

GUYANA

Bill No. 2 of 2018

JUVENILE JUSTICE BILL 2018

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

1. Short title and commencement.
2. Interpretation.

PRINCIPLES WITH RESPECT TO JUVENILE JUSTICE SYSTEM

3. Policy with respect to juveniles.
CRIMINAL CAPACITY
4. Criminal capacity.

PART II

DIVERSION

PRINCIPLES AND OBJECTIVES

5. Principles.
6. Objectives.
7. Conditions.
8. Measures.
9. Development of diversion measures.
10. Use of measures.
11. Notice to parent.
12. Victim's right to information.
WARNINGS AND REFERRALS
13. Duty of to warn juvenile or refer juvenile to a programme or agency.
14. Evidence of measures is inadmissible.

PART III

ORGANISATION OF JUVENILE JUSTICE SYSTEM

15. Exclusive jurisdiction of court.
16. Continuation of proceedings.
17. Aged-out juveniles.

**PART IV
PROCEEDINGS AGAINST JUVENILES**

- 18. Pre-charge screening.
- 19. Private prosecutions restricted.
- 20. Right to counsel.
- 21. Notice of arrest or detention.
- 22. Order requiring attendance of parent.

RIGHT TO COUNSEL

NOTICE TO PARENTS

REFERRAL TO THE DIRECTOR OF THE CHILDCARE AND PROTECTION AGENCY

- 23. Referral of the juvenile to the Director of the Childcare and Protection Agency.
- 24. Duty of police officer in relation to child.

**PART V
DETENTION OF JUVENILES BEFORE SENTENCING**

- 25. Taking of statements.
- 26. Release from custody by police officer where juvenile is arrested for offence not listed in Schedule.
- 27. Release from custody by police officer where juvenile is arrested for offence listed in the Schedule.
- 28. Holding of juvenile in custody.
- 29. Contents of summons or recognizance.
- 30. Failure of juvenile to appear.
- 31. Taking juvenile before court.
- 32. Detention not a substitute for social measures.
- 33. Detention presumed unnecessary.
- 34. Temporary holding facility.
- 35. Placement of juvenile in care of an adult.
- 36. Appearance before court.
- 37. When juvenile pleads guilty or not guilty.

APPEARANCE

ADJUDICATION

**PART VI
SENTENCING**

- 38. Purpose and principles of sentencing and factors to consider when sentencing.
- 39. Restrictions on custody.
- 40. Contents of pre-sentence report.

PRE – SENTENCE REPORT

SENTENCES

- 41. Exemption from imprisonment.
- 42. Mode of dealing with juvenile found guilty.
- 43. Sentences if found guilty.

44. Sentences for offences in Schedule.
45. Conditions of probation and supervision orders.
46. Additional conditions of probation and supervision orders.
47. Preconditions to making compensation orders.
48. Restrictions on community service.
49. Order to be read and explained to the juvenile.
50. Coming into force of a sentence.
51. Consecutive sentences.
52. Duration of sentences imposed at the same time.
53. Duration of sentences imposed at different times.
54. Sentence continues when juvenile becomes an adult.
55. Supervision inoperative when additional custodial sentence ordered.
56. Reasons for the sentence.
57. Warrant of committal and custody during transfer.
58. Court to specify custody level.
59. Placement of juvenile.
60. Exception if juvenile is eighteen years or older.
61. Transfer to adult facility.
62. Documents to be sent to Principal and Chief Probation Officer.

**PART VII
REVIEW OF SENTENCES**

63. Optional review of non – custodial sentences and grounds for review.
64. Breach of an order.
65. Application for continuation of custody.
66. Setting of conditions of custody and supervision order.
67. Annual review of custodial sentences.
68. When juvenile reaches eighteen years.
69. No appeal from review.

EFFECT OF TERMINATION OF SENTENCE

70. Effect of absolute discharge or termination of sentence.

**PART VIII
CUSTODY, SUPERVISION AND REHABILITATION**

71. Purpose and principles of juvenile custody and supervision system.
72. Custody separate from adults.
73. Establishment of facilities for custody.
74. Saving of existing facilities.
75. Provision for other places of holding of juveniles.
76. Director of Juvenile Justice .
77. Delegation of powers and duties of Minister.
78. Regulations.

PRINCIPAL AND STAFF OF FACILITIES

79. The Principal.
80. Staff of facilities.
81. Transfer of staff.

JUVENILE JUSTICE COMMITTEE

- 82. Juvenile Justice Committee.
- 83. Duties and powers of Juvenile Justice Committee.
- 84. Annual report.
- 85. Access to facilities.

OPERATIONS OF FACILITIES

- 86. Obligation of Principal to accept juveniles.
- 87. Reception of juveniles.
- 88. Maximum number, sex and age of housed juveniles.
- 89. Transfer of juveniles between facilities.
- 90. Juvenile to be given opportunity to observe religion.
- 91. Arrangements to be made for juvenile to receive medical treatment.
- 92. Discipline.
- 93. Additional conditions.
- 94. Reintegration leave.
- 95. Authorized leave.
- 96. Change of address of parents.
- 97. Unconditional release.
- 98. Early discharge.
- 99. Supervision after release.

PART IX

PUBLICATION, RECORDS AND INFORMATION

PROTECTION OF PRIVACY OF JUVENILES

- 100. Identity of juvenile not to be published.
- 101. Non – application.

ACCESS TO RECORDS

- 102. No access unless authorized.
- 103. Persons having access to records.
- 104. Disclosure of information and copies of record.
- 105. Where records may be made available.
- 106. Access to record by juvenile.

DISCLOSURE OF INFORMATION IN A RECORD

- 107. Disclosure of information.
- 108. Disclosure with court order.
- 109. Effect of end of access periods.
- 110. No subsequent disclosure.

PART X

GENERAL PROVISIONS

JURISDICTION

- 111. Where a court hears a matter commenced before another court.

EXCLUSION FROM HEARING

- 112. Exclusion from hearing.

OFFENCES AND PUNISHMENT

- 113. Escaping from lawful custody.
- 114. Assisting or inducing a juvenile etc.
- 115. Delivering prohibited item.
- 116. Offences and punishment.
- 117. General penalty.

PROCEDURE AND EVIDENCE

118. Indictable and summary offences heard together.
119. General law on admissibility of statements to apply.
120. Evidence of age of child or juvenile.
121. Evidence of a child or juvenile.
122. If forms not prescribed.

**PART XI
TRANSITIONAL PROVISIONS**

123. Prohibition on proceedings.
124. Proceedings commenced under the Juvenile Offenders Act, Cap. 10:03, the Training Schools Act, Cap. 11:06 and the Education Act, Cap. 39:01.
125. Offences committed before the coming into force of the Act.
126. Applicable sentence and dispositions under the Juvenile Offenders Act, Cap. 10:03.
127. Temporary holding facilities and open residential facilities.

**PART XII
CONSEQUENTIAL AMENDMENTS AND REPEAL**

128. Repeal of sections 15, 16 and 26 of the Education Act, Cap. 39:01.
129. Amendment of sections 2, 7, 9 and 11 of the Probation of Offenders Act, Cap. 11:04.
130. Amendment of the Schedule to the Rehabilitation of Offenders Act, Cap. 11:07.
131. Repeal of sections 5 and 6 of the Parole Act, Cap. 11:08.
132. Repeal of the Juvenile Offenders Act, Cap. 10:03.
133. Repeal of the Training Schools Act, Cap. 11:06.

A BILL

Intituled

AN ACT to amend and consolidate the law in relation to criminal justice for juveniles; to make provision for proceedings with respect to juvenile offenders; to provide for the establishment of facilities for the custody, education and rehabilitation of juvenile offenders, and to repeal the Juvenile Offenders Act and the Training Schools Act.

A.D. 2018

Enacted by the Parliament of Guyana:-

PART I

PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Juvenile Justice Act 2018 and shall come into operation on the day the Minister may by order appoint.

Interpretation.

2. In this Act-
“Chief Probation Officer” means the person appointed under section 17(1) (a) of the Probation of Offenders Act;
“child” means a person who is under the age of eighteen years;
“court” means any court that hears a matter in which the person charged is a child or juvenile;
“Director of the Childcare and Protection Agency” means the person appointed under section 7 (1) of the Childcare and Protection Agency Act;
“Director of Public Prosecutions” means the Director of Public

Cap. 11:04

Cap. 46:07

Cap. 1:01

Prosecutions appointed under article 116 of the Constitution;
“Director of Juvenile Justice ” means the person appointed under section 76

(1);

“diversion” means the diversion of a juvenile away from formal court procedures to informal procedures established under Part II of this Act and includes restorative measures under this Act used to deal with a juvenile alleged to have committed an offence;

“facility” means a facility established under section 73 or designated under section 75 for the placement of juveniles and includes open residential facilities, secure residential facilities and temporary holding facilities, established or designated under this Act;

“juvenile” means a person who is or, in the absence of evidence to the contrary, appears to be fourteen years old or older, but less than eighteen years old and, if the context requires, includes any person who is charged under this Act with having committed an offence while the person was a juvenile or who is found guilty of an offence under this Act;

“Juvenile Justice Committee” means the Juvenile Justice Committee appointed under section 83;

“Minister” means the Minister responsible for Public Security unless specifically provided otherwise;

“parent” includes, in respect of a child or juvenile, any person who is under a legal duty to provide for the child or juvenile or any person who has, in law or in fact, the custody or control of the child or juvenile, but does not include a person who has the custody or control of the child or juvenile by reason only of proceedings under this Act;

“Parole Board” means the Parole Board established under section 3 (1) of the Parole Act;

“police officer” means a member above the rank of sergeant of the

Cap. 11:08

Cap. 16:01

Guyana Police Force established under the Police Act;

“pre-sentence report” means a report on the personal and family history and current environment of a juvenile in accordance with section 40;

Cap. 11:04

“probation officer” means a person appointed as such under section 17(1) (b) of the Probation of Offenders Act;

“publication” means the communication of information by making it known or accessible to the general public through any means, including print, radio or television broadcast, telecommunication or electronic means;

“record” includes anything containing information, regardless of its physical form or characteristics, including microform, sound recording, videotape, machine-readable record, and any copy of any of those things, that is created or kept for the purposes of an offence that is or could be prosecuted under this Act;

“sentence” means a sentence ordered in respect of a juvenile in accordance with this Act.

PRINCIPLES WITH RESPECT TO JUVENILE JUSTICE SYSTEM

Policy with respect to juveniles.

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

(a) the juvenile justice system is intended to-

(i) further the well-being of juveniles, therefore the best interest of the child shall be the paramount consideration when making decisions;

(ii) encourage and facilitate juveniles having a meaningful life in the community by rehabilitation, education, reintegration, and

proportionate and appropriate accountability to victims and society;

(b) the juvenile justice system shall-

(i) be separate from that for adults;

(ii) emphasize rehabilitation, education and reintegration;

(iii) ensure that a juvenile is subject to meaningful consequences proportionate to the offence and circumstances, recognising the juvenile's greater dependency and reduced level of maturity;

(iv) provide procedural protection to ensure that juveniles are treated fairly and humanely and their rights are protected;

(v) provide timely intervention that reinforces the link between the offending behaviour and its consequences;

(vi) inform and involve parents of juveniles of and in measures or proceedings;

(vii) ensure victims are provided with information about the proceedings and are given an opportunity to participate and be heard and wherever possible contribute to the rehabilitation and reintegration of the juveniles;

(c) application of measures taken against juveniles who commit offences shall-

(i) reinforce respect for societal values;

- (ii) ensure fair and proportionate accountability;
- (iii) encourage the repair of harm done to victims and the community;
- (iv) where appropriate, involve the parents, the extended family, the community and social or other agencies in the juvenile's rehabilitation, education and reintegration, and be prompt given a juvenile's perception of time;
- (v) respect gender, ethnic and cultural differences and respond to the needs of juveniles with special requirements; and
- (vi) resort to detention as a measure of last resort.

CRIMINAL CAPACITY

Criminal capacity.

4. (1) It shall be presumed that no child under the age of fourteen shall be capable of or guilty of committing an offence.

(2) Where a child is charged the Director of Public Prosecutions, the Prosecutor or the attorney-at-law representing the child shall request of the court that an evaluation of the child be done and the court shall order that the evaluation be conducted by a suitably qualified person at the expense of the State.

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

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

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

(6) If the presumption is rebutted the child shall be treated as a juvenile and dealt with in accordance with the provisions of this Act.

(7) If the presumption is not rebutted the court shall refer the child to the Director of the Childcare and Protection Agency to be dealt with under the Protection of Children Act and the Director of Public Prosecutions shall withdraw the charge.

Cap. 46:06

PART II

DIVERSION

PRINCIPLES AND OBJECTIVES

Principles.

5. (1) The following principles apply in this Part in addition to the principles set out in section 3-

(a) diversion is often the most appropriate and effective way to address juvenile crime;

(b) diversion allows for effective and timely interventions focused on correcting offending behaviour;

(c) diversion measures are presumed to be adequate to hold a juvenile accountable for his or her offence;

(d) diversion measures should be used if they are adequate to hold a juvenile accountable for his or her offending behaviour.

(2) If the use of diversionary measures is consistent with the principles set out in this section nothing in this Act precludes their use in respect of a juvenile who-

- (a) has previously been dealt with by the use of diversion; or
- (b) has previously been found guilty of an offence.

Objectives.

6. Diversion measures shall be designed to-

- (a) provide an effective and timely response to offending behaviour outside the bounds of judicial measures;
- (b) encourage juveniles to acknowledge and repair the harm caused to the victim and the community;
- (c) encourage families of juveniles including extended families where appropriate and the community to become involved in the design and implementation of those measures;
- (d) provide an opportunity for victims to participate in decisions related to the measures selected to receive reparation;
- (e) promote reconciliation between the juvenile and the victim;
- (f) respect the rights and freedoms of juveniles and be proportionate to the seriousness of the offence; and
- (g) prevent stigmatizing the juvenile and the adverse consequences that may flow from being subject to the criminal justice system.

Conditions.

7. Diversion measures shall-

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

Measures.

