
CHAPTER 132
CHILD PROTECTION

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CHAPTER 132**CHILD PROTECTION****AN ACT TO PROVIDE FOR THE CARE AND PROTECTION OF CHILDREN AND FOR RELATED AND CONSEQUENTIAL MATTERS** *1 of 2007**[Assent – 16th January 2007]**[Commencement – 1st October 2009]* *SI 93/2009***PRELIMINARY**

1. This Act may be cited as the Child Protection Act. Short title
2. In this Act, unless the context otherwise requires — Interpretation
 - "adult correctional centre" means a place referred to in section 3 of the Prisons Act; Ch 208
 - "approved children home" means a Government or non-government home approved by the Minister under the Residential Care Establishment Act; Ch 235A
 - "authorised person" means an official or other person authorised in writing by the Minister to perform duties or to discharge responsibilities under this Act;
 - "care order" means a care order made under section 62 or 69 or 130 and includes an interim care order;
 - "child" means, unless provided otherwise in this Act a person below the age of eighteen years;
 - "competent authority" means an official or body or other person authorised expressly or impliedly by this Act or any other enactment to perform the function in question;
 - "correctional order" means an order made by a court sending a child to a juvenile correction centre;
 - "court" means the Supreme Court, a magistrate's court or a juvenile court;

"Department" means the Department of Social Services/Rehabilitative and Welfare Services;

"exclusion order" means an exclusion order made under section 75 or 128;

"foster-care placement" means the placement of a child by order of the court with a person who is not his parent and who is willing to undertake the care and maintenance of the child;

"foster-parent" means a person not being the biological mother or father of the child who assumes responsibility for the child by way of a care order;

"guardian" means a person having parental responsibility for a child;

"juvenile correction centre" means any place declared to be an industrial school or appointed as a place of detention for children under any law in force before the coming into operation of the Act or hereafter so declared by order of the Minister;

"maintenance order" includes any order made by a court for the maintenance of a child whether born within or outside of wedlock and any order for the maintenance of a spouse pursuant to section 44;

"Minister" means the Minister for the time being responsible for social services;

"parent" means the biological mother or father or adoptive mother or father of a child and includes any person liable by law to maintain a child or entitled to his custody;

"parental responsibility" means all duties, responsibilities and authority which by law a parent of a child has in relation to the child and his property;

"single woman" includes a married woman who has become a single woman by reason of widowhood or otherwise;

"social services officer" means an officer of the Department;

"supervision order" means a supervision order made under section 62 or 128 and includes an interim supervision order;

"treatment centre" means any institution or unit thereof under the management of the Public Hospitals Authority in which the psychiatric assessment, evaluation and treatment of persons is conducted.

PART I - RIGHTS OF THE CHILD

- 3.** (1) Whenever a determination has to be made with respect to — Guiding principle.
- (a) the upbringing of a child; or
 - (b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be the paramount consideration.

(2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child.

(3) In determining any question relating to circumstances set out in paragraphs (a) and (b) of subsection (1), the court or any other person shall have regard in particular to —

- (a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding;
- (b) the child's physical, emotional and educational needs;
- (c) the likely effects of any changes in the child's circumstances;
- (d) the child's age, sex, background and any other circumstances relevant in the matter;
- (e) any harm that the child has suffered or is at the risk of suffering;
- (f) where relevant, the capacity of the child's parents, guardians or other persons involved in

the care of the child in meeting his or her needs.

General rights of child.

- 4.** A child shall have the right —
- (a) of leisure which is not normally harmful, and the right to participate in sports and positive cultural and artistic activities;
 - (b) to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;
 - (c) to exercise, in addition to all the rights stated in this Act, all the rights set out in the United Nations Convention on the Rights of the Child (the Convention) subject to any reservations that apply to The Bahamas and with appropriate modifications to suit the circumstances that exist in The Bahamas with due regard to its laws.

Child's right to stay with parents and to have education.

- 5.** (1) A child is entitled to live with his parents or guardian save as provided by this or any other Act.
- (2) It shall be the duty of any person having the charge, care or custody of a child to use his best efforts —
- (a) to protect the child from discrimination, violence, abuse and neglect;
 - (b) to ensure that the child is enrolled at, and attends school.

Parental responsibility.

- 6.** (1) Every parent shall have parental responsibility for his or her child but a court may, if it deems just, disregard any right arising therefrom unless that parent has addressed the criteria referred to in section 14(2).

(2) Where the parents of a child are deceased, parental responsibility may, pursuant to an application to the Supreme Court, and having regard to any recommendation of a social services officer, be passed on to relatives of either parent or to any person designated by the court.

(3) Parental responsibility includes the rights, powers and duties which a guardian of the child's estate (appointed to act generally) would have had in relation to the child and his property.

(4) The rights referred to in subsection (3) include, in particular, the right of the guardian to receive or recover

as trustee, for the benefit of the child, property of whatever description and wherever situate which the child is entitled to receive or recover.

(5) The fact that a person has, or does not have, parental responsibility for a child shall not affect —

- (a) any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or
- (b) any rights which, in the event of the child's death, he (or any other person) may have in relation to the child's property.

(6) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing shall be taken as affecting the operation of any enactment requiring the consent of more than one person in a matter affecting the child or the need to have meaningful consultation between them where the result of the decision of one would impact upon the financial obligation of the other.

(7) A person who —

- (a) does not have parental responsibility for a particular child; but
- (b) has care of the child;

may, subject to the provisions of this Act, do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

7. (1) No child shall be employed or engaged in any activity that may be detrimental to his health, education, or mental, physical or moral development.

Harmful
employment

(2) No child under the age of sixteen shall be employed, save as is provided by subsection (3).

(3) Subject to subsection (1) a child under the age of sixteen may be employed —

- (a) by the child's parents or guardian in light domestic, agricultural or horticultural work;
- (b) in any occupation in which his employment is sanctioned by any other law or prescribed under this Act:

Provided that no child under the age of sixteen shall be employed in night work or in an industrial undertaking.

- (4) Reference to night work is a reference to —
- (a) the period commencing from 8:00 p.m. on any school day;
 - (b) the period commencing from 9:00 p.m. on any non-school day.

Children with disabilities.

8. (1) The parents of children with disabilities shall take appropriate steps to see that those children are —

- (a) assessed as early as possible as to the extent and nature of their disabilities; and
- (b) offered appropriate treatment.

(2) The Minister responsible for education shall take appropriate steps to ensure that children with disabilities are afforded equal opportunities to education.

Social inquiry reports.

9. (1) A court considering any question with respect to a child under this Act may ask the Department to arrange for a social services officer or such other person as the court considers appropriate, to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.

(2) The report may be made in writing, or orally, as the court requires.

(3) If the report referred to in this section is in writing, a copy of such report shall be made available to the child having regard to his age and maturity and to his legal representative.

(4) It shall be the duty of the Department or, as the case may be, any other person with whom arrangements have been made to furnish a report under subsection (1), to comply with any requests for a report under this section.

(5) Nothing in this section shall authorise the disclosure to a child information which the court has determined on the recommendation of the preparer of the report or a social services officer to be of such a private and confidential nature pertaining to a parent or has the potential of causing mental trauma to the child.

PART II - LEGAL CAPACITY AND GUARDIANSHIP OF CHILDREN

10. In this Part, unless the context otherwise requires —

Interpretation of words used in this Part.

"court" means the Supreme Court;

"maintenance" includes education;

"person" includes any local authority, school or institution.

11. Notwithstanding anything to the contrary contained in any law relating to the wills of children, a married child may make a will relating to his property, real and personal, and of every kind whatever.

Testamentary capacity of married child.

12. (1) A child may be appointed as an executor or a trustee but shall be incapable of exercising the office until he has attained the age of eighteen years.

Child executors and administrators.

(2) Letters of administration under any law relating to the administration of the estates of deceased persons shall not be granted to anyone before he has attained the age of eighteen years.

13. (1) Notwithstanding any law to the contrary a child has the right to and may pursue in the same manner as if he were of full age legal proceedings to recover any sum of money which may be due to him for salary, wages or piece work.

Legal proceedings as regards contracts with children.

(2) All contracts, whether by speciality or by simple contract, henceforth entered into by children for the repayment of money lent, or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with children shall be absolutely void:

Provided that this subsection shall not invalidate any contract into which a child may by an existing or future law or by the rules of common law or equity enter, except such as now by law are voidable.

(3) No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during childhood, or upon any ratification made after full age of any promise or contract made during childhood, whether there shall or shall not be any new consideration for such promise or ratification after full age.

Access and rights
of parent as
guardian of child.

14. (1) The mother and father of a child, subject to sections 16, 19 and 21 and any order of the court, each shall be guardian of and subject to subsection (2) each shall have a right of access to the child.

(2) A Court shall when considering the issue of custody or access have regard to the past contribution of the parent to the care, maintenance and upbringing of the child.

(3) On the death of one parent, the surviving parent, if any, shall, subject to this Act, be guardian of the child:

Provided that if the parents were separated, and the deceased parent had custody of the child, the surviving parent may be guardian of the child either alone or jointly with any guardian appointed by the deceased parent, and

- (a) where no guardian has been appointed by the deceased parent; or
- (b) in the event of the death or refusal to act of the guardian or guardians appointed by the deceased parent,

the court may, if it thinks fit, appoint a guardian to act jointly with the surviving parent.

Power of father
and mother to
appoint
testamentary
guardians.

15. (1) The father or mother of a child may by deed or will appoint any person to be guardian of the child after his or her death, provided that the father of a child born out of wedlock may only appoint a guardian if he has been granted custody of such child pursuant to section 21.

(2) Any guardian appointed in accordance with subsection (1) shall act jointly with the surviving parent, if any, unless the surviving parent objects to his so acting.

(3) If the surviving parent so objects, or if the guardian so appointed considers that the surviving parent is unfit to have the custody of the child, the guardian may apply to the court, and the court may either —

- (a) refuse to make any order (in which case the surviving parent shall remain sole guardian); or
- (b) make an order that the guardian so appointed shall —
 - (i) act jointly with the surviving parent; or

(ii) be the sole guardian of the child.

(4) Where the court makes an order under subsection (3) (b) (ii) that a person shall be the sole guardian of a child, the court may —

(a) make such order regarding —

(i) the custody of the child; and

(ii) the right of access to the child of the surviving parent, as the court thinks fit, having regard to the welfare of the child; and

(b) make a further order requiring the surviving parent to pay the guardian a weekly or other periodical sum towards the maintenance of the child as the court thinks reasonable having regard to the means of the surviving parent.

(5) The powers conferred by subsections (3) and (4) may be exercised at any time and include powers to vary or discharge any order previously made.

(6) Where guardians are appointed by both parents, the guardians so appointed shall after the death of the surviving parent act jointly.

(7) If under section 14 a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent, but if the surviving parent has appointed a separate guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.

(8) A person appointed guardian by a parent may disclaim his appointment, but no such disclaimer has effect unless —

(a) it is in writing signed and made within a reasonable time after his first knowing that the appointment has taken effect, and

(b) the written disclaimer had been served upon the Director of Child and Welfare Services twenty-one days previously.

16. Subject to this Act, a child's parent may appoint a guardian or guardians to his own child or children as if he were of full age.

Powers of child's parents.

Application to court for leave if joint guardians disagree.

17. (1) Where two or more persons act as joint guardians of a child and they are unable to agree on any question affecting the welfare of the child, any of them may apply to the court for its directions, and the court may make such order regarding the matters of difference as it may think proper.

(2) The power of the court under subsection (1) shall, where one of the joint guardians is the surviving parent of the child, include power —

- (a) to make such order regarding —
 - (i) the custody of the child; and
 - (ii) the right of the access to the child of the surviving parent, as the court thinks fit, having regard to the welfare of the child;
- (b) to make an order requiring the surviving parent to pay a weekly or other periodical sum towards the maintenance of the child as the court thinks reasonable having regard to the means of the surviving parent;
- (c) to vary or discharge any order previously made under this section.

Powers of guardians.

18. Without prejudice to any other powers specifically vested in guardians by virtue of this Act, every guardian under this Act has all such powers over the estate and the person of a child as any guardian would have had prior to the coming into operation of this Act.

Power of court to remove or substitute guardian.

19. The Supreme Court may, in its discretion, on being satisfied that it is in the best interests of the child, remove from office any testamentary guardian, or any guardian appointed or acting by virtue of this Act, and may also if it considers it to be for the welfare of the child, appoint another guardian in place of the guardian so removed.

Guardianship in case of divorce or judicial separation.

20. In any case where a decree for judicial separation, or a decree nisi or absolute for divorce has been pronounced and the court in those proceedings has determined in the best interest of the child to declare the parent by reason of whose misconduct the decree is made to be a person unfit to have the custody of the child, if any, of the marriage then, in such case, the parent so declared to be unfit shall not, upon the death of the other parent, be automatically entitled as of right to the custody or

guardianship of such child; provided that the court may, if satisfied, determine whether there has been a change of circumstances necessitating the grant of custody or guardianship to such parent.

PART III - CUSTODY

21. (1) The mother of any child born out of wedlock shall be the guardian of that child and a court shall be capable of exercising with respect to the child born to a single woman all the powers conferred upon it by this Act with respect to a child born within wedlock.

Guardianship and custody of a child born to a single woman.

(2) Subject to subsection (3), the mother of any child born out of wedlock shall have and be entitled to the custody of the said child, until it attains the age of eighteen years.

(3) The mother of any child born out of wedlock may be deprived of her custody under this Act by order of a court where —

- (a) such mother has deserted or abandoned the child in such a manner likely to endanger the health or well-being of the child;
- (b) such mother is by reason of intemperate or immoral habits, (such as prostitution or drunkenness,) or for any reason, unfit to have custody of the child;
- (c) such mother does not exercise proper care and control of the child;
- (d) the order depriving her of custody, if made, will be in the best interest of the child, and a social service officer has so confirmed by a written report or in evidence before the court;
- (e) the court is satisfied that there exists some other circumstances not provided under paragraphs (a) to (d) which render the mother unfit to exercise the rights and assume the duties of custody.

(4) Without prejudice to subsection (3) the father of a child born out of wedlock may in the course of any proceedings for a maintenance order or in other proceedings make application to any court for custody of the child and the court may make such order if it is shown

to the satisfaction of the court that it is in the child's best interest for him to have custody.

Court may make order as to custody

22. (1) A court may, upon the application of any of the parents of a child or in the course of the hearing of any such application by one parent make such order as it may think fit regarding —

- (a) the custody of the child; and
- (b) the right of access to the child mentioned in section 14 by either parent; and
- (c) any other matter affecting the child, having regard to the age and the best interests of the child and taking into consideration the conduct and wishes of the parents and the child.

(2) Where a court makes an order under subsection (1) or under section 21(4) giving the custody of the child to one parent, it may further order that the other parent pays to the parent having custody of the child a weekly or other periodical sum towards the maintenance of the child as the court thinks reasonable having regard to the means of the parents.

(3) Where any order as to custody of the child or payment to a parent of a periodical sum for the maintenance of the child had been previously made by another court, a court may, if it is of like or superior jurisdiction to the latter court and it thinks fit, in the exercise of its power to make an order for the custody or maintenance of the child under this section, discharge the previous order and substitute any order as it may think fit.

(4) An order may be made under subsection (1) or (2) as regards the custody or maintenance of a child notwithstanding that the parents of the child are then residing together.

(5) An order under subsection (1) or (2) may be varied or discharged by a subsequent order made on the application of either parent or, in the case of an order under subsection (1), after the death of either parent on the application of any guardian under this Act, without prejudice to the powers conferred by the other provisions of the Act upon an officer of the Department.

(6) A parent granted custody of, or access rights to, the child under subsection (1), may apply to the court to voluntarily give up such custody or access to the child.

23. No agreement contained in any separation deed made between the parents of a child shall be held invalid by reason only of its providing that a parent of such child shall give up the custody or control thereof to the other, however, the court shall not enforce any such agreement, if it is of the opinion that it will not be for the benefit of the child.

Effect of separation deed between parents.

24. (1) Subject to any other law to the contrary, where a maintenance order has been made the court shall, in addition to any other powers for enforcing compliance with the order, have power, in any case where there is any pension, income or sum payable to the person against whom the order is made and capable of being attached, after giving that person and the person by whom the pension, income or sum is payable an opportunity of being heard, to order that such part as the court may think fit of any such pension, income or sum be attached and paid to the person named by the court.

