

JAMAICA

No. 14-2018

I assent,

[L.S.]

Sgd. P. L. Allen
Governor-General.

28th day of August 2018

AN ACT to Facilitate the implementation of child diversion in the criminal justice system; and for connected matters.

[*The date notified by the Minister bringing the Act into operation*]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I—*Preliminary*

1. This Act may be cited as the Child Diversion Act, 2018, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title and commencement.

2.—(1) In this Act, unless the context otherwise requires—

Interpretation.

“appointed day” means the day appointed by notice under section 1 for the coming into operation of this Act;

“approved counsellor” means a counsellor approved by the Minister under section 20(2);

“approved psychologist” means a psychologist approved by the Minister under section 20(2);

“best interests of the child” shall be construed in accordance with subsections (2) and (3);

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

“child diversion” means a child appropriate process of determining the responsibility and treatment of a child in conflict with the law without resorting to formal adjudication by a court;

“Child Diversion Committee” means a committee established under section 6;

“Child Diversion Office” means the department of Government established by section 4(1);

“child diversion programme” means a programme developed under this Act in which a child in conflict with the law is required to participate;

“child diversion referral order” means an order of the court referring a child to a Child Diversion Committee for participation in a child diversion programme under section 37;

“child offender” means, as applicable—

- (a) a child who—
 - (i) is suspected of, accused of, charged or convicted of a diversion offence; and
 - (ii) accepts responsibility for a diversion offence as set out in subsection (4);
- (b) an inmate who is a child serving a sentence, in an adult correctional centre or a juvenile correctional centre; or
- (c) a parolee under the *Parole Act* who is or was a child at the time of the grant of parole;

“Commissioner of Corrections” means the office established under section 3 of the *Corrections Act*;

“conflict with the law”, in relation to a child, means taken into the custody of a constable, on suspicion of having committed a diversion offence, or detained or charged with a diversion offence;

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

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

“diversion offence” means—

- (a) an offence specified in the First Schedule;
- (b) any other offence for which a court may make an order referring a child to participate in a child diversion programme;

First
Schedule

“diversion option” means one or more of the options available for inclusion in a child diversion programme specified in section 16;

“guardian”, in relation to a child, includes any person, who has for the time being the charge of, or control over, the child and any person who is legally liable to maintain the child;

“lock-up” has the meaning assigned to it by section 2 of the *Corrections Act*;

“National Child Diversion Oversight Committee” means the committee established under section 8;

“order to make amends” means an order made by a court under section 36;

“Parole Board” means the Board established by section 3 of the *Parole Act*;

“police caution” means a caution by a constable under section 25;

“police warning” means—

- (a) an informal warning by a constable under section 22; or
- (b) a formal warning by a constable under section 23;

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

“reparation order” means an order made by a court under section 35;

“restorative justice programme” has the meaning assigned to it by section 5A of the *Criminal Justice (Reform) Act*;

“suspended sentence order” means an order made by the court under section 34(2)(e) and section 38;

“victim” means a person who suffers physical harm, psychological harm, injury, loss or damage to property, or financial loss as a direct result of an act committed or suspected to have been committed by a child in the course of a diversion offence.

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

- (a) the safety of the child;
- (b) the child’s physical, mental and emotional needs and level of development;
- (c) the importance of continuity in the child’s care;
- (d) the quality of the relationship the child has with a parent or guardian and the effect of maintaining that relationship;
- (e) the child’s religious and spiritual views;
- (f) the child’s level of education and educational requirements;
- (g) whether the child is of sufficient age and maturity so as to be capable of forming his own views and, if so, those views are

to be given due weight in accordance with the age and maturity of the child; and

- (h) the effect on the child of delay in making a decision.

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

- (a) criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter; and
- (b) unless the public interest otherwise requires, and subject to this Act, any child who has committed a diversion offence and accepts responsibility for that offence shall be considered for admission into a child diversion programme.

(4) An acceptance of responsibility by a child for a diversion offence is not an acceptance for the purposes of this Act unless it takes place in the presence of—

- (a) the parent or guardian of the child;
- (b) an adult (other than a constable) who is present with the consent of—
 - (i) the parent or guardian of the child; or
 - (ii) if the child has attained the age of fourteen years, the consent of the child; or
- (c) an attorney-at-law acting for or on behalf of the child.

