

THE CHILD CARE AND PROTECTION ACT
ARRANGEMENT OF SECTIONS

Preliminary

1. Short title.
2. Interpretation.
3. Objects of Act.

PART I. Care and Protection of Children

4. Representation by Children's Advocate.
5. Establishment of Children's Register.
6. Duty to report need for care and protection.
7. Assessment and investigation of reports to Registry.
8. Circumstances in which a child is in need of care and protection.
9. Cruelty to children.
10. Prohibition against sale or trafficking of children.
11. Warrant to search for and remove child.
12. Detention of child in place of safety.
13. Power to bring child needing care or protection before court.
14. Powers of court.
15. Power to take offender into custody.
16. Mode of charging offences and limitation of time.
17. Power to hear case in absence of child.
18. Extension of power to take statement of child.
19. Admission in evidence of deposition of child.
20. [Repealed by Act 16 of 2015,Sch.]
21. Order to submit to medical examination.
22. Disease testing of convicted offender.

CHILD CARE AND PROTECTION

23. Disposal of case by order of court.
24. Power of parent or guardian to bring child before court.

PART II. General Provisions for Care and Protection of Children

25. Interpretation for Part II.
26. Responsibilities of fit persons.
27. Duty to provide care for child.
28. Duty to secure education of child.
29. Contributions.
30. Contribution orders.
31. Provisions as to affiliation order.
32. Reference in section 30 or 31 to court for Kingston and Saint Andrew is to Family Court.
33. Prohibition on employment of child under thirteen.
34. Restriction on employment of child over thirteen.
35. Exception for artistic performances.
36. Responsibility for contravention of sections 33 and 34.
37. Search warrant.
38. Saving.
39. Prohibition on employment in nightclubs, etc.
40. Prohibition of sale of intoxicating liquor or tobacco products to child.
41. Begging.
42. Restriction on presence of child in court.
43. Power to clear court when child in court.
44. Power to prohibit publication of certain matters.
45. Restriction on newspaper reports of proceedings in Juvenile Court.

PART III. Children in Care

46. Interpretation for Part III.

47. Licence to operate children's home.
48. Application for licence.
49. Power of Minister in respect of licences.
50. Appeals.
51. Responsibility of licensees.
52. Notification of reception of child.
53. Removal or death of child.
54. Power to visit and inspect homes.
55. Warrant to visit and inspect.
56. Control over licensed homes.
57. Order to remove child from home.
58. Escape from fit person.
59. Transfer of persons under care of fit persons.
60. Emigration, etc., of children.
61. Rules relating to fit persons.
62. Rights of child in places of safety, etc.

PART IV. *Children Detained or Brought Before a Court*

63. Age of criminal responsibility.
64. Determination of age.
65. General considerations for guidance of courts.
66. Separation of children from adults.
67. Bail or detention of child.
68. Remand or committal to juvenile remand centre.
69. Attendance at court of parent of child charged with offence, etc.
70. Notice to appropriate officers of charges against child.
71. Constitution of, procedure in, and appeal from, Children's Court.
72. Jurisdiction of Children's Court.
73. Provisions as to powers of Children's Court.

CHILD CARE AND PROTECTION

74. Court other than Children's Court to have powers of Children's Court.
75. Power of other courts to remit child offenders to Children's Court.
76. Methods of dealing with child offenders.
77. Enforcement of recognizance.
78. Restriction on punishment.
79. Restriction on committal to juvenile correctional centre.
80. Special provisions relating to probation.
81. Provisions relating to committal to child correctional centre.
82. Provisions relating to committal to fit person.
83. No committal to centre which has ceased to be a juvenile correctional centre.
84. Steps to be taken by Minister on receipt of fit person order.

PART V. Administration and Enforcement

85. Establishment of Council.
86. General duty of the Council to advise the Minister.
87. Proceedings by Minister.
88. Miscellaneous offences.
89. General penalty.
90. Forms.
91. Regulations.
92. Protection from liability.
93. Power of Minister to amend Act.

SCHEDULES

THE CHILD CARE AND PROTECTION ACT

Acts
11 of 2004,
12 of 2009
3rd Sch.,
20 of 2016
Sch.

[26th March, 2004.]

Preliminary

1. This Act may be cited as the Child Care and Protection Act. Short title.

2. -(1) In this Act— Interpreta-
tion.

“adult” means a person who has attained the age of eighteen years;

“adult correctional centre” has the meaning assigned to it by section 2 of the Corrections Act;

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

“Children’s Advocate” means the office of Children’s Advocate constituted under section 4;

“Children’s Court” means any Children’s Court established in accordance with the provisions of this Act;

“children’s home” means any institution, dwelling-house or other place where four or more children are boarded and maintained other than by a parent or lawful guardian, either gratuitously or for reward;

“children’s officer” means a public officer designated by the Minister to be a children’s officer for the purposes of this Act;

“contribution order” means an order made by a court under section 30 requiring any person to make contributions in respect of any child committed to the care of a fit person or to a juvenile correctional centre;

“correctional order” means an order made by a court sending a child to a juvenile correctional centre;

“the Council” means the Advisory Council established under this Act;

“fit person” means the Minister, and any person or body, whether corporate or unincorporate, designated by the Minister;

“fit person order” means an order committing a child to the care of a fit person;

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

“intoxicating liquor” means any fermented, distilled or spirituous liquor which cannot, save in certain specified circumstances, according to any enactment for the time being in force, be legally sold without a licence;

“juvenile correctional centre” has the meaning assigned to it by section 2 of the Corrections Act;

“juvenile remand centre” has the meaning assigned to it by section 2 of the Corrections Act;

“place of safety” means any place appointed by the Minister to be a place of safety for the purposes of this Act;

“probation and after-care officer” has the meaning assigned to it by section 2 of the Corrections Act;

“Registry” means the Children’s Registry established under section 5.

(2) Where there is a reference in this Act to the best interests of a child, the factors to be taken into account in determining the child’s best interests shall include—

- (a) the safety of the child;
- (b) the child’s physical and emotional needs and level of development;
- (c) the importance of continuity in the child’s care;

- (d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;
- (e) the child's religious and spiritual views;
- (f) the child's level of education and educational requirements;
- (g) whether the child is of sufficient age and maturity so as to be capable of forming his or her own views and, if so, those views are to be given due weight in accordance with the age and maturity of the child;
- (h) the effect on the child of a delay in making a decision.

(3) This Act shall be interpreted and administered so that the best interests of the child is the paramount consideration and in accordance with the following principle—

- (a) children are entitled to be protected from abuse, neglect and harm or threat of harm;
- (b) a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;
- (c) if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;
- (d) where the child is of sufficient age and maturity so as to be capable of forming his or her own views, those views should be taken into account when decisions relating to the child are made;
- (e) kinship ties and the child's attachment to the extended family should be preserved if possible; and
- (f) decisions relating to children should be made and implemented in a timely manner.

(4) For the purposes of this Part—

- (a) any person who is the parent or legal guardian of a child, or who is legally liable to maintain the child, shall be presumed to have the custody of the child, and as between father and mother, neither shall be deemed to have ceased to have such custody by reason only that the father or mother has deserted, or otherwise does not reside with, the other parent and the child;
- (b) any person to whose charge a child is committed by any other person who has the custody of the child shall be presumed to have charge of that child;
- (c) any other person having actual possession or control of a child shall be presumed to have the care of the child.

Objects of
Act.

3. The objects of this Act are—

- (a) to promote the best interests, safety and well-being of children;
- (b) to recognize that—
 - (i) while parents often need help in caring for children, help should give support to the autonomy and integrity of the family unit and wherever possible, be provided on the basis of mutual consent;
 - (ii) the least restrictive or disruptive course of action that is available and appropriate in a particular case to help a child should be followed;
- (c) to recognize that child services should be provided in a manner that—
 - (i) respects the child's need for continuity of care and for stable family relationships; and
 - (ii) takes into account physical and mental differences among children in their development;

- (d) to recognize the special needs of children in conflict with the law.

PART I.—*Care and Protection of Children*

4.—(1) For the purpose of protecting and enforcing the rights of children, there is hereby established a commission of Parliament which shall be known as the Children's Advocate.

Representation by Children's Advocate. First Schedule.

(2) The provisions of the First Schedule shall have effect with respect to the constitution and functions of the Children's Advocate.

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

- (a) refer the case to the Children's Advocate or, if the court thinks fit, grant a legal aid certificate in such circumstances as may be prescribed;
- (b) if the court thinks fit, adjourn the proceedings until such time as the court considers sufficient to allow for, as the case may be—
- (i) the Children's Advocate to consider the case; or
- (ii) the necessary arrangements to be made for the child to obtain legal representation pursuant to the legal aid certificate; and
- (c) cause to be delivered to the Children's Advocate a notice of its determination under this section.

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

Establishment of Children's Register.

(2) The Children's Register shall consist of such information as is supplied by persons who are required to make a report under section 6.

(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 appointment and 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.

Duty to
report need
for care
and
protection.

6.—(1) In this section—

“prescribed person” means—

- (a) a physician, nurse, dentist or other health or mental health professional;
- (b) an administrator of a hospital facility;
- (c) a school principal, teacher or other teaching professional;
- (d) a social worker or other social service professional;
- (e) an owner, operator or employee of a child day care centre or other child care institution;
- (f) a guidance counselor; or
- (g) any other person who by virtue of his employment or occupation has a responsibility to discharge a duty of care towards a child;

“relevant regulatory entity” means the entity authorized by law to regulate the professional activities of a prescribed person.

(2) Any person who has information which causes that person to suspect that a child—

- (a) has been, is being or is likely to be, abandoned, neglected or, physically or sexually ill-treated; or
- (b) is otherwise in need of care and protection,

shall make a report to the Registry.

(3) A prescribed person who, in the discharge of that person’s duties, acquires information that ought reasonably to cause that person to suspect that a child—

- (a) has been, is being or is likely to be, abandoned, neglected or, physically or sexually ill-treated; or

(b) is otherwise in need of care and protection,
shall make a report to the Registry in accordance with the provisions of this section.

(4) A person who contravenes subsection (2) or (3) commits an offence and shall be liable upon summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment to a term not exceeding six months or to both such fine and imprisonment.

(5) Where the Minister has reasonable grounds to suspect that a prescribed person has committed an offence under subsection (4), the Minister may, without prejudice to any proceedings under that subsection, require the relevant regulatory entity to cause an investigation to be made into the matter.

(6) No action shall lie in respect of any person who makes a report to the Registry in good faith pursuant to this section.

(7) 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 suspicion that the child has been, is being or is likely to be, abandoned, neglected, physically or sexually ill-treated, or is otherwise in need of care and protection.

(8) A person who knowingly makes a false statement in a report to the Children's Registry commits an offence.

(9) Subsection (2) or (3) applies even if the information on which the belief is based—

- (a) is privileged as a result of a relationship of attorney-at-law and client; or
- (b) is confidential,

unless there is no substantial risk that the welfare of the child will be further endangered.

Assessment and investigation of reports to Registry.

7.—(1) On receiving a report about a child under section 6, the Registrar shall assess the information in the report and, after such assessment, may—

- (a) refer the report to the Children's Advocate and the Government agency responsible for children for further investigation or so that the child may be brought before a court under section 13, 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 Registrar, such information would cause physical or emotional harm to any person, endanger the safety of the child or impede an investigation under paragraph (a).

(2) Every person shall regard as secret and confidential every report made under section 6 and shall not, other than in any proceedings for an offence or as is permitted for the purposes of this Act, disclose—

- (a) the existence of the report or any information contained therein; or
- (b) any other information from which the identity of—
 - (i) any child concerned in the report; or
 - (ii) any person alleged in the report to have committed an offence in respect of any such child,

may be reasonably inferred.

(3) A person who contravenes subsection (2) shall be liable upon summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(4) The Registrar commits an offence if the Registrar—

- (a) fails to assess any report referred to in subsection (1); or

(b) fails, without good cause, to refer the report in accordance with subsection (1)(a).

(5) A person to whom a report is referred for investigation under subsection (1)(a), other than the Children's Advocate, commits an offence if that person fails to carry out the investigation.

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

Circumstances in which a child is in need of care and protection

- (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 falling into bad associations, 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 the Second Schedule 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; or
- (e) is a member of the same household as a person who has been convicted of such an offence in respect of a child.

Second Schedule.

(2) For the purposes of subsection (1), 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 or loitering for that purpose,
- shall, without prejudice to the generality of the provisions of subsection 1 (a), be evidence that the child is exposed to moral danger.

Cruelty to children.

9.—(1) A person commits an offence if that person, being an adult and having the custody, charge or care of any child willfully—

- (a) assaults, physically or mentally ill-treats, neglects, abandons or exposes such child; or
- (b) causes or procures the child to be assaulted, physically or mentally ill-treated, neglected, abandoned or exposed,

in a manner likely to cause that child unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, or any mental derangement).

(2) A person who commits an offence under subsection (1) shall be liable—

- (a) on conviction on indictment in a Circuit Court, to a fine or to imprisonment with hard labour for a term not exceeding five years, or to both such fine and imprisonment;
- (b) on summary conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment with hard labour for a term not exceeding three years, or to both such fine and imprisonment.

(3) For the purposes of this section, 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 in accordance with any duty imposed by section 27 or 28;
- (b) an adult with whom an infant under three years of age was in a bed, where it is proved that—

- (i) the infant'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 drink or any drug;
- (c) any adult having the custody, charge or care of any child, 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 stove, coal-stove, or open flame; or
 - (ii) have access to any poisonous or flammable substances,

not sufficiently protected to guard against the risk of that child being drowned, poisoned, 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 paragraph nor any proceedings taken thereunder, shall affect the liability of any person to be indicted for manslaughter or for any offence against the Offences Against the Person Act.

(4) Any adult other than an owner or operator in the circumstances referred to in section 40, 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.

