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GRENADA

ACT NO. 24 OF 2012

I assent,

CARLYLE ARNOLD GLEAN
*Governor-General.**25th July, 2012.*

AN ACT to establish a judicial process for children accused of committing offences, to protect the rights of these children and for other related matters.

[By Order].

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

1.—(1) This Act may be cited as the

JUVENILE JUSTICE ACT, 2012.

Short title
and com-
mencement.

(2) This Act shall come into force on a date to be fixed by the Minister by Order published in the *Gazette*.

Interpretation.

2. —(1) In this Act, unless the context otherwise requires—

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

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

“appropriate adult” means—

(a) a member of the family of the child; or

(b) a custodian or guardian of the child,

who has attained the age of eighteen years, but excludes a parent of the child;

“assessment” means the assessment of a child by a probation officer pursuant to Part III;

“attorney-at-law” means an individual who has been admitted to practice law under the Legal Profession Act 2011;

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

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

“Child (Protection and Adoption) Act” means the Child (Protection and Adoption) Act Cap. 44A of the 2010 Continuous Revised Edition of the Laws of Grenada;

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

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

“correctional supervision” means a community based sentence, referred to in section 58;

“Court” means the Magistrate’s Court or the Supreme Court where applicable;

“Criminal Procedure Code” means the Criminal Procedure Code Cap. 72B of the 2010 Continuous Revised Edition of the Laws of Grenada;

“detention” includes confinement in a police cell, lockup, place of safety or other secure residential facility;

“Director” means the Director of Social Services;

“Director of Public Prosecutions” means the Director of Public Prosecutions appointed under section 86 of the Constitution;

“diversion” means the removal of cases of children alleged to have committed an offence from the formal court procedures and the adoption of

informal procedures in relation to such children, pursuant to Part VI;

“diversion option” means a plan or programme with a specified content and duration set out in three levels under section 37;

“family group conference” means a gathering convened by a probation officer as a diversion or sentencing option under section 57;

“family order” means an order requiring a child to spend a specified number of hours with his or her family;

“good behaviour order” means an order requiring a child to abide by an agreement made between the child and his or her family to comply with certain standards of behaviour;

“initial inquiry” means a procedure referred to in Part VI which takes place after an assessment and before trial in a court;

“Magistrate” means a Magistrate appointed under the Magistrates Act Cap. 177 of the 2010 Continuous Revised Edition of the Laws of Grenada;

“Minister” means the Minister responsible for Social Development;

“natural father” includes a man who has been adjudged to be the biological father of a child;

“natural mother” means a woman who gave birth to a child;

“natural parent” means a natural mother or a natural father;

“parent” includes—

- (a) a natural 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 of the child who has custody or guardianship rights of the child,

but does not include a person acting as a care giver on behalf of the Director;

“parental responsibility”

- (a) means the duties, powers, responsibilities and authority, and
- (b) includes the rights and obligations;

which by any relevant law in force, the parent of a child has in relation to that child;

“place of safety” means any place or institution, whereby the person in charge is willing temporarily to receive and take care of a child in conflict with the law and which, in the opinion of

the Court, may be a safe and secure place to keep such child;

“police officer” means an officer not below the rank of sergeant, of the Royal Grenada Police Force;

“positive peer association order” means an order requiring a child to associate with a person whom the probation officer has reason to believe can contribute to the positive behaviour of the child;

“probation officer” means an officer appointed under the Probation Act Cap. 256 of the 2010 Continuous Revised Edition of the Laws of Grenada;

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

“reporting order” means an order requiring a child to report to a specified person at a time specified in such order so as to enable the person to monitor the behaviour of the child;

“restorative justice” means the promotion of reconciliation, restitution and responsibility through the involvement of a child, the parents of a child, the members of family of the child, the victim and the community;

“secure residential facility” means a residential facility established or certified by the Minister under section 11 and designated to receive sentenced children;

“supervision and guidance order” means an order placing a child under the supervision and guidance of a mentor or peer in order to guide the behaviour of the child;

“symbolic compensation” has the meaning assigned to it in section 63 (2).

(2) For the purposes of this Act, where a “place of safety” is determined to be a prison, it shall be a place that—

- (i) is suitable for the detention of children;
- (ii) provides for such children to be detained separately from adults; and
- (iii) provides for female children to be detained separately from male children.

3. (1) The Court or a person performing any function pursuant to the provisions of this Act shall be guided by the following principles—

Principles to be applied when dealing with children.

- (a) the safety, welfare and well-being of the child shall be the paramount consideration;
- (b) a child shall as far as possible be given an opportunity to respond before any decision is taken which affects the child;
- (c) a child shall be addressed in a manner appropriate to his or her age, maturity and intellectual development;
- (d) a child shall be treated in a manner which takes into account his or her beliefs;

- (e) all procedures to be carried out pursuant to this Act shall be conducted and completed in a timely manner;
- (f) parents and families of children shall have the right to assist their children in proceedings under this Act and, wherever possible, to participate in decisions affecting their children;
- (g) all consequences arising from the commission of an offence by a child shall be proportionate to the circumstances of the child, the nature of the offence and the interests of society, and a child shall not be treated more severely than an adult would have been in the same circumstances;
- (h) a child lacking in family support, educational or employment opportunities shall have equal access to available services; and
- (i) every effort shall be made to ensure that children receive equal treatment to other children when having committed similar offences.

(2) A Court shall consider the following principles when making a decision regarding the release of a child in detention—

- (a) preference shall be given to the release of the child into the care of a parent or an appropriate adult, with or without the imposition of conditions;
- (b) 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/ a

bond, upon the recommendation of the Director shall be considered; or

- (c) if the child must be detained as a measure of last resort, the least restrictive form of detention appropriate to the child and the offence shall be selected.

(3) A child who is in detention in police custody

- (a) shall be—
 - (i) detained separately from adults;
 - (ii) detained with children of the same sex; and
 - (iii) detained in conditions which will reduce the risk of harm to that child, including the risk of harm caused by other children;
- (b) shall have the right—
 - (i) to adequate food and water;
 - (ii) to medical treatment;
 - (iii) to a reasonable number of visits by a parent, guardian, an attorney-at-law, registered social worker, probation officer, health worker and religious counsellor;
 - (iv) of access to reading material;
 - (v) to adequate exercise; and
 - (vi) to adequate clothing.

