

THE FAMILY COURT BILL, 2009

Arrangement of Clauses

Clause

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SCHEDULE

No. 5 of 2009

Second Session Ninth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

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

FAMILY COURT BILL, 2009

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 three 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 of the Court and jurisdiction of the Masters of the Family Court and would contain four clauses.

Clause 4 of the Bill would vest the exclusive jurisdiction for family matters and juvenile matters in relation to any child under fourteen 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 Family Court Masters, the terms and conditions of their office and the jurisdiction of the Family Court Master.

Clause 6 would set out the powers of the Family Court Master.

Clause 7 of the Bill would provide for the enforcement of Maintenance Orders issued by the Family Court or a Family Court Master in furtherance of the magisterial jurisdiction of the Family Court.

Part III of the Bill would provide for the administration of the Family Court and would contain one clause.

Clause 8 would provide for the staff of the Family Court Administration Department.

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

Clause 9 would prescribe the Family Court Proceedings Rules as applicable to any civil proceedings before the Family Court. It would also empower the Rules Committee to make rules for the Family Court where required in accordance with the Supreme Court of Judicature Act, Chap. 4:01.

Clause 10 would empower the Family Court to restrict publication of proceedings before it except in cases of decrees for divorces. It would also allow for the proceedings of the Court to be held in camera, but would prohibit the publication of the proceedings.

Clause 11 would provide for the appointment of a Children's Attorney and the Senior Children's Attorney.

Clause 12 would empower the family Court to appoint a guardian *ad litem* and a Children's Attorney in respect of a child on whom the proceedings of this Court impacts.

Clause 13 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 14 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 five clauses.

Clause 15 would create offences for contempt before a Family Court Master.

Clause 16 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 17 would enable the Attorney General to amend the Schedule by Order and such Orders are subject to negative resolution of Parliament.

Clause 18 would amend the First and Second Schedules of the Judicial and Legal Services Act to include the offices of Senior Children's Attorney, Children's Attorney, Family Court Master, Deputy Court Executive Administrator, Family Court and Assistant Court Executive Administrator, Family Court.

Clause 19 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.

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

[, 2009]

WHEREAS in May 2004, a Family Court was established Preamble
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 juvenile matters:

And whereas on account of the success of the pilot project and lessons learnt, 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 customers 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 juvenile 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.

PART I PRELIMINARY

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|-------------|--|
| Enactment | ENACTED by the Parliament of Trinidad and Tobago as follows: |
| Short title | 1. This Act may be cited as the Family Court Act, 2009. |

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

3. (1) In this Act—

Interpretation

“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) concerning maintenance, guardianship, wardship, access, custody, care, adoption or welfare of children, succession and inheritance excluding probate the administrates of estates; and

(b) arising out of the statutes listed in the Schedule or any other Schedule written law and which is connectd with or arises out of a matrimonial, familial or other domestic relationship; and

“juvenile matter” means—

(a) a summary offence; or

(b) a preliminary enquiry under the Indictable Offences (Preliminary Enquiry) Act,

Chap. 12:01

in which the accused is under the age of fourteen years at the time of the hearing of the charge

Schedule

(2) In any proceedings under any law listed in the Schedule, a reference to—

- (a) the High Court, a Court of summary jurisdiction or Juvenile Court shall in relation to a family matter or a juvenile matter be read and construed as a reference to the Family Court;
- (b) a Judge, Magistrate or the Court, shall in relation to a family matter or a juvenile matter, be read and construed as a reference to a Judge of the Family Court or the Family Court; and
- (c) a Clerk of the Peace or Clerk of the Court shall in relation to a family matter or a juvenile matter, be read and construed as a reference to a Deputy Registrar of the Supreme Court.

PART II

ESTABLISHMENT OF COURT AND JURISDICTION OF MASTERS OF THE FAMILY COURT

Vesting of
jurisdiction for
family matters and
juvenile 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 and juvenile matters.

(2) Subject to section 29(a), on the commencement of this Act, jurisdiction and powers in all family matters and juvenile matters exercisable by the High Court and a Court of Summary Jurisdiction 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 and in case of doubt the Family Court

shall be guided by its view whether the dispute or application is appropriate to be determined 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) Notwithstanding any written law, the Family Court shall have jurisdiction in relation to any child who is under fourteen years of age at the hearing of the offence.

(5) No term of imprisonment shall be imposed by the Family Court in relation to any juvenile matter.

Family Court Masters

5. (1) The Judicial and Legal Service Commission may appoint such number of persons as Family Court Masters who, in addition to meeting the requirements of section 65A of the Supreme Court of Judicature Act, shall possess the prescribed training and experience and in the opinion of the Judicial and Legal Service Commission, the temperament suitable to adjudicate in family matters and juvenile matters.

Appointment and
jurisdiction of Family
Court Masters
Chap. 6:01

(2) The Chief Justice may also assign to the Family Court, such Masters, who by reason of their special training, experience and temperament are suitable to adjudicate family matters and juvenile matters.

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

(4) Notwithstanding subsections (2) and (3), the period of assignment of a Family Court Master to the Family Court, shall be subject to the discretion of the Chief Justice, having regard to all the circumstances.

