

THE OFFICIAL GAZETTE 12TH NOVEMBER, 2009
LEGAL SUPPLEMENT — A



GUYANA

ACT No. 17 of 2009

PROTECTION OF CHILDREN ACT 2009

I assent.

Bharat Jagdeo,
President

November 12, 2009

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AN ACT to provide for the protection of children at risk, children in difficult circumstances and children in general and for related matters.

A.D. 2009

Enacted by the Parliament of Guyana:-

**PART I
PRELIMINARY**

Short title and commencement.

1. This Act may be cited as the Protection of Children Act 2009 and shall come into operation on a date appointed by order of the Minister.

Interpretation.

2. (1) In this Act –

"Board" means the Child Protection Board established under section 57;

"care" means the physical daily care and nurturing of a child;

"caregiver" means a person with whom a child is placed for care with the approval of the Director and who, by agreement with the Director, has assumed responsibility for the care of the child but does not include a parent or a day care centre;

"child" means a person under the age of eighteen years, whether born in or out of wedlock, who has never been married, and includes –

(a) a stepchild or child adopted by law; or

(b) a child of the family;

except that in the case where a person has special needs that person shall be a child under this Act regardless of his age;

"child care organisation" means an organisation –

(a) which is concerned with the provision of accommodation, social services or health care services to children or the supervision of children; and

(b) which fulfils other conditions as may be prescribed;

"child care position" means a position which –

(a) is concerned with the provision of accommodation, social services or health care services to children or the supervision of children; and

(b) is such as to enable the holder to have regular contact with children in the course of his duties;

"Court" means the High Court;

"custody" means custody within the meaning of the laws relating to custody, access, guardianship and maintenance;

"Director" means the Director of the Childcare and Protection Agency appointed by the Minister;

"employment" -

- (a) means employment, whether paid or unpaid and whether under a contract for services, or otherwise than under a contract; and
- (b) includes an office established by or by virtue of a prescribed enactment, and references to an individual being employed shall be construed accordingly;

"mental impairment" means a state of arrested or incomplete development of mind which includes a significant impairment of intelligence and social functioning which results in that person having special needs;

"Minister" means the Minister who has responsibility for matters related to the welfare of children;

"organisation" means a body whether or not corporate or an individual who employs others in the course of business;

"parent" unless the context otherwise implies means a person's mother or father or stepmother or stepfather and includes adoptive parents as well as a person who has treated a child as a child of the family;

"physical impairment" means lacking part of or all of a limb, or having a defective limb, organ or mechanism of the body;

"protective intervention hearing" means the process where the Court makes an order with respect to protection of the child;

"registered medical practitioner" means a physician or other person registered as a medical practitioner by the Guyana Medical Council under the Medical Practitioners Act 1991.

No. 16 of 1991

PART II GENERAL PRINCIPLES

General principles.

3. This Act shall be interpreted and administered in accordance with the following principles and due consideration must be given to these principles by the Court or any other body or entity that is charged with the administration of these provisions -
 - (a) the overriding and paramount consideration in any decision made under this Act shall be the best interests of the child;
 - (b) every child is entitled to be assured of personal safety, health and well-being;

- (c) the family is the basic unit of society responsible for the safety, health and well being of the child;
- (d) the members of a community have a responsibility to support the safety, health and well-being of a child;
- (e) prevention activities are integral to the promotion of the safety, health and well-being of a child;
- (f) kinship ties are integral to a child's self-development and growth and if a child's safety, health and well-being cannot be assured in the context of the family, the extended family shall in the first instance be encouraged to care for the child provided that the Director or the Court, as the case may be, can be assured that the child's safety, health and well-being will not be at risk and that the best interests of the child have been considered;
- (g) the cultural heritage of a child shall be respected;
- (h) in the absence of evidence to the contrary, there shall be a presumption that a child twelve years of age or over is capable of forming and expressing an opinion regarding his care and custody;
- (i) the views of a child under twelve years shall be heard and considered once the child is of sufficient maturity and understanding;
- (j) removal of a child from home and familiar surroundings shall be a measure of last resort and shall be ordered only after due consideration has been given to the removal from the home of the person whose conduct or presence in the home is not in the best interest of the child;
- (k) where a child has been removed from his home to a foster home, there shall be a review every six months of the need to continue this arrangement; and
- (l) if in the interests of the child he cannot remain with or return to his immediate or extended family, the Court shall in arriving at its decision consider the continuous care and stability in the child's life and the child's age, needs and the requirement for a normal family environment.

Child, youth and family service principles.

4. The following principles apply to the provision of services under this Act whether provided by the State, Board or other persons or entities -

- (a) families shall be provided, to the extent possible, with services which support the safety, health, education and well-being of their children;
- (b) services shall be provided using the least intrusive means of intervention;
- (c) wherever possible, having regard to a child's age and level of development, the views and wishes of the child shall be sought and considered in providing services;

- Best interests of child.
- (d) families shall be informed of the services which may be available to them to assist them in supporting a child's safety, health, education and well-being;
 - (e) families shall be encouraged to participate in the identification, planning, provision and evaluation of services available to them; and
 - (f) services shall be provided in a manner that acknowledges a child's overall needs for safety, health, education and well-being.
5. All relevant factors shall be considered in determining a child's best interests, including -
- (a) the child's safety and health;
 - (b) the child's educational and developmental needs;
 - (c) where possible, the child's views and wishes;
 - (d) the importance of stability and continuity in the child's care;
 - (e) the continuity of a child's relationship with his family, including siblings or others with whom the child has a significant relationship;
 - (f) the child's geographic and social environment;
 - (g) the child's supportive environment outside the family, including child care and the school environment;
 - (h) the effect upon the child of a delay in judicial or other proceedings with respect to the child; and
 - (i) any issues to be considered where a child is HIV positive or has special needs.

