

THE CHILDREN BILL, 2010

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

Clauses 1 and 2 would provide for the short title and interpretation. In clause 2, includes the definition of the terms “touching” “sexual” and “sexual penetration of a child” are defined. “Child” is also defined as a person under the age of eighteen years.

Clause 3 would provide for the guiding principles for parents in relation to children and describe the rights and responsibilities of children which are set out in the Second Schedule to the Bill.

PART II-Prevention of cruelty to children

Clause 4 would provide for the offence of cruelty to children. Clause 5 would provide for the offence of suffocation of infants less than three years of age whilst in bed or another place of rest with a person over the age of sixteen years.

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

Clause 6 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 7 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 8 would provide for the offence of injury or death by a firearm or ammunition, whilst clause 9 would provide for the offence of giving, selling or renting a firearm to a child.

PART IV- Abuse of children through prostitution

Clause 10 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 11 would provide for the offence of causing, encouraging or favouring the seduction, prostitution or unlawful carnal knowledge 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 12 would provide for the offence of intentionally obtaining whether for oneself or another person, the sexual services of a child. Clause 13 would provide for the offence of causing or inciting a child to become a prostitute in any part of the world. Further, clauses 14 and 15 would provide for the offences of controlling a child prostitute in any part of the world and arranging or facilitating child prostitution in any part of the world, respectively. Clause 16 would provide for the definition of “prostitute”.

PART V- Other sexual offences

Clause 17 would provide for the offence of intentional sexual penetration of a child less than fourteen years of age. Where the perpetrator is eighteen years or over, the penalty is life imprisonment.

Clause 18 would provide for the offence of sexual penetration of a child who is over fourteen years but less than eighteen years of age.

Clause 19 would provide for the offence of sexual “touching”, as defined in clause 2 of the Bill. It also provides for more severe penalties where the touching amounts to sexual penetration.

Clause 20 would provide for the offence of sexual “touching” where perpetrated by persons in a position of trust in relation to the child, as defined in section 34(1) of the Bill. There are more severe penalties for this offence than for the offence of sexual “touching” in clause 19. There is also a rebuttable presumption that the person knew or could reasonably be expected to have known that he was in a position of trust in relation to the child. Clause 21 would provide for a similar offence of sexual “touching”, except that this offence would apply to a person in a familial relationship, as defined by section 40 of the Bill, with the child. Again, there are more severe penalties for this offence than the offence of sexual “touching” simpliciter. Both clauses 20 and 21 would provide for

more severe penalties where the touching amounts to “sexual penetration” as defined in clause 2 of the Bill.

Clause 22 would provide for the offence of causing or inciting a child to engage in sexual activity, as defined in clause 2 of the Bill, with another person. Where sexual penetration of the child occurs, a more severe penalty is to be imposed.

Clauses 23 and 24 would provide for the offences of causing or inciting a child to engage in sexual activity where the perpetrator is in a position of trust or has a familial relationship in relation to the child.

Clauses 25 to 27 would provide for the offences of engaging in sexual activity in the presence of a child. Clauses 26 and 27 would apply in the case where the perpetrator is in a position of trust or a familial relationship with the child.

Clauses 28 to 30 would provide for the offences of causing a child to watch a sexual act for sexual gratification. Clauses 29 and 30 would apply where the perpetrator is in a position of trust or a familial relationship with the child.

Clauses 31 to 33 would provide for the offences of meeting a child following sexual grooming. Clauses 32 and 33 would apply where the perpetrator is in a position of trust or a familial relationship with the child.

Clause 34 would set out 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 35 would further define those positions set out in clause 34.

Clauses 36 and 37 would provide for the marriage exception and proceedings with respect to the same, in relation to the offences specified in that clause. It would be a defence that the defendant was, at the time of the conduct, lawfully married to the child.

Clauses 38 and 39 would provide for a defence, for the offences referred to in that clause, where the defendant and the child had a sexual relationship which predates the position of trust.

Clauses 40 and 41 would provide the definition of “familial relationships” for the purposes of the Bill.

Clause 42 would provide that the Court may, with respect to any child who has been the victim of an offence under the Act, for which this is the Bill, make certain orders for the welfare of the child.

Clause 43 confers on the Court the power to hear and take into consideration certain matters in determining the sentence to be imposed on a child who has been convicted of an offence under the Act, for which this is the Bill.

Clause 43A would provide that where the perpetrator is a child, with respect to an offence under Part IV or V, that proceedings be not instituted except by or with the consent of the Director of Public Prosecutions.

Part VI- Offences relating to tobacco and alcohol

Clause 44 would provide for the offence of exposing children to dangerous drugs while clause 45 would provide for the offence of giving or causing a child to be given dangerous drugs, except upon the order of a medical practitioner.

Clause 46 would provide for the offence of using a child or causing a child to be used, or using a child or causing a child to be used as a courier in order to sell, purvey or deliver dangerous drugs; whilst clause 47 would provide for a similar offence committed in the furtherance of trafficking in dangerous drugs.

Clause 48 would provide for the offence of using or causing a child to be used, or using a child or causing a child to be used as a courier in order to sell, buy, purvey or deliver alcohol or tobacco.

Clause 49 would provide for the offence of selling any tobacco products or alcohol to a child.

Clause 50 would give a police officer power to issue a caution and obtain the name and address of a child, or a person whom he reasonably believes to be a child, who is found smoking or drinking alcohol. The police officer 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 police officer.

Clause 51 would give the Court power to make an order against any owner of any automatic machine used for the sale of tobacco products or against a person on whose premises the machine is being kept, where such machine is being used by a child.

Clause 52 would require every vendor of tobacco products to display at all times, in a prominent place, a sign which states that the sale of tobacco products is prohibited to individuals under the age of eighteen years. Clause 53 would impose a similar requirement on vendors of alcohol.

Clause 54 would exempt, from the offences under Part VII, a person who was, at the time of the offence, employed by a manufacturer of or dealer in tobacco products or alcohol, either wholesale or retail, for the purposes of his business. Clause 55 would provide for the interpretation of certain terms used in this Part.

Part VII- Child pornography, trafficking for sexual exploitation

Clause 56 would provide for the offence of child pornography, whilst clauses 57 to 60 would provide for the offences of exposing a child to child pornography; causing or inciting child pornography; controlling a child involved in pornography and arranging or facilitating child pornography, respectively.

Clauses 61 to 63 would provide for the offences relating to trafficking with respect to a child, whilst Clause 64 would provide for the interpretation of the term “relevant offence” referred to in clause 63, and the jurisdiction to which those offences would apply.

Clause 65 would provide for the Court to make an order for counselling in respect of a person convicted of an offence under Parts II to IV.

Part VIII- Arrest of offenders and provisions for the safety of children

Clause 66 would give a police officer the power of arrest without a warrant where an offence has been committed under Parts II to VII or the First Schedule, by a person or where the police officer has reasonable cause to suspect that a person is guilty of the offence and he has reasonable grounds for believing that such a person will abscond or the name and address of such person are unknown and cannot be ascertained.

Clause 67 would provide that a police officer, a person or any person authorized by a Court may take a child to a place of safety where any offence under Parts II to VII or any of the offences mentioned in the First Schedule 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 68 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 Parts II to VII or any of the offences mentioned in the First Schedule 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 69 would provide for the maintenance and control of the child who is placed in the care of a person under an order of the Court.

Clause 70 would require that the Court take into consideration the religious persuasion of persons into whose care a child is to be placed when making an order under clause 69.

Clause 71 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.

Clause 72 would provide for the interpretation of “fit person” in this Part.

Part IX- Evidence and Procedure

Clause 73 would provide for Part II of the Evidence Act to apply to proceedings against any person for an offence under Parts II to VII of the Act, or for any offence mentioned in the First Schedule.

Clause 74 would provide that, where the Court is satisfied that the presence of a child before the Court, in respect of offences under Parts II to VII or in the First Schedule, 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, electronic audio recording, video recording or computer aided transcription, or to have the child appear from a remote location by video conferencing.

Clause 75 would provide for the admissibility of the deposition and recorded evidence referred to in Clause 74, without further proof, on the evidence of a duly qualified practitioner or the Director of Public Prosecutions, that the attendance before the Court of any child in respect of whom an offence is alleged to have been committed would involve a danger to the life or physical, mental or psychological health of the child or place the child at risk of harm.

Clause 76 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 77 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 78 would provide for a child to be called as a witness where a video recording is given in evidence pursuant to clause 76.

Clause 79 would provide for video recorded evidence to be treated as direct oral testimony.

Clause 80 would provide for children under the age of ten 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 81 would provide for the Rules Committee established by the Supreme Court of Judicature Act to make Rules of Court for the purposes of the operation of sections 76 to 79.

Clause 82 would provide for the interpretation of “child” used in sections 76 to 79.

Clause 83 would provide for the power of a Court to proceed with and determine a case with respect to offences under Parts II to VII and the First Schedule, in the absence of the child, once the Court determines that the child’s presence is not essential.

Clause 84 would provide for the mode of charging persons for an offence under Parts II to VII and the First Schedule and limitation of time in respect of two or more children.

Part X – Child Offenders

Clause 85 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 86 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.

Clause 87 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 88 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 89 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 90 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 91 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 92 would provide for the limitation of costs ordered to be paid pursuant to clauses 90 and 91.

Clause 93 would provide for methods which the Court may adopt in dealing with children where the Court is satisfied of the guilt of the child who has been charged with offences and tried by a Court.

Clause 94 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 95 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 96 would provide for a child to be placed in a Community Residence where that child is convicted on indictment of an attempt to murder, manslaughter, wounding with intent to do grievous bodily harm or other offences against the person, and the Court believes that the punishment in this Act is not sufficient.

Clause 97 would provide for the discharge of a child placed in a Community Residence, pursuant to the directions of the Court, under sections 94(2) and 96 (1) .

Clause 98 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 99 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 100 would provide that the Minister may make rules, on the advice of the Authority, pertaining to places of detention.

Clause 101 would provide for procedures of Juvenile Courts.

Part XI- Right to Administer Punishment

Clause 102 would provide for the retention of the right of a parent to administer reasonable punishment including corporal punishment.

Part XII – Restrictions on Employment of Children

Clause 103 would provide for the interpretation of certain terms used in Part XII of this Act, for which this is the Bill.

Clause 104 would provide for the President to define and declare any undertaking to be an industrial undertaking for the purposes of Part XII.

Clause 105 would impose restrictions on employers in relation to the employment of persons under the age of sixteen years, while clause 106 would provide for the exception to the application of clause 105 to certain types of work.

Clause 107 would provide for employers to keep and maintain a register of every child employed by them.

Clause 108 would provide for the Minister to whom responsibility for labour is assigned to designate suitably qualified persons as inspectors and clause 109 would provide the powers of entry of inspectors.

Clause 110 would provide that it is an offence for a parent or guardian to conduce to the employment of a child under the age of sixteen years through willful or habitual neglect to exercise due care.

Clauses 111 would make it an offence for an agent or employee to employ a child less than sixteen years of age.

Clause 112 would provide that a parent or guardian is liable if a child, under sixteen years of age, is taken into employment on the basis of a false or forged certificate,

with the privity of the parent or guardian, or a false representation by the parent or guardian that the child is over sixteen years of age.

