is in a place from which the person can be observed; and

(ii) knowing or believing that the child is aware, or intending that the child should be aware, that the person is engaging in sexual activity; and

(c) the child is under sixteen years of age,
the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of thirty thousand dollars and to imprisonment for five years; or

(b) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for ten years.

Causing a child to
watch a sexual act

24.(1) Where a person, for the purpose of obtaining sexual gratification, causes a child to watch a third person engaging in an activity, or causes a child to look at an image of any person engaging in an activity and—

(a) the activity is sexual; and

(b) the child is under sixteen years of age,

the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of thirty thousand dollars and to imprisonment for five years; or

(b) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for ten years.

Meeting a child
following sexual
grooming

25.(1) Where a person has on at least two earlier occasions, met or communicated with a child in Trinidad and Tobago or elsewhere, by any means, including the internet, for the purpose of sexual grooming, and he meets, attempts to meet or travels for the purpose of meeting the child in Trinidad and Tobago or elsewhere with the intention of doing anything to or in respect of the child, during or after the meeting, which if done in Trinidad and Tobago would constitute the commission of an offence under Part V and this Part, the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to a fine of one hundred thousand dollars and to imprisonment for twenty years.

(3) For the purposes of this section, “sexual grooming” means gaining the trust of a child, or of a person who takes care of the child, for the purpose of sexual activity with the child.

26. (1) Subject to subsection (2), conduct by a person Marriage exception with respect to sections 18, 19 or 24 in relation to a child which would otherwise constitute an offence against a child under section 18, 19 or 24, is not an offence if, at the time of the conduct—

- (a) the person and the child were lawfully married; or
- (b) the person believed on reasonable grounds that he was lawfully married to the child.

(2) Subsection (1) does not apply in the case of sexual penetration per anum by a male person with a female person.

27. Conduct by a person in relation to a child which Marriage exception with respect to section 23 would otherwise constitute an offence against a child under section 23 is not an offence if there are only two persons involved and they are lawfully married to each other.

28. In proceedings for an offence referred to in Proceedings with respect to marriage exceptions sections 26 and 27, it is for the defendant to prove that he and the child were lawfully married.

29. Where a person commits an offence under this Abuse of positions of trust and familial relationships Part at the time when that person is either—

- (a) in a position of trust in relation to the child and knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to the child; or
- (b) in a familial relationship with the child and knows or could reasonably be expected to

know that his relation to the child is of the description falling within that section,

that person is liable—

- (c) where the offence does not involve penetration—
 - (i) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or
 - (ii) on conviction on indictment, to imprisonment for twenty-five years; or
- (d) where the offence involves penetration, on conviction on indictment, to imprisonment for life.

Persons in position of trust

30. For the purposes of this Part a person is in a position of trust in relation to a child if he—

- (a) is eighteen years of age and over and looks after a child who is detained in an institution by virtue of a Court order or under any written law and the child is so detained in that institution;
- (b) looks after a child who is resident in a Community Residence or is at an Assessment and Support Centre or a Reception Centre maintained by the Authority or is cared for in a Nursery, or is in Foster Homes under the Children's Community Residences, Foster Care and Nurseries Act;
- (c) is an employee, independent contractor or volunteer at an institution whose main purpose is to provide services to children;
- (d) looks after a child who is receiving education at an educational institution but the person is not receiving education at that institution;
- (e) is appointed to be the guardian of a child;

- (f) is a person who has contact with a child, by any means, in the exercise of the functions of the Authority;
- (g) is a person who is to report to the Court or the Authority under this Act, the Family Proceedings Act, the Children's Authority Chap. 46:09 Act or any other written law on matters relating to the welfare of the child, and has contact with the child by any means;
- (h) is a personal adviser appointed for the child under any written law;
- (i) is a constable, medical practitioner, nurse, social worker, teacher, scout master, troop leader, clergyman, spiritual leader, driver, sports coach or trainer or other person in authority in whose care the child is placed;
- (j) is a person who is eighteen years and over who has control over or directs a child in respect of any work done by the child;
- (k) is appointed to be the guardian *ad litem* of the child;
- (l) has care or control of a child while that child is in a place of safety;
- (m) looks after a child on an individual basis—
 - (i) where the child is subject to a foster care order, care order, child assessment order, fit person order or any other order of the Court which deals with the supervision of the child or supervision of the education of the child; and
 - (ii) in the exercise of the functions conferred by virtue of the order of an authorised person or the authority designated by order;
- (n) looks after the child on an individual basis in pursuance of the requirements imposed on the child by or under any written law on

his release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings; or

- (o) is such other person as the Minister, after consultation with the Attorney General, may by Order prescribe.

Position of trust:
interpretation

31. For the purposes of section 30 of the Act, the following provisions apply:

- (a) a person “looks after a child” if he is regularly involved in caring for, training, supervising or being in charge of the child;
- (b) a person “looks after a child” on an individual basis if the person—
- (i) is regularly involved in caring for, training or supervising or being in charge of the child; and
 - (ii) in the course of his involvement, regularly has unsupervised contact with that child by any means;
- (c) a child receives education at an educational institution if—
- (i) he is registered or otherwise enrolled as a pupil or student at the institution; or
 - (ii) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.

Familial
relationships:
interpretation

32.(1) For the purposes of this Part, a person is within a familial relationship with a child if—

- (a) the person is the child’s parent, grand-parent, brother, sister, half-brother, half-sister, niece, nephew, aunt, uncle, or the spouse of an aunt or uncle;

- (b) the person is or has been the child's step-parent, step-brother or step-sister;
 - (c) the person is or has been the child's foster-parent or spouse or cohabitant of a foster-parent;
 - (d) the person is in the process of seeking an adoption order in relation to the child who is in the care and control of the person for that purpose; and
 - (e) the person and the child live or have lived in the same household, or the person is or has been regularly involved in the caring for, training, supervising or being in sole charge of the child.
- (2) For the purposes of subsection (1)—
- (a) “aunt” means the sister or half-sister of a person's parent and “uncle” has a corresponding meaning;
 - (b) a person is a child's foster-parent if he is the person with whom the child has been placed under the Children's Community Residences, Foster Homes and Nurseries Act or pursuant to a Foster Care Order under the Children's Authority Act;
 - (c) “step-parent” includes a parent's cohabitant; and
 - (d) “step-sister” or “step-brother” includes the child of a parent's cohabitant.

33. A constable may take into custody, without Power of arrest warrant, a person who has committed, or who the constable has reason to believe has committed an offence under section 18 or 19(3).

Order for the welfare
of child victim

34. Notwithstanding any other order the Court may make with respect to any child who has been the victim of any offence in this Part, the Court may—

- (a) order that the child be deemed in need of care and protection and referred to the Authority, which shall seek any appropriate order of the Court;
- (b) order that the child be referred to counselling;
- (c) order that any family members, members of the child's household or persons connected to the child be referred to counselling; or
- (d) may make any other order as the Court may deem fit for the welfare of the child.

PART VII

OFFENCES RELATING TO DANGEROUS DRUGS, TOBACCO AND ALCOHOL

Exposing a child to a
dangerous drug

35. A person who exposes a child or causes a child to be exposed to a dangerous drug or a substance having an effect similar to that of a dangerous drug commits an offence and is liable—

- (a) on summary conviction, to a fine of five thousand dollars and to imprisonment for nine months; or
- (b) on conviction on indictment to imprisonment for five years.

Giving a child a
dangerous drug

36. A person who gives, or causes to be given to a child, a dangerous drug or a substance having an effect similar to that of a dangerous drug, except upon the order of a medical practitioner, commits an offence and is liable in addition to any other penalty prescribed by law—

- (a) on summary conviction, to a fine of thirty thousand dollars and to imprisonment for five years; or

- (b) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for ten years.

37. A person who uses a child or causes a child to be used as a courier, in order to sell, buy or deliver a dangerous drug or a substance having an effect similar to that of a dangerous drug commits an offence and is liable—

- (a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or
- (b) on conviction on indictment, to a fine of one hundred thousand dollars and to imprisonment for twenty years.

38.(1) Where a constable reasonably believes that a child or person whom he reasonably believes to be a child is—

- (a) in possession of tobacco products or alcohol;
- (b) smoking tobacco products; or
- (c) drinking alcohol,

the constable shall—

- (i) issue a warning to the child or person;
- (ii) obtain the name of and address of the child or person; and
- (iii) immediately notify the Authority, who shall contact the parents of the child forthwith on receiving the information.