Garnishing.

(2) An order under subsection (1) shall be an authority to the person by whom the pension, income or sum is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or income is payable.

25. Where the parent of a child applies to the Supreme Court for a writ or order for the production of a child, and the court is of the opinion that the parent has abandoned or deserted the child, or that he has otherwise so conducted himself that the court should refuse to enforce his right to the custody of the child, the court may, in its discretion, decline to issue the writ or make the order.

Power of court as to production of child.

26. If at the time of the application for a writ or order for the production of a child, the child is being brought up by another person, the court may, in its discretion, if it orders the child to be given up to the parent, further order that the parent pays to such person the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the court to be just and reasonable, having regard to the circumstances of the case.

Power of court to order repayment of cost of bringing up child.

27. Where a parent has —

- (a) abandoned or deserted his child; or
- (b) allowed his child to be brought up by another person at that person's expense for such a length of time and under such circumstances

Court in making order to have regard to conduct of parent.

as to satisfy the court that the parent was unmindful of his parental duties,

the court shall not make an order for the delivery of the child to the parent, unless the parent has satisfied the court that, having regard to the welfare of the child, he is a fit and proper person to have the custody of the child.

Power of court as to child's upbringing.

28. (1) Upon any application by the parent for the production or custody of a child, if the Supreme court is of the opinion that the parent ought not to have the custody of the child having regard to the guiding principle mentioned in section 3(1), and that the child is being brought up in a different religion to that in which the parent has a legal right to require that the child should be brought up, the court may, having regard to the age and maturity of the child, and if it considers it in the best interests of the child, order that the child be brought up in the religion in which the parent has a legal right to require that the child should be brought up.

(2) Nothing contained in this section or in sections 26 and 27 shall interfere with or affect the power of the court to consult the wishes of the child in considering what order ought to be made under this section, or diminish the right which any child now possesses to the exercise of its own freedom of thought, conscience and religion having regard to its age and maturity.

Principle on which questions relating to custody, upbringing, etc., of children are to be decided.

29. Where in any proceeding before any court —

- (a) the custody or upbringing of a child; or
- (b) the administration of any property belonging to or held on trust for a child, or the application of the income thereof,

is in question, the court shall in deciding that question, have regard to the guiding principle mentioned in section 3 (1) and shall not take into consideration whether the claim of the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or vice-versa.

Duty of Department to safeguard children.

30. (1) It is a general duty of the Department —

- (a) to safeguard and promote the welfare of children; and
- (b) to mediate in any situation where the rights of a child are infringed upon and especially with regard to the protection of a child, the child's

health and education, and the child's succession rights to the property of his parents.

(2) The Department shall keep a register of disabled children and shall provide assistance and accommodation for any disabled child in need who appears to require such assistance and accommodation as a result of having been lost or abandoned or is seeking refuge, save where any such child is otherwise cared for in any other government institution providing care for that child.

31. Where the Department —

- (a) is informed that a child is in police protection; or
- (b) has reasonable cause to believe that a child's rights are being infringed or the child is suffering or likely to suffer harm; or
- (c) has reasonable cause to believe that a parent, guardian or any person having custody of a child is able, but refuses or neglects, to provide the child with adequate food, shelter, clothing, medical care or education,

Duty to investigate infringements of child's rights.

the Department shall make or cause to be made such enquiries as it considers necessary to enable it to decide whether it should take action to safeguard or promote the welfare of the child.

32. Nothing in this Act shall restrict or affect the inherent jurisdiction of the Supreme court to appoint or remove guardians or its paramountcy as a superior court of record.

Saving.

PART IV - FAMILY MAINTENANCE, MAINTENANCE RIGHTS AND DUTIES OF MEMBERS OF THE FAMILY AS BETWEEN THEMSELVES

33. Subject to the other provisions of this Act, every man is hereby required to maintain his own children and also every child, whether born in wedlock or not, which his wife may have living with her at the time of marriage to him so long as such children are unable to maintain themselves.

Duty of man to maintain children.

34. Every widow and unmarried woman is hereby required to maintain her own children, and every woman

Duty of woman to maintain children.

having children to whom any man is primarily bound under section 33 to maintain, is hereby required to maintain those children in the event of his failing to perform his obligation.

Application by person who may be abroad.

35. A court shall have power to make, vary or revoke a maintenance order —

- (a) for the benefit of a child notwithstanding the mother was domiciled abroad at the date of the child's birth and that the child was born abroad;
- (b) for the benefit of a spouse notwithstanding the proceedings are brought by or against a person residing outside The Bahamas.

Burden of proof as to ability of child to maintain himself.

36. For the purposes of this Act, every child under sixteen years of age shall be presumed unable to maintain himself by reason of tender age, unless the contrary is shown.

PART V - PROCEEDINGS TO ENFORCE RIGHT TO MAINTENANCE

Mode of compelling performance of duties imposed by this Act.

37. (1) Without prejudice to the provisions of section 41 and subject to section 42 any person entitled to be maintained (hereinafter referred to as the "dependant") by another person as provided by this Act, or any person having the care and custody of the dependant may, if the person, or some one of the persons, if more than one who is liable to maintain the dependant fails to do so, make a complaint before a magistrate for an order of maintenance, including an additional order where applicable for the maintenance of a parent of that child as is provided for in section 3 of the Matrimonial Causes (Summary Jurisdiction) Act.

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(2) The magistrate shall inquire into the matter and, if there is reasonable cause to believe that the complainant or the dependant is entitled to be maintained by the person or persons against whom the complaint is made, and that that person or those persons have neglected to comply with the requirements of this Act, he shall issue a summons to him or them to appear before the court at a time and place to be mentioned in the summons to answer the matter of the complaint.

(3) If any dependant becomes chargeable to any department or agency of the Ministry responsible for social welfare, any person authorised by the head of that department or agency may make complaint before a magistrate on behalf of the dependant who has become chargeable to the department or agency, and thereupon the magistrate shall proceed in the same way as if the dependant had himself made the complaint.

38. Where, on hearing any application under section 37, the court is of the opinion that any of the matters in question between the parties would be more conveniently dealt with by the Supreme Court, the court may refuse to make a maintenance order on the application and no appeal shall lie from that refusal, but, if in any proceedings in the Supreme Court relating to or comprising the same subject matter as that application the Supreme Court so orders, the application shall be re-heard and determined by the magistrate's court in the same district as the first mentioned court.

Refusal of order
in case more
suitable for
Supreme Court.

39. (1) At the time and place mentioned in the summons, the magistrate shall proceed to inquire into the matter and, if satisfied that the complainant or the dependant on whose behalf the complaint is made is entitled under this Act to be maintained by the party against whom the complaint is made, (hereinafter referred to as the "respondent") and that the respondent has neglected his duty in that respect the magistrate shall proceed to inquire into his means and if satisfied that the respondent is capable of maintaining or contributing to the maintenance of the complainant, or the dependant on whose behalf the complaint is made, the magistrate shall proceed to make a maintenance order against the respondent directing him to pay a periodical sum which, having regard to the matters set out in section 53 the magistrate thinks just:

Proceedings on
hearing of
complaint.

Provided that if the complaint has been made under section 37 by a person authorised by the head of a department or agency, the magistrate, if he sees fit, may order the party or parties against whom the complaint is made to pay some person to be named in the order, a sum not exceeding one hundred dollars a week for every week during which the Government department or agency has given relief, such sum, however, not to exceed the amount of that relief.

(2) A magistrate in directing the payment of a periodical sum as maintenance for a child may also order the respondent to pay an additional lump sum to defray any expenditure previously incurred by the applicant in respect of the birth, death, welfare or education of the child.

Limitation of time for operation of order of maintenance.

40. Subject to section 41 any order of maintenance made under this Act shall, in the case of a child, be deemed to be in force until the child attains the age of eighteen years and, in the case of any other person, for the period named in the order:

Provided that —

- (a) the order for that other person may be renewed at any time by any magistrate having jurisdiction to make an order;
- (b) where that other person to be maintained is unable to maintain himself by reason of old age or by reason of an illness or infirmity likely to be permanent, as determined by a registered medical practitioner, the magistrate may make the order of maintenance for the rest of the natural life of that person.

Cancellation and variation of order.

41. Any person against whom any order has been made under this Act by a magistrate's court may at any time apply to the court to cancel or vary it, and, if he satisfies the magistrate on due inquiry that he has ceased to be capable of maintaining or contributing to the maintenance, because of illness or physical or mental disability, or any change in his circumstances, (financial or otherwise), or that the person whom he was ordered to maintain is not able to maintain himself, the magistrate may cancel or vary the order as the court sees fit.

Application for declaration of parentage.

42. (1) Any single woman who is with child, or who has been delivered of a child may —

- (a) either before the birth of that child; or
- (b) at any time before the child attains the age of eighteen years or sooner marries,

make application to the magistrate of the district in which she resides for a summons for a declaration of parentage to be served on the man alleged by her to be the father of the child.

(2) A single woman who has been delivered of a child may, upon proof that —

-
- (a) before the birth she was party to a marriage which would have been valid but for the provisions of any law making it void on account of her, or the other party to the marriage, being under the age at which she, or the other party, might legally contract a marriage; and
 - (b) the said other party had access to her within twelve months before the birth,

make at any time an application under this section against that other party before the child attains the age of eighteen years or sooner marries.

(3) An application under subsection (1) may be made by a woman who was a single woman at the date of the birth of the child whether or not she was a single woman at the time of the application, and the reference to a single woman in subsection (2) shall be construed accordingly.

(4) If the application is made before the birth of the child, the woman shall make a deposition on oath stating who is the father of such child, and the magistrate shall thereupon issue his summons to the person alleged to be the father of that child to appear before the magistrate's court at such time, not being less than four days from the issue of the summons, as the summons shall direct.

(5) Nothing shall enable an application to be made under the foregoing provisions of this section in respect of a child born prior to the date of the coming into operation of this Act if an application could not be made under section 4 of the Affiliation Proceedings Act, prior to its repeal, by reason only of the lapse by that date of the period of time prescribed by that Act for the bringing of the application under that Act.

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(6) Where an issue of paternity arises in any proceedings before a Magistrate in respect of a child referred to in the foregoing provisions of this section the determination of that issue shall not be made upon evidence —

- (a) given by the mother; or
- (b) given by a person alleging to be the father,

that is not corroborated in some material particular by other evidence to the court's satisfaction unless a presumption as

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Satisfying obligation under order.

43. (1) If a court makes a maintenance order and it appears that the person who is to make the payment under that order is about to leave The Bahamas and has not made adequate provision for the payment of any sums ordered to be paid during his absence the court may, if it thinks it expedient so to do upon an application by or on behalf of the dependant order that the person shall make the necessary provision before leaving.

(2) It shall be lawful for such magistrate to issue a summons directed to such person requiring him to appear before the magistrate at the time therein mentioned and to show cause why an order should not be made against him prohibiting him from leaving The Bahamas:

Provided that the magistrate may, if he thinks it expedient so to do, either in the first instance or subsequent to the issue of a summons issue a warrant addressed to the Commissioner of Police and all peace officers to apprehend such person and cause him to be brought before him or any other magistrate.

(3) A person who attempts to leave or leaves The Bahamas and has failed to make the requisite provision in breach of an order made under subsection (1) is guilty of an offence punishable on summary conviction to a fine of five hundred dollars and to imprisonment for three months.

Liability of spouse to pay for other spouse's maintenance in mental hospital, etc.

44. Whenever any spouse is a patient in a mental hospital, or hospital, or is an inmate in a house for the aged, or is in a rehabilitation centre provided or maintained by the Government out of public monies, the other spouse is required to contribute towards the maintenance of such spouse therein, and sections 45 to 48 shall *mutatis mutandis* apply in that case and, for the purposes of those sections, every spouse shall be deemed a person entitled to be maintained by the other spouse within the meaning of this Act:

Provided that the sum which the contributing spouse shall be required to pay shall be based on his personal circumstances and ability to pay.

MAINTENANCE OF PERSONS IN PUBLIC
INSTITUTIONS

45. If any dependant is a patient in a mental hospital, or hospital, or is a resident of a home for the aged or child care centre, or is in a rehabilitation centre, being provided or maintained or subsidised out of public monies, the Director may make a complaint before a magistrate, who shall thereupon inquire into the matter and, if it appears to the magistrate that the dependant is entitled to be maintained by any person or persons under this Act, he shall summon the person or persons liable under this Act for the maintenance of the other person to appear before him at a time and place to be mentioned in the summons, and to show cause why he or they should not contribute towards the maintenance of the dependant.

Orders in respect of persons in mental hospitals, etc.

46. (1) At the time and place mentioned in the summons referred to in section 45 the magistrate shall proceed to inquire into the matter and, if satisfied that the dependant in respect of whom the complaint is made is entitled under this Act to be maintained by the party or parties (hereinafter referred to as "the party") against whom the complaint is made, shall proceed to inquire into his or their means.

Proceedings for orders under section 45.

(2) If the magistrate is satisfied that the party is of sufficient ability to maintain or contribute towards the maintenance of the dependant in respect of whom the complaint is made, the magistrate shall proceed to make an order against the party ordering him to pay to the person authorised to receive by the head of the Government department or agency such periodical sum which, having regard to the party's means, and all circumstances of the case, the magistrate thinks just.

(3) In addition to the periodical sum referred to in subsection (2), the magistrate may order any further sum, not exceeding the sum of one hundred dollars a week to be paid by the party for every week during which the dependant in respect of whom the complaint was made has been in the hospital, mental hospital, home for the aged, child care centre or rehabilitation centre as aforesaid.

(4) Any order made under the foregoing provisions of the section shall —

(a) stand discharged upon the death of the dependant in respect of whom it was made, or

upon his discharge from the hospital, mental hospital, house for the aged, child care centre, or rehabilitation centre, as the case may be;

- (b) if the party against whom an order is made under this section has previously had a maintenance order made against him in respect of the same dependant, the last mentioned order shall not be enforced so long as the order made under this section is enforceable.

(5) No maintenance order shall subsequently be made under section 39 so long as any order under this section remains in force in respect of the same dependant.

(6) The powers exercisable by a magistrate under the provisions of the preceding subsections of this section and of section 45 in respect of a dependant who is eligible to be maintained by another person shall also be exercisable in respect of a dependant who is in receipt of or eligible to receive benefits under the National Insurance Act and accordingly those provisions shall *mutatis mutandis* apply to the National Insurance Board.

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Enforcement of
order
Ch 54

47. Any order made under this Act for the payment of any sum may be enforced by distress or other means and, in the manner, prescribed in the Magistrates Act, and except as otherwise provided by this Act, all proceedings under this Act before a magistrate shall be as nearly as possible according to the procedure under that Act.

Appeals as
regard
maintenance
orders

Ch 54

48. Any person against whom a maintenance order has been made by a magistrate under the provisions of this Act or who is aggrieved by any decision made in respect of such order may appeal from that order or decision, as the case may be, to the Supreme Court in accordance with the provisions of the Magistrates Act relating to appeals from decisions of magistrate's courts.

COLLECTION OF MONEY PAYABLE UNDER MAINTENANCE ORDERS

Collection
officer
Ch 54

49. For the purposes of this Act, the person who is directed by the magistrate pursuant to section 50 of the Magistrates Act to collect monies shall be the collecting officer in respect of any monies payable under a maintenance order unless there has been another person designated in the order or by the Registrar of the Supreme Court by notice for the purpose.

50. (1) When a magistrate makes a maintenance order for a child born out of wedlock, he shall provide in that order that all payments under the maintenance order be made to the officer referred to in section 49 and thereupon all payments made thereunder shall be made to that collecting officer unless upon representation expressly made in that behalf by the applicant for the maintenance order he is satisfied that it is more appropriate for the payments to be made otherwise.

Power to order payments to be made through collection officer.

(2) Payment of any amount under a maintenance order may be made to the collecting officer in person or by letter sent by registered post addressed to the collecting officer and posted in time to be delivered to him on the day appointed for payment.

51. (1) A collecting officer shall receive all payments made to him under this Act and shall make payment to the person as is named in the maintenance order of the sum directed to be paid thereunder or such part thereof as he receives without any deduction therefrom.

Processing by collecting officer of payment.