Clause 113 would provide that, for the purposes of an offence under Part XII, it shall be presumed that the child was, at the date of the commission of the offence, less than sixteen years of age.

Clause 114 would provide the penalty of summary conviction for any offence committed under Part XII.

Part XIII – Miscellaneous

Clause 115 would provide for the power of the Court to exclude persons from the Court whilst a child is giving evidence, in certain cases.

Clause 116 would provide no child under the age of sixteen shall present in the Court or during any proceedings except he is the person charged with an offence or a he is present as a witness.

Clause 117 would provide that the age presumed or declared by the Court to be the age of a person, be deemed the true age.

Clause 118 would provide for the recovery of penalties under this Act.

Clause 119 would provide for the Rules Committee to make rules for this Act.

Clause 120 would provide for the transition of jurisdiction from the High Court or a Magistrate vested with jurisdiction in a matter, to the jurisdiction of Family Court.

Clause 121 would provide for certain presumptions to apply in the case where a person is charged with an offence, in respect of the same conduct, both under this Act, for which this is the Bill and an offence under any other enactment in existence prior to the coming into force of the Act.

Clauses 121A to 121E would provide for consequential amendments to the following Acts: the Summary Courts Act, the Indictable Offences (Preliminary Enquiry) Act; the Education Act; the Workmen’s Compensation Act and the Occupational Safety and Health Act.

Clause 122 would provide that where a person is charged in respect of the same conduct, with an offence under the Children Act, 2010, for which this is the Bill, and an offence specified in any other enactment, this Act shall apply to the exclusion of any such enactment.

Clause 123 would provide for the repeal of the Children Act, Chap. 46:01 upon the coming into force of the Children Act, 2010, for which this is the Bill.

A BILL

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

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

PART I
PRELIMINARY

Short title 1. This Act may be cited as the Children Act, 2010.

Interpretation 2. (1) In this Act -

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

Act No. 64
of 2000

“Authority” means the Children’s Authority established under the Children’s Authority Act;

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

“child pornography” includes -

(a) a photograph, film, video or other visual representation, whether or not it was made by electronic, mechanical or artistic means -

(i) that shows, for a sexual purpose, a person who is or is depicted as being under eighteen years of age engaging in or depicted as engaging in explicit sexual activity or conduct; or

(ii) the dominant characteristic of which is the depiction for a sexual purpose of a sexual organ or the anal region of a person under eighteen years of age or depicted as being under eighteen years of age; or

(b) any written material or visual representation which advocates or counsels sexual activity with a person under eighteen years of age except counselling or

education on reproductive health;

“Children’s Home” means a residence for the care and rehabilitation of children;

Act No. 65 of
2000

“Community Residence” means a Children’s Home or Rehabilitation Centre licensed under the Children’s Community Residences, Foster Homes and Nurseries Act;

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

“Court” includes the Family Court;

Act No. 38 of
1991

“dangerous drugs” has the meaning assigned to it in the Dangerous Drugs Act;

“Family Court” means the Court established by the Judiciary to hear and determine family matters filed in the High Court in Port of Spain and the St. George West Magisterial district pending the establishment of the Family Court of Trinidad and Tobago throughout Trinidad and Tobago;

“guardian” in relation to a child or youthful offender, includes any person who, in the opinion of the Court, having cognizance of any case in relation to the child or youthful offender, has for the time being in charge of or control over the child or youthful offender;

“inspector” means a person designated as such under section 108;

“juvenile court” means a criminal court where charges against a youthful offender who has attained the age of fourteen years but is under eighteen years of age are heard;

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

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

“place of safety” means a reception centre of the Children’s Authority, 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” means a residence for the rehabilitation of youthful offenders established by the Children’s Community Residences, Foster Homes and Nurseries Act;

“sexual activity” for the purposes of this Act includes penetration, touching or any other activity which a reasonable person would consider to be, by its nature, sexual, in the circumstances or any person’s purpose in relation to it and “sexual” shall be construed accordingly;

“sexual penetration of a child” includes -

- (a) the insertion of a penis or other body part or any object into a child’s anus or vagina;
- (b) the insertion of a person’s penis into a child’s mouth;
- (c) the insertion by the child into a person’s anus or vagina, a part of the child’s body or any object;
- (d) insertion of a child’s penis into a person’s mouth;
- (e) placing of a person’s vagina on the mouth of a child, and

“sexually penetrates” shall be construed accordingly;

Chap. 48:01

“street” has the meaning assigned to it in the Highways Act;

“touching” includes bringing into contact of any part of a person’s body with a part of another person’s body or any other object;

"vagina" includes vulva;

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

“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

“youthful offender” means a child who is charged with or convicted of committing an offence.

(2) Pending the establishment of the Family Court with jurisdiction throughout Trinidad and Tobago, where a child is the accused with respect to an offence under this Act, a Judge or Magistrate while adjudicating in the Family Court, may-

(a) transfer any matter under this Act to another Court in Trinidad and Tobago with jurisdiction in family matters; or

(b) hear and determine the matter.

Guiding
Principles
Second
Schedule

3.(1) The guiding principles describing the rights and responsibilities of parents in relation to their children, as contemplated by the Convention, are set out as Parts A and B respectively, of the Second Schedule.

(2) The guiding principles describing the rights and responsibilities of children, as contemplated by the Convention, are set out as Parts C and D respectively, of the Second Schedule.

PART II

PREVENTION OF CRUELTY TO CHILDREN

Punishment
for cruelty
to children

4.(1) A person over sixteen years of age who has the custody, charge, or care of any child and 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, commits an offence and is liable on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for five years.

(2) For the purposes of -

- (a) subsection (1), a parent or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause injury to his health if he fails to provide adequate food, clothing, medical aid or lodging for the child; and
- (b) this Part, an offence under this section is referred to as the offence of cruelty.

(3) 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 was destitute or suffered from an infirmity of the mind or body.

(4) Notwithstanding -

- (a) 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; or
- (b) the death of the child in relation to whom the offence is committed,

a person may be convicted of an offence under this section on indictment.

(5) Where it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruable or payable in the event of the death of the child and had knowledge that such sum of money was accruing or would be payable, then in the case of -

- (a) summary conviction, the Court in determining the sentence shall take into consideration the fact that the person was so interested and had such knowledge; or
- (b) conviction on indictment, the Court shall sentence the person to imprisonment for twelve years.

(6) A person is deemed to be directly or indirectly interested in a sum of money under this section if he has any share in or any benefit from the payment of that money, though he is not a person to whom it is legally payable.

(7) A copy of a policy of insurance certified to be a true copy by an officer or agent of the insurance company granting the policy shall, in any proceedings under this section be *prima facie* evidence that -

- (a) the child or young person therein stated to be insured has been in fact so insured; and
- (b) the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable.

Suffocation
of infants

5. Where an infant, under the age of three years, dies as a result of suffocation whilst in bed or in any other place of rest with some other person over sixteen years of age and it is proved that -

- (a) the suffocation was not caused by disease or the presence of any foreign body in the throat or air passages of the infant, or by any other cause; and
- (b) the other person was, at the time of going to bed, under the influence of drink, dangerous drugs or other substances having a similar effect,

that other person shall be deemed to have committed the offence of neglecting the infant in a manner likely to cause injury to his health within the meaning of section 4 and shall be liable -

- (aa) on summary conviction, to a fine of five thousand dollars and to imprisonment for six months; or
- (bb) on conviction on indictment, to a fine of ten thousand dollars and to imprisonment for two years.

PART III

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

Begging

6.(1) A person who -

- (a) causes or procures any child; or
- (b) having the custody, charge, or care of 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 commits an offence and is liable on summary conviction to a fine of two 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 the custody, charge, or care of 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) and the burden of proving that the person charged under subsection (1) did not cause, procure or allow the child to be in the street, premises or other place lies with that person, unless the contrary is proved.

Exposing children to risk of burning

7.(1) Where a person who has the custody, charge or care of a child fails to take reasonable precaution to protect the child from the risk of being burnt or scalded, and the child is injured or harmed, that person commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(2) Where the child referred to in subsection (1) is killed or suffers serious or grievous bodily harm, the person having custody, charge, or care of the child commits an offence and is liable on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for ten 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.

Injury or death by firearm or ammunition

8.(1) Where a person has custody, charge or care of any child and that child accesses a loaded firearm and ammunition that has not been sufficiently protected to guard against the risk of the child being injured or injuring another person, without taking reasonable precautions against that risk, and by reason thereof the child is injured or harmed or injures or harms another person, the person who has custody, charge or care of the child commits an offence and is liable on summary conviction, to a fine of ten thousand dollars.

(2) Where a child is killed or suffers serious or grievous bodily harm, or injures or kills another person, as a consequence of the circumstances referred to in subsection (1), the person having custody, charge, or care of the child commits an offence and is liable on conviction on indictment to a fine of fifty 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
firearm to
child

9. (1) A person who gives, sells, lends or rents a firearm to any child commits an offence.

(2) Where any person gives, sells, lends or rents to any child a firearm and the child is killed or suffers serious or grievous bodily harm, or injures or kills another person with that firearm, that person commits an offence.

(3) A person who commits an offence under this section is liable on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for twenty years.

(4) 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

ABUSE OF CHILDREN THROUGH PROSTITUTION

Allowing
children to
be in
brothels

10.(1) A person having the custody, charge or care of a child who allows that child to reside in or to frequent a brothel commits an offence and is liable -

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

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

Act No. 27
of 1986

(2) Nothing in this section shall affect the liability of a person to be indicted under section 21 of the Sexual Offences Act, but upon the trial of a person under that section, the jury may, if satisfied that the accused is guilty of an offence under this section, find the accused guilty of such offence.

Causing,
encouraging or
favouring
seduction or
prostitution

11.(1) A person having the custody, charge or care of a child who causes or encourages the seduction, prostitution or unlawful carnal knowledge of that child commits an offence and is liable on conviction on indictment to imprisonment for life.

or unlawful carnal knowledge of a child

(2) For the purpose of this section, a person is deemed to have caused or encouraged the seduction, prostitution or unlawful carnal knowledge of a child, who has been seduced, become a prostitute or been unlawfully carnally known, if he knowingly allowed the child to consort with, or to enter or continue in the employ of any prostitute or person who controls prostitutes or is of known immoral character.

(3) 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 of being unlawfully carnally known 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; and
- (b) make a supervision order under the Children's Authority Act.

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(4) 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.

Payment for sexual services of a child

12.(1) Where a person intentionally obtains for himself or any other person the sexual services of a child and before obtaining those services, 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 -

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

(2) Where a person who is fourteen years of age or over but under eighteen years of age intentionally obtains for himself or any other person the sexual services of a child and, before obtaining those services, 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 -

- (a) on summary conviction, to a fine of twenty

thousand dollars and to detention for five years; or

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

(3) Where a person who is under fourteen years of age intentionally obtains for himself or any other person the sexual services of a child and, before obtaining those services, 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 -

- (a) on summary conviction, to a fine of five thousand dollars and to detention for two years; or
- (b) on conviction on indictment, to detention for three years.

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

(5) 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.

(6) Nothing in this section shall affect the liability of a person to be charged or indicted under Part V of this Act, and upon the trial of a person under that Part, the Court or the jury may, if satisfied that the accused is guilty of more than one offence under this Act, find the accused guilty of more than one offence.