(5) In this Act, where the consent of a victim is required, and such consent is unreasonably withheld, the matter may proceed to a diversion programme if the court so orders.

3. The objects of this Act are to ensure that every child in conflict with the law is treated in a manner that recognizes and upholds human dignity and worth, diverts the child from engaging in deviant and

Objects and
application
of Act.

delinquent behavior and instills in the child respect for the fundamental rights and freedoms of others, taking into consideration—

- (a) the best interests of the child;
- (b) the desirability of the child's rehabilitation, reintegration and assumption of a constructive role in society; and
- (c) the restorative justice proceedings under section 5A of the *Criminal Justice (Reform) Act*.

PART II—*Child Diversion*

Establishment of the Child Diversion Office.

4.—(1) There is established, for the purposes of this Act, a department of Government to be known as the Child Diversion Office which shall be under the direction of the Permanent Secretary in the Ministry with responsibility for justice.

(2) The Permanent Secretary shall appoint to the Child Diversion Office, in such numbers as may, from time to time, be necessary, public officers with qualifications, training and experience in matters relating to addressing the needs of children in conflict with the law, child diversion and child delinquency, one of whom shall be appointed as the head of the Office.

Functions of the Child Diversion Office.

5. The Child Diversion Office shall be responsible for the rehabilitation of children in conflict with the law and for the development, implementation and administration of child diversion and without prejudice to the generality of the foregoing, the Office shall, in consultation with the National Child Diversion Oversight Committee and the Child Diversion Committee for each parish—

- (a) advise the Minister on matters of policy relating to children in conflict with the law and child diversion;
- (b) monitor the operation of child diversion in the justice system, including the supervision of child diversion programmes;
- (c) review the methods, procedures and processes used in child diversion and recommend any changes and amendments, as appropriate;

- (d) in respect of children referred to Child Diversion Committees, develop, approve, administer and supervise child diversion programmes and other programmes for the prevention of child delinquency and for the rehabilitation of children in conflict with the law based on the evaluations, knowledge, advice and recommendations of the Child Diversion Committee of each parish;
- (e) undertake research and statistical analyses to inform policy development in relation to children in conflict with the law and child diversion;
- (f) facilitate, prepare and conduct training programmes, from time to time, for the judiciary, constables, correctional officers, public officers and the public as necessary;
- (g) monitor compliance with the provisions of this Act and the regulations; and
- (h) perform such other functions relating to children in conflict with the law as may be assigned to the Office by the Minister with responsibility for justice.

6.—(1) Subject to subsection (2), for the purposes of this Act, there is established in respect of each parish of Jamaica, a committee to be called the Child Diversion Committee for the relevant parish.

Child
Diversion
Committees.

(2) In respect of the parishes of Kingston and St. Andrew, there shall be established a single Child Diversion Committee, with jurisdiction for both parishes, which shall be called the Child Diversion Committee for the parishes of Kingston and St. Andrew.

(3) Every Child Diversion Committee shall be a committee under the direction of the Permanent Secretary in the Ministry with responsibility for justice.

(4) The Second Schedule shall have effect in relation to the Child Diversion Committee.

Second
Schedule.

Functions of
the Child
Diversion
Committee.

7.—(1) Subject to subsections (2) and (3), the functions of a Child Diversion Committee shall be to—

- (a) advise the Child Diversion Office on all matters relating to child diversion in the parish, including individual child diversion programmes;
- (b) conduct any relevant evaluation, provide advice and make recommendations to the Child Diversion Office for the development, administration and supervision of diversion programmes for each child referred to the Child Diversion Committee;
- (c) implement child diversion programmes and supervise the participation of children in child diversion programmes in the parish, including modified child diversion programmes;
- (d) coordinate child diversion related activities to ensure the effective administration of child diversion in the parish;
- (e) provide advice and make recommendations to constables, correctional officers and the Parole Board, in relation to the treatment of child offenders and child diversion generally;
- (f) conduct research, studies, evaluations and other studies and collect data on matters relating to child care and protection in the parish, including—
 - (i) the efficacy of child diversion programmes in the parish;
 - (ii) the performance and results achieved by child intervention programmes and child-related activities undertaken by public bodies in the parish;
 - (iii) the implementation and outcomes of policies and procedures relating to child diversion in the parish;
 - (iv) identifying the causes and trends of child delinquency and criminal activity by and against children;
 - (v) children detained or imprisoned in correctional institutions; and