(2) Where the maintenance order provides that payment be made to the collecting officer the applicant for the order shall thereupon state to the collecting officer his postal address, if any, or make arrangements with the collecting officer to receive payment under the order by attendance at the office of the collecting officer weekly.

52. (1) Notwithstanding anything to the contrary in any other Act limiting the time within which summary proceedings are to be taken, such limitation shall not apply to proceedings for making application for a maintenance order except as provided by section 42 and section 13 of the Matrimonial Causes (Summary Jurisdiction) Act.

Limitation period not to apply and notice of change of address.

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(2) Any person for the time being under an obligation to make payments in pursuance of a maintenance order under this Act, shall give notice of any change of address within fourteen days to —

- (a) such person, if any, as may be specified to receive the money in the order;
- (b) the clerk to the court that made the order,

and any person failing without reasonable excuse to give such a notice commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.

Matters for
magistrate's
consideration

53. A magistrate in making a maintenance order shall have regard to —

- (a) the income, earning capacity, property and other financial resources which each the dependant and the respondent has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each the dependant and the respondent has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the dependant before the application;
- (d) the age of the respective dependant and the respondent; and the duration of any cohabitation;
- (e) any physical or mental disability of either the dependant or the respondent;
- (f) the contributions made by each of the parties to the welfare of the family or household;
- (g) any other matter which in the circumstances of the case the court may consider relevant including any such matters as are mentioned in subsections (5) and (7) of section 4 of the Matrimonial Causes (Summary Jurisdiction) Act.

Ch 126

Enforcement of
order

54. (1) Where default is made in paying any sum ordered to be paid by a maintenance order, the court shall not enforce payment of the sum in accordance with section 46 of the Magistrates Act except by an order made on the application of the person entitled to the payments under the maintenance order.

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(2) An application under subsection (1) shall be made not earlier than the fifteenth day after the making of the order for the enforcement of which it is made, but subject to this, an application may be made at any time notwithstanding anything contained in any Act.

(3) Where at the time and place appointed for the hearing or adjourned hearing of an application under this section the applicant appears but the person in default does not, the court may proceed in his absence:

Provided that the court shall not begin to hear the application in his absence unless either it is proved to

the satisfaction of the court on oath, or in such other manner as may be prescribed, that the summons was served on him within what appears to the court to be a reasonable time before the hearing or adjourned hearing, or the person in default has appeared on a previous occasion to answer the application.

55. (1) If an application under section 54 is substantiated on oath, any magistrate acting for the district as a court having jurisdiction to hear the application may issue a warrant for the arrest of the person in default whether or not a summons has been previously issued.

Committal for non-payment.

(2) If upon the return of such warrant, or if by the admission of the person in default, it appears that no sufficient distress can be had, then the magistrate shall, by warrant under his hand, cause the person in default to be committed to prison, there to remain for any term not exceeding three months unless such sum and costs and all reasonable charges attending the said distress together with the costs and charges of the committal and conveyance to prison be sooner paid and satisfied.

(3) A court shall not impose imprisonment in respect of a default to which this section relates unless the court has inquired in the presence of the person in default whether the default was due to his wilful refusal or culpable neglect, and shall not impose imprisonment as aforesaid if it is of opinion that the default was not so due; and without prejudice to the foregoing provisions of this subsection, a court shall not impose imprisonment as aforesaid —

- (a) in a case in which the court has power to make an attachment of earnings order under section 24(1), unless the court is of opinion that it is inappropriate to make such an order;
- (b) in any case, in the absence of the defendant;
- (c) for a period exceeding twelve weeks.

(4) When a magistrate commits a person in default to prison under this Act, unless the magistrate otherwise directs —

- (a) the committal shall not operate to discharge the person from his liability to pay the sum for which the committal was made;
- (b) no arrears shall accrue under the order during the time of his imprisonment and arrears shall

continue to occur once that person has been released from prison.

Duration of order for benefit of child.

56. Subject to the provisions of sections 46, 57 and 58 a maintenance order for the benefit of a child shall not, except for the purpose of recovering money previously due under the order, be of any validity after the child has attained the age of eighteen years or has died.

Continuance of payment in certain cases.

57. (1) If, on the application of the parent or guardian of a child, it appears to the court that the child is or will be engaged in a course of education or training after attaining the age of eighteen years, or that the child is suffering from a mental or physical disability, and that it is therefore expedient for payments to be made under the order after the child attains that age, then subject to subsection (2), the court may by order direct that payments be so made for such period not exceeding three years from the date of the order as may be specified in the order.

(2) The period specified in an order made under subsection (1) may from time to time be extended by a subsequent order so made, but shall not in any case extend beyond the date when the child attains the age of twenty-one years except in the case of a disabled child or a child pursuing full time education.

Variation or revocation of maintenance orders.

58. (1) A maintenance order made by a court of summary jurisdiction may, at any time on application be revoked, revived or varied by a magistrate having regard to all the circumstances.

(2) An order for maintenance of a child against a father or mother shall cease to have effect on the custody of the child being granted to that father or mother by the court.

(3) An order for maintenance of a child may be made and enforced against the estate of a deceased person who has been declared the father or mother of the child under a declaration of parentage.

(4) Where a declaration of parentage has been made, an order for recovery of arrears of expenses incurred in the maintenance of a child may be made even after the death of the child.

Power to remit arrears.

59. On the hearing of proceedings for the enforcement, revocation, revival, variation or discharge of a maintenance order, the court may remit the whole or any part of the sum due under the order if the person responsible to pay such

maintenance was prevented from doing so due to illness, mental disability, his incarceration in a correctional institution or by reason of some other circumstance beyond his control.

60. (1) Whenever a maintenance order is made against the father or mother, a court may, at the time of making the order or from time to time thereafter, on being satisfied that the applicant —

Appointment of
custodian.

- (a) is not a fit and proper person to have custody of the child; or
- (b) has since died, or has become of unsound mind, or is in prison,

appoint a person who is willing to have custody of the child to be the custodian of the child.

(2) The appointment of a custodian may be made on the application on behalf of the Director of the Department or of the person having custody of the child or of the person against whom the maintenance order is made.

(3) The appointment of a custodian may be revoked and another person appointed to have custody of the child.

(4) A custodian shall have power to apply for the recovery of all payments in arrears becoming due under a maintenance order as any other applicant would have been entitled to do.

(5) Where any order of appointment or of revocation of the appointment of a custodian is made, the court may also order the child to be delivered to the person appointed to have custody of the child.

(6) If a child in respect of whom a maintenance order has been made is wrongfully removed from the person in whose custody he is, the court may, on the application of the custodian, make an order that the custody of the child be recommitted to the applicant having regard to any report from the Department or other evidence relevant to the issue.

(7) Any person who contravenes an order made under subsection (6) or hinders the carrying out of the order commits an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or two years imprisonment, or to both such fine and term of imprisonment.

Misapplying
maintenance
money.

61. (1) A person who misapplies any money paid for the maintenance of a child in his custody thereby resulting in the neglect of the child commits an offence punishable on summary conviction by a fine of five thousand dollars and to imprisonment of two years and in such circumstances the court shall consider if custody should be varied in the best interests of the child.

(2) Notwithstanding anything to the contrary in any other law, hearsay evidence may be admitted by the court in proof of an offence under subsection (1).

PART VI - CARE AND PROTECTION OF CHILDREN SUPERVISION ORDERS

Cruelty to
children.

62. (1) If any person who has attained the age of eighteen years and has the custody, charge or care of any child assaults, ill-treats, neglects, abandons or exposes him, or causes or permits him to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence and shall be liable upon summary conviction to a fine not exceeding five thousand dollars or imprisonment for two years or both, or, upon conviction before the Supreme Court, to a fine not exceeding ten thousand dollars or imprisonment for five years or both.

(2) For the purposes of this Act the persons specified in paragraphs (a) to (c) shall, in the circumstances described in those paragraphs, be deemed to have neglected a child in a manner likely to cause injury to the child's health, that is to say —

- (a) a parent or other person legally liable to maintain the child who, being able to do so, fails to provide for the child;
- (b) an adult with whom a child under three years of age was in a bed, where it is proved that —
 - (i) the child's death was caused by suffocation (not resulting from disease or the presence of any foreign body in the infant's throat or air passages); and

-
- (ii) the adult was, at the time of going to bed under the influence of alcohol or any drug;
 - (c) any adult having the custody, charge or care of any child under fourteen years of age who allows that child to —
 - (i) be in any room or yard containing —
 - (A) any body of water, whether naturally or artificially formed or stored in a container; or
 - (B) a flame; or
 - (ii) to have access to any flammable substances,

not sufficiently protected to guard against the risk of that child being drowned, burnt or scalded, as the case may be, without taking reasonable precautions against the risk, and by reason thereof that child is killed or suffers serious injury:

Provided that neither this subsection nor any proceedings taken thereunder, shall affect the liability of any person to be indicted for manslaughter or for any offence against the Penal Code.

(3) Any adult who gives, or causes to be given, or sells or causes to be sold, to any child any intoxicating liquor, except upon the order of a duly qualified medical practitioner for the purpose of treating sickness, or in case of other urgent cause, shall be deemed to have ill-treated that child in a manner likely to cause injury to the child's health.

(4) An owner or operator of an establishment that sells or serves intoxicating liquor or tobacco products shall not be guilty of an offence under subsection (3) if he proves to the satisfaction of the court that at the time of such sale he took all reasonable steps to ascertain and reasonably believed that the person to whom the intoxicating liquor or tobacco product was sold was not a child.

(5) A person may be convicted of an offence under this section —

- (a) notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering

or injury to health, was obviated by the action of another person;

- (b) notwithstanding the death of the child in respect of whom the offence is committed.

(6) Upon the trial of any adult for infanticide or for the manslaughter of a child of whom the adult had the custody, charge or care, it shall be lawful for the jury, if he is acquitted of that charge and the evidence establishes the commission by law of an offence under this section to find the adult guilty of the latter offence.

Mandatory reporting of child abuse.

63. (1) Every person who has information indicating that a child is suffering or has suffered significant harm, shall forthwith report that information to the Director.

(2) Notwithstanding subsection (1) or any statutory provision, a person who performs professional or official duties with respect to a child, including —

- (a) a physician, nurse, dentist, pharmacist, psychologist or other health care professional;
- (b) a school principal, teacher, counsellor, social worker, youth or recreational leader, member of the clergy or child care worker; or
- (c) a police officer, probation officer or youth care worker,

who, in the course of that person's professional or official duties, has reasonable grounds to suspect that a child is suffering or has suffered significant harm, shall forthwith report the suspicion to the Director together with the information upon which it is based.

(3) Subsections (1) and (2) apply whether or not the information is confidential or privileged except that nothing in this section shall be taken to affect or abrogate the privilege that attaches to a communication between an attorney and his client.

(4) No civil action lies against a person by reason of that person reporting information pursuant to subsection (1) or (2) unless the reporting of that information is done falsely and maliciously.

- (5) Every person who —
- (a) contravenes subsection (2) or (6); or

- (b) falsely and maliciously reports information to the Director indicating that a child is suffering significant harm or is suspected thereof,

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

(6) No person shall reveal or be compelled to reveal the identity of a person who has reported information to the Director pursuant to subsection (1) or (2).

(7) On receiving a report pursuant to subsection (1) or (2) the Director shall —

- (a) cause an investigation to be made in the circumstances of the case;
- (b) arrange for the provision of such child care services as he considers necessary; and
- (c) make application for such order under this Act as he considers appropriate.

64. (1) Where a parent or a guardian of a child determines that he is unable to control the child, it is the duty of that parent or guardian to seek the assistance of an officer of the Department or any other authorised officer for the purpose of establishing parental control.

Supervision and care orders.

(2) Lack of parental control is evidenced by, but not limited to, the failure of the child to regularly attend school, the child being away from home at night beyond hours that would be considered desirable in view of the norm expected of a child of the respective age, or the child being abusive to parents or teachers.

(3) On the application of an officer of the Department or any other authorised person, a magistrate's court may if it is satisfied that it is expedient to deal with the child as provided in this subsection, make —

- (a) a supervision or interim supervision order placing a child under the supervision of the Department while leaving the child in the custody of his or her parents or guardians; or
- (b) a care order or an interim care order placing the child in the custody of the Department where the child's parents or relatives are unable to care and maintain the child, and

where no other alternative measures are available to protect the child.

(4) While a supervision order is in force no person may —

- (a) cause the child be known by a new surname; or
- (b) change the school he was attending at the inception of the order; or
- (c) remove him from the island of The Bahamas in which he resided at the inception of the order,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(5) The particulars of any approach to the Department made under subsection (1) by a parent or guardian shall be entered into the Children's Register.

Social inquiry reports.

65. (1) The magistrate's court shall require a written social inquiry report in respect of a child before making a supervision order or a care order.

(2) It shall be the duty of the Department to prepare a social inquiry report and it shall comply with the request of the magistrate's court whenever required to produce a social inquiry report.

(3) The Department shall cause to be made home visits by a social services officer to interview the parents or guardian of the child concerned and to carry out investigations concerning the child before submitting a social inquiry report.

(4) Where the child in respect of whom the social inquiry report is made is considered by the Department to be of sufficient age and understanding, he or she shall be interviewed by a social services officer.

(5) A social inquiry report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the magistrate's court.

(6) The magistrate's court shall take the information contained in the social inquiry report into account in so far as it is relevant to the order being made.

(7) If the magistrate's court is not satisfied with any recommendation made by the social services officer in the social inquiry report, it shall state and record its reasons for not complying with the recommendation.

66. The magistrate's court, without prejudice to section 71, may only make a supervision or care order under this Part, if it is satisfied that —

Grounds for making a supervision or care order.

- (a) the child concerned is suffering or is likely to suffer harm; and
- (b) that the harm, or probability of harm, is attributable to —
 - (i) the care given to the child, or likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give to a child; or
 - (ii) the child being beyond parental control.

67. Before making an application for a supervision order, the social services officer or an authorised person shall be satisfied that there is need for continuous supervision enforced by a court order.

Application for a supervision order.

68. The duties of a supervisor while a supervision order is in force are —

Duties of a supervisor under a supervision order.

- (a) to be friendly to, advise, and assist the supervised child;
- (b) to advise the parents;
- (c) to make plans for the child's future in consultation with the child and his or her parents or guardian;
- (d) to apply to the court to discharge or vary the order if necessary;
- (e) to take such other reasonable steps as may be necessary to reduce any harm to the child.

69. (1) A supervision order shall be made for one year but may be extended on the application of the Department.

Duration and enforcement of a supervision order.

(2) An extension of a supervision order shall require a written report by the Department.

(3) The duty to enforce a supervision order shall be vested in the Department.

Requirements as to change of address and visits.

70. (1) A supervision order shall require the supervised person —

- (a) to inform the supervisor of any change of his or her address;
- (b) to allow the supervisor to visit him at his or her home.

First Schedule.

(2) The First Schedule makes further provisions with respect to supervision orders.

Care order and its enforcement.

71. (1) A magistrate's court may in making a care order or an interim care order, direct that the child be placed in —

- (a) the care of foster parents;
- (b) an approved children's home;
- (c) a juvenile correction centre;
- (d) a treatment centre;
- (e) the care of a person whom the court considers fit,

having regard to any recommendation of a social services officer.

(2) An application for a care order may only be made —

- (a) after all possible alternative methods of assisting the child have been tried without success, and the harm from which the child is suffering or is likely to suffer requires his removal from where he is living; or
- (b) the danger to which the child is exposed is so severe as to require his immediate removal from where he is living.

(3) The duty to enforce the care order shall be vested in the Department.

Purpose of a care order.

72. The object of a care order is —

- (a) to remove a child from a situation where he is suffering or is likely to suffer harm; and
- (b) to assist the child and those with whom he was living or wishes to live with to examine the circumstances that have led to the making of the order and to take steps to resolve or

ameliorate the problem so as to ensure the child's return to the community.

73. (1) A care order shall, depending on the age of the child, be for a maximum period of three years or until the child reaches the age of eighteen years, whichever is the earlier.

Duration of a care order.

(2) Subject to subsection (1), a care order may be renewed upon application by the Department.

(3) A care order during its currency shall be reviewed at least once in ninety days by the Department who may make recommendations to the court as to the steps to be taken having regard to the outcome of the review,

(4) No care order or supervision order shall be made with respect to a child who has reached the age of seventeen years or, in the case of a child who is married, sixteen years.