(7) Notwithstanding the penalties imposed in respect of the offences under subsections (2) and (3), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or

(f) make any other order as the Court may deem fit.

Causing or
inciting
prostitution

13. Where a person intentionally causes or incites a child to become a prostitute in any part of the world, he commits an offence and is liable -

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

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

Controlling
a child
prostitute

14. Where a person intentionally controls any of the activities of a child relating to that child's prostitution in any part of the world, he commits an offence is liable -

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

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

Arranging or
facilitating
child
prostitution

15. Where a person intentionally arranges or facilitates the prostitution of a child in any part of the world, he commits an offence and is liable -

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

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

Definition

16. In sections 11 to 16 "prostitute" means a person who, 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 V

OTHER SEXUAL OFFENCES

Sexual penetration of a child under fourteen

Sexual

17.(1) A person eighteen years of age and over who intentionally

penetration
of a child
under
fourteen
years

sexually penetrates a child under fourteen years of age commits an offence and is liable on conviction on indictment to imprisonment for life.

(2) A child fourteen years of age or over but under eighteen years of age who intentionally sexually penetrates a child under fourteen years of age commits an offence and may be liable on conviction on indictment to detention for life.

(3) A child under fourteen years of age who intentionally sexually penetrates a child under fourteen years of age commits an offence and may be liable -

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

(4) Notwithstanding the penalties imposed in respect of offences under subsections (2) and (3), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 child 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 Family Court; or
- (f) make any other order as the Court may deem fit.

Sexual penetration of a child fourteen and over but under eighteen

Sexual
penetration
of a child

18.(1) A person eighteen years of age and over who intentionally sexually penetrates a child fourteen years of age or over but under eighteen years of age, commits an offence and is liable on conviction on indictment to

over
fourteen
but under
eighteen
years

imprisonment for life.

(2) A child fourteen years of age or over but under eighteen years of age who intentionally sexually penetrates a child fourteen years of age or over but under eighteen years of age, commits an offence and is liable on conviction on indictment to detention for life.

(3) A child under fourteen years of age who intentionally sexually penetrates a child fourteen years of age or over but under eighteen years of age, commits an offence and may be liable -

- (a) on summary conviction to a fine of twenty thousand dollars and detention for five years; or
- (b) on indictment to detention for fifteen years.

(4) Notwithstanding the penalties imposed in respect of offences under subsections (2) and (3), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(5) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

Sexual touching of a child

Sexual touching of a child

19.(1) Where a person eighteen years of age or over intentionally touches a child and the touching is sexual, he commits an offence and is liable -

- (a) where the touching involved sexual penetration of the child, on conviction on indictment, to imprisonment for life; and
- (b) in any other case -
 - (i) on summary conviction, to a fine of twenty thousand dollars and to imprisonment for five years; or
 - (ii) on conviction on indictment, to imprisonment for fifteen years.

(2) Where a child fourteen years and over but under eighteen years of age intentionally touches a child and the touching is sexual, the person commits an offence and is liable -

- (a) where the touching involved sexual penetration of the child, on conviction on indictment, to detention for life; and
- (b) in any other case -
 - (i) on summary conviction, to a fine of twenty thousand dollars and to detention for five years ; or
 - (ii) on conviction on indictment, to detention for fifteen years.

(3) Where a child under fourteen years of age intentionally touches a child and the touching is sexual, he commits an offence and is liable –

- (a) where the touching involved sexual penetration of the child -
 - (i) on summary conviction to a fine of twenty thousand dollars and detention for five years; or

(ii) on conviction on indictment to detention for fifteen years; and

(b) in any other case -

(i) on summary conviction, to a fine of twenty thousand dollars and to detention for five years; or

(ii) on conviction on indictment, to detention for ten years.

(4) Notwithstanding the penalties imposed in respect of the offences under subsections (2) and (3), the Court may -

(a) order that the offender be deemed in need of care and protection and referred to the Children's Authority, which will 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 Family Court; or

(f) make any other order as the Court may deem fit.

(5) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

Sexual touching of a child by persons in positions of trust

Sexual touching by persons in positions of trust

20.(1) Where a person intentionally touches a child and the touching is sexual, and he is in a position of trust in relation to the child pursuant to section 34(1) and the person knows or could reasonably be expected to know that he is in a position of trust in relation to the child, he commits an offence and is liable -

- (a) where the touching involved sexual penetration of the child, on conviction on indictment, to imprisonment for life; and
- (b) in any other case -
 - (i) on summary conviction, to a fine of forty thousand dollars and to imprisonment for ten years; or
 - (ii) on conviction on indictment, to imprisonment for twenty-five years.

(2) Where the person who commits an offence under this section is fourteen years or over but under eighteen years of age he is liable -

- (a) where the touching involved sexual penetration of the child, on conviction on indictment, to detention for life; and
- (b) in any other case -
 - (i) on summary conviction, to a fine of forty thousand dollars and to detention for ten years; or
 - (ii) on conviction on indictment, to detention for twenty-five years.

(3) Notwithstanding subsection (2) the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(4) Where in proceedings for an offence under this section -

- (a) it is proved that the defendant was in a position of trust in relation to the child pursuant to section 34(1); and
- (b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is presumed that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

Sexual touching by persons in familial relationships

Sexual touching by persons in familial relationships

21.(1) Where a person eighteen years of age or over intentionally touches a child and the touching is sexual and he has a familial relationship with the child pursuant to section 40 and the person knows or could reasonably be expected to know that he is related to that child pursuant to that section, he commits an offence and is liable -

- (a) where the touching involved sexual penetration of the child, on conviction on indictment, to

imprisonment for life; and

(b) in any other case -

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

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

(2) Where a person fourteen years of age or over but under eighteen years of age intentionally touches a child and the touching is sexual and he has a familial relationship with the child pursuant to section 40 and the person knows or could reasonably be expected to know that he is related to that child pursuant to that section, he commits an offence and is liable -

(a) where the touching involved sexual penetration of the child, on conviction on indictment, to detention for life; and

(b) in any other case -

(i) on summary conviction, to a fine of forty thousand dollars and to detention for a term of ten years; or

(ii) on conviction on indictment, to detention for twenty-five years.

(3) Where a person under fourteen years of age intentionally touches a child and the touching is sexual and he has a familial relationship with the child pursuant to section 40 and the person knows or could reasonably be expected to know that he is related to that child pursuant to that section, he commits an offence and is liable -

(a) where the touching involved sexual penetration of the child -

(i) on summary conviction, to a fine of twenty thousand dollars and to detention for a term of five years; or

(ii) on conviction on indictment, to detention for fifteen years; and

(b) in any other case -

- (i) on summary conviction, to a fine of twenty thousand dollars and to detention for a term of five years; or
- (ii) on conviction on indictment, to detention for ten years.

(4) Notwithstanding the penalties imposed in respect of offences under subsections (2) and (3), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(5) Where in proceedings for an offence under this section it is proved that the relationship between the defendant and the child was of a description pursuant to section 40, it is presumed that the defendant knew or could reasonably have been expected to know that his relationship to the child was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

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

Causing or inciting a child to engage in sexual activity with

22.(1) Where a person eighteen years of age or over intentionally causes or incites a child to engage in sexual activity with another person, the person commits an offence and is liable -

- (a) where the activity caused or incited involved sexual penetration of the child, on conviction on

another
person

indictment, to detention for life; and

- (b) in any other case -
 - (i) on summary conviction, to a fine of twenty thousand dollars and to imprisonment for five years; or
 - (ii) on conviction on indictment, to imprisonment for fifteen years.

(2) Where a child fourteen years or over but under eighteen years of age intentionally causes or incites a child to engage in sexual activity with another person, he commits an offence and is liable -

- (a) where the activity caused or incited involved sexual penetration of the child, on conviction on indictment, to detention for life; and
- (b) in any other case -
 - (i) on summary conviction, to a fine of twenty thousand dollars and to detention for five years; or
 - (ii) on conviction on indictment, to detention for fifteen years.

(3) Where a person under fourteen years of age intentionally causes or incites a child to engage in sexual activity with another person, the person commits an offence and is liable -

- (a) where the activity caused or incited involved sexual penetration of the child -
 - (i) on summary conviction to a fine of twenty thousand dollars and detention for five years;
 - (ii) on conviction on indictment, to detention for fifteen years; and
- (b) in any other case -
 - (i) on summary conviction, to a fine of twenty thousand dollars and to detention for five years and; or

- (ii) on conviction on indictment, to detention for ten years.

(4) Notwithstanding the penalties imposed in respect of the offences under subsections (2) and (3), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(5) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

Persons in positions of trust causing or inciting child to engage in sexual activity

Persons in positions of trust causing or inciting a child to engage in sexual activity

23.(1) Where a person eighteen years of age or over intentionally causes or incites a child to engage in sexual activity with another person and the person who so causes or incites the child is in a position of trust in relation to the child pursuant to section 34(1) and the person knows or could reasonably be expected to know that he is in a position of trust in relation to the child, he commits an offence and is liable -

- (a) where the activity caused or incited involved sexual penetration of the child, on conviction on indictment, to imprisonment for life; and

- (b) in any other case -
 - (i) on summary conviction, to a fine of forty thousand dollars and to imprisonment for ten years; or
 - (ii) on conviction on indictment, to imprisonment for twenty-five years.

(2) Where a person fourteen years of age or over but under eighteen years of age intentionally causes or incites a child to engage in sexual activity with another person and the person who so causes or incites the child is in a position of trust in relation to the child pursuant to section 34(1) and the person knows or could reasonably be expected to know that he is in a position of trust in relation to the child, he commits an offence and is liable -

- (a) where the activity caused or incited involved sexual penetration of the child, on conviction on indictment, to detention for life; and
- (b) in any other case -
 - (i) on summary conviction, to a fine of forty thousand dollars and to detention for ten years; or
 - (ii) on conviction on indictment, to detention for twenty-five years.

(3) Notwithstanding the penalties imposed in respect of offences under subsection (2), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or

(f) make any other order as the Court may deem fit.

(4) Where in proceedings for an offence under subsection (1) -

(a) it is proved that the defendant was in a position of trust in relation to the child pursuant to section 34(1); or

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is presumed that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

Causing or inciting a child to engage in sexual activity by persons in familial relationships

24.(1) Where a person eighteen years of age or over intentionally causes or incites a child to engage in sexual activity with another person and the person causing or inciting has a familial relationship with the child pursuant to section 40 and the person knows or could reasonably be expected to know that his relationship to that child is of a description pursuant to that section, he commits an offence and is liable -

Person in a familial relationship with a child causing or inciting a child to engage in sexual activity

(a) where the activity caused or incited involved sexual penetration of the child, on conviction on indictment, to imprisonment for life; and

(b) in any other case -

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

(2) Where a person fourteen years or over but under eighteen years of age intentionally causes or incites a child to engage in a sexual activity with another person and the person causing or inciting has a familial relationship with the child pursuant to section 40 and the person causing or inciting knows or could reasonably be expected to know that his relationship to that child is of a description pursuant to that section, he commits an offence and is liable -

(a) where the activity caused or incited involved sexual penetration of the child, on conviction on indictment, to detention for life; and

(b) in any other case -

- (i) on summary conviction, to detention for ten years and a fine of forty thousand dollars; or
- (ii) on conviction on indictment, to detention for twenty-five years.