8. Diversion measures may include any one of the following measures or any

combination of a number of them that are not inconsistent with each other-

- (a) an oral or written apology to a specified person or institution;
- (b) placement by the court under the supervision and guidance of the Director of the Childcare and Protection Agency;
- (c) the issue by the Director of the Childcare and Protection Agency of a positive peer association directive requiring the juvenile to associate for a specified period with a specified person who the Director of the Childcare and Protection Agency has reason to believe can contribute to the positive behaviour of the juvenile;
- (d) referral by the court to counselling or therapy for a specified period;
- (e) compulsory attendance ordered by the court at a specified place for a specified vocational or educational purpose for a specified period;
- (f) restitution by the juvenile as ordered by the court of a specified object to a specified victim of an alleged offence where the object concerned may be returned or restored;
- (g) performance as directed by the court without remuneration of some service for the benefit of the community under the supervision or control of an organisation or institution; or
- (h) provision as ordered by the court to a specified victim of some service or compensation in an amount which the family of the juvenile can afford.

Development of
diversion measures.

9. The Director of Juvenile Justice may-

- (a) develop and maintain suitable diversion programmes; and
- (b) recognise as suitable diversion programmes, those offered by government departments, non-governmental organisations and the Juvenile Justice Committee.

Use of measures.

10. (1) A diversion measure may be used to deal with a juvenile alleged to

have committed an offence only if the juvenile cannot be adequately dealt with by a warning or referral mentioned in section 13 or 14 because of the seriousness of the offence, the nature and number of previous offences committed by the juvenile or any other aggravating circumstances.

(2) A diversion measure may only be used if-

(a) it is part of a programme of measures that may be authorised or recognised by the Director of Juvenile Justice under section 9;

(b) the person who is considering whether to use the diversionary measure is satisfied that it would be appropriate, having regard to the needs of the juvenile and the interests of society;

(c) the juvenile having been informed of the diversion measure, fully and freely consents to be subject to it;

(d) the juvenile has, before consenting to be subject to the diversion measure, been advised of the juvenile's right to be represented by counsel and been given a reasonable opportunity to consult with counsel or the juvenile's parents;

(e) the juvenile accepts responsibility for the act or omission that forms the basis of the offence that the juvenile is alleged to have committed;

(f) in the opinion of the Director of Public Prosecutions there is sufficient evidence to proceed with the prosecution of the offence; and

(g) the prosecution of the offence is not in any way barred by law.

(3) A diversion option may not be used in respect of a juvenile who-

(a) denies participation or involvement in the commission of the offence; or

(b) expresses the wish to have the offence allegedly committed dealt with by the court.

(4) Any admission, confession or statement accepting responsibility for a given act or omission that is made by a juvenile as a condition of being dealt with by diversion is inadmissible in evidence against the juvenile in civil or criminal proceedings.

(5) The use of a diversion measure in respect of a juvenile alleged to have committed an offence is not a bar to judicial proceedings under this Act, but if a charge is laid against the juvenile in respect of the offence-

(a) the court shall dismiss the charge if it is satisfied on a balance of probabilities that the juvenile has totally complied with the terms and conditions of the diversion measure; and

(b) the court may dismiss the charge if it is satisfied on a balance of probabilities that the juvenile has partially complied with the terms and conditions of the diversion measure and if, in the opinion of the court, prosecution of the charge would be unfair having regard to the circumstances and the juvenile's performance with respect to the diversion measure.

(6) Subject to subsection (5) and section 19, nothing in this section shall be construed as preventing any person from laying a charge, obtaining the issue or confirmation of any process or proceeding with the prosecution of any offence in accordance with law.

Notice to parent. 11. If a juvenile is dealt with by diversion, the person who administers the programme under which the measure is being applied, shall inform a parent of the juvenile in writing of the measure.

Victim's right to information. 12. If a juvenile is dealt with by a diversion measure, a police officer or the Director of Public Prosecutions, shall, on request, inform the victim of the identity of the juvenile and how the offence has been dealt with.

WARNINGS AND REFERRALS

Duty to warn juvenile or refer juvenile to a programme or agency. 13.(1) The Director of Public Prosecutions or a police officer shall, before starting judicial proceedings or taking any other measures under this Act against a juvenile alleged to have committed an offence, consider whether it would be sufficient, having regard to the principles set out in section 5, to take no further action, warn the juvenile, or, with the consent of the juvenile, refer the juvenile to a programme or agency in the community established or recognised by the Director of Juvenile Justice under section 9.

(2) The failure of the Director of Public Prosecutions or a police officer to consider the options set out in subsection (1) does not invalidate any subsequent charges against the juvenile for the offence.

Evidence of measures inadmissible. 14. Evidence that a juvenile has received a warning or referral mentioned in section 13 or that the Director of Public Prosecutions or a police officer has taken no further action in respect of an offence, and evidence of the offence, is inadmissible for the purpose of proving prior offending behaviour in any proceedings before a court in respect of the juvenile.

PART III

ORGANISATION OF JUVENILE JUSTICE SYSTEM

- Exclusive jurisdiction of court.
Cap. 1:01
15. Notwithstanding any other law but subject to the Constitution, a court has exclusive jurisdiction in respect of any offence alleged to have been committed by a person while the person was a juvenile, and that person shall be dealt with as provided for in this Act.
- Continuation of proceedings.
16. Diversion measures taken or judicial proceedings commenced under this Act against a juvenile may be continued under this Act after the juvenile attains the age of eighteen years.
- Aged- out juveniles.
17. (1) This Act applies to persons eighteen years old or older who are alleged to have committed an offence while a juvenile.
- (2) When a person is alleged to have committed an offence during a period that includes the date on which the person attained the age of eighteen years, the court has jurisdiction in respect of the offence and shall on finding the person guilty of the offence-
- (a) if it has been proven that the offence was committed before the person attained the age of eighteen years, order a sentence under this Act; or
 - (b) if it has been proven that the offence was committed after the person attained the age of eighteen years, sentence the person as an adult.

PART IV

PROCEEDINGS AGAINST JUVENILES

CONSENT TO PROSECUTE

- Pre-charge screening.
18. The Director of Public Prosecutions shall within three months of the

coming into force of this Act establish a programme of pre-charge screening in relation to offences listed in the Schedule that sets out the circumstances in which the consent of the Director of Public Prosecutions shall be obtained before a juvenile is charged.

Private prosecutions restricted.

19. Private prosecutions of juveniles shall not be conducted without the written consent of the Director of Public Prosecutions.

RIGHT TO COUNSEL

Right to counsel.

20. (1) A juvenile has the right to retain and instruct counsel without delay, and to exercise that right personally, at any stage of proceedings against the juvenile and before and during any consideration of whether, instead of starting or continuing judicial proceedings, to use a diversion measure.

(2) Every juvenile who is arrested or detained shall, on being arrested or detained, be advised without delay by the arresting officer or the officer in charge, as the case may be, of the right to retain and instruct counsel, and be given an opportunity to retain counsel.

(3) When a juvenile is not represented by counsel at any hearing or trial, review or other judicial proceedings under this Act the court before which the hearing, trial or review is held, shall advise the juvenile of the right to retain and instruct counsel and shall give the juvenile a reasonable opportunity to retain counsel.

(4) When a juvenile at a trial or at a hearing or review referred to in subsection (3) wishes to retain counsel but is unable to do so, the court before which the hearing, trial or review is held-

(a) shall, if there is a legal aid programme or an assistance programme available where the hearing, trial or review is held, refer the juvenile to that programme; or

(b) if no legal aid programme or assistance programme is

available or the juvenile is unable to retain counsel through the programme, may direct that the juvenile be represented by counsel.

(5) When a direction is made under subsection (4) (b), the court shall appoint counsel, or cause counsel to be appointed to represent the juvenile, the expense to be defrayed by the Registrar of the Supreme Court.

(6) When a juvenile is not represented by counsel at trial or at a hearing or review referred to in subsection (3), the court before which the proceedings are held may, on the request of the juvenile, allow the juvenile to be assisted by an adult whom the court considers to be suitable.

(7) If it appears to a court that the interests of a juvenile and the interests of a parent are in conflict or that it would be in the best interests of the juvenile to be represented by the juvenile own counsel, the court may allow the juvenile to be represented by counsel independent of the parent.

(8) A statement that a juvenile has the right to be represented by counsel shall be included in any-

- (a) summons issued to the juvenile;
- (b) warrant to arrest the juvenile;
- (c) recognizance entered into by the juvenile before a police officer; or
- (d) notice of a review of a sentence given to the juvenile.

(9) Subsections (4) to (8) do not apply to a person who is alleged to have committed an offence while a juvenile, if the person has attained the age of eighteen years at the time of the person's first appearance before a

court in respect of the offence; however, this does not restrict any rights that a person has under the law applicable to adults.

NOTICE TO PARENTS

Notice of arrest
or detention.

21. (1) Subject to subsection (3), if a juvenile is arrested and held in custody pending the juvenile's appearance in court, the arresting police officer at the time the juvenile is held shall, within twenty-four hours of the arrest, give or cause to be given to a parent of the juvenile, in writing, notice of the arrest stating the place where the juvenile is held and the reason for the arrest.

(2) Subject to subsection (3), if a summons is issued in respect of a juvenile, the person who issued the summons or if a juvenile is released on entering into a recognizance, the police officer who is releasing the juvenile, shall, as soon as possible, give or cause to be given to a parent of the juvenile notice in writing of the summons, or the recognizance.

(3) If the whereabouts of the parents of a juvenile are not known or it appears that no parent is available, a notice under this section may be given to an adult relative of the juvenile who is known to the juvenile and is likely to assist the juvenile or, if no such adult relative is available, to any other adult who is known to the juvenile and is likely to assist the juvenile.

(4) A notice under this section shall also be sent to the Director of the Childcare and Protection Agency.

(5) If doubt exists as to the person to whom a notice under this section may be given, a court may give directions as to the person to whom the notice shall be given, and a notice given in accordance with those directions is sufficient notice for the purposes of this section.

(6) Any notice under this section shall, in addition to any other requirements under this section, include-

- (a) the name of the juvenile in respect of whom it is given;
- (b) the charge against the juvenile, and the time and place of appearance; and
- (c) a statement that the juvenile has the right to be represented by counsel.

(7) Subject to subsections (8) and (9), a notice under this section shall be served personally.

(8) Subject to subsections (9) and (10), failure to give a notice in accordance with this section does not affect the validity of proceedings under this Act.

(9) Failure to give a notice under subsection (2) in accordance with this section in any case renders invalid any subsequent proceedings under this Act relating to the case unless-

- (a) a parent of the juvenile attends court with the juvenile; or
- (b) a court before which proceedings are held against the juvenile adjourns the proceedings and orders that the notice be given in the manner and to the persons that the court directs.

(10) Where there has been a failure to give a notice under subsection (1) or (3) in accordance with this section and none of the persons to whom the notice may be given attends court with the juvenile, a court before which proceedings are held against the juvenile may adjourn the proceedings and order that the notice be given in the manner and to the persons that the court directs.

(11) This section does not apply to a person who is alleged to have committed an offence while a juvenile, if the person has attained the age of eighteen years at the time of the person's first appearance before a court in respect of the offence.

Order requiring attendance of parent.

22. (1) If a parent does not attend proceedings held before a court, the court may, if in its opinion the presence of the parent is necessary or in the best interests of the juvenile, by order in writing require the parent to attend at any stage of the proceedings.

(2) A copy of the order shall be served by a police officer or bailiff or by a person designated by a court by delivering it personally to the parent to whom it is directed, unless the court authorises service by any other means.

(3) A parent who is ordered to attend a court under subsection (1) and who fails without reasonable excuse, the proof of which lies on the parent, to comply with the order commits an offence and is liable on summary conviction to a fine of thirty thousand dollars.

(4) If a parent who is ordered to attend a court under subsection (1) does not attend when required by the order or fails to remain in attendance as required and it is proved that a copy of the order was served on the parent, a court may issue a warrant to compel the attendance of the parent.

REFERRAL TO THE DIRECTOR OF THE CHILDCARE AND PROTECTION AGENCY

Referral of juvenile to the Director of the Childcare and Protection Agency.

23. In addition to any order that it is authorised to make, a court may, at any stage of proceedings against a juvenile, refer the juvenile to the Director of the Childcare and Protection Agency for assessment to determine whether the juvenile is in need of child welfare services.

Duty of police officer in relation to child.

24. (1) Subject to section 4 and subsection (2), where a police officer has reasonable grounds for believing that a child is responsible for an act or omission which but for the child's age would constitute an offence, the police officer shall arrange for the child to remain with the child's parents.

(2) Where it is not practicable for the child to remain with the child's parents the police officer shall arrange for the child to be given into the custody of the Director of the Childcare and Protection Agency.

(3) (a) Where a child is responsible for an act or omission which but for the child's age would constitute an offence, any person who aids, abets, counsels or procures the child in or in relation to that act or omission shall be guilty of that offence and be liable to be charged, tried and punished as a principal offender.

(b) Where the person charged under paragraph (a) is a juvenile the provisions of this Act shall apply.

PART V

DETENTION OF JUVENILES BEFORE SENTENCING

Taking of statements. 25.(1) Subject to subsection (2), a juvenile who has been arrested shall not be questioned, or asked to make a written statement, in relation to an offence in respect of which the juvenile has been arrested unless-

(a) the person questioning the juvenile or taking the statement has clearly explained to the juvenile in language appropriate to the juvenile's age and understanding that-

(i) the juvenile is under no obligation to make a statement;

(ii) any statement made by the juvenile may be used as evidence in proceedings against the juvenile; and

(iii) the juvenile has a right to consult with counsel and at least one of the juvenile's parents or another appropriate adult chosen by the juvenile, as long as that person is not a co-accused, or under investigation, in respect of the same offence;

(b) the juvenile is given a reasonable opportunity to consult with any of the persons mentioned at paragraph (a) (iii); and

(c) the juvenile is in the presence of at least one of the juvenile's parents;

and

(d) the juvenile, in the absence of the juvenile's parents, is in the presence of the appropriate adult consulted pursuant to paragraph (a) (iii) or another adult chosen by the juvenile except a police officer.