Powers of Family
Court Master

6. (1) Where under this Act, a Family Court Master has jurisdiction in relation to any matter, then, subject to this Act, he shall have and may exercise in relation to that matter all the powers of the Family Court or of a Judge to make an order in the matter and such an order may include provision for costs, certificate for attorney-at-law or other consequential matters, and any such order made by a Family Court Master shall, subject to this Act, have the same effect as if it had been made by the Family Court or by a Judge.

(2) Where under this Act, a Family Court Master exercises jurisdiction in relation to any family matter then—

- (a) in relation to such a matter, the Master shall have all the rights, powers, immunities and privileges of a Judge; and
- (b) any party to the proceedings may, if he so desires appear by an attorney-at-law.

Enforcement of
Certain Orders
Chap. 46:08
Chap. 45:51

7. (1) Where an Order for maintenance is issued by a Judge of the Family Court under the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, the Order shall be enforced as if it were a Maintenance Order to which section 37 of the Matrimonial Proceedings and Property Act applies.

(2) Where an Order is made by a Family Court Master under the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, the provisions of sections 26 and 27 of the Act shall apply as if the Order were made by a Magistrate under that Act.

PART III

ADMINISTRATION

Departments and
Divisions

8. (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 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.

PART IV PROCEDURE AND PROCEEDINGS

9. (1) In any family matter before the Family Court, ^{Rules} the Family Proceedings Rules, 1998 and all other relevant Rules of Court shall apply.

(2) The Rules Committee established under section 77 of the Supreme Court of Judicature Act may—

- (a) where required, make rules generally for the Family Court in accordance with that Act; and
- (b) make rules specifically for the exercise of the functions and powers of the Family Court Masters, under sections 6 and 7 of this Act.

(3) The Judicial and Legal Service Commission may by order prescribe the training and experience requirements referred to in section 6(1) for the appointment of a person as a Master of the Family Court.

10. (1) In any proceeding, the Family Court may, ^{Restrictions on publication of proceedings} 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 judgment or ruling of the Family Court shall be done in such a manner that the parties to a family matter, juvenile 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; and
- (b) not be published.

(4) The Family Court or a Judge may seal the copies of any proceedings before it involving to a child and any documents relevant to such proceedings.

(5) Where the Family Court or a Judge seals the copies of any proceedings or documents under subsection (4) it shall remain sealed until further order is made.

Appointment of
Children's Attorney
Chap. 6:01

11. (1) There shall be appointed in accordance with the Judicial and Legal Service Act, for the purposes of sections 22 and 23 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) The Children's Attorneys shall be appointed to the Civil Law Department within the meaning of the Judicial and Legal Service Act.

(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 appropriate temperament for dealing with children.

(4) 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 temperament for dealing with children.

(5) 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.

12. In any family matter or juvenile matter the Family Court may—

(a) appoint a guardian *ad litem* of the child; and

(b) make an Order requesting the Attorney General to assign a Children's Attorney as the attorney to safeguard the interest of the child and perform such other functions as the Family Court may think necessary.

13. In any family matter or juvenile matter 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.

14. Where in proceedings before any other Division of the High Court, the Court is of the view that the elements of the matter necessitate that the matter should be dealt with by the Family Court, it may refer the matter to the Family Court and the Family Court may adjudicate on the matter.

PART V

MISCELLANEOUS

15. (1) Any person who refuses or fails, without sufficient cause to attend at the time and place mentioned in a summons served on him by the Family Court, and any person who attends but leaves the Family Court without the permission of the Family Court Master commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(2) Any person who refuses without sufficient cause to answer to or to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him by or with the concurrence of the Family Court Master commits an offence and is liable on summary conviction to a fine to ten thousand dollars.

(3) Any person who refuses or fails without sufficient cause to produce any books, plans or documents in his possession, or under his control and mentioned or referred to in the summons served on him commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(4) Any person who at any sitting of the Family Court wilfully insults any Family Court Master or wilfully interrupts the proceedings of the Family Court commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

Appeals

16. An appeal shall lie from any judgment or order of a Family Court Master or a Judge of the Family Court 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

17. The Attorney General may by Order amend the First Schedule and such Order shall be subject to negative resolution of Parliament.

Judicial and Legal
Service Act,
Chap. 6:01
amended

18. The Judicial and Legal Service Act is amended in the First Schedule in Part I by adding to the list of offices, the following:

“Senior Children’s Attorney,
Children’s Attorney”

19. Where before the commencement of this Act— Transitional
Provisions

- (a) 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;
- (b) 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

[Section 3(1)]

| | | |
|----------------------------------|--------|-------------|
| 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 (Part III) | | Chap. 9:03 |
| Summary Offences Act | | Chap. 11:02 |
| Offences Against the Person Act | | Chap. 11:08 |
| Larceny Act | | Chap. 11:12 |

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|---|-----------------------|
| 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 |
| Cohabital 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 | |

17

Passed in the Senate this day of ,
2009.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day of ,
2009.

Clerk of the House

I confirm the above.

Speaker

No. 5 of 2009

SECOND SESSION
NINTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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

Received and read the

First time.....

Second time.....

Third time.....