(3) Where a person under fourteen years of age intentionally causes or incites a child to engage in a sexual activity with another person and the person causing or inciting has a familial relationship with the child pursuant to section 40 and the person knows or could reasonably be expected to know that his relationship to that child is of a description pursuant to that section, he commits an offence and is liable -

(a) where the activity caused or incited involved sexual penetration of the child -

- (i) on summary conviction, to detention of five years and a fine of twenty thousand dollars; or
- (ii) on conviction on indictment, to detention for fifteen years; and

(b) in any other case -

- (i) on summary conviction, to detention for five years and a fine of twenty thousand dollars; or
- (ii) on conviction on indictment, to detention for fifteen years.

(4) Notwithstanding the penalties imposed in respect of offences under subsections (2) and (3) the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's Authority, which will 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(5) Where in proceedings for an offence under this section it is proved that the relationship of the defendant to the child was of a description pursuant to section 40, it is presumed that the defendant knew or could reasonably have been expected to know that his relationship to the child was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

Engaging in sexual activity in the presence of a child

Engaging in sexual activity in the presence of a child

25.(1) Where a person eighteen years of age or over engages in sexual activity, and for the purpose of obtaining sexual gratification he intentionally engages in it -

- (a) when a child is present or is in a place from which

the person can be observed; and

(b) knowing or believing that the child is aware, or intending that the child should be aware that he is engaging in it, he commits an offence and is liable -

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

(ii) on conviction on indictment, to imprisonment for ten years.

(2) Where a person fourteen years or over but under eighteen years of age engages in sexual activity and for the purpose of obtaining sexual gratification he intentionally engages in it -

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

(b) knowing or believing that the child is aware or intending that the child should be aware that he is engaging in it, he commits an offence and is liable-

(i) on summary conviction, to a fine of twenty thousand dollars and to detention for five years; or

(ii) on conviction on indictment, to detention for ten years.

(3) Where a person under fourteen years of age engages in sexual activity, and for the purpose of obtaining sexual gratification he intentionally engages in it -

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

(b) knowing or believing that the child is aware or intending that the child should be aware that he is engaging in it, he commits an offence and is liable -

(i) on summary conviction, to a fine of five thousand dollars and to detention for two years; or

(ii) on conviction on indictment, to detention for five years.

(4) Notwithstanding the penalties imposed in respect of offences under subsection (2) and (3), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(5) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

Person in position of trust engaging in sexual activity in the presence of a child

Engaging in sexual activity in the presence of a child by persons in a position of trust

26. (1) Where a person eighteen years of age or over engages in sexual activity, and for the purpose of obtaining sexual gratification he intentionally engages in it -

- (a) when a child is present or is in a place from which the person can be observed; and
- (b) knowing or believing that the child is aware or intending that the child should be aware that he is engaging in it,

and he is in a position of trust in relation to a child-

(aa) pursuant to section 34(1); and

(bb) is not in such a position of trust by virtue of other circumstances,

and the person 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, he commits an offence and is liable -

(i) on summary conviction, to a fine of forty thousand dollars and to detention for ten years; or

(ii) on conviction on indictment, to detention for twenty years.

(2) Where a person between the age of fourteen years of age or over but under eighteen years of age engages in sexual activity, and for the purpose of obtaining sexual gratification, he intentionally engages in it -

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

(b) knowing or believing that the child is aware or intending that the child should be aware that he is engaging in it,

and he is in a position of trust in relation to a child-

(aa) pursuant to section 34(1); and

(bb) is not in such a position of trust by virtue of other circumstances,

and the person 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, he commits an offence and is liable -

(i) on summary conviction, to a fine of forty thousand dollars and to detention for ten years; or

(ii) on conviction on indictment, to detention for twenty years.

(3) Notwithstanding the penalties imposed in respect of offences under subsection (2), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(4) Where in proceedings for an offence under subsection (1) -

- (a) it is proved that the defendant was in a position of trust in relation to the other person pursuant to section 34(1); and
- (b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is presumed that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

**Engaging in sexual activity in presence of a child for the purpose
of sexual gratification by persons in a familial relationship**

Person in a
familial
relationship
engaging in
sexual
activity in
the presence
of a child for
sexual
gratification

27.(1) Where a person eighteen years of age or over engages in sexual activity, and for the purpose of obtaining sexual gratification he intentionally engages in it -

- (a) when a child is present or is in a place from which the person can be observed; and
- (b) knowing or believing that the child is aware or intending that the child should be aware that he is engaging in it,

and he has a familial relationship with the child pursuant to section 40 and the person knows or could reasonably be expected to know that his relationship to that child is of a description falling within that section, he commits an offence and is liable -

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

(2) Where a person fourteen years or over but under eighteen years of age engages in sexual activity, and for the purpose of obtaining sexual gratification he intentionally engages in it -

- (a) when a child is present or is in a place from which the person can be observed; and
- (b) knowing or believing that the child is aware or intending that the child should be aware that he is engaging in it,

and he has a familial relationship with the child pursuant to section 40 and the person knows or could reasonably be expected to know that his relationship to that child is of a description falling within that section, he commits an offence and is liable -

- (c) on summary conviction, to a fine of forty thousand dollars and to detention for ten years; or
- (d) on conviction on indictment, to detention for twenty years.

(3) Where a person under fourteen years of age engages in sexual

activity, and for the purpose of obtaining sexual gratification he intentionally engages in it -

- (a) when a child is present or is in a place from which the person can be observed; and
- (b) knowing or believing that the child is aware or intending that the child should be aware that he is engaging in it,

and he has a familial relationship with the child pursuant to section 40 and the person knows or could reasonably be expected to know that his relationship to that child is of a description falling within that section, he commits an offence and is liable -

- (aa) on summary conviction, to a fine of five thousand dollars and to detention for two years; or
- (bb) on conviction on indictment, to detention for five years.

(4) Notwithstanding the penalties imposed in respect of offences under subsections (2) and (3), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(5) Where in proceedings for an offence under this section it is proved that the relationship of the defendant to the child was of a description pursuant

to section 40, it is presumed that the defendant knew or could reasonably have been expected to know that his relationship to the child was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(6) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

Causing a child to watch a sexual act for sexual gratification

Causing a child to watch a sexual act for sexual gratification

28.(1) Where a person eighteen years of age or over, for the purpose of obtaining sexual gratification, intentionally causes a child to watch a third person engaging in sexual activity, he commits an offence and is liable -

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

(2) Where a person fourteen years or over but under eighteen years of age, for the purpose of obtaining sexual gratification, intentionally causes a child to watch a third person engaging in sexual activity, he commits an offence and is liable -

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

(3) Where a person under fourteen years of age, for the purpose of obtaining sexual gratification, intentionally causes a child to watch a third person engaging in sexual activity, he commits an offence and is liable -

- (a) on summary conviction, to detention for two years and a fine of five thousand dollars; or
- (b) on conviction on indictment, to detention for three years.

(4) Notwithstanding the penalties imposed in respect of offences under subsections (2) and (3), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(5) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

Persons in position of trust causing a child to watch a sexual act for sexual gratification

Person in position of trust causing a child to

29.(1) Where a person eighteen years of age or over, for the purpose of obtaining sexual gratification, intentionally causes a child to watch a third person engaging in sexual activity and the person is in a position of trust in relation to that child -

watch a
sexual act for
sexual
gratification

- (a) pursuant to section 34(1); and
- (b) is not in such a position of trust by virtue of other circumstances,

and the person 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, he is liable -

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

(2) Where a person fourteen years or over but under eighteen years of age for the purpose of obtaining sexual gratification intentionally causes a child to watch a third person engaging in sexual activity and the person is in a position of trust in relation to that child -

- (a) pursuant to section 34(1); and
- (b) is not in such a position of trust by virtue of other circumstances,

and the person 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, he is liable -

- (aa) on summary conviction, to a fine of forty thousand dollars and to detention for ten years; or
- (bb) on conviction on indictment, to detention for twenty-five years.

(3) Notwithstanding subsection (2), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(4) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

(5) Where in proceedings for an offence under this section -

- (a) it is proved that the defendant was in a position of trust pursuant to section 34(1); and
- (b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is presumed that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

Causing a child to watch a sexual act for sexual gratification by persons in familial relationships

Person in
familial
relationships
causing a child
to watch a
sexual act for
sexual
gratification

30.(1) Where a person eighteen years of age or over, for the purpose of obtaining sexual gratification, intentionally causes a child to watch a third person engaging in sexual activity and he has a familial relationship with the child pursuant to section 40 and the person knows or could reasonably be expected to know that his relationship to that child is of a description falling within that section, he commits an offence and is liable -

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

(2) Where a person fourteen years of age or over but under eighteen years of age, for the purpose of obtaining sexual gratification, intentionally causes a child to watch a third person engaging in sexual activity and he has a familial relationship with the child pursuant to section 40 and the person knows or could reasonably be expected to know that his relationship to that child is of a description falling within that section, he commits an offence and is liable -

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

(3) Where a person under fourteen years of age, for the purpose of obtaining sexual gratification, intentionally causes a child to watch a third person engaging in sexual activity and he has a familial relationship with the child pursuant to section 40 and the person knows or could reasonably be expected to know that his relationship to that child is of a description falling within that section, he commits an offence and is liable –

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

(4) Notwithstanding the penalties imposed in respect of offences under subsection (2) and (3), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(5) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

(6) Where in proceedings for an offence under this section it is proved that the relationship of the defendant to the child is of a description pursuant to section 40, it is to be presumed that the defendant knew or could reasonably have been expected to know that his relationship to the child was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

Meeting a child following sexual grooming

Meeting a child following sexual grooming

31.(1) Where a person eighteen years of age or over does not reasonably believe a child is eighteen years of age or over and having, on at least two earlier occasions, met or communicated with the child in any part of the world, by any means including the internet, he -

- (a) intentionally meets the child; or
- (b) travels with the intention of meeting the child in any part of the world,

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 sections 10 to 15 and 17 to 30, that person commits an offence and is liable -

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

or

- (bb) on conviction on indictment, to imprisonment for fifteen years.

(2) Where a person fourteen years or over but under eighteen years of age does not reasonably believe that a child is eighteen years of age or over and having met or communicated, on at least two earlier occasions, with the child in any part of the world or having communicated with the child by any means including the internet in any part of the world, he -

- (a) intentionally meets the child; or
- (b) travels with the intention of meeting the child in any part of the world,

and at the time, he intends to do anything to or in respect of the child, during or after the meeting, which if done in Trinidad and Tobago will involve the commission by the person of an offence under sections 10 to 15 and 17 to 30, he commits an offence and is liable -

- (aa) on summary conviction, to a fine of twenty thousand dollars and to detention for five years; or
- (bb) on conviction on indictment, to detention for fifteen years.

(3) Where a person under fourteen years of age does not reasonably believe a child is eighteen years of age or over and having met or communicated, on at least two earlier occasions, with the child in any part of the world or having communicated with the child by any means including the internet in any part of the world, he-

- (a) intentionally meets the child; or
- (b) travels with the intention of meeting the child in any part of the world,

and at the time, he intends to do anything to or in respect of the child, during or after the meeting, which if done in Trinidad and Tobago will involve the commission by the person of an offence under sections 10 to 15 and 17 to 30 he commits an offence and is liable -

- (aa) on summary conviction, to a fine of ten thousand dollars and to detention for three years; and

(bb) on conviction on indictment, to detention for five years.