**PART III
PROTECTIVE INTERVENTION**

- Definition of child in need of protective intervention.
6. A child is in need of protective intervention where the child -
- (a) is, or is at risk of, being physically or emotionally harmed by the action or lack of appropriate action by the child's parent, guardian, person in whose care the child is left or other persons living in or visiting the household;
 - (b) is, or is at risk of, being sexually or emotionally abused or exploited by the child's parent, guardian, person in whose care the child is left or other persons living in or visiting the household;
 - (c) is, or is at risk of, being physically harmed by a person and the child's parent, guardian or person in whose care the child is left, does not protect or seek protection for the child;

- (d) is, or is at risk of, being sexually abused or exploited by a person and the child's parent, guardian or person in whose care the child is left does not protect the child;
- (e) is being emotionally harmed by a person;
- (f) is in the custody or *de facto* custody of a person who refuses or fails to obtain or permit essential medical, psychiatric, surgical or remedial care or treatment to be given to the child when recommended by a qualified health practitioner;
- (g) is abandoned;
- (h) has no living parent or has a parent who is unavailable to care for him and who has not made adequate provision for his care;
- (i) is living in a situation where there is violence;
- (j) has -
 - (i) been left without adequate supervision;
 - (ii) allegedly killed or seriously injured another person or has caused serious damage to another person's property; or
 - (iii) on more than one occasion caused injury to another person or other living thing or threatened, either with or without weapons, to cause injury to another person or other living thing, either with the parent's encouragement or because the parent does not respond adequately to the situation; or
 - (iv) is being exposed to drugs or obscene material or objects.

Duty to report.

7. (1) Where a person has direct information that a child is or may be in need of protective intervention, the person shall immediately report the matter to the Director, a probation officer appointed by the Public Service Commission or a police officer.
- (2) Where a person makes a report under subsection (1) the person shall report all the information in his possession.
- (3) Where a report is made to a police officer under subsection (1), the police officer shall immediately inform the Director of the said report, investigate the matter promptly, and inform the Director of the findings of the investigation.
- (4) This section applies, notwithstanding the provisions of any other law, to a person referred to in subsection (5) who, in the course of his professional duties, has reasonable grounds to suspect that a child is or may be in need of protective intervention.

- (5) Subsection (4) applies to every person who performs professional or official duties or is in a position of trust with respect to a child, including -
- (a) a health care professional;
 - (b) a school principal, teacher, social worker, family counsellor, coach, religious leader, operator or employee of a child care service;
 - (c) a police officer;
 - (d) an attorney-at-law;
 - (e) a member of a non-governmental organisation which provides special services for children;
 - (f) a person who is entrusted with the care of children;
 - (g) a mediator; and
 - (h) a coroner.
- (6) A person pursuant to subsections (4) and (5) who is found to have had knowledge and failed to make a report commits an offence and shall be liable on summary conviction to a fine of fifty thousand dollars.
- (7) This section applies notwithstanding that the information is confidential or privileged, and an action does not lie against the informant unless the making of the report is done maliciously or without reasonable cause.
- (8) A person shall not interfere with or harass a person who gives information under this section.
- (9) A person who contravenes subsection (8) commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars or to imprisonment for a term of twelve months.
- (10) Notwithstanding any other law, a complaint under subsection (8) shall be laid within three years from the day when the matter of the complaint arose.

Determining the
need for
protective
intervention.

8. (1) Upon receiving information that a child is or may be in need of protective intervention, the Director or a social worker shall assess whether the child is in need of protective intervention.
- (2) After the assessment, the Director or the social worker may -
- (a) determine that protective intervention is required;
 - (b) determine that protective intervention is not required;
 - (c) offer support services to the child and family;

- (d) refer the child and family to other services; or
- (e) investigate further the child's need for protective intervention.

Interview of child.

9. (1) A person who has custody of a child or a person who is entrusted with the care of a child shall, at a place where the child is located, permit the child to be visited and interviewed by the Director, a social worker or someone duly appointed by the Director, in private where in the opinion of the Director or social worker or that person appointed, it is appropriate or necessary to do so.
- (2) The Director, social worker or person appointed by the Director shall notify, where possible, the parent who has custody or a person who has care of the child of the interview and request the presence of that parent or a representative of the child at the interview.
- (3) Subsection (2) shall not apply where the Director, social worker or person appointed by the Director determines that it would not be in the best interests of the child for this procedure to be followed.

PART IV COURT PROCEEDINGS

Director denied
access to child.

10. (1) Where the Director or a social worker is denied access to a child where he believes that access to the child is necessary to determine if the child needs protective intervention, the Director or social worker may apply *ex parte* to a Judge for an order and the Judge may grant orders *inter alia* -
- (a) that a person disclose the location of the child;
 - (b) requiring a person to allow the Director or social worker to interview, visually and if necessary, medically examine the child;
 - (c) authorising the Director or social worker to remove the child from the place where the child is located for an interview or medical examination; and
 - (d) authorising a medical practitioner or other qualified health practitioner to examine the child.
- (2) A Court may grant any other order that is necessary for carrying out the provisions of paragraphs (a) to (d), inclusive.
- (3) The Judge may attach terms and conditions to an order under this section that the Judge considers appropriate.
- (4) Where a child is removed from the place where the child was located for an interview or medical examination, the Director or social worker shall return the child to the parent or other person who has care of the child from whom the child was removed unless the Director or social worker proceeds under section 14.