PART II**APPLICATION AND CRIMINAL RESPONSIBILITY**

Application of
Act.

4.— (1) Subject to subsections (2) and (3), this Act shall apply to—

- (a) a child who is alleged to have committed an offence; and
- (b) a person referred to in paragraph (a) who attained the age of eighteen years before proceedings that were instituted against him or her, pursuant to this Act, have been concluded.

(2) The Criminal Procedure Code shall apply to any person referred to in subsection (1), except in so far as this Act provides for different procedures in respect of that person.

(3) The Director of Public Prosecutions, in the circumstances described in subsection (4), may direct that this Act shall apply to a person who is alleged to have committed an offence and who, at the time of the alleged commission of the offence, was over the age of eighteen years, but under the age of twenty one years.

(4) A direction referred to in subsection (3) may be issued if—

- (a) there are several co-accused and the majority of them are under the age of eighteen years;

- (b) the person commits a further offence while serving a residential sentence imposed pursuant to this Act and after having reached the age of eighteen years; or
- (c) in the opinion of the Director of Public Prosecutions, any other circumstance merits the issuance of a direction under that subsection.

Criminal
responsibility.

5. It shall be presumed that a child under the age of twelve years is not capable of or guilty of committing a criminal offence.

Place of
Assessment.

6. —(1) The Director shall designate and certify a place of assessment for the temporary reception of a child in conflict with the law, prior to or pending an initial inquiry regarding the child, for assessment pursuant to Part III of this Act.

(2) A child who, upon commission of an alleged offence, is not placed under the charge of a parent and is sent to a place of assessment, shall be placed in the care of a probation officer for assessment and classification, giving due consideration to the age, physical and mental status of the child and the degree of the alleged offence.

PART III

ASSESSMENT OF A CHILD

7. A probation officer who receives notification from a police officer pursuant to Part V that a child has been apprehended, served with a summons or issued with a written notice, shall assess the child in a place of assessment as

Duty of
probation
officer to
assess child.

provided for pursuant to section 6, before the child appears at the initial inquiry relating to that child.

Persons to attend
assessment.

8.—(1) Subject to section 9 (2) and (3), the parent of the child 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) a prosecutor;
- (b) the attorney-at-law representing the child;
- (c) a police officer; and
- (d) any appropriate adult permitted by the probation officer to attend.

Powers and
duties of
probation
officer prior to
assessment.

9.—(1) A probation officer may at any time before the assessment of a child issue a notice in the prescribed form to the parent of the child or an appropriate adult to appear at the assessment.

(2) A notice issued pursuant to subsection (1) shall be delivered by a police officer of any rank on the request of the probation officer in the prescribed manner.

(3) A person notified pursuant to subsection (1) may apply to the probation officer for permission to be absent or excluded from the assessment, and if the probation officer grants such permission, the permission shall be in writing.

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

- (a) obtain any documentation required for the completion of the assessment of a child;
- (b) locate the parent of a child or an appropriate adult; and
- (c) provide transport, in order to secure the attendance of the child, and his or her parent or an appropriate adult, for the assessment.

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

(6) If all reasonable efforts to locate a parent of the child or an appropriate adult have failed, the probation officer shall conclude the assessment in the absence of such persons.

10.—(1) A probation officer shall—

- (a) explain the purpose of the assessment to—
 - (i) the child; and
 - (ii) parent of the child or an appropriate adult;
- (b) inform the child of his or her rights in the prescribed manner;

Powers and duties of probation officer at assessment.

- (c) explain the procedures to be followed under this Act to—
 - (i) the child; and
 - (ii) the parent of the child or an appropriate adult; and
- (d) inquire from the child whether he or she intends to acknowledge responsibility for the offence in question.

(2) The probation officer, shall, at any stage during the assessment—

- (a) consult individually with any person at the assessment;
- (b) contact or consult any person who is not present at the assessment and who may have information relating to an assessment and if such information is obtained, the child shall be informed of the information.

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

(4) The probation officer shall—

- (a) encourage participation of the child during the assessment process;

- (b) complete an assessment report at the end of an assessment in the prescribed manner and shall provide recommendations with respect to—
 - (i) the prospects of diversion;
 - (ii) the possible release of the child into the care of a parent of the child or an appropriate adult, if the child is in detention; or
 - (iii) the placement, where applicable, of the child in a particular place of safety or a place of assessment.

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

(6) The probation officer shall submit the report referred to in subsection (4) (b) to the Director of Public Prosecutions prior to the commencement of the initial inquiry undertaken pursuant to Part VI.

(7) Any information obtained by a probation officer during the assessment of a child shall not be admissible in any Court proceedings against the child.

PART IV

SECURE RESIDENTIAL FACILITY

11.—(1) The Minister shall establish and maintain, either by his Ministry or pursuant to an agreement with a voluntary organisation, a secure residential facility as may be required

Secure
residential
facility.

for the reception and rehabilitation of a child that has been sentenced.

(2) Where the Minister is of the opinion that any institution other than a secure residential facility established pursuant to subsection (1), is fit for the reception of a child that has been 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) The rules made under subsection (3) may also 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 V

METHODS OF SECURING ATTENDANCE OF CHILD AT INITIAL INQUIRY

Method of
securing
attendance of
child.

12.—(1) The methods which may be used by a police officer for securing the attendance of a child in conflict with the law, at an initial inquiry, are—

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

(2) Before a police officer uses any of the methods referred to in 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.

13.—(1) Unless there are compelling reasons justifying an apprehension, a child shall not be apprehended for an offence stated in Schedule I.

(2) A warrant to apprehend issued pursuant to the Criminal Procedure Code in respect of a child shall direct that the child be brought to appear at an initial inquiry.

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

(4) Where a police officer has notified a parent or an appropriate adult of an apprehension pursuant to subsection (3), the police officer shall inform the child and a parent or appropriate adult in the presence of the child of—

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

(5) The police officer who has apprehended a child, or any other police officer shall not later than twenty four hours

after the apprehension, inform a probation officer of the apprehension in the prescribed manner.

(6) If the police officer is unable to inform the probation officer of the apprehension and comply with the requirements of subsection (5), he or she shall submit a written report to a Magistrate at the initial inquiry in the prescribed manner giving reasons for the non-compliance.

(7) A child who has been apprehended shall, whether an assessment of the child has been effected or not, be taken by a police officer to appear at an initial inquiry within forty eight hours after the apprehension.

