

*Child Justice Act***EXPLANATORY NOTE  
CHILD JUSTICE BILL**

1. The Bill for consideration is the Child Justice Bill (the Bill).
2. The main purpose of the Bill is to establish a judicial process applicable to a child in conflict with the law and to protect the rights of the child.
3. In the preliminary part of the Bill, clauses 1, 2 and 3 of the Bill make provision for the short title and commencement, interpretation and application. Additionally, clause 4 of the Bill provides for the purpose of the Bill.
4. Part I of the Bill makes provision for criminal responsibility and clause 5 of the Bill identifies the age of criminal responsibility.
5. The designation of a place of assessment and establishment of a secure residential facility are provided for in Part II of the Bill (clauses 6 and 7).
6. The methods of securing attendance of a child at an initial inquiry is provided for in Part III of the Bill. Clause 8 of the Bill provides the methods of securing attendance as apprehension, summons and a written notice. Clauses 9, 10 and 11 of the Bill make provision for apprehension, detention of a child and report of injury sustained by the child during detention. Clause 12 of the Bill provides for the keeping of a register of children in detention in police custody.
7. Release of a child in conflict with the law is provided for in clauses 13 to 19 of the Bill. There, provision is made for release of a child into the care of a parent or appropriate adult before an initial inquiry in clause 13 of the Bill. In addition, there is provision for the release of a child by the Director of Public Prosecutions and the duty of a police officer under clauses 14 and 15 of the Bill. According to clause 16 of the Bill a child may be released on recognisance prior to an initial inquiry. Release to a place of safety is provided for in clause 17 of the Bill. Clauses 18 and 19 of the Bill provide for a child accused of a Schedule 3 offence and the making of a report by a police officer if a child is not released. Clause 20 of the

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Bill provides a police officer with powers if he or she is uncertain as to the age of a person. A summons and written notice are provided for in clauses 21 and 22 of the Bill.

8. Under Part IV of the Bill provision is made for an assessment of a child. Clause 23 of the Bill empowers a probation officer to assess a child. A notice of assessment must be provided to the parent or an appropriate adult under clause 24 of the Bill and the persons to attend an assessment are specified in clause 25 of the Bill. The powers and duties of a probation officer at an assessment are provided in clause 26 of the Bill.
9. Provisions relating to an initial inquiry are set out in Part V of the Bill. A magistrate may hold an initial inquiry in accordance with clause 27 of the Bill. The attendance at an initial inquiry and conduct of an initial inquiry are provided for in clauses 28 and 29 of the Bill. The powers of a Magistrate with respect to an initial inquiry are highlighted in clause 30 of the Bill. The release of a child into the care of a parent or appropriate adult at the initial inquiry and on recognisance or bail is provided for in clause 31 of the Bill. The detention of a child after first appearance before a Magistrate is provided for in clause 32 of the Bill. Clauses 33, 34 and 35 of the Bill make provision for postponement of an initial inquiry, the detailed assessment and referral to the Director of Human Services. In clauses 36 and 37 of the Bill provision is made for a decision regarding diversion, release of a child and procedure on referral of a matter for trial.
10. Court Proceedings are provided for in Part VI of the Bill. This Part begins with a provision relating to the intention to prosecute in clause 38 of the Bill. Clauses 39 and 40 of the Bill stipulate that a child must be provided with an attorney-at-law and the requirements to be complied with by an attorney-at-law.
11. Provision is made in clauses 41, 42 and 43 of the Bill for the summoning of a parent or an appropriate adult, conduct of proceedings relating to a child in Court and admissibility of evidence. The treatment of a child, separation and joinder of trials involving a child and an adult and time limit for conclusion of a trial are provided for in clauses 44, 45 and

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46 of the Bill. Diversion and privacy and confidentiality are provided for in clauses 47 and 48 of the Bill. Sentencing is provided for in clauses 49 to 65 of the Bill. The Court is empowered to impose sentences involving a compulsory residential requirement, community based sentence, family group conference and correctional supervision. The Court has power to proceed with a case in the absence of a child, to take depositions and determine the age of a child under clauses 66, 67 and 68 of the Bill. The Court may also make an order relating to a parent or appropriate adult under clause 69 of the Bill. An appeal from a decision of the Court may be made in accordance with clause 70 of the Bill.

12. Diversion is provided for in Part VII of the Bill. The circumstances in which diversion should be considered are set out in clause 71 of the Bill. Clauses 72, 73 and 74 of the Bill make provision for the levels of diversion options, development of diversion options and designation of an assigned officer. Community service work as a diversion and the keeping of a register are provided for in clauses 75 and 76 of the Bill.
13. The Miscellaneous matters in Part VIII of the Bill make provision for obstruction of an assigned officer in clause 77 of the Bill, expungement of record in clause 78 of the Bill, the making of Regulations in clause 79 of the Bill and the amendment of the Schedules in clause 80 of the Bill. The laws that are repealed or saved are identified in clause 81 of the Bill.
14. The Bill contains five Schedules. In Schedule 1 of the Bill the offences for which a child may not be apprehended and be released are indicated. Schedule 2 of the Bill contains the offences for which a child may be released from police custody. The offences for which a child may not be released from police custody are set out in Schedule 3 of the Bill. Levels of diversion options are specified in Schedule 4 of the Bill and the offence for which diversion options apply are highlighted in Schedule 5 of the Bill.

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SAINT LUCIA

No. of 2018

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## SAINT LUCIA

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**No. of 2018**

**AN ACT** to establish a judicial process for a child in conflict with the law, to protect the rights of a child and for related matters.

[ ]

**BE IT ENACTED** by The Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia and by the authority of the same as follows —



*Child Justice Act***PRELIMINARY****Short title**

1. This Act may be cited as the Child Justice Act, 2018.

**Interpretation**

2. In this Act —

“acknowledging responsibility” means an admission of liability for an offence by a child without a formal admission of guilt;

“adoptive parent” means a person who has adopted a child under the Child (Care, Protection and Adoption) Act;

“appropriate adult” means a person, other than a parent, who has attained the age of eighteen years and who is —

- (a) a member of the family of the child;
- (b) a custodian or legal guardian of the child; or
- (c) a family friend;

“assessment” means the assessment of a child by a probation officer under sections 23 and 34;

“assigned officer”, in relation to —

- (a) a family group conference, means a person appointed under section 58(2);
- (b) diversion, means a person designated under section 74;

“attorney-at-law” means a person who is admitted to practice law under the Legal Profession Act, Cap. 2.04;

“available services” includes social services, legal aid and child care services;

“biological father” includes a man who —

- (a) is the father of a child by blood;
- (b) is adjudged to be the father of a child; or

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(c) is a father as a result of artificial conception procedures under any other law;

“biological mother” includes a woman who —

(a) gave birth to a child; or

(b) is a mother as a result of artificial conception procedures under any other law;

“biological parent” means a biological mother or a biological father of a child;

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

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

“community service work” means work for a community organization or other work of value to the community performed by a child without payment;

“compulsory school age” means the age during which a child is obliged to attend school under section 27 of the Education Act, Cap. 18.01;

“compulsory school attendance order” means an order requiring a child to attend school for a specified period to be monitored by a specified person;

“correctional facility” means a correctional facility under the Correctional Services Act, Cap. 14.02;

“correctional supervision” means a sentence under section 60;

“Court” means a District Court, the Family Court or the High Court;

“detention” includes confinement in a police cell, lock-up, place of safety or secure residential facility;

“Director” means the Director of Probation;

“Director of Human Services” means a person appointed by the Public Service Commission as Director of Human Services within the Division responsible for human services;

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“Director of Public Prosecutions” —

- (a) means the Director of Public Prosecutions appointed under section 89 of the Constitution of Saint Lucia, Cap. 1.01; and
- (b) includes a representative or a person who holds the *fiat* of the Director of Public Prosecutions and a police prosecutor;

“diversion” means the removal of cases of a child in conflict with the law from the formal court procedures and the adoption of informal procedures in relation to the child, under Part VII;

“diversion option” means a plan or programme with a specified content and duration set out in three levels under section 72;

“family group conference” means a gathering convened by an assigned officer as a sentencing option under section 58;

“initial inquiry” means a procedure under Part V which takes place after an assessment and before trial in a Court;

“legal guardian”, in relation to a child, means a person appointed, by deed, will or by an order of a court of competent jurisdiction with legal responsibility and authority for making decisions with respect to a child;

“Minister” means the Minister responsible for legal affairs;

“parent” includes —

- (a) a biological parent or adoptive parent who has the parental responsibility of the child;
- (b) a person, who has stood in *loco parentis* to a child for a period of not less than one year and who has a continuing relationship with the child; or
- (c) a legal guardian;

“parental responsibility” means the duties, powers, rights responsibilities, and authority that a parent of a child

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has in relation to that child under the law;

“place of assessment” means a place designated or certified by the Minister under section 6 to receive a child in conflict with the law;

“place of safety” means a place or institution, other than a police cell, lock-up or a correctional facility, whereby the person in charge is willing to receive and take care of a child in conflict with the law temporarily and which, in the opinion of the Court, provides safety for a child;

“police custody” includes keeping by the police in a place of assessment or secure residential facility;

“police officer” means a member of the Royal Saint Lucia Police Force under section 3 of the Police Act, Cap. 14.01;

“prescribed” means prescribed by Regulations made under section 79;

“relative”, in relation to a child, means a grandparent, brother, sister, uncle, or aunt of a child, whether the relationship is by blood, affinity or adoption;

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

“restorative justice” means an approach to justice which aims to involve a child in conflict with the law, the victim, the families concerned and community members to collectively identify and address harms, needs, and obligations through accepting responsibility making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation;

“secure residential facility” means a residential facility established or certified by the Minister under section 7;

“supervision and guidance order” —

(a) means an order placing a child under the supervision

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and guidance of a mentor or peer in order to guide the behaviour of the child; and

(b) includes a probation order;

“symbolic compensation” means the giving of an object owned, made, or brought by a child to a person, or group of persons or an institution as compensation for the harm caused by the child.

**Application**

**3.—(1)** Subject to subsections (2) and (3) and section 5, this Act applies to —

(a) a child in conflict with the law; and

(b) a person under paragraph (a) who attained the age of eighteen years before proceedings that were instituted against him or her, under this Act, have been concluded.