(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 they are satisfied that the adult is guilty of an offence under this section to find that adult guilty of that offence.

(7) If it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruing or payable in the event of the death of the child and had knowledge that that sum of money was accruing or becoming payable, then—

- (a) in the case of a conviction on indictment before a Circuit Court, the Court may impose a fine or sentence that person to imprisonment with hard labour for any term not exceeding ten years or impose both such fine and sentence;
- (b) in the case of a summary conviction before a Resident Magistrate, the maximum amount of the fine which may be imposed under this section shall be one million five hundred thousand dollars and the Resident Magistrate may, instead of any other penalty, sentence that person to imprisonment with hard labour for any term not exceeding five years or impose both such fine and sentence.

(8) For the purposes of subsection (7)—

- (a) a person shall be deemed to be directly or indirectly interested in a sum of money if he has any share in or any benefit from the payment of that money, notwithstanding that he is not the person to whom it is legally payable;

- (b) a copy of a policy of insurance, certified to be a true copy by an officer or agent of the insurance company granting the policy, shall be evidence that the child therein stated to be insured has in fact been so insured and that the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable.

(9) Any reference in this section, section 50(3) or 57 to a Resident Magistrate, in so far as it relates—

- (a) to a Resident Magistrate for the parish of Kingston or for the parish of St. Andrew shall be construed as a reference to a Judge of the Family Court—Corporate Area Region; and
- (b) to a Resident Magistrate for a parish within the geographical jurisdiction of the Family Court established pursuant to Part II of the Judicature (Family Court) Act shall be construed as a reference to a Judge of that Family Court.

10.—(1) No person shall sell or participate in the trafficking of any child.

Prohibition against sale or trafficking of children.

(2) Any person who commits an offence under subsection (1) shall be liable on conviction on indictment before a Circuit Court, to a fine or to imprisonment with hard labour for a term not exceeding ten years, or to both such fine and imprisonment.

11.—(1) If it appears to a Justice of the Peace on information on oath laid by any person who, in the opinion of the Justice of the Peace is acting in the interests of a child that there is reasonable cause to suspect—

Warrant to search for and remove child.

- (a) that the child has been or is being assaulted, ill-treated or neglected in a manner likely to cause that child unnecessary suffering; or
- (b) that any offence mentioned in the Second Schedule has been, is being or is likely to be committed in respect of the child, the Justice of the Peace may act in accordance with subsection (2) or (3).

Second Schedule.

(2) The Justice of the Peace may issue a warrant—

(a) authorizing any constable—

- (i) to search for the child and, if it is found that the child has been, is being or is likely to be assaulted, ill-treated or neglected in any such manner, or that any such offence has been or is being committed in respect of the child, to remove the child to and detain the child in a place of safety; or
- (ii) to remove the child with or without search to a place of safety and to detain the child there,

and bring the child before a Children's Court or, if there is no Children's Court sitting in that parish, before a Resident Magistrate in chambers, within forty-eight hours after such removal; or

(b) causing any person accused of any offence mentioned in subsection (1) in respect of the child to be apprehended and brought before a court of summary jurisdiction in order that proceedings may be taken against him according to law.

(3) Instead of authorizing the removal of a child under subsection (2), the Justice of the Peace may make an order prohibiting any person accused of any offence mentioned in subsection (1) in respect of the child from—

- (a) entering or remaining in the household residence where the child resides; or
- (b) following or waylaying the child in any place, until such time as the child is brought before the court.

(4) A copy of an order made under subsection (3) shall be served personally on the person accused of the offence, who may apply immediately to the Justice of the Peace for the order to be discharged.

(5) In determining whether to discharge the order, the Justice of the Peace shall have regard to the matters referred to in subsection (1).

(6) Any constable authorized by warrant under this section to search for any child, or to remove any child with or without search, may enter (if need be by force) any house, building or other place specified in the warrant and may remove the child therefrom.

(7) The constable executing any warrant issued under this section may be accompanied by the person laying the information, if that person so desires, and may also, if the Justice of the Peace by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.

(8) It shall not be necessary in any information or warrant under this section to name the child.

12.—(1) A constable, a children's officer or a probation and after-care officer may take to a place of safety any child in respect of whom any of the offences mentioned in the Second Schedule has been committed, or there is reason to believe has been committed, or who is, in accordance with the provisions of section 13, about to be brought before a Children's Court.

Detention of child in place of safety. Second Schedule.

(2) Any child taken to a place of safety under this section, or any child who seeks refuge in a place of safety, shall not be detained there for longer than forty-eight hours without having been brought before a Children's Court or, if there is no Children's Court sitting in that parish, a Resident Magistrate in chambers.

13.—(1) Any constable or authorized person may bring before a Children's Court any child in need of care or protection.

Power to bring child needing care or protection before court.

(2) For the purposes of this section the expression—

“authorized person” means—

(a) any probation and after-care officer or any children's officer;

- (b) any person appointed by the Minister under section 87, including any person appointed by the Minister on the recommendation of a welfare organization.

Powers of Court.

Second Schedule.

14.—(1) A Children's Court before which any child is brought under this Part, or before which is brought any child in respect of whom any of the offences mentioned in the Second Schedule has been committed, may, if satisfied that the best interests of the child so require, make an order in accordance with subsection (2).

(2) An order under subsection (1) may—

- (a) require the child's parent or guardian to enter into a recognizance to exercise proper care and guardianship;
- (b) commit the child to the care of any fit person, whether a relative or not, who is willing to undertake the care of the child;
- (c) either in addition to, or without making any order under paragraph (a) or (b), place the child for a specified period not exceeding three years, under the supervision of a probation and after-care officer, or some other person to be selected for the purpose by the Minister;
- (d) prohibit for a specified period, not exceeding two years, any person found guilty of such offence—
- (i) from entering onto or residing at any premises at which the child resides, including premises the person owns or has a right to occupy; or
- (ii) from contacting or interfering with, or attempting to contact or interfere with, the child, except that where such person is the child's parent, the order may set out such conditions for supervised contact between

that parent and the child, as the court may think fit having regard to the best interests of the child;

- (e) if there are reasonable grounds to believe that a person is likely to interfere with a party who has custody of a child, prohibit that person from contacting or interfering with, or attempting to contact or interfere with, the party who has custody of the child;
- (f) where any person found guilty of such offence is a person having the custody, charge, or care of the child, require—
 - (i) that person; or
 - (ii) the child or any other child 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) The Government agency responsible for children or 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.

(4) Notice of any application under subsection (3) shall be given to all other parties to the proceedings at least seven days before the date set for hearing the application.

(5) If a Children's Court before which any child 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 child's detention 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 child.

(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 Children's Court by which an interim order is made is satisfied on any occasion that, by reason of illness, accident or other justifiable cause the child 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 child.

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

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

15.—(1) Any constable may take into custody, without warrant, any person who—

- (a) commits, within his view, any of the offences mentioned in the Second Schedule;
- (b) has committed, or whom he has reason to believe to have committed, any such offence,

if the constable has reasonable grounds for believing that such person will abscond, or if the constable does not know and cannot ascertain that person's name and address.

(2) Where, under the powers conferred by this section, a constable arrests any person without warrant, the officer or sub-officer of the police in charge of the station to which that person is brought shall grant the person bail in accordance with the Bail Act, unless he believes, on reasonable grounds, that the release of that person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child against whom the offence is alleged to have been committed.

16.—(1) Where a person is charged with committing any of the offences mentioned in the Second Schedule in respect of two or more children, the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not, if he is summarily convicted, be liable to a separate penalty in respect of each child except upon separate information.

Mode of charging offences and limitation of time.

(2) The same information or summons may also charge any person as having the custody, charge or care, alternatively or together and may charge him with—

- (a) the offence of assault, ill-treatment, neglect, abandonment, or exposure, together or separately; and
- (b) committing all or any of those offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together,

but when those offences are charged together the person charged shall not, if he is summarily convicted, be liable to a separate penalty for each.

(3) Where a person is charged with any offence mentioned in the Second Schedule, and the offence is a continuous offence, it shall not be necessary to specify in the information, summons or indictment the date of the acts constituting the offence.

17. Where in any proceedings with relation to any of the offences mentioned in the Second Schedule the court is satisfied that the attendance before it of any child in respect of whom the

Power to hear case in absence of child.

offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

Extension
of power to
take statement
of child.
Second
Schedule

18.—(1) Where a Justice of the Peace is satisfied by the statement of a duly qualified medical practitioner that the attendance before a court of any child, in respect of whom any of the offences mentioned in the Second Schedule is alleged to have been committed, would involve serious danger to the life or health of the child, the Justice of the Peace may take in writing the deposition of the child on oath, and shall thereupon subscribe the statement and add thereto a declaration of his reason for taking it and of the date on which, and the place where, it was taken, and of the names of the persons (if any) present at the taking thereof.

(2) The Justice of the Peace taking any such statement shall transmit it with the Justice's declaration—

- (a) if the statement relates to an offence for which any accused person is already committed for trial, to the proper officer of the court for trial at which the accused person has been committed;
- (b) in any other case, to the clerk of the court before which proceedings are pending in respect of the offence.

Admission in
evidence of
deposition
of child.

19. Where, in any proceedings in respect of any of the offences mentioned in the Second Schedule, the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any child, in respect of whom the offence is alleged to have been committed, would involve serious danger to the child's life or health, any deposition of the child taken under Part II of the Justices of the Peace Jurisdiction Act, or under this Part of this Act, shall be admissible in evidence either for or against the accused person without further proof thereof if it purports to be signed by the Justice of the Peace by or before whom it purports to be taken:

Provided that the deposition shall not be admissible in

evidence against the accused person unless it is proved that reasonable notice of the intention to take the deposition has been served upon him and that he or his attorney-at-law had, or would have had if he had chosen to be present, an opportunity of cross-examining the child making the deposition.

20. [Repealed by Act 16 of 2015, Sch.]

21.—(1) Where a child is brought before the court as being in need of care and protection and there is reason to believe that the child has been abused, the court may, of its own volition or on the application of the child's parent or guardian, a constable or authorized officer or the Children's Advocate, make an order requiring that the child be medically examined for the purposes of determining what steps ought to be taken in relation to the health and medical treatment of the child.

Order to submit to medical examination.

(2) A medical practitioner acting pursuant to an order made under subsection (1) may carry out, or cause to be carried out, such medical examination of the child as the medical practitioner thinks fit and shall, as soon as practicable, transmit a report thereon to the court.

(3) No proceedings shall be brought against a medical practitioner for anything done in good faith in accordance with the provisions of this section.

Disease
testing of
convicted
offender.

22.—(1) Where a person is charged with or convicted of an offence in respect of a child, being—

- (a) an offence under the Offences Against the Person Act, namely section 40 (aggravated assaults on women or children), 47 (defilement of female imbecile), 48 (carnal knowledge of girl under 12), 50 (above 12 and under 16) or 53 (indecent assault, etc.); or
- (b) any offence involving conduct likely to result in the transmission of a communicable disease to a child,

the court may make an order requiring such person to submit to medical examination and testing for the purpose of ascertaining whether such person is the carrier of a communicable disease, if the court is satisfied that such examination and testing is in the best interests of the child.

(2) 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 authorized to communicate it; or
- (b) otherwise than for the purposes of this Act,

commits an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars and in default of payment to imprisonment for a term not exceeding twelve months.

(3) 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 communication of the results of any examination or test as is necessary in the best interests of the child.

23.—(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 the Second Schedule;
- (b) committed for trial for any such offence; or
- (c) bound over to keep the peace towards that child,

Second Schedule.

by any court, that court may order that child to be brought before a Children's Court with a view to the said court making an order under section 14, and shall direct that the Minister and the probation and after-care officer 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 Children's Court, it shall be the duty of the following persons to bring the child before the Children's Court—

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

24.—(1) The parent or guardian of a child may bring the child before a juvenile court and where such parent or guardian proves to the court that he is unable to control the child, the court may make an order in respect of the child if satisfied—

Power of parent or guardian to bring child before court.

- (a) that it is expedient so to deal with the child; and
- (b) that the parent or guardian understands the results which will follow from, and consents to the making of, the order.

- (2) An order under subsection (1) may—
- (a) be a correctional order; or
 - (b) provide for the child—
 - (i) to be committed to the care of any fit person, whether a relative or not, who is willing to undertake the care of the child; or
 - (ii) to be placed for a specified period, not exceeding three years, under the supervision of a probation and after-care officer, a children's officer or of some other person to be selected for the purpose by the Minister.

PART II.—*General Provisions for Care and Protection of Children*

Interpreta-
tion for
Part II.

25. In this Part—

“employment” means employment in any undertaking, trade, or occupation, carried on for profit or gain, irrespective of whether the employment is gratuitous or for reward;

“industrial undertaking” includes—

- (a) a mine, quarry, distillery or brewery, or a sugar, spirit compounds, match, soap, cigar or cigarette factory, or any undertaking in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed, including ship-building and the generation, transformation and transmission of electricity and motive power of any kind;
- (b) construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work, or

other work of construction, as well as the preparation for or laying the foundation of any such work or structures;

- (c) transport of passengers or goods by road, air, rail, or inland waterway, including the handling of goods at docks, wharves, airports and warehouses;

“night work” means work between the hours of ten o’clock in the evening and five o’clock in the morning;

“ship” means any sea-going ship or boat of any description.

26. The person to whose care a child is committed or transferred by an order made under this Act shall, while the order is in force, have the same rights and powers and be subject to the same liabilities in respect of the child’s maintenance as if he were the child’s parent, and the child so committed or transferred shall continue in his care notwithstanding any claim by a parent or other person.

Responsibilities of fit persons.

27.—(1) It shall be the duty of every person responsible for the maintenance of a child to provide the child with adequate food, clothing, lodging and health care appropriate to the age and needs of the child.

Duty to provide care for child.