- (vi) the particular needs of children in conflict with the law or in custody or detained in the parish;
- (g) make recommendations to the Minister and Child Diversion Office for the development of policies and procedures for—
 - (i) child intervention programmes;
 - (ii) the prevention of child delinquency;
 - (iii) the administration of justice in respect of children; and
 - (iv) the rehabilitation and treatment of children in conflict with the law;
- (h) formulate and recommend policies and strategies for the prevention of child delinquency and for the treatment and rehabilitation of the children in the parish who are in conflict with the law, in consultation with—
 - (i) the Government agency with responsibility for children; and
 - (ii) the Minister;
- (i) nominate a member of the committee to attend the meetings of the National Child Diversion Oversight Committee as required by the Permanent Secretary;
- (j) furnish the Child Diversion Office with such reports (including an annual report) returns, accounts and other information as the Minister may require with respect to the Child Diversion Committee and afford the Minister facilities for verifying the information in such manner and at such times as the Minister may reasonably require;
- (k) furnish reports to the Child Diversion Office, the court and constables as required under this Act; and
- (l) perform such other functions as the Permanent Secretary in the Ministry with responsibility for justice may direct or as otherwise necessary to implement the provisions of this Act.

(2) The Child Diversion Committee shall establish procedures to ensure that children are consulted and participate in the research, studies and policy development undertaken by the Child Diversion Committee.

(3) In developing the recommendations under subsection (1), the Child Diversion Committee may consult with—

- (a) the judiciary;
- (b) the Minister with responsibility for youth;
- (c) the Director of Public Prosecutions;
- (d) the Commissioner of Police;
- (e) the Commissioner of Corrections;
- (f) the Parole Board;
- (g) the head of the Government agency with responsibility for children;
- (h) the Children's Advocate;
- (i) any other relevant Government departments, agencies or other public bodies;
- (j) a non-governmental organization, youth and community organization; and
- (k) any other person with the experience, resources or expertise in matters relevant to this Act.

National
Child
Diversion
Oversight
Committee.

8.—(1) The Minister shall establish a national committee, for the purposes of this Act, to be called the National Child Diversion Oversight Committee, which shall be under the general direction of the Minister to—

- (a) monitor and report to the Minister on the implementation of child diversion in Jamaica;
- (b) review compliance with the provisions of this Act; and
- (c) advise and make recommendations to the Minister on child diversion and the treatment generally of children in conflict with the law.

(2) The National Child Diversion Oversight Committee shall consist of such number of persons, not being less than seven nor more than nine, as follows—

- (a) the Permanent Secretary in the Ministry with responsibility for Justice, who shall be an *ex-officio* member and the chairperson of the National Child Diversion Oversight Committee, or a public officer in the Ministry with responsibility for Justice nominated by the Permanent Secretary with responsibility for justice;
- (b) the Children's Advocate;
- (c) the head of the government agency with responsibility for children;
- (d) if required by the Permanent Secretary with responsibility for justice, such members of a Child Diversion Committee nominated by that Child Diversion Committee; and
- (e) such other persons suitably qualified in accordance with paragraph 1 of the Second Schedule, appointed, in writing, by the Minister, for such period not exceeding three years, as the Minister may specify.

Second
Schedule.

(3) In the absence of the Permanent Secretary with responsibility for justice, the nominee of the Permanent Secretary referred to in subsection (2)(a), shall act as the Chairperson of the National Child Diversion Oversight Committee.

(4) The members of the National Child Diversion Oversight Committee appointed under subsection (2)(e) shall be eligible for re-appointment.

(5) The Minister may, at any time, revoke the appointment of any member of the National Child Diversion Oversight Committee appointed pursuant to subsection (2)(e) if the Minister thinks it expedient to do so.

(6) A member of the National Child Diversion Oversight Committee appointed by the Minister under subsection (2)(e) may, at

any time, resign his office by instrument in writing addressed to the Minister and transmitted through the Chairperson, and from the date of receipt by the Minister of the instrument, the member shall cease to be a member of the Committee.