(8) The police officer responsible for the investigation of a case with respect to a child shall ensure that the child is assessed pursuant to Part VI, before the commencement of the initial inquiry of the offence alleged to have been committed by the child.

(9) Where a child who is accused of an offence referred to in Schedule I, has not been released from 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 why the child could not be released.

(10) A police officer shall not apprehend a child under the age of twelve years who is 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.

14.—(1) A summons issued in respect of a child pursuant to the Criminal Procedure Code, shall specify the place, date and time of the initial inquiry. Summons.

(2) A copy of the summons relating to the alleged offence by the child shall be served on the parents of the child or an appropriate adult.

(3) A police officer shall—

- (a) not later than twenty four hours after the service of the summons referred to in subsection (1) inform a probation officer of the serving 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 pursuant to this Act or any other relevant law that is in force.

Written notice.

15.—(1) A police officer may direct a child to appear at an initial inquiry at a specified time on a specified date and to remain in attendance at the initial inquiry relating to the offence in question.

(2) A police officer who directs a child pursuant to subsection (1), shall—

- (a) direct the parent of the child or an appropriate adult to bring the child or cause the child to be brought to appear at the initial inquiry and to have the child remain in attendance at the initial inquiry relating to the offence in question; and
- (b) complete and hand to the child and the parent of the child or an appropriate adult, as the case may be, a written notice on which shall be entered the offence in respect of which the initial inquiry will be conducted and the time and place at which the child shall appear.

(3) Pursuant to subsection (2) (b), the police officer shall—

- (a) when he or she hands the written notice to a child, the parent of the child or an appropriate adult, as the case may be—
 - (i) inform the child, the parent of the child or appropriate adult of the nature of the allegation against the child;

-
- (ii) inform the child, the parent of the child or appropriate adult of his or her rights in the prescribed manner; and
 - (iii) explain to the child, the parent of the child or appropriate adult the immediate procedures to be followed pursuant to 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.

16. 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 age would render a person 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.

Uncertainty
as to age of
person.

17.—(1) A police officer shall release a child who is in detention in police custody and who is accused of an offence referred to in Schedule I, into the care of the parent of the child or an appropriate adult, before the child appears at the initial inquiry unless—

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

- (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) A police officer may, in consultation with the Director of Public Prosecutions, release a child who—

- (a) is accused of an offence referred to in Schedule I but has not been released pursuant to subsection (1); or
- (b) is in detention in police custody and who is accused of an offence referred to in Schedule II,

into the care of a parent of the child or an appropriate adult on any one or more conditions referred to in subsection (3).

(3) A child may be released pursuant to subsection (2) on condition that the child—

- (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; and
- (c) resides at a particular address.

Director of
Public Pros-
ecutions may
authorise the
release of child.

18.—(1) Notwithstanding the decision of a police officer to the contrary, the Director of Public Prosecutions may, authorise the release of a child in accordance with section 17 from detention in police custody into the care of the parent of the child or an appropriate adult on any of the conditions referred to in that section.

(2) If a release is authorised under subsection (1), the written notice referred to in section 15, shall be handed to the child and to the person into whose care the child is released.

19. A police officer who releases a child from detention in accordance with section 17 or who releases a child on the direction of the Director of Public Prosecutions in accordance with section 18, and places the child in the care of a parent or an appropriate adult, shall—

Duty of police officer and person into whose care the child is released.

- (a) at the time of release of the child, complete and hand to the child and to the person into whose care the child is released, a written notice in the prescribed form on which shall be entered the offence in respect of which the child is being accused, any conditions relating to the release of the child and the place, date and time at which the child shall appear for the initial inquiry;
- (b) direct a parent of the child 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 any of the conditions referred to in paragraph (a) have been imposed, to ensure that the child complies with the said conditions; 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 any of the conditions referred to in paragraph (a) have been imposed, to comply with those conditions.

Release of child
on recognisance
prior to initial
inquiry.

20.—(1) If a child is taken into police custody with or without a warrant, and cannot be brought forthwith 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 in any case—

- (a) unless the child is accused of an offence referred to in Schedule III;
- (b) unless it is necessary in the interest of the child to remove him or her from association with any undesirable person; or
- (c) unless 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 such an amount as will, in the opinion of the officer, secure the attendance of the child at the initial inquiry related to the charge upon the hearing of the charge, being entered into by him or her or by his or her parent or appropriate adult.

(2) The recognisance provided pursuant to subsection (1) may require the attendance at the initial inquiry of the parent or the appropriate adult and the child.

(3) The Chief 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 or a prosecutor

may, in consultation with the police officer charged with an investigation with respect to a child pursuant to this Act, authorise the release of a child accused of an offence referred to in Schedule II 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 of the child or an appropriate adult is deemed appropriate.

21. Subject to section 22, a police officer shall not release a child accused of an offence referred to in Schedule III from detention in police custody.

Child accused of certain offences not to be released from detention.

22. If a child cannot for any reason be released—

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

Detention in place of safety.

the child may be detained in a place of safety.

23.—(1) If a child in detention in police custody complains of an injury sustained during apprehension or whilst in detention, the police officer to whom such complaint is made shall report the complaint to the police officer in charge of the police station where the child was apprehended, and the police officer in charge of the police station shall delegate a police officer to take the child to a medical doctor for examination as soon as is reasonably possible.

Report of injury sustained by child.

(2) The report of the medical doctor shall be included in the appropriate police docket in the police station where the child was apprehended.

24.—(1) The police officer in charge of a police station

children in
detention in
police cell.

shall keep a register in which prescribed details regarding the detention in police holding cells of all children shall be distinctively recorded.

(2) The register referred to in subsection (1) may be examined by such persons as may be prescribed.

PART VI

INITIAL INQUIRY AND DIVERSION

Nature and
objectives of
initial inquiry.

25.—(1) An initial inquiry shall be held in respect of a child after an assessment pursuant to Part III.

(2) The appearance of a child at an initial inquiry before a Magistrate shall be the equivalent of a first appearance before a Court as contemplated under the Criminal Procedure Code.

(3) The objectives of an initial inquiry are to—

- (a) establish whether the matter can be diverted 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 in order to make a decision on diversion and placement of the child;
 - (e) ensure that the views of all persons present are considered before a decision is taken;
 - (f) encourage the participation of the child and his 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.