(2) Any person mentioned in subsection (1), who is financially unable to provide for a child in accordance with subsection (1), shall apply to the Minister in the prescribed manner, for assistance.

28.—(1) Every person having the custody, charge or care of a child between the ages of four and sixteen years shall take such steps as are necessary to ensure that the child is enrolled at, and attends, school.

Duty to secure education of child.

(2) Where a person having the custody, charge or care of a child is financially unable to provide the child with any article required for the purposes of the child’s education at a school at which the child is registered, that person shall apply to the Minister, in the prescribed manner, for assistance.

(3) The Minister may by order published in the *Gazette* amend subsection (1) by increasing or decreasing any age specified in that subsection.

Contributions.

29.—(1) Where a court makes a fit person order or an order sending the child to a juvenile correctional centre, the court may order the following persons to make contributions in respect of the child—

- (a) the child's father, adopted father or step-father;
- (b) the child's mother, adopted mother or step-mother; and
- (c) any person who, at the date when any such order is made, is cohabiting with the mother of the child, whether he is the putative father or not.

(2) Where a child has been committed to the care of a fit person, contributions under this Act shall be payable to the Government agency responsible for children, to be applied in or towards the maintenance, or otherwise for the benefit, of the child.

(3) Where a child has been committed to a juvenile correctional centre, contributions under this Act shall be payable to the Commissioner of Inland Revenue.

Contribution orders.

30.—(1) A contribution order may be made in accordance with this section where a fit person order or a correctional order has been made in respect of a child.

(2) The contribution order may be made—

- (a) by the court which makes the fit person order or the correctional order, at the same time when it makes that order; or
- (b) subject to the provisions of section 32, by any court of summary jurisdiction having jurisdiction in the place where the person to be charged is for the time being residing, on the application of—
 - (i) the person to whose care the child is committed; or

- (ii) the Minister in the case of a committal to a juvenile correctional centre.

(3) The contribution order shall require any person who is liable to make contributions under section 29, in respect of any child, to contribute such sum as the court thinks fit having regard to his means.

(4) A contribution order—

- (a) shall, unless varied or revoked, remain in force so long as the child remains in the care of the fit person or juvenile correctional centre, and the court when making such order shall have regard to any affiliation order in force in respect of the child;
- (b) may be varied or revoked on the application of either the contributor or the Government agency responsible for children.

(5) A contribution order shall be enforceable—

- (a) where a child has been committed to the care of a fit person, at the instance of the Government agency responsible for children; or
- (b) where a child has been committed to a juvenile correctional centre, at the instance of the Minister in the same manner as an affiliation order made under the Affiliation Act.

(6) A person against whom a contribution order is made shall, if he changes his address, forthwith give notice thereof to the Government agency responsible for children, and any person who fails to comply with the provisions of this subsection, or who knowingly gives notice that is false in any material particular, commits an offence against this Act.

31.—(1) Subsection (2) or (3) shall apply where a court makes a fit person order or a correctional order, and an order for the child's maintenance is in force.

Provisions
as to
affiliation
order.

(2) The court which makes the order referred to in sub-

section (1) may, at the same time, order the payments under the maintenance order to be paid to the person to whom contributions in respect of the child are payable under section 29.

(3) Subject to the provisions of section 32, the powers of the court under subsection (2) may be exercised by any court of summary jurisdiction having jurisdiction in the place where the putative father is for the time being residing, on the application of the person who would be entitled to apply for a contribution order.

(4) Any sums received under the maintenance order shall be applied in like manner as if they were contributions received under a contribution order.

(5) If the putative father changes his address, he shall forthwith give notice thereof to the Government agency responsible for children, and, if he fails so to do, or if he knowingly gives a notice that is false in any material particular, he commits an offence against this Act.

(6) The making of an order under this section with respect to a maintenance order shall not extend the duration of that order.

32.—(1) Any reference in section 30(2) (b) or 31(3) to a court having jurisdiction in any place of residence for the time being shall—

- (a) in relation to a place in the parish of Kingston or the parish of Saint Andrew, be construed as a reference to the Family Court—Corporate Area Region; and
- (b) in relation to a place aforesaid in a parish within the geographical jurisdiction of a Family Court established pursuant to Part II of the Judicature (Family Court) Act be construed as a reference to that Family Court.

Reference in section 30 or 31 to court for Kingston or Saint Andrew is to Family Court.

33. No person shall employ a child under the age of thirteen years in the performance of any work.

Prohibition on employment of child under thirteen.

34.—(1) No person shall employ a child who has attained the age of thirteen years, but who has not attained the age of fifteen years, in the performance of any work other than in an occupation included on the list of prescribed occupations referred to in subsection (2).

Restriction on employment of child over thirteen.

(2) For the purposes of subsection (1), the Minister shall maintain a list of prescribed occupations—

- (a) consisting of such light work as the Minister responsible for labour considers appropriate for the employment of any child of the age referred to in that subsection; and
- (b) specifying the number of hours during which and the conditions under which such child may be so employed.

(3) No person shall employ a child—

- (a) in the performance of any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual or social development; or
- (b) in night work or an industrial undertaking.

35.—(1) Notwithstanding the provisions of sections 33 and 34, the Minister responsible for labour may, on the advice of the Council, issue a permit to a child to enable that child to be employed for the purpose of participating in artistic performances.

Exception for artistic performances.

(2) A permit issued pursuant to subsection (1) shall specify the number of hours during which and the conditions under which the child may be so employed.

36. Where any child is employed in contravention of any of the provisions of section 33 or 34, any person to whose act, default or representations the contravention is attributable commits an offence against this Act and is liable upon summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not

Responsibility for contravention of sections 33 and 34.

exceeding six months or to both such fine and imprisonment.

Search
warrant.

37. If it is made to appear to a Justice of the Peace that there is reasonable cause to believe that any of the provisions of section 33, 34, 39 or 40 are being contravened with respect to any person, the Justice of the Peace may by warrant authorize any constable to enter any place in, or in connection with, which such person is, or is believed to be, employed, and to make all necessary enquiries therein.

Saving.

38. Nothing in section 33 or 34 shall be construed to apply to the performance of work by any child—

- (a) under order of detention in a juvenile correctional centre or a community service order; or
- (b) as part of that child's instruction in any school,

if such labour or work is not likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual or social development.

Prohibition on
employment
in nightclubs,
etc.

39.—(1) A person commits an offence if that person—

- (a) employs any child in a nightclub; or
- (b) in any manner, uses a child for the purposes of any conduct contrary to decency or morality.

(2) An owner or operator of a nightclub who permits a child to enter into, or remain in, the nightclub commits an offence:

Provided that no person shall be guilty of an offence under this section if he proves to the satisfaction of the court that at the time of entry and while the child was permitted to remain on the premises, the person took all reasonable steps to ascertain and reasonably believed, that the person was not a child.

(3) An owner or operator of a nightclub or premises, who commits an offence under subsection (1) or (2) shall, in addition to any other penalty to which he may be liable under this Act, be liable to have his licence to operate the nightclub revoked and in

the case of such revocation, shall not be eligible to be issued a licence to operate a nightclub until the expiration of the period of three years from the date on which such owner or operator is convicted for the offence.

(4) Any person who knowingly rents, or allows his premises to be used, for the purposes of any conduct mentioned in subsection (1) involving a child, commits an offence.

(5) A person who commits an offence under this section shall be liable upon summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year.

40.—(1) An owner or operator of an establishment that sells or serves intoxicating liquor or tobacco products shall ensure that—

- (a) no intoxicating liquor or tobacco product is sold or served by the establishment to any child; and
- (b) no child is employed by the establishment to sell or assist in the selling of intoxicating liquor or tobacco products.

(2) A person commits an offence if that person—

- (a) contravenes subsection (1);
- (b) employs a child to sell or assist in selling intoxicating liquor or tobacco products; or
- (c) purchases intoxicating liquor or tobacco products from a child:

Provided that no person shall be guilty of an offence under this section if he proves to the satisfaction of the court that at the time of the sale, or purchase in the case of paragraph (c), he took all reasonable steps to ascertain, and reasonably believed, that the person employed, or the person to or by whom the intoxicating liquor or tobacco product was sold or served, as the case may require, was not a child.

(3) In this section, "tobacco products" means cigarettes, cigars, cheroots or cigarillos.

Prohibition
of sale of
intoxicating
liquor or
tobacco
products
to child.

Begging.

41.—(1) Every person who—

- (a) causes or procures any child; or
- (b) having the custody, charge or care of a child, allows the child,

to be in any street, premises or place for the purpose of begging or receiving alms, or of inducing the giving of alms commits an offence against this Act.

(2) If any person while singing, playing, performing or offering anything for sale in a street or public place has with him a child who has been lent or hired out to him, the child shall, for the purposes of this section, be deemed to be in that street or place for the purpose of inducing the giving of alms.

(3) Where an offence under this section is committed by a person mentioned in subsection (1) (b)—

- (a) in the parish of Kingston or the parish of St. Andrew, such offence shall be triable by the Family Court—Corporate Area Region; and
- (b) in a parish within the geographical jurisdiction of a Family Court established pursuant to Part II of the Judicature (Family Court) Act, such offence shall be triable by that Family Court.

Restriction on presence of child in court.

42.—(1) No child, other than an infant in arms, shall be permitted to be present in court during the trial of any other person charged with any offence, or during any proceedings preliminary thereto, except during such time as the child's presence is required as a witness or otherwise for the purpose of justice or in such other circumstances as the court may determine.

(2) The court shall order the removal of any child who is present in court in contravention of this section.

Power to clear court when child in court.

43.—(1) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, it appears to the court that a person who is called as a witness is a child, the court may direct that all or any persons, not being

members or officers of the court, parties to the case, their attorneys-at-law, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness.

(2) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera.

44.—(1) In relation to any proceedings in any court which arise out of any offence against, or any conduct contrary to, decency or morality, the court may direct that—

Power to prohibit publication of certain matters.

(a) no report of the proceedings shall reveal the name, address, or school, or include any particulars calculated to lead to the identification, of any child concerned in the proceedings, either as being the person against or in respect of whom the proceedings are taken, or as being a witness therein;

(b) no picture of any child so concerned in the proceedings as aforesaid, shall be published,

except in so far (if at all) as may be permitted by the direction of the court.

(2) Any person who publishes any matter in contravention of any directions given under subsection (1) commits an offence and is liable upon summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or in default of payment to imprisonment for a term not exceeding twelve months.

45.—(1) No report of any proceedings in a Children's Court shall reveal the name, address or school or include any particulars calculated to lead to the identification of any child concerned in those proceedings either as being the person against or in respect of whom proceedings are taken or as being a witness therein, nor shall any picture be published as being or including a picture of any child so concerned in any such proceedings:

Restriction on newspaper reports of proceedings in juvenile courts.

Provided that the court may in any case, if satisfied that it is in the interests of justice so to do, by order dispense with the provisions of this section to the extent specified in the order.

(2) Any person who publishes any matter in contravention of this section commits an offence against this Act.

PART III.—*Children In Care*

Interpretation
for Part III.

46. In this Part—

“lawful guardian” means any person appointed according to law or by deed or will or the order of a court, to be the guardian of a child, or to have the custody and maintenance of a child;

“licence” means a licence granted under this Part;

“licensed home” means a children’s home licensed under this Part;

“licensee” means the holder of a licence under this Part.

Licence to
operate
children’s
home.

47.—(1) No person shall establish or maintain a children’s home (hereinafter in this Part referred to as a “home”) except under a valid licence granted to him by the Minister in respect of the home:

Provided that nothing in this subsection shall apply to—

- (a) a juvenile correctional centre;
- (b) any school, other than a school required by the Minister to be licensed;
- (c) any house where four or more children are boarded and maintained by relatives of such children, or by the wish or with the consent of the parents or lawful guardians of such children, save in cases where the Minister, by notice in writing, expressly requires any such house to be licensed;
- (d) any home or orphanage maintained wholly by the Government.

(2) Save with the prior written permission of the Minister, no person shall maintain a home at any address or location other than that provided for in the licence granted in respect of the home.

(3) A licence shall be valid for a period of three years from the date of its issue and may be renewed successively.

(4) Save with the prior written permission of the Minister, no licence shall be transferred into the name of any person other than the licensee.

48. Every person who desires to establish and maintain a home shall make application to the Minister, in the prescribed form and manner, for a licence. Application for licence

49.—(1) The Minister, in his discretion, may refuse to grant a licence in respect of any home, or may refuse to permit the transfer of a licence or to renew a licence. Power of Minister in respect of licences.

(2) The Minister, in granting a licence, may attach thereto such terms and conditions as he may, in any case, think fit.

(3) Where, in connection with any licensed home, the Minister is of opinion that there has been any contravention of any of the provisions of this Act or of the terms and conditions of any licence, the Minister may cancel any licence issued in respect of such home, or may suspend the licence for such period as he thinks fit, and may apply to the Court under section 57 for an order or an interim order for the removal of any child from the home.

50.—(1) An appeal shall lie to a Judge in Chambers against— Appeals.

- (a) any refusal of the Minister to grant, permit the transfer or renew a licence;
- (b) any term or condition imposed in a licence;
- (c) any decision of the Minister to suspend or cancel a licence;
- (d) any decision of the Minister under section 47 (1)(c) requiring a school or house to be licensed.

(2) Every appeal under this section shall be lodged within fourteen days of the date on which the aggrieved party is notified of the refusal or decision of, or the terms or conditions imposed by, the Minister, and the procedure on such appeal shall be in accordance with rules of court made for such purposes.

(3) Where an appeal has been lodged under this section, the Minister, pending the determination of the appeal, may apply to a Resident Magistrate under section 57 for an interim order for the removal of any child from the home to which the appeal relates.

Responsibility
of licensees.