(2) A person or child referred to in subsection (1) shall comply with the warning and request for information of the constable.

(3) Subsection (1) does not apply where a person referred to therein can establish that he is an adult.

Part VII:
interpretation

Chap. 84:10

39. For the purposes of this Part—

“alcohol” includes intoxicating liquor as defined under section 2 of the Liquor Licences Act;

“cigarette” includes cut tobacco rolled up in paper, tobacco leaf or other material in such form as to be capable of immediate use for smoking;

“cigarette paper” means paper used for rolling tobacco to be used for cigarettes; and

“tobacco products” includes cigarettes, cigars, chewing tobacco, pipe tobacco or tobacco in any of its forms and cigarette paper.

PART VIII

CHILD PORNOGRAPHY

Child pornography

40. (1) Subject to subsection (5), a person who—

(a) makes or permits to be made any child pornography or copy thereof;

(b) publishes, distributes or shows any child pornography;

(c) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows any child pornography;

(d) knowingly has in his possession any child pornography; or

(e) purchases, exchanges or otherwise receives any child pornography,

commits an offence and is liable on conviction on indictment, to a fine of thirty thousand dollars and to imprisonment for ten years.

(2) For the purposes of subsection (1), a person distributes child pornography, if he—

(a) offers; or

(b) transmits by any means including post, courier, electronic mail or facsimile,

child pornography to another person.

(3) Where a person is charged with an offence under subsection (1)(a), (b), (c), (d) or (e), it is a defence for him to prove that he had not himself seen the child pornography and did not know, nor had any cause to suspect it to be child pornography.

(4) A person who is found in possession of child pornography is deemed to have known he was in possession of child pornography unless the contrary is proved, the burden of proof being on the accused.

(5) A person who is—

(a) a member of the Police Service established under the Police Act; Chap. 15:01

(b) a member of the Prison Service established under the Prison Act; Chap. 13:02

(c) a member of the Defence Force established under the Defence Act; Chap. 14:01

(d) a member of Customs established under the Customs Act; Chap. 78:01

(e) the Director of the Forensic Science Centre or any other officer designated by the Director of the Forensic Science Centre holding the office of Scientific Officer I or above;

(f) any other officer employed by the State in the prevention, detection, investigation, or prosecution of an offence relating to child pornography; or

(g) any other person involved in the prosecution or defence of an offence relating to child pornography,

does not commit an offence under subsection (1), if the act which would otherwise constitute an offence under that subsection is done by him in good faith, for the purpose of his official duties.

Exposing a child to pornography

41. A person who exposes a child or causes a child to be exposed to pornography commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for nine months or upon conviction on indictment, to a fine of thirty thousand dollars and to imprisonment for five years.

Inciting or facilitating child pornography

42. A person who intentionally causes, incites, controls, arranges or facilitates a child's involvement in pornography in Trinidad and Tobago or elsewhere is liable—

(a) on summary conviction, to a fine of thirty thousand dollars or to imprisonment for five years; or

(b) on conviction on indictment, to imprisonment for twenty years.

PART IX

PROVISIONS FOR THE SAFETY OF CHILDREN

Taking a child to a place of safety

43.(1) Without prejudice to any power conferred upon a constable at common law or under any other written law, a constable, a person referred to in section 48(2)(a) or (b) or a person authorised by a Court may take to a place of safety, any child in respect of whom an offence under this Act or an offence mentioned in Schedule 1 has been, or there is reason to believe has been, or is likely to be committed, and shall notify the Authority forthwith.

Schedule 1

(2) A child who is taken to a place of safety or who seeks refuge in a place of safety may remain there—

- (a) unless the Authority advises otherwise; or
- (b) until he is brought before a Court.

(3) Where a child is brought before a Court, the Court may—

- (a) make an order under subsection (5);
- (b) cause the matter to be dealt with under the Children's Authority Act;
- (c) make a Fit Person Order directing a child to be placed in the care of a fit person; or
- (d) make any other order that it deems necessary.

(4) A Court, in making an order under this section shall do so with the child's welfare as the paramount consideration, taking into account the wishes of the child where such wishes can be reasonably ascertained.

(5) Where it appears to any Court that a person has committed an offence under this Act or an offence mentioned in Schedule 1 in respect of any child, and it is in the best interest of the child that the child be brought to the attention of the Authority, the Court may, without prejudice to any other power under this Act, make such an order.

(6) Any order referred to in subsection (3) may be carried out notwithstanding that any person claims responsibility for the child.

(7) A constable or a person referred to in section 48(2) (a) or (b) shall make a written report of the action taken under this section to his superior officer within seventy-two hours of the taking of such action.

44.(1) Where a person having responsibility for a child has been convicted of committing an offence under Arrangements for child by order of Court

this Act or an offence mentioned in Schedule 1 in respect of that child, or has been—

- (a) committed for trial for any such offence; or
- (b) bound over to keep the peace towards such child,

by any Court, that Court, without requiring any new proceedings to be instituted, shall forthwith take the child out of the responsibility of the person, and bring the child to the attention of the Authority.

(2) Where at any time during the proceedings—

- (a) a person having the responsibility for a child is charged with any offence in respect of that child, before any Court; or
- (b) it has come to the knowledge of a Court that an offence has been committed in respect of a child,

that Court may, without requiring any new proceedings to be instituted for that purpose, bring the child to the attention of the Authority and refer the child to the Court with jurisdiction in family matters.

(3) Upon a child being brought to the attention of the Authority under this section, the Authority shall—

- (a) temporarily place the child in the care of a fit relative, some other fit person or a reception centre licensed under the Children's Authority Act; and
- (b) immediately bring the child before a Court with jurisdiction in family matters, where upon such Court may make such order as it deems necessary.

(4) Nothing in this section shall be construed as preventing a Court at the time when the person is so charged or at any time during the proceedings, without requiring any new proceedings to be instituted for that

purpose, from bringing the child to the attention of the Authority and referring the child to the Court with jurisdiction in family matters.

(5) Every order under this section shall be in writing, and may be made by a Court in the absence of the child.

(6) Where an order is made under this section in respect of a person who has been committed for trial, and that person is acquitted of the charge, or the charge is dismissed for want of prosecution, a Court with jurisdiction in family matters may take the circumstances in respect of the acquittal or dismissal into account when considering the future care of the child.

(7) A Court, in making an order under this section shall do so with the child's welfare as the paramount consideration, taking into account the wishes of the child, and having regard to the age and maturity of the child, where such wishes can be reasonably ascertained.

45.(1) A person into whose care a child is placed under this Part shall, whilst the order is in force, have the like control over the child as if he were the child's parent, and shall be responsible for his welfare, and the child shall continue in the care of such person, notwithstanding that he is claimed by his parent or any other person.

Control of child placed
in the care of a person

(2) Where a person—

- (a) knowingly assists or induces, directly or indirectly, a child to escape from the person to whose care he is committed; or
- (b) knowingly harbours, conceals or prevents a child who has so escaped from returning to such person, or knowingly assists in so doing,

he is liable on summary conviction, to a fine of three thousand dollars or to imprisonment for six months.

Maintenance of child
placed in care of a
person

46. (1) Where a Court makes an order to place a child into the care of a person, the Court may also order the parent or any other person liable to maintain the child, to contribute to the child's maintenance, having regard to the means of the parent or that other person, for such period as the Court deems fit.

(2) An order under subsection (1) may be made—

(a) on the complaint or application of the person into whose care the child is placed; and

(b) at the time when the order to place the child into his care is made, or subsequently.

(3) The sums contributed by the parent or such other person liable to maintain the child pursuant to subsection (1) shall be paid to the person into whose care the child is placed and be applied for the maintenance of the child.

(4) Where, under this Part, an order to place a child into the care of a fit relative or other person is made in respect of a person who has been committed for trial for an offence, the Court has the power to make an order under this section in respect of the parent or any other person liable to maintain the child prior to the trial of the person so committed.

(5) A Court making an order for a contribution by a parent or any other person may, in the case where there is any pension or income payable to such parent or other person capable of being attached, after giving such parent or person an opportunity of being heard, order that such part of the pension or income, as the Court may see fit, be attached and be paid to the person named by the Court.