(4) Notwithstanding the penalties imposed in respect of offences under subsections (2) and (3), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(5) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

Meeting a child following sexual grooming by persons in position of trust

Person in position of trust meeting a child following sexual grooming

32.(1) Where a person eighteen years of age or over does not reasonably believe a child is eighteen years of age or over and having met or communicated, on at least two earlier occasions, with the child in any part of the world or having communicated with the child by any means including the internet in any part of the world, he -

- (a) intentionally meets the child; or
- (b) travels with the intention of meeting the child in any part of the world,

and at the time, he intends to do anything to or in respect of the child, during or after the meeting which if done in Trinidad and Tobago will involve the commission by the person of an offence under sections 10 to 15 and 17 to 30 and he-

- (c) is in a position of trust in relation to the child pursuant to section 34(1);
- (d) is not in a position of trust by virtue of other circumstances; and
- (e) 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,

he commits an offence and is liable -

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

(2) Where a person fourteen years of age or over but under eighteen years of age or over having met or communicated, on at least two earlier occasions, with the child in any part of the world or having communicated with the child by any means including the internet in any part of the world, he -

- (a) intentionally meets the child; or
- (b) travels with the intention of meeting the child in any part of the world,

and at the time, he intends to do anything to or in respect of the child, during or after the meeting which if done in Trinidad and Tobago will involve the commission by the person of an offence under sections 10 to 15 and 17 to 30 and he-

- (c) is in a position of trust in relation to the child pursuant to section 34(1);

(d) is not in a position of trust by virtue of other circumstances; and

(e) 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,

he commits an offence and is liable -

(aa) on summary conviction, to a fine of forty thousand dollars and to detention for ten years ; or

(bb) on conviction on indictment, to detention for twenty-five years.

(3) Notwithstanding subsection (2), the Court may -

(a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or

(f) make any other order as the Court may deem fit.

(4) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

(5) Where in proceedings for an offence under subsection (1) -

- (a) it is proved that the defendant was in a position of trust in relation to the provisions referred to in section 34(1); and
- (b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

**Meeting a child following sexual grooming
by persons in familial relationships**

Person in
familial
relationship
meeting a
child
following
sexual
grooming

33.(1) Where a person eighteen years of age or over does not reasonably believe a child is eighteen years of age or over and having met or communicated, on at least two earlier occasions, with the child in any part of the world or having communicated with the child by any means including the internet in any part of the world, he -

- (a) intentionally meets the child; or
- (b) travels with the intention of meeting the child in any part of the world,

and at the time, he intends to do anything to or in respect of the child, during or after the meeting which if done in Trinidad and Tobago will involve the commission by the person of an offence under sections 10 to 15 and 17 to 30 and he-

- (c) has a familial relationship with the child pursuant to section 40 ;and
- (d) knows or could reasonably be expected to know that his relation to that child is of a description falling within section 40,

he commits an offence and is liable -

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

(2) Where a person fourteen years of age or over but under eighteen years of age does not reasonably believe a child is eighteen years of age or over and having met or communicated, on at least two earlier occasions, with the child in any part of the world or having communicated with the child by any means including the internet in any part of the world, he -

- (a) intentionally meets the child; or
- (b) travels with the intention of meeting the child in any part of the world,

and at the time, he intends to do anything to or in respect of the child, during or after the meeting which if done in Trinidad and Tobago will involve the commission by the person of an offence under sections 10 to 15 and 17 to 30, and he-

- (c) has a familial relationship with the child pursuant to section 40 ;and
- (d) knows or could reasonably be expected to know that his relation to that child is of a description falling within section 40,

he commits an offence and is liable -

- (aa) on summary conviction, to a fine of forty thousand dollars and to detention for ten years; or
- (bb) on conviction on indictment, to detention for twenty-five years.

(3) Where a person under fourteen years of age does not reasonably believe a child is eighteen years of age or over and having met or communicated, on at least two earlier occasions, with the child in any part of the world or having communicated with the child by any means including the internet in any part of the world, he -

- (a) intentionally meets the child; or
- (b) travels with the intention of meeting the child in any part of the world,

and at the time, he intends to do anything to or in respect of the child, during or after the meeting which if done in Trinidad and Tobago will involve the commission by the person of an offence under sections 10 to 15 and 17 to 30

and he-

- (c) has a familial relationship with the child pursuant to section 40 ;and
- (d) knows or could reasonably be expected to know that his relation to that child is of a description falling within section 40,

he commits an offence and is liable -

- (aa) on summary conviction, to a fine of twenty thousand dollars and to detention for five years; or
- (bb) on conviction on indictment, to detention for fifteen years.

(4) Notwithstanding the penalties imposed in respect of offences under subsections (2) and (3), the Court may -

- (a) order that the offender be deemed in need of care and protection and referred to the Children's 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 Family Court; or
- (f) make any other order as the Court may deem fit.

(5) A person sixteen years or over but under twenty-one years of age is not liable under this section 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.

(6) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the child was of a description pursuant to section 40, it is presumed that the defendant knew or could reasonably have been expected to know that his relation to the child was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

Positions of Trust

Persons in positions of trust

34.(1) For the purposes of this Part a person is in a position of trust in relation to a child if he -

- (a) is over eighteen years of age and looks after a child who is detained in an institution by virtue of a court order or under an enactment 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 under this Act, the Family Proceedings Act, or the Family Court Act on matters relating to the welfare of the child, and has contact with the child by any means;

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- (h) is a personal adviser appointed for the child under any written law;
- (i) is a police officer, social worker, teacher, scout master, troop leader, clergyman, spiritual leader, private driver, sports coach or trainer or other person in authority in whose care the child is placed;
- (j) is appointed to be the guardian *ad litem* of the child;
- (k) has care or control of a child while that child is in a place of safety;
- (l) 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 authorized person or the authority designated by order; or
- (m) looks after the child on an individual basis in pursuance of the requirements imposed on the child by or under an enactment on his release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings.

(2) The Minister, after consultation with the Attorney General, may by Order amend subsection (1) by adding and not deleting.

Positions of trust: Interpretation

Positions of
trust:
Interpretation

35.(1) For the purposes of section 34 the following provisions apply:

- (a) a person “looks after children” if he is regularly involved in caring for, training, supervising or being in charge of such children;

- (b) a person “looks after a child” on an individual basis if that person -
 - (i) is regularly involved in caring for, training or supervising 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.

Positions of trust : Marriage exception

Marriage exception

36. Conduct by a person which would otherwise constitute an offence against a child under sections 18 to 21, 31 and 32 is not an offence if, at the time of the conduct, the person and the child were lawfully married.

Proceedings with respect to marriage exceptions

37. In proceedings for such an offence referred to in section 36, it is for the defendant to prove that he and the child were lawfully married.

Exceptions of sexual relationships which pre-date positions of trust

Sexual relationships which pre-date positions of trust

38.(1) Conduct by a person which would otherwise be an offence under sections 20, 23, 26, 29 and 32 against a child is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between the person and the child, being under the age of eighteen years but over the age of sixteen years.

(2) Subsection (1) does not apply if at that time of the conduct sexual intercourse between the person and the child would have been unlawful.

Proceedings
with respect
to section 40

39. In proceedings for an offence under any of the sections mentioned in section 40, it is for the defendant to prove that a sexual relationship existed between the person and the child immediately before the position of trust arose.

Familial relationships

Interpretation;
familial
relationships

40. For the purposes of this Act, the relation of a person to a child is within a familial relationship if -

- (a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, niece, nephew, aunt or uncle, or the spouse of an aunt or uncle;
- (b) the person is or has been the child's foster parent or spouse or partner of a foster parent;
- (c) the child is in the care and control of the person pending an adoption order;
- (d) the person and the child live or have lived in the same household, or the person is or has been regularly involved in caring for, training, supervising or being in sole charge of the child, and -
 - (i) one of them is or has been the other's step-parent;
 - (ii) the person and the child are cousins;
 - (iii) one of them is or has been the other's stepbrother or stepsister; or
 - (iv) the parent or foster parent of one of them is the other's foster parent.

Interpretation
of section 40

41. For the purpose of section 40 -

- (a) “aunt” means the sister or half-sister of a person’s parent and “uncle” has a corresponding meaning;
- (b) “cousin” means the child of an aunt or uncle;
- (c) 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;
- (d) “step-parent” includes a parent’s partner; and
- (e) “stepsister” or “stepbrother” includes the child of a parent’s partner.

**Court order for welfare of child victim and
sentencing a convicted child**

Order for
the welfare
of child
victim

42. Notwithstanding any other order the court may make, the court may, with respect to any child who has been the victim of any offence in this Part -

- (a) order that the child be deemed in need of care and protection and referred to the Children’s Authority, which shall seek any appropriate order of the Court with jurisdiction in family matters;
- (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) make any other order as the Court may deem fit for the welfare of the child.

Determination
of sentence
for child

43. In determining the sentence of any child who has been convicted of an offence under this Part or under Part IV the Court may -

- (a) request an investigation and report by a probation officer, social worker, psychologist, psychiatrist, or the Children’s Authority, and take same into account;

- (b) in relation to a child who is fourteen years of age or over, request a copy of any proceedings from the Family Court which relates to the child and take into account these proceedings;
- (c) hear and take into account submissions on behalf of the Children's Authority;
- (d) hear and take into account submissions on behalf of the Children's Attorney representing the child who has been convicted; or
- (e) hear and take into account submissions on behalf of the Children's Attorney representing the child victim.

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

43. A. Proceedings for an offence under this Part or Part IV, 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.

PART VI
OFFENCES RELATING TO DANGEROUS DRUGS,
TOBACCO AND ALCOHOL

Exposing children to dangerous drugs

44. A person who exposes a child or causes a child to be exposed to dangerous drugs or other substances having a similar effect, commits an offence and is liable -

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

Giving a child a dangerous drug
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45. A person who gives, or causes to be given, to any child any dangerous drug or other substances having a similar effect except upon the order of a medical practitioner registered under the Medical Board Act, commits an offence and is liable in addition to any other penalty prescribed by law -

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

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

Use of a child to sell, buy, purvey or deliver dangerous drugs

46. A person who -

- (a) uses a child or causes a child to be used; or
- (b) uses a child or causes a child to be used as a courier,

in order to sell, buy, purvey or deliver dangerous drugs or other substances having a similar effect, commits an offence and is liable -

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

Use of a child to sell, buy, purvey or deliver dangerous drugs in the furtherance of trafficking in dangerous drugs

47. A person who -

- (a) uses a child or causes a child to be used; or
- (b) uses a child or causes a child to be used as a courier,

in order to sell, buy, purvey or deliver dangerous drugs or other substances having a similar effect in the furtherance of trafficking in dangerous drugs or other substances having a similar effect, commits an offence and is liable -

- (aa) on summary conviction to a fine of forty thousand dollars and to imprisonment for ten years; or
- (bb) on conviction on indictment, to a fine of one hundred thousand dollars and to imprisonment for thirty years.