51. It shall be the duty of every licensee to—

- (a) act in the best interests of every child in his home;
- (b) ensure that every child in his home receives at all times careful and humane treatment and suitable education; and
- (c) ensure that all the provisions of this Part and all the terms and conditions of the licence and the directions of the Minister are at all times complied with in respect of the home and every child maintained therein.

Notification
of reception
of child.

52.—(1) A licensee shall notify the Minister in writing of the name, sex, age and date of reception of every child who is received into his home, and every such notification shall be made within forty-eight hours after the reception of the child into the home and shall contain such further particulars as may from time to time be prescribed.

(2) The licensee shall, after such notification, supply the Minister with all such particulars relating to any such child as the Minister in any case may require.

Removal or
death of child.

53.—(1) Save where a child is removed from a home under an order of a court, a licensee shall not permit any child to leave, or to be removed or transferred from, the licensee's home, without first giving the Minister seven days' notice in writing of such impending removal or transfer, and except in the case of a transfer to another licensed home, without first obtaining the

written permission of the Minister.

(2) A licensee shall forthwith notify the Minister if any child is absent for more than twenty-four hours from his home without the permission of the licensee.

(3) A licensee shall forthwith notify the Minister of the death of any child maintained in his home, or of the removal therefrom of any such child.

(4) A person who removes from a licensed home, without the written permission of the Minister, any child received into that home, commits an offence.

54. At all reasonable times—

- (a) any person authorized by the Minister; or
- (b) an officer of the Jamaica Constabulary Force, not below the rank of Deputy Superintendent,

Power to visit and inspect homes.

may visit and inspect any home for the purpose of verifying that the home is licensed, ensuring that the home is properly administered and that the children therein are receiving adequate care and attention.

55. Where any person empowered under the provisions of section 54 to visit and inspect a home has been refused admission to a home or to any place where he has reason to believe that—

Warrant to visit and inspect.

- (a) an unlicensed home is being maintained;
- (b) there is any contravention of any of the provisions of this Part, the terms or conditions of any licence or any directions given by the Minister thereunder; or
- (c) any child is being maltreated, neglected or illegally detained,

he may apply to a Justice of the Peace who may issue a warrant authorizing the person, or any constable, to enter the home or place at any time of the day or night and, with such assistance and by such force as may be necessary, to carry out the visit and inspection.

Control over
licensed
homes.

56.—(1) If the Minister is satisfied that the management of any licensed home, or the accommodation provided for, or the treatment of, the children therein, is such as to endanger or to be likely to endanger their welfare, he may give, in writing to the licensee concerned, such general or special directions with respect to the matters aforesaid, or any of them, as he thinks expedient for the welfare of the children in the home.

(2) A direction under this section—

- (a) may be served on the licensee concerned by being delivered personally to him, or by being sent, by post or otherwise, in a letter addressed to him at the home; and
- (b) may be varied by a subsequent direction, or may be withdrawn by the Minister.

Order to
remove child
from home.

57.—(1) Subsection (2) shall apply in any case where the Minister—

- (a) in exercise of the powers conferred on him by section 49, has cancelled or suspended a licence or has refused to renew a licence; or
- (b) has reasonable grounds for believing that—
 - (i) any home is maintained in contravention of any of the provisions of this Part, any of the terms and conditions of a licence or of any direction given by the Minister thereunder; or
 - (ii) that any child is being maltreated, neglected or illegally detained in any home.

(2) Any person authorized by the Minister in that behalf may apply to a Resident Magistrate for an order—

- (a) directing the Minister to remove any child from such home to a place of safety to be specified in the order; and
- (b) making any necessary arrangements for the future of the child.

(3) The court may make interim orders under this section upon application made by the Minister under this Act.

(4) An order for the removal of any child under this section shall operate as an authority to any Constable or other person authorized to execute the order to enter any place at any time of the day or night and with such assistance and by such force as may be necessary to remove the child therefrom.

58.—(1) A child who runs away from a person to whose care the child has been committed under this Act may—

Escape from
fit person.

- (a) be apprehended without warrant by a constable or an authorized person as defined by section 13(2) and brought back to that person if that person is willing to receive that child; and
- (b) if that person is not so willing, be taken before a Children's Court which may make an order in respect of that child as if the child had been brought before the court in need of care and protection.

(2) Any person who knowingly—

- (a) assists or induces a child to run away from a person to whose care the child has been committed; or
- (b) harbours or conceals a child who has so run away and prevents that child from returning,

commits an offence against this Act.

59.—(1) The Minister may at any time order a child under the care of a fit person to be transferred to the care of some other person.

Transfer of
persons
under care
of fit
persons.

(2) Upon a child being transferred in accordance with the provisions of subsection (1) the Minister shall cause notice thereof to be sent to the person liable to make contributions in respect of the child transferred.

60.—(1) Subject to the provisions of this section, it shall be lawful for a child who is, by an order under this Act, committed to the care of a fit person, to emigrate or be taken out of Jamaica with the written consent of the Minister.

Emigration,
etc., of
children.

(2) In giving his consent the Minister may impose such terms and conditions as he may think fit.

(3) The Minister shall not give his consent unless he is satisfied that—

- (a) it would be in the best interests of the child;
- (b) suitable arrangements have been made, or will be made for the child's reception and welfare in the country to which the child is going;
- (c) the parents or guardian of the child have been consulted or such consultation is not practicable; and
- (d) subject to subsection (4), the child consents.

(4) Where the child is too young to form or express a proper opinion on the matter, the Minister may consent to his emigrating, or being taken out of Jamaica, notwithstanding that the child is unable to consent thereto.

Rules relating
to fit persons.

61. The Minister may make rules not inconsistent with the provisions of this Act or any regulations made thereunder, as to—

- (a) the manner in which children committed or transferred to the care of fit persons are to be dealt with;
- (b) the duties and supervision of the persons to whose care they are committed or transferred; and
- (c) the sums which may be payable out of the Consolidated Fund to such persons towards the maintenance and education of children committed or transferred to their care, and different sums may be specified for different cases or classes of case.

Rights of
child in
places of
safety, etc.

62. A child in a place of safety, children's home or in the care of a fit person shall have the following rights—

- (a) to be fed, clothed and nurtured according to prescribed minimum standards and to be given the same quality of care as other children in the placement;

- (b) to be consulted and, according to the child's abilities, to express his views about significant decisions affecting that child;
- (c) to reasonable privacy and to possession of the child's personal belongings;
- (d) to be free from corporal punishment;
- (e) to be informed of the standard of behaviour expected by the caregivers and of the consequences of not meeting that standard;
- (f) to receive medical and dental care (including psychological care) when required;
- (g) to participate in social and recreational activities appropriate to the child's abilities and interests;
- (h) to receive the religious instruction, and, as far as may be reasonably practicable, to participate in the religious activities, of the child's choice;
- (i) to be provided with an interpreter if language or disability is a barrier to consulting with the child on decisions affecting the child's custody or care;
- (j) to privacy during discussions with a family member or a legal representative;
- (k) to be informed about and to be assisted if the child so wishes, in contacting the Children's Advocate;
- (l) to be informed of the child's rights under this Act and the procedures available for enforcing those rights.

PART IV—*Children Detained or Brought Before a Court*

63. It shall be conclusively presumed that no child under the age of twelve years can be guilty of an offence.

Age of
criminal
respon-
sibility

64.—(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—

Deter-
mination
of age.

- (a) make due enquiry 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 to be an adult.

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

Second
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 Offences Against the Person Act, section 45 (procuring defilement of girl under eighteen), 48 (carnally knowing girl under twelve), 50 (carnally knowing girl above twelve and under sixteen), 51 (inducing or encouraging defilement of girl on premises), 57 (abduction of girl under sixteen), 58 (procurement), 60 (abduction with intent

to have carnal knowledge), 61 (unlawful detention with intent to have carnal knowledge) or 69 (child stealing).

65.—(1) Every court, in dealing with a child who is brought before it either as being in need of care or protection or as an offender or otherwise, shall have regard to the best interests of the child and shall, if it deems it necessary, take steps for removing the child from undesirable surroundings and for securing that proper provision is made for the child's education and training.

Best interests, restorative justice, and other factors to be considered by courts.
20/2016 Sch.

(2) The provisions of sections 5, 16A, 16B and 16C of the Criminal Justice (Reform) Act shall apply to every court dealing with a child charged with an offence, subject to the provisions of subsection (1).

20/2016 Sch.

66. 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 remand 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.

67.—(1) Where a person who is apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a court, the officer or sub-officer of police in charge of the police station to which the person is brought shall act in accordance with subsection (2).

Bail or detention of child.

(2) The officer or sub-officer shall—

- (a) so inform the government agency responsible for the care and protection of children; and
- (b) 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 or sub-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 murder or other grave crime; or
- (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 or sub-officer has reason to believe that the person's release would defeat the ends of justice.

(3) Where a person apparently a child is apprehended and is not released under subsection (2), the agency responsible for the care and protection of children shall cause the person to be detained in a juvenile remand centre until the person can be brought before a court.

Remand or
committal to
juvenile
remand
centre

68.—(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 remand centre named in the commitment, to be detained there for the period for which the child is remanded or until the child is there delivered in due course of law:

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 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 court having jurisdiction in the place where the sitting of the court which made the order was held.

(4) If the order is revoked, the child may be committed to such place, including an adult correctional centre, as may be specified in the commitment warrant.

69.—(1) When a child is charged with any offence or is for any other reason brought before a court, 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 his attendance.

Attendance
at court by
parent of
child
charged
with
offence, etc.

(2) 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 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 Justices of the Peace Jurisdiction Act shall, with the necessary adaptations and modifications, apply to the procedure on such summons.

(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.

Notice to appropriate officers of charges against child.

70.—(1) Where a child is to be brought before—

- (a) any court charged with an offence;
- (b) a Children's Court as being in need of care and protection,

the person bringing the child before the court shall cause notice of the grounds on which the child is brought before the court and of the date on which such matter will be heard, to be served in accordance with subsection (2).

(2) The notice referred to in subsection (1) shall be served within a reasonable time before such date—

- (a) on a children's officer, if the child is to be brought before the court as being in need of care and protection;
- (b) in any other case, on the probation and after-care officer, if any, of the district; and
- (c) on the Children's Advocate,

so, however, that no such notice shall be necessary whenever a children's officer, the probation and after-care officer or the Children's Advocate, as the case may be, is the person bringing the child before the court.

(3) Upon the receipt of the notice referred to in subsection (1), it shall be the duty of the probation and after-care officer on whom it is served to make such investigations and render available to the court such information as to the child's home surroundings, school record, age, health and character, as the probation and after-care officer is able to obtain and as, in his opinion, is likely to be of assistance to the court.

71.—(1) The Minister responsible for justice shall cause to be established courts, to be known as Children's Courts, which shall be constituted in accordance with the provisions of the Third Schedule and, when so constituted and sitting for the purpose of exercising any jurisdiction conferred on them by this or any other enactment, shall be deemed to have, subject to the provisions of this Act, all the powers of a Resident Magistrate's Court; and the procedure in the Children's Court, subject to the provisions of this Act, shall be the same as in the Resident Magistrate's Court.

Constitution of, procedure in, and appeal from Children's Courts. Third Schedule

(2) The Governor-General may appoint, in respect of each Children's Court, a clerk and deputy clerk who shall, in respect of the Children's Court to which they are so appointed, have all powers and perform all duties which the clerk and deputy clerk have and perform in respect of a Resident Magistrate's Court:

Provided that it shall be lawful for any clerk and deputy clerk, respectively, assigned under section 7 of the Judicature (Family Court) Act, to exercise the like powers and perform the like duties as aforesaid in respect of the Children's Court constituted by virtue of paragraph 4 of the Third Schedule.

(3) Without prejudice to the power to bring before a Children's Court by any other means, any child in need of care or protection, the attendance of a child or of any other person before a Children's Court in accordance with the provisions of this Act may be enforced by the same officers, the same process and in the same way as the attendance of persons before Justices of the Peace may be enforced under the provisions of the Justices of the Peace Jurisdiction Act.

(4) Children's Court shall sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on them by or under this or any other enactment

(5) Subject to subsection (6), a Children's Court shall sit in such place or places as may from time to time be specified under paragraph 3 of the Third Schedule as the place or places in which such court shall sit.

(6) Where no place is so specified the Children's Court shall sit either in a different building or room from that in which sittings of courts other than Children's Courts are held, or on different days or at different times from those on which sittings of such other courts are held.

(7) No person shall be present at any sitting of a Children's Court except—

- (a) members and officers of the court, and any authorized person as defined in section 13;
- (b) parties to the case before the court, their attorneys-at-law, and witnesses giving or having given their evidence, and other persons directly concerned with the case;
- (c) *bona fide* representatives of newspapers or news agencies;
- (d) such other persons as the court may specially authorize to be present.

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

- (a) the reason for the child being before the court; and
- (b) that the child is entitled to the assistance of the Children's Advocate.

(9) Where a child is charged before a Children's Court with any offence and does not have legal representation, the Court shall act in accordance with section 4 (3).

(10) Where a child is charged with any offence and admits the offence, or the court is satisfied that the offence has been proved, the court shall record a finding to that effect and, before sentencing the child, shall obtain such information as to the child's 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.

(11) For the purpose of obtaining the information referred to in subsection (10) or for special observation, the court may from time to time remand the child on bail or in custody.

(12) An appeal shall lie from any decision of a Children's Court in the same manner and subject to the same procedure as an appeal from a Resident Magistrate's Court.

72.—(1) Subject to the provisions of this section, no charge against a child and no application in relation to a child in need of care or protection shall be heard by any court of summary jurisdiction which is not a Children's Court.

Jurisdiction
of
Children's
Courts.

(2) Subject to subsection (3), a charge made jointly against a child and a person who has attained the age of eighteen years shall not be heard by a Children's Court.