- (5) At the request of the Director or social worker, a police officer shall assist in enforcing an order made under subsections (1) and (4).
- Location of child not disclosed. 11. (1) Where a person does not comply with an order under section 10, a Judge may issue a warrant for the person's arrest to bring him before the Judge to explain why the order should not be enforced.
- (2) Where a person referred to in subsection (1) appears before a Judge and the Judge believes that the person's reasons for being unable or unwilling to comply with the order are not valid, the Judge may order that the person be imprisoned for thirty days.
- (3) The Court may draw adverse inferences during the hearing of the substantive matter until the person complies with the order under section 10.
- Order to produce record. 12. (1) On application by the Director or social worker, a Judge may order a person to produce information that is written, photographed, recorded or stored by other means, or a certified copy of the record, for inspection by the Director or social worker where -
- (a) there are reasonable grounds to believe that the information is necessary for determining whether a child needs protective intervention;
- (b) there are reasonable grounds to believe that the person has possession or control of the information; and
- (c) the person has neglected or refused, upon request of the Director or social worker to produce the information.
- (2) Notice of the time, date and place of the hearing of the application under subsection (1) shall be served on the person against whom the order is sought.
- (3) Notwithstanding subsection (2), where the Director or social worker believes on reasonable grounds that the information may be destroyed if notice is given, an *ex parte* application may be made under subsection (1).
- Child who needs to be protected from contact with someone. 13. (1) Where there are reasonable grounds to believe that contact between a child and another person would cause the child to be in need of protective intervention, the Director or social worker may apply to a Court for an order to prohibit contact between the child and that person.
- (2) Where an *ex parte* application for an order has not been granted, the date set for hearing the application under subsection (1) shall be not later than two days after the application is made and notice of the hearing shall be served on the day the application is made or on the next working day.
- (3) Notice of the time, date and place of the hearing shall be served on -

- (a) the person against whom the *ex parte* order is sought;
 - (b) the child, if he or she is twelve years of age or over; and
 - (c) a parent of the child.
- (4) Where a Court is satisfied that there are reasonable grounds to believe that contact between a child and a person named in an application under subsection (1) would cause the child to be in need of protective intervention, the Court may do one or more of the following -
- (a) prohibit the person against whom the order is sought for a period of up to twelve months from contacting or interfering with or trying to contact or interfere with the child or from entering a place where the child is located or is usually located.
 - (b) prohibit the person against whom the order is sought for a period of up to twelve months from residing with the child or entering premises where the child resides, including premises that the person owns or has a right to occupy.
 - (c) where the Judge believes the person against whom the order is sought may not comply with an order under paragraph (a) or (b), the Court may order that person to -
 - (i) enter into a recognizance, with or without sureties, in an amount the Judge considers appropriate; or
 - (ii) report to a Judge, or to a person named by the Judge, for the period of time and at the times and places the Judge directs; and
 - (d) impose those terms and conditions that the Court considers appropriate for implementing the order and protecting the child.
- (5) A failure to comply with subsection (4) (c) (i) shall be reported by the Director or a social worker to the Judge and the Judge shall take action as considered appropriate.
- (6) Before an order to prohibit contact between a child and another person expires, the Director or social worker may apply to the Court and the Court may -
- (a) vary the order;
 - (b) rescind the order; or
 - (c) extend the term of the order for one period of up to six months.
- (7) At the request of the Director or social worker, a police officer shall assist in enforcing an order made under subsection (4).

- (8) An order made under this section may be made at any time including, at or after another hearing.
- (9) The person against whom an order is made under this section may appeal the said order in accordance with section 61.
- Removal of child. 14. (1) In the event that the various types of intervention as provided for in section 8 have failed and the Director or social worker believes that a child is in need of protective intervention, he shall obtain an order of Court to remove a child.
- (2) Where satisfied on the basis of a Director's or social worker's *ex parte* application that there are reasonable grounds to believe that a child is in need of protective intervention, a Judge may issue an order authorising the Director or social worker to enter the premises or a vehicle or board a vessel or aircraft, by force, if necessary, to remove a child.
- (3) At the request of the Director or social worker, a police officer shall assist in enforcing an order issued under subsection (2).
- (4) An order issued under subsection (2) shall have sufficient information to identify the child or premises where the child may be located.
- (5) The *ex parte* order shall be served on the parent of the child or organisation which has care of the child.
- (6) For the avoidance of doubt where the Director or social worker determines that it is in the best interest of the child to be removed from a particular environment, the Director or social worker shall so remove the child and shall as soon as practicable thereafter make an application to the Court seeking direction for the child's care and placement.
- Time frame to hear matter. 15. The Court shall render its decision in writing on the matter referred in section 14 within ninety days of filing.
- Counselling prior to removal. 16. Where applicable, the Director or social worker may provide counselling to the child prior to the child's removal from the home or other location.
- Care of child after removal. 17. (1) Where a child is removed under section 14, the Director has interim care of the child until -
- (a) the child is returned under section 20 to the parent from whom the child was removed; or
- (b) a Court makes such order as it deems fit.
- (2) Where a child has been removed under section 14, the Director shall place the child in accordance with the provisions of section 41 herein.
- (3) While a child is in the Director's care, the Director or a social worker shall ensure the child is examined by a registered medical practitioner; and

- (4) The Director or social worker shall notify the parent from whom the child was removed that the child has undergone a medical examination.
- (5) While pursuant to a Court order, a child is hospitalised and is removed from his parent by a Director or social worker, the chief executive officer or Matron of the hospital and the attending registered medical practitioner shall be advised of the child's removal and that the child's care is the responsibility of the Director.
- (6) Should the child be found to be in need of special care then the Director shall obtain a special order of the Court to direct the hospital administration that the child is under the jurisdiction of the Director.
- (7) In the event that in the course of the child's treatment an invasive procedure is required, the Director shall seek the consent of the child's parents; if such consent is unreasonably withheld, the Director may make the decision in these circumstances in the best interests of the child or obtain a Court order as provided for by section 20.
- (8) Where the child in question is sixteen years or older, is conscious and capable of so giving, the Director shall seek and obtain the consent of the child for the administering of medical treatment, examination and evaluation in order to determine the medical status of the child.