(2) Where the juvenile or the juvenile's parent requests legal representation, the juvenile shall not be asked to make a statement, either orally or in writing until a reasonable time not being less than eight hours for the attendance of counsel has elapsed.

Release from custody by police officer where juvenile arrested for offence not listed in the Schedule.

Schedule.

26. Subject to section 28, if a police officer arrests a juvenile with or without a warrant for an offence, other than those listed in the Schedule, the arresting officer shall, as soon as practicable-

(a) inform the Director of Public Prosecutions and the Director of the Childcare and Protection Agency of the arrest and the name, address and age of the juvenile and the circumstances under which the juvenile was arrested; and

(b) release the juvenile with the intention of compelling the juvenile's appearance by way of summons; or

(c) release the juvenile on the juvenile or the juvenile's parent or other adult, entering into a recognizance before the officer in charge or another police officer without deposit of money or other valuable security.

Release from custody by police officer where juvenile arrested for offence in Schedule.

Schedule.

27. Subject to section 28, where a juvenile who has been arrested with or without a warrant by a police officer is taken into custody for any offence listed in the Schedule, the arresting officer shall as soon as practicable and not being more than sixteen hours after the arrest-

(a) inform the Director of Public Prosecutions and the Director of the Childcare and Protection Agency of the arrest and the name, address and age of the juvenile and the circumstances under which the juvenile was arrested; and

(b) release the juvenile with the intention of compelling juvenile's

appearance by way of summons;

(c) release the juvenile on the juvenile or juvenile's parent or other adult, entering into a recognizance without deposit of money or other valuable security;

(d) release the juvenile on the juvenile or the juvenile's parent or other adult entering into a recognizance with one or more of the following conditions-

(i) to remain within a territorial jurisdiction specified in the recognizance;

(ii) to notify a police officer or another person specified in the recognizance of any change in the person's address, employment or occupation;

(iii) to abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the recognizance, or from going to a place specified in the recognizance, except in accordance with the conditions specified in the recognizance;

(iv) to deposit the juvenile's passport with the police officer or other person specified in the recognizance;

(v) to report at the times specified in the recognizance to a police officer or other person designated in the recognizance; or

(vi) to comply with any other condition specified in the recognizance that is considered necessary to ensure the safety and security of any victim of or witness to the offence; or

(e) to deliver the juvenile to a temporary holding facility established under this Act until the juvenile can be brought before a court.

Holding of juvenile
in custody.

28. A police officer shall not release a juvenile under section 26 or 27 if the police officer believes, on reasonable grounds that it is necessary in the public interest that the juvenile be held in custody having regard to all the

circumstances including the need to-

(i) prevent the continuation or repetition of the offence or the commission of another offence; or

(ii) ensure the safety and security of any victim of or witness to the offence or of the juvenile.

Contents of summons
or recognizance.

29. (1) A summons issued by a court or a recognizance entered into shall-

(a) set out the name of the juvenile;

(b) set out the substance of the offence that the juvenile is alleged to have committed; and

(c) require the juvenile to attend court at a time and place to be stated and to attend as required by the court in order to be dealt with according to law.

(2) A juvenile shall be requested to sign or mark in duplicate the juvenile's recognizance after its meaning has been explained to the juvenile and, whether or not the juvenile complies with that request, one of the duplicates shall be given to the juvenile, but if the juvenile fails or refuses to sign or mark the recognizance, the lack of the juvenile's signature or mark does not invalidate the recognizance.

(3) The issue of a recognizance or service of a summons may be proved by the oral evidence, given under oath, or by way of affidavit of the police officer who issued the recognizance or served the summons.

Failure of juvenile to
appear.

30. Where a juvenile who is required by a summons, or by recognizance to appear at a time and place stated therein does not appear at that time and place, a court may issue a warrant for the arrest of the juvenile.

Taking juvenile before
court.

31. A police officer who arrests a juvenile with or without a warrant for any offence and does not release the juvenile under this Act shall cause the

juvenile to be taken before a court to be dealt with according to law-

(a) where a court is available, without unreasonable delay, within a period of forty-eight hours after the juvenile has been arrested by or delivered to the police officer; and

(b) where a court is not available, within a period of forty-eight hours after the juvenile has been arrested by or delivered to the police officer, as soon as possible and in any event within seventy-two hours.

Detention not a substitute for social measures.

32. A court shall not order that a juvenile be held in custody after the completion of the juvenile's trial and prior to the juvenile's being sentenced as a substitute for appropriate child protection, mental health or other social measures including but not limited to recreation and education.

Detention presumed unnecessary.

33. (1) In considering whether the pre-sentence detention of a juvenile is necessary for the protection or safety of the public, a court shall presume that detention is not necessary if the juvenile could not on being found guilty, be committed to a sentence of detention under this Act.

(2) Notwithstanding subsection (1), where the prosecutor shows cause why the detention of the juvenile in custody is justified, the court may order that the juvenile be held at a temporary holding facility until he or she is dealt with according to this Act and shall make a record of the reasons for the making of the order.

Schedule

(3) Notwithstanding any provision of this section, where a juvenile is charged with an offence listed in the Schedule the court shall order that the juvenile be held at a temporary holding facility until the juvenile is dealt with according to this Act, unless the juvenile, having been given a reasonable opportunity to do so, shows cause why holding the juvenile is not justified, but where the court orders that the juvenile be released, the court shall make a record of the reasons for making the order.

(4) For the purposes of this section, the holding of a juvenile in a

temporary holding facility is only justified on the following grounds-

(a) where the detention is necessary to ensure the juvenile's attendance in court; or

(b) where the detention is necessary for the protection or safety of the juvenile or the public, including any victim of or witness to the offence, having regard to all the circumstances including any substantial likelihood that the juvenile will, if released from custody, commit a criminal offence.

Temporary holding facility.

34. (1) A juvenile who is brought before a court and not ordered to be released pending the juvenile's trial shall be held in any temporary holding facility for juveniles established under section 73 or designated under section 75 unless a court is satisfied that-

(a) having regard to the best interests of the juvenile, the juvenile cannot, having regard to the juvenile's own safety or the safety of others, be detained in a temporary holding facility for juveniles; or

(b) no temporary holding facility is available within a reasonable distance.

(2) Where paragraphs (a) and (b) of subsection (1) apply, the court shall place the juvenile in the care of the Director of the Childcare and Protection Agency or a responsible adult.

(3) A juvenile who is held in a temporary holding facility under subsection (1) may, in the course of being transferred from that place to the court or from the court to that place, be held under the supervision and control of a police officer.

(4) When a juvenile is held under subsection (1), the court may, on application of the Director of Public Prosecutions made at any time after the juvenile attains the age of eighteen years, after giving the juvenile an opportunity to be heard, order that the juvenile be temporarily held in a half-way house, if the court considers it to be in the best interests of the juvenile

or in the public interest.

(5) When a juvenile is eighteen years old or older at the time of the juvenile's temporary holding under subsection (1) begins, the juvenile shall be temporarily held in a place of detention for adults.

(6) A juvenile who is held in custody under subsection (1) may with leave of the court, during the period of holding, be transferred from one place of temporary holding for juveniles to another such place and prior to the transfer being effected, the parents of the juvenile or other adult and the Director of the Childcare and Protection Agency shall be notified.

Placement of juvenile
in care of an adult.

35. (1) A juvenile who has been charged may be placed into the care of an adult instead of being held in a temporary holding facility if a court is satisfied that-

(a) the juvenile would, but for this subsection, be held under section 33;

(b) the adult is willing and able to take care of and exercise control over the juvenile; and

(c) the juvenile is willing to be placed in the care of that adult.

(2) Prior to deciding whether to hold a juvenile, a court shall inquire as to the availability of an adult, and whether the juvenile is willing to be placed in that adult's care.

(3) A juvenile shall not be placed in the care of an adult under subsection (1) unless the adult undertakes in writing to take care of and to be responsible for the attendance of the juvenile in court when required and to comply with any other conditions that the court may specify.

(4) A juvenile, an adult in whose care a juvenile has been placed or any other person may apply for an order under subsection (5)(a) if-

(a) the adult in whose care the juvenile has been placed is no longer willing or able to take care of or exercise control over the juvenile; or

(b) it is, for any other reason, no longer appropriate that the

juvenile remain in the care of the adult with whom the juvenile has been placed.

(5) When a court is satisfied that a juvenile should not remain in the care of the adult the juvenile was placed under subsection (1), the court shall-

(a) make an order relieving the adult of the obligations undertaken under subsection (3); and

(b) inquire as to the availability of another adult to care of the juvenile and if there is no such adult the court shall make any other appropriate order pursuant to the provisions of this Act.

APPEARANCE

Appearance before court.

36. (1) A juvenile against whom a charge is laid shall appear before a court and the court shall cause the charge to be read to the juvenile.

(2) When a juvenile is not represented by counsel, the court, before accepting a plea, shall-

(a) satisfy itself that the juvenile understands the charge; and

(b) explain that the juvenile may plead guilty or not guilty to the charge.

(3) If the court is not satisfied that a juvenile understands the matters set out in subsection (2), the court shall direct that the juvenile be represented by counsel.

(4) When a direction is made under subsection (3), section 21 (4), (5) and (9) apply with any necessary modifications.

ADJUDICATION

When a juvenile pleads guilty or not guilty.

37. (1) If a juvenile charged with an offence pleads guilty and the court is satisfied that the facts support the charge, the court shall find the juvenile guilty of the offence.

(2) If a juvenile charged with an offence pleads not guilty to the offence or pleads guilty but the court is not satisfied that the facts support the charge, the court shall proceed with the trial and shall, after considering the matter, find the juvenile guilty or not guilty.

PART VI

SENTENCING

Purpose and principles of sentencing and factors to consider when sentencing.

38. (1) The purpose of sentencing is to hold a juvenile accountable for an offence and to promote the juvenile's rehabilitation, education and reintegration into society.

(2) A court that orders a sentence shall determine the sentence in accordance with the principles set out in section 3 and the following principles-

(a) the sentence shall not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;

(b) the sentence shall be proportionate to the seriousness of the offence and the degree of responsibility of the juvenile for that offence;

(c) all available diversion measures under Part II shall be considered in deciding whether or not to order a custodial sentence; and

(d) subject to paragraph (b), the sentence shall-

(i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1);

(ii) be the one that is most likely to educate and rehabilitate the juvenile and reintegrate the juvenile into society; and

(iii) promote a sense of responsibility in the juvenile and an acknowledgement of the consequences of the juvenile's action.

(3) In determining a sentence, the court shall take into account-

- (a) the degree of participation by the juvenile in the commission of the offence;
- (b) the harm done, if any, to victims and whether it was intentional or reasonably foreseeable;
- (c) any reparation made by the juvenile to the victim or the community;
- (d) the time spent in custody by the juvenile as a result of the offence;
- (e) previous findings of guilt of the juvenile; and
- (f) any other aggravating and mitigating circumstances related to the juvenile or the offence that are relevant to the purpose and principles set out in this section.

(4) Where a juvenile has been found guilty of the offence of murder the court shall not pronounce or record a sentence of death against the juvenile but the Court shall sentence the juvenile to be held at a secure residential facility during the Court's pleasure.

(5) The trial Judge shall state in open Court what the Judge considers to be the minimum time for which the juvenile shall be held in custody and the reasons for the Judge's decision.

- (6) (a) A sentence to be served during the Court's pleasure shall be reviewed by the Judge who ordered the sentence at intervals not exceeding three years which intervals shall be fixed by the Judge

who ordered sentence.

(b) Where the Judge who ordered the sentence is not available the Chief Justice shall assign another Judge to review the sentence.

(7) For the purposes of a review under this section the Court shall be provided with and have regard to the following-

(i) a full report on the juvenile from the Chief Probation Officer addressing the conduct of the juvenile while being held pursuant to subsection (4);

(ii) the response of the juvenile to the punishment and any counselling or rehabilitative programmes;

(iii) the attitude of the juvenile to the offence including remorse;

(iv) an up-to-date medical report from a Government Medical Officer; and

(v) any other information derived from the record of the case or otherwise as the Court may require.

(8) Subsection (2) (c) and (d) (i) shall not apply to the sentencing of a juvenile who has been found guilty of the offence of murder.

Restrictions on custody.

39. (1) A court shall not commit a juvenile to custody under sections 43 and 44 unless-

(a) there are no reasonable alternatives to custody;

(b) the juvenile has committed a serious or violent offence;

(c) the juvenile has failed to comply with a non-custodial sentence;

(d) the juvenile has a previous record of guilt;

(e) the aggravating circumstances of the offence are such that the

imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38.

(2) At the time of sentencing the court shall not use custody as a substitute for appropriate child protection, mental health or other social measures including but not limited to recreation and education.

(3) Before ordering a custodial sentence under sections 43 and 44, a court shall order the Director of the Childcare and Protection Agency to prepare and present a pre-sentence report and shall consider that report and any sentencing proposal made by or on behalf of the juvenile.

PRE-SENTENCE REPORT

Contents of pre-sentence report.

40. (1) A pre-sentence report made in respect of a juvenile shall, subject to subsection (2), be in writing and shall include the following, to the extent that it is relevant to the purpose and principles of sentencing set out in section 38 and to the restrictions on custody set out in section 39-

(a) the results of an interview with the juvenile, the juvenile's parents and members of the juvenile's extended family;

(b) the results of an interview with the victim in the case, if applicable;

(c) any information that is applicable to the case, including-

(i) the age, maturity, character, behaviour and attitude of the juvenile and the juvenile's willingness to make amends;

(ii) any plans put forward by the juvenile to change the juvenile's conduct or to participate in activities or undertake measures to improve himself or herself;

(iii) subject to section 103(2), the history of previous findings of delinquency or previous findings of guilt for offences under the Juvenile Offenders Act, or under this Act or any other law, the history of community or other

Cap. 10:03

services rendered to the juvenile with respect to those findings and the response of the juvenile to previous sentences or dispositions and to services rendered to the juvenile;

(iv) subject to section 103(2), the history of diversion measures used to deal with the juvenile and the response of the juvenile to those measures;

(v) the availability and appropriateness of community services and facilities for juveniles and the willingness of the juvenile to utilize those services or facilities;

(vi) the relationship between the juvenile and the juvenile's parents and extended family and the degree of control and influence they may have over the juvenile; and

(vii) the school attendance and performance record or the employment record of the juvenile;

(d) any information that may assist the court in determining whether under section 39 there is an alternative to custody; and

(e) any other information that the Director of the Childcare and Protection Agency considers relevant.

