

THE Family Court Bill, 2007

Arrangement of Clauses

Clause

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Family Court Bill, 2007

Explanatory Note

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

The Bill seeks to vest jurisdiction for all family matters in a Division of the High Court to be called the Family Court and to make provision for matters incidental thereto. This Bill is divided into five parts.

Part I of the Bill would provide for certain preliminary matters and would contain 3 clauses.

Clause 1 of the Bill would provide the short title of the Act, for which this is the Bill.

Clause 2 would provide the commencement provision.

Clause 3 of the Bill would provide the interpretation of certain words and phrases used in the Act.

Part II of the Bill would provide for the Establishment and jurisdiction of the Judges, Masters, Deputy Registrars, Assistant Registrars and Deputy Marshals of the Family Court and would contain seven clauses.

Clause 4 of the Bill would vest the exclusive jurisdiction for family matters and matters in relation to any child under thirteen years of age charged with an offence in a division of the High Court to be known as the Family Court. The clause would also empower the Family Court to determine the question of which matters fall within its jurisdiction.

Clause 5 would provide for the appointment of the Family Court Judges as well as the terms and conditions in respect of their office.

Clause 6 would provide for the appointment of Family Court Masters and the terms and conditions of their office.

Clause 7 would provide for the time and locations of the sittings of the Family Court.

Clause 8 would provide for the appointment of Family Court Deputy Registrars, Family Court Assistant Registrars and Deputy Marshals.

Clause 9 would provide for the functions of the Family Court Deputy Registrar.

Clause 10 would provide that the Deputy Registrars and Assistant Registrars of the Supreme Court shall perform the duties and functions of the Family Court Deputy

Registrar and Family Court Assistant Registrar until such time as the latter has been appointed.

Part III of the Bill would deal with the administration of the Family Court and would contain two clauses.

Clause 11 would provide for the staff of the Family Court Administration Department.

Clause 12 would provide for the appointment of the Head of the Family Court Administration Department and his assistants.

Part IV of the Bill would deal with the non-judicial staff of the Family Court and would contain four clauses.

Clause 13 would provide for the staff of the non-judicial officers of the Family Court.

Clause 14 would provide for the management of the Family Court.

Clause 15 would allow transfer or secondment of any public servant to the Family Court and vice versa.

Clause 16 would require officers of the Family Court, prior to entering upon the performance of their duties, to make an oath of secrecy before a Commissioner of Affidavits.

Part V seeks to provide for the relevant procedures and proceedings applicable to the Family Court and would contain six clauses.

Clause 17 would prescribe the Family Court Proceedings Rules as applicable to any civil proceedings before the Family Court. It also would empower the Rules Committee to make rules for the Family Court where required.

Clause 18 would empower the Family Court to restrict publication of proceedings before it except in cases of decrees for divorces. It also would allow for the proceedings of the Court to be held in camera but would prohibit the publication of the proceedings.

Clause 19 would provide for the appointment of a Children's Attorney and the Senior Children's Attorney.

Clause 20 would empower the Family Court to appoint to a child, on whom the proceedings of this Court impacts, a guardian *ad litem* and a Children's Attorney.

Clause 21 would allow for an adjournment by the Family Court in order for an application to be made under the Legal Aid and Advisory Act.

Clause 22 would enable the High Court, where it deems necessary to do so, to transfer a matter to the Family Court.

Part V of the Bill would deal with certain miscellaneous matters and would contain three clauses.

Clause 23 would preserve the appellate procedure applicable to any judgment or order of a magistrate or judge to the Court of Appeal to be so applied in respect of appeals from the Family Court.

Clause 24 would enable the Attorney General to amend the Schedule by Order.

Clause 25 would allow for the proceedings which have been instituted in the High Court or in a Magistrates' Court prior to the commencement of the Act to continue to be tried in these respective courts. It would also vest in the Family Court exclusive jurisdiction over any Order in respect of a family matter.

A BILL

AN ACT to vest jurisdiction for all family matters in a Division of the High Court to be called the Family Court and to make provision for matters connected therewith

Preamble

WHEREAS in May 2004 a Family Court was established as a pilot project which through constant monitoring and evaluation and the resulting changes in systems and administration has proved successful and has produced the desired result:

And whereas it was intended that the experience of the pilot project would inform the preparation of the legislation to establish a special court exercising jurisdiction for all family matters:

And whereas on account of the success of the pilot project, it is now intended to establish the Family Court in legislation to make its services available at several locations in Trinidad and Tobago:

And whereas jurisdiction for all family matters exercisable by the High Court and the Magistrates' Court will be vested in the Family Court and all the essential elements and resources appropriate to the operation of a Family Court will be combined into one entity including a social services unit, a mediation unit and such other units and services as are critical to the resolution of a family's problems:

And whereas it is intended that such a court should provide the highest quality service to its clients and to the community through-

- (a) a strong focus on customer service;
- (b) the employment of dedicated judicial, administrative, professional and support staff trained specifically for a family court and who possess the temperament required for family matters; and
- (c) the removal of the complexity of identifying the appropriate court or agency to which a matter may be taken, by having one

intake point for the customer seeking direct access to family justice:

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

Short title 1. This Act may be cited as the Family Court Act, 2007.