(2) The Criminal Code, Cap. 3.01 and the District Courts Act, Cap. 2.02 apply to a person under subsection (1), except in so far as this Act provides for different procedures in respect of that person.

(3) Subject to subsection (4), the Director of Public Prosecutions may issue a direction that this Act applies to a person who is alleged to have committed an offence and who, at the time of the alleged commission of the offence —

(a) was at least twelve years old but under the age of sixteen years;

(b) was over the age of eighteen years but under the age of twenty-one years;

(c) was over the age of eighteen years but is mentally handicapped or of unsound mind.

(4) A direction under subsection (3) may be issued if —

(a) where applicable, the person commits a further offence while serving a sentence involving a residential requirement imposed under this Act and after having reached the age of

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eighteen years; or

- (b) in the opinion of the Director of Public Prosecutions, another circumstance merits the issuance of a direction under that subsection.

**Purpose**

- 4. The purposes of this Act are to ensure that —
  - (a) the best interest of a child, the safety, welfare, and well-being of a child are of paramount consideration;
  - (b) a child is as far as possible given an opportunity to respond before a decision is taken which affects the child;
  - (c) a child is addressed in a manner appropriate to his or her age, maturity, and intellectual development;
  - (d) a child is treated in a manner which considers his or her beliefs;
  - (e) procedures to be carried out under this Act are conducted and completed in a timely manner;
  - (f) parents, relatives, and other family members have the right to assist a child in proceedings under this Act and, wherever possible, to participate in decisions affecting the child;
  - (g) consequences arising from the commission of an offence by a child are proportionate to the circumstances of the child, the nature of the offence, the interests of society and that a child is not treated more severely than an adult would be treated in the same circumstances;
  - (h) a child has equal access to available services if the child is lacking in —
    - (i) family support,
    - (ii) educational support, or
    - (iii) employment opportunities, if the child is between the ages of sixteen years and eighteen years;
  - (i) every effort is made to ensure that a child receives equal treatment to other children when having committed a

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similar offence; and

- (j) when deciding to release a child in detention —
- (i) preference is given to the release of the child into the care of a parent or an appropriate adult, with or without the imposition of conditions,
  - (ii) if the release of a child into the care of a parent or an appropriate adult is not feasible, the release of the child on bail or recognisance is considered,
  - (iii) if the child is detained as a measure of last resort, the least restrictive form of detention appropriate to the child and the offence is selected.

**PART I**  
**CRIMINAL RESPONSIBILITY**

**Age of criminal responsibility**

**5.—(1)** A child under the age of twelve years is not capable of or guilty of committing a criminal offence.

(2) A child over the age of twelve years and under the age of sixteen years is criminally responsible for an act or omission if at the time of doing the act or making the omission, he or she had the capacity to know that he or she ought not to do the act or make the omission.

(3) The criminal responsibility of a child over the age of twelve years must be proved by the Crown beyond reasonable doubt.

(4) For the purposes of subsection (3), the Director of Public Prosecutions or an attorney-at-law appointed by the Crown and representing the child may request the Court to order a medical examination by a medical practitioner or an evaluation of the child by a suitably qualified person to be conducted at the expense of the Crown.

(5) If an order is made by the Court under subsection (4), the person identified to conduct the medical examination or evaluation of the child shall furnish the Court with a written report of the examination or evaluation within thirty days of the date of the order.

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(6) An evaluation under subsection (4) must include an assessment of the cognitive, emotional, psychological and social development of the child.

(7) The person who conducts the evaluation may be summoned to attend the Court proceedings and to give evidence and if called must be remunerated by the Crown.

**PART II**  
**PLACE OF ASSESSMENT AND SECURE RESIDENTIAL**  
**FACILITY**

**Place of assessment**

**6.—**(1) The Minister may designate and maintain by the Ministry or under an agreement with a voluntary organization, a place of assessment for the temporary reception of a child in conflict with the law prior to or pending the completion of an initial inquiry regarding the child under this Act.

(2) Notwithstanding subsection (1), if the Minister believes an institution other than a place of assessment under subsection (1), is fit for the temporary reception of a child in conflict with the law pending an initial inquiry regarding the child, the Minister shall certify the institution as a place of assessment for the purposes of this Act.

(3) The Minister may make Rules to provide for the management of a place of assessment including the standards and the various types of services to be provided by the place of assessment and the circumstances under which and the manner in which the certification of a place of assessment may be granted or withdrawn.

(4) A child who, on commission of an alleged offence is not placed under the charge of a parent and is sent to a place of assessment, must be initially kept in a reception unit of the place of assessment for initial assessment, care and classification, giving due consideration to the age, physical and mental status of the child and the degree of the alleged offence.

**Secure residential facility**

**7.—**(1) The Minister may establish and maintain by the Ministry or under an agreement with a voluntary organization, a secure residential facility as may be required for the reception and rehabilitation of a



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child that is sentenced.

(2) Notwithstanding subsection (1), if the Minister believes an institution other than a secure residential facility established under subsection (1), is fit for the reception of a child that is sentenced, the Minister shall certify that institution as a secure residential facility.

(3) The Minister may make Rules to provide for the management of a secure residential facility including the standards and various types of services to be provided by that facility which are necessary for the rehabilitation and social integration of a child.

(4) Without limiting the generality of subsection (3), the Rules may provide for the management, classification and separation of a child on the basis of age and the nature of the offence committed by the child and his or her physical and mental status.

**PART III  
METHODS OF SECURING ATTENDANCE OF CHILD AT  
INITIAL INQUIRY**

**Method of securing attendance of child**

**8.**—(1) If a police officer reasonably believes that a child has committed an offence, the police officer may secure the attendance of the child in conflict with the law, at an initial inquiry, by one of the following methods —

- (a) apprehension;
- (b) summons; or
- (c) a written notice.

(2) Before a police officer uses a method under subsection (1), the police officer shall consult with the Director of Public Prosecutions as to whether or not the matter should be set down for an initial inquiry.

**Apprehension**

**9.** —(1) Subject to subsections (2) and (3), a police officer may apprehend a child in conflict with the law with or without a warrant.

(2) A police officer shall not apprehended a child for an offence under Schedule 1.

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(3) A police officer shall not apprehend a child who is under the age of twelve years alleged to have committed an offence but —

- (a) shall inform a probation officer of the particulars of the child as may be prescribed; and
- (b) may remove the child to a place of safety if the police officer has reasons to believe that it is necessary to do so for the safety of the child.

(4) A warrant to apprehend issued under the Criminal Code, Cap. 3.01, the District Courts Act, Cap. 2.02 or any other law in respect of a child must direct that the child be brought to appear at an initial inquiry.

(5) A police officer on apprehending a child shall immediately notify the parent of the child, or if the parent cannot be found, an appropriate adult, of the apprehension.

(6) If a police officer has notified a parent of a child or an appropriate adult of an apprehension under subsection (5), the police officer shall inform the child in the presence of the parent of the child or appropriate adult of —

- (a) the nature of the allegation against the child;
- (b) the rights of the child, in the prescribed manner; and
- (c) the immediate procedures to be followed under this Act and any other law.

(7) A police officer who has apprehended a child shall, promptly but not later than twenty-four hours after the apprehension, inform a probation officer of the apprehension in the prescribed manner.

(8) If a police officer is unable to inform a probation officer of the apprehension under subsection (7), he or she shall submit a written report to a magistrate at an initial inquiry in the prescribed manner giving reasons for the non-compliance.

**Detention of child**

**10.**—(1) A child who is apprehended shall, whether an assessment of the child is effected or not, be detained by a police officer to appear at an initial inquiry within a reasonable time but not later than seventy-

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two hours after the apprehension.

- (2) A child who is in detention in police custody —
- (a) must be —
    - (i) detained separately from adults,
    - (ii) detained with children of the same sex and monitored by a police officer of the same sex,
    - (iii) detained in conditions which will reduce the risk of harm to that child, including the risk of harm caused by other children;
  - (b) must have —
    - (i) adequate food and water,
    - (ii) medical treatment,
    - (iii) reasonable visits by a parent, relative, appropriate adult, an attorney-at-law, social worker, assigned officer, health worker and religious counsellor or another person having a close relationship with the child;
    - (iv) access to reading material,
    - (v) adequate exercise, and
    - (vi) adequate clothing.

**Report of injury sustained by child**

**11.—(1)** If a child in detention in police custody complains of an injury sustained during apprehension or otherwise, whilst in detention —

- (a) the police officer to whom the complaint is made shall report the complaint to the police officer in charge of the police station where the child was apprehended; and
- (b) the police officer in charge of the police station where the child was apprehended, shall immediately inform a parent or an appropriate adult and delegate a police officer to take the child, accompanied by his or her parent or the appropriate adult, to a medical practitioner

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for examination of the child.

(2) A report of a medical practitioner who conducted an examination on the child under subsection (1)(b) must be included in the police file.

**Register of children in detention in police custody**

**12.**—(1) The police officer in charge of a police station shall keep a register in which prescribed details regarding the detention in police custody of all children must be recorded.

(2) A register under subsection (1) may be examined by the persons to be prescribed.

**Release of child into care of parent or appropriate adult before initial inquiry**

**13.**—(1) Subject to section 14, a police officer shall release a child who is in detention in police custody into the care of the parent or an appropriate adult, before the child appears at the initial inquiry unless —

- (a) exceptional circumstances, as may be prescribed, warrant detention;
- (b) the parent of the child or an appropriate adult cannot be located or is not available and all reasonable efforts have been made to locate the parent or appropriate adult; or
- (c) there is a substantial risk that the child may be a danger to any other person or to himself or herself.

(2) Subject to subsection (3), a police officer may, in consultation with the Director of Public Prosecutions, release into the care of a parent or an appropriate adult a child who —

- (a) is accused of an offence under Schedule 1 but has not been released under subsection (1); or
- (b) is in detention in police custody and who is accused of an offence under Schedule 2.

(3) A child may be released under subsection (2) on condition that he or she —

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- (a) appears at a specified place and time for assessment;
- (b) does not interfere with a witness, tamper with evidence or associate with a person or group of specified people;
- (c) resides at a particular address; and
- (d) complies with terms that the Court or Director of Prosecutions' orders.

