

**DRAFT
CHILD JUSTICE BILL**

REV III

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REPORT ON CHILD JUSTICE BILL

Introduction

Although legislation dealing with child offenders exist, blatantly lacking is the adequate social services delivery system to support this legislation and the clear underlying philosophy and principles within the legislation, of the United Nations Convention on the Rights of the Child and the United Nations guidelines such as the UN Rules for the *Protection of Juveniles Deprived of their Liberty*, to which all OECS Member States are parties.

Article 37 of the UN Convention on the Rights of the Child on torture degrading treatment and deprivation of liberty provides as follows:

“States Parties shall ensure that:

- (a) No child shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. Neither capital punishment or life imprisonment without possibility of release shall be imposed for offences committed by persons below the age of eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest detention or imprisonment of a child shall be in conformity with the law and shall only be used as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before the court or other competent, independent and impartial authority, and to a prompt decision on any such action”.

However, *Article 40* which addresses the administration of juvenile justice states:

- “1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others which takes into account the child’s age and the desirability of promoting the child’s re-integration and the child’s assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reasons of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) to be presumed innocent until proved guilty according to law;
 - (ii) to be informed promptly and directly of the charged against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) not to be compelled to give testimony or to confess guilt, to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) if considered to have infringed penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) to have his or her privacy respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and in particular:
 - (a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe penal law;
 - (b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders, counselling; probation; foster care; educational and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”.

This UN Convention should act as a benchmark in assisting Member States in the preparation of any reform legislation relating to a child alleged as or accused of having infringed the penal law.

Examination of the existing legislation and social services system in OECS Member States with respect to a child alleged as or accused of having infringed the penal law.

Ena Trotman–Stoby in her research conducted in the OECS Member States alluded to the fact that whilst there was sufficient literature and studies done within the region on juvenile justice systems and its relation to the social delivery services, there has been a somewhat reluctance on the part of the Member States to enact the recommendations of with respect to the same. She further stated that:

“policy makers and practitioners acknowledge that the juvenile justice systems do not work well, either in the interest of the individual juvenile, or the society from which he or she comes and to which he or she will return following State intervention”.

She stated further that despite the above mentioned,

“There is either an insufficient recognition of the important role of service provision to young offenders and/ or an underdeveloped social structure to give real meaning to the role of service provision, even where the importance of this is recognised.”

What is therefore required is reformed legislation in compliance with Member States international obligations, supported by a reform social services delivery system to complement the legislation.

Based on the research obtained, the following have been identified as the major deficiencies in the legislation and social services structure in the OECS Member States:

1. In most Member States there do not appear to be a formally established interagency and inter ministerial protocol on justice issues relating to children. In most instances, the police and probation or social service agency share responsibility for children in the penal system.
2. The lack of any established interagency and inter-ministerial protocol outlined above has resulted in the following:
 - (a) a lack of co-ordination resulting in the wastage of resources or doubling of efforts, hence causing the service to be in disarray;
 - (b) the inability to dispose of cases and treat young offenders;
 - (c) duplication of services across agencies;
 - (d) poor communication between agencies, possibly causing longer sentencing for children. There is also little information sharing that could be useful in various situations;
 - (e) under-utilisation of the special resources of the social service agency;
 - (f) poor assessment and management of the special needs of young offenders and unclear procedures for the rehabilitation or the appropriate punishment for young offenders. It is felt that the young offenders do not realise the full benefit from the system because efforts to assist the offenders are fragmented due to the territorial practices of the agencies. In addition, it is believed that the young offender is deprived of the benefit of support systems, necessary for a holistic approach to deal with presenting problems. This results in either inappropriate or no rehabilitation.
3. In most of the Member States, there appear to be no meaningful or structured systems in place to divert young offenders from court proceedings. Diversion programmes which provide opportunities particularly educational ones, together with a supportive infrastructure which helps to safeguard the young offender's personal development and well-being, are fundamental elements. They are in complete opposition to a philosophy and cultural expectations which can often penalise a child for behaviour that does not cause serious damage or harm to others;
4. It is necessary to implement new legislation appropriate to the offence with respect to children since the application of alternatives to a custodial sentence is necessary and more effective in the rehabilitation of children. Community sentences and other supervision orders which require young offenders to do unpaid work for the benefit of the

community for a specified number of hours are deemed appropriate for reform. It is felt that due to the shortage of human and financial resources and the lack of such sentencing options, it is necessary to rely on custodial sentences which are not at all times appropriate for young offenders.