(4) An initial inquiry shall be held in such place as a Magistrate may determine having regard to privacy and confidentiality.

(5) A Magistrate shall conduct the proceedings in an informal manner by asking questions, interviewing persons at the initial inquiry and obtaining information.

26.—(1) The following persons shall attend an initial inquiry—

Persons to attend initial inquiry.

- (a) the child;
- (b) the parent of the child or an appropriate adult;
- (c) a social worker;

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- (d) the probation officer who conducted the assessment of the child;
 - (e) a prosecutor; and
 - (f) any other person as may be considered necessary by a Magistrate .

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

(3) If an initial inquiry proceeds in the absence of the probation officer who conducted the assessment of the child, the assessment report shall be made available at the initial inquiry unless the assessment has been dispensed with pursuant to section 28 (2).

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

- (a) the attorney-at-law representing the child;
- (b) a police officer; and
- (c) any other person as may be considered by a Magistrate.

Procedure
relating to initial
inquiry.

27.—(1) At the commencement of an initial inquiry a Magistrate shall—

- (a) determine the age of the child; and

- (b) in the prescribed manner—
 - (i) explain the purposes of the initial inquiry to the child;
 - (ii) inform the child of the nature of the allegation against him or her;
 - (iii) inform the child of his or her rights; and
 - (iv) explain to the child the immediate procedures to be followed under this Act.

(2) A prosecutor shall ensure that the Magistrate has a copy of the assessment report prepared pursuant to section 10 (4) (b), if available.

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

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

(5) 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.

(6) Where a joint initial inquiry is held pursuant to subsection (5), different decisions may be made in respect of each child.

(7) If a child does not acknowledge responsibility for the offence with which he or she is being charged, no further questions regarding the offence may be put to the child and the Director of Public Prosecutions or a prosecutor may set the matter down for trial in the Court.

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

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

Powers and duties of a Magistrate with respect to an initial inquiry.

28.—(1) A Magistrate shall conduct all initial inquiries and discuss all relevant considerations of a child's case with a social worker before making a decision pursuant to this Part.

(2) A Magistrate may—

- (a) subpoena or cause to be subpoenaed any person whose presence is necessary for the conclusion of an initial inquiry;
- (b) permit the attendance of any other person who may be able to contribute to the initial inquiry;
- (c) request any 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

any information from any person attending the initial inquiry to supplement or clarify the information in the assessment report;

- (e) take such steps as may be necessary to establish the truth of any statement or the correctness of any submission; and
- (f) where the conduct of the proceedings of the initial inquiry or any aspect of it is in dispute, rule on the conduct of the initial inquiry in a manner consistent with this Act.

(3) If a child has not been assessed at the commencement of the initial inquiry, the Magistrate may dispense with the assessment if it is in the best interests of the child to do so.

(4) A Magistrate shall ensure that the child, the attorney-at-law representing the child, the parent of the child or an appropriate adult—

- (a) know of the recommendations in the report prepared by the probation officer; and
- (b) are informed of any diversion option and the aims and content of such option.

(5) If the probation officer is present at the initial inquiry, a Magistrate may request him or her to explain, elaborate upon or justify any recommendation or statement made in the assessment report, and provide additional information.

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

Failure to appear
at initial inquiry.

29.—(1) A child or his or her parent or an appropriate adult, who has been directed to appear at an initial inquiry by a police officer pursuant to section 11 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 a term of imprisonment not exceeding three months.

(2) Subsection (1) shall apply with the changes required by the context and subject to sections 59 and 60 to a child who has been released in the care of his or her parent or an appropriate adult and who fails to comply with the direction contained in the written notice referred to in section 15 or with any condition imposed pursuant to section 17(3).

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

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

- (a) the initial inquiry is not disposed of at the first appearance of the child before a Magistrate; and
- (b) 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 of the child 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 interests of the child;
- (b) whether the child has any previous convictions;
- (c) the availability of the parent of the child 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 has already been in detention since apprehension;
- (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 any other person;
- (i) the state of health of the child;
- (j) the reason for any delay in the disposal or conclusion of the initial inquiry and whether such delay was due to any fault on the part of the State 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 twelve years and 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 referred to in Schedule III.

(3) A Magistrate may, in releasing a child pursuant to subsection (1), require the child—

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

(4) If a Magistrate releases a child into the care of a parent of the child or an appropriate adult, the Magistrate

shall direct the parent or the appropriate adult, as the case may be, to bring the child or ensure that the child appears at a specified time and place and, if a condition has been imposed pursuant to 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 a term of imprisonment not exceeding one year.

(6) If a child has been released into the care of his or her parent or an appropriate adult and the child fails to comply with a condition imposed pursuant to 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 recognisance having regard to the factors referred to in subsection (2) and subject to one or more of the conditions referred to in subsection (3).

31. (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 pursuant to section 32 or 33;
- (b) the release of the child into the care of his or her parent or an appropriate adult is for any reason not possible; or
- (c) the child is to appear for trial pursuant to section 42.

Detention
of child
after first
appearance
before a
Magistrate.

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

(3) A child of fourteen years or older who is charged with an offence referred to in Schedule III shall be detained in a prison if a Magistrate feels there is a substantial risk that the child may cause harm to other children in a place of safety.

(4) Where a Magistrate issues a direction that a child be detained in prison, a Magistrate shall record the reasons for issuing such a direction.

(5) If a Magistrate issues a direction for the detention of a child pursuant to subsection (1) (c), the child shall appear before the Court at a time and place to be determined by the Court.

(6) Where a child appears before a Court pursuant to subsection (5), a Magistrate shall—

- (a) determine whether or not the detention remains necessary;
- (b) if ordering further detention of the child, record the reasons for its decision;
- (c) consider a reduction of the amount of bail or recognisance, 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 properly treated and kept under suitable conditions, inspect and investigate the treatment and conditions and make appropriate remedial recommendations to the Minister.

32.—(1) A Magistrate may postpone the proceedings of an initial inquiry for a period not exceeding fourteen days for the purposes of— Postponement of initial inquiry.

- (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 no assessment has previously been undertaken and it is found that 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; or

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- (k) any other matter which a Magistrate deems necessary.

(2) If the proceedings of an initial inquiry are postponed pursuant to 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) If the initial inquiry is not concluded within the period specified in subsection (1) and subject to section 33, it shall be closed and the Director of Public Prosecutions or a prosecutor shall set the matter down for trial in the Court.