**Release by Director of Public Prosecutions**

**14.** The Director of Public Prosecutions may authorize the release of a child from detention in police custody into the care of the parent or an appropriate adult on any of the conditions under section 13(3).

**Duty of police officer**

**15.—(1)** A police officer who releases a child from detention in police custody under section 13 or who releases a child on the direction of the Director of Public Prosecutions under section 14, and places the child in the care of a parent or an appropriate adult, shall —

- (a) at the time of release of the child, complete and hand to the child and to the parent or appropriate adult, a written notice in the prescribed form on which must be entered the offence in respect of which the child is being accused, conditions relating to the release of the child and the place, date and time at which the child must appear for the initial inquiry;
- (b) direct the parent or appropriate adult to bring the child or cause the child to be brought to appear at the initial inquiry at a specified place, date and time and to remain in attendance and, if a condition under paragraph (a) is imposed, to ensure that the child complies with the condition; and
- (c) direct the child to appear at the initial inquiry at a specified place, date and time and to remain in attendance and, if a condition under paragraph (a) is imposed, to comply with the condition.

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(2) A parent or appropriate adult who fails to comply with a notice or a direction issued under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year.

**Release of child on recognisance prior to initial inquiry**

**16.**—(1) If a child is taken into police custody with or without a warrant and cannot be brought immediately before a magistrate, the police officer in charge of a police station to which the child is brought shall inquire into the matter and shall, unless —

- (a) the child is accused of an offence under Schedule 3;
- (b) it is necessary in the interest of the child to remove him or her from association with an undesirable person; or
- (c) the police officer has reason to believe that the release of the child would defeat the ends of justice,

release the child on recognisance, with or without sureties, for an amount as will, in the opinion of the police officer, secure the attendance of the child at the initial inquiry related to the charge on the hearing of the charge, being entered into by the child or by his or her parent or an appropriate adult.

(2) A recognisance under subsection (1) may require the attendance at the initial inquiry of the parent or the appropriate adult and the child.

(3) The Commissioner of Police may, after consultation with the Director of Public Prosecutions, issue directives regarding the amounts to be set for recognisance of bail.

(4) The Director of Public Prosecutions may, in consultation with the police officer charged with an investigation with respect to a child under this Act, authorize the release of a child accused of an offence under Schedule 2 on recognisance prior to the appearance of the child at the initial inquiry, subject to reasonable conditions if the release of the child into the care of a parent or an appropriate adult is considered appropriate.

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(5) If a child is released under this section, a probation officer may monitor the child in a manner prescribed.

**Release to place of safety**

17. If a child cannot, for any reason, be released, the child may be detained in a place of safety —

- (a) into the care of a parent or an appropriate adult; or
- (b) on recognisance.

**Child accused of Schedule 3 offence**

18. A police officer shall not release a child accused of an offence under Schedule 3 from detention in police custody.

**Report of non-release**

19. If a child in conflict with the law is not released from detention in police custody before appearing at an initial inquiry, the police officer who apprehended the child shall provide a magistrate with a written report in the prescribed manner giving the reasons for not releasing the child.

**Uncertainty as to age of person**

20. If a police officer is uncertain as to the age of a person suspected of having committed an offence but has reason to believe that the person is a child, the police officer shall treat the person as a child for the purposes of this Part, subject to the ascertainment of the age of the person at the initial inquiry.

**Summons**

21.—(1) A summons issued in respect of a child in conflict with the law under the Criminal Code, Cap. 3.01, the District Courts Act, Cap. 2.02 or any other law must specify the place, date and time for the initial inquiry.

(2) A copy of the summons relating to the child in conflict with the law must be served on the parents of the child or an appropriate adult.

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(3) A police officer shall —

- (a) not later than twenty-four hours after the service of the summons under subsection (1), inform a probation officer of the service of the summons in the prescribed manner;
- (b) as soon as is reasonably possible, but prior to the commencement of the initial inquiry, explain the following to the child —
  - (i) the nature of the allegation against him or her,
  - (ii) the rights of the child, in the prescribed manner, and
  - (iii) the immediate procedures to be followed under this Act or other law.

**Written notice**

**22.**—(1) A police officer may, by a written notice, direct a child in conflict with the law to appear at an initial inquiry at a specified time, specified place and on a specified date and to remain in attendance at the initial inquiry relating to the offence.

(2) If a release is authorized under section 14, the written notice under subsection (1), must be delivered to the child and to the parent or appropriate adult.

(3) A police officer who directs a child under subsection (1) shall —

- (a) direct the parent or an appropriate adult to bring the child or cause the child to be brought to appear at the initial inquiry; and
- (b) complete and hand to the child and the parent or an appropriate adult, a written notice on which is entered the offence in respect of which the initial inquiry will be conducted and the time and place at which the child must appear.

(4) A police officer shall —

- (a) when he or she hands the written notice to a child, the parent or an appropriate adult —



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- (i) inform the child, the parent or appropriate adult of the nature of the allegation against the child,
  - (ii) inform the child, the parent or appropriate of his or her rights in the prescribed manner, and
  - (iii) explain to the child, the parent or appropriate adult the immediate procedures to be followed under this Act; and
- (b) not later than twenty-four hours after handing the written notice to the child, inform a probation officer that he or she has done so.

(5) A child, a parent or an appropriate adult who is directed to appear at an initial inquiry by a police officer under this section and who fails to do so, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

**PART IV  
ASSESSMENT OF CHILD**

**Assessment of child by probation officer**

**23.** A probation officer shall assess a child at a place of assessment or in a place that is conducive to privacy, before the child appears at the initial inquiry relating to that child when he or she is informed by a police officer of —

- (a) the apprehension of the child under section 9(7);
- (b) the service of a summons under section 21(3)(a); or
- (c) the delivery of a written notice under section 22(3)(b).

**Notice of assessment**

**24.—(1)** A probation officer shall within a reasonable time, being not less than forty-eight hours, before the assessment of a child issue a notice in the prescribed form to the parent or an appropriate adult to appear at the assessment.

(2) A notice issued under subsection (1) must be delivered by a police officer on the request of the probation officer in the prescribed

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manner.

(3) A parent or appropriate adult notified under subsection (1) may apply to the probation officer for permission to be absent or excluded from the assessment, and if the probation officer grants the permission, the permission must be in writing.

**Attendance at assessment**

**25.**—(1) Unless permission to be absent or excluded from the assessment is granted under section 24(3), the parent or an appropriate adult shall attend the assessment of the child.

(2) A child shall be present at his or her assessment.

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

- (a) the Director of Public Prosecutions;
- (b) the attorney-at-law representing the child;
- (c) the police officer who apprehended the child, issued the summons or notice or any other police officer designated by the Commissioner of Police; and
- (d) a person whose presence the probation officer believes is necessary or desirable for the assessment or whom the probation officer believes should attend in the best interest of the child.

(4) A probation officer may in the prescribed manner, request a police officer to —

- (a) locate the parent or an appropriate adult; and
- (b) provide transport to secure the attendance of the child, and his or her parent or appropriate adult at the assessment.

(5) A probation officer shall make an effort to locate a parent or an appropriate adult for the purposes of concluding the assessment of a child.

(6) If reasonable efforts to locate a parent or an appropriate adult have failed, the probation officer shall conclude the assessment in the

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absence of the parent or appropriate adult and the probation officer shall record his or her efforts to locate the parent or appropriate adult.

**Powers and duties of probation officer at assessment**

**26.—(1)** A probation officer shall, during an assessment —

- (a) explain the purpose of the assessment to —
  - (i) the child, and
  - (ii) the parent or an appropriate adult;
- (b) inform the child of his or her rights in the prescribed manner;
- (c) explain the procedures to be followed under this Act to —
  - (i) the child, and
  - (ii) the parent or an appropriate adult;
- (d) inquire from the child whether he or she intends to acknowledge responsibility for the offence;
- (e) request a police officer to obtain documentation required for the completion of the assessment of the child;
- (f) consult individually with a person at the assessment;
- (g) contact or consult a person who is not present at the assessment and who may have information relating to an assessment and if the information is obtained, the child must be informed of the information, in a language that the child can understand; or
- (h) encourage participation of the child during the assessment process.

(2) If a child is accused with another child, a probation officer may conduct the assessment of the children simultaneously.

(3) A probation officer shall complete an assessment report at the end of an assessment in the prescribed manner and shall provide

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recommendations with respect to —

- (a) the prospects of diversion;
- (b) the possible release of the child into the care of a parent or an appropriate adult, if the child is in detention; or
- (c) the placement, where applicable, of the child in a place of safety or a place of assessment.

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

(5) A probation officer shall submit the assessment report under subsection (3) to the Director of Public Prosecutions and the attorney-at-law representing the child prior to the commencement of an initial inquiry.

**PART V  
INITIAL INQUIRY**

**Decision to hold initial inquiry**

**27.—(1)** A magistrate shall, after an assessment, hold an initial inquiry in respect of a child in conflict with the law to —

- (a) determine the prospects of diversion before a trial;
- (b) identify a suitable diversion option, where applicable;
- (c) provide an opportunity for the Director of Public Prosecutions to assess whether there are sufficient grounds for the matter to proceed to trial;
- (d) ensure that all available information relevant to the child, his or her circumstances and the offence are considered to decide on diversion and placement of the child;
- (e) ensure that the views of all persons present are considered before a decision is taken concerning the child;
- (f) encourage the participation of the child and his

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or her parent or an appropriate adult in decisions concerning the child; and

- (g) determine the release or placement of the child pending —
  - (i) conclusion of the initial inquiry, or
  - (ii) appearance of the child in Court.

(2) An initial inquiry must be held in a place as a magistrate determines having regard to privacy and confidentiality.

**Attendance at initial inquiry**

**28.—(1)** The following persons must attend an initial inquiry —

- (a) the child in conflict with the law;
- (b) the parent or an appropriate adult;
- (c) the probation officer who conducted the assessment of the child;
- (d) the Director of Public Prosecutions;
- (e) the victim or complainant; and
- (f) any other person as may be considered necessary by a magistrate under section 30(1).

(2) A magistrate may exclude a parent or an appropriate adult from attending the initial inquiry if his or her presence at the initial inquiry is not in the best interest of the child.

(3) If an initial inquiry proceeds in the absence of a probation officer who conducted the assessment of the child, the assessment report of the probation officer must be made available at the initial inquiry unless the assessment is dispensed with under section 30(2).