(3) Where, in the course of any proceedings before a Children's Court, it appears that a person so jointly charged has attained the age of eighteen years—

- (a) nothing in subsection (2) shall be construed as preventing the Children's Court, if it thinks fit, from proceeding with the hearing and determination of those proceedings; and
- (b) where it does so, it shall be deemed to have, in relation to the person who has attained the age of eighteen years, all the powers of a court of summary jurisdiction.

(4) Where a child is charged with an offence, the charge may be heard by a court of summary jurisdiction which is not a Children's Court if a person who has attained the age of eighteen years is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting the offence.

(5) Where, in the course of any proceedings before any court of summary jurisdiction other than a Children's Court, it appears that the person to whom the proceedings relate is a child, nothing in this section shall be construed as preventing that court, if it thinks fit, from proceeding with the hearing and determination of those proceedings.

(6) Where a child—

- (a) who has not attained the age of fourteen years is charged with any offence; or
- (b) who has attained the age of fourteen years is charged with any offence other than an offence specified in the Fourth Schedule,

Fourth
Schedule.

the charge shall, subject to any right of appeal provided by this or any other enactment, finally be disposed of by a Children's Court, or if the charge is heard before a court of summary jurisdiction that is not a Children's Court, by that court of summary jurisdiction, without prejudice, however, to the provisions of section 75.

(7) Where a child who has attained the age of fourteen years is charged with an offence specified in the Fourth Schedule—

- (a) proceedings for the child's committal for trial shall, subject to subsection (1), be heard in a Children's Court; and
- (b) if, on the termination of those proceedings, the court is satisfied that the child should be committed for trial, the court shall so commit the child and shall bind such child and the witnesses, by recognizance to appear at the court to which such child is committed.

(8) No direction, whether contained in this or in any other enactment, that a charge shall be brought before a Children's Court shall be construed as restricting the powers of any Resident Magistrate or Justice of the Peace to entertain an application for bail or for a remand and to hear such evidence as may be necessary for that purpose.

Provisions as
to powers of
Children's
Court.

73.—(1) A Children's Court sitting for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child may, if it thinks fit, proceed with the hearing and determination of the charge or application notwith-

standing that it is discovered that the person in question is not a child.

(2) Where a Children's Court has remanded a child for information to be obtained with respect to that child or for special observation, any Children's Court sitting in the same parish or place—

- (a) may in the child's absence extend the period of remand, so, however, that the child appears before a court at least once in every seven days;
- (b) when the required information has been obtained, may, subject to any right of appeal provided by this Act, deal with the matter finally.

(3) Where the court by which a child was originally remanded has recorded a finding that the child is guilty of an offence charged, it shall not be necessary for any court which subsequently deals with that child under this section to hear evidence as to the commission of that offence, except in so far as may be considered that such evidence will assist the court in determining the manner in which the child should be dealt with.

74. Where under the provisions of this Act, a child is tried before any court which is not a Children's Court, then such court shall, in relation to that child, have all the powers of a Children's Court.

Court other than Children's Court to have powers of Children's Court.

75.—(1) Any court by or before which a child is found guilty of an offence other than murder may, if it thinks fit, remit the case to a Children's Court acting for the place where the offender was committed for trial, or, if he was not committed for trial, to a Children's Court acting either for the same place as the remitting court or for the place in which the offender resides.

Power of other courts to remit child offenders to Children's Court.

(2) Where any such case is so remitted, the offender shall be brought before a Children's Court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court.

(3) No appeal shall lie against an order of remission made under subsection (1), but nothing in this subsection shall affect any right of appeal against a verdict or finding on which such an order is founded; and a person aggrieved by the order of the Children's Court to which the case is remitted may appeal therefrom as if he had been tried by and had pleaded guilty before the Children's Court.

(4) A court that makes an order remitting a case to a Children's Court under this section—

- (a) may give such directions as appear to be necessary with respect to the custody of the offender or for his release on bail until he can be brought before the Children's Court; and
- (b) shall cause to be transmitted to the clerk of the Children's Court, a certificate—
 - (i) setting out the nature of the offence;
 - (ii) stating that the offender has been found guilty thereof and that the case has been remitted for the purpose of being dealt with under this section.

Methods of dealing with child offenders.

76.—(1) Where a child has been found guilty of any offence before a Children's Court, that court may, subject to the provisions of this Act, make an order—

- (a) dismissing the case;
- (b) for probation under the Probation of Offenders Act;
- (c) placing the child, either in addition to or without making any other order under this section for a specified period not exceeding three years, under the supervision of a probation and after-care officer or some other person to be selected for the purpose by the Minister;

- (d) committing the child to the care of any fit person, whether a relative or not, who is willing to undertake the care of the child;
- (e) in accordance with subsection (7), if the child's parent or guardian consents to the making of the order;
- (f) sending the child to a juvenile correctional centre;
- (g) ordering the parent or guardian of the child to pay a fine, damages or costs;
- (h) ordering the parent or guardian of the child to enter into a recognizance for the good behaviour of such offender; 20/2016
Sch.
- (i) under section 16B(2) of the Criminal Justice (Reform) Act (restorative justice order). 20/2016
Sch.

(2) An order under this section, other than an order under subsection (7), may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(3) Any sums ordered under this section to be paid by a parent or guardian may be recovered by distress or imprisonment, and, in default of such recovery, such parent or guardian may be imprisoned with or without hard labour as if he had been convicted of the offence in respect of which the child was charged:

Provided that in determining the sentence to be imposed under this subsection, the Court shall take into account the impact of such sentence on any child of the person to be sentenced.

(4) A parent or guardian may appeal against an order made against him under this section as if he had been convicted by a Resident Magistrate's Court of the offence in respect of which the child was charged.

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

- (a) an order has been made under subsection (1)(f) in respect of a child who has attained the age of fourteen years; and

- (b) the Minister at any time during the period of the child's detention at a juvenile correctional centre, establishes to the satisfaction of a Children's Court that the child is of so recalcitrant a character that it is not expedient that he should continue his detention at such centre.

(6) The court may, notwithstanding anything to the contrary, direct that the child be detained in such place (including an adult correctional centre) and for such time, not exceeding the unexpired portion of the period during which he could have been detained in the juvenile correctional centre under the authority of that order, and on such conditions as the court may think fit.

(7) An order under this subsection may—

- (a) require the child to remain at a place specified in the order for a period of time so specified (hereinafter called a curfew order);
- (b) refer the matter for mediation by an approved mediator (hereinafter referred to as a mediation order);
- (c) require the child to perform unpaid work for such number of hours (being in the aggregate not less than forty nor more than three hundred and sixty) as may be specified in the order (hereinafter referred to as a community service order).

(8) The following provisions of the Criminal Justice (Reform) Act shall apply, with the necessary modifications, to an order under subsection (7)—

- (a) in the case of a curfew order, sections 13(2) to (6) and 14;
- (b) in the case of a mediation order, section 16(2) to (7), so, however, that the child's parent or guardian shall be the participating party in the mediation on behalf of the child;
- (c) in the case of a community service order, section 10(2) to (5) and the proviso to section 10(1).

(9) A court before whom any child in respect of whom

an order is made under subsection (7) is brought, if satisfied that the child has failed without reasonable excuse to comply with any of the requirements of the order, may—

- (a) without prejudice to the continuance of the order, impose on the child's parent or guardian a fine not exceeding two thousand dollars; or
- (b) revoke the order and deal with the child for the offence in respect of which the order was made in any manner in which the child could have been dealt with for that offence by the court, if the order had not been made.

77. If it appears to a court that any person, having entered into a recognizance under section 14 or 76, 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 recog-
nizance.

78.—(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 such person shall be liable to be imprisoned for life.

Restriction
on
punishment.

(2) A person sentenced 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 the Parole Act, on sentencing any child under subsection (1), the court may

specify a period which that child should serve before becoming eligible for parole.

(4) A child shall not be sentenced to imprisonment, whether with or without hard labour, for any offence, or be committed to an adult correctional centre in default of payment of any fine, damages or costs.

(5) Where a child under the age of fourteen years is convicted of an offence specified in the Fourth Schedule and the court is of opinion that none of the other methods in which the case may legally be dealt with is suitable, the court may sentence the child to be detained for such period, not exceeding twenty-five years, as the court may determine.

(6) Where a sentence referred to in subsection (5) has been passed the child shall, during that period and notwithstanding anything in the other provisions of this Act, be liable to be detained in such place (including an adult correctional centre) and on such conditions as the Minister may direct and, while so detained, shall be deemed to be in legal custody.

Restriction on
committal to
juvenile
correctional
centre.

79. 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.

Special
provisions
relating to
probation.

80.—(1) Where a child has been placed under the supervision of a probation and after-care officer or any other person, that officer or person—

- (a) shall, while the order remains in force, visit, advise and befriend the child and when appropriate, endeavour to find suitable employment for the child; and
- (b) may, if it appears necessary in the child's interest so to do, at any time while the order remains in force and the child is under the age of eighteen years, bring the child before a Children's Court.

(2) The Children's Court before which a child is brought

under subsection (1) may, if thinks it desirable in the child's interest, order the child to be sent to a juvenile correctional centre or commit the child to the care of a fit person, whether a relative or not, who is willing to undertake the care of that child.

(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 Probation of Offenders Act, is a Children's Court, the attainment by that person of the age of eighteen years shall not deprive that 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.

81.—(1) Every correctional order shall contain a declaration—

Provisions relating to committal to child correctional centre.

- (a) as to the age of the child with respect to whom the order is made; and
- (b) where a contribution order has at the same time been made under section 30, stating the amount of such contribution and by whom it is payable.

(2) Every court which makes a correctional order in relation to any child 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 child as is, in the opinion of the court, material to be known by the Minister.

(3) Pending the admission into a juvenile correctional centre of a child in respect of whom a correctional order is made, the child shall be detained in a juvenile remand centre, unless the court which made the order has otherwise directed, or a Children's Court acting for the same parish or place as the court which made the order otherwise directs.

(4) Where a court orders a child to be sent to a juvenile correctional centre, the order shall be the authority for the child's detention in a juvenile correctional centre for such period as shall be specified in the order, not being a period ending after the date on which the child attains the age of eighteen years.

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

Provisions
relating to
committal to
fit person.

82.—(1) Every fit person order shall contain a declaration—

- (a) as to the age of the child with respect to whom the order is made; and
- (b) where a contribution order has at the same time been made under section 30, stating the amount of such contribution and by whom it is payable.

(2) Every court which makes a fit person order 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 child as is, in the opinion of the court, material to be known by the Minister.

(3) Pending the delivery to a fit person of a child pursuant to a fit person order, the child shall be detained in a place of safety, unless the court which made the order has otherwise directed, or a Children's Court acting for the same parish or place as the court which made the order otherwise directs.

(4) Every fit person order, other than an interim order, shall, subject to the provisions of this Act, remain in force until the child attains the age of eighteen years.

(5) A fit person order may, on the application of the Minister, be varied or revoked by a Children's Court acting for

the same parish or place as the court that made the order, and such Children's Court may, on such application, make such order, subject to the provisions of this Act, in relation to the child as it considers necessary in the interests of the welfare of the child.

83. No person shall be committed to any juvenile correctional centre after it has ceased to be such a centre under the Corrections Act.

No committal to centre which has ceased to be a juvenile correctional centre.

84.—(1) Upon the receipt by the Minister of a fit person order delivered under section 82(3), the Minister shall select the fit person to whose care the child is to be committed and shall endorse upon the order the name of such person.

Steps to be taken by Minister on receipt of fit person order.

(2) A fit person order endorsed in accordance with subsection (1), shall be a sufficient authority for the person named in the endorsement to receive and care for the child in accordance with the provisions of this Act.

PART V—Administration and Enforcement

85.—(1) For the purposes of this Act there shall be established a body to be known as the Advisory Council.

Establishment of Council.

(2) The Council shall be constituted and its proceedings shall be determined in accordance with regulations made under section 91.

86.—(1) It shall be the duty of the Council, in its discretion, to advise and report to the Minister on any matter which, in its opinion, affects the proper carrying out of the provisions and objects of this Act.

General duty of the Council to advise the Minister.

(2) It shall be the duty of the Council to advise the Minister on any matter about which the Minister may seek its advice, with a view to the proper carrying out of the provisions and objects of this Act.

Proceedings
by Minister.

87. Where it is necessary or expedient for the Minister to bring any child before a Children's Court or to make any application to a court in relation to a child, such proceedings may be brought in the name of the Minister by a children's officer or by any person generally or specially appointed for such purpose by the Minister.

Miscellaneous
offences.

88.—(1) A person commits an offence against this Act if that person—

- (a) refuses to permit any person empowered under section 54 to visit or inspect any children's home, or hinders or obstructs any person so empowered when so visiting or inspecting;
- (b) refuses to comply with the terms of a warrant granted under section 55 upon such warrant being produced and read over to him, or hinders or obstructs any constable or person authorized to execute the warrant;
- (c) refuses to comply with an order or interim order made under section 57 upon such order or interim order being produced and read over to him, or who hinders or obstructs any constable or other person authorized to execute the order or interim order;
- (d) contravenes any of the provisions of Part III;
- (e) contravenes any of the terms or conditions of any licence granted under Part III;
- (f) contravenes any general or special direction served by the Minister under section 56;
- (g) knowingly gives, or causes or procures any other person to give, any false or misleading information in, or in connection with, any notification, notice or return required by the provisions of Part III;
- (h) refuses to answer or answers falsely any enquiry authorized by or under section 37.

(2) Subject to the provisions of subsection (3), an offence

under this section committed—

- (a) in the parish of Kingston or in the parish of Saint Andrew, shall be triable by the Family Court—Corporate Area Region; and
- (b) in a parish within the geographical jurisdiction of a Family Court established pursuant to Part II of the Judicature (Family Court) Act shall, be triable by that Family Court.

(3) Subsection (2) does not apply to any offence mentioned in Part III or in paragraph (h) of subsection (1) of this section.