The proposed draft Child Justice Bill seeks to provide for the implementation of the provisions of the Convention aforementioned and takes into consideration the deficiencies outlined above along with the following additional recommendations:

1. That the reform legislation articulates Member States approach for combating child crime through strategies which are centered on:
 - (a) preventing offences by children;
 - (b) diverting children from court proceedings;
 - (c) diverting children from criminal sentencing; and
 - (d) punishment appropriate to the seriousness of the offence.
2. That the requirement for inter-ministerial partnerships be established in combating child crime, recognising cause and effect of drug abuse, and alcohol abuse, damage to health and disruption to education.
3. To provide for the role and responsibilities of probation officers to be explicitly stated and indicate the intervention measures which must be used with children and parents.
4. That the status offences be abolished from the statute books.
5. That the age of criminal responsibility be twelve years.

CHILD JUSTICE BILL

EXPLANATORY NOTES

The objectives of this Bill are:

1. to establish a criminal justice process for children accused of committing offences, that aims at protecting the rights of children as provided for in international instruments;
2. to provide for the minimum age of criminal responsibility of a child;
3. to incorporate diversion of cases away from the formal court procedures;
4. to establish a procedure for the assessment of children and an initial inquiry as compulsory procedures;
5. to ensure that children are tried in the Family Court and to extend sentencing options available in respect of children; and
6. to entrench the notion of restorative justice in respect of children.

Part I, Clauses 1-3, contains the preliminary provisions.

Clause 1 provides for the short title and commencement.

Clause 2 provides for the interpretation section which defines the words and phrases to be used throughout the Bill.

Clause 3 stipulates the principles to be applied by the Court or any person performing a function in relation to the Bill. It states that, a Court or such person shall be guided by the following principles:

- (a) a child shall as far as possible be given an opportunity to respond before any decision is taken which affects the child;
- (b) a child shall be addressed in a manner appropriate to his or her age, level of maturity and intellectual development;
- (c) a child shall be treated in a manner which takes into account his or her beliefs;
- (d) all procedures to be carried out pursuant to this Act shall be conducted and completed in a speedy manner;

- (e) parents and families shall have the right to assist their children in proceedings pursuant to this Act and, wherever possible, to participate in decisions affecting their children;
- (f) 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;
- (g) a child lacking in family support, or educational or employment opportunities must have equal access to available services and every effort must be made to ensure that children receive equal treatment when having committed similar offences.

Part II of the Bill, *Clauses 4-5*, provides for its application and the criminal responsibility of a child.

By virtue of *Clause 4*, the Bill applies to any person in the State, who is alleged to have committed an offence and who at the time of the alleged commission was under the age of eighteen years, and any person contemplated as stated above who attains the age of eighteen years before the proceedings that were instituted against him or her under the Bill have been concluded.

Clause 5 makes provision for the criminal responsibility of a child. By virtue of sub-clause (1) a child who is under the age of twelve years shall not be prosecuted for any offence which he or she has committed.

By virtue of sub-clause (2), a child who commits an offence while he or she is over the age of twelve but under the age of fourteen shall be presumed not to have the capacity to appreciate the difference between right and wrong and to act in accordance with that appreciation unless the criminal responsibility of the child is proved in accordance with *Clause 48*.

Part III of the Bill provides for the establishment of the Child Justice Committee and contains *Clauses 6-7*.

Clause 6 makes provision for the establishment of the Child Justice Committee which shall be responsible for exercising the powers and discharging the duties conferred on it under the Bill. By virtue of sub-clause (2), the Child Justice Committee shall comprise of a Magistrate and two social workers who shall have the powers conferred on them under this Bill. Sub-clause (5) provides that the term of office of a member of the Child Justice Committee and other matters of appointment shall be as prescribed by the Minister.

Clause 7 provides for the procedure to be followed by the Child Justice Committee.

Part IV of the Bill provides for the establishment of assessment centres and a residential facility and contains *Clauses 8-9*. By virtue of this Part, the Minister shall establish and maintain, either

by his or her Ministry or pursuant to an agreement with a voluntary organisation, an assessment centre and a secure residential facility for the reception, evaluation or rehabilitation of a child.

Part V of the Bill makes provision for the methods to be adopted by the police in securing attendance of a child at an initial inquiry before the Child Justice Committee and contains *Clauses 10-22*.