Postponement
of initial inquiry
for detailed
assessment.

33.—(1) A Magistrate may postpone the proceedings of an initial inquiry for a period not exceeding seven days if there are exceptional circumstances warranting a further assessment of the child, and if these circumstances relate to the—

- (a) possibility that the child may be a danger to others or to himself or herself;
- (b) fact that the child has a history of repeatedly committing offences or abscondment;
- (c) social welfare history of the child;
- (d) possible admission of the child to a sexual offender's programme, substance abuse programme, therapeutic treatment programme or other intensive programme; or
- (e) possibility that the child may be a victim of sexual or other abuse.

(2) A detailed assessment shall 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.

34.—(1) A Magistrate shall ascertain whether a matter before him or her may be diverted after consideration of the following— Decision regarding diversion.

- (a) any recommendations made by the Director of Public Prosecutions or a prosecutor;
- (b) the assessment report, unless this has been dispensed with pursuant to section 28 (2);
- (c) the views of all persons present at the initial inquiry and any information provided by such persons;
- (d) any information requested pursuant to section 28 (2) (c); 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 direction for diversion in the prescribed manner in respect of the child concerned.

(3) In addition to the diversion options in section 37, 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.

Purposes of diversion.

35. The purposes of diversion are to—

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

Child to be considered for diversion under certain circumstances.

36. 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;

- (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.

37.—(1) At the initial inquiry, a Magistrate, in directing a diversion option in respect of a child, may direct a level one, level two or level three diversion option and in selecting the level that is appropriate for the child, a Magistrate shall consider the—

Levels of diversion options.

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

(2) A level one diversion option referred to in subsection (1) 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;

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- (c) placement under a supervision and guidance order in the prescribed form for a period not exceeding three 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 three months;
 - (f) the issue of a positive peer association order in the prescribed manner in respect of a specified person in a specified place for a period not exceeding three months;
 - (g) the issue of a family time order in the prescribed form for a period not exceeding three 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 exceeding three 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 three 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.

(3) A level two diversion option referred to in subsection (1) includes—

- (a) the options referred to in subsection (2) except that the maximum periods referred to in that subsection shall for the purposes of this subsection be six months;
- (b) compulsory attendance at a specified vocational or educational purpose for a period not exceeding eight hours each week, for a maximum of six months;
- (c) performance of some service without remuneration for the benefit of the community under the supervision or control of an organisation or institution, or a specified person or group identified by a probation officer effecting the assessment, for a maximum period of fifty hours, and to be completed within a maximum period of six 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; and

- (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 organisation, charity or welfare organisation for the benefit of the community.

(4) A level three diversion option referred to in subsection (1) includes—

- (a) referral to a programme which does not exceed six 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 a probation officer and for a period not exceeding two hundred and fifty hours which shall be completed within one year 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 six 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 this subsection.

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

(6) On the selection of a diversion option, the Court shall designate a probation officer or other suitable person to monitor the compliance of the child of the selected diversion option and in the event of a child failing to comply with any condition of the diversion option, the probation officer or specified person shall notify the Court of such failure.

38.—(1) A child may be required to perform community services as an element of diversion, with due consideration to the age and development of the child.

Minimum standards applicable to diversion and diversion options.

(2) A diversion option shall—

- (a) promote 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) not be exploitative, harmful or hazardous to the physical or mental health of the child;
- (c) be appropriate to the age and maturity of the child; and
- (d) not interfere with the education or schooling of the child.

(3) A diversion option presented to the Minister by a government department, an agency or a non-governmental organisation, which meets the requirements of subsection (1), and which has a predetermined content and duration and which involves a service to children on a regular basis may be registered by the Minister in the prescribed manner.

(4) The Director shall keep a register in the prescribed manner of all children who have been subjected to diversion.

Failure to
comply with
diversion
direction.

39.—(1) If a child fails to comply with a diversion direction, a Magistrate shall, on being notified of such 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.

(2) If a child appears before a Magistrate pursuant to subsection (1), a 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 or a prosecutor decides to proceed with the prosecution of the child concerned, a Magistrate may, after consideration of the views of any 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.

(3) If the Director of Public Prosecutions decides to proceed with the prosecution of the matter, the matter shall be set down for trial in the Court and section 44 shall apply with the necessary changes required by the context.

40. The Minister on consultation with a Magistrate and the Director may develop any other suitable diversion options as contemplated in this Part. Development of diversion options.

41.—(1) If it appears during proceedings at an initial inquiry that a child is in need of care and protection under the Child (Protection and Adoption) Act, and that it is desirable to deal with the child under the provisions of that Act, a Magistrate shall stop the proceedings and transfer the matter to the Director of the Child (Protection and Adoption) Authority, to be dealt with in accordance with the Child (Protection and Adoption) Act. Referral of matter to the Director of the Child (Protection and Adoption) Authority.

(2) Referral of a matter to the Director of the Child (Protection and Adoption) Authority shall be considered by a Magistrate if a child—

- (a) has previously been assessed on more than one occasion with regard to minor offences that were committed to meet the basic need of the child for food and warmth and in the initial inquiry in question it is again alleged that the child has committed such offences;
- (b) is allegedly abusing dependence producing substances;
- (c) does not live at his or her family home or in an appropriate 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 warmth; or

- (d) is a child in need of care and protection under section 25(1)(h) of the Child (Protection and Adoption) Act.

Procedure upon referral of matter for trial.

42.—(1) If diversion has not taken place and the matter has not been transferred to the Director of the Child (Protection and Adoption) Authority pursuant to section 41, on the conclusion of the initial inquiry, the Magistrate upon consultation with the Director of Public Prosecutions, shall set the place, date and time when the child shall 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 of the child or an appropriate adult, as the case may be, the provisions of Part IX regarding legal representation.

(3) If a child is in detention, a Magistrate shall inform the child of the place, date and time of his or her appearance in Court and shall direct the parent of the child or an appropriate adult to attend the proceedings at the specified time and place.

(4) If a child is not in detention, a Magistrate may alter or extend any condition imposed under section 13 (3) or section 30 (3), and shall direct the child and his or her parent or appropriate adult, to appear in Court at a specified place, date and time.