(2) If a pre-sentence report cannot reasonably be committed to writing, it may, in urgent circumstances with leave of the court, be submitted orally and as soon as practicable the report shall be reduced into writing and filed with the court.

(3) A pre-sentence report shall form part of the record of the case in respect of which it was ordered.

(4) When a pre-sentence report is submitted to the court in writing, the court shall, cause a copy of the report to be given to-

(i) the juvenile;

(ii) any parent of the juvenile;

(iii) any adult assisting the juvenile; or

- (iv) any counsel representing the juvenile; and
- (v) the prosecutor.

(5) When a pre-sentence report is submitted to a court, the juvenile, any parent of the juvenile, the juvenile's counsel or the adult assisting the juvenile and the prosecutor shall, on application to the court, be given the opportunity to cross-examine the person who made the report.

(6) When a pre-sentence report made in respect of a juvenile is submitted to a court, the court shall, on request, cause a certified copy or a transcript of the report to be supplied to any court that is dealing with a matter relating to the juvenile.

(7) The Director of the Childcare and Protection Agency who submits a pre-sentence report to a court may make all or part of the report available to any person in whose custody or under whose supervision the juvenile is placed or to any other person who is directly assisting in the care or treatment of the juvenile.

(8) A statement made by a juvenile in the course of the preparation of a pre-sentence report in respect of that juvenile is inadmissible in evidence against any juvenile in any other proceedings.

SENTENCES

Exemption from imprisonment.

41. A child or juvenile shall not be sentenced to imprisonment.

Mode of dealing with juvenile found guilty.

42. Where a juvenile is found guilty of an offence under any law the finding of guilt shall not be recorded as a conviction.

Sentences if found guilty.

43. Subject to section 44, when a court finds a juvenile guilty of an offence and is ordering a sentence, the court shall make any one or more of the following orders that are not inconsistent with each other on such terms and conditions that the court deems necessary-

- (a) reprimand the juvenile;
- (b) order that the juvenile be discharged;

- (c) require the juvenile to report to and be supervised by the Chief Probation Officer;
- (d) commit the juvenile to the care of a relative or other adult;
- (e) if the juvenile is employed, order the juvenile to pay a fine;
- (f) order the parent of the juvenile to pay a fine;
- (g) if the juvenile is employed, order the juvenile to pay compensation for any loss or damage suffered or injury sustained arising from the commission of the offence, but no order shall be made for general damages;
- (h) order the juvenile to make restitution of any property obtained as a result of the commission of the offence;
- (i) order the juvenile to perform community service and to report to and be supervised by a probation officer or a person designated by the court;
- (j) place the juvenile on probation in accordance with sections 45 and 46 for a specified period not exceeding two years;
- (k) make a custody and supervision order, ordering that a period be served in custody in an open residential facility, and that a second period which is one half as long as the first, be served under supervision in the community subject to conditions, the total of the periods not exceeding two years from the date of the coming into force of the order;
- (l) make a deferred custody and supervision order that is for a specified period not exceeding six months, subject to any conditions set out in sections 45 and 46; or
- (m) order that the juvenile complies with any other reasonable and ancillary conditions that the court considers appropriate.

Sentences for offences in Schedule.

Schedule.

44. Subject to the provisions of section 38 (4) to (8), when a court finds a juvenile guilty of any of the offences listed in the Schedule, and is ordering a sentence, the court shall make any one of the following orders or any number of them that is not inconsistent with each other and, may make any other of

the orders set out in section 43-

- (a) place the juvenile on probation in accordance with sections 45 and 46 for a specified period not exceeding three years;
- (b) make a custody order placing the juvenile in an open residential facility for a specified period not exceeding three years;
- (c) commit the juvenile to custody in an open or secure residential facility provided for under this Act for a period not exceeding five years from the date of the coming into force of the order;
- (d) make a custody and supervision order with respect to the juvenile, ordering that a period be served in custody in an open or secure residential facility and that a second period, which is one half as long as the first, be served under supervision in the community subject to conditions, the total of the periods not exceeding five years from the date of the coming into force of the order;
- (e) make a deferred custody and supervision order that is for a specified period not exceeding three years, subject to any conditions set out in sections 45 and 46;
- (f) make a supervision order that is for a specified period not exceeding three years, subject to any conditions set out in sections 45 and 46;
- (g) make a custody and supervision order with respect to the juvenile ordering that a period be served in custody in an open residential facility and that a second period which is one half as long as the first, be served under supervision in the community subject to conditions, the total of the periods not to exceed three years from the date of the coming into force of the order; or
- (h) make an order that the juvenile complies with any other reasonable and ancillary conditions.

Conditions of
probation and
supervision orders.

45. The court shall prescribe as conditions of any probation or supervision order, that the juvenile shall keep the peace and be of good behaviour.

Additional conditions of probation and supervision orders.

46. A court may prescribe, as conditions of any probation or supervision order, that a juvenile do one or more of the following-

(a) report to and be under the supervision of the Chief Probation Officer or a person designated by the court;

(b) notify the Chief Probation Officer or person designated by the court of any change of address or any change in the juvenile's place of employment, education or training;

(c) remain within the territorial jurisdiction of Guyana, unless the juvenile obtains the permission of the court to leave the jurisdiction;

(d) make reasonable efforts to obtain and maintain suitable employment;

(e) attend school or any other place of learning, training or recreation that is appropriate, if the court is satisfied that a suitable programme for the juvenile is available there;

(f) reside with a parent, or any other adult who is willing to provide for the care and maintenance of the juvenile;

(g) reside at a place that the Chief Probation Officer may specify;

(h) advise the Chief Probation Officer or the person designated by the court immediately of any change-

(i) in the juvenile's address; or

(ii) in the juvenile's family or financial situation, that may reasonably be expected to affect the juvenile's ability to comply with the conditions of the sentence;
and

(iii) comply with any other conditions set out in the

order.

Pre-conditions to making compensation orders.

47. (1) An order shall not be made under section 43(g) or (h) unless the court has secured the consent of the person to be compensated.

(2) The court may consider any representations made by the person who would be compensated or to whom restitution or payment would be made.

(3) The court shall cause notice of the terms of the order to be given to the person who is to be compensated or to whom restitution or payment is to be made.

Restrictions on community service.

48. (1) An order shall not be made under section 44 (i) to perform community service unless the court is satisfied that-

(a) the order does not interfere with the normal hours of work or education of the juvenile;

(b) those services can be completed in two hundred and forty hours or less and within twelve months after the date of the order;

(c) the community service to be performed is part of a programme that is approved by the Director of Juvenile Justice ; and

(d) the organisation for whom the community service is to be performed has agreed to its performance.

(2) A court may, on application by or on behalf of the juvenile in respect of whom a sentence has been ordered under section 43 (g), (h) or (i) allow further time for the completion of the sentence subject to any conditions it deems appropriate.

Order to be read and explained to the juvenile.

49. (1) A court that makes an order under section 43 (g), (h), (i) or (j), or any order subject to the conditions under sections 45 and 46 shall-

(a) cause the order to be read by or to the juvenile;

(b) explain or cause to be explained to the juvenile the purpose and effect of the order, and confirm that the juvenile understands it; and

(c) cause a copy of the order to be given to the juvenile, to any parent of the juvenile or adult assisting the juvenile at the sentencing and the Chief Probation Officer.

(2) After the order has been read and explained under subsection (1), the juvenile shall endorse on the order an acknowledgement by signature or mark that the juvenile has received a copy of the order and that it was explained.

(3) The failure of the juvenile to endorse the order or of the juvenile or the juvenile's parent or the adult assisting the juvenile to receive a copy of the order does not affect the validity of the order.

(4) An order made under section 43 (g),(h),(i) or (j) comes into force-

(a) on the date on which it is made; or

(b) if a juvenile receives a sentence that includes a period of continuous custody and supervision, at the end of the period of custody and supervision unless the juvenile or the juvenile's parent or adult assisting the juvenile is able to comply with the said order before the end of such custody or supervision.

Coming into force
of a sentence.

50. A sentence comes into force on the date on which it is ordered but the court may order that any terms and conditions of the sentence are to be complied with on any later date that the court specifies.

Consecutive sentences.

51. A court that sentences a juvenile may order that the sentence be served consecutively if the juvenile-

(a) has been sentenced for another offence; or

(b) is found guilty of more than one offence.

Duration of sentences imposed at the same time.

52. Subject to section 38 (4) to (8), no sentence or combination of sentences ordered at the same time for a single offence or with respect to different offences shall continue in force for more than five years.

Duration of sentences imposed at different times.

53. If a sentence is ordered in respect of an offence committed by a juvenile after the commencement of, but before the completion of, any sentence ordered on the juvenile-

(a) the sentence may be served consecutively to the sentences ordered in respect of the previous offence; and

(b) the combined duration of all the sentences may exceed five years.

Sentence continues when juvenile becomes an adult.

54. A sentence ordered on a juvenile continues in accordance with its terms after the juvenile becomes an adult.

Supervision inoperative when additional custodial sentence ordered.

55. If a juvenile has begun to serve a portion of a sentence ordered under section 43 (j), (k), or (l) or section 44 (a), (b), (d), (e) or (f) in the community subject to conditions under sections 45 and 46 at the time an additional custodial sentence is ordered under this Act, the probation, deferment of custody, serving a portion of the sentence in the community under supervision, shall become inoperative and the juvenile shall be committed to custody until the end of the portion of the sentence.

Reasons for the sentence.

56. When a court orders a sentence, it shall record reasons for the sentence and shall, on request, give or cause to be given a copy of the sentence and the reasons to the juvenile, the juvenile's counsel, a parent of the juvenile or an adult assisting the juvenile, the Director of Juvenile Justice and the Chief Probation Officer.

Warrant of committal and custody during transfer.

57. (1) When a juvenile is committed to custody, the court shall issue or cause to be issued a warrant of committal.

(2) A juvenile who is committed to custody may, in the course of being transferred to and from custody and the court, be held under the supervision and control of a police officer or in any temporary holding facility

established under section 73(c) or designated under section 75.

(3) Section 34(4) applies in respect of a juvenile held under the supervision and control of a police officer pursuant to subsection (2).

Court to specify
custody level.

58. When making a custodial order the court shall specify the level of custody appropriate for the juvenile, after taking into account the following factors and any other provision of this Act-

(a) that the appropriate level of custody for the juvenile is the one that is the least restrictive to the juvenile, having regard to-

(i) the seriousness of the offence in respect of which the juvenile was committed to custody and the circumstances in which that offence was committed;

(ii) the needs and circumstances of the juvenile, including proximity to family, school, employment and support services; and

(iii) the safety of the juvenile and other juveniles in custody;

(b) that the level of custody should allow for the best possible match of programmes to the juvenile's needs and behaviour, having regard to the findings of any assessment in respect of the juvenile; and

(c) the likelihood of the juvenile escaping.

Placement of juveniles.

59. (1) The Director of Juvenile Justice shall –

(a) place the juvenile in a facility that contains the level of custody identified by the court; and

(b) cause a written notice of the facility in which the juvenile is placed to be given to the juvenile, a parent of the juvenile or an adult assisting the

juvenile.

Exception if juvenile is eighteen years or older.

60. Notwithstanding section 41, a juvenile who is eighteen years old or older at the time a custodial sentence is ordered may be committed to a correctional facility for adults to serve the sentence ordered.

Transfer to adult facility.

61. (1) When a juvenile is committed to custody in a facility for juveniles under this Part, the court may, on an application of the Director of Juvenile Justice made before the juvenile attains the age of eighteen years, direct that the juvenile serves the remainder of the sentence in a correctional facility for adults, if -

(a) after giving the juvenile the opportunity to be heard, the court considers it to be in the best interests of the juvenile or in the public interest; and

(b) at the time of the application, that remainder is twelve months or more.

(2) If the court makes a direction under subsection (1), any law applicable in respect of adult prisoners and offenders, applies in respect of the juvenile except to the extent that they conflict with Part IX (publication, records and information) of this Act, which Part continues to apply to the juvenile.

Documents to be sent to Principal and Chief Probation Officer.

62. (1) When a sentence is ordered committing a juvenile to custody, the clerk of court shall forward a copy of the pre-sentence report, the sentencing order and reasons for sentence together with the committal order to the Principal of the facility and to the Chief Probation Officer.

(2) When a sentence is ordered committing a juvenile to custody, the Chief Probation Officer shall designate a probation officer to work with the juvenile to plan for the juvenile reintegration into the community, including the preparation and implementation of a reintegration plan.

(3) When a portion of a juvenile's sentence is served in the community, a probation officer shall supervise the juvenile by providing support and assistance to the juvenile in the implementation of a reintegration plan.

PART VII

REVIEW OF SENTENCES

Optional review of non-custodial sentences and grounds for review.

63. (1) When a court has ordered a non-custodial sentence the court shall, on the application of the juvenile, the juvenile's parents or the adult assisting the juvenile or the Director of Juvenile Justice , made at any time after six months after the date of the sentence or with leave of the court, at any earlier time, review the sentence if the court is satisfied of any of the grounds for review under subsection (2).

(2) A review of a sentence may be made under this section if-

- (a) the juvenile is unable to comply with or is experiencing serious difficulty in complying with the terms of the sentence;
- (b) the juvenile has contravened a condition of the juvenile's sentence without reasonable excuse;
- (c) the terms of the sentence are adversely affecting the opportunities available to the juvenile to obtain services, education or employment; or
- (d) any other reasonable ground.

(3)The court may, before reviewing a sentence ordered, require the Chief Probation Officer to cause to be prepared and to submit to the court, a progress report on the performance of the juvenile since the sentence took effect.

(4) The progress report shall include any information relating to the personal and family history and present environment of the juvenile.

(5) The progress report shall be in writing unless it cannot reasonably

be committed to writing, in which case it may, with leave of the court, be submitted orally in court and as soon as practicable thereafter the report shall be reduced into writing and submitted to the court.