74. (1) The person in charge of the approved children's home or the foster parent with whom the child is placed shall be responsible for the care of the child while the child is in his custody.

Parental responsibility vested in residential home or in foster parent.

(2) The child's contact with parents, relatives and friends while he is in the approved children home or with a foster parent shall be encouraged unless it is not in the best interests of the child.

(3) The person in charge of an approved children home or the foster parent with whom the child is placed shall ensure that the child's development while in the approved home or with the foster family, particularly his health and education, is given paramount attention.

(4) Nothing in the foregoing provisions of this section shall relieve the Department of its responsibility to ensure the proper care of a child while in the custody of an approved children's home or foster parent with whom the child has been placed by the Department.

75. (1) It is the duty of the Department, before, during and after the termination of the care order, to work with the parents, guardians or relatives, to whom the child returns or is expected to return after the termination of the care order.

Special duties of the social services officer in relation care orders.

(2) The duties of the Department under this section include providing child and family counselling, and gaining the assistance of those in the community who can

help in the process of resolving the problems which caused the care order to be made.

(3) In carrying out its duties under this section, the Department shall have regard to the wishes of the child.

(4) Where a child is placed with a foster family, it shall be the responsibility of the Department to communicate with the guardians or parents of the child, to inform them of the progress of the child and to arrange a trial period for the child to be at home as soon as it is appropriate.

(5) The social services officer shall visit the child during the trial period at home and make plans for the future of the child in consultation with foster parents, the natural parents or the adoptive parents.

Interim supervision order and interim care order.

76. (1) A magistrate's court may, on hearing information on oath by a social services or authorised officer make an interim supervision or care order in respect of a child if it is satisfied that there are reasonable grounds to believe that the circumstances with respect to the child are as mentioned in section 66.

(2) The maximum period for an interim order is three months.

(3) If the social services or authorised officer wishes to recommend a full care or supervision order, he shall present such a recommendation to the court during the period of the interim order.

Exclusion order.

77. (1) The magistrate's court may, in addition to, or in proceedings for a supervision order, care order, interim supervision order or interim care order, make an exclusion order prohibiting a named person from having contact with both the child and persons looking after the child.

(2) Before making an exclusion order, the magistrate's court shall be satisfied that it is necessary for the protection of the child and to safeguard the child's welfare.

Second Schedule.

(3) The Second Schedule has effect with respect to the requirements and undertakings ensuing upon the making of an exclusion order.

(4) The magistrate's court may specify the duration of the exclusion order.

78. (1) Any person who breaches an exclusion order commits a summary offence and shall be dealt with in accordance with the provisions of this Act and for this purpose a social services officer or authorised person may proceed by way of complaint against the offender without prejudice to the right of any other person to do so.

Enforcement of exclusion order.

(2) The magistrate's court may vary or discharge an exclusion order on the application of the person named in the order or of the child concerned.

79. (1) The magistrate's court may, in proceedings for an application for a care order, on hearing information on oath, make a search and production order authorising a social services officer with or without a police officer, to enter any premises specified in the order and to search for and remove to a place of safety, any child whom the social services officer has reasonable cause to believe is suffering or is likely to suffer significant harm or is in need of care and protection.

Search and production order.

(2) A child removed on a search and production order shall be produced before a magistrate within forty-eight hours after his or her removal save where there is no sitting of the court then at the commencement of the next sitting.

80. (1) A social services officer, an authorised person or a police officer, who has reasonable grounds for believing that a child is suffering or is likely to suffer significant harm or is in need of care and protection or is ill-treated or neglected shall make enquiries to decide whether to act to safeguard the child's welfare and may —

Duty of social services officer to investigate and act.

- (a) take the child and place him under emergency protection in a place of safety for a maximum period of forty-eight hours; or
- (b) take such steps as are reasonable to ensure that the child's removal from any hospital, or other place, in which he is then being accommodated is prevented.

(2) As soon as possible and in any case within the period of forty-eight hours referred to in subsection (1), the social services officer, the authorised person or police officer, as the case may be, shall make a report to the magistrate's court and to the Children's Registry.

(3) Nothing in subsection (1) shall be construed as authorising entry upon any premises without a search and

production order or a warrant issued by a justice of the peace upon information on oath for the purpose.

(4) A person who places a child under emergency protection may, if he deems it necessary, ensure the provision of medical attention or treatment, including a medical examination of the child.

(5) Whenever a child is placed under emergency protection, his parents or the persons with whom the child was living shall be informed as soon as practicable and shall be allowed to have contact with the child unless it is not in the interests of the child.

Responsibility of
police officer.

81. (1) A police officer shall provide assistance to a social services officer or to an authorised person in order for that person to carry out the duties specified in section 80(1).

(2) A police officer who has placed a child under emergency protection shall ensure that within twenty-four hours arrangements are made for the accommodation of the child outside of police precincts.

(3) Without prejudice to section 80(5) where a child is dealt with under section 80(1), the person bringing the child before the magistrate shall cause notice of the grounds on which the child is being brought before the court, including all relevant particulars, and of the date on which such matter will be heard to be served in accordance with subsection (4).

(4) The notice referred to in subsection (3) shall be served at least one clear day before such date —

- (a) on the Director if the child is to be brought before the court in Nassau;
- (b) in any other case, on the social services officer, if any, of the respective Family Island or where there is none, the Director;
- (c) on any parent or person from whose custody the child was removed or has parental responsibility for the child;
- (d) on the Minors Advocate,

so, however that no such notice shall be necessary whenever a social services officer or the Minors Advocate, as the case may be, is the person bringing the child before the court.

(5) Upon receipt of the notice referred to in subsection (4), it shall be the duty of the Director or the social services officer on whom it is served to make such investigations and render a report to the court containing information as to the child's home surroundings, school record, age, health and character, as the social services officer is able to obtain and as, in his opinion, is likely to be of assistance to the court.

82. (1) For the purposes of this Act a child shall be deemed to be ill-treated or neglected who, having no parent or guardian, or a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardianship, is either falling into bad associations or is exposed to moral danger.

Determination of whether child being ill-treated, etc.

(2) Without prejudice to the generality of the provisions of subsection (1) it shall be evidence that a child is falling into bad associations or is exposed to moral danger if —

- (a) he is found destitute, or deserted by his parent or guardian;
- (b) he is under the care of a parent or guardian, who by reason of immoral, antisocial or criminal habits or substance abuse is unfit to have the care of him;
- (c) he is found sleeping at night in the open air, or is found wandering without any settled place of abode, or without visible means of subsistence, or is found wandering having no parent or guardian or a parent or guardian who does not exercise proper care and guardianship;
- (d) he is found begging or receiving alms or inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise) or is found in any street, premises or place for the purpose of so begging or receiving alms or inducing the giving of alms;
- (e) the child is a member of a household whereof a member has committed the offence of incest in respect of another member of that household;

- (f) he frequents the company of any reputed thief or vagrant;
- (g) he frequents the company of any common or reputed prostitute;
- (h) the child lodges or resides in or frequents a house or part of a house used by prostitutes for the purposes of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour her seduction or prostitution;
- (i) he frequents any public bar or any gambling house;
- (j) he is found unlawfully buying or receiving or in possession of any dangerous drug:

Provided that a child shall not be deemed to come within the scope of paragraph (g) of this subsection if the only common or reputed prostitute whose company he frequents is his mother and it is proved that she exercises proper guardianship and due care to protect the child from falling into bad associations and from exposure to moral danger.

(3) For the purposes of this Act a child shall be considered to be in need of care and protection if that child —

- (a) having no parent or guardian, or having a parent or guardian unfit to exercise care and guardianship, or not exercising proper care and guardianship is either falling into bad associations, or exposed to moral danger, or beyond control;
- (b) is being cared for in circumstances in which the child's physical or mental health or emotional state is being seriously impaired or there is a substantial risk that it will be seriously impaired;
- (c) is a child in respect of whom any offence mentioned in section 113(5) has been committed or attempted to be committed;
- (d) is a member of the same household as a child in respect of whom such an offence has been committed;

- (e) is a member of the same household as a person who has been convicted of such an offence in respect of a child.
- (4) For the purposes of subsection (3), the fact that a child is found —
- (a) destitute;
 - (b) wandering without any settled place of abode and without visible means of subsistence;
 - (c) begging or receiving alms (whether or not there is any pretence of singing, playing, performing or offering anything for sale);
 - (d) loitering for the purpose of so begging or receiving alms,

shall, without prejudice to the generality of the provisions of subsection (3) (a), be evidence that the child is exposed to moral danger.

83. Any person who without reasonable cause removes a child placed under emergency protection from a place of safety without the authority of the person in whose care and control the child is, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for two years or to both fine and term of imprisonment.

Offence to remove a child from a place of safety without authority.

84. Any of the following persons may apply for a supervision or care order to be discharged or varied —

- (a) the child concerned if he has attained age fourteen years;
- (b) the child's parent or guardian;
- (c) the person who has parental responsibility;
- (d) the person with whom the child was living before the order was made;
- (e) a social services or an authorised officer.

Persons who may apply for discharge or variation of supervision or care order.

85. (1) When the magistrate's court is satisfied that information concerning or affecting the welfare of a child is being withheld by any person, it may summon that person to disclose the information and such person shall be obliged to disclose such information.

Requirements to disclose information.

(2) A person who refuses to make a disclosure in breach of subsection (1) shall on summary conviction be

liable to a fine of five hundred dollars unless he shows he has reasonable cause for such refusal.

Medical examination of child.

86. (1) A social services or authorised officer acting on behalf of the Director of the Department, or a police officer above the rank of sergeant, may, if there is reasonable cause to believe that a child is in need of a medical examination to enable a determination to be made as to whether the child has been the subject of an offence or for some reason requires a report concerning the child's physical or mental condition apply to a magistrate to order that the child be examined by a registered medical practitioner.

(2) When a magistrate is satisfied upon an application made under subsection (1) that there is reasonable cause to believe in the need for such examination, he shall order the examination to be made and that order shall have effect as if it were a warrant for the arrest of a suspect.

(3) The fact that an order has been made under subsection (2) shall be reported to the Children's Registry.

FOSTER-CARE PLACEMENTS

Conditions for foster-care placements.

87. (1) Where a care order has been made the social services officer may place the child with a person who is willing to undertake the care and maintenance of the child (hereinafter referred to as a "foster parent").

(2) An application to foster a child shall be made to the Department except that a relative of a child without a parent or guardian may foster the child without first applying to the Department and the provisions of this section shall not apply to him or her.

Third Schedule.

(3) The rules set out in the Third Schedule shall apply to foster care placements.

PART VII - APPROVED CHILDREN HOMES

Purposes of approved children homes.

88. (1) An approved children home shall provide substitute family care for a child in its custody until such time as the parents of the child are able to provide adequate care to meet his basic needs or the child can be reunited with its family or arrangements made for its custody or other permanent placement.

(2) It shall be the responsibility of the staff of the approved children home, the social services or authorised officer and any other person to assist the child to become reunited with his parents or guardian.

(3) After a child has been returned home from an approved children home, the social services or authorised officer shall keep in regular contact with the child and his family until the completion of the order or its discharge.

(4) Where a child is unable to return to his or her parents or to go to foster parents or has no parent, nor a foster parent, he shall, where possible, be encouraged and assisted by the approved children home and the social services or authorised officer until placement can be arranged for the child.

89. While a child is in an approved children home on a care order, the Administrator and staff of the home have parental responsibility for the child.

Responsibility of staff of home.

90. A person who removes a child from an approved children home without reasonable cause commits an offence and shall be liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for three years, or to both such fine and term of imprisonment.

Removal of child from approved children home.

91. (1) When a court has been informed on information on oath that a child has been removed unlawfully from an approved children home, it may make a recovery order.

Recovery order.

- (2) A recovery order may —
- (a) direct any person who is in possession of the child to produce him on demand to any social services or authorised officer;
 - (b) require removal of the child by or on behalf of the person named in the order;
 - (c) require any person who has information leading to the child's whereabouts to disclose it;
 - (d) authorise a search by any police officer or social services or authorised officer of any premises where the child is believed to be staying; and
 - (e) specify the name of the child in question and the person who has the current parental responsibility.

Application for a recovery order.

92. Any of the following persons may apply for a recovery order —

- (a) a person with parental responsibility for the child; or
- (b) a social services or authorised officer.

Escape from approved children home.

93. (1) A child who runs away from an approved children home to which he has been committed or from a person in whose care he has been placed on emergency or committed by the court on a care order may, pending investigation —

- (a) be brought back to the approved children home or to the person from which or from whom he has run away; or
- (b) be put in an alternative approved home or place of safety.

(2) As soon as possible, the child shall be interviewed by the social services or authorised officer who shall also interview the person in charge of the home or the person in whose care the child has been placed.

(3) The child may then be returned to where he had been placed or, if that is not in the child's best interests, he may be moved by the social services or authorised officer under a care order or otherwise returned to court for a variation or discharge of the order.

Court's power to order or guardian to contribute.

94. (1) Where an approved children home has custody of a child who has a parent or guardian, the court may order the parent or guardian to contribute towards the child's maintenance.

(2) The amount contributed shall be reasonable and within the means of the parent or guardian and may be varied by the court if there is a change in the person's circumstances.

(3) A contribution order made under this section shall remain in force as long as the child is in the home; but a person contributing may, at any time, apply to the court for the order to be varied or discharged on the ground that his circumstances have changed since the order was made.

Regulations for giving effect to this Part.

95. The Minister may make regulations for carrying this Part into effect, and in particular for —

- (a) prescribing the medical arrangements to be made for protecting the health and well-being

of the children in approved children homes; and

- (b) regulating the management and conduct of and discipline in approved children homes.

**PART VIII - ESTABLISHMENT, FUNCTIONS AND
TERMS OF REFERENCE OF THE NATIONAL
COMMITTEE FOR FAMILIES AND CHILDREN**

96. (1) There shall be and is hereby established a body to be known as the National Committee for Families and Children (hereinafter referred to as "the Committee"), consisting of twelve members appointed by the Minister from among persons representing governmental and non-governmental organisations concerned with the welfare of families and children.

Establishment of the national Committee for families and children.

(2) The Director of the Department shall be an ex officio member of the Committee without the right to vote.

(3) In making the appointments under subsection (1) the Minister shall ensure that there is representation from the several Family Islands or group of Family Islands.

(4) The term of office of the members of the Committee appointed under subsection (1) above shall be for a period of one year subject to subsection (5), but each member shall be eligible for reappointment.

(5) The term of office of the person appointed by the Minister to be chairman may be for a period not exceeding two years.

97. The functions and terms of reference of the Committee shall be as follows —

Functions and terms of reference of the Committee.

- (a) promoting, monitoring and evaluating the implementation of the Convention on the Rights of the Child, and ensuring that the Government meets its national and international obligations as a party to the Convention;
- (b) promoting, monitoring and evaluating the implementation of the goals reached at the world summits on the Convention on the Rights of the Child;
- (c) promoting public awareness on the national legislation affecting families and children, and

facilitating effective and efficient planning and coordination of efforts among and between nongovernmental organisations, service clubs, churches and other organisations involved in the provision of services for families and children;

- (d) ensuring that the various institutions, communities and homes in The Bahamas understand and apply the standards of protection and care of children set out in this Act and regulations made hereunder and in the Convention on the Rights of the Child within their institutional, community or family setting;
- (e) recommending and advocating to, and at different levels and institutions of, the Bahamian society policies for —
 - (i) policies for the care, protection and maintenance of families and children in The Bahamas;
 - (ii) the contribution of resources from the international community and the local private sector.

Oversight powers of the Ministry.

98. The Ministry shall oversee the work of the Committee and take such action as is considered necessary to implement its recommendation.

PART IX - PROCEEDINGS INVOLVING CHILDREN

Attendance of child at hearing.

99. (1) In any proceedings in which a court is hearing an application for an order under this Act, or is considering whether to make such an order, the court may summon the child concerned to attend such stage or stages of the proceedings as may be specified in the summons.

(2) The power conferred by subsection (1) shall be exercised in accordance with any rules of court.

(3) Subsections (4) to (6) apply where —

- (a) an order under subsection (1) has not been complied with; or
- (b) the court has reasonable cause to believe that it will not be complied with.