Commencement 2. This Act shall come into operation in such places on such day as is fixed by the President by Proclamation.

PART I PRELIMINARY

Interpretation 3.(1) In this Act -

“Family Court Assistant Registrar” means the Assistant Registrar of the Family Court referred to in section 9;

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

“children’s attorney” means an attorney-at-law appointed in accordance with section 21;

"family matter" means any cause, matter or legal proceeding -

- (a) in connection with or arising out of a matrimonial familial or other domestic relationship;
- (b) concerning maintenance, guardianship, wardship, access, custody, care, adoption or welfare of children, succession and inheritance excluding probate; or
- (c) arising out of the statutes listed in the Schedule;

Schedule

Chap. 5:32

“family mediator” means a person certified as a family mediator in accordance with the Mediation Act;

"Family Court Deputy Registrar" means the Deputy Registrar of the Family Court referred to in section 9; and

“social worker” means a public officer or person contracted by the state to perform the duties of a social worker.

(2) Where in any proceedings under any law listed in the Schedule there is a reference to-

- (a) the High Court; or

Schedule

(b) the Magistrates' Court,

such reference shall, in relation to family matters, be read and construed as a reference to the Family Court.

(3) Where in any proceedings under any law listed in the Schedule there is a reference to a Magistrate, such reference shall in relation to a family matter, be read and construed as a reference to the Family Court Master.

(4) Where in any proceedings under any law listed in the Schedule there is a reference to a Clerk of the Peace or Clerk of the Court such reference shall in relation to a family matter, be read and construed as a reference to a Family Court Deputy Registrar.

PART II

ESTABLISHMENT AND JURISDICTION OF JUDGES, MASTERS, DEPUTY REGISTRARS, ASSISTANT REGISTRARS AND DEPUTY MARSHALS OF THE FAMILY COURT

Vesting of
jurisdiction for
family matters
in the Family
Court of the
High Court

4.(1) There shall be a Division of the High Court to be known as the Family Court which shall exercise jurisdiction for all family matters.

(2) Subject to section 25, on the commencement of this Act, jurisdiction for all family matters exercisable by the High Court and the Magistrates' Court shall vest in the Family Court.

(3) The question whether any cause, matter or proceeding is a family matter within the jurisdiction of the Family Court under this section, shall be decided by the Family Court which in case of doubt shall be guided by its view whether the dispute or application is appropriately to be determined by the Family Court by reason of-

- (a) the matrimonial, familial or domestic relationship between the parties or any of them; or
- (b) its primary issue affecting the welfare of a child.

(4) The Family Court shall have jurisdiction in relation to any child under thirteen years charged with an offence.

Family Court Judges

Appointment
and assignment
of Family Court
Judges

5.(1) The President may on the advice of the Judicial and Legal Services Commission may appoint twelve persons as Judges of the High Court who in addition to meeting the requirements of section 6(1) of the Supreme Court of Judicature Act to be a Judge shall possess the special training, experience and temperament suitable to adjudicate family matters.

(2) The Chief Justice may also assign to the Family Court for a period of not less than three years, such Puisne Judges, who by reason of their special training, experience and temperament are suitable to adjudicate family matters.

(3) A Puisne Judge shall when sitting in the Family Court shall be known as a Family Court Judge.

(4) A person appointed under subsection (1) as a Family Court Judge may apply to the Chief Justice for re-assignment to any other High Court exercising Civil or Criminal Jurisdiction.

(5) A Puisne Judge-

- (a) appointed to the Family Court under subsection (1), may exercise the option to remain assigned to the Family Court; or
- (b) assigned to the Family Court under subsection (2), may apply to the Chief Justice to be assigned for a further period.

(6) Notwithstanding subsection (2) a Pusine Judge assigned to the Family Court may be reassigned before the expiration of the stated period.

Family Court Masters

Appointment of
Family Court
Masters

6. (1) The Judicial and Legal Services Commission may appoint twenty persons as Family Court Masters who shall possess such qualifications, training and experience as may be prescribed.

(2) The Family Court Masters shall exercise the same jurisdiction as was exercisable by a Magistrate prior to the commencement of this Act, in respect of family matters and such other jurisdiction as may be assigned to them by the Chief Justice or under the Family Proceedings Rules, 1998.

(3) The office of Family Court Master shall be an office to which the Judicial and Legal Services Act applies.