Where the child is not removed.

18. (1) Where the Director or social worker believes on reasonable grounds that -
 - (a) a child is in need of protective intervention but not urgently so;
 - (b) with the provision of protective intervention services the child's safety could be assured without removing the child;
 - (c) a parent or caregiver of the child is unwilling to accept protective intervention services for the child; or
 - (d) an organisation or a person (other than a parent) who is in charge of a child in respect of whom intervention is sought to be made and whose actions have not been in the child's best interests,

the Director or social worker shall file an application for an order of a Judge that the child is in need of protective intervention and for a protective intervention hearing.

- (2) A hearing under this section shall be held within fourteen days of the filing of the application under subsection (1).
- (3) Notice of the time and place of a hearing under this section shall be served within three days after the date for holding the hearing is obtained from the Court on -

- (a) a parent or caregiver of the child;
- (b) the child, where the child is twelve years of age or older; or
- (c) an organisation who is in charge of a child.
- (4) Where an application is made under this section, a Judge may make an order under section 21.
- (5) With respect to section 17, this section and any other provisions on this Act, a Director may appear before a Judge or make an application to the Court with or without legal representation.
- Medical treatment.
19. (1) Where the Director or social worker believes a child to be in need of protective intervention because of his parent's refusal to obtain or permit essential medical, psychiatric, surgical or remedial treatment that is recommended by a registered medical practitioner for the child, the Director or social worker may apply for an *ex parte* order authorising the treatment.
- (2) A parent and the child, where possible, where the child is twelve years of age or over, shall be notified of the time and place of a hearing under this section which shall commence within one day after filing the application.
- (3) A Judge may hear the application at any time or place.
- (4) Where a Court finds that a child needs protective intervention for a reason referred to in subsection (1), the Court may so declare and grant an order authorising the treatment recommended by a registered medical practitioner.
- (5) Where a child is treated under an order under this section, no liability attaches to the person treating the child by reason only that the parent of the child did not consent to the treatment.
- (6) Notwithstanding subsection (1) where a child is sixteen years or older, the Director or social worker shall seek to obtain the consent in writing of that child, if conscious and capable of so giving, to medical treatment.
- (7) Nothing in this section shall be taken to limit or affect the right of a person to consent to or administer necessary medical treatment to a child in the best interests of the child or in accordance with medical treatment ordered by the Court.
- Plan for the child.
20. (1) Not later than ten days prior to a protective intervention hearing, the Director or social worker shall file with the Court a written plan for the child and provide a copy to those persons to whom notice of the hearing has been given.

- (2) Not later than five days prior to a protective intervention hearing those persons to whom a copy of a plan has been given under subsection (1) may respond to the plan and file an alternate written plan with the Court and provide a copy to the Director or social worker.
 - (3) Before the conclusion of a hearing for a protective intervention order, a Court may -
 - (a) grant a temporary order -
 - (i) that the child be returned to the parent under the supervision of the Director or social worker until the conclusion of the protective intervention hearing;
 - (ii) that the child be placed in the care of a person other than the person from whom the child was removed under the supervision of the Director or social worker until the conclusion of the protective intervention hearing;
 - (iii) that the child remain in the care of the Director or social worker until the conclusion of the protective intervention hearing; or
 - (b) make a declaration that further inquiry needs to be made to determine whether the child is in need of protective intervention.
 - (4) At a protective intervention hearing a Court may give the parties to the hearing directions with respect to those matters that are relevant at a protective intervention hearing.
 - (5) A Court may attach those conditions to an order that it considers appropriate.
 - (6) When a Judge makes an order under this section, the Judge may grant a parent, or a person significant to the child, contact with the child.
21. (1) At a protective intervention hearing a Court shall determine whether a child needs protective intervention.
- (2) Where a Court finds that a child needs protective intervention, the Court shall so declare and order -
 - (a) that the child be returned to or remain with the parent and under the Director's supervision or that of a social worker for such period as the Court thinks fit and which shall be subject to an extension should it be found to be necessary.

- (b) that the child be placed in the custody of a person or organisation other than the parent home or environment from which the child was removed, with the consent of the other person or organisation; or
- (c) that the child be placed in the continuous custody of the Director or other suitable person with the consent of the other person.
- (3) A Court may attach those conditions to an order made under subsection (2) that it considers appropriate.
- (4) Where a Judge makes an order under subsection (2)(b) or (c) the Judge may grant a parent contact with the child under such terms and conditions as the Court deems fit.
- (5) Where the Judge finds that the child does not need protective intervention, the Judge shall so declare and order that the child remain with or be returned to the parent or organisation from whom the child was removed.
- (6) In the course of considering all matters set out in this section, the Court shall have regard to the views of the child and the child shall be entitled to legal representation provided by the State.
- Financial responsibility. 22. (1) Where a child is committed temporarily or continuously to the custody of the Director or other person, upon application by the Director or social worker or other person, a Judge may order that the obligation of the parent to provide maintenance for the child shall continue subject to the law relating to custody, access, guardianship and maintenance.
- (2) The parent against whom an order under subsection (1) has been made shall make payments for the benefit of the child on the terms and conditions and for the period the Judge considers appropriate.
- Time limits for temporary orders. 23. (1) Where a Judge grants a temporary order under section 20(3) (a) (i) or (ii), the term of the order shall not exceed a maximum of three months.
- (2) Notwithstanding subsection (1), a Judge may, in exceptional circumstances, grant an extension and this extension shall not exceed three months.
- (3) Before a temporary order expires, the Director or a social worker may file an application with a Judge for an extension of the existing order or for an order no later than twenty-one days prior to the expiration of the temporary order and shall serve this application within three days of filing.
- (4) Notice of the time and place of a hearing for an extension with respect to an application under subsection (3) shall be given not later than fourteen days from the date of filing on –
- (a) a parent; and