Pursuant to the provisions of this Part, a child who is alleged to have committed an offence may be brought before the Child Justice Committee for an initial inquiry by the process of an apprehension, a summons or a written warning.

Clause 11 provides for the instances where the process of an apprehension may be used.

Clause 12 provides for the instances where a summons may be used, and *Clause 13* provides for the instances where directions may be issued by the police and a written notice may be used.

Clause 14 makes provision for the procedure to be adopted by a police officer where he or she is uncertain of the age of the person who is alleged to have committed an offence.

Clause 15 makes provision for the release of a child into the care of a parent or an appropriate adult prior to the initial inquiry of the child by the Child Justice Committee.

By virtue of *Clause 16*, the Director of Public Prosecutions has the power to order the release of a child from detention in police custody, notwithstanding the decision of a police officer to the contrary.

Clause 17 makes provision for the duty of a police officer and a person into whose care a child is released pending an initial inquiry.

Clause 18 makes provision for the release of a child on own recognisance prior to an initial inquiry.

By virtue of *Clause 19*, a child who has committed an offence listed in Schedule II of the Bill shall not be released from detention in police custody and *Clause 20* makes provision for the detention of the child in a place of safety in lieu of detention in police custody.

Clause 21 imposes certain duties on a police officer with respect to a child.

Clause 22 makes provision for the keeping of a register of child in detention in a police cell.

Part VI of the Bill provides for the assessment of a child and contains *Clauses 23-26*.

Under *Clause 23* a probation officer who receives notification from a police officer that a child has been apprehended, served with a summons or issue a written notice, shall assess the child before he or she appears at the initial inquiry before the Child Justice Committee.

Clause 24 makes provisions for persons who may attend an assessment.

Clause 25 makes provision for the powers and duties of a probation officer prior to an assessment and *Clause 26* provides for the powers and duties of the probation officer at the assessment.

Part VII provides for the initial inquiry of a child and diversion options and contains *Clauses 27-44*.

By virtue of *Clause 27*, an initial inquiry shall be held in respect of a child after an assessment. The objects of the initial inquiry are states in sub-clause (3) as follows:

- (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 is 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 by the Child Justice Committee;
- (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.

Clause 28 provides for persons who shall attend an initial inquiry.

Clause 29 makes provision for the procedure to be followed by the Child Justice Committee at an initial inquiry.

Clause 30 gives the Child Justice Committee the power, to conduct all initial inquiries, pursuant to this Part, relating to a child in conflict with the law.

Pursuant to *sub-clause (2)*, the Child Justice Committee 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 contained in the assessment report, elicit any information from any person attending the inquiry to supplement or clarify the information in the assessment report;
- (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 proceedings in a manner consistent with this Act.

By virtue of **Clause 31**, a child who fails to appear at an initial inquiry commits an offence.

Clause 32 provides for the release of a child into the care of a parent or an appropriate adult at an initial inquiry.

Clause 33 makes provision for the further detention of a child after the first appearance before the Child Justice Committee.

Clauses 34 and 35 provide for instances where an initial inquiry may be postponed.

Clause 36 gives the Child Justice Committee the power to make a decision with respect to diversion.

Clause 37 makes provisions for a child who fails to comply with a diversion direction.

Clause 38 provides for instances where the Child Justice Committee may refer a matter to the Director of [Social/Family Services].

Clause 39 provides for the procedure on referral of a matter to the Court for trial.

Clause 40 states the purposes of diversion which are to:

- (a) encourage the child to be accountable for the harm 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 prevent adverse consequences flowing from being subject to the criminal justice system; and
- (h) prevent the child from having a criminal record.

Clause 41 provides the instances whereby a child may be considered for diversion by the Child Justice Committee.

Clause 42 provides for the minimum standards applicable to diversion and diversion options.

Clause 43 gives the Minister the power to develop suitable diversion options pursuant to the Bill.

Clause 44 addresses the levels of diversion options.

Part VIII of the Bill provides for court proceedings with respect to a child and contains **Clauses 45-53**.

Clause 45 provides for the conduct of the proceedings relating to a child before the Court.

Clause 46 provides for the admissibility of certain evidence.

Clause 47 provides the manner in which a child may be detained in Court.

Clause 48 provides for the establishment of criminal responsibility.

Clause 49 provides for the separation and joinder of trial involving a child and an adult.

Clause 50 makes provision for the time limit relating to the conclusion of trials.

Clause 51 gives the Court the power to divert a matter before it in relation to a child.