Chap 6:01

Sittings of the
Family Court

7. (1) Subject to this Act or any Rules made hereunder, the Family Court shall have power to sit and act at any time for the transaction of its business in relation to family matters or for the discharge of any duty which by law is required to be transacted or discharged.

(2) Sittings of the Court shall be held at such locations and at such times as the Chief Justice with the concurrence of a Judge of the Family Court may appoint in accordance with the Supreme Court of Judicature Act.

Chap 4:01

Family Court
Registrar

8.(1) There shall be appointed at least two Family Court Deputy Registrars, three Family Court Assistant Registrars and Deputy Marshals.

(2) The Family Court Deputy Registrars and Family Court Assistant Registrars shall, in addition to the requirements specified under the Supreme Court of Judicature Act, be persons who by reason of their special training, experience and disposition are suitable for appointment to the Family Court.

Chap. 4.01

(4) The Family Court Deputy Registrars and Family Court

Assistant Registrars shall be *ex officio* Deputy Registrars and Deputy Marshals of Trinidad and Tobago.

(5) The terms and conditions of the Family Court Deputy Registrar and Family Court Assistant Registrar shall be prescribed in accordance with section 141 of the Constitution.

Functions of Registrar

Chap. 4:01

9. (1) The Family Court Deputy Registrar shall, in relation to the business of the Court, perform the same functions and exercise the same powers as the Registrar under the Supreme Court of Judicature Act and such other functions as may be prescribed by the Family Proceedings Rules, 1998 or the Civil Proceedings Rules, 1998 or any other Rules of Court.

(2) In addition to the functions and powers prescribed under subsection (1), the Family Court Deputy Registrars shall perform the same functions and exercise the same powers as the Clerk of the Court and the Clerk of the Peace under any other written law.

Transitional provisions for the Registrar of Family Court

10. On the commencement of this Act and until a Family Court Deputy Registrar and a Family Court Assistant Registrar are appointed, the incumbent Registrar, Deputy Registrars and Assistant Registrars of the Supreme Court shall perform the duties and functions of the Family Court Deputy Registrar and Family Court Assistant Registrar.

PART III

ADMINISTRATION

Departments and units

11.(1) The Family Court shall be supported by the Family Court Administration Department which shall be a sub-department of the Department of Court Administration and which shall include:

- (a) a Court Office;
- (b) the Children's Authority Liaison Division;
- (c) a Family Court Social Services Division;

- (d) a Family Court Mediation Division; and
- (e) such other Administrative Support Divisions as may be determined by the Chief Justice.

(2) The Family Court Administration Department shall be staffed with an appropriate number of suitably qualified persons.

Family Court,
Administration
Department

12. The Family Court Administration Department shall be headed by a Deputy Court Executive Administrator, Family Court and shall be assisted by two Assistant Court Executive Administrators, Family Court.

PART IV
STAFF

Officers of
Family Court

13. The Family Court shall, in addition to judicial officers, be staffed with public officers and such other officers employed by the Judiciary from time to time, as may be required for the purposes of carrying out its functions.

Manager

14. The Family Court shall have in each location a Family Court Manager who shall be responsible for the management of the particular location and shall be assisted by at least one Family Court Assistant Manager .

Transfer on
secondment

15. (1) Subject to subsection (2) and to the approval of the appropriate Service Commission and the officer, any officer in the public service may be transferred on secondment to the service of the Court or from the service of the Court to the public service.

(2) A period of transfer on secondment shall be for three years and may only be extended for a further two years.

Oath of secrecy

16. An officer of the Family Court shall, before entering upon the

performance of his functions, make before a Commissioner of Affidavits an oath or affirmation of secrecy in accordance with the prescribed form.

PART V

PROCEDURE AND PROCEEDINGS

Rules

17. (1) In any civil proceedings before the Family Court, the Family Proceedings Rules, 1998 and all other relevant Rules of Court shall apply.

Chap.4:01

(2) The Rules Committee established under section 77 of the Supreme Court of Judicature Act, may, subject to negative resolution of Parliament make rules for the Family Court, where required.

Restrictions on publication of proceedings

18.(1) In any proceeding, the Family Court may, at its own instance or on the application of either party restrict the publication of the names of the parties or of any proceedings before the Family Court.

(2) Any publication of a judgement and ruling of the Family Court shall be done in such a manner that the parties to a family matter or the children to whom the matter may relate cannot be identified.

(3) The Family Court may in proceedings before it, order that the proceedings-

- (a) be held in camera;
- (b) not be published.

(4) Subsection (3) shall not apply to decrees for divorces.

(5) The Family Court may seal the copies of any proceedings before it relating to a child and any documents relevant to such proceedings.

(6) Where the Family Court seals the copies of any proceedings or documents under subsection (5) it shall do so for a stipulated period of time.