Religious persuasion
of person with whom
child is placed

47. A Court in determining the person in whose care the child shall be placed under this Part, shall be satisfied that the order, if made, will be for the welfare of the child, due consideration being for this purpose

given to the religious persuasion of the parties and to the wishes of the child having regard to the age and understanding of the child.

48.(1) Where it appears to a Court on complaint on oath of a person described in subsection (2), that a child has suffered, is suffering, or is likely to suffer such harm as to cause concern for the welfare of that child, the Court may require a parent or guardian of the child to appear before it and shall notify the Authority immediately.

Court order to require
the appearance of
parent or guardian

(2) The Court may require a parent or guardian of the child to appear before it under subsection (1) where a complaint on oath is made by—

- (a) a public officer experienced or qualified in social work;
- (b) a person employed on contract by the Government, experienced or qualified in social work;
- (c) a person who, in the opinion of the Court is acting in the interest of the child; or
- (d) a constable.

(3) A Court may also act in accordance with subsection (1) in proceedings under section 43 or 44.

(4) Where, in proceedings referred to in subsection (1), the Court is satisfied that the child has suffered, is suffering or is likely to suffer such harm as to cause concern for the welfare of that child, the Court may, with the child's welfare as the paramount consideration and taking into account the wishes of the child, having regard to the age and maturity of the child where such wishes can be reasonably ascertained, order that the child—

- (a) remain in the custody of a parent or guardian, subject to a period of supervision

by a named person or authority, and subject to such conditions as are specified in the order; or

- (b) be committed to the care of a fit relative of the child or other fit person named by the Court, such fit relative or other fit person being willing and able to undertake such care.

(5) Where proceedings are before a Magistrate under subsection (1), section 43 or section 44 in respect of a child—

- (a) who is a ward of the Court;
- (b) in relation to whom there is in force an order of the High Court relating to custody, guardianship or access; or
- (c) in relation to whom proceedings, not of a criminal nature, relating to or affecting him are before or pending in the High Court,

the Magistrate shall refer the proceedings to the High Court, whereupon those proceedings, subject to subsections (6), (7) and (8) shall be continued as if they had been properly and duly commenced in the High Court.

(6) In proceedings removed to the High Court under subsection (5), the High Court may make any order that a Magistrate may make under this Act or such other order as it sees fit.

(7) At any stage of the proceedings referred to in subsection (3) the Court may—

- (a) in the case of the High Court, on its own motion;
- (b) in the case of the Magistrate, by summons; or

(c) on the application of any person acting in the interest of the child,

join as a party to the proceedings any person who ought to have been joined as a party or whose presence before the Court is desirable or necessary to determine the matter.

(8) Nothing in this section precludes the Court from making an interim order, including an interim care order, pending the appearance of the child, parent or guardian, or other person.

(9) Where a complaint on oath has been made under subsection (1), and where the circumstances so require, the Court may issue a warrant authorizing any constable to remove the child, with or without search, to a place of safety and detain him there until he is brought before a Court with jurisdiction in family matters and the constable shall notify the Authority forthwith.

(10) A Court issuing a warrant under this section may, by the same warrant, cause any person accused of any offence in respect of the child to be apprehended and brought before a Court or Magistrate, and cause proceedings to be taken against such person according to law.

(11) Any constable authorised by warrant under this section to search for any child, or to remove any child with or without search, may enter, if need be by force any house, building, or other place specified in the warrant, and may remove the child therefrom.

(12) Every warrant issued under this section shall be executed by a constable, who shall be accompanied by the person laying the information, if such person so desires, unless the Court by whom the warrant is issued otherwise directs.

(13) It shall not be necessary in any information or warrant under this section to name the child.

(14) For the purposes of this section, “harm” includes—

- (a) neglect or abandonment;
- (b) assault;
- (c) ill-treatment, physical or otherwise;
- (d) physical, sexual or mental abuse;
- (e) domestic violence;
- (f) a situation where any child is being used as a courier, seller of a dangerous drug or other substance having an effect similar to that of a dangerous drug by those having responsibility for him or by any other person;
- (g) psychological suffering from seeing or hearing the ill-treatment of another;
- (h) an offence under this Act or an offence mentioned in Schedule 1; or
- (i) any act or omission which impedes or may impede or is detrimental to the physical, psychological, intellectual, social, behavioural, mental or emotional development of a child.

PART X

CHILD OFFENDERS

Bail for children
arrested

49. Where a person who appears to be under the age of eighteen years is apprehended with or without warrant, and cannot be brought forthwith before a

Court, the officer in charge of the Police Station to which such person is brought shall enquire into the case and may—

- (a) unless the charge is for murder or any other offence which would have been indictable if it were committed by an adult;
- (b) unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or
- (c) if there is reason to believe that the release of such person would defeat the ends of justice,

release such person on bail in accordance with the Bail Act, subject to a duty to appear before a Magistrate at such time and place as the officer appoints and shall bring the child to the attention of the Authority.

50. Where a person who appears to be under the age of eighteen years is apprehended and is not released in accordance with section 49, the officer in charge of the Police Station to which such person is brought shall notify the Authority forthwith and shall cause him to be placed in a Community Residence until he can be brought before a Court.

51. Where a child has been detained in a Police Station, the Commissioner of Police shall make arrangements for preventing, so far as practicable, the child from associating with an adult charged with or convicted of an offence.

52. (1) A Court, on remanding or committing for trial a child who is not released on bail, shall order that the child be placed in the custody of a Community Residence named in the Order for the period for which he is remanded or until he is brought before the Court.

(2) An order under subsection (1) may be varied to name an alternative Community Residence.

Parent or guardian to
attend Court
proceedings

53.(1) Where a child is charged with an offence or brought before a Court under this Act, his parent or guardian shall be required to attend at the proceedings of the Court, unless the Court is satisfied that it would be unreasonable or impractical to require his attendance.

(2) Where a child is arrested by a constable, that officer or the officer in charge of the Police Station to which the child was brought, shall advise the parent or guardian of the child to attend the Court before which the child will appear.

(3) Subsection (2) shall not apply if the parent or guardian cannot be found.

(4) Where a child is arrested or charged with any offence, or in proceedings referred to in section 48(1) or (2), a summons or warrant may be issued by the Court to enforce the attendance of the parent or guardian for the purpose of—

- (a) enabling such parent or guardian to take part in the proceedings; and
- (b) enabling orders to be made against the parent or guardian in the same manner as if a complaint were made upon which a summons or warrant could be issued against a defendant under the Summary Courts Act.

(5) The parent or guardian required to attend Court proceedings under this section shall be the parent or guardian having the care and control of the child.

(6) The attendance of the parent or guardian of a child in the proceedings of the Court shall not be required under this section in any case where the child was, before the institution of the proceedings, removed from the custody or care and control of his parent or guardian by an order of a Court.

54.(1) Where a child is charged and brought before a Court with an offence, the commission of which attracts a fine, damages, or costs, and the Court is of the opinion that the case would be best met by the imposition of a fine, damages, or costs, whether with or without any other punishment, the Court may, in any case where the offender is a child, order the parent or guardian of the child to pay the fine, damages, or costs awarded unless the Court is satisfied that—

Power of Court to order parent to pay any fine, damages or costs instead of child where a child is charged

- (a) the parent or guardian cannot be found; or
- (b) the parent or guardian has not contributed to the commission of the offence by neglecting to exercise due care of the child.

(2) Where a child is charged with any offence, the Court may order his parent or guardian to give security for his good behaviour.

(3) Where the Court finds that a charge against a child is proved, the Court, without proceeding to convict the child, may make—

- (a) an order against the parent or guardian—
 - (i) for the payment of damages or costs; or
 - (ii) requiring him to give security for good behaviour;
- (b) a Recognizance Order in accordance with the Children's Authority Act; or
- (c) any other order including an interim order as the Court thinks fit under section 25 of the Children's Authority Act.

(4) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity to be heard.

(5) Any sums, pursuant to this section, which a Court—

- (a) imposes and orders to be paid by a parent or guardian; or
- (b) on forfeiture of any such security referred to in this section,

may be recovered from the parent or guardian in like manner as if the order had been made on the conviction of the parent or guardian for the offence with which the child was charged.