PART VII**COURT PROCEEDINGS**

43.—(1) At the commencement of the proceedings, the Court shall in the prescribed manner—

Conduct of proceedings relating to child in Court.

- (a) inform the child of the nature of the allegations against him or her;
- (b) inform the child of his or her rights; and
- (c) explain to the child the procedures to be followed pursuant to this Act and the Criminal Procedure Code.

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

(3) If a child refuses to have his or her parent or an appropriate adult present at the proceedings referred to in subsections (1) and (2), or where a parent of a child or an appropriate adult is not present or cannot be traced and an attorney at law is not available, the police officer in charge of the investigation relating to the child, shall request a person to act as an independent observer and such independent observer shall be present at the proceedings.

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

Admissibility of
certain evidence.

44.—(1) Evidence obtained as a result of a confession, or an admission that is admissible pursuant to the Criminal Procedure Code shall only be 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) shall also apply in cases where an identity parade has taken place.

Treatment of
child at Court.

45.—(1) A child shall not be subjected to the wearing of leg irons when appearing in the Court, and handcuffs may only be used where there are exceptional circumstances warranting their use.

(2) A child held in a cell at a police station or a Court shall be kept separate from adults and shall be treated in a manner and kept in conditions which take into account the age of the child.

(3) A female child shall be kept separate from a male child.

(4) Where a child is transported to and from Court he or she shall be transported separate from adults.

(5) The Chief of Police shall issue directives in the treatment and conditions of children while in detention at Court.

Age of criminal
responsibility
and the State.

46.—(1) The criminal responsibility of a child under the age of twelve years shall be proved by the State beyond reasonable doubt.

(2) The Director of Public Prosecutions or the prosecutor or the attorney-at-law representing the child may request the Court to order an evaluation of the child by a suitably qualified person to be conducted at the expense of the State.

(3) If an order has been made by the Court pursuant to subsection (2), the person identified to conduct an evaluation of the child shall furnish the Court with a written report of the evaluation within thirty days of the date of the order.

(4) The evaluation shall include an assessment of the cognitive, emotional, psychological and social development of the child.

(5) The person who conducts the evaluation may be called to attend the Court proceedings and to give evidence and, if called, shall be remunerated by the State.

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

Separation and joinder of trials involving child and adult.

(2) An application for such joinder shall be made to the Court and the child shall appear after notice is given to him or her in the prescribed manner.

(3) If the Court grants an application for a joinder of trials, the matter shall be transferred to the relevant Court, and that Court shall afford the child concerned all such benefits conferred on the child under this Act.

48.—(1) The Court shall conclude the trial of an accused child as expeditiously as possible and shall ensure that postponements are limited in number and duration.

Time limits relating to conclusion of trials.

(2) Sections 30 and 33, shall apply, with the necessary changes required by the context to the Court where the child appearing in the Court for the first time is in detention.

(3) Where a child remains in detention and the trial of the child is not concluded within six 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 item 1, 2 or 3 of Schedule III.

Court may divert
matter.

49.—(1) If at any time before the conclusion of a case for the prosecution it comes to the attention of the Court that a child acknowledges or intends 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 or a prosecutor indicates that the matter may be diverted.

(2) Sections 34 to 40 shall apply with the changes required by the context if the Court makes an order for diversion.

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

(4) The Court shall, on receipt of a report from a probation officer that a child has successfully complied with a diversion order, acquit the child of all charges in question.

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

(6) If a child fails to comply with a diversion order, section 39 shall apply with the necessary changes required by the context.

50. A person shall not be present at a sitting of the 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 Court has granted the person permission to be present. Privacy and confidentiality.

51.—(1) A person shall not publish any information which reveals or may reveal the identity of a child or of any witness under the age of eighteen appearing at any proceedings before the Court. Power to prohibit publication of certain matters.

(2) Subject to subsection (3), a probation officer, pursuant to this section, shall not preclude—

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

(3) The reports referred to in subsection (2) (b) and (c) shall not mention the name of the person charged or the person against whom or in connection with whom the offence in question is alleged to have been committed or any witness at such proceedings, and shall not mention the place where the offence in question was alleged to have been committed.

(4) Subject to subsection (5), in relation to any proceedings in any Court—

- (a) no newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of any child either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness in the proceedings; and
- (b) no picture shall be published in any manner as being, or including a picture of, any child so concerned in the proceedings.

(5) The Court may, in any 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 such extent as may be specified in the order.

(6) A person who publishes or broadcasts by radio any matter in contravention of this section, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding three months.

PART VIII**SENTENCING OF CHILD**

52.—(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.

Child to be sentenced in accordance with this Part.

(2) Where the provisions of this Act regarding sentencing options, conflict with those provided for pursuant to any other relevant enactment, the sentencing options under this Act shall prevail.

53.—(1) Prior to the imposition of sentence on a child, the Court shall—

Pre-sentence reports.

- (a) request a pre-sentence report prepared by a probation officer; and
- (b) hold a pre-sentence conference with the probation officer and a social worker, where all considerations relevant to the child's case and possible sentencing options are discussed.

(2) Pursuant to subsection (1), the probation officer shall complete the report as soon as possible, but no later than one calendar month following the date upon which such report was requested.

(3) Where the Court imposes a sentence other than that recommended in the pre-sentence report it shall record the reason for the imposition of a different sentence.

(4) The Court may dispense with a pre-sentence report where a child is convicted for an offence referred to in Schedule I, or where requiring such a 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 has been placed before the Court.

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

(6) Where a 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 has been placed before the Court prior to the imposition of the sentence.

Purposes of
sentencing.

54. The purposes of sentencing pursuant to this Act are to—

- (a) encourage the child to understand the implications of and be accountable for the harm caused;
- (b) promote an individualised response which is 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 any necessary supervision, guidance, treatment or services which form part of the sentence, assist the child in the process of reintegration.

Community
based sentences.

55.—(1) The Court may impose as a requirement in relation to a penalty for an offence that the child is sentenced

to imprisonment for an initial period and thereafter is required to serve the remainder of the sentence providing a service in the community.