Clauses 52 and *53* provide for privacy and confidentiality of information in proceedings relating to a child.

Part IX of the Bill makes provision for the sentencing of a child and contains *Clauses 54-68*

Clause 54 provides that a child shall be sentenced in accordance with this Part.

By virtue of *Clause 55*, the Court shall request a pre-sentence report prior to the sentencing of a child.

Clause 56 states the purposes of sentencing which 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.

Clause 57 makes provision for community based sentences.

Clause 58 makes provision for restorative justice sentences.

Clause 59 makes provision for family group conference.

Clause 60 makes provision for sentences involving correctional supervision.

Clause 61 makes provision for a sentence to be imposed on a child with a compulsory residential requirement.

Clause 62 makes provision for the referral of a child to a secure residential facility.

Clause 63 makes provision for the referral of a child to prison.

Clause 64 provides that the passing of any sentence on a child may be postponed or suspended with one or more of the conditions stated in the clause.

Clause 65 gives the Court the power to impose a penalty in lieu of a fine or imprisonment.

By virtue of *Clause 66*, a sentence of life imprisonment shall not be imposed on a child.

Clauses 67 and 68 provide for compensation to be paid by the parent of a child.

Part X of the Bill makes provision for the right to legal representation with respect to a child and contains *Clauses 69-70*.

Part XI contains general provisions relating to court proceedings and contains *Clauses 71 -72*.

Part XII makes provision for records of conviction and sentences and contains *Clause 73*.

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CHILD JUSTICE BILL

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CHILD JUSTICE BILL

AN ACT to establish a judicial process for children accused of committing offences, that aims at protecting the rights of children and for other related matters.

BE IT ENACTED [by the Queen's Most Excellent Majesty by and with the advice of the House of Assembly and the Senate of [State] and the authority of the same as follows]:

PART I PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Child Justice Act, 200 [].
- (2) This Act shall come into operation on a day to be fixed by the [Minister] by [Order] published in the *Gazette*.

Interpretation

2. 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;

“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 VI;

“assessment centre” means any place established or certified by the Minister under section 8 to receive a child in conflict with the law;

“attorney-at-law” means an individual who has been admitted to practice law under the [Legal Professions Act, No. [] of []];

“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 Justice Committee” means the Child Justice Committee established under section 6;

[“Commissioner of Police” means the Commissioner of Police appointed under section [] of the Constitution;]

“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 60;

“Court” means the [Family Court];

“[Criminal Procedure [Act] [Code]” means the Criminal Procedure [Act] [Code] No. [] of [];]

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

“Director” means the Director of [Social] [Family] Services;

[“Director of Public Prosecutions” means the Director of Public Prosecutions appointed under section [] 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 VII;

“diversion option” means a plan or programme with a specified content and duration set out in three levels under section 39;

“family group conference” means a gathering convened by a probation officer as a diversion or sentencing option under section 59;

“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;

[“Government” means the Government of []];

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

[“Minister” means the Minister responsible for [Social /Family Services;]

[“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 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 law in force in [], the parent of a child has in relation to that child;

“place of safety” means any place or institution, not being a police cell, lock-up or a prison, 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 Child Justice Committee, may be a place of safety for a child;

“police officer” means an officer of the Royal [] Police Force below the rank of [];

“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;

[“prescribed” means prescribed by the Regulations;]

["probation officer]" means an officer appointed as such by the [Public Services Commission] [Probation Services Act];

"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 9 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 in section 65 (2).

[Principles to be applied when dealing with 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:

- (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 [Judge] [Magistrate] presiding in the Court/ the Director] or the members appointed to the Child Justice Committee pursuant to section 6, 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] shall be considered;
- (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;
 - (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 reasonable 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 person who is alleged to have committed an offence and who, at the time of the alleged commission of the offence, was under the age of eighteen years; 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 [Act] [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 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. (1) It shall be presumed that a child under the age of twelve years is not capable of or guilty of committing a criminal offence.
- (2) A person over the age of twelve years and under the age of fourteen years shall not be criminally responsible for an act or omission unless it is proved that 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) If the Director of Public Prosecutions intends to prosecute a child for an offence pursuant to subsection (2), he or she shall issue a certificate in the prescribed form confirming such an intention to prosecute.

(4) If the certificate referred to in subsection (3) is not issued within fourteen days after the initial inquiry, the Director of Public Prosecutions shall be regarded as having declined to institute proceedings to prosecute.