(4) A person who commits an offence under subsection (1) (a) or (e) is liable upon summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

89. Any person who commits an offence against this Act or any regulations made hereunder, for which no special punishment is provided, shall be liable on summary conviction before a Resident Magistrate or a Judge of a Family Court (as the case may require) to a fine not exceeding two hundred and fifty thousand dollars, and in default of payment to imprisonment with hard labour for a term not exceeding three months.

General
penalty.

90. A correctional order, a fit person order (other than an interim order) a contribution order, and an order under section 31 (affiliation order) shall be in the appropriate form set out in the Fifth Schedule, and such forms may be amended or revoked and different forms may additionally be prescribed by regulations made under section 91.

Forms.

Fifth
Schedule.

91.—(1) The Minister may, subject to affirmative resolution, make regulations generally for giving effect to the provisions of this Act, and, without prejudice to such general power, may make regulations—

Regulations.

- (a) providing for the constitution, duties and powers of the Council and for all matters connected with or incidental to the proper and effective operation by the Council of their functions;
- (b) providing for the licensing, regulation and control of children's homes, for ensuring the proper care, accommodation, upbringing, maintenance and education of children in such homes and for all purposes and matters connected therewith;
- (c) with respect to the exercise of powers of entry conferred by section 55 or 57.

(2) Notwithstanding the provisions of section 29 of the Interpretation Act, regulations made under this section may provide in respect of a breach of any of the provisions thereof that the offender be liable to such fine not exceeding two hundred and fifty thousand dollars or to such term of imprisonment with hard labour not exceeding three months or to both such fine and imprisonment, as maybe prescribed therein.

Protection
from liability.

92. No person shall be personally liable for anything done or omitted in good faith in the exercise or performance or intended exercise or performance of any power, duty or function conferred by this Act.

Power of
Minister to
amend Act.

93. The Minister may, by order subject to affirmative resolution, increase, with effect from any date specified in the order, not being earlier than the 26th day of March, 2004, any penalty imposed by this Act.

FIRST SCHEDULE

(Section 4)

PART I—*Constitution of Office of Children's Advocate*

1. The Children's Advocate shall be appointed by the Governor-General by instrument under the Broad Seal after consultation with the Prime Minister and the Leader of the Opposition. Appointment.

2.—(1) Subject to the provisions of sub-paragraphs (4) to (7), the Children's Advocate shall hold office until he attains the age of seventy years. Tenure of office.

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

(3) Where by reason of illness, absence from the Island or other sufficient cause a person appointed Children's Advocate is unable to perform his functions under this Act, he may appoint a member of his staff to perform those functions for a period not exceeding two months, but if the Children's Advocate is unable or fails to appoint such a person or if it is necessary that such a person be appointed for a period in excess of two months, the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition may appoint such person as he thinks fit to perform those functions.

(4) The Children's 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) If each House of Parliament by resolution decides that the question of removing the Children's Advocate from office ought to be investigated then—

- (a) the Governor-General, acting after consultation with the Prime Minister and the Leader of the Opposition, 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 and advise the Governor-General whether the Children's Advocate ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) The provisions of sections 8 to 16 of the Commissions of Enquiry Act shall apply, with the necessary modifications, in relation to tribunals appointed under sub-paragraph (5) or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that Act.

(7) Where the question of removing the Children's Advocate from office has been referred to a tribunal appointed under sub-paragraph (5) and the tribunal has advised the Governor-General that the Children's Advocate ought to be removed from office, the Governor-General shall by instrument under the Broad Seal, remove the Children's Advocate from office.

(8) Where the question of removing the Children's Advocate from office has been referred to a tribunal under sub-paragraph (5), the Governor-General, acting after consultation with the Prime Minister and the Leader of the Opposition, may suspend the Children's Advocate from performing the functions of his office, and any such suspension may at any time be revoked by the Governor-General acting as aforesaid, and in any case cease to have effect if the tribunal advises the Governor-General that the Children's Advocate ought not to be removed from office.

Disqualifica-
tion for
appointment,
etc.

3.—(1) No person shall be qualified for appointment to the office of Children's Advocate if that person—

- (a) is a member of the Senate or the House of Representatives;
- (b) is an undischarged bankrupt; or
- (c) has at any time been convicted of any offence involving dishonesty or moral turpitude.

(2) The Children's Advocate shall vacate office if any circumstances arise that, if he were not Children's Advocate, would cause him to be disqualified for appointment as such, by virtue of sub-paragraph (1).

Restriction on
employment.

4. A person appointed as Children's Advocate—

- (a) shall be a full-time officer; and
- (b) except with the approval of the Governor-General acting in his discretion, shall not be employed in any other capacity during any period in which he holds office as Children's Advocate.

Filling of
vacancy.

5. When a vacancy arises in the office of Children's Advocate the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may designate someone to act in that office during such vacancy, until an appointment is made.

Remuneration.

6.—(1) The Children's Advocate shall receive 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 or by a resolution of the House of

Representatives, such emoluments being not less than the emoluments which may, from time to time, be payable to a Puisne Judge.

(2) The emoluments and terms and conditions of service of the Children's Advocate, other than allowances that are not taken into account in computing pensions, shall not be altered to his disadvantage during the period of his appointment or reappointment, as the case may be.

(3) The emoluments for the time being payable to the Children's Advocate under this Act shall be charged on and paid out of the Consolidated Fund.

7. The provisions of Appendix A shall have effect with respect to the pension and other benefits to be paid to or in respect of a person who has held office as Children's Advocate.

Pensions,
etc.
Appendix
A.

8.—(1) The Children's Advocate may appoint and employ for the purposes of this Act, at such remuneration and on such terms and conditions as may be approved by the Commission constituted under sub-paragraph (2), such officers and agents as may be considered necessary to assist him in the proper performance of his functions under this Act.

Appoint-
ment of
staff.

(2) The Commission referred to in sub-paragraph (1) shall consist of—

- (a) the Speaker, as chairman;
- (b) the President of the Senate;
- (c) the person designated by the Prime Minister as Leader of Government Business in the House of Representatives;
- (d) the person designated by the Leader of the Opposition as Leader of Opposition Business in the House of Representatives;
- (e) the person designated by the Leader of the Opposition as Leader of Opposition Business in the Senate; and
- (f) the Minister responsible for finance.

(3) The Governor-General may, subject to such conditions as he may impose, approve the appointment to the staff of the Children's Advocate, of any officer in the public service, provided that in relation to pension, gratuity, allowance and other rights as public officer, such officer shall be deemed to be in the public service while so employed.

9. Every person appointed to the staff of the Children's Advocate shall, before he performs any function assigned to him under or by virtue of this Act, take and subscribe an oath to be administered by the Children's Advocate, in the form set out in Appendix B.

Oath of
secrecy.

Appendix
B.

PART II.—*Functions of Children's Advocate*Inter-
pretation.

10. For the purposes of this Part—

“relevant authority” means—

- (a) a Ministry, department or agency of Government;
- (b) a Parish Council or the Kingston and St. Andrew Corporation;
- (c) a statutory body or authority; or
- (d) a company registered under the Companies Act, being a company which the Government or an agency of Government holds not less than fifty-one *per centum* of the ordinary shares;

“right” means a right guaranteed by the Constitution of Jamaica or any other law.

Review of law
and practice,
advice, etc.

11.—(1) The Children's Advocate shall—

- (a) keep under review the adequacy and effectiveness of—
 - (i) law and practice relating to the rights and best interests of children;
 - (ii) services provided for children by relevant authorities;
 - (b) give advice and make recommendations to Parliament or any Minister or relevant authority, on matters concerning the rights or best interests of children—
 - (i) upon request by Parliament or such Minister or relevant authority, as the case may be, as soon as is reasonably practicable after receipt of the request;
 - (ii) on such other occasions as the Children's Advocate considers appropriate;
 - (c) take reasonable steps to ensure that—
 - (i) children are made aware of the functions and the location of the office of the Children's Advocate and the ways in which they may communicate with the Children's Advocate;
 - (ii) the views of children and persons having custody, control or care of children, are sought concerning the exercise by the Children's Advocate of his functions under this Part.
- (2) The Children's Advocate may, after consultation with such bodies

and persons as he thinks appropriate, issue guidance on best practice in relation to any matter concerning the rights or best interests of children.

12.—(1) The Children's Advocate may provide assistance (including financial assistance) to a child in making a complaint to a relevant authority—

Assistance
in com-
plaints to
relevant
authorities.

- (a) that the rights of the child have been infringed by any action taken by that or another relevant authority; or
- (b) that the interests of the child have been adversely affected by any such action.

(2) The Children's Advocate may act on behalf of a child in—

- (a) making a complaint referred to in subparagraph (1); and
- (b) any investigation or other proceedings conducted by a relevant authority pursuant to the complaint.

(3) Where the making of a complaint to a relevant authority is regulated by a statutory provision, nothing in this paragraph authorizes a complaint to be made to that authority otherwise than in accordance with the statutory provision.

13.—(1) Subject to the provisions of this paragraph, the Children's Advocate may conduct an investigation into a complaint made by a child, that—

Investiga-
tion of
complaints.

- (a) the child's rights have been infringed by any action taken by a relevant authority; or
- (b) the child's interests have been adversely affected by any such action.

(2) Where the Children's Advocate decides not to conduct an investigation into a complaint made under sub-paragraph (1), he shall prepare a statement of his reasons for that decision and shall send a copy of the statement to—

- (a) the complainant; and
- (b) the Minister and such other persons as the Children's Advocate considers appropriate.

(3) The Children's Advocate shall not conduct an investigation in respect of—

- (a) any action for which the complainant has or had—
 - (i) a right of appeal, complaint, reference or review under any other law; or

CHILD CARE AND PROTECTION

(ii) a remedy by way of proceedings in any court, unless the Children's Advocate is satisfied that, in the particular circumstances, it is not reasonable to expect the complainant to resort or to have resorted to the right or remedy;

(b) the commencement or conduct of any proceedings before any court or any international tribunal.

(4) There shall be a written record of every complaint submitted under this paragraph.

(5) A complaint under this section may be submitted orally or in writing by—

(a) the child, his parent, guardian, next friend or person in *loco parentis*; or

(b) where the child is unable to act for himself by reason of infirmity, or for any other cause or has died, his personal representative, or a member of his family, or any other suitable person.

(6) Notwithstanding anything provided by or under any law where a complaint addressed to the Children's Advocate is made by a person who is an inmate of a Government institution or is detained therein—

(a) it shall be forwarded to the Children's Advocate by the person for the time being in charge of the institution; and

(b) if such complaint is contained in a sealed envelope, the envelope shall be forwarded unopened.

Intervention in
legal pro-
ceedings.

14.—(1) Subject to the provisions of this paragraph, the Children's Advocate may in any court or tribunal—

(a) bring proceedings, other than criminal proceedings, involving law or practice concerning the rights or best interests of children;

(b) intervene in any proceedings before a court or tribunal, involving law or practice concerning the rights or best interests of children;

(c) act as *amicus curiae* in any such proceedings.

(2) An intervention under sub-paragraph (1)(b) shall not be made except—

(a) with the leave of the court or tribunal; and

(b) in accordance with the rules regulating the practice and procedure of the court or tribunal.

(3) The Children's Advocate shall not bring, or apply to intervene in, proceedings unless he is satisfied that—

- (a) the case raises a question of principle; or
- (b) there are other special circumstances which make it appropriate for the Children's Advocate to do so.

15.—(1) This paragraph applies to proceedings—

- (a) involving law or practice concerning the rights or welfare of children, which a child has commenced or wishes to commence; or
- (b) in the course of which a child relies, or wishes to rely, on such law or practice.

Assistance
in legal
proceedings.

(2) Where a child applies to the Children's Advocate for assistance in relation to proceedings to which this paragraph applies, the Children's Advocate may, subject to sub-paragraph (3), grant the application if he is satisfied that—

- (a) the case raises a question of principle;
- (b) it would be unreasonable to expect the child to deal with the case without assistance because of its complexity, the child's position in relation to another person involved, or for some other reason; or
- (c) there are other special circumstances which make it appropriate for the Children's Advocate to provide assistance.

(3) The Children's Advocate shall not grant an application under sub-paragraph (2) unless it appears to him that there is no other person or body likely to provide such assistance.

(4) Where the Children's Advocate grants an application under sub-paragraph (2), he may arrange for the provision of legal advice or representation and any other assistance which he thinks appropriate.

(5) Arrangements made by the Children's Advocate for the provision of assistance to a child may, if the Children's Advocate thinks it reasonable in the circumstances, include provision for the recovery of expenses from the child, or the child's parent or guardian.

PART III—*Process of Investigation*

16.—(1) Where the Children's Advocate proposes to conduct any investigation under this Act, he shall give to—

- (a) the principal officer of the relevant authority to which the investigation relates; and

Procedure in
respect of
investiga-
tion.

CHILD CARE AND PROTECTION

- (b) any other officer thereof who is alleged to have done or authorized any action referred to in paragraph 13(1)(a) or (b), an opportunity to comment in writing on any allegations relating to such action.

(2) The Children's Advocate may adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of this Act, may obtain information from such persons and in such manner, and make such enquiries as he thinks fit.

(3) Nothing in this Act shall be construed as requiring the Children's Advocate to hold any hearing, and except as provided by subparagraphs (1) and (5), no person shall be entitled as of right to comment on any allegations or to be heard by the Children's Advocate.

(4) Regulations made under this Act may prescribe the procedure to be adopted at any hearing and such procedure may include provision to ensure that any communication is not disclosed at that hearing.

(5) If it appears to the Children's Advocate during the course of an investigation that there are sufficient grounds for making a report or recommendation that may adversely affect any person, the Children's Advocate shall give that person an opportunity to be heard and that person may, if he wishes, be represented at that hearing by an attorney-at-law or any other person.