(2) A sentence which allows a child to remain in the community and which may be imposed pursuant to this Act includes—

- (a) any of the options referred to in section 37 (3) (a), (b), (c), (d) or (e);
- (b) placement under a supervision and guidance order in the prescribed form for a period not exceeding three years;
- (c) in cases that warrant such specialised intervention, referral to counselling or therapy in conjunction with any of the options listed in this section for a period of time as the Court considers fit;
- (d) where the child is over the age of compulsory school attendance, and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose, for no more than thirty five hours per week;
- (e) performance of some service without remuneration for the benefit of the community 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 shall be completed in one year; and

-
- (f) any other sentence, subject to section 61, which is appropriate to the circumstances of the child and in keeping with the principles of this Act and which, if it includes a period of time, shall not exceed twelve months.

(3) Before a child from the age of twelve to fourteen is sentenced pursuant to subsection (2) (e), due consideration must be given to the age, development and compulsory school attendance of the child.

Restorative
justice
sentences.

56.—(1) Where 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) Section 57 shall apply where the Court has referred a matter to a family group conference.

(3) 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 it an appropriate order.

(4) 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 upon at the family group conference, the Court shall note the reasons for deviating from the plan on the record of the proceedings.

(5) Where a child who has been sentenced in

accordance with an order arising from a family group conference fails to comply with that order, the probation 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 where the child appears before the Court pursuant to such warrant, the Court shall impose an appropriate sentence on the child.

57.—(1) If a child has been referred to appear at a family group conference pursuant to section 56, a probation officer shall be appointed by a Court to conduct the family group conference and he or she shall within fourteen days, but not later than twenty one days after such appointment, convene the family group conference by setting the time and place for such conference, and taking all necessary steps to ensure that all persons who are to attend the conference are adequately notified of the time and place of the conference.

(2) The following persons shall attend a family group conference—

- (a) the child and the parent or an appropriate adult;
- (b) any person reasonably requested by the child;
- (c) the probation officer;
- (d) a police officer;
- (e) the victim of the alleged offence which the child committed and if the victim is under the age of eighteen years, the 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) any person authorised by the probation officer to attend the family group conference.

(3) The participants in a family group conference shall follow the procedure agreed upon by them and may agree to a plan in respect of the child pursuant to subsection (4) as they deem fit.

(4) A plan referred to in subsection (3)–

- (a) may include–
 - (i) the application of any option contained in section 37 (2) or (3); or
 - (ii) any other plan appropriate to the child, his or her family and the circumstances; except that such a plan shall be consistent with the principles contained in this Act; and
- (b) shall–
 - (i) specify the objectives for the child and the period within which they are to be achieved;
 - (ii) contain the details of the services and the assistance to be provided

- for the child and for a parent of a child or an appropriate adult;
- (iii) specify the persons or organisations to provide such services;
 - (iv) state the responsibility of the child and the parents of the child or an appropriate adult; and
 - (v) include such other matters relating to the education, recreation and welfare of the child as are relevant.

(5) The probation 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.

(6) Where a child fails to comply with any condition of the plan agreed to in a family group conference, the probation officer shall notify the Court in writing of such failure, and section 35 shall apply.

(7) If the participants of a family group conference fail to agree on a plan, the probation officer shall close the family group conference and refer the matter back to the Court for consideration of another diversion option.

(8) The proceedings of a family group conference shall be confidential and no statement made by a participant in the family group conference may be used as evidence in any subsequent court proceedings.

Sentences involving correctional supervision.

58.—(1) The Court may impose a sentence of correctional supervision for a period not exceeding five years on a child over the age of twelve years.

(2) The whole or any part of the sentence imposed pursuant to subsection (1) may be postponed or suspended, with or without conditions referred to in section 62 (3).

Sentence with a compulsory residential requirement.

59.—(1) A sentence involving a compulsory residential requirement shall not be imposed on a child unless the Court is satisfied that such a 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) A Court imposing any sentence involving a compulsory residential requirement on a child, shall note the reasons for the sentence on the record and explain them to the child in a language which the child can understand.

(3) A sentence involving a compulsory residential requirement shall include referral to a-

- (a) programme with a periodic residence requirement where the duration of the programme does not exceed one year, and no portion of the residence requirement exceeds twenty one consecutive nights, with a maximum of sixty nights for the duration of the programme;

-
- (b) secure residential facility, subject to section 60; or
 - (c) prison, subject to section 61.

60.—(1) Subject to subsection (2) a sentence to a secure residential facility shall not exceed three years. Referral to secure residential facility.

(2) A sentence to a secure residential facility may be imposed for a period exceeding three years if the child is under the age of twelve and he or she would have been sentenced to imprisonment due to the seriousness of the offence were it not for section 61 (1)(a).

(3) A child referred to in subsection (2) may not be required to reside in a secure residential facility beyond the age of eighteen.

(4) On completion of a sentence referred to in subsection (1) or on attainment of the age of eighteen in the case of a child referred to in subsection (2), the head of the secure residential facility shall make a determination whether the child will continue to reside at the secure residential facility for the purposes of completing his or her education.

61.—(1) A sentence of imprisonment shall be used as a sentence of last resort and the sentence shall not be imposed unless— Referral to prison.

- (a) the child was over the age of twelve at the time of commission of the offence; and
- (b) substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include conviction of an offence referred to in Schedule III or a previous failure to respond to alternative sentences, including sentences with a residential element.

(2) A sentence of imprisonment shall not be imposed on a child—

- (a) in respect of an offence referred to in Schedule I; or
- (b) as an alternative to any other sentence specified in this Act.

(3) 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, subject to subsections (1) and (2) include a sentence of imprisonment.

(4) If the Court imposes a sentence of imprisonment, 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 prison prior to the sentence being announced in the Court.

Postponement
or suspension of
passing
sentence.

62.—(1) The passing of any sentence may be postponed, with or without one or more of the conditions referred to in subsection (3), for a period not exceeding three years.

(2) The whole or any part of any sentence may be suspended, with or without one or more conditions referred to in subsection (3), for a period not exceeding five years.

(3) The conditions referred to in subsections (1) and (2) may be any condition appropriate to the circumstances of the child which is in keeping with the principles of this Act 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 and place of a family group conference;
- (g) placement under the supervision of a probation officer;
- (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 any diversion option referred to in section 37 (2) (d), (e), (f), (g), (h), (i), (j) or (k).

(4) Where the Court has postponed the passing of a sentence pursuant to subsection (1) on one or more conditions, the Court may request the probation officer concerned to submit regular reports indicating the compliance of the child with the conditions referred to in this section.

(5) The conviction of a child in respect of whom passing of a sentence has been 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, as the case may be.