(5) In issuing a certificate under subsection (3), the Director of Public Prosecutions may have regard to any relevant information, but must have regard to:

- (a) the appropriateness of diversion pursuant to 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 upon any victim of such offence; and
- (e) an assessment report done by a probation officer pursuant to section 26 (4).

PART III CHILD JUSTICE COMMITTEE

Establishment of Child Justice Committee

6. (1) There is hereby established a Child Justice Committee which shall be responsible for exercising the powers and discharging the duties conferred on it pursuant to this Act.

(2) The Child Justice Committee shall consist of the members appointed by the Minister as follows:

- (a) a Magistrate; and
- (b) two social workers.

(3) A Magistrate appointed pursuant to subsection (2) shall be a person who has experience or training in child psychology or child welfare.

(4) A social worker appointed pursuant to subsection (2) shall be a person who is or was actively involved in health, education or welfare activities pertaining to children.

(5) The term of office of a member of the Child Justice Committee and other matters of appointment including resignation shall be as prescribed.

(6) The appointment of a member of the Child Justice Committee shall be terminated by the Minister where the member:

- (a) has been convicted of an offence punishable by imprisonment or by a fine exceeding [five thousand dollars]; or
- (b) fails to attend proceedings of the Child Justice Committee for three consecutive months without any valid reason.

Procedure in relation to Child Justice Committee

7. (1) The Child Justice Committee shall meet at least four times annually and shall observe such rules of procedure in regard to the transaction of any business at its meetings as may be prescribed.

(2) Subject to subsection (3), the Child Justice Committee may act notwithstanding the absence of any member of the Child Justice Committee, and no order made by the Child Justice Committee shall be invalid by reason only of the absence of any member during any stage of any proceedings before the Child Justice Committee.

(3) There shall be at least two members of the Child Justice Committee present, including the Magistrate at the hearing of any proceeding by the Child Justice Committee.

(4) In the event of any difference of opinion among members of the Child Justice Committee in the interim of final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Magistrate shall prevail.

[(5) The Chief Justice shall make rules relating to the proceedings before the Child Justice Committee.]

PART IV
ESTABLISHMENT OF ASSESSMENT CENTRES AND SECURE RESIDENTIAL
FACILITY

Assessment Centre

8. (1) The Minister shall establish and maintain, either by his Ministry or pursuant to an agreement with a voluntary organisation, an assessment centre for the temporary reception of any child in conflict with the law and prior to or pending the completion of an initial inquiry regarding the child pursuant to this Act.

(2) Where the Minister is of the opinion that any institution other than an assessment centre referred to 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 such institution as an assessment centre for the purposes of this Act.

(3) The Minister may make rules to provide for the management of an assessment centre including the standards and the various types of services to be provided by it and the circumstances under which and the manner in which the certification of an assessment centre 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 an assessment centre, shall be initially kept in a reception unit of the assessment centre 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

9. (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 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

10. (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

11. (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] [Act]] 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 in force in [].

(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 the Child Justice Committee 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 the Child Justice Committee 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.

Summons

12. (1) A summons issued in respect of a child pursuant to the [Criminal Procedure] [Code] [Act], shall specify the place, date and time of the initial inquiry.

(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 in force in [].

Written notice

13. (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 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.

Uncertainty as to age of person

14. 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.

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

15. (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:

- (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 Prosecutions may authorise the release of child

16. (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 15 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 17, shall be handed to the child and to the person into whose care the child is released.

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

17. A police officer who releases a child from detention in accordance with section 15 or who releases a child on the direction of the Director of Public Prosecutions in accordance with section 16, 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 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

18. (1) If a child is taken into police custody with or without a warrant, and cannot be brought forthwith before the Child Justice Committee, 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 [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 or a designated 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.

Child accused of certain offences not to be released from detention

19. Subject to section 20, a police officer shall not release a child accused of an offence referred to in Schedule III from detention in police custody.

Detention in place of safety

20. If a child cannot for any reason be released:

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

the child may be detained in a place of safety.

Report of injury sustained by child

21. (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.

(2) The report of the medical doctor shall be included in the appropriate police docket.

Register of children in detention in police cell

22. (1) The police officer in charge of a police station shall keep a register in which prescribed details regarding the detention in police 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 ASSESSMENT OF A CHILD

Duty of probation officer to assess child

23. 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 that is conducive to privacy before the child appears at the initial inquiry relating to that child.