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

- (a) the attorney-at law representing the child;
- (b) a police officer who apprehended the child, issued the summons or notice or any other police officer designated by the Commissioner of Police; and
- (c) a person as may be considered by a magistrate under

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section 30(1).

**Conduct of initial inquiry**

**29.**—(1) A Magistrate shall conduct an initial inquiry in an informal manner by asking questions, interviewing persons and using other lawful methods to obtain information.

(2) At the commencement of an initial inquiry a Magistrate shall —

- (a) confirm or determine the age of the child;
- (b) explain the purposes of the initial inquiry to the child;
- (c) inform the child of the nature of the allegation against him or her;
- (d) inform the child of his or her rights; and
- (e) explain to the child the immediate procedures to be followed under this Act.

(3) The Director of Public Prosecutions shall ensure that the magistrate has a copy of the assessment report prepared under section 26(3).

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

(5) A child, the attorney-at-law representing the child, the parent, an appropriate adult and the Director of Public Prosecutions shall be given an opportunity to question the probation officer who prepared the assessment report on the child or a person giving evidence at the initial inquiry.

(6) If the child in respect of whom an initial inquiry is being conducted is a co-accused with one or more children, a joint initial inquiry may be held.

(7) If a joint initial inquiry is held under subsection (6), different decisions may be made with respect to each child.

(8) If a child does not acknowledge responsibility for the offence with which he or she is being charged, no further questions

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regarding the offence may be put to the child and the Director of Public Prosecutions or a designated prosecutor may set the matter down for trial in the Court.

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

(10) A magistrate shall keep a record of all proceedings relating to an initial inquiry.

**Powers of a magistrate at an initial inquiry**

**30.—(1)** A magistrate may —

- (a) summon or cause to be summoned a person to be present at an initial inquiry, whose presence is in the best interest of the child or is necessary for the conclusion of the initial inquiry;
- (b) permit the attendance of a person who may be able to contribute to the initial inquiry;
- (c) request further documentation or information which may be necessary or relevant to the initial inquiry;
- (d) after consideration of the information contained in an assessment report, elicit information from a person attending the initial inquiry to supplement or clarify the information in the assessment report;
- (e) take the steps that may be necessary to establish the truth of a statement or the accuracy of a submission; and
- (f) if the conduct of the proceedings of the initial inquiry or an aspect of it is in dispute, rule on the conduct of the initial inquiry in a manner consistent with this Act.

(2) Notwithstanding section 27(1), if a child has not been assessed at the commencement of the initial inquiry, a magistrate may dispense with the assessment if it is in the best interest of the child to do so.

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(3) A magistrate shall ensure that the child, in a language that the child understands, the attorney-at-law representing the child, the parent or an appropriate adult —

- (a) has knowledge of the recommendations in the assessment report prepared by the probation officer; and
- (b) is informed of a diversion option and the aims and content of the diversion option.

(4) A magistrate may request the probation officer to explain, elaborate on or justify a recommendation or statement made in the assessment report and provide additional information.

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

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

**31.**—(1) A magistrate shall release a child who is in detention, into the care of the parent or an appropriate adult if —

- (a) the initial inquiry is not disposed of at the first appearance of the child before the magistrate;
- (b) it is in the interest of the child to do so; and
- (c) it is in the interest of justice to release the child.

(2) In considering whether or not it would be in the interest of justice to release a child into the care of the parent or an appropriate adult, a magistrate shall have regard to the recommendation made by the probation officer and other relevant factors, including —

- (a) the best interest of the child;
- (b) whether the child has a previous conviction;
- (c) the availability of the parent or an appropriate adult;
- (d) the likelihood of the child returning to the initial inquiry for a further appearance;
- (e) the period for which the child is in detention since apprehension;



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- (f) the imposition of a curfew on release;
- (g) the probable period of detention of the child until conclusion of the initial inquiry;
- (h) the risk that the child may be a danger to himself or herself or to another person;
- (i) the state of health of the child;
- (j) the reason for delay in the disposal or conclusion of the initial inquiry and whether such delay was due to fault on the part of the Government or on the part of the child or his or her attorney-at-law;
- (k) whether detention would prejudice the child in the preparation of his or her case;
- (l) the likelihood that if the child is found guilty of the offence, he or she will be detained for a substantial period;
- (m) the fact that the child is under the age of twelve years and conclusively presumed to lack criminal responsibility; and
- (n) the receipt of a written confirmation by the Director of Public Prosecutions that he or she intends to charge the child with an offence under Schedule 3.

(3) A magistrate may, in releasing a child under subsection (1), impose one or more of the following conditions that the child must —

- (a) appear before the magistrate at a specified place and time;
- (b) report periodically to a specified person or place;
- (c) attend a particular school;
- (d) reside at a particular address;
- (e) be placed under the supervision of a specified person;  
or
- (f) not to interfere with a witness, tamper with evidence or associate with a person or group of specified persons.

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(4) If a magistrate releases a child into the care of a parent or an appropriate adult, the magistrate shall direct the parent or the appropriate adult to bring the child or ensure that the child appears at a specified time and place and if a condition is imposed under this section, to ensure that the child complies with the condition.

(5) A parent or an appropriate adult into whose care a child is placed, who fails to comply with a direction issued under subsection (4), commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year.

(6) If a child is released into the care of his or her parent or an appropriate adult and the child fails to comply with a condition imposed under subsection (3), the magistrate may direct that the child be detained in a place of safety.

(7) A magistrate may, after consideration of the facts, release a child on bail or recognizance having regard to the factors under subsection (2) and subject to one or more of the conditions under subsection (3).

**Detention of child by magistrate**

**32.**—(1) A magistrate may direct the detention of a child in a place of safety if —

- (a) the proceedings of the initial inquiry are postponed under section 33 or 34;
- (b) the release of the child into the care of his or her parent or an appropriate adult is not possible; or
- (c) the child is to appear before the Court under section 38(1).

(2) A magistrate shall have regard to the recommendations made by a probation officer when deciding where to place the child under subsection (1).

(3) A child of fourteen years or older who is charged with an offence under Schedule 3 must be detained in a correctional facility if a magistrate believes there is a substantial risk that the child may cause harm to other children in a place of safety.

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(4) If a magistrate issues a direction that a child be detained in a correctional facility, the magistrate shall record the reasons for issuing the direction.

(5) If a magistrate directs the detention of a child under subsection (1)(c) the probation officer shall make periodic visits to the child to ensure that the child is being properly treated or kept under suitable care.

(6) If the probation officer under subsection (5) is satisfied that the child is not being properly treated or kept under suitable care the probation officer shall issue appropriate remedial directions to the person in whose custody the child is detained and submit a report to a magistrate regarding the detention of the child.

(7) Subject to subsections (5) and (6), if a magistrate issues a direction for the detention of a child under subsection (1)(c), or on receipt of the report under subsection (6), the child shall appear before a magistrate at a time, date and place to be determined by the magistrate.

(8) If a child appears before a magistrate under subsection (7), the magistrate shall —

- (a) determine whether or not the detention remains necessary;
- (b) if ordering the further detention of the child, record the reasons for his or her decision;
- (c) consider a reduction of the amount of bail or recognizance, if applicable;
- (d) inquire whether or not the child is being properly treated and kept under suitable conditions; and
- (e) if satisfied that the child is not being properly treated and kept under suitable conditions, inspect and investigate the treatment and conditions and make an appropriate remedial order.

**Postponement of initial inquiry**

**33.—**(1) A magistrate may postpone the proceedings of an initial inquiry for a period not exceeding fourteen days for the purposes of —

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- (a) securing the attendance of a person necessary for the conclusion of the initial inquiry;
- (b) obtaining information necessary for the conclusion of the initial inquiry;
- (c) establishing the attitude of the victim regarding diversion;
- (d) the planning of a diversion option;
- (e) finding alternatives to pre-trial residential detention;
- (f) assessing the child, where an assessment has not previously been undertaken and it is found that an assessment may not be dispensed with;
- (g) noting a confession;
- (h) noting an admission;
- (i) holding of an identity parade;
- (j) securing an attorney-at-law to represent the child;
- (k) a detailed assessment of the child under section 34; or
- (l) other matters which the magistrate considers necessary.

(2) If the proceedings of an initial inquiry are postponed under subsection (1)(g), (h) or (i), a magistrate shall inform the child of his or her right to have his or her parent or an appropriate adult present during the proceedings.

(3) Subject to section 34, the Director of Public Prosecutions shall set the matter down for trial in the Court, if the initial inquiry is not concluded within the period specified under subsection (1).

**Detailed assessment**

**34.—(1)** A detailed assessment must determine if —

- (a) there is a possibility that the child may be a danger to others or to himself or herself;
- (b) the child has a history of repeatedly committing offences or abscondment;
- (c) there is a social welfare history of the child;

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- (d) the child admits that he or she is part of a sexual offender's programme, substance abuse programme, therapeutic treatment programme or other intensive programme; or
- (e) the child is a victim of abuse.

(2) A detailed assessment under subsection (1) must be conducted in the home of the child, unless this is not in the best interests of the child, or is impossible, in which case the assessment may be conducted at a place of safety or a place of assessment.

**Referral of matter to the Director of Human Services**

**35.**—(1) If it appears during proceedings at an initial inquiry that a child is in need of care and protection under the Child (Care, Protection and Adoption) Act and that it is desirable to deal with the child under that Act, a magistrate shall stop the proceedings and transfer the matter to the Director of Human Services to be dealt with in accordance with the Child (Care, Protection and Adoption) Act.

(2) Referral of a matter to the Director of Human Services under subsection (1), shall be considered by a magistrate if a child —

- (a) is assessed on more than one occasion regarding minor offences that were committed to meet the basic need of the child for food and shelter and in the initial inquiry in question it is again alleged that the child has committed the offences;
- (b) is allegedly abusing dependence-producing substances or controlled drugs; or
- (c) does not live at his or her family home or in a child care service and is alleged to have committed a minor offence, the purpose of which was to meet the basic need of the child for food and shelter.