(4) The court may make an order authorising a police officer —

- (a) to take charge of the child and to bring him to court; and
- (b) to enter and search any premises specified in the order if he has reasonable cause to believe that the child may be found on the premises.

(5) The court may order any person who is in a position to do so to produce the child to court.

(6) Where the court has reason to believe that a person has information about the whereabouts of the child, it may order him to disclose that information to the court.

(7) A person who without reasonable excuse fails to comply with an order made under subsection (5) or (6) commits an offence and upon summary conviction is liable to a fine not exceeding one thousand dollars or to imprisonment for three months or to both such fine and imprisonment.

100.(1) Subsection (2) applies where a child who is called as a witness in any family proceeding does not, in the opinion of the court, understand the nature of an oath.

Evidence given by, or with respect to children.

(2) Notwithstanding anything to the contrary in any law, the child's evidence may be heard by the court if, in its opinion —

- (a) he understands that it is his duty to speak the truth; and
- (b) he has sufficient understanding to justify his evidence being heard,

and there shall not be a need for corroboration.

(3) In any family proceedings before any court hearsay evidence on any issue concerning the care, custody, control, maintenance or welfare of a child shall be admissible notwithstanding any law or rule of law.

(4) For the purpose of this Act, "family proceedings" means —

- (a) any proceedings relating to adoption, wardship, maintenance, care, custody or control of a child;
- (b) any matrimonial proceedings or proceedings ancillary thereto.

Evidence by
video recorded
deposition where
child unfit to
attend court.

101. (1) Where a magistrate is satisfied that a child in respect of whom an offence is alleged to have been committed —

- (a) is unable, on the evidence of a duly qualified medical practitioner, by reason of the child's bodily or mental condition, to attend before the court in proceedings relating to the offence; or
- (b) is kept away from such proceedings by threats or fear of bodily harm,

the magistrate may order the taking of a deposition by an approved recording device in accordance with Rules of Court made under section 76 of the Supreme Court Act.

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(2) The term “an approved recording device” means a device for recording sound or visual images or both approved by the Chief Justice by notice published in the Gazette.

(3) Rules of Court made for the purposes of this section may provide for the manner and the circumstances under which a deposition shall be taken, including dispensing with the child being in the physical presence of the alleged offender or any other person.

(4) Subject to subsection (6), the digital audio file or, as the case may be, the audio and video file of the whole or any part of the evidence, depositions or proceedings recorded by a person using an approved recording device is admissible in evidence as a true and official record of the evidence, depositions or proceedings.

(5) Where a transcript is requested for the purpose of any appeal or otherwise, the transcript shall —

- (a) be prepared from the official record referred to in subsection (4) by; and
- (b) be certified as an accurate transcript of the official record by the person who prepared it.

(6) Where any dispute arises with respect to the content of a transcript prepared from the official record, a party may apply to the presiding judge or magistrate to resolve the dispute and determine the content of the transcript to accord with the official record.

(7) The original record prepared pursuant to subsection (1) shall be filed in the office of the registrar or clerk of the court and shall not be removed except on the

order of a judge or magistrate, but nothing in this subsection precludes any party or his counsel from obtaining a copy of the record for his personal use.

(8) The Chief Justice may direct that the official record made by use of an approved recording device be erased, cancelled, destroyed or otherwise disposed of after such period from the making of the record as the Chief Justice may determine.

(9) Any person who —

- (a) wilfully records or transcribes, in a false or incorrect manner, any evidence or other matter recorded under this section;
- (b) wilfully alters or falsifies any record under this section or any transcription of it; or
- (c) wilfully certifies as correct any transcription of such record which he knows to be false or incorrect,

is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars or imprisonment for two years.

(10) Rules of Court may prescribe fees for the preparation of a transcript or a copy of the official record.

102.(1) Notwithstanding anything to the contrary in any other law, where, in any proceedings against any person for any offence the evidence of any child of tender years called as a witness, even though not given upon oath, as it is the opinion of the court the child does not understand the nature of an oath —

Evidence of child
of tender years

- (a) may be received, if, in the opinion of the court, the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth;
- (b) if otherwise taken and reduced into writing in accordance with the provisions of the Criminal Procedure Code, or of this Part, shall be deemed to be a deposition within the meaning of that Code and the Evidence Act respectively.

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(2) Subject to subsection (1) evidence admitted by virtue of this section shall be subject to the same rules of law and procedure as the sworn evidence of a child.

(3) In any trial, no court shall be required to give the jury a warning about convicting the accused on the uncorroborated evidence of a child, in any case where the only reason for requiring the warning is that it is the evidence of a child notwithstanding anything to the contrary in any law.

(4) Any child whose evidence is received pursuant to subsection (1) of section 100 who wilfully gives false evidence in such circumstances that the child would, if the evidence had been given on oath, have been guilty of perjury shall be liable to be prosecuted and punished for perjury as if he or she had been sworn.

(5) In this section "child of tender years" means a child under the age of fourteen years.

Disease testing
of convicted
offender
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Ch 99

103.(1) Where a person is convicted of an offence under the Penal Code or the Sexual Offences Act in respect of a child, the court may make an order requiring such person to submit to a medical examination and testing for the purpose of ascertaining whether such person is a carrier of a communicable disease, if satisfied that such examination and testing is in the best interests of the child.

(2) Notwithstanding anything to the contrary in any enactment an order made under subsection (1) shall be carried out as soon as practicable notwithstanding any notice of appeal unless the court that made the order or the appeal court otherwise sees fit to stay the order and any person who fails to submit to a medical examination when ordered to do so shall be guilty of an offence and punishable on summary conviction to imprisonment for one year.

(3) A person having knowledge or possession of information relating to any examination or test carried out under subsection (1) shall regard and deal with such information as secret and confidential; and any such person who communicates or attempts to communicate such information to any person —

- (a) other than to a person to whom he is authorised to communicate it; or
- (b) otherwise than for the purposes of this Act,

commits an offence and shall be liable on summary conviction to a fine not exceeding ten thousand dollars and to imprisonment for a term not exceeding two years.

(4) An order made under this section may give directions in respect of such ancillary matters as are necessary for the proper carrying out of the order and for such communications of the results of any examination or test as is necessary in the best interests of the child.

104.(1) Where a person having the custody, charge or care of a child has been —

Disposal of case
by order of court.

- (a) convicted, in respect of that child, of any of the offences mentioned in section 110(5);
- (b) committed for trial for any such offence; or
- (c) bound over to keep the peace towards the child,

by any court, that court may order that child to be brought before a juvenile court with a view to the juvenile court making an order under Part VI and shall direct that the Director and the Minors Advocate be informed, as soon as practicable, of the order made.

(2) Where any court has, under this section, made an order directing that a child be brought before a juvenile court, it shall be the duty of the following persons to bring the child before the juvenile court —

- (a) the complainant, if he is a social services officer or police officer, in the proceedings against the person having the custody, charge or care of the child; or
- (b) if that complainant is not a social services officer or police officer, the senior police officer present in court at the time that the order was made.

PART X - REPRESENTATION AND MONITORING OF CHILDREN CHILDREN'S REGISTRY

105.(1) The provisions of the Fourth Schedule shall have effect with respect of the constitution and functions of the Minors Advocate.

Representation
by Minors
Advocate.
Fourth Schedule.

(2) Where in any proceedings a child is brought before the court and it appears to the court that the child is in need of legal representation in those proceedings, the court shall —

- (a) refer the case to the Minors Advocate;

-
- (b) if the court thinks fit, adjourn the proceedings until such time as the court considers sufficient to allow the Minors Advocate to consider the case; and
 - (c) cause to be delivered to the Minors Advocate a notice of its determination under this section.
- (3) Where a case is referred to the Minors Advocate under subsection (2) —
- (a) the Minors Advocate shall act as the child's legal representative in the proceedings if the child so consents, directly or through his parents or guardian;
 - (b) if the Minors Advocate has cause to believe that any of the fundamental rights and freedoms of the individual protected under Chapter III of the Constitution have been or are being contravened in relation to any child he may institute or carry on, on behalf of the child, any proceedings for redress under Article 28 of the Constitution.
- (4) On application at any time by the Minors Advocate, the court may order any person to produce any information, record or document, or a certified copy of such record or document, to the Minors Advocate if —
- (a) there are reasonable grounds to believe the information, record or document is material for determining whether a child is in need of care and protection;
 - (b) there are reasonable grounds to believe the person has possession or control of the information, record or document; and (c) the person neglects or refuses to produce the information, record or document to the Minors Advocate.
- (5) Subsection (4) shall not apply to information, records or documents privileged from disclosure or regarded as confidential under any law, unless the court is satisfied that there is a substantial risk that the child will be further endangered.

Establishment of
Children's
Register.

106. (1) For the purposes of this Act there shall be a Children's Register and a Children's Registry.

(2) The Children's Register shall consist of such information as is supplied by persons who make or are required to make a report under section 64, 107 or 108 as the case may be.

(3) The Minister may make regulations prescribing the procedure for the entry of information into the Register, the form and contents of the Register, the duties of officers and staff of the Registry, the location of registration centres, and any other matter necessary to give effect to the provisions of this section.

107.(1) Where any action is taken under section 80 or information comes to the Director pursuant to section 108 or 112 in respect of a child, the event shall be reported to the Children's Registry in accordance with the provisions of this section.

Duty to report to Children's Registry.

- (2) A report to the Children's Registry shall —
- (a) be made as soon as is reasonably possible;
 - (b) be in such form as may be prescribed; and
 - (c) contain all the material facts giving rise to the belief that an offence has been committed or is being committed or that a child is otherwise in need of care and protection.

(3) Subsection (1) applies even if the information that occasioned the steps to be taken are based —

- (a) is privileged as a result of a relationship of attorney-at-law and client; or
- (b) is confidential and its disclosure is prohibited under another Act,

unless there is a substantial risk that the welfare of the child will be further endangered.

108.(1) It shall be the duty of the officer in charge of a police station at which a report is made or from which investigations are being carried out in respect of an offence allegedly committed upon a child to inform the Children's Registry within twenty-four hours of the receipt of the allegation and of its particulars.

Assessment and investigation of reports to registry.

(2) On receiving any report under this Act about a child, the officer in the Registry shall inform the Director who shall —

- (a) cause the matter to be further investigated and any necessary further steps to be taken as the case may require;
- (b) inform the person having custody, care or control of the child, of the report, unless, in the opinion of the Director, such information would cause physical or emotional harm to any person, endanger the safety of the child or impede an investigation under paragraph (a).

PART XI - CHILDREN DETAINED OR BROUGHT BEFORE A COURT

Age of criminal responsibility.

109. Notwithstanding anything to the contrary in any law —

- (a) it shall be conclusively presumed that no child under the age of ten years can be guilty of an offence;
- (b) it shall not be presumed that a child aged ten or over is incapable of committing an offence.

Determination of age.

110. (1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that the person is a child, the court shall —

- (a) make due inquiry as to the age of that person; and
- (b) for that purpose, shall take such evidence as may be forthcoming at the hearing of the case.

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

(3) Where it appears to the court that the person so brought before it has attained the age of eighteen years, that person shall, for the purposes of this Act, be deemed not to be a child.

(4) Where, in any charge or information for any offence under this Act or any of the offences mentioned in the Fifth Schedule, except offences specified in subsection (5) —

Fifth Schedule.

- (a) it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age; and
- (b) the person appears to the court to have been, at the date of the commission of the alleged offence, a child or to have been under or to have attained the specified age, as the case may be,

the person shall for the purposes of this Act be presumed at that date to have been a child or to have been under or to have attained that age, as the case may be, unless the contrary is proved.

(5) The offences referred to in subsection (4) are offences against the following sections of the Sexual Offences Act, sections 6 (rape), 7 (procuring defilement of person under eighteen), 10 (carnally knowing person under fourteen), 11 (carnally knowing person fourteen and under sixteen), 12 (sexual intercourse with a person suffering mental disability), 20 (forcible taking with intent to have carnal knowledge) 21 (unlawful detention with intent to have carnal knowledge) or 22 (abduction of unmarried person under sixteen).

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111.(1) Arrangements shall be made for preventing a child who is —

Separation of children from adults.

- (a) at a police station in connection with the commission of any offence, whether committed by the child or by any other person;
- (b) being conveyed to or from any criminal court, correction centre or place of safety; or
- (c) waiting before or after attendance in any court,

from associating with any adult, not being a relative, who is charged with any offence other than an offence with which the child is jointly charged.

(2) A child referred to in subsection (1) shall, if a female, be, in the instances mentioned in paragraphs (a) and (b) of that subsection, under the care or control of a female social services or police officer.

112.(1) Where a person apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a court, the officer or sub-officer

Bail or detention of child.

of police in charge of the police station to which the person is brought shall as soon as practicable —

- (a) ascertain the identity of and contact the parent or guardian;
- (b) so inform the office of the Director and the office of the Minors Advocate;
- (c) enquire into the case and may, in accordance with the Bail Act, release the person on a recognizance being entered into by the person or his parent or guardian (with or without sureties) for such amount as will, in the opinion of the officer secure the person's attendance upon the hearing of the charge, and shall so release that person unless —
 - (i) the charge is one of homicide,
 - (ii) it is necessary in the person's interest to remove the person from association with any reputed criminal or prostitute, or
 - (iii) the officer has reason to believe that the person's release would defeat the ends of justice.

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(2) Where a person apparently a child is apprehended and is not released under subsection (1) the police shall cause the person to be detained in a juvenile correction centre until the person can be brought before a court.

(3) Notwithstanding anything to the contrary in this Act or any other law where a child (under the age of fourteen years) comes into police custody for an alleged offence and the provisions of subsection (4) apply, the officer shall not proceed to file a complaint if the child in the presence of —

- (a) a parent or guardian;
- (b) a social services officer; and (c) the would be virtual complainant,

admits the offence and agrees to undertake such an assignment as could be the subject of an order under the Offenders (Community Service and Supervision Order) Act for such period not exceeding six months as is

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provided in a written undertaking to be executed by the child and parent or guardian.

(4) The alleged offence for which the child has come into custody —

- (a) does not involve an assault upon a teacher or physical injury to any person or the use of a weapon or dangerous instrument; or
- (b) does not involve damage to or appropriation of property in excess of fifty dollars,

and the child involved has not been previously dealt with under subsection (3) or has been the subject of an order of a court for a criminal offence.

(5) There shall be included in the undertaking to be signed under subsection (4) an undertaking by the parent or guardian to pay to the Treasurer a sum not exceeding five hundred dollars in the event of the child failing to carry out the assignments without reasonable cause.

(6) It shall be deemed a term of any undertaking mentioned in subsection (4) that in the event of a wilful breach by a child of its terms, the child may be prosecuted for the alleged offence referred to in subsection (3) and which may be done notwithstanding any period of limitation for doing so has expired.

113.(1) Any court on remanding or committing for trial a child who is not released on bail shall commit that child to custody in a juvenile correction centre named in the commitment, to be detained there for a period for which the child is remanded or until the child is there delivered in due course of law:

Remand or committal to juvenile remand centre.

Provided that in the case of a child who has attained the age of fourteen years —

- (a) the court shall not be obliged so to commit that child if the court based upon sworn information certifies that the child is of —
 - (i) so unruly a character that the child cannot safely be so committed, or
 - (ii) so depraved a character that the child is not a fit person to be so detained; and
- (b) where the court so certifies, the child may be committed to such place, including an adult

correctional centre, as may be specified in the commitment warrant.

(2) Subject to subsection (3), the court which makes an order under subsection (1), committing a child to custody may, on application —

- (a) vary the order; or
- (b) revoke the order in respect of a child referred to in the proviso to subsection (1).

(3) If an application under subsection (2) cannot conveniently be made to the court which made the order for commitment, action under that subsection may be taken by any competent court that would have had jurisdiction but for its geographical location.

(4) If the order is not revoked, the child may be committed to such place, including an adult correctional centre, as may be specified in the commitment warrant.

Attendance at
court of parent of
child charged
with an offence,
etc

114. (1) When a child is charged with any offence or is for any other reason brought before a court in relation to an offence, the child's parent or guardian may, in any case, and shall, if such parent or guardian can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require the attendance.

(2) Without prejudice to paragraph (a) of section 112(1), where a child is arrested or taken to a juvenile remand centre, the officer or sub-officer of police in charge of the police station in the district of the court before which the child will appear shall take such steps as are practicable to cause the parent or guardian of that child, if he can be found, to be warned to attend court.