Persons to attend assessment

24. (1) Subject to section 25 (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) the Director of Public Prosecutions;
- (b) the attorney-at-law representing the child;
- (c) a police officer; and
- (d) any other person permitted by the probation officer to attend.

Powers and duties of probation officer prior to assessment

25. (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 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 assessment of the child, and his or her parent or appropriate adult.
- (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 a 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.

Powers and duties of probation officer at assessment

- 26. (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;
 - (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 an assessment centre.
- (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 VII.
- [(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 VII

INITIAL INQUIRY AND DIVERSION

Nature and objectives of initial inquiry

- 27. (1) An initial inquiry shall be held in respect of a child after an assessment pursuant to Part VI.
- (2) The appearance of a child at an initial inquiry before the Child Justice Committee shall be the equivalent of a first appearance before a court as contemplated under the Criminal Procedure [Act/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 is 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 by the Child Justice Committee;
 - (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 the Child Justice Committee may determine having regard to privacy and confidentiality.
- (5) The Child Justice Committee shall conduct the proceedings in an informal manner by asking questions, interviewing persons at the initial inquiry and obtaining information.

Persons to attend initial inquiry

28. (1) The following persons shall attend an initial inquiry:
- (a) the child;
 - (b) the parent of the child or an appropriate adult;
 - (c) the probation officer who conducted the assessment of the child;
 - (d) the Director of Public Prosecutions; and
 - (e) any other person as may be considered necessary by the Child Justice Committee.
- (2) The Child Justice Committee 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 30 (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 the Child Justice Committee.

Procedure relating to initial inquiry

- 29. (1) At the commencement of an initial inquiry the Child Justice Committee shall:
 - (a) determine the age of the child;
 - (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) The Director of Public Prosecutions or a designated prosecutor shall ensure that the Child Justice Committee has a copy of the assessment report prepared pursuant to section 26 (4) (b), if available.
- (3) A person attending an initial inquiry may submit to the Child Justice Committee 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 designated 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 designated 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) The Child Justice Committee shall keep a record of all proceedings relating to an initial inquiry.

Powers and duties of the Child Justice Committee with respect to an initial inquiry

30. (1) The Child Justice Committee shall conduct all initial inquiries pursuant to this Part relating to a child in conflict with the law.

(2) The Child Justice Committee 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 Child Justice Committee may dispense with the assessment if it is in the best interests of the child to do so.

(4) The Child Justice Committee 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, the Child Justice Committee 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) The Child Justice Committee 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

31. (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 13 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 61 and 62 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 13 or with any condition imposed pursuant to section 15(3).

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

32. (1) The Child Justice Committee 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 the Child Justice Committee; and
- (b) it is in the interest of justice to so 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, the Child Justice Committee 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 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) The Child Justice Committee may in releasing a child pursuant to subsection (1) require the child:

- (a) to appear before the Child Justice Committee 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 the Child Justice Committee releases a child into the care of a parent of the child or an appropriate adult, the Child Justice Committee 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 Child Justice Committee may direct that the child be detained in a place of safety.

(7) The Child Justice Committee may, after consideration of the facts release a child on bail or recognizance having regard to the factors referred to in subsection (2) and subject to one or more of the conditions referred to in subsection (3).

Detention of child after first appearance before the Child Justice Committee

33. (1) The Child Justice Committee 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 34 or 35;
- (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 43.

(2) The Child Justice Committee shall have regard to the recommendations made by the probation officer when deciding where to place the child pursuant to subsection (1).

(3) If a place of safety is not available, the child shall be detained in a detention facility at the police station that is suitable for the detention of children and provide for children to be detained separately from adults and for female children to be separate from male children.

(4) 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 the Child Justice Committee feels there is a substantial risk that the child may cause harm to other children in a place of safety.

(5) Where the Child Justice Committee issues a direction that a child be detained in prison, the Child Justice Committee shall record the reasons for issuing such a direction.

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

(7) Where a child appears before the Child Justice Committee pursuant to subsection (6), the Child Justice Committee 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 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 properly treated and kept under suitable conditions, inspect and investigate the treatment and conditions and make appropriate remedial recommendation to the Minister.

Postponement of initial inquiry

34. (1) The Child Justice Committee may postpone the proceedings of an initial inquiry for a period not exceeding fourteen days for the purposes of:

- (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
- (k) any other matter which the Child Justice Committee deems necessary.

(2) If the proceedings of an initial inquiry is postponed pursuant to subsection (1) (g), (h) or (i), the Child Justice Committee 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 35, it shall be closed and the Director of Public Prosecutions or a designated prosecutor shall set the matter down for trial in the Court.