Appointment of Children's

19.(1) There shall be appointed in accordance with the Judicial and

attorney
Chap. 6:01

Legal Service Act, for the purpose of section 21 an appropriate number of attorneys-at-law to be called Children's Attorneys and one attorney-at law who shall be appointed as the Senior Children's Attorney.

(2) A Children's Attorney shall be appointed to the Civil Law Department of the Ministry with responsibility for the administration of legal affairs.

(3) An attorney-at-law shall not be appointed a children's attorney unless he possesses at least three years experience as an attorney-at-law, knowledge of family law and the temperament for dealing with children.

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

Family Court to appoint guardian *ad litem* and children's attorney

20. In any family matter or in any proceedings where a child is a party or the rights or interests of a child are directly or indirectly affected, the Family Court may -

- (a) appoint a guardian *ad litem* of the child; and
- (b) appoint the Children's Attorney to safeguard the interest of the child and perform such other functions as the Family Court may think necessary.

Court to adjourn for application for legal aid

Chap. 7:07

21. In any family matter or in any matter relating to an offence alleged to have been committed by a child under thirteen or against a child the Family Court may, notwithstanding the appointment of a Children's Attorney, where necessary, adjourn the matter for an application to be made under the Legal Aid and Advisory Act.

Transfer of matters

22. Where in proceedings before the High Court, the Court is of the view that the elements of the matter necessitates that the matter should be dealt with by the Family Court, it may transfer the matter to the Family Court and the Family Court may adjudicate on the matter.

PART V
MISCELLANEOUS

Appeals 23. An appeal shall lie from any judgment or order of the Family Court Master or a Family Court Judge to the Court of Appeal in like manner and to like extent as an appeal from any judgment or order of a magistrate or judge immediately preceding the coming into force of this Act.

Power to amend
Schedule 24. The Attorney General may by Order amend the Schedule.

Transitional
Provisions 25. (1) Where before the commencement of this Act any proceedings have been instituted in the High Court or in a Magistrates' Court in which that Court had jurisdiction, the High Court or the Magistrates' Court, as the case may be, shall have jurisdiction to continue to hear and determine the proceedings notwithstanding any provisions to the contrary in this Act.

(2) Where before the commencement of this Act, the High Court or a Magistrates' Court is vested with jurisdiction to enforce, renew, vary, suspend, revive, cancel or discharge an Order in respect of a family matter and, by virtue of this Act such jurisdiction vests in the Family Court, the jurisdiction shall be exercisable by the Family Court.

SCHEDULE

Supreme Court of Judicature Act	...	...	Chap. 4:01
Summary Courts Act	...	...	Chap. 4:20
Petty Civil Courts Act	...	...	Chap. 4:21
Habeas Corpus Act	...	...	Chap. 8:01
Administration of Estates Act	...	...	Chap. 9:01
Succession Act (Part VIII)	...	...	Chap. 9:02
Wills and Probate Act	...	...	Chap. 9:03
Summary Offences Act	...	...	Chap. 11:02
Offences Against the Person Act	...	...	Chap. 11:08
Larceny Act	...	...	Chap. 11:12
Indictable Offences (Preliminary Enquiry) Act			Chap. 12:01
Community Services Orders Act	...	...	Chap. 13:02
Probation of Offenders Act	...	...	Chap. 13:51
Emigration (Children) Act	...	...	Chap. 18:02
Mental Health Act	...	...	Chap. 28:02
Education Act	...	...	Chap. 39:01
Marriage Act	...	...	Chap. 45:01
Muslim Marriage and Divorce Act			Chap. 45:02
Hindu Marriage Act	...	...	Chap. 45:03
Orisha Marriage Act			Chap. 45:04
Married Persons Act	...	...	Chap. 45:50
Matrimonial Proceedings and Property Act	...		Chap. 45:51
The Attachment of Earnings (Maintenance) Act	...	...	Chap. 45:52
Maintenance Orders (Enforcement) Act	...		Chap. 45:53
Cohabitation Relationships Act	...	...	Chap. 45:55
Domestic Violence Act	...	...	Chap. 45:56
Children Act	...	...	Chap. 46:01
Infants Act	...	...	Chap. 46:02
Adoption of Children Act	...	...	Chap. 46:03
Age of Majority Act	...	...	Chap. 46:06
Status of Children Act	...	...	Chap. 46:07
Family Law (Guardianship of Minors, Domicile and ... Maintenance) Act			Chap. 46:08
Children's Authority Act	...	...	Act. No 64 of 2000
Children's Community Residence, Foster Homes and Nurseries Act	...	...	Act No 65 of 2000
Occupational Health and Safety Act, 2004 (Part IX)			Act No. 1 of 2004
International Child Abduction Act			

Passed in the House of Representatives this day of , 2007.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2007.

Clerk of the Senate

I confirm the above.

President of the Senate