(6) Section 40 (5) to (8) apply with any modifications the circumstances require, in respect of any progress report required under subsection (3).

(7) When a review of a sentence ordered is requested under subsection (1), the person requesting the review shall cause notice of the date of hearing of the application of the review to be served on the juvenile, a parent of the juvenile or an adult assisting the juvenile, the Director of Juvenile Justice , the Director of the Childcare and Protection Agency and the Director of Public Prosecutions in not less than five working days before the date of hearing.

(8) Notice given to the juvenile and a parent of or adult assisting the juvenile shall include a statement that the juvenile has the right to legal representation.

(9) Notice may be served personally or by registered post.

(10) If notice is not given, the court may-

(a) adjourn the proceedings and order that the notice be given in the manner prescribed by this section; or

(b) dispense with the notice, having regard to the circumstances.

(11) The court may, by summons or warrant, compel a juvenile in respect of whom a review is to be made under this section to appear before the court for the purposes of the review.

(12) When a court reviews a sentence ordered, it may, after giving the juvenile, a parent of or adult assisting the juvenile, the Director of Public

Prosecutions, the Director of Juvenile Justice and the Chief Probation Officer an opportunity to be heard-

- (a) confirm the sentence;
- (b) terminate the sentence and discharge the juvenile from any further obligation to comply with the sentence; or
- (c) vary the sentence or order any new sentence under section 43, other than a committal to custody, for any period of time, not exceeding the remainder of the period of the earlier sentence.

(13) A court may extend the time within which a sentence ordered under section 43 (g), (h) or (i) is to be complied with by a juvenile if the court is satisfied that the juvenile requires more time to comply with the sentence, but in no case shall the extension be for a period of time that expires more than twelve months after the date the sentence would otherwise have expired.

(14) When a court makes an order under subsection (13), it shall record the reasons for making the order and shall give, or cause to be given to the juvenile, the counsel and a parent of or adult assisting the juvenile, the Director of Juvenile Justice , the Chief Probation Officer and the Director of Public Prosecutions-

- (a) a copy of the order; and
- (b) on request, a transcript or copy of the reasons for the order.

Breach of an order.

64. (1) If the Director of Public Prosecutions, the Director of Juvenile Justice or the Chief Probation Officer has reasonable grounds to believe that a juvenile has breached or is about to breach a condition of an order made under section 43 (j), (k) or (l) the Director of Public Prosecutions, the Director of Juvenile Justice or the Chief Probation Officer may apply to the court for an order that the juvenile be placed in custody for a period not

exceeding the remainder of the sentence.

(2) After giving the juvenile an opportunity to be heard, the court may, if satisfied on reasonable grounds that the juvenile has breached or was about to breach a condition of an order made under section 43 (j), (k) or (l)-

(a) confirm the sentence;

(b) vary the conditions applicable to the juvenile's probation or supervision in the community or order new conditions; or

(c) order that the juvenile serve in custody, any period of time, not exceeding the remainder of the sentence that the juvenile is then serving.

(3) In making its decision under subsection (2), the court shall consider the length of time the juvenile has been subject to the order, whether the juvenile has previously breached it, and the nature of the breach, if any.

(4) When a court makes an order under subsection (2), it shall record its reasons in writing and shall give, or cause to be given to the juvenile, the counsel and a parent of or adult assisting the juvenile, the Director of Juvenile Justice , the Chief Probation Officer and the Director of Public Prosecutions-

(a) a copy of the order; and

(b) on request, a transcript or copy of the reasons for the order.

(5) The court may, before reviewing a sentence ordered, require the Chief Probation Officer to cause to be prepared and to submit to the court, a progress report on the performance of the juvenile since the date that the sentence took effect.

(6) Section 40 (4) to (8) apply with any modifications that the

circumstances require, in respect of a review under this section.

(7) The court may compel the juvenile by summons or warrant to appear before the court for the purposes of the review.

Application for
continuation of
custody.

65. (1) Within a reasonable time before the expiry of the custodial portion of a sentence, the Director of Public Prosecutions or the Director of Juvenile Justice may apply to the court for an order that the custodial portion of the sentence be extended for a period not exceeding the remainder of the sentence.

(2) If the hearing of an application under subsection (1) cannot be completed before the expiry of the custodial portion of the sentence, the court may order that the juvenile remain in custody pending the determination of the application if the court is satisfied that the application was made in a reasonable time, and that there are compelling reasons for keeping the juvenile in custody.

(3) The court may, after giving the applicant, the juvenile and a parent of the juvenile or adult assisting the juvenile an opportunity to be heard, order that the juvenile remain in custody for a period not exceeding the remainder of the sentence, if it is satisfied that there are reasonable grounds to believe that-

(a) the juvenile is likely to commit a serious violent offence before the expiry of the sentence the juvenile is then serving; and

(b) the conditions that would be ordered in respect of the juvenile if the juvenile were to serve a portion of the sentence in the community would not be adequate to prevent the commission of the offence.

(4) For the purpose of determining an application under subsection (1),

the court shall take into consideration any factor that is relevant to the case of the juvenile, including-

(a) evidence of a pattern of persistent violent behaviour and, in particular-

(i) the number of offences committed by the juvenile that caused physical or psychological harm to any other person;

(ii) the juvenile's difficulties in controlling violent impulses to the point of endangering the safety of any other person;

(iii) the use of weapons in the commission of any offence;

(iv) explicit threats of violence;

(v) behaviour of a brutal nature associated with the commission of any offence; and

(vi) indifference on the part of the juvenile as to the reasonably foreseeable consequences, to other persons, of the juvenile's behaviour;

(b) psychiatric or psychological evidence that a physical or mental illness or disorder of the juvenile is of such a nature that the juvenile is likely to commit, before the expiry of the sentence, a serious violent offence;

(c) reliable information that satisfies the court that the juvenile is planning to commit, before the expiry of the sentence, a serious violent offence;

(d) the availability of supervision programmes in the community that would offer adequate protection to the public from the risk that the juvenile might otherwise present until the expiry of the sentence;

(e) whether the juvenile is more likely to reoffend if the juvenile serves the sentence entirely in custody without the benefits of serving a portion of the sentence in the community under supervision; and

(f) evidence of a pattern of committing violent offences while the juvenile was serving a portion of a juvenile's sentence in the community under supervision.

(5) If an application under this section is refused, the court shall proceed as though the juvenile had been brought before the court as required under section 66(1).

Setting of conditions of custody and supervision order.

66. (1) Where a juvenile is held in custody pursuant to a custody and supervision order under sections 43(k), 44(d) and (g) or continuation of custody order under section 65-

(a) the Director of Juvenile Justice shall cause the juvenile to be brought before the court at least one month before the expiry of the custodial portion of the sentence; and

(b) the court shall, after giving the juvenile an opportunity to be heard, set the conditions of the juvenile's supervision.

(2) The court may include in the order made under subsection (1) any of the conditions set out in sections 45 and 46.

(3) When the Director of Juvenile Justice is required under subsection (1) to cause a juvenile to be brought before the court but is unable to do so, the Director of Juvenile Justice shall so advise the court and the court shall,

set interim conditions for the juvenile's supervision.

(4) The Director of Juvenile Justice shall cause the juvenile to be brought to the court as soon as practicable after an order has been made under subsection (3) and the court shall then set the final condition of the juvenile's supervision.

(5) For the purpose of setting conditions under this section, the court may require the Chief Probation Officer to cause to be prepared, and to submit to the court, a report setting out any information that may be of assistance to the court.

(6) Section 63(4) to (11) applies with any modification that the circumstances require, in respect of any proceedings held under subsection (1).

Annual review of
custodial sentences.

67. (1) When a juvenile is committed to custody pursuant to more than one sentence under sections 43 (k) and 44(b), (c), (d) or (g) for a period exceeding one year, the Director of Juvenile Justice shall cause the juvenile to be brought before the court without delay at the end of one year from the date of the most recent sentence ordered and at the end of every subsequent year from that date, and the court shall review the sentence.

(2) The juvenile may be brought before the court at any other time, with leave of the court.

(3) The following are grounds for review of a sentence under this section-

(a) the juvenile has made sufficient progress to justify a change in the sentence;

(b) the circumstances that led to the sentence have changed materially;

(c) that new services or programmes are available that were not available at the time of the sentence;

(d) on the recommendation of the Director of Juvenile Justice or the Chief Probation Officer that the needs of the juvenile and the interests of society would be better served by releasing the juvenile from custody and placing the juvenile under supervision;

(e) the opportunities for rehabilitation are now greater in the community; or

(f) any other ground.

(4) No review of a sentence in respect of which an appeal has been taken shall be made until all proceedings in respect of any such appeal have been completed.

(5) When the Director of Juvenile Justice is required under subsection (1) to cause a juvenile to be brought before the court and fails to do so, the court may, on an application made by the juvenile, the juvenile's parent or adult assisting the juvenile or the Director of Public Prosecutions, or on its own motion, order the Director of Juvenile Justice to cause the juvenile to be brought before the court.

(6) The court may, before reviewing a sentence, require the Chief Probation Officer to cause to be prepared, and to submit to the court, a progress report on the performance of the juvenile since the sentence took effect.

(7) Section 63(4) to (11) apply, with any modifications that the circumstances require, in respect of any proceedings held under subsection (1).

(8) When a court reviews a sentence, it may, after giving the juvenile, a

parent of or adult assisting the juvenile, the Director of Public Prosecutions and the Director of Juvenile Justice an opportunity to be heard, having regard to the needs of the juvenile and the interests of society-

(a) confirm the sentence; or

(b) release the juvenile from custody and place the juvenile under conditional supervision for a period not exceeding the remainder of the sentence having regard to the recommendations of the Director of Juvenile Justice

When a juvenile reaches eighteen years.

68. No juvenile shall remain in a juvenile facility under this Part after the juvenile attains the age of eighteen years, unless the court is satisfied that remaining in the facility would be in the best interests of the juvenile and would not jeopardize the safety of others.

No appeal from review.

69. No appeal lies from a review of a sentence.

EFFECT OF TERMINATION OF SENTENCE

Effect of absolute discharge or termination of sentence.

70. (1) If a juvenile is found guilty of an offence, and a court directs under section 43(b) that the juvenile be discharged absolutely, or the sentence has ceased to have effect, the juvenile is deemed not to have been found guilty of the offence except that-

(a) the juvenile may plead autrefois convict in respect of any subsequent charge relating to the offence;

(b) a court may consider the finding of guilt in considering an application for bail or in considering what other sentence to order for any other offence; and

(c) a Parole Board may consider the finding of guilt in considering an application for conditional release or pardon.

(2) Notwithstanding subsection (1), where there has been an absolute discharge under section 43(b) or where the sentence has ceased to have effect, any disqualification to which the juvenile is subject under any Act of Parliament by reason of a finding of guilt in respect of the offence is removed.

(3) At the conclusion of the applicable period set out in section 103(2) a juvenile who has served a sentence under this Act shall be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for or sentenced for, the offence or offences of which the juvenile was found guilty and shall be treated as a person rehabilitated within the meaning of the Rehabilitation of Offenders Act.

Cap. 11:07

PART VIII

CUSTODY, SUPERVISION AND REHABILITATION

Purpose and principles of juvenile custody and supervision system.

71. (1) The purpose of the juvenile custody and supervision system is to contribute to the protection of society by-

(a) carrying out sentences ordered by the court through the safe, fair and humane custody and supervision of juveniles;

(b) assisting juveniles to be rehabilitated, educated and reintegrated into the community as law-abiding citizens, by providing effective programmes to juveniles in custody and while under supervision in the community;

(c) recognising that, because of their high vulnerability, juveniles deprived of their liberty require special attention and protection and that their rights and well-being should be guaranteed during and after the period when they are deprived of their liberty.

(2) In addition to the principles set out in section 3, the following principles are to be used in achieving that purpose-

(a) that the least restrictive measures consistent with the protection of the public, of personnel working with juveniles and of juveniles be used;

(b) that juveniles sentenced to custody retain the rights of other juveniles, except the rights that are necessarily removed or restricted as a consequence of a sentence under this Act or another Act of Parliament;

(c) that juveniles sentenced to custody have the right to regular contact with their parents or other family members;

(d) that the juveniles custody and supervision system facilitate the involvement of the families of juveniles and members of the public;

(e) that custody and supervision decisions be made in a forthright, fair and timely manner, and that juveniles have access to an effective and timely review procedure;

(f) that juveniles continue education or training.

Custody separate from adults.

72. Subject to sections 34(5) and (6), 60 and 61, a juvenile who is committed to custody shall be held separate and apart from any adult who is detained or

held in custody.

Establishment of facilities for custody. 73. The Minister shall -

(a) establish and maintain secure residential facilities suitable for the custody, education and rehabilitation of juveniles who are sentenced by the court under section 44, to serve a period in custody and rehabilitation;

(b) establish and maintain open residential facilities suitable for the-

(i) custody, education and rehabilitation of juveniles who are sentenced by the court under sections 43 and 44 to serve a period in custody and rehabilitation; and

(ii) care, custody, education and control of children and juveniles recommended for placement or rehabilitation by the Director of the Childcare and Protection Agency; and

(c) establish and maintain temporary holding facilities and half-way houses for the reception, care, education and custody of-

(i) juveniles who are awaiting court appearances and sentencing;

(ii) juveniles who have been committed by the court to an open or secure residential facility but not yet escorted there;

(iii) juveniles who have completed the custodial portion of their sentence and are awaiting reintegration with their families or the community;

(iv) juveniles who are otherwise eligible for reintegration; and

(v) any other category of juveniles that the Juvenile Justice Committee may determine.

Saving of existing facilities.

[8 of 1907]

[4 of 1972]

[1 of 1973]

Cap. 11:06

Provision for other places of holding of juveniles.

74. The facility established by the Essequibo Boys' School Ordinance 1907 and continued by the Training Schools Act, is continued as if it were an open residential facility established under section 73 (b).

75. The Minister may with the agreement of the Minister of Social Protection designate as a temporary holding facility or open residential facility or half-way house, any place, home, school or premises established, maintained and operated by the Ministry of Social Protection.

Director of Juvenile Justice .