Penalty in lieu
of fine or
imprisonment.

63.—(1) 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 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) any other sentence as stated in this Act, except imprisonment.

(2) In this section “symbolic compensation” means the giving of an object owned, made or bought by a child to a person, or group of persons or an institution as compensation for the harm caused by the child.

64.—(1) A sentence of life imprisonment shall not be imposed on a child.

Prohibition
on certain
forms of
punishment.

(2) A sentence of flogging or whipping shall not be imposed on a child.

65.—(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—

Notice to
parent of
child.

- (a) that wilful failure on the part of a parent of the child 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 any—
 - (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, why the parent of the child or an appropriate adult should not pay the compensation.

(2) If the parent of the child or an appropriate adult is present in Court when the Court decides to call on the parent of the child 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 Court to give written notice to the parent of the child or an appropriate adult to show cause, as directed by the notice, why the parent of the child or an appropriate adult should not pay the compensation.

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

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

Proceedings to
show cause.

66.—(1) At the proceedings to show cause referred to in section 65–

- (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 of a child or appropriate adult may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and
- (d) the parent of a child 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 65.

(3) If the parent 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 was called on to show cause on the Court's own initiative, the Director of Public Prosecutions or a prosecutor may at the proceedings–

- (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 mentioned in subsection (1)(a) and (b), a Court

is satisfied beyond reasonable doubt of the matters mentioned in section 65(1) and (b), the Court may make an order requiring the parent to pay compensation.

(6) An order made pursuant to subsection (5) shall direct that—

- (a) the amount shall be paid by a time specified in the order or by instalments specified in the order; and
- (b) the amounts shall be paid to the Registrar of the 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 has been given notice of the proceedings to show cause under section 65.

PART IX

LEGAL REPRESENTATION

Child to be provided with legal representation.

67.—(1) A child shall be provided with legal representation by the State at the conclusion of an initial inquiry where—

- (a) the child is awaiting trial before the Court;
- (b) it is determined by the Director that the parent(s) of the child or the appropriate adult in charge of the child cannot afford to pay for legal representation; and
- (c) the proceedings are postponed for trial in the Court and it is likely that the child will be found guilty of committing one or more of the first four offences in Schedule III.

(2) The Director of Public Prosecutions or a prosecutor shall indicate to the Court whether he or she is of the opinion that the matter is a matter referred to in subsection (1)(b) before the child is asked to plead and if so, a plea shall not be taken until an attorney-at-law has been appointed.

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

68. 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 any proceedings pursuant to 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) make reasonable efforts to ensure that the trial is conducted without delay.

PART X**GENERAL PROVISIONS AS TO PROCEEDINGS IN COURT**

Power to proceed with case in absence of child.

69. Where in any proceedings in relation to any 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.

Extension of power to take depositions.

70.—(1) Subject to subsection (2), where 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 pursuant to subsection (1) shall not be admissible in evidence against the accused person unless it is proved that—

- (a) reasonable notice of the intention to take the deposition has been given to him or her; or
- (b) it 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.

PART XI**RECORDS OF CONVICTION AND SENTENCE**

71. —(1) The record of any sentence imposed on a child convicted of an offence referred to in Schedule III may not be expunged, subject to subsection (2). Expungement of records.

(2) In respect of any sentence imposed on a child, the Court shall make an order regarding the expungement of the conviction and sentence of the child and shall note the reasons for the decisions as to whether such record may be expunged or not where the Court imposes the sentence after consideration of any relevant factor, including—

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

(3) Where the Court makes a decision regarding the expungement of a record of a conviction and sentence pursuant to 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 Court not to expunge a record shall be subject to appeal.

PART XII**OFFENCES AND PENALTIES**

Offences and penalties.

72.—(1) A person shall not hinder or obstruct a police officer or a probation 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 three months.

(3) A person who—

- (a) fails to comply with a notice issued pursuant to section 19;
- (b) fails to comply with a direction issued pursuant to section 16 or 41(3); or
- (c) publishes information or reveals the identity of persons in contravention of section 52,

commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding one year.

PART XIII**MISCELLANEOUS**

Regulations.

73. The Minister may make regulations regarding procedures to be put in place to monitor and assess the proper application of and compliance with this Act.

SCHEDULE I

(Sections 13, 17, 53, 61)

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. Threat of harm
4. Causing harm or wound
5. Causing grievous harm
6. Assault (summary offence)
7. Aggravated assault
8. Unlawfully carrying a weapon
9. Threatening injury to property
10. Trespass
11. Stealing (summary offence)
12. Dishonestly receiving
13. Unlawful possession
14. Unlawfully carrying arms
15. Praedial larceny
16. Resisting arrest, obstruction, assault on police under the Police Act Cap. 244 of the 2010 Continuous Revised Edition of the Laws of Grenada
17. Offences under the Road Traffic Act Cap. 289A of the 2010 Continuous Revised Edition of the Laws of Grenada
18. Summary offences carrying a penalty of five years or under

SCHEDULE II

(Sections 17, 20)

1. Defilement of a female between 13 and 16 years of age
2. Robbery
3. Housebreaking
4. Possession of instrument for burglary
5. Assault (indictable)
6. Stealing (indictable)
7. Forgery
8. Manslaughter by negligence
9. Summary offences pursuant to the Drug Abuse (Prevention and Control) Act, Cap. 84A of the 2010 Continuous Revised Edition of the Laws of Grenada
10. Indictable offences carrying a penalty of over 5 years to 14 years imprisonment

SCHEDULE III

(Sections 20, 21, 30, 31, 48, 61, 67 and 72)

1. Murder
2. Manslaughter
3. Rape
4. Robbery with violence
5. Burglary
6. Defilement of a female under 13 years of age
7. Incest by a male
8. Unnatural carnal knowledge of any person

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9. Causing maim or dangerous harm
 10. Arson
 11. Indictable offences pursuant to the Drug Abuse (Prevention and Control) Act, Cap. 84A of the 2010 Continuous Revised Edition of the Laws of Grenada
 12. Indictable offences carrying a penalty of 15 years or more of imprisonment

Passed in the House of Representatives this 26th day of June, 2012.

RAPHAEL DONALD
Acting Clerk to the House of Representatives.

Passed in the Senate this 10th day of July, 2012.

RAPHAEL DONALD
Acting Clerk to the Senate.

GRENADA