Power of the Court to call parent to show cause where a child is convicted

55.(1) Where a child is convicted of an offence and the Court is of the view that the parent or guardian of the child has failed to exercise reasonable care of or supervision over the child to ensure that the child does not commit an offence, the Court may call upon the parent or guardian to show cause why he should not be required to pay a fine in addition to that which is to be paid by the child or for the child by order of the Court and if the parent or guardian fails to show good cause, the Court may order—

- (a) the parent or guardian to pay a fine to the Court;
- (b) the parent or guardian to attend counselling on such terms as the Court may order; and
- (c) with the consent of the parent or guardian, the parent or guardian to enter into a recognizance to take proper care of the child and to exercise proper supervision over the child.

(2) In determining whether a parent failed to exercise reasonable care of or supervision over a child, the Court may consider any of the following factors:

- (a) the age and maturity of the child;
- (b) the prior conduct of the child;

- (c) psychological or medical disorders, psychological, physical or learning disabilities or emotional disturbances of the child;
- (d) whether the child was under the supervision of the parent or guardian when the child committed the offence for which he was convicted;
- (e) if the child was not under the care or supervision of the parent or guardian when the child committed the offence, whether the parent or guardian made suitable arrangements for the supervision of the child;
- (f) whether the parent has sought to improve his parenting skills by attending parenting courses or in any other manner;
- (g) whether the parent or guardian has sought professional assistance in handling or controlling the child, when necessary;
- (h) whether the parent or guardian has assisted or co-operated with the relevant governmental authorities in their efforts to handle or control the child, including producing the child for Court appointment and hearings;
- (i) psychological or medical disorders, physical or learning disabilities or emotional disturbances of the parent or guardian; and
- (j) any other matter that the Court considers relevant to its determination.

(3) Where a parent or guardian refuses to enter a recognizance and the Court considers the refusal to be unreasonable, that person commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(4) An order under subsection (1)(c) shall not require the parent or guardian to enter into a recognizance for a period exceeding three years or, where the child will attain eighteen years in a period shorter than three years, for a period not exceeding that shorter period.

(5) In determining the amount to be paid by a parent or guardian under subsection (1), the Court must have regard to the parent's or guardian's capacity to pay the amount, including the effect that any order would have on the parent's capacity to provide for dependants.

Limitation of costs

56.(1) Where a child is ordered by the Court to pay costs in addition to a fine, the amount of the costs so ordered to be paid shall not exceed the amount of the fine.

(2) The Court may order—

- (a) all fees payable or paid by the complainant in excess of the amount of costs ordered to be paid under subsection (1) to be remitted or repaid to the complainant; and
- (b) the fine or any part thereof, to be paid to the complainant to offset his costs.

Determination of sentence for child

57.(1) Notwithstanding any other written law, in determining the sentence of any child who has been convicted of any offence, the Court may—

- (a) request an investigation and report by—
 - (i) a probation officer or social worker;
 - (ii) a child psychologist, or a child psychiatrist;
 - (iii) a Children's Home; or
 - (iv) the Authority,

and take the report into account;

- (b) in relation to a child who is fourteen years of age or over, request a copy of any proceedings from the Court with jurisdiction in family matters which relate to the child and take into account those proceedings;
- (c) hear and take into account submissions on behalf of the Authority;
- (d) hear and take into account submissions by the Children's Attorney or any other attorney-at-law representing the child who has been convicted; or
- (e) hear and take into account submissions by the Children's Attorney or any other attorney-at-law representing the child victim.

(2) Where a child charged with any offence is tried by any Court, and the Court is satisfied of his guilt, the Court shall take into consideration the provisions of any written law enabling the Court to deal with the case and the Court may—

- (a) dismiss the charge;
- (b) discharge the offender on his entering into a recognizance;
- (c) discharge the offender and place him under the supervision of a probation officer;
- (d) place the offender in the care of a fit relative or other fit person;
- (e) commit the offender to a Community Residence appropriate to the age of the child;
- (f) order the offender to pay a fine, damages, and costs;
- (g) order the parent or guardian of the offender to pay a fine, damages and costs;

- (h) order the parent or guardian of the offender to give security for his good behaviour;
- (i) make a Supervision Order as described in section 25K of the Children's Authority Act;
- (j) order that the offender be deemed in need of care and protection and referred to the Authority, which shall investigate and seek any appropriate order of the Court with jurisdiction in family matters or the Juvenile Court;
- (k) make an order for counselling or for psychological evaluation and resultant assistance;
- (l) make an order for community service;
- (m) order that no conviction be recorded;
- (n) order that the proceedings be sealed and not divulged without an order of the Court; and
- (o) make any other order as the Court deems fit.

(3) Where a child is convicted of any offence and the offence is his first offence, the Court may pronounce a custodial sentence only if convinced that—

- (a) the offence is so grave that no other punishment or course of action that it is authorised to impose under this Act is sufficient; and
- (b) having regard to such information revealed pursuant to subsection (1) it is in the best interest of the child that he be placed in an appropriate Community Residence.

(4) If a custodial sentence is pronounced on a person who was at the time of his sentencing, a child, and the period of that sentence extends beyond the time

that the person would have attained the age of eighteen years, the High Court shall, on his attaining the age of eighteen years, review the sentence and may order that—

- (a) the remainder of the sentence be served in prison;
- (b) the sentence be commuted to time served subject to paragraph (d);
- (c) the sentence be reduced and the remainder of the sentence be served in prison;
- (d) the person be discharged from detention but placed on a bond for a period of time not exceeding fifteen years during which time he attends counselling, on condition that failure to attend and participate in counselling may result in the requirement that he completes the sentence in prison; or
- (e) the person be placed under the supervision of a probation officer and attend counselling on condition that failure to attend upon the probation officer or to attend and participate in counselling may result in the requirement that he completes the sentence in prison.

(5) An order made under subsection (4)(e) may be made in addition to any order made under paragraphs (b) and (c).

58.(1) A Court shall not order a child to be detained in an adult prison.

(2) Where a child—

- (a) is convicted of an offence which is punishable with imprisonment; or
- (b) would be liable to be imprisoned in default of payment of any fine, damages or costs,

Restriction on
punishment
of children and
substitution of
custody in place
of detention or
imprisonment

the Court may—

- (i) order that he be detained in a Community Residence named in the order for such term as may be specified in the order, not exceeding the term for which he may, but for this Part, be sentenced to imprisonment or committed to prison;
- (ii) order that the offender be deemed in need of care and protection and referred to the Authority, who will investigate and seek any appropriate order of the Court with jurisdiction in family matters;
- (iii) order that the offender be referred to counselling;
- (iv) order that any family members, members of the offender's household or persons connected to the offender be referred to counselling;
- (v) order that no conviction be recorded;
- (vi) order that the proceedings be sealed and not divulged without an order of the Court; or
- (vii) make any other order as the Court may deem fit.

(3) Where a child is detained in any facility he shall not be allowed to associate with adult prisoners except with the express permission of the Court in respect of the adult prisoner named in such order.

Abolition of death
sentence in case of
person under eighteen
years of age

59. The sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the Court that at the time when the offence was committed he was under eighteen years of age.

60.(1) Where a child is convicted on indictment of an attempt to murder, or of manslaughter, or of wounding with intent to do grievous bodily harm, and the Court is of the opinion that no punishment which, under the provisions of this Act, it is authorised to inflict is sufficient, the Court may sentence the offender to be placed in a Community Residence for such period as may be specified in the sentence, and on such conditions as the Court may direct.

Placement in case of
certain crimes
committed by children

(2) A child placed in a Community Residence under subsection (1) shall be deemed to be in legal custody.

61.(1) A child who was placed pursuant to the directions of the Court under section 60 may, at any time, be discharged by the Court on licence.

Provisions as to
discharge of children
detained in
accordance with
directions of the Court

(2) A licence may be in such form and may contain such conditions as the Court may direct.

(3) A licence may at any time be revoked or varied by the Court, and, where a licence has been revoked, the child to whom the licence relates shall return to such place as the Court may direct, and if he fails to do so, may be apprehended without warrant and taken to that place.

(4) A licence means a conditional release granted by the Court on such terms and conditions as the Court deems fit.

62.(1) The order committing a child to a Community Residence shall be sufficient authority for such detention and shall be delivered with the child to the person in charge thereof.