- (b) a child, where the child is twelve years of age or older.
- (5) At least three days before the date set for a hearing those receiving notice may respond to the Director's or social worker's plan and provide an alternate written plan to the Judge with a copy to the Director or social worker.
- (6) Hearing for an extension shall be determined before the temporary order expires.
- Alternate dispute resolution or assessment. 24. (1) Notwithstanding section 23, a Judge may adjourn a proceeding under this Act one or more times, for a total period of up to three months, to allow –
- (a) a pre-trial settlement conference, a family conference, mediation or other means of alternate dispute resolution to proceed; or
- (b) where an assessment is considered necessary by a Judge, Director or social worker, an assessment to be completed.
- (2) Where a proceeding is adjourned under subsection (1), a time limit applicable to the proceeding remains applicable.
- (3) Where, as a result of a pre-trial settlement conference, a family conference, mediation or other means of alternate dispute resolution, a written agreement is made, the Director or social worker shall file the agreement with the Court which shall be made into a final order of Court.
- Effect of temporary order. 25. (1) Where the Director has been granted a temporary order under section 20, the Director has custody of the child for the specified period and shall have the right to make all decisions regarding the child during that specified period, but the Director shall not consent –
- (a) to medical treatment, unless a parent consents or the Director is granted an order under section 19;
- (b) to an adoption under the law relating to adoption of children, without the consent of the parent from whom the child was removed.
- (2) Where the child is sixteen years or older the consent of the child if conscious and capable of so giving, shall be obtained.
- Effect of continuous order. 26. (1) Where the child has been placed in the continuous custody of the Director, the Director shall select a suitable foster home, orphanage or voluntary home in which the child shall be placed.
- (2) The Director may approach the Court for directions on the future state of the child.

When final order ends.

27. (1) An order for continuous custody ceases to have effect when –

- (a) the child reaches eighteen years of age;
- (b) the child marries; or
- (c) the Court rescinds the order, which ever occurs first.

(2) The child on attaining the age of sixteen, shall be at liberty to apply to discharge an order for continuous custody without a guardian *ad litem* or next friend.

Rescission of continuous order.

28. (1) Where circumstances have changed significantly since the time when an order for continuous custody was made, the Director or a party to the hearing at which the order was made may apply to the Court for the discharge of the order.

(2) Notice of an application for a hearing shall be served not later than ten days prior to the hearing on –

- (a) any party who was present at the original hearing;
- (b) a child, where the child is twelve years of age or older; and
- (c) a person who represents the child.

(3) The Judge may grant an order to rescind an order for continuous custody, where he believes it is in the best interest of the child to do so.

(4) The Director shall continue to monitor the child in a manner that is considered by the Director to be appropriate.

(5) The views of the child shall be obtained prior to the making of an order by the Court.

Discontinuance before protective intervention hearing.

29. (1) Where a child is returned to the parent or other person who previously had care of the child before a Court for a protective intervention hearing, the Director or social worker shall –

- (a) seek leave of a Judge to discontinue the application for a protective intervention hearing;
- (b) provide notice of the intention to apply to discontinue the application to the persons previously given notice of the application for a protective intervention hearing; and
- (c) file with the Court and provide to all persons receiving notice a written explanation of the circumstances for discontinuing the removal.

- (2) Where leave of a Judge is sought under this section, the matter shall be heard no later than the date set for the protection intervention hearing and the Judge may rescind any outstanding order made in relation to the child.

**PART V
GENERAL COURT MATTERS**

- | | | |
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| Hearing and evidence. | 30. (1) | A hearing under this Act – <ul style="list-style-type: none"> (a) is civil in nature; and (b) may be as informal as a Judge may allow. <p>(2) A special measures directions may provide for the wearing of gowns to be dispensed with while a witness is testifying or during any other part of the proceedings.</p> <p>(3) In any proceeding under this Part and notwithstanding any other law, a Judge may admit and act upon – <ul style="list-style-type: none"> (a) the evidence, including hearsay, that the Judge considers relevant and reliable in the circumstances; (b) an oral or written statement which may have been video-taped; and (c) a report the Judge considers relevant, including a transcript, exhibit or finding in an earlier civil or criminal proceeding. </p> |
| Appearance in Court. | 31. | The Director or a social worker shall have audience in Court in respect of a matter arising out of a provision of this Act. |
| Application to be heard. | 32. | A person who has custody or care of a child may apply to be heard at a hearing under this Act. |
| Judge to hear child. | 33. | A Judge shall permit a child who is the subject of a hearing under this Act to be heard at the hearing where the child requests to be heard or the Judge so orders, and the State shall provide assistance, if required, for the child to have legal representation. |
| Power to vary notice requirements. | 34. | In the event of an emergency or where the best interests of the child so dictate, a Judge may – <ul style="list-style-type: none"> (a) shorten the time period to perform any act under this Act, or (b) dispense with a requirement to serve notice of a hearing under this Act. |
| Service of documents. | 35. (1) | Where the Director, a social worker or another person is required under this Act to serve a document on a person, personal service may be made by showing the original to the person and giving a copy of the original document to the person to be served. |