Postponement of initial inquiry for detailed assessment

35. (1) The Child Justice Committee 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:

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

Decision regarding diversion

36. (1) The Child Justice Committee shall ascertain whether a matter before it may be diverted after consideration of the following:

- (a) any recommendations made by the Director of Public Prosecutions or a designated prosecutor;
- (b) the assessment report, unless this has been dispensed with pursuant to section 30 (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 30 (2) (c); and
- (e) the willingness of the child to acknowledge responsibility for the offence.

(2) If the Child Justice Committee decides that the matter may be diverted, the Child Justice Committee 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 39, the Child Justice Committee 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

37. 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

38. 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.

Levels of diversion options

39. (1) At the initial inquiry, the Child Justice Committee, 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, the Child Justice Committee 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.

(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;
- (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;
 - (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 of 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 Child Justice Committee or 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 Child Justice Committee or the Court of such failure.

Minimum standards applicable to diversion and diversion options

- 40. (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.
- (2) A diversion option must:
 - (a) promote the dignity and well-being of the child, and the development of his or sense of self worth and ability to contribute to his 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

- 41. (1) If a child fails to comply with a diversion direction, the Child Justice Committee 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 the Child Justice Committee.

(2) If a child appears before the Child Justice Committee pursuant to subsection (1), the Child Justice Committee 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 designated prosecutor decides to proceed with the prosecution of the child concerned, the Child Justice Committee 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.

Development of diversion options

42. The Minister on consultation with the Child Justice Committee and the Director may develop any other suitable diversion options as contemplated in this Part.

[Referral of matter to the Director]

43. (1) If it appears during proceedings at an initial inquiry that a child is in need of care and protection under the [Children (Care and Adoption) Act], and that it is desirable to deal with the child under the provisions of that Act, the Child Justice Committee shall stop the proceedings and transfer the matter to the Director to be dealt with in accordance with the [Children (Care and Adoption) Act].

(2) Referral of a matter to the Director shall be considered by the Child Justice Committee 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; or
- (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.]

Procedure upon referral of matter for trial

44. (1) If diversion has not taken place and the matter has not been transferred to the Director pursuant to section 43 on the conclusion of the initial inquiry, the Director of Public Prosecutions or a designated prosecutor shall inform the Child Justice Committee of the place, date and time when the child shall appear for trial in the Court.
- (2) The Child Justice Committee 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 X regarding legal representation.
- (3) If a child is in detention, the Child Justice Committee 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, the Child Justice Committee may alter or extend any condition imposed under section 15 (3) or section 32 (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 VIII COURT PROCEEDINGS

Conduct of proceedings relating to child in Court

45. (1) At the commencement of the proceedings in the Court, the [Judge/Magistrate] shall in the prescribed manner:
- (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 [Act /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 subsection (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 [Judge/Magistrate] 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

46. (1) Evidence obtained as a result of a confession, or an admission that is admissible pursuant to the Criminal Procedure [Act/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

47. (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 the 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 [Commissioner of Police] shall issue directives in the treatment and conditions of children while in detention at Court.

Establishment of criminal responsibility

48. (1) The criminal responsibility of a child over the age of twelve years but under the age of fourteen years shall be proved by the State beyond reasonable doubt.

(2) The Director of Public Prosecutions or the designated 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.

Separation and joinder of trials involving child and adult

49. (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.

(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 joinder of trials, the matter shall be transferred to the Criminal Court.

(4) The Criminal Court shall afford the child concerned all such benefits conferred on the child under this Act.

Time limits relating to conclusion of trials

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

(2) Sections 32 and 35, 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

51. (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 designated prosecutor indicates that the matter may be diverted.

(2) Sections 36 to 42 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 41 shall apply with the necessary changes required by the context.

Privacy and confidentiality

52. 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 judge has granted the person permission to be present.

Power to prohibit publication of certain matters

53. (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.

(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;

- (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 subsection 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 IX SENTENCING OF CHILD

Child to be sentenced in accordance with this Part

54. The Court shall, after a finding of guilt in relation to a child, impose a sentence on the child in accordance with this Part.

Pre-sentence reports

55. (1) The Court shall request a pre-sentence report prepared by a probation officer prior to the imposition of sentence on a child.
- (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

56. 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

57. (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 39 (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 a period not exceeding one year and 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 63, 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

58. (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 59 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.