Provisions as to
custody of children

(2) A child whilst so placed and whilst being conveyed to and from the Community Residence shall be deemed to be in legal custody of that Community Residence.

(3) A child who escapes from legal custody referred to subsection in (2) may be apprehended without warrant and returned to the Community Residence.

Court order may provide for the guardian or parent to have access to child, etc.

63.(1) An order made by any Court pursuant to this Part or any other Part under this Act may also provide for—

- (a) access to the child by a parent or legal guardian; and
- (b) supervision and monitoring of the order in such manner as is specified in the order.

(2) Every order made pursuant to subsection (1) shall be in writing and may be made by the Court in the absence of the child.

Minister to make Rules for Community Residences on the advice of the Authority

64. The Minister may make rules on the advice of the Authority pertaining to the places of detention, with respect to—

- (a) the buildings or residences that may be used;
- (b) the inspection of these places;
- (c) the classification of children;
- (d) the treatment of children;
- (e) the employment of children;
- (f) the control of children;
- (g) the visitation procedures for children; and
- (h) any other matter that may be necessary for the purposes of the Act.

Juvenile Court and its proceedings

65.(1) A Juvenile Court—

- (a) when hearing charges against children; or
- (b) when hearing applications relating to a child at which the attendance of the child is required,

shall sit—

- (i) in a different building;

- (ii) in a different room;
- (iii) on different days; or
- (iv) at different times,

from those at which the ordinary sittings are held, unless the child is charged jointly with any other person not being a child.

(2) Where, in the course of any proceedings in a Juvenile Court, it appears to the Court that the person charged or to whom the proceedings relate is eighteen years of age or older, nothing in this section shall be construed as preventing the Juvenile Court, if it thinks it undesirable to adjourn the case from proceeding with the hearing and determination of the case.

(3) A person who appears to be under eighteen years of age shall not be allowed to associate with adults charged with any offence—

- (a) whilst being conveyed to or from Court; or
- (b) whilst waiting before or after his attendance in Court.

(4) For the purpose of proceedings in the Juvenile Court, no persons other than—

- (a) the Judges and judicial officers, officers of the Court and staff of the Court;
- (b) the parties to the case and their attorneys-at-law; and
- (c) other persons directly concerned in the case,

shall, except by leave of the Court, be allowed to attend.

(5) Proceedings in the Juvenile Court shall be heard *in camera* except by order of the Court.

(6) No person shall publish the name, address, photograph or Community Residence where the child is placed or anything likely to lead to the identification of the child before the Court, save with the permission of the Court or in so far as required by this Act.

(7) A person who contravenes subsection (6) is liable on summary conviction to a fine of fifty thousand dollars.

PART XI
CHILDREN'S ATTORNEY

Children's Attorney **66.**(1) There shall be appointed by the Judicial and Legal Service Commission, an appropriate number of attorneys-at-law to be called "Children's Attorneys" including one attorney-at-law who shall be appointed as the Senior Children's Attorney.

Chap. 6:01 (2) The office of Children's Attorney shall be a legal office under Part I of the First Schedule of the Judicial and Legal Service Act.

(3) The Senior Children's Attorney shall possess not less than seven years experience as an attorney-at-law, knowledge of family law and the appropriate training with respect to matters relating to children.

(4) A Children's Attorney shall possess not less than three years experience as an attorney-at-law, knowledge of family law and the appropriate training with respect to matters relating to children.

(5) In any court proceedings, the Court may request that the Solicitor General assign a Children's Attorney to represent and safeguard the interest of a child and perform such other functions as the Court may think necessary.

Chap. 7:07 (6) Notwithstanding the assignment of a Children's Attorney under subsection (5), the Court may, where necessary, adjourn the matter for an application to be made under the Legal Aid and Advice Act.

Children's Attorney may be engaged on contract **67.**(1) The Permanent Secretary in the Ministry of the Attorney General may, in accordance with the Guidelines on Contract Employment established by the Chief Personnel Officer for such purpose, engage on

contract, the services of other persons who possess the qualifications and training specified in section 66(4) as the case may require for the purpose of performing the functions of a Children’s Attorney.

(2) Where a person is engaged on contract under subsection (1), the duration of the contract shall not be less than three years.

68.(1) Save as otherwise provided in this Act or under any other written law, the Children’s Attorney shall not, in the exercise of his functions, be subject to the direction or control of any other person or authority.

Independence of
Children’s Attorney

PART XII

EVIDENCE AND PROCEDURES

69.(1) Where a Court is satisfied by the evidence of a medical practitioner or any other person that the attendance of a child before a Court in respect of whom an offence under this Act or an offence under any written law listed in Schedule 1 is alleged to have been committed, would place the child at risk of harm, the Court may—

Special power to take
deposition and record
evidence, etc.

- (a) take in writing the deposition of the child;
- (b) have recorded by audio-digital recording, video-digital recording or computer aided transcription, the evidence of the child; or
- (c) have the child appear from a remote location by video conferencing in accordance with the rules made by the Rules Committee of the Supreme Court.

(2) Where the evidence is being taken in writing, the following shall apply:

- (a) the evidence of the child shall be taken in the form of a deposition;

(b) the Court shall subscribe the deposition and add thereto—

- (i) the date when and place where the deposition was taken; and
- (ii) the names of the persons present at the taking of the deposition.

(3) The Court taking any such deposition shall transmit it—

- (a) to the proper officer of the Court at which the accused person has been committed and to the Deputy Registrar of a Court with jurisdiction in family matters if the deposition relates to an offence for which an accused person is already committed for trial; or
- (b) in any other case, to the Clerk of the Peace of the magisterial district in which the deposition has been taken, and to the Deputy Registrar of a Court with jurisdiction in family matters,

and the Clerk of the Peace and Deputy Registrar of the Court with jurisdiction in family matters to whom any such deposition is transmitted shall preserve, file, and record the deposition and not otherwise disclose its contents except by order of the Court.

(4) If the evidence of the child is recorded by audio-digital recording, video-digital recording or computer aided transcription, or transmitted by video conferencing, a transcript of the evidence may be prepared and verified by the certificate of those responsible for its accuracy in accordance with the Recording of the Court Proceedings Act.

(5) The Court shall subscribe the certificate and add thereto—

- (a) the date when and place where the evidence was recorded; and

(b) the names of the persons present.

(6) Where the evidence is recorded, the Court shall cause a copy of the recording and any verified transcript to be kept as a record of the evidence with all the other relevant evidence.

(7) The video-digital recording, electronic audio-digital recording or video conferencing recording shall be the official record.

(8) A deposition, recording, or transcript of evidence of a child in a case involving allegations of a sexual nature shall not be disclosed to anyone except by order of the Court.

(9) For the purposes of this section—

“audio-digital recording” means an audio-recording taken with digital equipment and stored on non-rewritable digital media accompanied by timed annotations identifying the persons speaking; and

“video-digital recording” means a video recording taken with digital equipment and stored on non-rewritable digital media.

70.(1) Where, on the trial of a person on indictment for an offence under this Act or an offence under any written law listed in Schedule 1, in respect of a child, the Court is satisfied by the evidence of a medical practitioner or the Director of Public Prosecutions, that the attendance before the Court of any child in respect of whom the offence is alleged to have been committed would involve—

Admission of
deposition and
recorded evidence
into evidence

(a) danger to the life or physical, mental or psychological health of the child; or

(b) place the child at risk of harm,

any deposition or recorded evidence of the child shall be admissible in evidence in respect of the accused person without further proof.

(2) The deposition or recorded evidence referred to in subsection (1), shall be admissible in evidence in respect of the accused without further proof if, in the case of—

- (a) a deposition, it purports to be signed by the Court, by or before whom it purports to be taken;
- (b) recorded evidence, it purports to be verified by the certificate of those responsible for the accuracy of the recording of the proceedings and of the transcript in accordance with the Recording of Court Proceedings Act; or
- (c) the recording of a video conference, it is verified by the person responsible for the accuracy of the recording of the proceeding and—
 - (i) reasonable notice of the intention to take the deposition or to have the evidence recorded has been served upon the person against whom it is proposed to use it as evidence; and
 - (ii) that person or his attorney-at-law had, or might have had if he had so chosen to be present, an opportunity of cross-examining the child making the deposition, including cross-examination by video conferencing.