- (2) Personal service under subsection (1) may be proved by a written or oral statement under oath by the person who effected the service.
- Full disclosure to parties. 36. (1) A party to a hearing under this Act shall disclose in a timely manner or as ordered by a Court all the information relevant to the hearing in his possession where requested to do so by another party to the hearing.
- (2) Information identifying a person who has made a complaint to the Director or social worker, or who provided information to the Director or social worker with respect to a child, shall not be disclosed unless the person who provided the information consents.
- Confidentiality of information. 37. (1) A person shall not disclose, or be compelled to produce or disclose, at a hearing under this Act, information obtained in a family conference, mediation or other means of alternative dispute resolution, except –
- (a) with the consent of everyone who participated in the family conference, mediation or other means of alternative dispute resolution;
- (b) to the extent necessary to make or implement an agreement with respect to a child;
- (c) where the information is disclosed in an agreement filed under section 24 (3); or
- (d) where the disclosure is necessary for the performance of the duties of the Director or a Social worker acting in the best interest of the child;
- (e) where the disclosure is necessary for a child's safety or is required under section 7.
- (2) A person who publishes or discloses to anyone information that may lead to identification of a child commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars.
- Consent orders. 38. (1) Where a parent consents to an order made under this Act, a Judge shall be satisfied –
- (a) that the wishes of the child have been considered; and
- (b) that the parent consenting to the order has been informed that he may be represented by legal counsel and understands the nature and consequences of the consent.
- (2) A consent by a parent under this Act is not an admission by the parent of a ground alleged by the Director or social worker for protective intervention.

Custody
application under
another Act.

39. (1) Where a hearing under this Act is proceeding at the same time as custody of a child is being determined under the law relating to custody, access, guardianship and maintenance or under any other Act, a party may apply to have the two matters heard together.

(2) Where one of the two matters is heard in the High Court, the two matters shall be heard by that Court.

Variance.

40. Where an order has been made under this Act, a Judge may, upon application accompanied by evidence to the satisfaction of the Judge that the circumstances relating to the child have changed since the original order was given, vary the order.

PART VI PLACEMENT OF CHILDREN ON REMOVAL

Placement
consideration.

41. (1) The placement of a child shall be conducted in a manner which is least disruptive to a child and recognises the importance of placement with siblings, wherever possible and contact with family or other persons who are significant to the child including godparents, or close family friends.

(2) The Director or social worker shall first consider placement of a child with a relative or person with whom the child has a significant relationship.

(3) Where a child is removed by the Director or social worker from a custodial parent and the non-custodial parent is considered by the Director or social worker to be suitable to provide care, the child may be placed with the non-custodial parent pending final determination of the application before the Court.

(4) Where a child cannot be placed in accordance with subsection (2) or (3), the child may be placed with a caregiver voluntary home, foster home or other organisation.

Agreements.

42. (1) If ordered by a Court, the Director or a social worker may make an agreement for service including financial support, with a person, foster home or organisation providing care to or entrusted with the care of a child pursuant to this Act.

(2) Where an agreement is made under sub-section (1) with a non-custodial parent, the non-custodial parent shall be entitled to financial support from the other parent, if required.

(3) A person, foster home or organisation who provides care under this Act shall be approved by the Director or a social worker.

- Information concerning child's care.
43. (1) The Director or a social worker shall provide information concerning a child's prior care to a person required to provide care to or entrusted with the care of the child by the Director or social worker, or if so ordered by the Court.
- (2) The Director or social worker shall provide information concerning the caregiver of a child, the parent of the child and any other person who may have had care of the child to the person now entrusted with the care of the child.
- Removal of child from caregiver.
44. The Director or a social worker may remove a child from the care of a caregiver with whom the Director or social worker has placed the child, without notice, if necessary, but only where the removal is in the child's best interests.
- Counselling.
45. A child who is removed from a person caring for the child, shall be counselled.

**PART VII
CONFIDENTIALITY AND DISCLOSURE OF
INFORMATION**

- Right of access and right to consent to disclose.
46. (1) A person over twelve years of age has the right to and shall, on request, be given access to information relating to himself including –
- (a) information relating to his birth family;
 - (b) the reasons why he was removed from his parent;
 - (c) the reasons for the continuation of a Court order relating to him; and
 - (d) the identity of former caregivers.
- (2) A person who has custody of a child other than temporary custody has the right to and shall, on request, be given access to information including information about the child referred to in subsection (1).
- (3) The right to be given access to information does not extend to information exempted from disclosure under section 47.
- (4) Where information exempted from disclosure under section 47 can reasonably be severed, a person referred to in subsection (1) or (2) has the right of access to the remainder of the information.
- Exceptions to access rights.
47. A person shall be denied access to information where –
- (a) the disclosure is prohibited under the law relating to adoption of children;

- (b) there are reasonable grounds to believe that the disclosure might result in physical or emotional harm to that person or to another person;
- (c) where the disclosure would identify a person who made a report under section 7; or
- (d) the disclosure could reasonably be expected to jeopardize an assessment or intervention under this Act or a criminal investigation.
- Disclosure without consent. 48. Subject to section 47, a Director may, without the consent of another person, authorise the disclosure of information obtained under this Act if the disclosure is -
- (a) necessary to ensure the safety, health or well-being of a child;
- (b) shared with persons entrusted with the care of a child;
- (c) necessary for the administration of this Act; or
- (d) for research and evaluation purposes.

PART VIII OFFENCES AGAINST CHILDREN

- General offence. 49. A person who by commission or omission wilfully contributes to a child being a child in need of protective intervention commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars or to imprisonment for a term of six months.
- Contributing to an offence. 50. (1) A person who sells, gives or causes to come into the possession of a child, including ingesting for the purpose of trafficking -
- (a) a drug or substance, which is or, is such quantity that it may be harmful to the child;
- (b) an obscene book or other printed material, copies or written obscene matter;
- (c) an obscene picture, photograph, or pornographic material or model available through electronic means;
- (d) any other obscene object; or
- (e) intoxicating liquor or tobacco products,
- commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars, or to imprisonment for a term of six months.