Family group conference

59. (1) If a child has been referred to appear at a family group conference pursuant to section 58, a probation officer shall be appointed by the Child Justice Committee 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 a appropriate adult;

- (b) any person 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 39 (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 Child Justice Committee.

(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 Child Justice Committee in writing of such failure, and section 37 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 Child Justice Committee 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 law conference may be used as evidence in any subsequent court proceedings.

Sentences 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 any part of the sentence imposed pursuant to subsection (1) may be postponed or suspended, with or without conditions referred to in section 64 (3).

Sentence with a compulsory residential requirement

61. (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 62; or

- (c) prison, subject to section 63.

Referral to secure residential facility

62. (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 and he or she would have been sentenced to imprisonment due to the seriousness of the offence were it not for section 63 (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), that 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.

[Referral to prison]

63. (1) A sentence of imprisonment shall not be imposed unless:

- (a) the child was over the age of [fourteen] 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

64. (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 are 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 44 (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

65. 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.

Prohibition on certain forms of punishment

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

(2) A child who has been sentenced to attend a secure residential facility may not be detained in a prison or in police custody pending designation of the place where the sentence is to be served.

[Notice to parent of child]

67. (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 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:
 - (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 in 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 show cause hearing.

Proceedings to show cause

68. (1) At the proceedings to show cause referred to in section 67:

- (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 67.

(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, 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 mentioned in subsection (1)(a) and (b), a Court is satisfied beyond reasonable doubt of the matters mentioned in section 67(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 67.

PART X LEGAL REPRESENTATION

Child to be provided with legal representation

69 . (1) A child shall be provided with legal representation by the State at the conclusion of an initial inquiry if no legal representative was appointed by the parent or an appropriate adult and if:

- (a) the child is in detention pending trial in the Court;
- (b) the proceedings is postponed for 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

- (c) the child is over the age of twelve and under the age of fourteen and a certificate pursuant to section 5 (3) has been issued in respect of the child.

(2) The Director of Public Prosecutions or a designated 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

70. 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 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.]

PART XI GENERAL PROVISIONS AS TO PROCEEDINGS IN COURT

Power to proceed with case in absence of child

71. 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

72. (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 XII RECORDS OF CONVICTION AND SENTENCE

Expungement of records

73. (1) The record of any sentence imposed on a child convicted of an offence referred to in Schedule III shall not be expunged.

[(2) In respect of offences other than those referred to in Schedule III, the [Judge/Magistrate] 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 judge 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 judge 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 [Judge/Magistrate] not to expunge a record shall be subject to appeal.

PART XIII OFFENCES AND PENALTIES

Offences and penalties

74. (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 17;
 - (b) fails to comply with a direction issued pursuant to section 13 or 43(3); or
 - (c) publishes information or reveals the identity of persons in contravention of section 53;

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 XIV REGULATIONS AND REPEAL

Regulations

75 . 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.

Repeal

76. The [Children and Young Persons Act, 19[] No. [] of 19[] is hereby repealed.

SCHEDULE I

Sections, 11, 15, 55, 63

1. Assault where grievous bodily harm has not been inflicted.
2. Malicious injury to property where damage does not exceed five thousand dollars.
3. Trespass.
4. Any offence under any law in force in the State relating to the illicit possession of dependence producing drugs 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. Any statutory offence where the maximum penalty determined by that statute does not exceed five thousand dollars.
7. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

SCHEDULE II

Sections 15, 18

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. Any offence under any law relating to the illicit possession of dependence drugs 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. Any statutory offence where the penalty concerned does not exceed one hundred thousand dollars.
8. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

SCHEDULE III

Sections 18, 19, 32, 33, 50, 63 and 74

1. Murder.
2. Rape.
3. Robbery:
 - (a) where there are aggravating circumstances;
 - (b) involving the taking of a motor vehicle.
4. Indecent assault involving the infliction of grievous bodily harm.
5. Indecent assault on a person under the age of eighteen years.
6. Any offence pursuant to the [Drug Trafficking Act/Misuse of Drugs Act] if:
 - (a) the value of the dependence producing substance in question is more than one hundred thousand; or
 - (b) the value of the dependence producing substance in question is more than one hundred thousand and the offence was committed by a person, group of persons, acting in the execution or furtherance of a common purpose or conspiracy.
7. Any conspiracy or incitement to commit an offence referred to in this Schedule or an attempt to commit any of the offences referred to in Item 1, 2, or 3 of this Schedule.