Use of a child to buy or purvey alcohol or tobacco products

48. A person who uses or causes a child to be used as a courier in order to sell, buy, purvey or deliver alcohol or tobacco products commits an offence and is liable upon summary conviction to a fine of two thousand dollars and to imprisonment for twelve months.

Sale of tobacco products and alcohol to children

49. Where a person sells any tobacco products or alcohol to a child, whether for use by the child or not, he commits an offence and is liable on summary conviction -

- (a) in the case of a first offence to a fine of two thousand dollars;
- (b) in the case of a second offence to a fine of five thousand dollars; or
- (c) in the case of a third or subsequent offence to a fine of twenty thousand dollars.

Child found in possession of or smoking tobacco products or in possession of or drinking alcohol

50.(1) Where a police officer finds a child or any person whom he reasonably believes to be a child-

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

or the police officer reasonably believes that the child or person is in possession of tobacco products or alcohol or smoking tobacco products or drinking alcohol, the police officer shall-

- (i) issue a caution to the child or person;
- (ii) obtain the name of and address of the child or person; and
- (iii) notify the Authority immediately.

(2) A person or child referred to in subsection (1) shall comply with the caution and request for information of the police officer referred to in subsection (1)

Automatic machines for sale of tobacco

51.(1) Where it is proven to the satisfaction of a Court, on the complaint of any person, that any automatic machine used for the sale of tobacco products and kept on any premises, is being used by a child, the Court may order the owner of the machine or the person on whose premises the machine is kept -

- (a) to take such precautions to prevent the machine being so used; and
- (b) where necessary, to remove the machine, within such time as may be specified in the order,

or make any other order that the Court may think fit.

(2) Where a person against whom an order is made under subsection (1) fails to comply with the order, he commits an offence and is liable, on summary conviction, to a fine of one thousand dollars and to a further fine of two hundred and fifty dollars for each day that the offence continues.

Vendor of tobacco products to display Signs

52.(1) 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 are offered for sale, a sign, written in large, bold, legible, upper case characters that reads as follows:

“THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF EIGHTEEN YEARS IS PROHIBITED”

(2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Vendor of alcohol to display signs

53.(1) Every vendor of alcohol shall at all times cause to be displayed in a prominent place in that part of the premises where alcohol is offered for sale, a sign, written in large, bold, legible, upper case characters that reads as follows:

“THE SALE OF ALCOHOL TO PERSONS UNDER THE AGE OF EIGHTEEN YEARS IS PROHIBITED”

(2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Exemptions

54. The provisions of this Part which make it an offence to sell tobacco products or alcohol to a child, shall not apply where the person to whom they are sold, or in whose possession they are found, was at the time employed by a manufacturer of or dealer in tobacco products or alcohol, either wholesale or retail, for the purposes of his business.

Interpretation

55.(1) For the purposes of this Part -

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

“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.

(2) This Part shall apply to smoking mixtures intended as a substitute for tobacco in like manner as it applies to tobacco products.

PART VII

CHILD PORNOGRAPHY, TRAFFICKING FOR SEXUAL EXPOLITATION

Child
pornography

56.(1) A person who -

- (a) makes or permits to be made any child pornography;
- (b) makes or permits to be made any copy of any child pornography;
- (c) distributes or shows such child pornography;
- (d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such child pornography with a view to it being distributed or shown by himself or others, or intends to do so; or
- (e) has in his possession child pornography,

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

(2) For the purposes of this Act, a person is to be regarded as distributing child pornography, if he -

- (a) offers it ;

- (b) parts with possession of it ;
- (c) exposes it;
- (d) posts it on the internet or causes it to be posted on the internet;
- (e) e-mails it;
- (f) faxes it; or
- (g) transmits it by any other means,

for acquisition by another person.

(3) Proceedings for an offence under this section shall not be instituted except by or with the consent of the Director of Public Prosecutions.

(4) Where a person is charged with an offence under subsection (1)(b), (c), (d) and (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 pornographic.

(5) A person is not guilty of an offence under subsection (1)(b), (c) (d) or (e) if he proves that -

- (a) it was necessary for him to take the photograph or make the film, video or other visual representation or for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world; or
- (b) at the time of the offence he was a member of the police service or otherwise employed by the State and in the course of his employment, he was legally involved in the prevention, detection, or investigation, or prosecution of a crime for which the pornography was necessary.

Exposing a child to child pornography

57. A person over eighteen years of age 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 or upon conviction on indictment to a fine of five thousand dollars and to imprisonment for five years.

Causing or inciting

58. Where a person intentionally causes or incites a child to be involved in pornography, in any part of the world, he commits an offence and

child
pornography

is liable -

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

Controlling
a child
involved in
pornography

59. Where a person intentionally controls any of the activities of a child relating to that child's involvement in pornography in any part of the world, he commits an offence and is liable -

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

Arranging or
facilitating
child
pornography

60. Where a person intentionally arranges or facilitates the involvement of a child in pornography, in any part of the world, he commits an offence and is liable -

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

Offence of
trafficking

61.(1) A person who recruits, transports, transfers, harbours or receives a child by means of -

- (a) the threat or use of force or other forms of coercion;
- (b) abduction;
- (c) fraud;
- (d) deception;
- (e) abuse of power;

(f) position of vulnerability; or
(g) the giving or receiving of payments or benefits to achieve the consent of a person having control over a child;
for the purpose of exploitation, commits an offence of trafficking.

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

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

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

(3) An offence under this section is referred to as an offence of trafficking.

(4) The consent of a child to the offence of trafficking shall be irrelevant where any of the means referred to in subsection (1) has been used.

(5) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking” even if it does not involve any of the means referred to in subsection (1).

Intentionally arranging or facilitating the offence of trafficking

62.(1) A person who intentionally arranges or facilitates the offence of trafficking referred to in section 61 and intends to do anything to or in respect of that child during or after the journey of the child, commits an offence and is liable -

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

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

(2) The consent of a child to the offence of trafficking shall be irrelevant where any of the means referred to in section 61 (1) has been used.

(3) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking” even if this does not involve any of the means referred to in section 61(1).

Arranging or

63.(1) A person who intentionally arranges or facilitates –

facilitating the departure from, arrival into or travel within Trinidad Tobago of a child involving the commission of the relevant offence

and he -

- (a) the departure from Trinidad and Tobago of a child;
- (b) the arrival into Trinidad and Tobago of a child; or
- (c) the travel within Trinidad and Tobago by a child,
- (d) intends to do anything to or in respect of that child, after the child's departure, or during or after his journey in any part of the world, which if done will involve the commission of a relevant offence; or
- (e) believes that another person is likely to do something to or in respect of that child after the child's departure, or during or after his journey in any part of the world, which if done will involve the commission of a relevant offence,

commits an offence.

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

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

Interpretation
and
jurisdiction

64.(1) For the purposes of sections 63, "relevant offence" means -

- (a) an offence under this Part ; or
- (b) anything done outside Trinidad and Tobago which is not an offence under this Part, but would be if it is done with respect to a child in Trinidad and Tobago.

(2) Sections 63 apply to anything done -

- (a) in Trinidad and Tobago; or
- (b) outside Trinidad and Tobago, by a body incorporated under the laws of Trinidad and Tobago or by an individual who is -
 - (i) a citizen of Trinidad and Tobago;
 - (ii) a CARICOM citizen who resides in Trinidad and Tobago;
 - (iii) a CARICOM citizen who resides or works in Trinidad and Tobago under a CARICOM skills certificate;
 - (iv) a person ordinarily resident in Trinidad and Tobago;
 - (v) a person for the time being resident in Trinidad and Tobago; or
 - (vi) a person domiciled in Trinidad and Tobago.

(3) For the purposes of sections 61 and 62 'exploitation' shall include, at a minimum, the exploitation or prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude of the removal of organs.

Order of
Court for
counselling

65. Where under Parts II to VII a person is convicted of an offence, the Court may make an order for the convicted person to be submitted for counselling.

PART VIII
ARREST OF OFFENDERS AND PROVISIONS
FOR THE SAFETY OF CHILDREN

Power of
arrest

66.(1) Any constable may take into custody, without warrant, any person -

- (a) who, within view of the constable, commits an offence under Parts II to VII or the First Schedule, where the name and residence of such person are unknown to the constable and cannot be ascertained by the constable; or
- (b) who has committed, or who the constable has reason to believe has committed, an offence of cruelty or any of the offences referred to in Parts II to VII or the First Schedule, if he has reasonable grounds for believing that such person will abscond, or if the name and address of such person are unknown to and cannot be ascertained by the constable.

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(2) Where a police officer arrests any person without a warrant in pursuance of this section, an officer of the rank of inspector or above shall, unless, in his belief, the release of such person on bail would tend to defeat the ends of justice or to cause injury or danger to the child against whom the offence is alleged to have been committed, release the person arrested on bail in accordance with the Bail Act, subject to a duty to appear before a Magistrate's Court at such time and place as the officer appoints.

Taking a
child to a
place of
safety

67. (1) Without prejudice to any power conferred upon a police officer at common law or under any other enactment, any person authorized by a Court may take to a place of safety, any child in respect of whom an offence-

(a) under Parts II to VII; or

(b) mentioned in the First Schedule,
has been, or there is reason to believe has been, or is likely to be committed, and shall notify the Authority forthwith.

(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 can be brought before a Court.

(3) Where a child is brought before a Court, the Court may make an order under subsection (4), or may cause the matter to be dealt with as circumstances admit under the Children Authority Act.

(4) Where it appears to any Court that an offence under Parts II to VII, or any of the offences mentioned in the First Schedule has been committed 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 pending enquiry, the Court may, without prejudice to any other power under this Act, make such an order.

(5) The order made pursuant to subsection (4) may subsist until the charge made against any person in respect of an offence under Parts II to VII, with regard to the child, has been determined.

(6) Any such order referred to in subsection (4) may be carried out notwithstanding that any person claims the custody of the child.

(7) A police officer or a person referred to in section 71(1)(a) shall make a written report of action taken under this section to his superior officer within seventy-two hours of the taking of such action.

Arrangements
for child by
order of court

68.(1) Where a person having custody, charge or care of a child has been convicted of committing -

(a) an offence under Parts II to VII; or

(b) any of the offences mentioned in the First Schedule,

in respect of the child, he shall be-

(aa) committed for trial for any such offence; or

(bb) bound over to keep the peace towards such child,

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

(2) Where at any time during proceedings -

(a) a person having the custody, charge or care of 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 the court with jurisdiction in family matters, whereupon 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 the 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, the 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.

Maintenance and control of child placed in the care of any person under order of court

69.(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 his 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.

(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 two thousand dollars or to imprisonment for six months.

(3) Where a Court makes an order to commit a child, the Court may also order the parent or any other person liable to maintain the child, to contribute to his maintenance during that period, and such orders shall be enforceable in like manner as if the child were ordered to be sent to a community residence under the Children's Authority Act.

(4) An order under subsection (3) may be made -

- (a) on the complaint or application of the person to whose care the child is committed; and
- (b) at the time when the order for the committal of the child to his care is made, or subsequently.

(5) The sums contributed by the parent or such other person liable to maintain the child pursuant to subsection (3) shall be paid to the person to whose care the child is committed as the Court may name, and be applied for the maintenance of the child.