76. (1) The Minister shall appoint a Director of Juvenile Justice who shall organise and supervise the custody, education and rehabilitation of juveniles in facilities established under section 73 or designated under section 75 and in accordance with any regulations made under this Act.

(2) In addition to subsection (1), the functions and duties of the Director of Juvenile Justice shall be to-

(a) ensure the efficient, effective and coordinated delivery of services to juveniles in respect of whom custody orders are made and more particularly-

(i) control and manage facilities;

(ii) coordinate the delivery of support services to juveniles;

(iii) ensure the provision of adequate and suitable accommodation for the juveniles;

(iv) ensure the maintenance of the physical, psychological

and emotional well-being of the juveniles;

(v) ensure the maintenance of appropriate discipline and good order in the facilities;

(vi) ensure the development and provision of physical infrastructure necessary to support the programmes and services provided by the facilities;

(vii) liaise with the Principals of the facilities;

(viii) provide for the training of the staff of the facilities;

(ix) facilitate the inspection and investigation of the facilities by the Juvenile Justice Committee;

(b) advise the Minister on policies and procedures related to the juvenile justice system;

(c) carry out such policies in relation to juveniles in custody;

(d) recommend to the Minister any adjustments in the provision of facilities;

(e) liaise with the court in relation to the level and nature of services available for juveniles charged with offences;

(f) develop and maintain suitable diversion programmes provided for under Part II of this Act including victim-offender reconciliation programmes, mediation programmes and restitution programmes;

(g) establish and maintain community-based programmes that are an alternative to judicial proceedings;

(h) provide information to the public in respect of this Act and the juvenile justice system;

(i) cooperate and liaise with bodies that are interested or engaged in

assisting children and juveniles who are at risk or have been charged with offences;

(j) formulate in collaboration with the Chief Probation Officer the policies and regulations to be adopted in relation to-

(i) reintegration leave pursuant to section 94;

(ii) the promotion of the educational and social development of juveniles in custody;

(iii) visits and communication between juveniles housed in the facilities and their families, relatives and friends;

(iv) the provision of facilities for specialised treatment or programmes to be made available to juveniles who may be in need of such treatment or programmes;

(k) establish and maintain at the facilities specialized treatment or programmes to be made available to juveniles who may be in need of such treatment or programmes;

(l) identify specialised treatment or programmes provided by other governmental or non-governmental organisations and certify these as being suitable for juveniles in custody and authorise the participation of juveniles within the facilities in such specialised treatment or programmes;

(m) develop and maintain in collaboration with the Chief Probation Officer and any other relevant governmental or non-governmental organisation, programmes to facilitate the rehabilitation and reintegration of juveniles into the community;

(n) report to the Juvenile Justice Committee at such times as may be required by the Committee;

(o) perform any other functions assigned by this Act or the Minister.

Delegation of powers and duties of Minister. 77. The Minister may authorise any person to exercise the powers or perform the duties or functions of the Minister under this Act, in which case the powers, duties or functions are deemed to have been exercised or performed by the Minister.

Regulations. 78. The Minister may make regulations for maintaining an efficient system for the custody, education and rehabilitation of juveniles.

PRINCIPAL AND STAFF OF FACILITIES

The Principal. 79. (1) The Juvenile Justice Committee shall appoint a Principal and a Deputy Principal for each of the facilities established under section 73, continued under section 74 or designated under section 75 on such terms and conditions as may be determined by the Committee.

(2) The Principal of a facility shall be responsible for the immediate control, supervision and management of the facility.

(3) A Principal shall perform such functions as provided for by this Act or regulations made under the Act.

(4) The functions of a Principal shall be performed, during the Principal's absence or when the post of Principal is vacant, by the Deputy Principal.

(5) The Principal of a facility shall-

(a) have care and control of a juvenile as if the Principal were the juvenile's parent; and

(b) do what is reasonable to safeguard and promote the juvenile's education, health, development and welfare.

Staff of facilities.

80. (1) The staff of a facility shall be appointed by the Juvenile Justice Committee.

(2) The Director of Juvenile Justice shall advise the Juvenile Justice Committee in relation to the required number and categories of staff members for each facility.

(3) The staff of each facility shall report to and be under the management of the Principal of the facility.

Transfer of staff.

81. Every person who immediately before the commencement of this Act was a Principal, headmaster or headmistress or member of staff of a detention facility or training school which becomes or is designated a facility under this Act, on the commencement of this Act shall become and be a member of staff of that facility.

JUVENILE JUSTICE COMMITTEE

Juvenile
Committee.

Justice

82. (1) The Minister shall appoint a Juvenile Justice Committee which shall consist of a Chairperson, a Deputy Chairperson and seven other persons.

(2) Except for the Chairperson and the Deputy Chairperson who shall hold office for four years, a member of the Juvenile Justice Committee shall hold office for three years from the date of appointment of the member, but shall be eligible for reappointment.

(3) Members of the Juvenile Justice Committee shall include an attorney-at-law, a retired probation officer who served in a senior capacity, a retired head of a secondary school, a retired head of a vocational institution

and other persons who possess skills, knowledge, experience and training in matters relating to juveniles, sociology, social work and psychology.

(4) The Juvenile Justice Committee shall-

(a) make its own rules and shall set out the manner in which the Committee shall perform its duties and exercise its

powers conferred by this Act; and

(b) prescribe the remuneration of any person appointed to the Committee.

Duties and powers
of Juvenile Justice
Committee.

83. The Juvenile Justice Committee shall-

(a) visit each facility at frequent intervals;

(b) hear any complaint which may be made to it by any juvenile in custody at a facility, and shall hear the complaint in the absence of other persons unless the juvenile requests otherwise;

(c) immediately cause an investigation to be conducted into any complaint;

(d) immediately cause an investigation of any abuse or irregularities observed or found in any facility;

(e) take appropriate action based on the findings and recommendations of any investigation;

(f) keep a record of every complaint received and the findings and recommendations of any investigation;

(g) report to the Minister any abuses or irregularities observed or found in any facility; and

(h) report to the Minister any relevant matter relating to any facility.

Annual report. 84. The Juvenile Justice Committee shall submit to the Minister an annual report which shall include information on the performance of its functions.

Access to facilities. 85. The members of the Juvenile Justice Committee shall be entitled to visit and have free access to any facility either collectively or individually.

OPERATION OF FACILITIES

Obligation of Principal to accept juveniles. 86. (1) The Principal of a facility shall accept any juvenile ordered by a court to be committed to the facility unless the committal order on the face of it is defective.

(2) The Principal shall keep a register of all juveniles committed to the facility.

Reception of juveniles. 87. A facility shall be open at all times for the reception of referred juveniles.

Maximum number, sex and age of housed juveniles. 88. (1) The Minister, on the advice of the Juvenile Justice Committee, shall issue a certificate in relation to each facility stipulating-

(a) the maximum number of juveniles who may be housed in each facility at any one time; and

(b) the sex and ages of juveniles who may be housed in each facility at any one time.

(2) The Minister may vary any certificate issued under subsection (1) and shall cause a copy of any certificate to be sent to the court, the Director of the Childcare and Protection Agency, the Director of Juvenile Justice , the Chief Probation Officer and the Principal of each facility.

Transfer of juveniles between facilities. 89. (1) A juvenile housed in a facility may be transferred to another such facility to serve the remaining portion of the juvenile's period of custody if-

(a) the facility to which the juvenile is to be transferred

caters for that juvenile and provides the conditions and facilities necessary for the objective of that juvenile's sentence to be achieved; and

(b) the Director of Juvenile Justice and the Chief Probation Officer

agree to the transfer; or

(c) a court directs the transfer.

(2) Where a juvenile is transferred pursuant to subsection (1) the Principal of the facility from which the juvenile is transferred shall inform the juvenile's parents of the transfer.

Juvenile to be given opportunity to observe religion.

90. The Principal of a facility shall ensure that each juvenile housed in it shall, as far as practicable, be given the opportunity to receive religious assistance and instruction and the opportunity of practising the juvenile's religion.

Arrangements to be made for juvenile to receive medical treatment.

91. If it appears to the Principal that a juvenile housed in a facility requires medical treatment that cannot properly be given in the facility, the Principal shall make arrangements for the juvenile to be received into any hospital or other institution where the juvenile can receive the necessary medical attention, and that juvenile while absent from the facility shall for the purposes of this Act be deemed to be in lawful custody.

Discipline.

92. (1) Any juvenile who breaches the rules of a facility may be disciplined on the instruction of the Principal of the facility in a way that is both reasonable and within the prescribed limits.

(2) The Minister, on the advice of the Juvenile Justice Committee, shall prescribe the limits for the disciplining of a juvenile housed in a facility.

(3) The following forms of discipline are prohibited-

- (a) corporal punishment or any other form of physical violence;
- (b) deprivation of food or drink;
- (c) treatment that is cruel, inhumane or degrading;
- (d) treatment that could reasonably be expected to be detrimental to the physical, psychological or emotional wellbeing of the juvenile; or
- (e) deprivation of access to educational instruction.

Additional conditions.

93. (1) The Principal of a facility into whose custody or under whose supervision a juvenile is ordered by the court may in consultation with the Chief Probation Officer, set additional conditions that support and address the needs of the juvenile and promote the reintegration of the juvenile into the community.

(2) The Principal and the Chief Probation Officer shall, in setting the conditions, take into account the needs of the juvenile, the most effective programmes that would maximize a juvenile's chances for reintegration into the community, the nature of the offence and the ability of the juvenile to comply with the conditions.

(3) The Principal shall-

- (a) cause any conditions set pursuant to subsections (1) and (2) to be read by or to the juvenile;
- (b) explain or cause to be explained to the juvenile the purpose and effect of the conditions, and confirm that the juvenile understands them;
- (c) cause the conditions to be recorded in a document; and
- (d) cause a copy of the document to be given to the juvenile,

and to a parent of or adult assisting the juvenile.

(4) The juvenile shall sign or mark the document acknowledging that the juvenile has received a copy and that the conditions were explained to the juvenile.

Reintegration leave.

94. (1) The Juvenile Justice Committee on the recommendation of a Principal, may authorise for a juvenile committed to a facility to proceed on reintegration leave from the facility for a period not exceeding thirty days, if in the opinion of the Principal, it is desirable that the juvenile be given such leave for compassionate or humanitarian reasons or for the purpose of rehabilitating the juvenile or reintegrating the juvenile into the community.

(2) A reintegration leave authorised under subsection (1) may be renewed by the Juvenile Justice Committee for one or more thirty-day periods on reassessment of the case.

(3) The Juvenile Justice Committee may, at any time, for good and sufficient cause revoke an authorisation made under subsection (1).

(4) If the Juvenile Justice Committee revokes an authorisation under subsection (3) or if a juvenile fails to comply with any term or condition of reintegration leave or a release from custody under this section, the juvenile may be apprehended and returned to custody.

(5) A failure without reasonable excuse, by a juvenile to return to the facility when the juvenile's permitted period of absence has expired may be treated as a breach of the rules of the facility.

(6) The period of a juvenile's permitted absence shall be deemed to be part of the juvenile's period of custody but if the juvenile fails to return to the facility when the period of permitted absence has expired, the time of unauthorised absence shall be excluded from a calculation of the period of custody.

(7) A juvenile on reintegration leave shall be deemed to be in lawful custody of the Principal of the facility to which the juvenile has been committed.

Authorised leave.

95. A juvenile may be released from a facility on the days and during the hours that a Principal specifies in order that the juvenile may-

(i) attend school or any other educational or training institution;

(ii) attend or participate in sports or recreational activities;

(iii) obtain or continue employment;

(iv) perform domestic or other duties required by the juvenile's family;

(v) participate in a programme specified by the Director of Juvenile Justice that will enable the juvenile to better carry out employment or improve the juvenile's education or training; or

(vi) attend an out-patient treatment programme or other programme that provides services that are suitable to addressing the juvenile's needs.

Change of address
of parents.

96. The parents of or adult assisting the juvenile who is housed in a facility shall inform a Principal of any change in their address.

Unconditional release.

97. The Juvenile Justice Committee shall authorise a juvenile's release from a court ordered facility based on an application made by the juvenile for early release on exceptional circumstances.

Early discharge.

98. A juvenile whose committal to custody would terminate on a Saturday, Sunday or Public Holiday may by order of the Principal be discharged from

custody on the last preceding day that is not a Saturday, Sunday or Public Holiday.

Supervision after
release.

99. (1) A juvenile released from a facility on the completion of the juvenile's period of custody, may, with the juvenile's consent, be placed under the supervision of a probation officer if the Chief Probation Officer considers that to do so would further assist the juvenile's reintegration into society.

(2) Where a juvenile is placed under supervision in accordance with subsection (1), the period of supervision shall continue for as long as the juvenile consents but for no more than twelve months and the probation officer supervising the juvenile is satisfied that continuance of the supervision is in the juvenile's interests.

PART IX

PUBLICATION, RECORDS AND INFORMATION

PROTECTION OF PRIVACY OF JUVENILES

Identity of juvenile not
to be published.

100. (1) A person shall not publish the name or any information related to a child or juvenile, if it would identify the child or juvenile as having been dealt with under this Act.

(2) This section does not apply in respect of the disclosure of information—

(a) in the course of the administration of justice; or

(b) in the provision of medical services or psychological treatment to the child or juvenile when it is not the purpose of the disclosure to make the information known to the public.

(3) A juvenile may, after the juvenile attains the age of eighteen years, publish or cause to be published information that would identify the juvenile as having been dealt with under this Act, provided that the juvenile is not in custody pursuant to this Act at the time of the publication.

(4) A court shall, on the ex-parte application of a police officer, make an order permitting any person to publish information that identifies a child or juvenile as having committed or allegedly committed an offence listed in the Schedule, if the court is satisfied that-

Schedule.

(a) there is reason to believe that the juvenile is a danger to others;
and

(b) publication of the information is necessary to assist in apprehending the juvenile.

(5) The court may, on the application of a juvenile, make an order permitting the juvenile to publish information that would identify the juvenile as having been dealt with under this Act, if the court is satisfied that the publication would not be contrary to the juvenile's best interests or the public interest.