(3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, a summons may be issued and served on him requiring attendance before the court; and the provisions of the Criminal Procedure Code Act as are applicable to the summoning of a witness shall, with the necessary adaptations and modifications, apply to the procedure on such summons.

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(4) The parent or guardian whose attendance is required under this section shall be the parent or guardian having the actual possession and control of the child:

Provided that the attendance of such parent shall not be required if the child is, prior to the institution of the proceedings, removed from the parent's custody or charge by an order of a court.

115.(1) Where a child is to be brought before any court charged with an offence, the person bringing the child before the court shall cause notice of the charge and its particulars on which the child is brought before the court and of the date on which such matter will be heard, to be served in the manner and to the extent mentioned in section 81(4) which shall mutatis mutandis apply.

Notice to appropriate officers of charges against child.

(2) Where a child is brought before a court, it shall be the duty of such court to explain to the child in as simple language as possible —

- (a) the reason for him being before the court; and
- (b) that he if not legally represented is entitled to the assistance of the Minors Advocate if he so requests directly or through his parent or guardian.

(3) Where a child is charged before a court with any offence and does not have legal representation having declined the use of the service of the Minors Advocate, it shall be the duty of the court to ascertain the defence, if any, of the child so as to put, or assist the child and the child's parent or guardian in putting, such questions to any witness as appear to be necessary.

PART XII - JUVENILE COURTS

116.(1) In this Part —

Juvenile courts.

"child" means a person under the age of fourteen years; "juvenile" means a person who has attained the age of ten and is under eighteen years;

"young person" means a person who has attained the age of fourteen and is under the age of eighteen years.

(2) The Chief Justice may by Order establish in any magisterial district a juvenile court which shall

exercise such jurisdiction as may be conferred upon it by this Act.

(3) A juvenile court shall consist of a magistrate as chairman and other members appointed as hereinafter provided.

(4) The Minister after consultation with the Chief Justice may by Order in respect of any juvenile court appoint a panel of not less than six persons from whom the members, other than the chairman, of the court at any sitting thereof shall be selected as hereinafter provided.

(5) Subject to subsection (6), every appointment to the panel shall be for a period of not more than three years but shall be revocable at any time by the Minister after consultation with the Chief Justice —

- (a) on the ground of the member's inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause); or
- (b) for misbehaviour; or
- (c) absence without reasonable explanation to the chairman from three consecutive sittings of the court as reported in writing by the chairman as having caused postponement of the continued hearing of a matter before the court.

(6) A person shall not be eligible for appointment if he is under the age of twenty-five years or has attained the age of sixty-five years and shall cease to be a member on attaining age sixty-five, save however he may continue in office for such period as is notified to the Minister in writing by the chairman as being a period necessary to enable that member to continue to participate in proceedings in which evidence was taken before he attained that age.

(7) At any sitting of a juvenile court the court shall consist of the chairman and two other members, selected by the chairman from the panel of persons appointed under subsection (4) and at least one member of the court shall be a woman.

117.(1) A juvenile court shall have the jurisdiction conferred upon juvenile courts by this Act and in addition all those powers of a magistrate under the Magistrates Act

and the Criminal Procedure Code Act which are necessary for the exercise of that jurisdiction. Ch. 91.

(2) The words "conviction" and "sentence" shall cease to be used in relation to juveniles dealt with by a magistrate's or juvenile court and any reference in any law whether made before or after the coming into operation of this section to a person convicted, a conviction or a sentence shall in the case of a juvenile be construed as including a reference to a person found guilty of an offence, a finding of guilty or an order made upon such a finding or upon the admission of guilt, as the case may be.

118. In the determination of any question or matter before a juvenile court the decision of the majority of the members of the court shall prevail:

Decision of majority of juvenile court to prevail.

Provided that any question of law that arises shall be decided by the chairman alone and the chairman alone shall decide whether any question is or is not a question of law.

119. In the exercise of any jurisdiction conferred upon a juvenile court the members thereof shall enjoy immunities as are enjoyed by a magistrate in the exercise of his jurisdiction.

Immunities of members of juvenile courts.

120. (1) Save as is otherwise provided, every matter brought before a juvenile court shall be heard and determined in a summary way.

Procedure in juvenile courts prior to hearing.

(2) Where a child or young person is brought before a juvenile court for any offence it shall be the duty of the court as soon as possible to explain to him in simple language the substance of the alleged offence.

(3) Where a child is brought before a juvenile court charged with any offence other than homicide the case, subject to any right of appeal, shall be finally disposed of in the juvenile court.

(4) Where a young person is brought before a juvenile court charged with any indictable offence other than one mentioned in the Fifth Schedule and the court considers that it is expedient, in the interests of the young person, to deal summarily with the case, the court shall put to the young person the following question, telling him that he may consult his parent or guardian before replying; "Do you wish to be tried by the court or by a jury?" and the court shall explain the meaning of being so tried and the place where the trial would be held.

- (5) Where —
- (a) a child or young person is brought before a juvenile court charged with homicide;
 - (b) a young person is charged with an indictable offence mentioned in the Fifth Schedule; or
 - (c) a young person is charged with any other indictable offence and the court does not consider it expedient to deal with the case summarily or the young person charged does not agree to be tried by the juvenile court,

the court shall remit the case to a magistrate to be dealt with in accordance with the provisions of the Magistrates Act, the Penal Code and the Criminal Procedure Code Act.

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Plea

121. Where the juvenile court proceeds to hear and to determine the charge it shall first ask the person charged whether he admits the offence.

122. (1) If the child or young person does not admit the offence the court shall then hear the evidence of the witnesses in support thereof. At the close of the evidence in chief of each such witness, the magistrate shall ask the child or young person or if he sees fit, the child's or young person's parent or guardian, whether he wishes to put any questions to the witnesses.

Procedure at
hearing

(2) If the child or young person instead of asking questions wishes to make a statement he shall be allowed to do so. It shall be the duty of the court to put to the witnesses such questions as appear to be necessary. The court may put to the child or young person such questions as may be necessary to explain anything in the statement of the child or young person.

(3) If it appears to the court that a prima facie case is made out, the evidence of any witnesses for the defence shall be heard, and the child or young person shall be allowed to give evidence or to make any statement.

(4) If the child or young person admits the offence or the court is satisfied that it is proved, he shall then be asked if he desires to say anything in extenuation or mitigation of the penalty or otherwise; before deciding how to deal with him the court shall obtain such information as to his general conduct, home surroundings, school record, and medical history, as may enable it to deal with the case in the best interests of the child or young person and may

put to him any question arising out of such information. For the purpose of obtaining such information or for special medical examination or observation the court may from time to time remand the child or young person on bail or to a place of detention.

(5) If the child or young person admits the offence or the court is satisfied that it is proved, and the court decides that a remand is necessary for purposes of inquiry or observation, the court may cause an entry to be made in the court register that the charge is proved and that the child or young person has been remanded.

123.(1) Juvenile courts shall sit as often as may be necessary for the purpose of exercising any jurisdiction conferred upon them by this Act.

Sittings of
juvenile courts.

(2) A juvenile court shall sit either in a different building or room from that in which sittings of courts other than juvenile courts are held, or on different days from those on which sittings of such other courts are held; and no persons shall be present at any sittings of a juvenile court except —

- (a) members and officers of the court;
- (b) parties to the case before the court, their counsel, and witnesses and other persons directly concerned in that case;
- (c) the parents or guardians of any child or young person concerned in that case;
- (d) such other persons as the court may specially authorise to be present.

124. Where a child or young person is tried before any court which is not a juvenile court, then such court shall, in relation to that child or young person have all the powers of a juvenile court.

Court other than
juvenile court to
have powers of
juvenile court.

125.(1) Where a juvenile court has made a determination that the charge against the child or young person has been proven that court may, subject to the provisions of this Act, make an order —

Methods of
dealing with
child offenders.

- (a) dismissing the case;
- (b) for probation for a specified period not exceeding three years, under the Penal Code
- (c) in accordance with the provisions of the Offenders (Community Service and

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Supervision Order) Act either in addition to or without making any other order under this subsection;

- (d) committing the offender to the care of any fit person, whether a relative or not, who is willing to undertake the care of the offender and in addition or in lieu thereof restricting his movement for a specified period under a curfew;
- (e) where the offender is a young person ordering the offender to pay a fine, damages or costs;
- (f) sending the offender to an adult or juvenile correctional centre;
- (g) ordering the parent or guardian of the offender to pay a fine, damages or costs;
- (h) ordering the parent or guardian of the offender to enter into a recognizance for the good behaviour of such offender;
- (i) either in addition to or without making any other order under this subsection, ordering the parent or guardian and the offender to attend together over a period not less than six weeks such parenting or counselling classes as have been arranged by the Department for parents and their children at such times as arranged with the Department having regard to the time constraints of the parent and the offender;
- (j) either in addition to or without making any other order committing the offender to a treatment centre.

(2) Nothing in subsection (1), other than paragraphs (i) and (j) thereof, shall be construed as authorising the court to deal with any case in any manner in which it could not be dealt with apart from that subsection.

(3) An order for the payment of a fine not exceeding five hundred dollars may be made against a parent or guardian who, having been required to attend before the court or attend counselling classes as aforesaid has failed to do so, but no such order of a fine shall be made without giving the parent or guardian an opportunity of being heard.

(4) Any sums ordered under this section to be paid by a parent or guardian may be recovered from him as if he had been convicted of the offence in respect of which the child was charged and a fine had been imposed upon him:

Provided that in determining any term of imprisonment to be imposed under this subsection for nonpayment, the Court shall take into account the impact of such sentence on any family member of the person to be sentenced.

(5) A parent or guardian may appeal against an order made against him under this section as if he had been convicted by a magistrate court of the offence in respect of which the child or young person was charged.

(6) The provisions of subsection (7) shall apply in any case where —

- (a) a correctional order has been made under subsection (1) (f) in respect of a young person; and
- (b) the Director at any time during the period of the offender's detention at a juvenile correctional centre, establishes to the satisfaction of a juvenile court that the offender is of so recalcitrant a character that it is not expedient that he should continue his detention at such centre; or
- (c) has, during the period specified in the order for his detention, attained the age of eighteen prior to the expiration of that period.

(7) A court may, notwithstanding anything to the contrary, direct that the offender be detained in such place (including an adult correctional centre) and for such time, not exceeding the unexpired portion of the original period specified for his detention and on such conditions as the court may think fit.

126.(1) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years, but in place thereof the court shall order him to be detained for such period as may be determined by the court and set out in the order.

Restriction on punishment.

(2) A person ordered to be detained under subsection (1) shall, notwithstanding anything in the other

provisions of this Act, be liable to be detained in such place including, save in the case of a child who has not attained the age of fourteen years, an adult correctional centre, and under such conditions as the Minister may direct, and, while so detained, shall be deemed to be in legal custody.

(3) Notwithstanding the provisions of any other law on ordering the detention of any person under subsection (1), the court may specify a period which that person should serve before becoming eligible for parole.

(4) No child shall be ordered to undergo imprisonment or be committed to prison in default of payment of a fine, damages or costs.

(5) No young person shall be ordered to undergo imprisonment if he can be suitably dealt with in any other way, whether by probation, fine, committal to a place of detention or industrial school, or otherwise.

(6) A young person ordered to undergo imprisonment shall not be allowed to associate with adult prisoners.

(7) A court shall not order a child under the age of twelve years to be sent to a juvenile correctional centre unless for any reason the court is satisfied that the child cannot suitably be dealt with otherwise.

Detention of
children and
young persons
for certain
crimes.
Fifth Schedule.

127.(1) The provisions of subsections (1), (2) and (3) of section 126 shall *mutatis mutandis* apply to a child or young person who admits to the commission of or is proven to have committed an offence mentioned in the Fifth Schedule.

(2) Subject to the following provisions of this section, where an offender has been sentenced by a relevant sentence of detention to a term of detention and either —

- (a) he has attained the age of 18; or
- (b) he has attained the age of 14 and has been reported to the Minister by the committee of visitors of the institution in which he is detained as exercising a bad influence on the other inmates of the institution or as behaving in a disruptive manner to the detriment of those inmates,

the Minister may direct that he shall be treated as if he had been sentenced to imprisonment for the same term.

(3) Where the Minister gives a direction under subsection (2) in relation to an offender, the portion of the term of detention imposed under the relevant sentence of detention which he has already served shall be deemed to have been a portion of a term of imprisonment and the remaining period of that sentence shall be served in an adult correctional centre.

(4) A sentence of detention imposed in accordance with section 126 or this section shall during its currency be reviewed by a judge upon the expiration of every three years with a view as to whether it should be maintained or decreased having regard to the reported conduct of the offender during his detention notwithstanding section 126(3) and for that purpose the Registrar of the court shall cause the offender to be brought before a judge.

128.(1) Any court before which is brought any juvenile in respect of whom any offence endangering his safety or occasioning bodily injury to him has been committed, may, if satisfied that the best interests of the juvenile so require, make an order in accordance with subsection (2).

Child victim.

- (2) An order under subsection (1) may —
- (a) require the parent or guardian of the juvenile to enter into a recognizance to exercise proper care and guardianship; or
 - (b) commit the juvenile to the care of any fit person, whether a relative or not, who is willing to undertake the care of the juvenile; or
 - (c) either in addition to, or without making any order under paragraph (a) or (b), place the juvenile under a care or supervision order;
 - (d) be an exclusion order made in accordance with Part VI against any person found guilty of such offence as is referred to in subsection (1) except that where that person is the parent of the juvenile, the order may set out such conditions for supervised contact between that parent and the juvenile, as the court may think fit having regard to the best interests of the juvenile;

- (e) if there are reasonable grounds to believe that a person is likely to interfere with a party who has custody of a juvenile, prohibit that person from contacting or interfering with, or attempting to contact or interfere with, the party who has custody of the juvenile;
- (f) where any person found guilty of such offence as is referred to in subsection (1) is a person having the custody, charge, or care of the juvenile, require —
 - (i) that person, or
 - (ii) the juvenile or any other juvenile who resides with that person,

to receive counselling for a specified period from a fit person, qualified by his knowledge of psychology or psychiatry, appointed by the court.

(3) A person referred to in subsection (2)(f) shall be guilty of a summary offence punishable by a fine of five hundred dollars if he fails without reasonable cause to comply with the requirement mentioned in that subsection.

(4) Any party to proceedings under this section may apply to the court for a variation or discharge of an order, if circumstances have changed significantly since the order was made and notice of the application shall be given to all other parties to the proceedings at least seven days before the date set for hearing of the application.

(5) If a court before which any juvenile is brought is not in a position to decide whether any or what order ought to be made under this section, it may make such interim order as it thinks fit for the detention of the juvenile or continued detention in a place of safety, or for his committal to the care of a fit person, whether a relative or not, who is willing to undertake the care of the juvenile.

(6) Any interim order made under subsection (5) shall not remain in force for more than thirty days, but at any time within such period the court may, if it considers it expedient so to do, make a further interim order, so, however, that in no case shall any interim order remain in force for more than sixty days after the date of the first order made under subsection (5).

(7) If the court by which an interim order is made is satisfied on any occasion that, by reason of illness or accident, the juvenile is unable to appear personally before the court, any further interim order which the court has power to make on that occasion may be made in the absence of the juvenile.

(8) In making an order under this section for the committal of a juvenile to the care of a fit person or for placement of a juvenile in a place of safety, the court shall consider the best interests of the juvenile and give priority to placing the juvenile with a relative or, if that is not consistent with the best interests of the juvenile, committal or placement of the juvenile as follows —

- (a) in a location where the juvenile can maintain contact with relatives and friends;
- (b) in the same family unit as the brothers and sisters of the juvenile;
- (c) in a location that will allow the juvenile to continue in the same school.

129. If it appears to a court that any juvenile or a parent having entered into a recognizance under this Act has failed to comply with any of the conditions of that recognizance, the court may adjudge the recognizance to be forfeited and the sum of money named therein to be payable by the parent, guardian or other surety, and thereupon that recognizance may be enforced against such parent, guardian or other surety as if the sum of money named therein were a fine ordered to be paid by a court of summary jurisdiction upon summary conviction of an offence.

Enforcement of
recognizance.

130.(1) Where a juvenile has been placed under the supervision of the Department or any authorised person, an officer of the Department or person —

Special
provisions
relating to
probation.