Chap. 4:31

Admissibility of video recorded evidence of interview between an adult and a child

71.(1) A video recording of an interview which is conducted between an adult who is not the accused or one of the accused and a child (hereinafter in this Part

referred to as “the child witness”), and which relates to any matter in issue in the proceedings, may, with the leave of the Court, be admitted in evidence in so far as it is not excluded under subsection (3).

(2) This section applies to all criminal proceedings in which the offence charged—

- (a) involves an assault on, or injury or threat of injury to a person;
- (b) is an offence under this Act;
- (c) is an offence under the Sexual Offences Act; or
- (d) is inciting the commission of an offence falling under paragraph (a), (b) or (c).

(3) Where a video recording is tendered in evidence under this section, the Court may, subject to the exercise of any power to exclude evidence which is otherwise admissible, give leave under subsection (1) unless—

- (a) it appears that the child witness will not be available for cross-examination;
- (b) any rules of Court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the Court; or
- (c) the Court is of the opinion having regard to all the circumstances of the case that, in the interest of justice, the recording should not be admitted.

(4) Where leave is granted under subsection (3), the Court may direct that any part of the recording be excluded if it thinks it would not be in the interest of justice to allow its admission.

Cross-examination of
child victim

72. Where a video recording is admitted in evidence under section 71(1), cross-examination of the child witness shall be by means of video conferencing.

Child witness to be
called

73. Where a video recording is admitted under section 71, the child witness shall be called by the party who tendered the recording in evidence but that witness shall not be examined in chief on any matter which, in the opinion of the Court, has been dealt with adequately in his recorded testimony.

Video recorded
evidence treated as
direct oral testimony

74.(1) Where a video recording is given in evidence under section 71, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony, and any such statement shall be admissible evidence of any fact of which such testimony from him would be admissible, but no such statement shall be capable of corroborating any other evidence given by him.

(2) In estimating the weight to be attached to a statement under subsection (1), regard shall be had to all the circumstances from which any inference can reasonably be drawn.

(3) In this section, “statement” includes any representation of fact, whether made in words or otherwise.

Definition of “child”
for the purposes of
sections 71 to 74

75. For the purposes of sections 71 to 74, “child” means a person who was, at the time when the video recording was made, less than sixteen years of age and who had not attained eighteen years of age at the time of the cross-examination.

Unsworn evidence of a
child in criminal
proceedings

76.(1) A child under ten years of age shall give unsworn evidence in criminal proceedings.

(2) Before receiving the evidence of a child under subsection (1), a Court shall hold an enquiry to determine whether the child is possessed of sufficient intelligence to justify the reception of his evidence, and understands the duty of speaking the truth.

(3) A child's unsworn evidence may be taken and reduced to writing in accordance with this Act or any other written law and shall be deemed to be a deposition.

(4) The unsworn evidence of a child may not be corroborated solely by the unsworn evidence of another child.

(5) Subject to subsection (6), a person may not be convicted of an offence unless the unsworn evidence admitted under this section and given on behalf of the prosecution is corroborated by some other material particular implicating the accused and such corroboration may consist of evidence other than oral evidence.

(6) Notwithstanding subsection (5), an accused person may be convicted on the uncorroborated unsworn evidence of a child provided that the Court warns the jury of the danger of convicting the accused person on the uncorroborated unsworn evidence of a child.

(7) A child, over ten years of age, whose evidence is received under this section and who wilfully gives false evidence under such circumstances that, if the evidence had been given on oath, he would have been guilty of perjury, commits an offence and is liable on summary conviction to be adjudged such punishment as may have been awarded had he been charged with perjury and the case dealt with summarily under section 99 of the Summary Courts Act.

Examination of child
witnesses through an
intermediary

77.(1) Whenever criminal proceedings are pending before any Court in which a witness is a child and it appears to such Court that the child's ability to follow the proceedings or to communicate should be facilitated through an intermediary, the Court may appoint a competent and qualified person to act as an intermediary.

(2) Unless the Court otherwise directs, the function of the intermediary is to communicate—

- (a) to the child witness, questions put to him; and
- (b) to any person asking such questions, the answers given by the child witness in reply to them,

and to explain such questions, or answers so far as necessary to enable them to be understood by the child witness or person in question.

(3) A person shall not act as an intermediary in a particular case except after making a declaration, in the form set out in Schedule 2.

Schedule 2

(4) Where a Court appoints an intermediary under subsection (2), the Court may direct that the child witness shall give his evidence at any place—

- (a) which is informally arranged to set the child witness at ease; and
- (b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness.

(5) Where a Court appoints an intermediary under subsection (2), the Court shall direct that the child witness shall give his evidence at any place which enables the Court and any person whose presence is necessary at the relevant proceedings to see or hear, either directly or through the medium of any electronic or other devices, the intermediary as well as that witness during his testimony.

(6) Notwithstanding subsection (3), any examination of the witness pursuant to subsection (1), shall take place in the presence of such persons as the Rules of Court or the directions of the Court may provide, but in circumstances in which—

- (a) a Court and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary; and
- (b) except in the case of a video recorded examination, the jury, if there is one, are able to see and hear the examination of the witness.

(7) Where two or more legal representatives are acting for a party to the proceedings, subsection (6)(a) shall be satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(8) No examination, cross-examination or re-examination of any witness in respect of whom the Court has appointed an intermediary under section (2), except examination by the Court, shall take place in any other manner than through that intermediary.

(9) Subsections (4) and (5) do not prevent the prosecution from presenting anew any evidence which was presented through an intermediary referred to in that subsection.

(10) Subsections (4) and (5) apply in respect of all cases where an intermediary referred to in that subsection has been appointed, and in respect of which, at the time of the appointment—

- (a) the trial Court; or
- (b) the Court considering an appeal or review,

has not determined the case.

Chap. 11:14

(11) Section 4 of the Perjury Act shall apply in relation to a person acting as an intermediary and where a person acts in any proceeding which is not a judicial proceeding, that proceeding shall be taken to be part of the judicial proceeding in which the witness's evidence is given.

Power to proceed in absence of child

78. Where, in any proceedings in relation to an offence under the Act or an offence mentioned in Schedule 1, the Court is satisfied that the attendance before it of a child in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

Power to clear Court whilst child is giving evidence in certain cases

79. In addition and without prejudice to any powers which a Court may possess to hear proceedings *in camera*, the Court may, where a person who, in the opinion of the Court is a child, is called as a witness in any proceedings in relation to an offence against, or any conduct contrary to decency or morality, direct that all or any persons not being officers of the Court or parties to the case, their attorneys-at-law, or person otherwise directly concerned in the case be excluded from the Court during the taking of the evidence of the child.

Prohibition on children being present in Court during the trial of other persons

80. No child under sixteen years of age, other than an infant in arms, shall be permitted to be present in Court during the trial of any person charged with an offence or during any proceedings preliminary thereto without the express permission of the judge, magistrate or other judicial officer presiding and if so present without that permission, he shall be ordered to be removed, unless he is the person charged with the alleged offence, or during such time as his presence is required as a witness or otherwise for the purposes of justice.

PART XIII

MISCELLANEOUS

81. Where a person is convicted of an offence under Parts II to VIII, the Court may, in addition to any other penalties for the offence, make an order for the convicted person to be referred for counselling.

Order of Court for counselling

82. Proceedings for an offence under Parts V, VI or VIII, with respect to which the alleged perpetrator is a child, shall not be instituted except by or with the consent of the Director of Public Prosecutions

Proceedings to be with the consent of the Director of Public Prosecutions

83. Where a person is brought before any Court—

Presumption and determination of age

(a) charged with an offence; or

(b) for the purpose of giving evidence,

and it appears to the Court that the person is a child, the Court shall make due enquiry as to the age of that person and take such evidence as may be forthcoming at the hearing of the case.

84. (1) Except where otherwise expressly provided, all offences under this Act may be prosecuted, and all penalties incurred may be imposed or recovered in the manner provided by the Summary Courts Act or any other written law.

Application of Summary Courts Act

(2) All orders of a Court under this Act shall be made, and all proceedings in relation to any such orders shall be taken in the manner provided by the Summary Courts Act or any other written law.