(6) A person shall not publish the name of a child or juvenile, or any other information related to a child or juvenile, if it would identify the child or juvenile as having been a victim of, or as having appeared as a witness in connection with an offence committed or alleged to have been committed by a juvenile.

(7) Information that would serve to identify a child or juvenile as having

been a victim or a witness may be published, or caused to be published, by-

- (i) that child or juvenile after the juvenile attains the age of eighteen years or before that age with the consent of the juvenile's parents; or
- (ii) the parents of that child or juvenile if the child or juvenile is deceased.

(8)The court may, on the application of a child or a juvenile, make an order permitting the child or juvenile to publish information that would identify the juvenile as having been a victim or a witness if the court is satisfied that the publication would not be contrary to the juvenile's best interests or the public interest.

Non-application.

101. Once information is published under section 100 (3), (7) or (8), section 100 (1) or (6) as the case may be, no longer applies in respect of the information.

ACCESS TO RECORDS

No access unless authorised.

102. Except as authorised or required by this Act, a person shall not be given access to a record kept under sections 106 to 108, and no information contained in it may be given to any person, where to do so would identify the juvenile to whom it relates as a juvenile dealt with under this Act.

Persons having access to records.

103. (1) The following persons may have access to a record in relation to a juvenile as prescribed in subsection (2)-

- (a) the Director of Public Prosecutions;
- (b) the victim of the offence or alleged offence to which the record relates;
- (c) the parents of or the adult assisting the juvenile;
- (d) any police officer for-

- (i) law enforcement purposes; or
 - (ii) any purpose related to the administration of the case to which the record relates, during the course of proceedings against the juvenile or the term of the sentence;
- (e) a court, for any purpose relating to proceedings against the juvenile;
- (f) the Director of the Childcare and Protection Agency, the Chief Probation Officer, the Director of Juvenile Justice or the Principal of the facility at which the juvenile is serving a sentence;
- (g) a person participating in the administration of diversion measures, if required for the administration of the case to which the record relates;
- (h) the Ombudsman, where the Ombudsman is investigating a complaint to which the record relates;
- (i) a coroner;
- (j) a person acting as a child or juvenile advocate;
- (k) a member of a department or agency of the Government, who is-
- (i) acting in the exercise of member's duties under this Act;
 - (ii) engaged in the supervision or care of the juvenile;
 - (iii) engaged in an investigation related to the juvenile;
 - (iv) considering an application for release or pardon made by the juvenile;
 - (v) administering a sentence, if the juvenile has been committed to custody;

(l) an employee or agent of the Government for statistical purposes;

(m) an accused or the accused's counsel who swears an affidavit to the effect that access to the record is necessary to make a full answer and defence;

(n) a person who a court considers has a valid interest in the record, if the court is satisfied that access to the record is-

(i) desirable in the public interest for research or statistical purposes, or

(ii) desirable in the interest of the proper administration of justice.

(2) The period of access to records of a juvenile is-

(a) if a diversion measure is used, the period ending two years after the juvenile consents to be subject to the measure;

(b) if the juvenile is acquitted, the period ending three months after the expiry of the time allowed for the filing of an appeal or, if an appeal is filed, the period ending three months after all proceedings in respect of the appeal have been completed;

(c) if the charge against the juvenile is dismissed for any reason other than acquittal, the charge is withdrawn, or the juvenile is found guilty of the offence and a reprimand is given, the period ending three years after the dismissal, withdrawal, or finding of guilt;

(d) if the charge against the juvenile is stayed, with no proceedings being taken against the juvenile for a period of one year, at the end of that period;

Schedule.

(e) if the juvenile is found guilty and the sentence is a discharge, the period ending one year after the juvenile is found guilty;

(f) subject to paragraphs (h) and (i), if the juvenile is found guilty of an offence other than those listed in the Schedule, the period ending three years after the sentence ordered has been completed;

(g) subject to paragraphs (h) and (i), if the juvenile is found guilty of an offence listed in the Schedule, the period ending five years after the sentence ordered has been completed;

(h) if during the period calculated in accordance with paragraph (f) or (g), the juvenile is found guilty of an offence other than one listed in the Schedule committed when the person was a juvenile, the latest of—

(i) the period calculated in accordance with paragraph (f) or (g), as the case may be, and

(ii) the period ending three years after the sentence ordered has been completed; and

(iii) if, during the period calculated in accordance with paragraph (f) or (g), the juvenile is found guilty of an offence listed in the Schedule committed when the person was a juvenile, the period ending five years after the sentence ordered has been completed.

(3) Nothing in subsection (1) (g) authorises the introduction into evidence of any part of a record that would not otherwise be admissible.

(4) When access to a record is given to a person under subsection (1) (l) or (n) (i), the person may subsequently disclose information contained in the record, but shall not disclose the information in any form that would

reasonably be expected to identify the juvenile to whom it relates.

Disclosure of information and copies of record.

104. A person who is required or authorized to be given access to a record under section 102 or 103 may be given any information contained in the record and may be given a copy of any part of the record.

Where records may be made available.

105. (1) A court may, on application by a person after the end of the period of access set out in section 103(2), order that the person be given access to the record or a copy of a record in relation to a juvenile-

(a) if the court is satisfied that-

(i) the person has a valid and substantial interest in the record;

(ii) it is necessary for access to be given to the record in the interest of the proper administration of justice; and

(iii) disclosure of the record or the information in it is not prohibited under any other Act of Parliament; or

(b) if the court is satisfied that access to the record is desirable in the public interest for research or statistical purposes.

(2) Subject to subsection (3), an application for an order under subsection (1) (a) in respect of a record shall not be heard unless the person who makes the application has given the juvenile to whom the record relates and the person or body that has possession of the record at least five days' notice in writing of the application, and the juvenile and the person or body that has possession of the record have had a reasonable opportunity to be heard.

(3) A court may waive the requirement in subsection (2) to give notice to a juvenile when the court is of the opinion that-

(a) to insist on the giving of the notice would frustrate the application; or

(b) reasonable efforts have not been successful in finding the juvenile.

(4) In any order under subsection (1), the court shall set out the purposes for which the record may be used.

(5) When access to a record is given to any person under subsection (1) (b), that person may subsequently disclose information contained in the record, but shall not disclose the information in any form that would reasonably be expected to identify the juvenile to whom it relates.

Access to record by juvenile.

106. A juvenile to whom a record relates and the juvenile's counsel may have access to the record at any time.

DISCLOSURE OF INFORMATION IN A RECORD

Disclosure of information.

107. (1) A police officer may disclose to any person any information in a record where it is necessary to disclose such record in the conduct of an investigation of an offence.

(2) The Director of Public Prosecutions may, in the course of a proceeding disclose-

(a) to a person who is a co-accused with a juvenile in respect of the offence for which the record is kept, any information contained in the record; and

(b) to an accused, if the record is in respect of a witness in the proceeding, information that identifies the witness as a juvenile who has been dealt with under this Act.

(3) (a) The Minister or a police officer may disclose to the Minister of

Foreign Affairs information in a record to deal with a request to or by a foreign state for the purposes of any extradition matter under the Fugitive Offenders Act; and

(b) the Minister of Foreign Affairs may disclose that information to the foreign state in respect of which the request was made, or to which the extradition matter relates, as the case may be.

(4) A police officer may disclose to an insurance company information in a record for the purpose of investigating a claim arising out of an offence committed or alleged to have been committed by the juvenile to whom the record relates.

(5) The Director of the Childcare and Protection Agency and the Chief Probation Officer may disclose information contained in a record if the disclosure is necessary for procuring information that relates to the preparation of a report required by this Act.

(6) The Director of Juvenile Justice , the Director of the Childcare and Protection Agency, the Chief Probation Officer, the Director of Public Prosecutions, a police officer or any other person engaged in the provision of services to juveniles may disclose to any professional or other person engaged in the supervision or care of a juvenile including the Principal of any facility, school or any other educational or training institution, any information contained in a record if the disclosure is necessary to-

- (a) ensure compliance by the juvenile with conditions of custody, reintegration leave or an order of the court;
- (b) ensure the safety of staff, students or other persons; or
- (c) facilitate the rehabilitation of the juvenile.

(7) A person to whom information is disclosed under subsection (6) shall-

(a) keep the information separate from any other record of the juvenile to whom the information relates;

(b) ensure that no other person has access to the information except if authorised under this Act, or if necessary for the purposes of subsection (6); and

(c) destroy their copy of the record when the information is no longer required for the purpose for which it was disclosed.

(8) No information may be disclosed under this section after the end of the period of access set out in section 103 (2).

Disclosure with court order.

108. (1) The court may, on the application of the Director of Public Prosecutions or a police officer, make an order permitting the applicant to disclose to the person specified by the court any information about a juvenile if the court is satisfied that the disclosure is necessary, having regard to the following circumstances-

(a) the juvenile has been found guilty of an offence involving serious personal injury;

(b) the juvenile poses a risk of serious harm to persons; and

(c) the disclosure of the information is relevant to the avoidance of that risk.

(2) Subject to subsection (3), before making an order under subsection (1), the court shall give the juvenile and a parent of or an adult assisting the juvenile an opportunity to be heard.

(3) An application under subsection (1) may be made *ex parte* by the Director of Public Prosecutions where the court is satisfied that reasonable efforts have been made to locate the juvenile and that those efforts have not been successful.

(4) No information may be disclosed under subsection (1) after the end of the period of access set out in subsection 103(2).

Effect of end of access periods.

109. Subject to sections 105 and 106, after the end of the period of access set out in section 103(2) no record may be used for any purpose that would identify the juvenile to whom the record relates as a juvenile dealt with under this Act.

No subsequent disclosure.

110. No person who is given access to a record or to whom information is disclosed under this Act shall disclose that information to any other person unless the disclosure is authorised under this Act.

PART X

GENERAL PROVISIONS

JURISDICTION

Where a court hears a matter commenced before another court.

111. (1) A court that continues the hearing of a matter commenced before another court shall-

(a) if an adjudication has been made, proceed to sentence the juvenile; or

(b) if no adjudication has been made, recommence the trial as if no evidence had been taken.

(2) A court that recommences a trial under subsection (1)(b) may, if the parties consent, admit into evidence a transcript of any evidence already given in the case.

(3) A sentence ordered may be reviewed under Part VII in a

magisterial district or county other than that in which the sentence was ordered.

EXCLUSION FROM HEARING

Exclusion from hearing.

112. A person shall not be present at a sitting of a court in a matter relating to a child unless the presence of the person is necessary in connection with the proceedings of the court or unless the court has granted the person permission to be present.

OFFENCES AND PUNISHMENT

Escaping from lawful custody.

113. (1) Any juvenile who has been ordered to be held in a facility who-

(a) escapes from the facility, or

(b) escapes whilst being conveyed to or from the facility or any other place, while in lawful custody at any time before the expiration of the juvenile's period of custody commits the offence of escaping from lawful custody.

(2) A juvenile who has escaped from lawful custody and has been arrested shall be returned to the facility.

(3) A juvenile who has escaped from lawful custody and has been arrested and returned to a facility may be-

(a) disciplined according to the rules of the facility; or

(b) charged and brought before a court.

(4) A juvenile who commits of an offence under this section and is

liable to not more than one month detention.

Assisting or inducing a juvenile, etc.

114. Any person who-

(a) knowingly assists either directly or indirectly, any juvenile to escape from a facility or any other place while in lawful custody;

(b) directly or indirectly induces a juvenile to escape from a facility or any other place while in lawful custody;

(c) knowingly harbours, maintains, conceals or otherwise prevents a juvenile from returning to a facility or any other place of lawful custody;

(d) wilfully induces or assists a juvenile to breach or disobey a term or condition of a sentence or other order of the court; or

(e) wilfully prevents or interferes with the performance by a juvenile of a term or condition of a sentence or other order of the court,

commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for six months.

Delivering prohibited item.

115. Any person who without lawful authority-

(a) brings or attempts to bring into a facility; or

(b) delivers or attempts to deliver to a juvenile in a facility, any item prohibited by the rules of the facility,

commits an offence and liable on summary conviction to a fine of one hundred and fifty thousand dollars and to imprisonment for two months.

Offences and

116. Every person who contravenes the provisions sections 100(1) and (6),

punishment. 102 or 110 commits an offence and is be liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for six months.

General penalty. 117. Any person who commits an offence under this Act for which no other penalty is specifically provided shall be liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for six months.

PROCEDURE AND EVIDENCE

Indictable and summary offences heard together. 118. Indictable offences at the stage of committal proceedings and offences punishable on summary conviction may be heard together.

General law on admissibility of statements to apply. 119. (1) Subject to the provisions of this section, the law relating to the admissibility of statements made by persons accused of committing offences applies in respect of juveniles.

(2) No oral or written statement made by a juvenile to a police officer or to any other person who is, in law, a person in authority, on the arrest or detention of the juvenile or in circumstances where the police officer or other person has reasonable grounds for believing that the juvenile has committed an offence is admissible against the juvenile unless-

(a) the provisions of section 25 have been complied with; and

(b) the statement was voluntary.

(3) Where a juvenile makes a statement to a person who is not in law a person in authority, a court may rule that statement inadmissible if it is satisfied that the statement was not freely and voluntarily made.

(4) For the purpose of this section, a person consulted under section 25(1)(b) is deemed not to be a person in authority.

Evidence of age of child or juvenile. 120. In any proceedings under this Act-

(a) a certificate of birth is evidence of the age of the person named in the certificate and in the absence of a certificate of birth, the court may

receive and act on any other information relating to age that it considers reliable;

(b) the testimony of a parent as to the age of a child or juvenile is admissible as evidence of the age of that child or juvenile, and

(c) the court may draw inferences as to the age of a person from the person's appearance or from statements made by the person in direct examination or cross-examination.

Evidence of a child or juvenile.

Cap. 5:03

121. Subject to the provisions of the Evidence Act, the evidence of a child or a juvenile may be taken in proceedings under this Act only after the court in the proceedings has-

(a) explained to a witness who is a child, the duty to speak the truth and the consequences of failing to do so; and

(b) explained to a witness who is a juvenile if the court considers it necessary, the duty to speak the truth and the consequences of failing to do so.

If forms not prescribed.