**Decision regarding diversion**

**36.**—(1) A magistrate shall ascertain whether a matter before him or her may be dealt with by diversion after consideration of the following —

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- (a) a recommendation made by the Director of Public Prosecutions;
- (b) an assessment report, unless the report is dispensed with under section 30(2);
- (c) the views of persons present at the initial inquiry and information provided by the persons;
- (d) information requested under section 30(1); and
- (e) the willingness of the child to acknowledge responsibility for the offence.

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

(3) Without prejudice to the diversion options under section 72, a magistrate may, after consultation with the persons present at the initial inquiry, develop an individual diversion option which meets the purposes of and standards applicable to the diversion set out in that section.

(4) If a child fails to comply with a diversion direction, a magistrate shall on being notified of the failure in the prescribed manner, issue a warrant for the apprehension of the child or a written notice to the child to appear before a magistrate.

(5) If a child appears before a magistrate under subsection (4), the Magistrate shall inquire into the reasons for the failure of the child to comply with the diversion direction and unless the Director of Public Prosecutions decides to proceed with the prosecution of the child concerned, the magistrate may, after consideration of the views of a person present at the initial inquiry —

- (a) apply the same option with altered conditions;
- (b) apply any other diversion option; or
- (c) issue an appropriate direction that will assist the child and his or her family to comply with the diversion option initially applied.

(6) If the Director of Public Prosecutions decides to proceed with prosecution under subsection (5), the matter must be set down

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for trial in the Court and section 38 applies.

**Procedure on referral of matter for trial**

**37.**—(1) If diversion has not taken place and the matter has not been transferred to the Director of Human Services under section 35 on the conclusion of the initial inquiry, the Director of Public Prosecutions shall inform a magistrate of the place, date and time when the child must appear for trial in the Court.

(2) A magistrate shall, if the child is not represented by an attorney-at-law, explain to the child and the parent or an appropriate adult, the provisions of Part VI regarding legal representation.

(3) If a child is —

- (a) in detention, a magistrate shall inform the child of the place, date and time of his or her appearance in the Court and shall direct the parent or an appropriate adult to attend the proceedings at the specified time and place;
- (b) not in detention, a magistrate —
  - (i) may alter or extend a condition imposed under section 14(3) or section 31(3), and
  - (ii) shall direct the child and his or her parent or an appropriate adult, to appear in the Court at a specified place, date and time.

**PART VI  
COURT PROCEEDINGS**

*Intention to Prosecute*

**Intention to prosecute**

**38.**—(1) If the Director of Public Prosecutions intends to prosecute a child in conflict with the law, he or she shall issue a certificate in the prescribed form confirming the intention to prosecute.

(2) In issuing a certificate under subsection (1), the Director of Public Prosecutions shall have regard to —

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- (a) the appropriateness of diversion under this Act;
- (b) the educational level, cognitive ability, domestic and environmental circumstances, age and maturity of the child;
- (c) the nature and gravity of the alleged offence;
- (d) the impact of the alleged offence on a victim of the offence;
- (e) an assessment report prepared by a probation officer under section 26(3); and
- (f) an evaluation or a report of a counsellor, medical practitioner or psychologist, if applicable.

(3) If a certificate under subsection (1) is not issued within twenty-eight days after an initial inquiry, the Director of Public Prosecutions is regarded as having declined to institute proceedings to prosecute.

*Legal Representation***Child to be provided with an attorney-at-law**

**39.**—(1) A child must be provided with an attorney-at-law by the State at the conclusion of an initial inquiry if no attorney-at-law was appointed by the parent or an appropriate adult and if —

- (a) it is determined by the Director that the parent of the child or the appropriate adult in charge of the child cannot afford to pay an attorney-at-law;
  - (b) the child is in detention pending plea and trial in the High Court;
  - (c) the proceedings is postponed for plea and trial in the Court and it is likely that a sentence involving a residential requirement may be imposed if the child is found guilty of the offence in question; or
  - (d) the child is over the age of twelve years and under the age of fourteen years and a certificate is issued under section 5(3) in respect of the child.
- (2) The Director of Public Prosecutions shall indicate to the



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Court whether he or she is of the opinion that the matter is a matter under subsection (1)(b) before the child is asked to plead and if so, a plea must not be taken until an attorney-at law is appointed.

**Requirements to be complied with by attorney-at-law**

- 40.** An attorney-at-law representing a child shall —
- (a) allow the child, as far as is reasonably possible, to give independent instructions concerning the case;
  - (b) explain the rights and duties of the child in relation to proceedings under this Act, in a manner appropriate to the age and intellectual development of the child;
  - (c) promote diversion where appropriate, but may not unduly influence the child to acknowledge responsibility; and
  - (d) ensure that the trial is conducted without delay.

*Procedure relating to children*

**Summoning of parent or appropriate adult**

**41.** On the hearing of a charge against, or an application relating to, a person who is believed to be a child, the Court may summon the parent or an appropriate adult responsible for the care of the child brought before the Court, to be present in Court while the charge or application is being determined.

**Conduct of proceedings relating to child in Court**

- 42.—(1)** At the commencement of the proceedings in the Court, the Judge, or magistrate shall in the prescribed manner —
- (a) inform the child of the nature of the allegations against him or her;
  - (b) inform the parent or appropriate adult of the nature of the allegations against the child;
  - (c) inform the child of his or her rights; and
  - (d) explain to the child the procedures to be followed under this Act, the Criminal Code, Cap. 3.01, the District Courts Act, Cap. 2.02 or any other law.

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(2) The proceedings in the Court is, with due regard to the procedural rights of the child, conducted in an informal manner in order to encourage maximum participation by the child and his or her parent or an appropriate adult.

(3) The police officer in charge of the investigation relating to the child, shall request a probation officer or other person to act as an independent observer and the independent observer must be present at the proceedings if —

- (a) a child refuses to have his or her parent or an appropriate adult present at the proceedings under subsections (1) and (2); or
- (b) a parent or an appropriate adult is not present or cannot be found and an attorney-at-law is not available.

(4) A judge or magistrate shall protect a child from hostile cross examination where the cross examination is prejudicial to the well-being of the child or to the fairness of the proceedings.

**Admissibility of evidence**

**43.**—(1) Evidence obtained as a result of a confession, or an admission that is admissible under the Criminal Code, Cap. 3.01, the District Courts Act, Cap. 2.02 or any other law is admissible as evidence in the Court if the parent of the child or an appropriate adult or the attorney-at-law representing the child was present when the confession or the admission was made.

(2) Subsection (1) applies if an identity parade has taken place.

**Treatment of child at Court**

**44.**—(1) A child shall not wear leg irons when appearing in a Court, and handcuffs may only be used if there are exceptional circumstances that warrant the use of handcuffs.

(2) A child held in custody at a police station or at a Court shall be kept separate from an adult and must be treated in a manner and kept in conditions which takes into account the age of the child.

(3) A female child must be kept separate from a male child when in the custody of a Court.

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(4) If a child is transported to and from a Court he or she must, be transported separate from adults.

(5) The Commissioner of Police shall issue directives for the treatment of a child while in detention in a Court.

**Separation and joinder of trials involving child and adult**

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

(2) An application for the joinder of the trials must be made to the Court.

(3) If the Court grants an application for joinder of trials, the matter must be transferred to the Court in which the adult is being tried and the child must appear after notice is given to the child in the prescribed manner.

(4) The Court in which the adult is being tried, shall give the child the benefits conferred on the child under this Act.

**Time limit relating to conclusion of trial**

**46.**—(1) The Court shall conclude the trial of an accused child as speedily as possible and shall ensure that adjournments are limited in number and duration.

(2) Sections 31 and 34, apply, with the necessary modifications required by the context, to the Court if the child appearing in the Court for the first time is in detention.

(3) If a child remains in detention in a place of safety, a secure residential facility or a correctional facility and the trial of the child is not concluded within eighteen months from the date on which the child has pleaded to the charge, the child shall be released from detention, unless he or she is charged with an offence listed under Schedule 3 item 1, 2 or 3.

**Order for diversion**

**47.**—(1) If before the conclusion of a case for the prosecution it comes to the attention of the Court that a child acknowledges or intends

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to acknowledge responsibility for an alleged offence, the Court may make an order for diversion in respect of the child if the Director of Public Prosecutions indicates that the matter may be settled by diversion.

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

(3) The Court may, on receipt of a report from an assigned officer that a child has successfully complied with a diversion order, acquit the child of all charges.

(4) An acquittal may be made in the absence of the child.

**Privacy and confidentiality for child in Court**

**48.**—(1) A person shall not be present at a sitting of a Court in a matter relating to a child unless the presence of the person is necessary in connection with the proceedings of the court or unless the judge or magistrate has granted the person permission to be present.

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

(3) Subject to subsection (4), a probation officer, judge or magistrate, shall not preclude —

- (a) access to information pertaining to a child if the access would be in the best interest, safety or welfare of the child;
- (b) the publication, in the form of a law report, of —
  - (i) information for the purpose of reporting a question of law relating to the proceedings, or
  - (ii) a decision or ruling given by the Court on the question under subparagraph (i); or
- (c) the publication, in the form of a report of a professional or technical nature, of research results and statistical data pertaining to a child if the publication would be in the best interest, safety or welfare of the child or children in general.

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- (4) A report under subsection (3)(b) and (c) must not mention —
- (a) the name of the child charged or of the person against whom or in connection with whom the offence in question is alleged to have been committed or of a witness at the proceedings; and
  - (b) the place where the offence was alleged to have been committed.
- (5) Subject to subsection (6), in relation to proceedings in a Court —
- (a) a newspaper report or radio or television broadcast or a report on the internet, in the social media or by other electronic means of the proceedings shall not reveal the name, address or school, or include particulars calculated to lead to the identification of a child as being the person by or against or in respect of whom the proceedings are taken, or as being a witness in the proceedings;
  - (b) a picture must not be published in a manner as being, or including a picture of, a child concerned in the proceedings.
- (6) The Court may, in a case, if satisfied that it is in the interests of justice or the public to do so, by order dispense with the requirements of this section to the extent as may be specified in the order.
- (7) A person who publishes in a newspaper or broadcasts by radio, television, internet, social media or other electronic means any matter or information or reveals the identity of any child, witness or other person in contravention of this section, commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six years or to both.

*Sentencing***Pre-sentence report**

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

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(2) The probation officer or other person shall complete the report under subsection (1) as soon as possible, but no later than one calendar month following the date on which the report was requested.