(3) Any party who is aggrieved by an order or decision of a Court under this Act, may appeal from such order or decision in the manner provided by the Summary Courts Act or any other written law.

Offences committed
outside of the
Republic of Trinidad
and Tobago

85. A Court in Trinidad and Tobago shall have the jurisdiction to try an offence under this Act where the act constituting the offence has been carried out—

- (a) wholly or partly in Trinidad and Tobago;
- (b) by a national of Trinidad and Tobago, whether in Trinidad and Tobago or elsewhere; or
- (c) by a person on board a vessel or aircraft registered in Trinidad and Tobago.

Application of
Chap. 11:28

86. The following provisions of the Sexual Offences Act shall apply *mutatis mutandis* for the purposes of an offence under Part VI:

- (a) section 26;
- (b) sections 31B to 31E;
- (c) section 32; and
- (d) Part III.

Chap. 46:01
repealed

87. The Children Act is hereby repealed.

Consequential
amendments
Schedule 3

88. The written laws specified in the First Column of Schedule 3 are amended to the extent specified in the Second Column of that Schedule.

SCHEDULE 1

[Sections 43(1) and (5); 44(1);
48(14)(h); 69(1); 70(1) and 78]

OFFENCES UNDER RELATED ACTS

Any offence under—

- (a) the Sexual Offences Act;
- (b) sections 21 and 48 of the Offences Against the Person Act, and any offence against a child under section 6 of that Act; and
- (c) section 4 or 5 of the Summary Offences Act.

SCHEDULE 2

[Section 77(3)]

**OATH/AFFIRMATION TO BE TAKEN WHEN PERSON IS
ACTING AS AN INTERMEDIARY**

I, AB, do solemnly *swear/affirm by the that I will to the best of my ability discharge the duties of intermediary and faithfully and accurately convey such questions and answers as shall be put to the child witness and received from the child witness in the case before the Court.

*delete whichever is inapplicable.

SCHEDULE 3

(Section 87)

CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS

| First Column <i>Written Law</i> | Second Column <i>Extent of Amendment</i> |
|---|---|
| 1. Summary Courts Act, Chap. 4:20 | The Summary Courts Act is amended— <ul style="list-style-type: none"> (a) in section 2, in the definition of “young person”, by deleting the word “sixteen” and substituting the word “eighteen”; (b) in section 63A(2), by deleting the word “19” and substituting the word “76”; and (c) in section 100(9), by deleting the word “sixteen” and substituting the word “eighteen”. |
| 2. Bail Act, Chap. 4:06 | The Bail Act is amended— <ul style="list-style-type: none"> (a) in section 6(1)(c), by deleting the words “Part IV” after the word “under” and substituting the words “Part X”; and (b) in section 15(6), by deleting the words “section 74” after the words “subject to” and substituting the words “section 52”. |
| 3. Sexual Offences Act, Chap. 11:28 | The Sexual Offences Act is amended— <ul style="list-style-type: none"> (a) by repealing sections 6 to 8, 10, 11 and 21; (b) in section 9 by deleting subsection (2) and substituting the following subsection: “ (2) A person who commits the offence of incest is liable on conviction to imprisonment for life.”; (c) in section 12A— <ul style="list-style-type: none"> (i) by deleting the word “who” the second time it occurs and substituting the word “whom”; and (ii) by deleting all the words after the word “section” and substituting the words “9 or 12”; (d) in section 13 by deleting subsection (1) and substituting the following subsection: “ (1) A person who commits the offence of buggery is liable on conviction to imprisonment for twenty-five years.”; |

Schedule 3—Continued

CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUEDFirst Column
*Written Law*Second Column
Extent of Amendment

- (e) in section 16 by deleting subsection (1) and substituting the following subsection:
 “ (1) A person who commits an act of serious indecency on or towards another is liable on conviction to imprisonment for five years.”;
- (f) in section 17, by deleting paragraph (a);
- (g) in section 31(1), by inserting after the word “minor”, the fifth time it occurs, the words “under this Act or section 9, 10, 18 or 19 of the Children Act, 2012”;
- (h) in section 31A, by inserting after the words “sexual offence” the words “under this Act or Part VI of the Children Act, 2012”; and
- (i) in section 34E(5)—
 (a) by deleting the words “6, 7, 8” and “11”; and
 (b) by inserting after the word “11” the words “of this Act and sections 18 and 19 of the Children Act.”.
4. Education Act,
Chap. 39:01
- Section 76(1) of the Education Act is amended—
 (a) deleting the word “six” wherever it occurs and substituting the word “five”; and
 (b) deleting the word “twelve” wherever it occurs and substituting the word “sixteen”.
5. Attachment of
E a r n i n g s
(Maintenance)
Act, Chap. 45:52
- Schedule 1 of the Attachment of Earnings (Maintenance) Act is amended in item 6, by deleting the words “13 and 65” and substituting the words “45 and 46”.

Schedule 3—Continued

**CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUED**

| First Column <i>Written Law</i> | Second Column <i>Extent of Amendment</i> |
|---|---|
| 6. Children's Authority Act, Chap. 46:10 | <p>The Children's Authority Act is amended—</p> <p>(a) in section 25—</p> <p style="padding-left: 40px;">(i) by deleting paragraph (k) and substituting the following paragraph: “(k) a Supervision Order;”;</p> <p style="padding-left: 40px;">(ii) by inserting after paragraph (k) the following paragraph: “(l) a Contribution Order under section 44; or”; and</p> <p style="padding-left: 40px;">(iii) by renumbering paragraph (l) as (m); and</p> <p>(b) by inserting after section 25J the following section:</p> <p style="padding-left: 40px;">“ 25K. (1) A Supervision Order made under section 25(k) shall be any order which requires any of the following persons:</p> <p style="padding-left: 80px;">(a) the child;</p> <p style="padding-left: 80px;">(b) the parents or guardians of the child;</p> <p style="padding-left: 80px;">(c) any person with care and control of the child; or</p> <p style="padding-left: 80px;">(d) any teacher or instructor of the child,</p> <p style="padding-left: 40px;">to meet with the Authority or any probation officer, social worker or counsellor designated by the Authority, so that the manner in which the child is being cared for may be supervised by the Authority.</p> <p style="padding-left: 40px;">(2) A Supervision Order shall state the period and the frequency of meetings and any reports required by the Court or the Authority.”.</p> |

Schedule 3—Continued

**CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUED**

| First Column <i>Written Law</i> | Second Column <i>Extent of Amendment</i> |
|---|--|
| 7. Liquor Licences Act, Chap. 84:10 | <p>The Liquor Licences Act is amended—</p> <p>(a) in section 60(4), by deleting the word “one” after the words “fine of” and substituting the word “five”; and</p> <p>(b) by inserting after section 60 the following section:</p> <p style="margin-left: 40px;">“Use of a child to buy alcohol 60A. A person who uses or causes a child to be used, or hires a child including as a courier, in order to sell, buy or deliver alcohol commits an offence and is liable upon summary conviction to a fine of two thousand dollars and to imprisonment for twelve months.”.</p> |
| 8. Occupational Safety and Health Act, Chap. 88:08 | <p>The Occupational Safety and Health Act, Chap. 88:08 is amended—</p> <p>(a) in section 4, by inserting in the appropriate alphabetical sequence the following definitions:</p> <p style="margin-left: 40px;">“employ” and “employment” include employment in any labour exercised by way of trade or for the purposes of gain, whether the gain be to the child or to any other person;</p> <p style="margin-left: 40px;">“family” means parents, brothers, sisters and other lineal antecedents and descendants;</p> <p style="margin-left: 40px;">“industrial undertaking” includes particularly—</p> <p style="margin-left: 40px;">(a) mines, quarries and other works for the extraction of minerals from the earth;</p> |

Schedule 3—Continued

CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUED

First Column
Written Law

Second Column
Extent of Amendment

(b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including ship building, and the generation, transformation, and transmission of electricity and motive power of any kind;

(c) construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or tele-phonic installation, electrical undertaking, gasworks, water-works or other work of construction, as well as the preparation for or laying the foundations of any such work or structure; and

(d) transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses but excludes transport by hand; and

“night” signifies a period of at least eleven consecutive hours, including the interval between ten o’clock in the evening and five o’clock in the morning;

Schedule 3—Continued

CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUEDFirst Column
*Written Law*Second Column
Extent of Amendment

- (b) by deleting the definition of “young person”;
- (c) by substituting the words “child of the age of sixteen and under the age of eighteen years” for the words “young person” wherever they occur in the Act; and
- (d) by deleting Part IX and substituting the following part:

“PART IX

EMPLOYMENT OF YOUNG PERSONS

President may define industrial undertakings 53. The President may by Order, define and declare any particular undertaking to be an industrial undertaking for the purposes of this Part.