(6) Where, under this Part, an order to commit a child to the care of some 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.

(7) A Court making an order under subsection (3) may -

- (a) where there is any pension or income payable to such person capable of being attached; and
- (b) after giving the person by whom the pension or income is payable an opportunity of being heard,

further 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.

(8) The person who is named by the Court in the Order to be paid the monies referred to in subsection (6), shall provide a receipt which shall be a good discharge of the obligation to pay under the Order.

(9) An order under this section may be made -

- (a) by any Court before which a person is charged with an offence under Parts II to VII and in the First Schedule; and
- (b) without regard to the place of residence of the person to whom the payment is to be made.

(10) 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.

Religious persuasion of persons with whom child is placed

70. In determining the person in whose care the child shall be placed under this Part, the Court shall -

- (a) ascertain the religious persuasion to which the child belongs; and
- (b) if possible, select a person -
 - (i) of the same religious persuasion; or
 - (ii) who gives an undertaking sufficient to the Court that the child shall be brought up in accordance with his religious persuasion,

and such religious persuasion shall be specified in the order.

Court order to require the appearance of parent or guardian

71.(1) Where it appears to a Court on complaint on oath of -

- (a) a public officer experienced or qualified in social work;
- (b) an employee or 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 a child; or
- (d) police officer,

that a child -

- (aa) has suffered;
- (bb) is suffering harm; or
- (cc) is likely to suffer such harm,

so as to cause concern for the welfare of that child, the Court may require a parent or guardian to appear before it and shall notify the Authority immediately.

(2) A Court may act in accordance with subsection (1) in proceedings under sections 67 and 68.

(3) Where, in proceedings referred to in subsections (1) and (2), the Court is satisfied that the child

- (a) has suffered;
- (b) is suffering; or
- (c) is likely to suffer harm,

sufficient 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 involved, where such wishes of the child can be reasonably ascertained, order that the child -

- (aa) 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
- (bb) 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.

(4) Where proceedings are before a Magistrate under subsection (1), section 67 or 68, in respect of a child -

- (a) who is a ward of the Court;
- (b) of whom there is in force an order of the High Court

relating to custody, guardianship or access; or

- (c) of 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 (7), (8) and (9) shall be continued as if they had been properly and duly commenced in that Court.

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

(6) At any stage of the proceedings referred to in subsection (7) 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.

(7) Nothing in this section precludes the High Court, the court with jurisdiction in family matters or the Magistrate, as the case may be, from making an interim order, including an interim care order, pending the appearance of the child, parent or guardian, or other person.

(8) For the purposes of this section, "harm" includes -

- (a) wilful neglect;
- (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 or purveyor of dangerous drugs or

other substances having a similar effect by those having his custody, charge or care or by any other person;

- (g) impairment suffered from seeing or hearing the ill-treatment of another;
- (h) an offence under Parts II to VII of this Act or in the First Schedule; 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.

(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 police officer to remove the child, with or without search, to a place of safety and detain him there until he is brought before the 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 Magistrate, and cause proceedings to be taken against such person according to law.

(11) Any police officer authorized 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 there from.

(12) Every warrant issued under this section shall be executed by a police officer, 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.

Interpretation
“fit person”

72.(1) In this Part, the expression “fit person”, in relation to the care of any child, includes any body corporate, authority, agency or society established for the reception of children to whom this Act applies.

(2) For the purposes of this Part -

- (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 the custody of the child, and, as between father and mother, the father shall not be deemed to have ceased to have the custody of the child by reason only that he has deserted, or otherwise does not reside with, the mother and child;

- (b) any person to whose charge a child is committed by any person who has the custody of 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 IX

EVIDENCE AND PROCEDURES

Evidence of
accused
person
Chap. 7:02

73. Part II of the Evidence Act is applicable in respect of proceedings against any person for an offence under Parts II to VII, or for any of the offences mentioned in the First Schedule.

Special
power to
take
deposition
and record
evidence
etc.

74.(1) Where a Court is satisfied by the evidence of a duly qualified medical practitioner or the Director of Public Prosecutions that the attendance of a child before a Court in respect of whom an offence -

- (a) under Parts II to VII; or
- (b) mentioned in the First Schedule,

is alleged to have been committed, would place the child at risk of harm, the Court may -

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

(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 the 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 the 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 electronic audio digital recording, video digital recording or computer aided transcription or video conferencing, a transcript of the recorded evidence shall be prepared.

(5) Where a transcript of the recorded evidence referred to in subsection (4) is prepared, the transcript shall be prepared and verified by the certificate of those responsible for the accuracy of the transcript prepared in accordance with the Recording of Court Proceedings Act, 1991.

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(6) 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.

(7) 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.

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

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

Admission of deposition and recorded evidence into evidence

75. (1) Where, on the trial of a person on indictment for an offence under Parts II to VII or any of the offences mentioned in the First Schedule, the Court is satisfied by the evidence of a duly qualified 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 -

(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 taken under the Indictable Offences (Preliminary Enquiry) Act, or under this Part 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 conference.

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

76.(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 given 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 Parts II to VII;
- (c) is an offence under the Sexual Offences Act;
- (d) is inciting the commission of an offence falling under paragraph (a), (b) or (c).

Chap 12:01

(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

77. Where a video recording is admitted in evidence under section 76(1), cross-examination of the witness shall be by means of an electronic device linking the voice and imagery of the accused or the voice and imagery of such witness who is a child and who is alleged -

- (a) to be the person against whom the offence was committed; or
- (b) to have witnessed the commission of the offence.

Child witness to be called

78. Where a video recording is admitted under section 76, 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

79.(1) Where a video recording is given in evidence under section 76, 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.

Unsworn evidence by children in criminal proceedings

80.(1) A child under ten years of age may 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 the Indictable Offences (Preliminary Enquiry) Act, or this Part, and shall be deemed to be a deposition within the meaning of that Act and this Part.

(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.

Rules of
Court
Chap 4:01

81.(1) The Rules Committee established by the Supreme Court of Judicature Act may make Rules of Court for the purposes of the operation of sections 76 to 79.

(2) Rules made under subsection (1) shall be subject to negative resolution of Parliament.

Definition of
"child" for
the purposes
of sections
76 to 79

82. In sections 76 to 79 "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.

Power to proceed in absence of child

83. Where, in any proceedings in relation to an offence under Parts II to VII, or any of the offences mentioned in the First Schedule, 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.

Mode of charging offence and limitation of time

84.(1) Where a person is charged with committing an offence under Parts II to VII, or an offence mentioned in the First Schedule, in respect of two or more children, the same information or summons may be used to charge that person with the offence in respect of all or any of the children and the person charged shall be liable to a separate penalty for each child.

(2) The same information or summons may also be used to charge any person -

- (a) as having the custody, charge or care of a child, alternatively or together;
- (b) with the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately; or
- (c) with committing all or any of the offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together.

(3) When the offences mentioned in the subsection (2) are charged together, the person charged shall not be liable to a separate penalty for each.

(4) Subject to subsection (5), a person shall not be summarily convicted of an offence under Parts II to VII, or of an offence mentioned in the First Schedule, unless the offence was wholly or partly committed within six months before the information was laid.

(5) Evidence may be taken of acts constituting, or contributing to constitute the offence, and committed at any previous time.

(6) Where an offence under Parts II to VII or any offence mentioned in the First Schedule charged against any person is a continuous offence, it shall not be necessary to specify in the information, summons or indictment, the date of the acts constituting the offence.

PART X

CHILD OFFENDERS

Bail for children arrested

85. 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 homicide 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 not 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.

Custody of children not discharged on bail after arrest

86. Where a person who appears to be under the age of eighteen years having been apprehended is not released in accordance with section 85, the officer in charge of the Police Station to which such person is brought shall notify the Children's Authority forthwith and shall cause him to be placed in a Community Residence until he can be brought before a court.

Association with adults during detention in Police Station

87. 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.

Remand or committal to custody in a Community Residence

88.(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

89.(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 police officer, 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 71(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.

Power of court to order parent to pay a fine, damages or cost instead of child where a child is charged

90.(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 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 -

- (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) a Supervision Order in accordance with the Children's Authority Act.

(4) A supervision order made under this section shall state the period of supervision and the frequency of meetings and any reports required by the Court or the Authority.

(5) 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.

(6) 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 by distress 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

91(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

is convicted

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 pay a fine to the Court;
- (b) the parent or guardian to attend counselling on such terms as the Court may order;
- (c) with the consent of the parent or guardian, that the parent or guardian 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) or (5), 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

92.(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
- (c) the fine or any part thereof, to be paid to the complainant to offset his costs.

Methods of
dealing with
children
charged with
offences

93.(1) 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 case may be dealt with in the following manner:

- (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) send 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;
- (j) bring the offender to the attention of the Children's Authority;
- (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; and
- (n) by dealing with the case in any manner in which it may legally be dealt with.

(2) 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 achieved the age of eighteen, the High Court shall, on his achieving the age of eighteen, 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.

(3) An order made under subsection (2)(e) may be made in addition to any order made under paragraphs (b) and (c).

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

94.(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,

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 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 Children's 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, member of the offender's household or persons connected to the offender be referred to counseling;
- (v) order that no conviction be recorded;
- (vi) order that the proceedings be sealed and not divulged without an order of the Family 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.

No death sentence in case of person under eighteen

95. 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.

Detention in case of certain crimes committed by children

96.(1) Where a child is convicted on indictment of -

- (a) an attempt to murder;
- (b) manslaughter;
- (c) wounding with intent to do grievous bodily harm; or
- (d) other offences against the person,

and the Court is of opinion that no punishment which, under the provisions of this Act, it is authorized to inflict is sufficient, the Court may sentence the offender to be placed at an appropriate Community Residence for such period as may be specified in the sentence and the Court may impose further conditions as it sees fit.

(2) Notwithstanding any other provision of this Act, where a sentence under subsection (1) is passed, a child so placed shall be deemed to be in legal custody.

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

97.(1) A child who was placed pursuant to the directions of the Court under sections 94(2) and 96 (1) may, at any time, be discharged by the Court on licence.

(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.

Provisions as to custody of children

98.(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.

(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 (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.

99.(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

100. (1) 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.

(1) The Rules made under subsection (1) shall be subject to the negative resolution of Parliament.

Juvenile
Courts
and its
proceedings

101.(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, unless the child is charged jointly with any other person not being a child, sit -

- (aa) in a different building;
- (bb) in a different room;
- (cc) on different days; or
- (dd) at different times,

from those at which the ordinary sittings are held.

(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 their 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

RIGHT TO ADMINISTER PUNISHMENT

Right of
parent,
etc. to
administer
punishment

102.(1) Subject to subsection (2), nothing in this Part shall be construed as taking away or 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.

(2) Reasonable punishment referred to in subsection (1), in relation to any person other than a parent, does not include corporal punishment.

PART XII

RESTRICTIONS ON EMPLOYMENT OF CHILDREN

Interpretation

103. In this Part -

“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;

“family” means parents, brothers, sisters and other lineal antecedents and descendants;

“industrial undertaking” includes particularly -

- (a) mines, quarries and other works for the extraction of minerals from the earth;
- (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 telephonic installation, electrical undertaking, gasworks, waterwork 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;

“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.