(6) Where, for the purposes of an investigation, the Children's Advocate requires a person to attend before him, that person shall be entitled to be paid, according to the scale laid down in the First Schedule to the Witnesses' Expenses Act, expenses incurred by him by reason of such attendance and by way of compensation for the trouble and loss of time suffered by him.

(7) After conducting an investigation under this Act, the Children's Advocate shall inform the principal officer of the relevant authority concerned of the result of that investigation, and if the Children's Advocate is of the opinion that—

- (a) the complainant's rights have been infringed by any action taken by a relevant authority; or
- (b) the complainant's interests have been adversely affected by any such action,

the Children's Advocate shall inform such officer aforesaid of the reason for that opinion and may, as he thinks fit, make recommendations for action to be taken by the relevant authority within a specified time.

(8) Where the Children's Advocate has made a recommendation under sub-paragraph (7) and within the time specified or a reasonable time

thereafter, he is of the opinion that no adequate action has been taken to remedy the injustice or infringement, he shall lay before Parliament a special report on the case.

(9) The Children's Advocate shall not, in any report under subparagraph (8), comment adversely on any person unless he has given that person an opportunity to be heard.

(10) Where the Children's Advocate is of the opinion that—

(a) the complainant's rights have been infringed or interests adversely affected as mentioned in paragraph 13(1)(a) or (b), the Children's Advocate—

(i) shall inform the complainant of that opinion, the nature of the infringement or adverse effect and the recommendations (if any) which have been made to remedy the matter; and

(ii) may make such comments in relation to the case as he thinks fit;

(b) the complainant has suffered no such infringement or adverse effect, the Children's Advocate shall inform the complainant of that opinion and the reasons therefor and may make such comments in relation to the case as he thinks fit.

(11) On the conclusion of an investigation, the Children's Advocate may make to the relevant authority concerned such recommendations as the Children's Advocate thinks fit and in particular, but without prejudice to the generality of the foregoing, may recommend any or all of the following—

(a) that the action which was the subject-matter of the complaint be reviewed;

(b) the alteration of an enactment, rule or regulation which causes or may cause infringement of children's rights or have an adverse effect on the best interests of children;

(c) that compensation be made to the complainant.

(12) If the Children's Advocate finds, during the conduct of his investigations or on the conclusion thereof, that there is evidence of a breach of duty, or misconduct, or criminal offence on the part of an officer or member of any relevant authority, the Children's Advocate shall refer the matter to the person or body of persons competent to take such disciplinary or other proceedings as may be appropriate against that officer or member and in all cases shall lay a special report before Parliament.

Evidence.

17.—(1) Subject to the provisions of sub-paragraph (5), the Children's Advocate may at any time require any officer or member of a relevant authority, or any other person who, in the opinion of the Children's Advocate, is able to give any assistance in relation to the investigation of any matter, to furnish such information and produce any document or thing in connection with such matter and which may be in the possession or under the control of that officer or member or other person.

(2) Subject to the provisions of sub-paragraph (5), the Children's Advocate may summon before him and examine on oath—

(a) any complainant; or

(b) any officer, member or employee of a relevant authority, or any other person who, in the opinion of the Children's Advocate, is able to furnish information relating to the investigation, and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.

(3) For the purposes of an investigation under this Act, the Children's Advocate shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents.

(4) Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person by any other law (including a rule of law) shall not apply in relation to the disclosure of information or the production of any document or thing by that person to the Children's Advocate for the purpose of an investigation; and accordingly, no person shall be liable to prosecution for an offence under any other law aforesaid, by reason only of that person's compliance with a requirement of the Children's Advocate under this Act.

(5) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.

Privilege.

18.—(1) Except in the case of proceedings for an offence under paragraph 23(c), no proceedings whatsoever shall lie against the Children's Advocate or any person concerned with the administration of the office and functions of the Children's Advocate, for anything he may do or report or say in the performance of his functions under this Act.

(2) Anything said or any information supplied or any document or thing produced by any person for the purpose or in the course of, any enquiry by or proceedings before the Children's Advocate under this Act, shall be absolutely privileged in the same manner as if the enquiry or proceedings were proceedings in a court of law.

(3) For the purposes of the Defamation Act, any report made by the Children's Advocate under this Act and any fair and accurate report thereon shall be deemed to be privileged.

PART IV—General

19.—(1) The Children's Advocate and every person concerned with the administration of the office and functions of the Children's Advocate shall regard as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Act, except that no disclosure—

Secrecy of information.

- (a) made by the Children's Advocate or any person aforesaid in proceedings for an offence under paragraph 23 or under the Perjury Act, by virtue of paragraph 17(2) of this Schedule;
- (b) which the Children's Advocate thinks it necessary to make in the discharge of his functions and for the purpose of executing the provisions of paragraph 16 or paragraph 21, subject as provided in sub-paragraph (5) thereof,

shall be deemed inconsistent with any duty imposed by this sub-paragraph.

(2) Neither the Children's Advocate nor any such person aforesaid shall be called upon to give evidence in respect of, or produce any document, information or thing, aforesaid in any proceedings other than proceedings mentioned in sub-paragraph (1).

20.—(1) The accounts and financial transactions of the office of Children's Advocate shall be audited annually by the Auditor-General and a statement of accounts so audited shall form part of the annual report mentioned in paragraph 21.

Accounts, etc.

(2) The Children's Advocate shall, at such time within each year as the Minister may direct—

- (a) submit to the Minister a statement of the accounts of the Children's Advocate audited in accordance with the provisions of subparagraph (1);
- (b) submit to the Minister for approval the estimates of revenue and expenditure for the financial year commencing on the 1st day of April next following.

(3) In this paragraph "Minister" means the Minister responsible for finance.

21.—(1) The Children's Advocate may at any time be required by Parliament to submit thereto a report in respect of any matter under investigation by the Children's Advocate.

Reports.

(2) The Children's Advocate shall submit to Parliament an annual report relating generally to the execution of his functions and may at any time submit a report relating to any particular case or cases investigated by him which, in his opinion, require the special attention of Parliament.

(3) Reports under this paragraph shall be submitted to the Speaker of the House of Representatives and the President of the Senate who shall, as soon as possible, have them laid on the Table of the respective Houses.

(4) The Children's Advocate may, in the public interest, from time to time publish in such manner as he thinks fit, reports relating to such matters as are mentioned in sub-paragraph (2) and any case which is the subject of a special report under paragraph 16(8) and (12), provided that no such report shall be published until after it has been laid pursuant to sub-paragraph (3).

(5) The Children's Advocate shall not, in any report furnished under this paragraph, disclose or act upon any communication between—

- (a) a medical practitioner and his patient in their professional relationship;
- (b) a minister of religion and any person consulting him in his capacity as such; or
- (c) between an Attorney-at-law and his client in their professional relationship,

where such communication came to the Children's Advocate's knowledge during the course of an investigation under this Act.

Register.

22.—(1) Where the Children's Advocate decides to investigate a complaint he shall cause to be recorded in a register kept for the purpose—

- (a) the subject-matter of the complaint and the date thereof; and
- (b) on the conclusion of the investigation, the Children's Advocate's decision respecting the complaint.

(2) No entry in the Register shall disclose the name of, or any other personal data relating to, the complainant and any person may, on the payment of such fees as may be prescribed, inspect, during the hours and on the days of business of the Children's Advocate, any register kept pursuant to this paragraph.

Offences.

23. Every person who—

- (a) wilfully—
 - (i) makes any false statement to or misleads or attempts to mislead the Children's Advocate or any other person in the exercise of his functions under this Schedule; or

- (ii) fails to comply with any lawful requirement of the Children's Advocate or any other person under this Schedule; or
 - (b) without lawful justification or excuse—
 - (i) obstructs, hinders or resists the Children's Advocate or any other person in the execution of his functions under this Schedule;
 - (ii) fails to comply with any lawful requirement of the Children's Advocate or any other person under this Schedule; or
 - (iii) contravenes the provisions of paragraph 13 (5); or
 - (c) in a manner inconsistent with his duty under paragraph 19(1), deals with documents, information or things mentioned in that subparagraph,
- commits an offence.

24. Nothing in this Schedule shall be construed as limiting or affecting any remedy or right of appeal, objection or procedure given to any person by any other provision of law.

Remedy under any provision of law unaffected.

25. The Children's Advocate may make regulations for the better carrying into effect of the provisions of this Schedule.

Regulations

26. Where pursuant to any provision of this Schedule, the Governor-General is required to act after consultation with the Leader of the Opposition and—

Provisions applicable where no Leader of the Opposition.

- (a) there is no person holding the office of Leader of the Opposition; or
- (b) the holder of that office is unwilling, or by reason of his illness or absence from Jamaica, unable to perform his functions in that regard,

the Governor-General shall act as if the reference to the Leader of the Opposition were a reference to such person as the Governor-General, in his discretion, considers appropriate.

Appendix A

Pensions and Gratuities

1. In this Appendix "pensionable emoluments" has the same meaning" as in the Pensions Act.

Interpretation.

Entitlement to pensions and gratuities in respect of service as Children's Advocate.

2.—(1) Where a person holding the office of Children's Advocate retires in pensionable circumstances he shall, subject to the provisions of this Appendix, be paid pension and gratuity in accordance with this Act in lieu of any pension, allowance or gratuity for which he may have been eligible or which he may have been granted pursuant to the Pensions Act or the Judiciary Act.

(2) A person entitled to pension or gratuity pursuant to sub-paragraph (1) or who is eligible for a grant of pension or gratuity pursuant to sub-paragraph (5) may, by memorandum in writing to the Governor-General, elect to forego his entitlement under this Act and be granted instead—

- (a) if he is, otherwise than under this Appendix, eligible for pension pursuant to section 5 of the Judiciary Act, such award as would be payable under that Act if the office of the Children's Advocate were an office to which that Act applied; or
- (b) in any other case, such award under the Pensions Act as would be payable under that Act if the office of the Children's Advocate were a pensionable office under that Act.

(3) For the purposes of this paragraph and paragraph 4, a person retires in pensionable circumstances if—

- (a) he retires—
 - (i) on or after attaining the age of sixty-five years; or
 - (ii) by reason of ill health prior to such attainment; or
- (b) he has a minimum of ten years service.

(4) For the purposes of this Act, a person retires from the office of Children's Advocate on the ground of ill health if—

- (a) he retires on medical evidence, to the satisfaction of the Governor-General, that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent; or
- (b) he is removed from office, in accordance with paragraph 2(7) of the First Schedule, for inability arising from infirmity of mind or body, to perform the functions of his office.

(5) A person who, pursuant to paragraph 2(7) of the First Schedule is removed from the office of Children's Advocate for misbehaviour or for any other cause other than inability arising from infirmity of mind or body or who retired otherwise than in pensionable circumstances may, subject to sub-paragraph (2), be granted by the Governor-General, in lieu of any pension, allowance or gratuity for which he may have been eligible pursuant to the

Pensions Act or the Judiciary Act such pension and gratuity as the Governor-General thinks fit not exceeding the pension and gratuity to which he would have been entitled had he retired in pensionable circumstances from such office and, for the purposes of sub-paragraph (6), the date of such removal from office or retirement shall be deemed to be the date of retirement in pensionable circumstances.

(6) Pension payable in accordance with this paragraph shall be—

- (a) charged on and payable out of the Consolidated Fund; and
- (b) paid monthly in arrears with effect, subject to paragraph 4, from the date of retirement in pensionable circumstances and shall, subject to the provisions of this Act, continue to be paid during the lifetime of the person entitled thereto.

3. The rate of pension payable pursuant to paragraph 2 to any person shall be an annual rate equivalent to the sum of one-half of his pensionable emoluments at the date of retirement and one-three hundred and sixtieth of such pensionable emoluments in respect of each month of service as the Children's Advocate.

Rate of pension.

4. Where in accordance with paragraph 2(3) a person retires in pensionable circumstances before he has attained the age of sixty-five years—

Special provision where Children's Advocate retires before attaining age sixty-five.

- (a) the date with effect from which any pension due to him under this Act shall be payable shall be the date on which he attains that age, but, if he elects pursuant to paragraph 5 to take a reduced pension and commuted pension gratuity, nothing in this paragraph shall prevent payment of the commuted gratuity at any time prior to the attainment of that age; and
- (b) if he dies before attaining that age, and he has not made an election to receive a reduced pension and commuted pension gratuity as aforesaid, he shall for the purposes of paragraph 6 be deemed to have died while holding the office of Children's Advocate.

5.—(1) Any person to whom a pension (in this paragraph referred to as the original pension) is payable pursuant to paragraph 2 may, at his option exercisable at his retirement in pensionable circumstances or within such period prior or subsequent to his retirement as the Governor-General may allow, be paid, in lieu of the original pension, a reduced pension at the rate of three-fourths of the annual rate of the original pension together with a gratuity (in this Act referred to as a commuted pension gratuity) equal to twelve and one-half times one-quarter of the annual rate of the original pension.

Reduced pension and gratuity.

(2) The option referred to in sub-paragraph (1) shall be irrevocable

unless the Governor-General, on such terms as he considers reasonable, otherwise permits.

Gratuity on death.

6.—(1) Where a person dies while holding the office of Children's Advocate there shall be paid to his legal personal representative, a gratuity of an amount equivalent to—

- (a) one year's pensionable emoluments; or
- (b) the commuted pension gratuity for which the person aforesaid had a right to opt pursuant to paragraph 5 of this Appendix on the assumption that he retired in pensionable circumstances at the date of his death,

whichever is the greater.

(2) Where a person dies while in receipt of a pension pursuant to paragraph 2, there shall be paid to his legal personal representative a gratuity of an amount equivalent to one year's pensionable emoluments of that person at the date of his retirement or removal from office, from which gratuity shall be deducted any pension or gratuity already paid to that person under this Act or under the Pensions Act or under the Judiciary Act.