Restrictions on employment of a child under the age of sixteen years 54. Subject to section 55, a child under the age of sixteen years shall not be employed or work in any public or private undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed; and any person who employs any such child, commits an offence.

Disapplication of section 54 55. Section 54 shall not apply to work done by—

(a) a child in school for general, vocational or technical education or in other training institutions; or

(b) a child at least fourteen years of age in undertakings, provided that the work is carried out in accordance with conditions prescribed by the Minister with responsibility for education after consultation with the organisations of employers and workers concerned and the work is an integral part of—

Schedule 3—Continued

**CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUED**

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Written Law

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Extent of Amendment

- | | |
|--|--|
| Hours of employment of a child between the ages of 16 and 18 years | <ul style="list-style-type: none"> (i) a course of education or training for which a school or training institution is primarily responsible; (ii) a programme of training mainly or entirely in an undertaking which programme has been approved by the Minister with responsibility for education; or (iii) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training. <p>56. (1) No child of the age of sixteen years and under the age of eighteen years shall be employed—</p> <ul style="list-style-type: none"> (a) between the hours of 10.00 p.m. and 7.00 a.m.; (b) during the period of twelve consecutive hours immediately following the end of the period during which he last worked; or (c) for more than eight hours a day. <p>(2) The hours of employment under subsection (1) shall include a rest period of at least one hour.</p> <p>(3) No child of the age of sixteen years and under the age of eighteen years shall be required to work more than forty-eight hours in any week.</p> |
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Schedule 3—Continued

CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUED

First Column
Written Law

Second Column
Extent of Amendment

| | |
|--|--|
| <p>C h i l d between the ages of 16 and 18 years to have certificate</p> | <p>(4) The Minister may, in relation to such industrial establishment as he thinks fit, by Order, vary or waive the provisions of subsection (1) or (3).</p> <p>57. (1) No child between the ages of sixteen and under the age of eighteen years shall be employed to work in an industrial establishment for a period of three months or more unless—</p> <p>(a) a medical practitioner, on the application of the child of the age of sixteen years and under the age of eighteen years has examined the child and ascertained his fitness for work in that industrial establishment; and</p> <p>(b) a document signed by the employer to the effect that such a child of the age of sixteen years and under the age of eighteen years will be employed in the industrial establishment is submitted to the medical practitioner no later than at the commencement of the medical examination.</p> <p>(2) The Minister may, by Order, exempt such industrial establishment as he thinks fit from subsection (1).</p> |
|--|--|

Schedule 3—Continued

CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUED

First Column
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Extent of Amendment

(3) After an examination under subsection (1), the medical practitioner may grant to such child of the age of sixteen years and under the age of eighteen years, in the prescribed form, or may renew—

(a) a certificate of fitness to work in an industrial establishment if he is satisfied that the child is of the age of sixteen years and under the age of eighteen years has attained the prescribed physical standard and that he is fit for such work; or

(b) a certificate of fitness to work in an industrial establishment as an adult, if he is satisfied that the child has attained the age of sixteen years and that he is fit for a full day's work in an industrial establishment.

(4) Unless the medical practitioner has personal knowledge of the place where the child of the age of sixteen years and under the age of eighteen years proposes to work and of the process in which he will be employed, he shall not grant or renew a certificate under subsection (3).

Schedule 3—Continued

CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUED

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(5) A certificate of fitness granted under subsection (3)—

(a) shall be valid for a period of twelve months from the date thereof; and

(b) may be issued subject to conditions regarding the nature of work in which the child of the age of sixteen years and under the age of eighteen years may be employed, or conditions requiring a medical re-examination of that child of sixteen years and under the age of eighteen years before the expiry of the period of twelve months.

(6) Where a certificate under this section is granted or renewed subject to such conditions as are referred to in subsection (5)(b), the child of the age of sixteen years and under the age of eighteen years shall not be required to work in any industrial establishment except in accordance with those conditions.

Power to
require
medical
examina-
tion

58. Where an inspector is of the opinion—

(a) that any person working in an industrial establishment without a certificate of fitness is a child of the age of sixteen years and under the age of eighteen years; or

Schedule 3—Continued

CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUED

First Column
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(b) that a child of the age of sixteen years and under the age of eighteen years working in an industrial establishment with a certificate of fitness is no longer fit to work in the capacity stated therein,

he may serve on the employer a notice requiring that such a child shall be examined by a medical practitioner and such child shall not, if the inspector so directs, be employed in an industrial establishment until he has been so examined and has been granted a certificate of fitness or a renewed certificate of fitness, as the case may be, under section 57.

Duty of employers to keep register of persons under the age of eighteen years

59.(1) All employers shall keep and maintain a register of every child employed by them, as well as the name, address, and date of birth, date of employment, particulars of the certificate of fitness, the nature of the work and such other particulars as the Minister may prescribe of every such person.

(2) The register shall on request by an inspector of the Ministry with responsibility for labour be produced for inspection at any reasonable hour of any working day.

Schedule 3—Continued

**CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUED**

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| | |
|--|---|
| Neglectful parent | 60. A parent or guardian who conduces to the employment of a child under the age of sixteen years through wilful default, or by habitually neglecting to exercise due care, commits an offence. |
| Liability of agent or employer | 61. Where the offence of taking a child under sixteen years of age into employment is committed by an agent or workman of the employer, the agent or workman commits an offence as if he were the employer. |
| False certificate of representation of age | 62. Where a child under sixteen years of age is taken into employment on the production by or with the privity of the parent or guardian of a false or forged certificate, or on the false representation by his parent or guardian that he is not sixteen years of age, the parent or guardian commits an offence. |
| Presumption of age | 63. Where a person is charged with an offence under this Part and it is alleged that the child in respect of whom the offence was committed was under sixteen years of age at the date of the commission of the alleged offence, the child shall, for the purposes of this Part, be presumed at that date, to have been sixteen years of age unless the contrary is proved. |
| Penalty | 64. A person who commits an offence under this Part is liable on summary conviction to a fine of twelve thousand dollars and to imprisonment for twelve months.”. |

Schedule 3—Continued

CONSEQUENTIAL AND OTHER AMENDMENTS TO
VARIOUS ACTS—CONTINUED

| First Column <i>Written Law</i> | Second Column <i>Extent of Amendment</i> |
|---|---|
| 9. Tobacco Control Act, No. 15 of 2009 | <p>The Tobacco Control Act is amended—</p> <p>(a) in section 13, by deleting subsection (2) and deleting the number “(1)”;</p> <p>(b) by inserting after section 13 the following section:</p> <p style="margin-left: 40px;">“Prohibition on use of a child to buy tobacco products 13A. No person shall use or cause a child to be used, or hire a child including as a courier, in order to sell, buy or deliver any tobacco product.”.</p> <p>(c) by inserting after section 17 the following section:</p> <p style="margin-left: 40px;">“Vendor of tobacco products to display sign 17A. Every vendor of tobacco products shall at all times cause to be displayed in a prominent place in that part of the premises where tobacco products is offered for sale, a sign, written in large, bold, legible, upper case characters, that reads as follows:</p> <p style="margin-left: 80px;">“THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF EIGHTEEN YEARS IS PROHIBITED”;; and</p> <p>(d) in section 37, by inserting after the number “17” the letter “A”.</p> |
| 10. Trafficking in Persons Act, No. 14 of 2011 | <p>Section 3 of the Trafficking in Persons Act, 2011 is amended in the definition of “child pornography” by—</p> <p>(a) inserting after paragraph “(a)” the following paragraph:</p> <p style="margin-left: 40px;">“(b) a child in a sexually explicit pose;”; and</p> <p>(b) renumbering paragraphs (b) and (c) as paragraphs (c) and (d) respectively.</p> |

No. 0 of 2012

SECOND SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT relating to the protection of children
and for matters related thereto

Received and read the

First time

Second time

Third time