President
may define
industrial
undertakings

104. 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

105. Subject to section 106, 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.

Application of
section 105

106 . Section 105 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 organizations of employers and workers concerned and the work is an integral part of -
 - (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.

Employers
to keep
register of
persons
under the
age of
eighteen
years

107.(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 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.

(3) An employer who fails to comply with this section is liable on summary conviction, to a fine of two thousand, five hundred dollars and to imprisonment for six months.

Inspectors

108.(1) The Minister to whom responsibility for labour is assigned may designate in writing a suitably qualified public officer as an inspector.

(2) An inspector shall have the authority to require a parent or guardian or an employer or any other person authorized by an employer, except a person engaged in a confidential and professional relationship with that employer -

- (a) to give him information with respect to

remuneration paid to, and the terms and conditions of service enjoyed by a child in the service of that employer; and

- (b) to permit him to inspect any record, paysheet or certificate or representation of age relating to a child.

Powers of entry

109.(1) An inspector may at a reasonable time and with the permission of the owner or occupier of any premises, enter the premises where a child is employed or where there is any book, record or other document relating to the child which may afford evidence as to the contravention of any provision of this Act and -

- (a) if necessary, with the assistance of any person, search the premises for any book, record, certificate or representation of age or other document; and
- (b) examine such book, record, certificate or other document.

(2) Where during the course of the examination under subsection (1), it appears to the inspector that there has been a contravention of this Act, he may -

- (a) require the parent, guardian, employer, or any other person in the service of that employer to give him all reasonable assistance with, and to answer all questions relating to, the examination; or
- (b) seize and take away any book, record, electronic or otherwise, or other document relating to a child and retain them until they are required to be produced in any proceeding; but where such book, record or other document is necessary for the continued operations of the business, an employer shall be allowed reasonable access to them.

(3) An inspector shall not demand entry to any premises under subsection (1) except on the warrant of a Court.

(4) Where it is shown to the satisfaction of a Judge on sworn information in writing, that admission to premises has been refused or withheld and that there is reasonable ground for entry into the premises for any purpose stated in subsection (1), the Judge may, subject to subsection (5), by warrant under his hand, authorize entry on the premises.

(5) A Judge shall not issue a warrant under subsection (4) unless he is satisfied either that written notice of the intention to apply for a warrant has been given to the occupier or that the giving of such notice would defeat the object of the entry.

(6) Where an inspector enters any premises by virtue of this section, he may take with him any other person as may be necessary to effect the purpose of his entry.

(7) A warrant issued under this section shall continue in force for such reasonable time as may be necessary to effect the purpose for which it was issued.

(8) A person who obstructs any person doing anything that he is authorized to do under this section or any person who, unless he is unable to do so, fails or refuses to do anything which he is required under this section to do, commits a contempt of the court.

(9) In this section, "Judge" means the President or Vice- President of the Industrial Court.

Neglectful parent

110. 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

111. 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 or representation of age

112. 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

113. 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

114. 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.

PART XIII MISCELLANEOUS

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

115.(1) 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 persons otherwise directly concerned in the case be excluded from the Court during the taking of the evidence of the child.

(2) Nothing in this section shall authorize the exclusion of *bona fide* representatives of the media but the Court may direct that the child's name and any other information which may identify the child or his whereabouts shall not be published.

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

116. 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.

Presumption and determination of age

117.(1) Where a person charged with an offence is brought before any Court, and it appears to the Court that he is a child, the Court shall make due enquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case.

(2) An order or judgment of the Court referred to in subsection (1), shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the Court, and the age presumed or declared by the Court to be the age of the person so brought before it shall, for the purposes of Part VIII, be deemed to be the true age of that person.

(3) Where a person is brought before any Court for the purpose of giving evidence, and it appears to the Court that he is a child, the Court shall

make due enquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case.

(4) An order or judgment of the Court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the Court, and the age presumed or declared by the Court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person.

(5) Where, in a charge or indictment for an offence under this Act, or any of the offences mentioned in the First Schedule it is alleged that the person by or in respect of whom the offence was committed was a child or was under or above any specified age, and he appears to the Court to have been at the date of the commission of the alleged offence a child or to have been under or above the specified age, as the case may be, he shall, for the purposes of this Act, be presumed at that date to have been a child or to have been under or above that age, as the case may be, unless the contrary is proved.

(6) Where a person is charged with an offence under this Act in respect of a person apparently under a specified age, it shall be a defence to prove that the person was actually of or over that age.

Recovery of penalties

118.(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 the Family Court Act or any other Act from time to time enforced.

(2) All orders of a Magistrate 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 the Family Court Act.

(3) Any party to such proceedings who aggrieved by the order or decision of a Magistrate under this Act, may appeal from such order or decision in the manner provided by the Summary Courts Act or the Family Court Act.

Rules

119. The Rules Committee of the Supreme Court of Judicature Act, may make rules subject to negative resolution of Parliament.

Transitional

120. Where before the commencement of this Act, the High Court or a Magistrate is vested with jurisdiction to make an order or to enforce, renew, vary, suspend, revive, cancel or discharge any 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.

Presumption with respect to time of conduct

121.(1) This section applies where in any proceedings, a person is charged in respect of the same conduct both with an offence under this Act and an offence specified in any other enactment in existence prior to the coming into force of this Act (“the earlier enactment”) and the only thing preventing the person from being found guilty -

- (a) of the offence under this Act is the fact that it has not been proved beyond a reasonable doubt that the time when the conduct took place was after the coming into force of this Act; or
- (b) of the offence under the earlier enactment is the fact that it has not been proved beyond a reasonable doubt that the time when the conduct took place was before the coming into force of this Act.

(2) For the purpose of determining the guilt of the defendant it shall be conclusively presumed that the time when the conduct took place was -

- (a) if the maximum penalty for the offence under the earlier enactment is less than the maximum penalty for the offence under this Act, a time before the coming into force of this Act;
- (b) in any other case, a time after the coming into force of this Act.

(3) This section applies to any proceedings, whenever commenced, other than proceedings in which the defendant has been convicted or acquitted of the offence under this Act or the earlier enactment.

Chapter 4:20 amended

121A. Section 2 of the Summary Courts Act is amended

- (a) in section 2, in the definition of “child”, by deleting the word “fourteen” and substituting the word “eighteen”; and

- (b) in section 100 (9), by deleting the word “sixteen” and substituting the word “eighteen”.

Chapter 12:01 amended 121 B. Section 16C(2) of the Indictable Offences (Preliminary Enquiry Act) is amended by deleting the words “Section 19” and substituting the words “section 80”.

Chapter 39:01 amended 121 C. Section 76(1) of the Education Act is amended by-

- (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”.

Chapter 88: 05 amended 121D. Section 2 of the Workmen’s Compensation Act is amended in the definition of “minor” by deleting the word “seventeen” and substituting the word “eighteen”.

Act No 1 of 2004 amended 121E. Section 54(1) of the Occupational Health and Safety Act is amended by deleting the words “Except as provided by section 90 (2) of the Children Act, no” and substituting the word “No”.

Inconsistency with other laws 122. Where a person may be charged in respect of the same conduct both with an offence under the provisions of this Act and an offence specified in any other enactment, the provisions of this Act shall apply to the exclusion of any such enactment.

Chap. 46:01 repealed 123. The Children Act is hereby repealed.

FIRST SCHEDULE

(66(1)(a)and(b);67(1)(b)and(4);68(1)(b);69(9)(a);
71(8)(h);73;74(1)(b); 75(1);83;84(1),(4) and (6);117(5))

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.

SECOND SCHEDULE (section 3(1) and (2))

PART A

PARENTAL RIGHTS

Every biological or adoptive parent of a child in Trinidad and Tobago has rights in respect of that child under the laws of Trinidad and Tobago including but not limited to -

1. the right to give the child a name of the parent's choice;
2. the right to pass on the nationality of the parent to the child;
3. the right not to be separated from the child without the parent's consent unless the relevant Authorities decide that this would be in the best interest of the child;
4. the right to provide religious direction and guidance to the child;
5. the right to request the State's assistance in caring for the child where the parents are unable to do so themselves;
6. the right to send the child to a State-supported school at the State's expense, or to a private or denominational school at the parent's own expense.

PART B

Every person in Trinidad and Tobago who is a parent of a child, or who acts in *loco parentis*, has responsibilities under the law in respect of the parenting function including but not limited to -

1. the responsibility to register the birth of the child with the relevant authorities;
2. the responsibility, within the parents' abilities and financial capacities, to secure the conditions of living adequate for the

child's physical, mental, spiritual and moral development;

3. the responsibility to send the child to school, or to provide for education at home of an equal standard;
4. the responsibility to guide and direct the child without the use of any cruel, inhuman or humiliating punishment;
5. the responsibility to ensure that the child has time for rest, recreation, creative expression and play;
6. the responsibility not to arbitrarily interfere with the child's privacy;
7. the responsibility to protect the child from unlawful physical violence and all forms of physical or emotional abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the parents' care;
8. the responsibility to make arrangements for the care of the child when the parent is absent from the child;
9. the responsibility to ensure that a child under the age of sixteen years is not engaged in labour.

PART C

Every person under the age of eighteen years, born in Trinidad and Tobago, or born to, or adopted by, parents who are citizens of Trinidad and Tobago is a child and is subject to care and protection under the law including but not limited to -

1. the right to live, survive and grow;
2. the right to be registered at birth or upon adoption, and to be a citizen of Trinidad and Tobago;
3. the right not to be discriminated against under the law on the basis of age, race, origin, colour, religion or sex;
4. the right not to be discriminated against or punished because of the beliefs or actions of one's family members;

5. the right to know and, as far as possible, to be cared for by one's parents;
6. the right not to be separated from one's parents against one's will, other than by a Court of law;
7. the right to privacy in one's own family, home, and in respect of one's correspondence;
8. the right to hold ideas of one's own, including religious beliefs and to express those views freely in matters affecting themselves;
9. the right to associate with other people for a peaceful purpose;
10. the right not to be treated with violence by a family member, a teacher, a public officer or by any other person;
11. the right to free education up to the age of sixteen;
12. the right not to have to work at anything that is dangerous or that will interfere with education;
13. where the child has broken the law and is in custody, the right not to be subjected to inhuman or degrading punishment. A child under the age of eleven giving evidence in a Court matter shall not be subject to the laws governing perjury and shall have the option of giving evidence by electronic means;
14. the right not to be subject to capital punishment, nor to life imprisonment without the possibility of release;
15. the right of a child offender not to be placed in custody with adult prisoners.

PART D

Every person under the age of eighteen years in Trinidad and Tobago, having the special protection under the law granted to a child, has responsibilities under the law which shall be observed subject to their age and understanding but not limited to -

1. respect and to obey the law;
2. not to take or to harm the property of other people without that person's permission;
3. learn about human rights and to respect the rights of others;
4. respect the guidance of parents, except where the law says otherwise;
5. attend school until the age of sixteen;
6. learn about and respect one's culture, language and country;
7. express one's views about matters which affect oneself;
8. respect the environment; and
9. respect one's own religious beliefs and the religious beliefs of others.

Passed in the House of Representatives this day of , 2010.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2010.

Clerk of the Senate

I confirm the above.

President