- Cap. 82:21
- (2) A person who employs a child on premises that sells intoxicating liquor commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars, or to a term of imprisonment of six months.
- (3) A person who employs a child in an establishment to engage in acts of prostitution commits an offence and is liable on summary conviction to a fine of four hundred thousand dollars, together with a term of imprisonment of not less than six months.
- Removing a child. 51. A person who removes or attempts to remove a child or entices a child to leave the care or custody of the Director or harbours a child who has left the care or custody of the Director commits an offence and shall be liable on summary conviction to a term of imprisonment of one year.

**PART IX
ACCOUNTABILITY PROVISIONS**

Minister's
advisory
committee.

52. (1) The Minister shall establish an advisory committee whose function is to review every two years the operation of this Act and to report to the Minister concerning its operation and stating whether, in its opinion, the principles and purpose of the Act are being achieved.
- (2) The advisory committee shall be appointed by the Minister and shall be composed of –
- (a) two persons who themselves or whose children are receiving or have received services under this Act or a predecessor Act;
 - (b) a representative of the Minister;
 - (c) an attorney-at-law assigned to or employed by a recognised Legal Aid provider;
 - (d) the Director who shall be an ex-officio member; and
 - (e) three other persons who have worked with children and have a background in social work or psychology, who are nominated by their respective organisations to be appointed to the committee.
- (3) Appointments to the advisory committee shall be for three years and may be renewed for a further period of three years.
- (4) The members of the committee shall elect one from amongst them to serve as chairperson.
- (5) The members of the committee shall serve without remuneration but may be reimbursed for expenses reasonably incurred in carrying out their duties on the committee.

PART X
PROTECTION FROM UNSUITABLE INDIVIDUALS

Duty of Minister
to keep list.

Cap. 8:01
Cap. 8:02

Inclusion in list on
reference to
Minister.

53. (1) The Director shall compile and the Minister shall keep a list of individuals who are considered unsuitable to work with children upon receipt of confirmation of that person's conviction for an offence under this Act or for an offence against a child under the Summary Jurisdiction Offences Act, Criminal Law Offences Act or any other law or in circumstances as set out in section 54.

(2) An individual shall not be included in the list unless that individual has been referred to the Minister under section 54.

(3) Except for extreme or urgent circumstances, a person whose name has been submitted for inclusion on the list shall be notified in writing by the Minister within seven days of such a submission and the reasons stated for such submission.

(4) The Minister shall appoint a person to conduct a hearing with respect to the request for inclusion on the list prior to such inclusion.

(5) The Minister may at any time remove an individual from the list if the Minister is satisfied that the individual should not have been included in it.

54. (1) A child care organisation, the Minister responsible for Health, the Minister responsible for Education or the Minister responsible for Home Affairs shall, and any organisation may, refer to the Minister an individual who is or has been employed in a child care position if there is fulfilled –

(a) any of the conditions mentioned in subsection (2); or

(b) the condition mentioned in subsection (4).

(2) The conditions referred to in subsection (1) (a) are –

(a) that the child care organisation has dismissed the individual on the grounds of misconduct or of being convicted of a sexual offence under any law (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm;

(b) that an individual has resigned or retired in circumstances where the organisation would have considered dismissing that individual, on the grounds of misconduct or that he was convicted of a sexual offence if he had not resigned or retired;

(c) the individual was convicted of a sexual offence.

(3) For the purposes of this section –

- (a) “development” includes physical, social or behavioural development;
 - (b) “harm” includes impairment of health or development;
 - (c) “health” means physical or mental health; and
 - (d) “ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical.
- (4) The condition referred to in subsection (1) (b) is that –
- (a) in circumstances not falling within subsection (2), the child care organisation has dismissed the individual, the individual has resigned or retired or the organisation has transferred him to a position within the organisation which is not a child care position;
 - (b) information with respect to the individual not available to the organisation at the time of the dismissal, resignation, retirement or transfer has since become available; and
 - (c) the organisation has formed the opinion that, if that information had been available at that time and if (where applicable) the individual had not resigned or retired, the organisation would have dismissed the individual or would have considered dismissing him, on the grounds mentioned in subsection (2)(a).
- (5) If it appears from the information submitted with a reference under subsection (1) that it may, except for a convicted sex offender, be appropriate for the individual to be included in the list kept under section 53 (1), the Minister shall –
- (a) determine the reference in accordance with subsections (6) to (8); and
 - (b) pending that determination provisionally include the individual in the list.
- (6) The Minister shall –
- (a) invite observations from the individual on the information submitted with the reference and, if the Minister thinks fit, the Minister may also invite observations on any information submitted pursuant to paragraph (b); and
 - (b) invite observations from the organisation on the information submitted with the reference and, if the Minister thinks fit, on any other observations under paragraph (a).
- (7) Where –

- (a) the Minister has considered the information submitted with the reference, any observations submitted to the Minister and any other information which he considers relevant; and
- (b) in the case of a reference under subsection (2) (a), the organisation has dismissed the individual or, as the case may be, has confirmed his transfer on such grounds as are there mentioned, the Minister shall confirm the individual's inclusion in the list if subsection (8) applies; otherwise the Minister shall remove the individual from the list.
- (8) This subsection applies if the Minister is of the opinion –
- (a) that the organisation reasonably considered the individual to be guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; and
- (b) that the individual is unsuitable to work with children.
- (9) The reference in subsection (7) (b) to the organisation dismissing the individual on such grounds as are mentioned in subsection (2) (a) includes –
- (a) a reference to the individual resigning or retiring in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not retired or resigned; and
- (b) a reference to the organisation transferring the individual, on such grounds, to a position within the organisation which is not a child care position.
- (10) Nothing in this section shall require a child care organisation to refer an individual whose resignation, retirement, transfer or suspension took place before the commencement of this section.
- Appeals against inclusion in list. 55. (1) An individual who is included (otherwise than provisionally) in the list kept by the Minister under section 53 may appeal to the Board against the decision to include him in the list.
- (2) Subject to subsection (5), an individual who has been provisionally included for a period of more than three months in the list kept by the Minister under section 53 may have the issue of his inclusion in the list determined by the Board instead of by the Minister.
- (3) The Board shall make its decision on the appeal known to the appellant and the Minister.