- (a) shall, while the order remains in force, visit, advise and befriend the child when necessary and where appropriate endeavour to find suitable employment for the juvenile; and
- (b) may, if it appears necessary in the interest of the juvenile so to do, at any time while the order remains in force and he is under the age of eighteen years, bring him before a juvenile court or magistrate as the case may be.

(2) The court before which a juvenile is brought under subsection (1) may, if it thinks it desirable in his interest, order him to be sent to a juvenile correctional centre or commit him to the care of a fit person, whether a relative or not, who is willing to undertake his care.

(3) Where the court before which any person is bound by his recognizance or in respect of whom a probation order is made under the Penal Code, is a juvenile court, the attainment by that person of the age of eighteen years shall not deprive a juvenile court of jurisdiction to enforce his attendance and deal with him in respect of any failure to observe the conditions of his recognizance or of jurisdiction to vary or discharge the recognizance.

Ch. 84.

Provisions relating to committal to child correctional centre.

131.(1) A court, before making a correctional order with respect to any child, shall endeavour to ascertain the religious persuasion of the child.

(2) Every correctional order shall contain a declaration as to the age and religious persuasion (if ascertained) of the child with respect to whom the order is made.

(3) Every court which makes a correctional order in relation to any juvenile shall cause to be delivered with as little delay as possible to the Minister —

- (a) the order; and
- (b) a record embodying all such information in the possession of the court with respect to the juvenile as is, in the opinion of the court, material to be known by the Minister.

(4) Pending the admission into a juvenile correction centre of a juvenile in respect of whom a correctional order is made, the juvenile shall be detained in a place appointed by the Minister for use as a remand centre, unless the court which made the order has otherwise directed, or a court which would have jurisdiction as the court which made the order but for its geographical location, otherwise directs.

(5) Where a court orders a child or young person to be sent to a juvenile correction centre, the order shall be the authority for his detention in a juvenile correction centre for such period as shall be specified in the order, not being a period ending after the date on which he attains the age of eighteen years.

(6) Where a child under the age of fourteen or a young person is detained in a juvenile correction centre as punishment for the commission of an offence and he attains the age of eighteen before the expiration of the period of detention he was ordered to undergo as punishment for the commission of an offence he shall be liable to serve the remaining period of detention subsequent to that age in an adult correctional centre.

(7) A juvenile detained under any correction order and while being conveyed to or from any juvenile correctional centre shall be deemed to be in legal custody.

132. A party to any proceedings in a juvenile court may be represented therein by counsel other than the Minors Advocate.

Representation
by counsel.

133. Any order, judgment or process purporting to be signed by the chairman of a juvenile court shall be deemed to have been duly made, given or issued by the court and the record of any proceedings before a juvenile court shall be deemed to be a true record of the proceedings, and judicial notice shall be taken by all courts of any order, judgment, process or record purporting to be so signed.

Signification of
judgments,
orders and
process.

PART XIII - PLACES OF DETENTION

134. This Part shall apply to New Providence but may be extended to such places in the Family Islands as the Minister may by Order direct.

Application.

135.(1) The Minister may by Order declare any place or premises to be a juvenile correction centre or a place of detention.

Minister may
declare places or
premises to be
places of
detention.

(2) A juvenile correction centre or place of detention may be appropriated to boys or girls or to boys and girls as the Minister may direct.

(3) The premises being used at the coming into operation of this Act as detention centres and known as The Willie Mae Pratt Centre and the Simpson Penn Centre for the accommodation of girls and boys, respectively, shall be considered places declared under subsection (1) until an order of the Minister is made thereunder to the contrary.

136. Subject to section 126(7), no child under the age of twelve years shall be received into a juvenile correction centre or a place of detention and no person shall be

Age limits.

retained in the centre or place after he has attained the age of eighteen years.

Form of
detention order.
Sixth Schedule.

137.(1) An order for the commitment of a child to a juvenile correction centre or place of detention shall be in the form in the Sixth Schedule.

(2) The production of such order, or a certified copy thereof, shall be sufficient evidence of the authority to detain such child in such juvenile correction centre or place of detention until the child shall attain the age specified in the order:

Provided that the superintendent of such juvenile correction centre or place of detention shall not incur any liability for damages if, owing to the absence of a certificate of the birth of such child he detains such child after such child has attained the age specified in the order in the reasonable belief that such child has not attained that age.

Visitors.

138.(1) It shall be lawful for the Minister to appoint a visiting committee for any juvenile correction centre or place of detention declared under this Act.

(2) Any minister of the religious denomination specified in the detention order as that to which the child appears to belong may visit the child at the juvenile correction centre or place of detention, for the purpose of instructing him in religion, on such days and at such times as may be fixed by rules.

Absconding and
failure to comply
with licence or
recall.

139.(1) A child who has been ordered to be sent to a juvenile correction centre or place of detention and who —

- (a) absconds from such juvenile correction centre or place of detention, or from any hospital or institution in which he is receiving medical attention; or
- (b) absconds whilst being conveyed to or from such juvenile correction centre or place of detention or to or from any hospital or institution; or
- (c) being outside such juvenile correction centre or place of detention, runs away from the person in whose charge he is, or fails to return to such juvenile correction centre or place of detention upon the revocation of his licence; or

-
- (d) being outside such juvenile correction centre or place of detention under the provisions of section 145 or 146 fails to return to such juvenile correction centre or place of detention upon the expiration of the period of time for which he was so permitted to be outside such juvenile correction centre or place of detention or fails to return when required to do so or fails to comply with the conditions, if any, imposed by the superintendent under the provisions of either of the said sections,

may be apprehended without warrant and returned to such juvenile correction centre or place of detention.

- (2) Any person who —
 - (a) knowingly assists directly or indirectly any child to abscond —
 - (i) from a juvenile correction centre or place of detention; or
 - (ii) during the currency of an order for the commitment of such child from any hospital or institution in which such child is receiving medical attention; or
 - (iii) during the currency of an order for the commitment of such child from any other place whatsoever at which such child is, under the provisions of this Act, at the time of the escape; or
 - (b) directly or indirectly induces any child so to abscond; or
 - (c) knowingly harbours or conceals or assists in so doing a child who has absconded or runs away as mentioned in paragraphs (a), (b), (c) or (d) of subsection (1); or
 - (d) knowingly harbours or conceals a child whose licence has been revoked or who has been recalled to a juvenile correction centre or place of detention, or knowingly assists in so doing,

shall be guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for twelve months, or to both such fine and imprisonment.

Inquest on death of detained child.

140. A coroner's inquest shall in every case be held whenever a child dies while detained in a juvenile correction centre or place of detention.

Detention outside juvenile correction centre.

141. Where a child committed to a juvenile correction centre is by virtue of the provisions of this Act or of any rule not living within the precincts of the centre, he shall nevertheless for all purposes of discipline be subject to all rules applicable to inmates of the centre.

Provisions regarding places of detention.

142. It shall be lawful for the authority or person responsible for the management of any institution other than a prison or juvenile correction centre whether supported out of the public funds or by voluntary contributions, to agree with the Minister for the use of the institution or any part thereof as a place of detention on such terms as may be agreed upon between them and the Minister.

Expenses.

143. The expenses incurred in respect of a juvenile correction centre or place of detention, including the expenses of the maintenance of any child detained therein, shall be a charge upon the Consolidated Fund.

Power to discharge or vary order.

144. The Minister may at any time, on the recommendation of the superintendent order any child —

- (a) to be discharged from a juvenile correction centre or place of detention; or
- (b) to be removed from one juvenile correction centre or place of detention to another or from a juvenile correction centre to a place of detention or from a place of detention to a juvenile correction centre but so that the total period of his detention shall not be increased by such removal; or
- (c) to be released from a juvenile correction centre or place of detention under a licence to be issued by the superintendent in the form prescribed by the rules, in order that such child may live under the charge of any trustworthy and respectable person named in the licence and willing to receive and take charge of him; and
 - (i) in the case of a child under sixteen years to keep him in regular attendance at a school;

- (ii) in the case of a child who has attained sixteen years to keep him in regular attendance at a school or regularly employed in some trade, occupation or calling:

Provided that the Minister may, on the recommendation of the superintendent order the superintendent to revoke such licence and to recall such child to a juvenile correction centre or place of detention.

145.(1) The superintendent of a juvenile correction centre or place of detention may, grant a licence in the form prescribed by the rules to any resident of such centre or place of detention who is a child and has attained the age of sixteen permitting him to be outside such centre or place of detention between the hours of six o'clock in the morning and six o'clock in the evening other than on Sundays and public holidays for the purpose of being gainfully employed by an employer approved by the visiting committee, but such child shall be deemed to remain under the supervision of the said superintendent, who may at any time revoke such licence without incurring any liability for damages suffered by the employer.

Permission for resident to engage in extramural employment.

(2) Any person employing a child as provided in subsection (1) hereof shall be required to render weekly to the superintendent a report on the conduct of the child in such form as may be prescribed by the rules.

(3) The earnings of a child employed under the provisions of subsection (1) hereof shall be paid by the employer to the superintendent, who shall —

- (a) deduct therefrom, from time to time, and pay to the child such sums as may be necessary for his expenses whilst outside the juvenile correction centre or place of detention in the course of his employment; and
- (b) from time to time retain the balance of such earnings on trust for the child in such manner and upon such conditions as may be prescribed by the rules.

Permission for resident to visit home or be absent from centre or place of detention in certain circumstances.

146.(1) The superintendent of a juvenile correction centre or place of detention may permit a resident of such centre or place of detention from time to time to visit his home for such period between the hours of eight o'clock in the forenoon and six o'clock in the evening upon such conditions as the superintendent may decide.

(2) In the case of the serious illness of a relative of a resident of a juvenile correction centre or place of detention or of any other person, not being a relative of such resident, but who stands in *loco parentis* to such resident, the superintendent of such centre or place of detention may, in his discretion permit such resident to be outside the centre or place of detention for a period not exceeding forty-eight hours at anyone time, upon such conditions as the superintendent may decide.

Offence in publication of particulars of child.

147.(1) It shall be an offence for any person to publish any material which is intended, or is likely, to identify —

- (a) any child as being involved in any proceedings before a court in which any power may be exercised by the court with respect to that or any other child; or
- (b) an address or school as being that of a child involved in any such proceedings; or
- (c) any child concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein.

(2) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he did not know, or had no reason to suspect, that the published material was likely to identify the child.

(3) The court may, if satisfied that the welfare of the child requires it, by order dispense with the requirements of subsection (1) (a), (b) or (c) to such extent as may be specified in the order.

(4) For the purposes of this section "publish" includes —

- (a) broadcast by radio or television;
- (b) causing to be published in any newspaper or by any other manner whatever; and "material" includes any information, picture or other form of representation.

(5) Any person who contravenes this section 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 twelve months, or to both such fine and term of imprisonment.

148. If any matter is published or broadcast in contravention of section 147 the following persons namely —

Persons liable for publication contrary to section 147

- (a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of any other publication, the person who publishes it; and
- (c) in the case of a broadcast, the owner of the undertaking or institution which transmits or provides the programme in which the broadcast is made and any presenter or person having functions in relation to the programme corresponding to those of an editor of a newspaper,

would be liable to prosecution.

PART XIV - MISCELLANEOUS

149. Save as otherwise provided in this Act an appeal shall lie to the Supreme Court from any order or decision made under this Act by a magistrate or juvenile court and the provisions of the Criminal Procedure Code Act and any Rules of Court shall *mutatis mutandis* apply to such appeal as they apply to other appeals from a magisterial court in criminal proceedings.

Appeals

Ch 91

150. The Rules Committee under section 76 of the Supreme Court Act may from time to time make rules of court for regulating the practice (including scales of fees) in respect of proceedings of any kind under this Act in a court, and may by the same or other rules assign to any particular court the determination of any applications or classes of applications involved in or related to those proceedings.

Rules of court
Ch 53

151.(1) Where a court has to determine the issue of parentage in any proceedings under this Act the court may, on the application of any party to the proceedings or on its own motion, make an order, upon such terms as may be

Determination of parentage issue

just, requiring any person to give any evidence which may be material to the question, including a blood sample for the purpose of blood test or for DNA analysis.

(2) Any person sought to be tested shall be made a party to the proceedings and the court may draw such inferences as it thinks appropriate from any refusal by a party to submit a sample of his blood to facilitate a test.

(3) The court may, on the application of the mother of the child, vary or amend an order made under this section.

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(4) This section is without prejudice to the provisions of the Status of Children Act, and any Rules made under section 15 of that Act shall *mutatis mutandis* apply to any steps to be taken under this section to determine the issue of parentage as they apply for that purpose under that Act.

(5) Any specimen obtained pursuant to subsection (1) shall after the completion of any test or analysis for which it was obtained be destroyed or not be used for any other purpose and the results of that test or analysis shall only be disclosed and made use of in the proceedings in which that test or analysis was ordered.

(6) Any person who retains or makes use of a specimen or discloses any results contrary to subsection (5) shall be guilty of a summary offence punishable by imprisonment for two years and a fine of ten thousand dollars.

Regulations

152.(1) The Minister may make regulations generally for the better carrying out of the provisions and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations —

- (a) defining child abuse;
- (b) prescribing reporting requirements for child abuse;
- (c) providing for the protection of children;
- (d) as to matters concerning the issue of child pornography;
- (e) providing for the prevention of the use of illicit drugs and also for the rehabilitation of children;

(f) prohibiting the trafficking of children.

(3) Regulations made under subsection (1) may prescribe in relation to any contravention of the regulations a penalty not exceeding five thousand dollars or five years imprisonment or both and may provide additional penalties for continuing or repeated offences.

(4) The Regulations may also, subject to the other provisions of this Act or any Rules of court provide for the charging of fees for the issue of any document or the reimbursement of the Department of any expenses incurred on behalf of a person under this Act.

153. In any proceedings duly initiated before a court under the provisions of this Act or the Matrimonial Causes (Summary Jurisdiction) Act, nothing shall in this or that Act preclude the court from exercising any power which it is competent to do in the proceedings pursuant to the provisions of either Act save that no person shall thereby be twice liable to any penalty or to make payment of any sum.

Avoidance of
doubt.
Ch. 126.

154. (1) Any juvenile panel in existence at the time of the coming into operation of this Act shall continue in existence in accordance with the terms of its appointment as if it were constituted under this Act and no proceedings pending at that time shall be prejudiced by any repeal made by this Act of any provisions pursuant to which that panel was appointed.

Transitional.

(2) Any application, order, appointment or other thing made or having effect for the purposes of any Act amended by this section and pending or in force immediately before the coming into operation of this Act shall be deemed to have been made under or for the purposes of the corresponding enactment in this Act and any proceedings or other thing begun under the Act so amended may be continued under this Act as if begun thereunder.

(3) Nothing in this Act shall have the effect of rendering any person liable to any penalty for any offence greater than that to which he was liable on the date when the offence was committed.

(4) The Minister may by Order amend the provisions of the First, Second or Third Schedule.

155. The Commissioner of Police shall within the competence of the Royal Bahamas Police Force, after

Co-operation of
law enforcement
authority

consultation with the Minister, make such arrangements as are necessary having regard to the Convention to secure the expeditious despatch of —

- (a) matters involving any child who has been brought to the attention, or has come into the custody, of the police;
- (b) the service of any process issued by a court in respect of maintenance under any Act.

FIRST SCHEDULE

SUPERVISION ORDERS (Section 70)

INTERPRETATION

1. (1) In this Schedule —

"the responsible person", in relation to a supervised person means —

- (a) any person who has parental responsibility for him; and
- (b) any other person with whom he is living;

"the supervised person" means the child with respect to whom a supervision order is made;

"supervision order" means a supervision order under section 64;

"the supervisor" means where the supervision order places the supervised person under the supervision of the Department, such officer of the Department as is for the time being assigned to him by the Department.

(2) The above definition of "supervisor" applies for the purpose of section 68.

REQUIREMENT TO COMPLY WITH SUPERVISOR'S DIRECTIONS

2. (1) A supervision order may require the supervised person to comply with any directions given from time to time by the supervisor and requiring him to do all or any of the following —

- (a) to live at a place or places specified in the directions for a period or periods so specified;
- (b) to present himself to a person or persons specified in the directions at a place or places and on a day or days;
- (c) to participate in activities specified in the directions on a day or days to be specified.