(3) The Court may dispense with a pre-sentence report if —

- (a) a child is convicted for an offence under Schedule 1;  
or
- (b) requiring the report would cause undue delay in the conclusion of the case to prejudice the child,

but the Court shall not impose a sentence with a residential requirement unless a pre-sentence report is submitted before the Court.

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

(5) If the Court imposes a sentence involving detention in a secure residential facility, the Court shall certify on the warrant of detention that a pre-sentence report is submitted before the Court prior to the imposition of the sentence.

**Prohibition on sentence**

**50.**—(1) A sentence of life imprisonment, capital punishment or any form of corporal punishment shall not be imposed on a child.

(2) A Court shall not pronounce or record a sentence of capital punishment against a child.

(3) A child who is sentenced to attend a secure residential facility shall not be detained in a correctional facility or in police custody pending designation of the place where the sentence is to be served.

**Imposition of sentence**

**51.**—(1) The Court shall, after a finding of guilt in relation to a child, impose a sentence on the child in accordance with this Part to —

- (a) encourage the child to understand the implications of and be accountable for the harm caused;
- (b) promote an individualized response that is

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appropriate to the circumstances of the child and proportionate to the circumstances surrounding the offence;

- (c) promote the reintegration of the child into the family and community; and
- (d) ensure that necessary supervision, guidance, treatment or service which form part of the sentence, assist the child in the process of reintegration and rehabilitation.

(2) Without prejudice to subsection (1), the Court may impose a sentence —

- (a) involving a compulsory residential requirement;
- (b) referring a child to a secure residential facility or correctional facility for an initial period and thereafter a community based sentence;
- (c) referring a child to a family group conference;
- (d) involving correctional supervision.

**Sentence involving a compulsory residential requirement**

**52.**—(1) A sentence involving a compulsory residential requirement shall not be imposed on a child unless the Court is satisfied that the sentence is justified by —

- (a) the seriousness of the offence, the protection of the community and the severity of the impact of the offence on the victim; or
- (b) the previous failure of the child to respond to non-residential alternatives.

(2) If the Court imposes a sentence involving a compulsory residential requirement on a child it shall note the reasons for the sentence on the record and explain the reasons to the child in a language which the child can understand.

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

- (a) programme with a periodic residence requirement where

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the duration of the programme does not exceed twelve months, and the portion of the residence requirement does not exceed twenty-one consecutive nights, with a maximum of sixty nights for the duration of the programme;

- (b) secure residential facility under section 53; or
- (c) correctional facility under section 54.

**Referral to secure residential facility**

**53.**—(1) Subject to subsection (2), a sentence to a secure residential facility shall not exceed two years.

(2) A sentence to a secure residential facility may be imposed for a period exceeding two years if the child is under the age of fourteen years and he or she would have been sentenced to imprisonment due to the seriousness of the offence were it not for section 54(1)(a).

(3) Subject to subsection (4), a child under subsection (2) may not be required to reside in a secure residential facility beyond the age of eighteen years.

(4) Notwithstanding subsection (3), a child may request permission, in the prescribed form, from the head of the secure residential facility to continue to reside at the secure residential facility for the purposes of completing his or her education in the following circumstances —

- (a) on completion of a sentence at a secure residential facility; or
- (b) in the case of a child under subsection (2), on attainment of the age of eighteen years.

**Referral to a correctional facility**

**54.**—(1) A Court shall not impose a sentence to a correctional facility on a child —

- (a) unless the child is over the age of fourteen years at the time of commission of the offence; and
- (b) unless substantial and compelling reasons exist for imposing a sentence to a correctional facility, which may include —



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- (i) conviction of an offence under Schedule 3, or
  - (ii) a previous failure to respond to an alternative sentence, including a sentence with a residential element; or
- (c) in respect of an offence under Schedule 1; or
- (d) as an alternative to another sentence specified in this Act.

(2) If a sentence to a correctional facility is imposed on a child under subsection (1) that sentence shall be for a period not exceeding three years.

**Community based sentence**

**55.** —(1) A community based sentence includes —

- (a) a level two diversion option under paragraphs (a), (b), (c), (d) or (e) of Schedule 4;
- (b) placement under a supervision and guidance order in the prescribed form for a period not exceeding three years;
- (c) in cases that warrant the specialized intervention, referral to counselling or therapy in conjunction with an option under paragraph (a) for a period of time as the Court considers necessary;
- (d) if the child is over the compulsory school age, and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose, for a period not exceeding twelve months and for no more than thirty-five hours per week;
- (e) performance of community service work under the supervision or control of a specified person or institution identified by the Court for a maximum period of two hundred and fifty hours and which must be completed in twelve months;

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- (f) committing the child to the care of a fit person, whether a relative or not, who consents to undertake the care of the child;
- (g) ordering the parent of the child to enter into a recognisance for the good behaviour of the child; and
- (h) any other sentence, subject to section 54, which is appropriate to the circumstances of the child and which, if it includes a period of time, shall not exceed twelve months.

(2) The consent of a person to undertake the care of a child under an order made under subsection (1)(f) shall be provided in a manner the Court determines sufficient.

(3) Before a child from the age of twelve years to fourteen years is sentenced under subsection (1)(e), the Court shall consider the age, development and compulsory school attendance of the child.

**Supervision of a child under a supervision and guidance order**

**56.**—(1) If a child is placed under the supervision of a person under a supervision and guidance order under section 55(1) (b), that person —

- (a) shall, while the order remains in force, visit, advise and support the child and, when necessary, endeavour to find the child suitable employment; and
- (b) may, if it appears necessary in the child's best interest to do so, at any time while the order remains in force, bring the child before a Court and that Court may, if it thinks it desirable in the child's best interest to do so, commit the child to the care of a fit person, whether a relative or not, who is willing to undertake the care of the child.

(2) If a child is bound by a recognisance or order under the Criminal Code, Cap. 3.01 or under this Act, the attainment by that child of the age of eighteen years does not deprive the Court of jurisdiction to —

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- (a) enforce his or her attendance and deal with him or her in any respect for a failure to observe a condition of his or her recognizance, or order; or
- (b) vary or discharge a recognizance or order.

**Summons to inquire of fit person**

**57.**—(1) If a child is convicted of an offence and the Court is satisfied that it is in the best interest and welfare of the child to make an order committing the child to the care of a fit person and ascertains on inquiry that the person is available and consents to undertake the care of the child, the Court shall summon the fit person before it for the purpose of examining him or her as to his or her fitness to be appointed.

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

**Family group conference**

**58.**—(1) If the Court makes a determination of guilt with respect to a child, the Court may refer the matter to a family group conference for a written recommendation.

(2) If a matter is referred to a family group conference under subsection (1), an assigned officer shall be appointed by the Court to conduct the family group conference.

(3) Within fourteen days, but not later than twenty-one days after the appointment of an assigned officer, the assigned officer shall convene the family group conference by setting the time and place for the conference, and taking the necessary steps to ensure that persons who are to attend the conference are adequately notified of the time and place of the conference.

- (4) The following persons shall attend a family group conference —
- (a) the child and his or her parent or an appropriate adult;
  - (b) a person reasonably requested by the child and

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considered appropriate by the Court;

- (c) the assigned officer;
- (d) a police officer who apprehended the child, issued a summons or notice or another police officer designated by the Commissioner of Police;
- (e) the victim of the alleged offence which the child committed and if the victim is under the age of eighteen years, his or her parent or an appropriate adult;
- (f) the attorney-at-law representing the child, if applicable;
- (g) a member of the community in which the child resides; and
- (h) a person authorized by the assigned officer to attend the family group conference.

(5) The persons in a family group conference shall decide the procedure to be followed and may agree to a plan in respect of the child under subsection (6) as they consider necessary.

(6) A plan under subsection (5) —

- (a) may include —
  - (i) the application of a diversion option, or
  - (ii) another plan appropriate to the child, his or her family and the circumstances, including a plan for restorative justice; and
- (b) must —
  - (i) specify the objectives for the child and the period within which the objectives are to be achieved,
  - (ii) contain the details of the services and the assistance to be provided for the child and for a parent or an appropriate adult,
  - (iii) specify the persons or organizations to provide the services,

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- (iv) state the responsibility of the child and the parents or an appropriate adult, and
- (v) include other matters relating to the education, recreation and welfare of the child as are relevant.

(7) An assigned officer shall record the details of and reasons for any plan agreed to at the family group conference and shall furnish a copy of the record to the Court.

(8) If a child fails to comply with a condition of the plan agreed to in a family group conference, the assigned officer shall notify the Court in writing of the failure.

(9) The Court on being notified under subsection (8) shall issue a warrant for the apprehension of the child or a written notice to the child to appear before the Court.

(10) If a person of a family group conference fails to agree on a plan, the assigned officer shall end the family group conference and refer the matter to the Court for consideration of another diversion option.

(11) The proceedings of a family group conference shall be confidential and a statement made by a person in the family group conference may not be used as evidence in subsequent court proceedings.

**Decision after family group conference**

**59.**—(1) On receipt of the written recommendation from a family group conference, the Court shall —

- (a) confirm the recommendation by making it an order of the Court; or
- (b) substitute or amend the recommendation and make an appropriate order.

(2) If the Court does not agree to the terms of the plan made at a family group conference, and imposes a sentence that is different in a material respect from that agreed to or decided on at the family group conference, the Court shall note the reasons for deviating from the plan on the record of the proceedings.

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(3) If a child who is sentenced in accordance with an order arising from a family group conference fails to comply with that order, an assigned officer shall notify the Court of the failure as soon as possible and the Court shall issue a warrant for the apprehension of the child, and if the child appears before the Court under the warrant, the Court shall impose an appropriate sentence on the child.

**Sentence involving correctional supervision**

**60.**—(1) The Court may impose a sentence of correctional supervision for a period not exceeding three years on a child over the age of fourteen years.

(2) The whole or part of a sentence imposed under subsection (1) may be postponed or suspended, with or without conditions under section 61(3).

**Postponement or suspension of imposition of sentence**

**61.**—(1) The imposition of a sentence on a child may be postponed, with or without one or more of the conditions under subsection (3), for a period not exceeding three years.

(2) The whole or a part of a sentence imposed on a child may be suspended, with or without one or more of the conditions under subsection (3), for a period not exceeding five years.