Cap. 10:01

Cap. 10:02

122. In any case for which forms are not prescribed under this Act the forms set out in the Criminal Law (Procedure) Act, and the Summary Jurisdiction (Procedure) Act, with any modifications that the circumstances require, or other appropriate forms, may be used.

PART XI

TRANSITIONAL PROVISIONS

Prohibitions on proceedings.

Cap. 10:03

Cap. 11:06

Cap. 39:01

123. On and after the coming into force of this Act, no proceedings may be commenced under-

- (a) the Juvenile Offenders Act;
- (b) the Training Schools Act; or
- (c) section 15 or 16 of the Education Act.

Proceedings commenced under the Juvenile Offenders Act, Cap. 10:03, the Training Schools Act, Cap 11:06 and the Education Act, Cap 39:01.

124. (1) Where before the coming into force of this Act, proceedings are commenced under section 16 of the Juvenile Offenders Act in relation to a child or a juvenile within the meaning of that Act, the proceedings shall be dismissed and the juvenile or child shall be referred to the Director of the Childcare Protection Agency who shall consult with the Director of Public Prosecution for any further action.

Cap. 10:03

(2) Subject to subsection (1) and section 126(1), where, before the coming into force of this Act, proceedings are commenced under the Juvenile Offenders Act in respect of a person who was at the time of the offence a child or juvenile as defined in this Act, the proceedings shall be dealt with in all respects under that Act as if this Act had not come into force.

Cap. 11:06

(3) Where, before the coming into force of this Act, proceedings are commenced under section 11 or 12 of the Training Schools Act in relation to a person who was at the time of the offence a child or juvenile as defined in this Act, the proceedings shall be dismissed and the child or juvenile be referred to the Director of the Childcare and Protection Agency who shall consult with the Director of Public Prosecution for any further action.

Cap. 11:06

(4) Where, before the coming into force of this Act, proceedings are commenced under section 21 of the Training Schools Act in relation to a person who was at the time of the offence a child or juvenile as defined in this Act, the proceedings shall be dealt with under this Act as if the offence had occurred after the coming into force of this Act.

Cap. 39:01

(5) Where, before the coming into force of this Act, proceedings are commenced under section 15 or 16 of the Education Act in relation to a person who was at the time of the offence a child or juvenile as defined in

this Act, the proceedings shall be dismissed and the child or juvenile in respect of whom the proceedings had been taken shall be referred to the Director of the Childcare and Protection Agency who shall consult with the Director of Public Prosecution for any further action.

Offences committed before the coming into force of Act.

125. Any person who, before the coming into force of this Act, while the person was a juvenile within the meaning of this Act, committed an offence in respect of which no proceedings were commenced before the coming into force of this Act, shall be dealt with under this Act as if the offence occurred after the coming into force of this Act.

Applicable sentence.

126. (1) A person referred to in section 124(2) who is found guilty of the offence charged in proceedings commenced before the coming into force of this Act, shall be sentenced under this Act.

Dispositions under the Juvenile Offenders Act, Cap. 10:03.

(2) Where a juvenile is to be sentenced under this Act in respect of a conviction under the Juvenile Offenders Act, on the application of the Director of Public Prosecutions or the juvenile, a court shall, order that matter be continued under this Act and a sentence may be ordered under sections 43 and 44.

Temporary holding facilities and open residential facilities.
Cap. 10:03

127. (1) Any place that was designated as a temporary holding facility for the purposes of the Juvenile Offenders Act is deemed, as of the coming into force of this Act, to have been designated for the purposes of this Act as a temporary holding facility.

Cap. 11:06

(2) Any place that was designated as a Training School for the purposes of the Training Schools Act is deemed, as of the coming into force of this Act, to have been designated for the purposes of this Act as an open residential facility.

PART XII

CONSEQUENTIAL AMENDMENTS AND REPEAL

Repeal of sections 15, 16 and 26 of Education Act, Cap. 39:01.

128. The Education Act is amended by repealing sections 15, 16 and 26.

Amendment of sections 2,7, 9 and 11 of Probation of Offenders Act, Cap. 11:04.

129. The Probation of Offenders Act is amended as follows-

(a) in section 2, by substituting for the words “Juvenile Offenders Act” the words “Juvenile Justice Act”;

(b) in section 7(1), by deleting the words “Provided that in the case of a juvenile the order for the payment of such damages or such compensation for loss shall be made against the parent or guardian”;

(c) in section 9(3) (a), by deleting the words “except in the case of a juvenile the order for the payment of a fine shall be made against the parent or guardian of the juvenile” ; and

(d) in section 11, by deleting the words “,or in the case of a juvenile the recording of his guilt has been made,”.

Amendment of the Schedule to the Rehabilitation of Offenders Act,

Cap. 11:07.

130. The Schedule to the Rehabilitation of Offenders Act is amended as follows -

(a) by deleting the words “(SUBJECT TO REDUCTION BY HALF FOR PERSONS UNDER SEVENTEEN YEARS OF AGE)” ; and

(b) by deleting sections 7, 8, 8a, 8b, 9 and 10.

Repeal of sections 5 and 6 of the Parole Act Cap.11:08.

131. The Parole Act is amended by repealing sections 5 (1)(b) and 6 (c).

Repeal of the Juvenile Offenders Act Cap. 10:03. 132. The Juvenile Offenders Act is repealed.

Repeal of the Training Schools Act Cap. 11:06. 133. The Training Schools Act is repealed.

SCHEDULE

OFFENCES

1. Murder
2. Manslaughter
3. Attempted murder
4. Assault causing actual bodily harm (indictable)
5. Assault causing grievous bodily harm (indictable)
6. Unlawful possession of a firearm and ammunition
7. Robbery (simpliciter)
8. Robbery under arms
9. Arson
10. Possession of narcotics
11. Trafficking in narcotics
12. Wounding with intent
13. Break and enter

14. Rape
15. Sexual activity with a child by abusing position of trust
16. Care worker engaging in causing or inciting sexual activity with a person with a mental disorder.

EXPLANATORY MEMORANDUM

This Bill seeks to amend and consolidate the law in relation to criminal justice for juveniles and generally reforms the juvenile justice system in Guyana by providing for the custody, education and rehabilitation of juvenile offenders.

PART I sets out the short title, commencement and the definition of key words and terms found in the Bill. This Part also explains the policy with respect to juveniles and establishes that when making decisions with respect to juveniles, the best interest of the child must always be paramount. This Part further deals with criminal capacity and sets out that it shall be presumed that no child under the age of fourteen shall be capable of or guilty of committing an offence. However, this presumption can be rebutted where an evaluation is done of the child's cognitive, emotional, psychological and social development.

PART II sets out the principles and objectives to be used in diversion and stipulates the general conditions which govern diversion measures (i.e. measures that divert a juvenile away from formal court procedures to informal procedures including restorative measures to deal with the juvenile alleged to have committed an offence). It also sets out the various diversion measures that are available, the circumstances under which a diversion measure may be used and provides for the Director of Juvenile Justice to develop diversion measures. Additionally, this Part further sets out that notice must be provided to a parent in relation to the use of a diversion measure and that a victim has a right to information on the use of such measures on request. This Part further provides for the police to use warnings and referral with respect to a juvenile instead of allowing the juvenile to be dealt with through judicial proceedings.

PART III deals with the organisation of the juvenile justice system. This Part provides the court with exclusive jurisdiction in juvenile justice matters subject to the Constitution. This Part also provides that diversion measures or judicial proceedings commenced under the Act shall continue after the juvenile attains the age of eighteen years. Additionally, this Part stipulates that this Act applies to persons eighteen years and older who are alleged to have committed an offence as a juvenile.

PART IV provides for the Director of Public Prosecutions to conduct pre-charge screenings and restricts private prosecution unless written consent is given by the Director of Public Prosecutions. Additionally, this Part provides for a juvenile to be able to retain counsel at any stage of the proceedings and for the juvenile to be informed of this right. This Part also provides for parents of the juvenile to be notified of the arrest and for the court, by order in writing, to

require the parent of the juvenile to attend court. Further, this Part provides that the court at any stage of the proceedings may refer the juvenile to the Director of the Childcare and Protection Agency for assessment to determine whether the juvenile is in need of child welfare services.

PART V deals with the detention of juveniles before sentencing. To this end, this Part sets the procedure to be followed by the police with respect to taking statements from a juvenile. Also, this Part sets out the procedures to be followed by the police for release of a juvenile from custody where the juvenile has been arrested for an offence not in the Schedule or for one listed in the Schedule (for example murder, manslaughter, robbery or arson). It also provides that a police officer shall not release a juvenile from custody where the police believes on reasonable grounds that to keep the juvenile detained would be in the best interest of the public. Additionally, this Part sets out the required information that a summons or recognizance should contain and provides for a warrant to be issued where the juvenile fails to appear in court. This Part also sets a period of forty-eight hours for a juvenile to be taken to court after arrest. It also stipulates that a court shall not use detention as a substitute for any appropriate child protection, mental health or other social measure that a juvenile may require. Also, this Part sets out the circumstances which may influence the need for pre-sentence detention of a juvenile and provides for the establishment of temporary holding facilities. Further, this Part sets out the procedure where the juvenile brought before the court pleads guilty or not guilty.

PART VI sets out the purpose and principles to be applied in sentencing a juvenile. This Part also makes provision for a pre-sentence report and sets out the contents of a pre-sentence report and provides that a copy of the pre-sentence report shall be given to the juvenile, any parent of

the juvenile, any adult assisting the juvenile or any counsel representing the juvenile and the prosecutor. Additionally, this Part stipulates that a child or juvenile shall not be sentenced to imprisonment and that a conviction must not be recorded where there is a finding of guilt. This Part also sets out recommended sanctions (for example probation and supervision orders) where a juvenile is found guilty of an offence. This Part also requires a court to ensure that the juvenile understands the order and for the court to record its reasons for a sentence and provide these reasons to the juvenile or the juvenile's parents. This Part further makes provision for the transfer of juveniles upon reaching the age of 18 from a juvenile facility to an adult one.

PART VII provides for review of sentences (for example probation, supervision and deferred custody orders) and the procedure to facilitate such review. This Part also sets out the procedure and conditions for the continuation of custody of a juvenile. It provides that the Director of Public Prosecutions, Director of Juvenile Justice or Chief Probation Officer may apply to the Court for extension of a custodial sentence where they have reasonable grounds to believe that a juvenile has breached or is about to breach a condition of probation, custody and supervision order or a deferred custody and supervision order. Additionally, this Part provides for annual review of a custodial sentence where the juvenile is committed to custody for a period exceeding one year and sets out the grounds for review. However, there shall be no review of a sentence where an appeal is pending until the appeal has been completed. This Part also makes provision for the transfer or non-transfer of a juvenile on attaining 18 years. This Part further prohibits appeal from review of a sentence and stipulates the effect of an absolute discharge or termination of a sentence.

PART VIII deals with the custody, supervision and rehabilitation of a juvenile. To this end it sets out the purpose of and principles to be applied in the juvenile custody and supervision system. This Part also stipulates that juveniles must be held separately from adults and provides for the Minister to establish facilities for custody and detention. Additionally, this Part provides for the Minister to appoint a Director of Juvenile Justice and sets out the functions and duties of the Director of Juvenile Justice . This Part also allows the Minister to delegate certain powers and duties to authorized persons and provides for the Minister to make regulations. This Part further makes provision for the appointment of a Principal and Deputy Principal of facilities for juveniles, their responsibilities and functions and for the appointment of members of staff of juvenile facilities and for the transfer of staff of the facilities. Additionally, this Part provides for the appointment, term and composition of the Juvenile Justice Committee and sets out the duties and powers of the Committee. Additionally, this Part stipulates that a juvenile must receive religious support and medical treatment and sets out guidelines and restrictions on discipline of a juvenile. This Part also allows for reintegration leave for a juvenile on compassionate or humanitarian grounds and for the authorised release of the juvenile to take part in certain activities for example an educational, recreational, an employment or an out-patient treatment programme. Further, this Part provides for early discharge of a juvenile in the event that the discharge date falls on a weekend or holiday and stipulates conditions for supervision after release of a juvenile.

PART IX sets out guidelines and procedures that govern any publication, record and information relating to a juvenile. It provides that the privacy of a juvenile must be protected and provides exceptions and conditions under which the records and publication of those records may be allowed. This Part also places restrictions on the access period for information disclosure and

restricts disclosure of information other than to an authorized person. For instance, this Part allows for disclosure by the Director of Public Prosecutions or a police officer of information in a record during an investigation of an offence under restrictive circumstances or where the court has ordered that the information be disclosed to the Director of Public Prosecutions or a police officer.

PART X provides for circumstances where a court can continue the hearing of a matter commenced before another court. It also prevents a person from being present in court at a hearing related to a child unless the person's presence is connected with the proceedings of the court or unless permission is granted. Additionally, this Part deals with offences and punishment. For example, some offences created under this Act are assisting or inducing a juvenile to escape from lawful custody, bringing or attempting to bring prohibited items into a facility and publishing information on a juvenile in breach of the law. This Part also deals with the procedure and evidence of the proceedings. It provides for indictable and summary offences to be heard together and states the general law on admissibility of statements apply. This Part further provides for procedure when taking evidence from a child and the procedure for the tendering of evidence to prove the age of a child or juvenile.

PART XI provides for transitional provisions to deal with proceedings that were commenced under section 17 of the Juvenile Offenders Act, Cap. 10:03, sections 11 or 12 of the Training Schools Act, Cap. 11:06 or sections 15 or 16 of the Education Act, Cap. 39:01. This Part also deals with offences committed by a juvenile before the coming into force of this Act for which no proceedings had commenced. This Part additionally provides that any place that was designated a temporary holding facility under the Juvenile Offenders Act or an open residential

facility under the Training Schools Act will continue as so designated upon the coming into force of this Act. This Part also provides for consequential amendments to the Education Act, Cap. 39:01, the Probation of Offenders Act, Cap. 11:04, the Rehabilitation of Offenders Act, Cap. 11:07 and the Parole Act, Cap. 11:08 and for the repeal of the Juvenile Offenders Act, Cap. 10:03 and the Training Schools Act, Cap. 11:06.

Hon Khemraj Ramjattan, MP
Vice-President and Minister of Public Security