Pensions to dependants where injuries received or disease contracted in discharge of duties.

7. Where a person holding the office of Children's Advocate dies as a result of injuries received—

- (a) in the actual discharge of his duties;
- (b) in circumstances in which the injury is not wholly or mainly due to or seriously aggravated by his own serious and culpable negligence or misconduct; and
- (c) on account of circumstances specifically attributable to the nature of his duty,

while in that office, it shall be lawful for the Governor-General to grant to the deceased officer's widow, children, parents or other dependants such award as would have been made under the Pensions Act if the office of Children's Advocate were a pensionable office for the purposes of that Act.

Pensions, etc., not to be assigned.

8. A pension or gratuity payable under this Act shall not be assignable or transferable except for the purpose of satisfying—

- (a) a debt due to the Government; or
- (b) an order of any court for the payment of periodical sums of money towards the maintenance of the wife or former wife or minor children, of the person to whom the pension or gratuity is payable,

and shall not be liable to be attached, sequestered or levied upon, for or in respect of any debt or claim whatever except a debt due to the Government.

Family Benefits pensions.

9.—(1) For the purposes of the Pensions (Civil Service Family Benefits) Act, the office of Children's Advocate shall be deemed to be a pensionable office in the service of the Island.

(2) Where a person dies while holding the office of Children's Advocate or while entitled to a pension under paragraph (2), there shall be paid to his widow a pension at an annual rate equivalent to one-fifth of the pensionable emoluments of the person aforesaid at the date of his death or, if at that date he was entitled to receive a pension under paragraph 2, at the date of his retirement or, as the case may be, removal from office in accordance with this Act.

(3) Pension payable to a widow pursuant to sub-paragraph (2) shall—

- (a) be charged on and payable out of the Consolidated Fund; and
- (b) be paid monthly in arrears with effect from the date of her husband's death and shall, subject to the provisions of this Act, continue to be paid during her lifetime.

(4) Pension payable to a widow pursuant to sub-paragraph (2) shall be without prejudice to any pension to which she may be entitled under the Pensions (Civil Service Family Benefits) Act but shall be in lieu of any pension to which she may be entitled pursuant to section 9 of the Judiciary Act.

(5) In paragraph 7 and sub-paragraphs (2) and (3) of this paragraph, references to a widow shall, in the case of a female appointed Children's Advocate, be deemed to include references to a widower and cognate expressions shall be construed accordingly and similarly, references to a husband shall be deemed to include references to a wife.

10. Where a person retires without a minimum of ten years service, he shall be granted in respect of his service, the commuted pension gratuity for which the person had a right to opt pursuant to paragraph 5 if he had retired in pensionable circumstances.

Gratuities where length of service does not qualify for pension.

Appendix B

(Paragraph 9)

Oath to be taken by persons appointed to assist the Children's Advocate

I, do swear that I will faithfully perform any functions assigned to me under the Child Care and Protection Act, and I will not, on any account, at any time whatsoever, except in so far as provisions of the Act authorize, directly or indirectly reveal any information or the nature or contents of any documents communicated to me in the performance of any functions assigned to me by virtue of the Act.

So help me God.

CHILD CARE AND PROTECTION

SECOND SCHEDULE (Sections 8, 12, 14, 15,
16, 17, 19, 23, 64)

1. The murder or manslaughter of a child.
2. Infanticide.
3. Any offence under Part I of this Act.
4. Any offence under—

12/2009
3rd Sch.

(a) any of the following sections of the Offences Against the Person Act—

section 28	—	abandoning or exposing child
section 69	—	child stealing;

(b) any of the following offences under the Offences Against the Person Act, committed against a child—

section 39	—	common assault
section 40	—	aggravated assault on women or children
section 76	—	unnatural crime
section 77	—	attempt to commit unnatural crime
section 79	—	outrages on decency;

(c) any of the following sections of the Sexual Offences Act—

section 8	—	sexual touching
section 9	—	sexual grooming
section 10	—	sexual intercourse with person under sixteen years of age
section 11	—	householder inducing violation of child
section 15	—	abduction of child under sixteen
section 20	—	abduction of child for sexual intercourse

(d) any of the following sections of the Sexual Offences Act, committed against a child—

section 3	—	rape
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section 4	—	grievous sexual assault
section 5	—	marital rape
section 13	—	indecent assault
section 16	—	violation of person suffering from mental disorder
section 18	—	procuration
section 19	—	procuring violation by threats or fraud
section 21	—	unlawful detention in premises.

5. Any offence involving bodily injury to a child.

THIRD SCHEDULE

(Section 71)

1. In each parish, except in those parishes in which a Family Court has jurisdiction, the Minister shall appoint to a special panel of Justices of the Peace those Justices whom he may consider to be specially qualified to deal with juvenile cases, and no Justice of the Peace shall be qualified to sit as a member of a Children's Court unless he is a member of such a panel.

2. Subject to the provisions of paragraph 4, a Children's Court shall be constituted of a Resident Magistrate as chairman, and two Justices of the Peace, one of whom shall be a woman, and both of whom shall be members of the panel referred to in paragraph 1:

Provided that—

- (a) the court shall be deemed to be fully constituted where the chairman and only one such Justice of the Peace sit;
- (b) until the panel referred to in paragraph 1 is prepared, the court shall be constituted of a Resident Magistrate alone.

3. Without prejudice to the provisions of subsection (3) of section 4 and subsection (2) of section 6 of the Judicature (Family Court) Act, the Minister may by order specify as respects any parish the place or places in which Children's Courts shall sit.

CHILD CARE AND PROTECTION

4. The Family Court shall be the Children's Court and shall be deemed to be duly constituted as such, at any sitting of a Family Court for the purpose of exercising its jurisdiction in the capacity of such Children's Court notwithstanding that it be constituted of a single Judge of a Family Court.

FOURTH SCHEDULE**(Sections 72 and 78)**

1. Murder or manslaughter.
2. Treason.
3. Infanticide.
4. Any offence under sections 8, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 29, 30, 31, 44, 48, 50, 51, 55, 56, 58, 59, 60, 61 or 69 of the Offences Against the Person Act.
5. Any offence under section 37 or 43 of the Larceny Act.
6. Any firearm offence as defined in the Gun Court Act.

FIFTH SCHEDULE**(Section 91)****FORM I**

*The Child Care and Protection Act
Correctional Order*

To the Minister, and to all persons authorized by the said Minister, and to the Managers of the juvenile correctional centre named in the endorsement hereon;

Whereas (1).....a child was brought before the (2) Children's Court for the parish of (3).....

(4) as being in need of care or protection, or by his parent or guardian as being uncontrollable by such parent or guardian, or charged with the offence of (5)

And whereas the (4) said court, or the Children's Court for the parish of

(3).....to which the matter was

remitted in accordance with the provisions of the Child Care and Protection Act, considered it expedient and in the best interests of the welfare of the said child to make an order sending the said child to a juvenile correctional centre.

These, therefore, are to command you the said Minister and all persons authorized by the said Minister to detain the said child (2) in a place of safety until the name of a juvenile correctional centre is endorsed hereon by the Minister and then to take the said child to the said juvenile correctional centre and deliver him to the Managers thereof; and to command you, the Managers of the juvenile correctional centre named in the endorsement hereon, to receive the said child into your custody and to keep him in accordance with and until he is released under the provisions of the Child Care and Protection Act.

It is hereby declared that---

- (a) The age of the said child is
 (6).....yearsmonths, being born on (6)

- (b) his religious persuasion is (7)
- (c) a contribution order in the sum of
 (8)..... a week payable by
 (9)..... being the
 (9).....of the said child has been made.

A record in accordance with the provisions of the Child Care and Protection Act, is forwarded herewith.

Given under my hand this (10).....day of..... at
 (11).....in the parish of (3) (12)

ENDORSEMENT

The juvenile correctional centre to which the said child shall be sent is the
 (13) Dated this (10)

(14)..... The said child shall be transferred from the above-named juvenile correctional centre to the (13) Dated this (10)

(14).....

- (1) State full name.
 (2) Amend, if necessary.
 (3) State name of parish.
 (4) Strike out inapplicable alternatives.

CHILD CARE AND PROTECTION

- (5) State nature of offence.
- (6) State age and date of birth.
- (7) State religious persuasion, if ascertainable.
- (8) State amount, if contribution order made.
- (9) State name and status of person by whom contributions payable if contribution order made.
- (10) State date.
- (11) State place.
- (12) Signature of the proper officer of the court.
- (13) State name of juvenile correctional centre.
- (14) Signature of person authorized by the Minister.

FORM II

The Child Care and Protection Act
Order Committing Child to Care of Fit Person

To the Minister and to all persons authorized by the said Minister, and to the fit person named in the endorsement hereon willing to undertake the care of the child.

Whereas (1).....a child was brought before the (2) Children’s Court for the parish of (3)(4) as being in need of care or protection, or by his parent or guardian as being uncontrollable by such parent or guardian, or charged with the offence of (5);

And whereas the (4) said court, or the Children’s Court for the parish of (3) to which the matter was remitted in accordance with the provisions of the Child Care and Protection Act, considered it expedient and in the best interests of the welfare of the said child to make an order committing the said child to the care of a fit person who is willing to undertake the care of him;

These, therefore, are to command you the said Minister and all persons authorized by the said Minister to detain the said child (2) in a place of safety until the name of a fit person willing to undertake the care of the child is endorsed hereon by the Minister and then to take the said child to the said fit person and deliver him to the said fit person: and to command you, the said fit person named in the endorsement hereon, to receive the said child into your custody and to keep him in accordance with and until he is released under the provisions of the Child Care and Protection Act.

[The inclusion of this page is authorized by L.N. 111/2005]

It is hereby declared that—

- (1) The age of the said child is
(6).....yearsmonths, being born on (6),
- (2) his religious persuasion is (7)
- (3) a contribution order in the sum of (8).....a week payable
by (9).....being the (9).....of the said child
has been made.

A record in accordance with the provisions of the Child Care and Protection Act is forwarded herewith.

Given under my hand this (10).....day of..... at
(11).....in the parish of (3),
(12)

ENDORSEMENT

The fit person to whose care the said child shall be committed is
(13)..... Dated this
(10)..... (14).....

The said child shall be transferred from the care of the above-named fit
person to the care of (13)..... Dated this
(10)..... (14).....

- (1) State full name.
- (2) Amend, if necessary.
- (3) State name of parish.
- (4) Strike out the inapplicable alternatives.
- (5) State nature of offence.
- (6) State age and date of birth.
- (7) State religious persuasion, if ascertainable.
- (8) State amount, if contribution order made.
- (9) State name and status of person by whom contributions payable if
contribution order made.
- (10) State date.
- (11) State place.
- (12) Signature of the proper officer of the court.
- (13) State name of fit person willing to undertake the care of the child.
- (14) Signature of person authorized by the Minister.

CHILD CARE AND PROTECTION

FORM III

The Child Care and Protection Act
Contribution Order

Whereas an order committing (1)..... a child (2) to the care of a fit person, or to a juvenile correctional centre has (2) this day, or on the (3).....been made by (2) this court, or by a Children's Court;

(4) And whereas (5)..... (2) the fit person to whose care, or the superintendent of the juvenile correctional centre to which, the said child was committed has made application for a contribution order;

It is hereby ordered that (6).....being the (6).....of the said child shall pay to (7).....the sum of (8).....each week to be applied in accordance with the provisions of the Child Care and Protection Act, the first of such payments to be made on the (3)..... so long as the said child remains in the care of (2) such fit person, or juvenile correctional centre, or until this order is varied or revoked in accordance with the provisions of the Child Care and Protection Act.

Given under my hand this (3).....day of.....at (9)..... in the parish of (10).....(11).....

- (1) State full name of child.
(2) Strike out inapplicable alternatives.
(3) State date.
(4) Strike out if inapplicable.
(5) State name of applicant, and if he is the superintendent also of the juvenile correctional centre.
(6) State name and status of person by whom contributions payable.
(7) State person to whom contributions payable under section 31 (2) and (3) of the Child Care and Protection Act.
(8) State amount of contribution.
(9) State place.
(10) State name of parish.
(11) Signature of the proper officer of the court.

[The inclusion of this page is authorized by L.N. 111/2005]

FORM IV

*The Child Care and Protection Act
Order Transferring Payments under Affiliation Order*

Whereas an affiliation order was made on the (1).....
against (2).....ordering him
to pay the sum of (3)a week to (4)
.....towards the maintenance and
education of (5).....a child of the age of
(6).....until he attains the age of
(7).....;

And whereas an order committing (5) a
child (8) to the care of a fit person, or to a juvenile correctional centre, has
(8) this day, or on the (1).....been made by (8) this
court, or by a Children’s Court; (9) And whereas (10).....(8)
the fit person to whose care, or the superintendent of the juvenile correctional
centre to which, the said child was committed has made application for a
contribution order;

It is hereby ordered, that the payments to be made by the said
(2)..... under the said affiliation order shall
be made to (11)instead of to the
said (4)..... the first
of such payments to be made on the (1).....so
long as the said affiliation order remains in force, to be applied in accordance
with the provisions of the Child Care and Protection Act.

Given under my hand this (1).....day of.....at
(12)..... in the parish of
(13).....(14).....

- (1) State date.
- (2) State name of person against whom affiliation order made.
- (3) State sum payable under the affiliation order.
- (4) State person to whom sum payable under the affiliation order.
- (5) State full name of child.
- (6) State age of child.
- (7) State age until which affiliation order payable.
- (8) Strike out inapplicable alternatives.
- (9) Strike out, if inapplicable.

CHILD CARE AND PROTECTION

- (10) State name of applicant and if he is the superintendent also of the approved school.
- (11) State person to whom contributions are payable under section 31 (2) and (3) of the Child Care and Protection Act.
- (12) State place.
- (13) State name of parish.
- (14) Signature of the proper officer of the court.