(3) The conditions under subsections (1) and (2) may be a condition appropriate to the circumstances of the child and which promotes the reintegration of the child into his or her community or society and may include —

- (a) restitution, compensation or symbolic compensation;
- (b) an apology;
- (c) the obligation not to commit a further offence of a similar nature;
- (d) good behaviour;
- (e) regular school attendance for a specified period;
- (f) attendance at a specified time, date and place of a family group conference;
- (g) placement under the supervision of a specified person;

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- (h) a requirement that the child shall appear before the Court on a date or dates to be determined by the Court for a periodic progress report; and
- (i) referral to a level one diversion option under Schedule 4(d), (e), (f), (g), (h), (i), (j) or (k).

(4) If the Court has postponed the passing of a sentence under subsection (1) on one or more of the conditions under subsection (3), the Court may request the person under subsection (3)(g) to submit regular reports indicating the compliance of the child with the conditions imposed under this section.

(5) Notwithstanding section 78, the conviction of a child in respect of whom imposition of a sentence is postponed shall be expunged from any record if the child has met all the conditions imposed or at the expiration of the period in question.

**Failure to comply with condition of sentence**

**62.**—(1) If a child fails to comply with a condition of a sentence imposed on him or her, the child may, in the prescribed manner, be brought before the Court for reconsideration of the original sentence which may include a sentence of imprisonment.

(2) If the Court imposes a sentence of imprisonment under subsection (1), the Court shall announce the term of imprisonment in open Court and the coming into effect of the term of imprisonment shall be antedated by the number of days that the child has spent in a correctional facility prior to the sentence being announced in the Court.

**Penalty in lieu of fine or imprisonment**

**63.** The Court convicting a child of an offence for which a fine or imprisonment is stated by law as the penalty, may impose any one of the following penalties in place of that fine or imprisonment —

- (a) symbolic compensation to a specified person or institution;
- (b) payment of compensation not exceeding five thousand dollars to a specified person or institution if the child

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- or his or her family is able to make that payment;
- (c) an obligation on the child to provide a service or benefit or to pay compensation to a specified organisation identified by the child or by the Court, if there is no identifiable person to whom restitution or compensation could be made; or
  - (d) another sentence under this Act, except imprisonment.

**Notice to parent or appropriate adult**

**64.**—(1) If it appears to the Court that finds a child guilty of an offence relating to property or against the person of another, on evidence admitted or submissions made in the case against the child —

- (a) that wilful failure on the part of a parent or an appropriate adult to exercise proper care of, or supervision over, the child was likely to have substantially contributed to the commission of the offence; and
- (b) that compensation may be paid to any person for —
  - (i) loss caused to the person's property whether the loss was an element of the offence charged or happened in the course of the commission of the offence, or
  - (ii) injury suffered by the person, whether as the victim of the offence or otherwise, because of the commission of the offence,

the Court, on its own initiative or on application by the Director of Public Prosecutions, may decide to call on the parent or an appropriate adult to show cause, as directed by the Court, that compensation should not be paid by the parent or appropriate adult.

(2) If the parent or an appropriate adult is present in Court when the Court decides to call on the parent or an appropriate adult to show cause, the Court may call on the parent to show cause by announcing its decision in Court.

(3) The Court in all cases, instead of acting under subsection (2), may cause the Registrar of the High Court to give written notice



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to the parent or an appropriate adult to show cause, as directed by the notice, why the parent or an appropriate adult should not pay the compensation.

(4) If the Court calls on the parent or an appropriate adult under subsection (2) or the Registrar of the High Court issues a notice under subsection (3) —

- (a) the Court shall give its reasons for so doing in writing; and
- (b) a copy of the reasons for so doing must be given, in accordance with the direction of the Court, if any, to the parent or an appropriate adult within a reasonable time before the proceedings to show cause.

**Proceedings to show cause**

**65.**—(1) At the proceedings to show cause for the purposes of section 64 (1) —

- (a) evidence and submissions in the case against the child are to be treated as evidence and submissions in the proceedings to show cause;
  - (b) further evidence may be given and submissions made;
  - (c) the parent or appropriate adult may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and
  - (d) the parent or an appropriate adult may require any fact stated in submissions mentioned in paragraph (a) to be proved.
- (2) Subject to subsection (1) —
- (a) the determination of the issues at the proceedings to show cause shall be by way of fresh hearing on the merits; and
  - (b) the Court shall not be bound by a determination made by it under section 64.

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(3) If the parent or appropriate adult was called on to show cause on the prosecution's application, the prosecution shall be a party to the proceedings to show cause.

(4) If the parent or an appropriate adult was called on to show cause on the Court's own initiative the Director of Public Prosecutions, may at the proceedings to show cause —

(a) appear and give the Court the assistance it may require;  
or

(b) intervene as a party with the permission of the Court.

(5) If on consideration of the evidence and submissions under subsection (1)(a) and (b), a Court is satisfied beyond reasonable doubt of the matters under section 64(1), the Court may make an order requiring the parent to pay compensation.

(6) An order made under subsection (5) must direct that the amount is paid —

(a) by a time specified in the order or by instalments specified in the order; and

(b) to the Registrar of the High Court.

(7) In determining the amount to be paid by a parent by way of compensation, the Court shall have regard to the capacity of the parent to pay the amount, which shall include an assessment of the effect any order would have on the capacity of the parent to provide for his or her child.

(8) The Court shall proceed under this section in the absence of the parent if the Court is satisfied that the parent is given notice of the proceedings to show cause under section 65.

*General***Power to proceed with case in absence of child**

**66.** If in proceedings in relation to an offence, the Court is satisfied that the attendance before the Court 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.

*Child Justice Act***Extension of power to take depositions**

**67.**— (1) Subject to subsection (2), if the Court is satisfied by the evidence of a medical practitioner that the attendance before the Court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to his or her life or health, any deposition of the child taken under this Part shall be admitted in evidence either for or against the accused child without further proof if it is signed by the Judge before whom it was taken.

(2) The deposition taken under subsection (1) is not admissible in evidence against the accused person unless it is proven that —

- (a) reasonable notice of the intention to take the deposition is given to him or her; or
- (b) the deposition was taken in the presence of the accused person; and
- (c) his or her attorney-at-law had the opportunity to cross-examine the child making the deposition.

**Determination of age**

**68.**—(1) If a person, whether charged with an offence or not, is brought before a Court otherwise than for the purpose of giving evidence, and it appears to the Court that he or she is a child, the Court shall make due enquiry as to the age of that person, and for that purpose shall take the evidence as may be forthcoming at the hearing of the case.

(2) If in a charge or indictment for an offence it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age, and he or she 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 to have attained the specified age he or she shall for the purposes of this Act be presumed at that date to have been a child or to have been under, or to have attained, that age, unless the contrary is proved.

(3) An order or judgment of the Court is not invalidated by subsequent proof that the age of a person has not been correctly stated

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to the court, and the age presumed or declared by the court to be the age of the person brought before it shall, for the purposes of this Act be the true age of the person brought before the court and if the person has attained the age of eighteen years that person shall for the purposes of this Act be considered not to be a child.

**Order relating to parent or appropriate adult**

**69.**—(1) The Court may make an order in relation to one or both of the parents or in relation to an appropriate adult of a child who is in conflict with the law.

(2) The Court order, under subsection (1), may require the parents or appropriate adult to —

- (a) attend counselling;
- (b) attend parenting classes;
- (c) comply with a treatment plan;
- (d) take an action as may be necessary to support a probation order or treatment plan.

(3) A parent who contravenes a Court order, made under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year.

(4) In making an order, under this section, the Court shall take into consideration the recommendations of a magistrate.

(5) When making a recommendation to the Court, under this section, a magistrate shall take into account —

- (a) the recommendations of the person who provided the counselling or parenting classes;
- (b) the effect on other children of the family;
- (c) the terms of employment of the parents or appropriate adult; and
- (d) other circumstances or conditions relevant to the particular case.

*Child Justice Act***Appeal**

**70.** An appeal may be made from a decision or order of the Court and the procedure to be followed on the bringing and hearing of the appeal shall be in accordance with the District Courts Act, Cap. 2.02, the Criminal Code, Cap. 3.01 or any other law.

**PART VII****DIVERSION****Diversion**

**71.—(1)** A probation officer, the Director of Public Prosecutions or Court may consider diversion to —

- (a) encourage a child to be accountable for the harm which he or she has caused to another person;
- (b) meet the particular needs of a child;
- (c) promote the reintegration of a child into the family and the community;
- (d) provide an opportunity to persons affected by the harm caused by a child to express views on the impact of the harm;
- (e) encourage the rendering to the victim of some symbolic benefit or the delivery of some object as compensation for the harm caused by a child;
- (f) promote the reconciliation between a child and the person or community affected by the harm caused by the child;
- (g) prevent stigmatization of a child and other adverse consequences flowing from being subject to the criminal justice system; and
- (h) prevent a child from having a criminal record.

**(2)** Notwithstanding subsection (1), a child shall be considered for diversion if —

- (a) the child and his or her parent or an appropriate adult, consent to the diversion and the diversion option;

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- (b) the child understands his or her right to remain silent and has not been unduly influenced to acknowledge responsibility for an alleged act or omission; and
- (c) there is sufficient evidence to prosecute the child, or
- (d) the penalty for the offence with which the child is charged does not exceed a term of imprisonment of ten years.

**Levels of diversion options**

**72.**—(1) A diversion may be a level one diversion option, level two diversion option or level three diversion option as set out in Schedule 4.

(2) In selecting the level that is appropriate for a child, a probation officer, the Director of Public Prosecutions or the Court shall consider —

- (a) the background of the child;
- (b) the educational level, cognitive ability and the environmental circumstances of the child;
- (c) the proportionality of the option recommended or selected to the circumstances of the child;
- (d) the nature of the offence and the interests of the community or society; and
- (e) the age and developmental needs of the child.

(3) A level three diversion option applies to a child over the age of fourteen years in cases where the law under which the offence is committed imposes a sentence of detention for a period not exceeding six months.

(4) The offences to which a level one diversion option, level two diversion option or level three diversion option apply are set out in Schedule 5 and a diversion option applies to offences that are similar to those under Schedule 5.

(5) A child shall not be excluded from a diversion option if his or her parent is unable to pay any fee required for the child's participation in the diversion option.