(2) It shall be for the supervisor to decide whether and to what extent he exercises any power to give directions under sub-paragraph (1).

(3) This paragraph does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment.

REQUIREMENTS IMPOSED ON RESPONSIBLE PERSONS

3. (1) With the consent of any responsible person, a supervision order may include a requirement —

- (a) that he take all reasonable steps to ensure that the supervised person complies with any direction given by the supervisor under paragraph 2;
- (b) that he take all reasonable steps to ensure that the supervised person complies with any requirement included in the order under paragraph 4 or 5;
- (c) that he comply with any directions given by the supervisor requiring him to attend at a place specified in the directions for the purpose of taking part in activities so specified.

(2) A direction given under sub-paragraph (1)(c) may specify the time at which the responsible person is to attend and whether or not the supervised person is required to attend with him.

(3) A supervision order may require any person who is a responsible person in relation to the supervised person to keep the supervisor informed of his address, if it differs from the supervised person's.

MEDICAL AND PSYCHIATRIC EXAMINATIONS

4. (1) A supervision order may require the supervised person —

- (a) to submit to a medical or psychiatric examination; or
- (b) to submit to any such examination from time to time as directed by the supervisor.

(2) Any such examination shall be required to be conducted —

- (a) by, or under the direction of, such registered medical practitioner as may be specified in the order;

-
- (b) at a place specified in the order and at which the supervised person is to attend as a non-resident patient; or
 - (c) at a health service hospital or (in the case of a psychiatric examination) a hospital or mental nursing home at which the supervised person is, or is to attend as, a resident patient.

(3) A requirement of a kind mentioned in subparagraph (2) (c) shall not be included unless the court is satisfied, on the evidence of a registered medical practitioner, that —

- (a) the supervised person may be suffering from a physical or mental condition that requires, or may be susceptible to, treatment; and
- (b) a period as a resident patient is necessary if the examination is to be carried out properly.

(4) No court shall include a requirement under this paragraph in a supervision order unless it is satisfied that —

- (a) where the child has sufficient understanding to make an informed decision, he consents to its inclusion; and
- (b) satisfactory arrangements have been, or can be, made for the examination.

(5) This paragraph does not apply in the case of an interim order or an order pending appeal.

MEDICAL AND PSYCHIATRIC TREATMENT

5. (1) Where a court proposes to make or vary a supervision order and is satisfied, on the evidence of a registered medical practitioner, that the physical condition of the supervised person is such as required and may be susceptible to treatment, the court may include in the supervision order a requirement that the supervised person shall, for a period specified in the order, submit to treatment of one of the following descriptions so specified —

- (a) treatment by or under the direction of a registered medical practitioner specified in the order;
- (b) treatment as a non-resident patient at a place specified in the order;

- (c) treatment as a resident patient in a health service hospital.

(2) Where a court proposes to make or vary a supervision order and is satisfied, on the evidence of a medical practitioner recognised for the purposes of the Mental Health Act that the mental condition of the supervised person is such as requires and may be susceptible to treatment, the court may include in the supervision order a requirement that the supervised person shall, for a period specified in the order, submit to treatment of one of the following descriptions so specified —

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- (a) treatment by or under the direction of a registered medical practitioner specified in the order;
- (b) treatment as a non-resident patient at a place specified in the order;
- (c) treatment as a resident patient in a hospital or mental nursing home.

(3) No court shall include a requirement under this paragraph in a supervision order unless it is satisfied that —

- (a) where the child has sufficient understanding to make an informed decision, he consents to its inclusion; and
- (b) satisfactory arrangements have been, or can be, made for the treatment.

(4) If a medical practitioner by whom or under whose direction a supervised person is being treated in pursuance of a requirement included in a supervision order by virtue of this paragraph —

- (a) is unwilling to treat or direct the treatment of the supervised person, or (b) is of the opinion —
 - (i) that the treatment should be continued beyond the period specified in that behalf in the order, or
 - (ii) that the supervised person needs different treatment, or
 - (iii) that he is not susceptible to treatment, or

- (iv) that he does not require further treatment,

the practitioner shall make a report in writing to that effect to the supervisor.

(5) On receiving a report under sub-paragraph (4) the supervisor shall refer it to the magistrate's court, and on such a reference the court may make an order cancelling or varying the requirement.

(6) This paragraph does not apply in the case of an interim order or an order pending appeal.

RESTRICTION ON DIRECTIONS

6. (1) The total number of days in respect of which a supervised person or responsible person may be required to comply with directions given under paragraph 2 or 3 shall not exceed ninety or such lesser number, if any, as may be specified in the order.

(2) For the purpose of calculating the total number of days in respect of which such directions may be given the supervisor may disregard any day in respect of which directions were previously given in pursuance of the order and on which the directions were not complied with.

INFORMATION TO BE GIVEN TO SUPERVISOR ETC.

7. (1) A supervision order may require the supervised person —

- (a) to keep the supervisor informed of any change in his address; and
- (b) to allow the supervisor to visit him at the place where he is living.

(2) The responsible person in relation to a supervised person shall —

- (a) if asked by the supervisor, inform him of the supervised person's address (if it is known to him); and
- (b) if he is living with the supervised person, allow the supervisor reasonable contact with the supervised person.

DURATION OF SUPERVISION ORDER

8. (1) Subject to any other enactment providing for its termination, a supervision order (other than an interim

order or an order pending appeal) shall, unless previously revoked, cease to have effect —

- (a) the end of the period specified in the order unless it is extended under subparagraph (2);
- (b) when the supervised person attains the age of eighteen years;
- (c) on the making of a care order with respect to the supervised person;
- (d) on the making of any order by the Supreme Court allowing the removal of the supervised person out of the jurisdiction.

(2) On an application made by the supervisor a magistrate court may make an order extending, or further extending, the duration of a supervision order for such period not exceeding one year as the court may specify.

(3) A supervision order may not be extended beyond —

- (a) the end of the period, of three years beginning with the date on which it was initially made; or
- (b) the date on which the supervised person attains the age of eighteen.

(4) This paragraph is without prejudice to any other law.

VARIATION AND REVOCATION OF SUPERVISION ORDER

9. (1) A supervision order may be revoked or varied by the court on the application of —

- (a) any person who has parental responsibility for the child;
- (b) the child himself if he has attained age fourteen years; or
- (c) the supervisor.

(2) On the application of a person —

- (a) who is not entitled to apply for the order to be revoked, but
- (b) with whom the child is living,

a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.

-
- (3) In this paragraph "the court" means —
- (a) where the supervision order was made by a court other than a magistrate's court, that court or;
 - (b) in any other case, a magistrate's court; but where the supervision order was made by a court on the determination of an appeal from another court, it shall be treated for the purpose of this sub-paragraph as made by the latter court.

EFFECT ON EARLIER ORDERS

10. The making of a supervision order with respect to a child revokes any earlier supervision order (including a supervision order made by a court of summary jurisdiction exercising criminal jurisdiction) made with respect to him which would otherwise continue in force.

SECOND SCHEDULE**EXCLUSION REQUIREMENTS ETC. (Section 77)****EXCLUSION REQUIREMENT**

1. (1) For the purposes of section 77 and this Schedule an exclusion requirement is any one or more of the following —

- (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child;
- (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives; and
- (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.

(2) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the relevant order.

POWER OF ARREST

2. (1) Where the court makes a relevant order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.

(2) Where the court attaches a power of arrest to an exclusion requirement of the relevant order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

**EXTENSION OF PERIOD OF REQUIREMENT OR
POWER OF ARREST**

3. Any period specified for the purposes of paragraph 1(2) or 2(2) may be extended by the court (on one or more occasions) on an application to vary or revoke the relevant order.

EXECUTION OF POWER OF ARREST

4. (1) Where a power of arrest is attached to an exclusion requirement of a relevant order by virtue of paragraph 2, a police officer may arrest without warrant

any person whom he has reasonable cause to believe to be in breach of the requirement.

(2) Where a power of arrest is attached to an exclusion requirement of a relevant order by virtue of paragraph 2 and a person is arrested under subparagraph (1) —

- (a) he shall be brought before a magistrate's court within a period of forty-eight hours beginning at the time of his arrest otherwise at its next sitting; and
- (b) the magistrate before whom he is brought may remand him.

LAPSE OF EXCLUSION REQUIREMENT

5. If, while a relevant order containing an exclusion requirement is in force, the Department has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than twenty-four hours, the relevant order shall cease to have effect in so far as it imposes the exclusion requirement.

UNDERTAKING IN LIEU OF EXCLUSION REQUIREMENT

6. (1) In any case where the court has power to include an exclusion requirement in a relevant order, the court may accept an undertaking from the relevant person.

(2) No power of arrest may be attached to any undertaking given under this paragraph.

(3) An undertaking given to a court under this paragraph —

- (a) shall be enforceable as if it were an order of the court, and
- (b) shall cease to have effect if, while it is in force, the Department has removed the child from the dwelling-house from which the relevant person is excluded by virtue of the undertaking to other accommodation for a continuous period of more than twenty-four hours.

(4) This paragraph has effect without prejudice to the powers of the court apart from this paragraph.

INTERPRETATION

In this Schedule —

"relevant order" means an interim care order or an emergency protection order;

"relevant person" means the person who is the subject of the exclusion order.

THIRD SCHEDULE (Section 87)**FOSTER-CARE PLACEMENT RULES**

1. These Rules may be cited as the Foster-Care Placement Rules. Citation.
2. In these Rules, unless the context otherwise requires — Interpretation.
- "foster child" means a child placed with a foster parent or foster family;
- "foster family" means a family in which a child is placed;
- "supervising officer" means the social services or the authorised officer.
3. These Rules apply to the placement of a child with foster parents by a social services or; authorised officer. Application of Rules.
4. Any person interested in fostering a child shall complete the prescribed application form and submit it to the Department. Application to foster a child.
5. (1) The following persons may apply to be foster parents — Persons qualified to foster children.
- (a) a husband and wife;
- (b) a single woman not below the age of twenty-five years; or
- (c) a single man not below the age of twenty-five years.
- (2) A single man may not foster a female child under these Rules unless the Minister is satisfied that there are special circumstances which justify the single man being permitted to do so.
6. (1) Where a child's religion is known, the child so far as possible shall be placed with a foster parent who is of the same religion as the foster child. Religion.
- (2) Where a child's religion is not known, the child shall be placed with a foster parent who shall undertake to bring up the child in accordance with his religious denomination.

Cultural
background

7. Wherever possible, a child shall be placed with a foster parent who has the same cultural background as the child's parents.

Undertaking by
foster parents

8. (1) Each foster parent shall, on the day on which the child is placed with him, sign in the presence of a witness an undertaking to the effect of paragraph 6(2).

(2) Where the prospective foster parent cannot read the English language sufficiently to understand the nature of the undertaking, the supervising officer or the authorised officer concerned shall cause the undertaking to be explained to the prospective foster parent in a language which he understands and shall certify to that effect.

(3) Each foster parent shall be given a copy of the undertaking signed by him.

(4) A copy of the undertaking shall also be kept in the Department.

FOURTH SCHEDULE (Section 105)**CONSTITUTION AND FUNCTIONS OF OFFICE OF
MINORS ADVOCATE**

1. (1) A person shall not be qualified to hold or act in the office of Minors Advocate unless he is a member of at least five years standing of The Bahamas Bar or of the Bar of any other country of The Commonwealth to which a member of The Bahamas Bar is admitted without examination.

(2) The powers of the Minors Advocate may be exercised by him in person or through other fit persons acting under and in accordance with his general or special instructions.

2. (a) The Minors Advocate shall be entitled to such emoluments and be subject to such other terms and conditions of service as may from time to time be prescribed by or under any law:

Provided that the emoluments, terms and conditions of service of the Minors Advocate, other than allowances that are not taken into account in computing pensions, shall not be altered to his disadvantage during his continuance in office.

(b) the salary for the time being payable to the Minors Advocate under this Act shall be charged on and paid out of the Consolidated Fund.

3. (1) Subject to subparagraphs (4) to (7), the Minors Advocate shall hold office until he attains the age of sixty years:

Provided that —

(a) he may at any time resign his office; and

(b) the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may permit a Minors Advocate who has attained the age of sixty years to continue in office until he has attained such later age, not exceeding sixty-five years, as

may (before the Minors Advocate has attained the age of sixty years) have been agreed between them.

(2) Nothing done by the Minors Advocate shall be invalid by reason only that he has attained the age at which he is required by this paragraph to vacate his office.

(3) If the office of Minors Advocate is vacant or the holder of that office is for any reason unable to perform the functions thereof, a person qualified for appointment to that office may be appointed to act therein, and any person so appointed shall, subject to the provisions of subparagraph (1), continue to act until the office of Minors Advocate is filled or, as the case may be, until the Minors Advocate has resumed the functions of his office or the appointment of that person is revoked by the Governor-General acting on the advice of the Judicial and Legal Service Commission.

(4) The Minors Advocate may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(5) The Minors Advocate shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subparagraph (6) and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Prime Minister represents to the Governor-General that the question of removing the Minors Advocate from office for inability as aforesaid or for misbehaviour ought to be investigated then —

(a) the Governor-General, acting in accordance with the advice of the Prime Minister, shall appoint a tribunal, which shall consist of a chairman and not less than two other members, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; and

-
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General whether the Minors Advocate ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) The provisions of the Commissions of Inquiry Act as in force immediately before the coming into operation of this Act shall, subject to the provisions of this Schedule apply as nearly as may be in relation to a tribunal appointed under subparagraph (6) or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that Act, and for that purpose shall have effect as if they formed part of this Schedule.

(8) If the question of removing the Minors Advocate from office has been referred to a tribunal under subparagraph (6), the Governor-General, acting in accordance with the advice of the Prime Minister, may suspend the Minors Advocate from performing the functions of his office, and any such suspension may at any time be revoked by the Governor-General, acting in accordance with the advice of the Prime Minister, and shall in any case cease to have effect if the tribunal recommends that the Minors Advocate should not be removed from office.

4. (1) It shall be the duty of the Minors Advocate to act as legal representative for any juvenile who is brought before a court and who, himself or through any person having the custody, care or control of the juvenile, requests legal representation.

(2) Where the Minors Advocate is not acting as legal representative of a juvenile under this section, he shall nevertheless be entitled to attend as a party to any proceedings in respect of a juvenile brought before a court, if the Minors Advocate is satisfied that such attendance is necessary in the best interest of the juvenile.

FIFTH SCHEDULE (Section 110)

Murder, manslaughter or treason

Conspiracy or abetment of murder or treason

Offences under the following sections of the Penal Code —

272 (causing maim or dangerous harm)

273 (use of deadly means of harm)

276 (garotting)

277(1) (intentionally endangering vessel)

292 (attempt to commit murder)

298 (infanticide)

323 (arson of dwelling house)

324 (arson of building)

326 (use of explosives)

339 (robbery and robbery with violence)

419 (threat by writing to cause death or harm)

Any offence under sections 6 (rape) 7 (procuration) 10 (sexual intercourse with a person under fourteen years) 11 (sexual intercourse with a person between fourteen and sixteen years) 12 (sexual intercourse with a person suffering mental disability) 20 (forcible taking of person with intent) of the Sexual Offences Act.

SIXTH SCHEDULE (Section 137)

DETENTION ORDER

COMMONWEALTH OF THE BAHAMAS

TO the Minister, to all persons authorised by the Minister, or any peace officer and to the Superintendent of the juvenile correctional centre.

WHEREASlate ofof the age ofyears and of thereligious persuasion was this day brought before me the undersigned and it was made to appear to me that the said.....

*here state the facts to bring the child or young person within sections 112, 113, 122, 125, 127.

*
.....

and that it was expedient for me to deal with him under the Child Protection Act, and to order him to be sent to and detained in a juvenile correction centre in.....
.....for a period ofyears and months or until he should arrive at the age ofyears (as the case may be).

THESE ARE THEREFORE TO COMMAND YOU the said peace officer to take the saidand safely convey him toand deliver him totogether with this Order AND I DO HEREBY COMMAND THE SAIDto receive the said.....into the said juvenile correction centre and to detain him therein or a period ofyears andmonths or until he shall arrive at the age ofyears (as the case may be) and for so doing so this shall be your warrant.

Given under my hand and seal thisday of