- (4) Where an individual has been convicted of an offence involving misconduct or a sexual offence (whether or not in the course of employment) which has harmed a child or placed a child at risk of harm, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal or determined under this section.
- (5) Where the misconduct of which the individual is alleged to have been guilty is the subject of any civil or criminal proceedings, an application under subsection (2) may not be made before the end of the period of one month immediately following the final determination of the proceedings.
- (6) For the purposes of subsection (5), proceedings are finally determined when –
- the proceedings are terminated without a decision being made;
 - a decision is made against which no appeal lies;
 - in a case where an appeal lies with leave against a decision, the time limited for applications for leave expires without leave being granted; or
 - in a case where leave to appeal against a decision is granted or is not required, the time limited for appeal expires without an appeal being brought.
- Effect of inclusion in list. 56. (1) Where a child care organisation proposes to offer an individual employment in a child care position, the organisation –
- shall ascertain whether the individual is included in the list kept under section 53;
 - if the individual is included in that list, shall not offer the individual employment in such a position.
- (2) Where a child care organisation proposes to offer employment in a child care position to an individual who has been supplied by an organisation which carries on an employment agency there is a sufficient compliance with subsection (1) if the child care organisation –
- satisfies itself that, on a date within the last twelve months, the other organisation ascertained whether the individual was included in the list kept under section 54;
 - obtains written confirmation of the facts as ascertained by that organisation; and
 - if the individual was included in the list on that date, does not offer him employment in a child care position.

- (3) On the commencement of this Act, it is immaterial for the purposes of subsection (1) or (2) whether the individual is already employed by the child care organisation.
- The Board.
57. (1) There shall be established a Board to be known as the Child Protection Board comprising of five persons including a Social Worker and an Attorney-at-Law, which shall exercise the jurisdiction conferred on it by or under this Act.
- (2) The Minister may by regulations make provision about the proceedings of the Board on an appeal or determination under section 55 or regulations made under section 62.
- (3) The regulations may, in particular, include provision –
- (a) as to the manner in which appeals are to be instituted or applications for determinations are to be made;
 - (b) as to the period within which appeals are to be instituted;
 - (c) as to the circumstances in which applications for leave may be made;
 - (d) for enabling any functions which relate to applications for leave for other matters preliminary or incidental to an appeal or determination to be performed by the Chairperson;
 - (e) for the holding of hearings in prescribed circumstances;
 - (f) for imposing reporting restrictions in prescribed circumstances;
 - (g) as to the qualification of persons who may appear on behalf of the parties;
 - (h) for granting a person such discovery or inspection of documents or right to further particulars as might be granted by the High Court;
 - (i) for requiring persons to attend to give evidence and produce documents;
 - (j) for authorising the administration of oaths to witnesses;
 - (k) for the determination of appeals or issues or applications or leave without a hearing in prescribed circumstances;
 - (l) as to the withdrawal of appeals or applications for determinations;
 - (m) for the award of costs or expenses;
 - (n) for taxing or otherwise setting any such costs or expenses (and, in particular, for enabling such costs to be taxed in the Court);

- (o) for the recording and proof of decisions and orders of the Board;
- (p) for enabling the Board to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations; and
- (q) for notification of the result of an appeal or determination to be given to such persons as may be prescribed.

(4) A person who without reasonable excuse fails to comply with –

- (a) a requirement imposed by the regulations by virtue of subsection (3) (f);
- (b) a requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of subsection (3) (h); or
- (c) a requirement imposed by the regulations by virtue of subsection (3) (i),

commits an offence and is liable on summary conviction to a fine not exceeding two hundred thousand dollars.

(5) An appeal shall lie to the High Court from a decision of the Board.

Power to remove difficulties.

58. (1) If any difficulty arises in giving effect to the provisions of this Act, the Minister may, by order, make any provision consistent with this Act that appears to be necessary or expedient for removing the difficulty.

(2) Every order under subsection (1) shall be subject to negative resolution of the National Assembly and shall not be made after the expiry of three years from the commencement of this Act.

Liability for an offence.

59. Unless specifically stated otherwise, a person who fails to comply with or otherwise contravenes a provision of this Act or the regulations for which a penalty has not been specifically provided commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars or to a term of imprisonment of twelve months.

Applications to be heard *in camera*.

60. Hearing of applications made under this Act shall be held *in camera*.

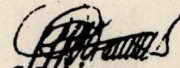
Appeals.

61. An appeal lies from a decision of a Court under this Act to the Court of Appeal.

**PART XI
MISCELLANEOUS**

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| Regulations. | 62. The Minister may make regulations to give effect to the purpose of this Act and these regulations shall be subject to negative resolution of the National Assembly. |
| Protection of Director and authorised officers. | 63. The Director and duly authorised officers shall not be personally liable for any acts done or omitted to be done in the course of carrying out their functions under this Act. |
| Powers of the Childcare and Protection Agency.
No. 2 of 2009 | 64. Every administrative authority exercising any function under this Act shall be under the supervision and control of the Childcare and Protection Agency established by section 3 of the Childcare and Protection Agency Act 2009. |

Passed by the National Assembly on 7th May, 2009.


S.E. Isaacs.

Clerk of the National Assembly.

(Bill No. 3/2009)