*Child Justice Act***Development of diversion options**

**73.**—(1) The Minister, after consultation with the Family Court and the Director, may develop other suitable diversion option as contemplated in this Part.

(2) A diversion option presented to the Minister by a government department, an agency or a non-governmental organization, may be approved by the Minister for the purposes of this Act, in the prescribed manner, if it —

- (a) promotes the dignity and well-being of the child, and the development of his or her sense of self worth and ability to contribute to his or her community and society;
- (b) is not exploitative, harmful or hazardous to the physical or mental health of the child;
- (c) is appropriate to the age and maturity of the child;
- (d) does not interfere with the education or schooling of the child;
- (e) has a predetermined content and duration; and
- (f) involves a service to children on a regular basis.

**Designation of assigned officer**

**74.**—(1) If a diversion option is selected by a Court, the the Court shall designate an assigned officer or other person to monitor the compliance of the child with the diversion option.

(2) If a child fails to comply with a condition of the diversion option, the assigned officer or other person shall notify the Court of that failure.

**Community service work as diversion**

**75.** A child may be required to perform community service work as an element of diversion, with due consideration to the age and development of the child.

*Child Justice Act***Register**

**76.** The Director shall keep a register in the prescribed manner of children who have been subjected to diversion.

**PART VIII****MISCELLANEOUS****Obstruction of assigned officer**

**77.—** (1) A person shall not hinder or obstruct an assigned officer in the performance of his or her functions under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

**Expungement of record**

**78.—**(1) A record of a sentence imposed on a child convicted of an offence under Schedule 3 must not be expunged.

(2) In respect of offences other than the offences under Schedule 3, a judge or magistrate shall make an order to expunge the conviction and sentence of the child and shall note the reasons for the decision as to whether the record may be expunged or not where the judge or magistrate imposes the sentence after consideration of a relevant factor, including —

- (a) the nature and circumstances of the offence; and
- (b) the personal circumstances of the child.

(3) If the judge or magistrate makes a decision regarding the expungement of a record of a conviction and sentence under this section, he or she shall explain the decision and give his or her reasons for the decision, including any conditions relating to the expungement of the record, to the child.

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



*Child Justice Act***Regulations**

**79.**—(1) The Minister may make Regulations for giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Minister may make Regulations —

- (a) regarding a matter which is required by this Act to be prescribed;
- (b) for the procedure to be put in place to monitor and assess the proper application of and compliance with this Act.

**Amendment of Schedules**

**80.** The Minister may, by Order subject to affirmative resolution of Parliament, amend Schedule 1, Schedule 2, Schedule 3, Schedule 4 or Schedule 5.

**Repeal and savings**

**81.**—(1) The Children and Young Persons Act, Cap. 3.09 is repealed.

(2) Notwithstanding the repeal of the Children and Young Persons Act, the rules, orders, and regulations made under that Act continues in force and unless replaced by Rules, Orders and Regulations made under this Act.

(3) Section 27 of the Criminal Code, Cap. 3.01 is repealed.

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**SCHEDULE 1**

(Sections 9(2), 13(1) and (2)(a),  
49(3)(a) and 54(1)(c))

**OFFENCES FOR WHICH CHILD MAY NOT BE APPREHENDED  
AND BE RELEASED**

1. Assault where grievous bodily harm has not been inflicted.
2. Malicious damage to property where damage does not exceed five thousand dollars.
3. Trespass.
4. An offence under a law in Saint Lucia relating to the possession of a controlled drug (where the quantity involved does not exceed five thousand dollars.
5. Theft, where the value of the property does not exceed five thousand dollars.
6. A statutory offence where the maximum penalty determined by the statute does not exceed five thousand dollars.
7. A conspiracy, incitement or attempt to commit any offence under this Schedule.

*Child Justice Act***SCHEDULE 2**

(Sections 13(2)(b) and 16(4))

**OFFENCES FOR WHICH A CHILD MAY BE RELEASED FROM  
POLICE CUSTODY**

1. Assault, involving the infliction of grievous bodily harm.
2. Arson.
3. Robbery, other than robbery with aggravating circumstances, if the amount involved does not exceed one hundred thousand dollars.
4. Theft, where the amount involved does not exceed one hundred thousand dollars.
5. An offence under a law relating to the possession of a controlled drug where the quantity involved does not exceed one hundred thousand dollars.
6. Forgery or fraud, where the amount concerned does not exceed one hundred thousand dollars.
7. A statutory offence where the penalty concerned does not exceed one hundred thousand dollars.
8. A conspiracy, incitement or attempt to commit an offence under this Schedule.

*Child Justice Act***SCHEDULE 3**

(Sections 16(1)(a), 18, 31(2)(n), 32(3), 46(3),  
54(1)(b)(i), 78(1) and (2))

**OFFENCES FOR WHICH A CHILD MAY NOT BE RELEASED  
FROM POLICE CUSTODY**

1. Murder, child destruction, infanticide.
2. Manslaughter
3. Rape.
4. Treason
5. Burglary
6. Robbery —
  - (a) where there are aggravating circumstances or violence;
  - (b) involving the taking of a motor vehicle.
7. Indecent assault involving the infliction of grievous bodily harm.
8. Indecent assault on a person under the age of eighteen years.
9. Any offence under the Drugs (Prevention of Misuse) Act, Cap. 3.02 if —
  - (a) the value of the controlled drugs in question is more than one hundred thousand dollars ; or
  - (b) the value of the controlled drugs in question is more than one hundred thousand dollars and the offence was committed by a person, group of persons, acting in the execution or furtherance of a common purpose or conspiracy.
10. Any conspiracy or incitement to commit an offence referred to under this Schedule or an attempt to commit any of the offences under Item 1, 2, or 3 of this Schedule.
11. Offences under the Criminal Code, Cap. 3.01 not listed in Schedule I and Schedule II.

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11. Resisting arrest, obstruction, assault on police under the Police Act, Cap. 14.01.
12. Offences under the Motor Vehicles and Road Traffic Act, Cap. 8.01.
13. Summary offences carrying a penalty of five years or under.

*Child Justice Act***SCHEDULE 4**

(Sections 55(1)(a), 61(3)(i) and 72(1))

**LEVELS OF DIVERSION OPTIONS****PART 1**

Level one diversion option includes—

- (a) an oral or written apology to a specified person or institution;
- (b) a formal caution in the prescribed form with or without conditions;
- (c) placement under a supervision and guidance order in the prescribed form for a period not exceeding six months;
- (d) placement under a reporting order in the prescribed form;
- (e) the issue of a compulsory school attendance order in the prescribed form for a period not exceeding six months;
- (f) the issue of a positive peer association order requiring a child to associate with a person whom the assigned officer has reason to believe can contribute to the positive behaviour of the child, in the prescribed manner in respect of a specified person in a specified place for a period not exceeding six months;
- (g) the issue of a family time order, requiring a child to spend a specified number of hours with his or her family, in the prescribed form for a period not exceeding six months;
- (h) the issue of a good behaviour order in the prescribed form;
- (i) the issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place in the prescribed form;
- (j) referral to counselling or therapy for a period not

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- exceeding six months;
- (k) compulsory attendance at a specified place for a specified vocational or educational purpose for a period not exceeding five hours each week, for a maximum of six months;
  - (l) symbolic compensation to a specified person or an institution; and
  - (m) restitution of a specified object to a specified victim of an alleged offence where the object concerned may be returned or restored.

**PART 2**

Level two diversion option includes —

- (a) the options under level one except that the maximum periods under that level shall for the purposes of this subsection be nine months;
- (b) compulsory attendance at a place approved by a Magistrate or the Court for a specified vocational or educational purpose for a period not exceeding eight hours each week, for a maximum of nine months;
- (c) performance of community service work under the supervision or control of an organisation or institution, or a specified person or group identified by an assigned officer effecting the assessment, for a maximum period of fifty hours, and to be completed within a maximum period of nine months;
- (d) provision of some service or benefit to a specified victim in an amount which the family of the child is able to afford;
- (e) where there is no identifiable person to whom restitution or compensation may be made, provision of some service or benefit or payment of compensation to an organization, charity or welfare organization for the benefit of the community.

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Level three diversion option includes —

- (a) referral to a programme which does not exceed twelve months and which has a residential element that must not exceed thirty-five days in total and twenty-one consecutive days during the operation of the programme;
- (b) performance of some service without remuneration for the benefit of the community under the supervision and control of an organisation or institution, or a specified group of persons, identified by an assigned officer and for a period of two hundred and fifty hours which shall be completed within twelve months and no more than thirty-five hours per week;
- (c) where the child is not attending formal schooling, compulsory attendance at a specified place for a specified vocational or educational purpose for a period not exceeding twelve months and no more than thirty-five hours per week; and
- (d) referral to counselling or therapeutic intervention in conjunction with any of the options listed in respect of this level.



*Child Justice Act***SCHEDULE 5**

(Section 72(4))

**OFFENCES FOR WHICH DIVERSION OPTIONS APPLY****PART 1****Level 1 Diversion Option - Offences (1<sup>st</sup> Time Offender)**

1. Truancy
2. Run-away
3. Theft
4. Threat of harm
5. Causing harm or wound
6. Trespass
7. Stealing (summary offence)
8. Praedial larceny

**PART 2****Level 2 Diversion Option - Offences**

1. Making use of threatening, violent or obscene language
2. Riotous, indecent, disorderly or insulting behaviour in any public place, Court, police station or place of entertainment
3. Causing grievous harm
4. Threatening injury to property
5. Beyond care and control
6. Assault
7. Truancy
8. Trespass
9. Theft
10. Dishonestly receiving

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11. Unlawful possession of goods

**PART 3**

**Level 3 Diversion Option - Offences**

1. Probation violation
2. Curfew violation
3. Unruly or incorrigible behaviour
4. Unlawful possession with intent
5. Theft
6. Assault (summary offence)
7. Aggravated assault
8. Unlawfully carrying a weapon
9. Resisting arrest, obstruction, assault on police
10. Defilement of a female between thirteen and sixteen years of age
11. Housebreaking
12. Possession of instrument for burglary

Passed in the House Assembly this                      day of                      , 2018.

*Speaker of the House Assembly*

Passed in the Senate this                      day of                      , 2018.

*President of the Senate.*