(7) The National Child Diversion Oversight Committee—

- (a) may make decisions on the basis of a majority vote and, if the voting is equal, the Chairperson shall have a casting vote; and
- (b) subject to the provisions of this Act, may regulate its own proceedings.

Referral to
child
diversion
programme.

9.—(1) Unless the public interest otherwise requires, a child who is suspected to have committed, is charged with the commission of, or who has been convicted of, a diversion offence may be referred, in accordance with the provisions of this Act, to the appropriate Child Diversion Committee for participation in a child diversion programme by—

- (a) the court; or
- (b) in the case of a diversion offence specified in the First Schedule, a constable having reason to suspect that a child has committed the diversion offence.

First
Schedule.

(2) A child referred to in subsection (1) may be considered for referral to a Child Diversion Committee for participation in a child diversion programme—

- (a) if the child accepts responsibility for the diversion offence without having been unduly influenced by another person to accept responsibility;
- (b) if there is a *prima facie* case against the child;
- (c) with the consent of the victim of the offence, if identified and located; and

- (d) with the consent of the child which shall be given in the presence of—
 - (i) the parent or guardian of the child;
 - (ii) an adult (other than a constable) who is present with the consent of the parent or guardian of the child or if the child has attained the age of fourteen years, the consent of the child; or
 - (iii) an attorney-at-law acting for or on behalf of the child.

(3) Where a child is charged with a diversion offence, the prosecutor may, if satisfied of the matters mentioned in subsection (2), recommend to the court that the child be referred to a child diversion programme.

10.—(1) Any admission made, acceptance of responsibility given, or information disclosed, for the purposes of child diversion—

Protections in relation to child diversion.

- (a) shall be treated as confidential; and
- (b) shall not be admissible in any proceedings before a court or tribunal.

(2) A person shall not be compellable in any proceedings before a court or tribunal to disclose an admission, the acceptance of responsibility, or information, referred to in subsection (1), or to produce any document that contains the admission, acceptance of responsibility, or information.

(3) A child's consent to participate in a child diversion programme under this Act shall not amount to, or be treated as, a confession or an admission of guilt for the purposes of any criminal proceedings for a diversion offence.

11.—(1) Notwithstanding the provisions of any other enactment, where a child is referred to a Child Diversion Committee for participation in a child diversion programme under this Act, criminal proceedings shall not be instituted or continued during the period of the child's participation in the child diversion programme.

Effect of child diversion programme.

- (2) Where a child completes a child diversion programme—
- (a) in the case of a child who has not been charged, the child shall not be charged for the commission of the diversion offence which resulted in the referral for participation in the child diversion programme;
 - (b) in the case of a child who has been charged, the court shall make an order dismissing the charge;
 - (c) in the case of a child who has been convicted but not sentenced, the court shall discontinue the trial of the diversion offence and the trial shall not resume; and
 - (d) in the case of a child who has been sentenced—
 - (i) the court shall make a suspended sentence order; and
 - (ii) the child shall not be detained in a lock-up, remand centre or a correctional institution.

(3) Subject to section 19, where a child fails to complete a child diversion programme—

- (a) the referring constable may proceed with charging the child; or
- (b) the court may continue the criminal proceedings in respect of the diversion offence which formed the basis of the child's referral to the child diversion programme, as the case may require.

Duty to
make
reports.

12.—(1) Where a child has been referred to a Child Diversion Committee under section 9 for participation in a child diversion programme, the Child Diversion Committee shall, report to the referring court or the constable, as the case may be, on—

- (a) the child's participation in the child diversion programme, including the child's conduct and the outcome of that participation;
- (b) the completion by the child of the child diversion programme;

- (c) the non-compliance of the child with the child diversion programme; and
- (d) the failure of the child to complete the child diversion programme.

(2) The Child Diversion Committee shall report quarterly or otherwise, as requested, in writing, to—

- (a) the Child Diversion Office, on any matter relating to a child, child diversion and the discharge of its functions under this Act; and
- (b) the referring court or constable, on matters relating to a child referred to the Child Diversion Committee for participation in a child diversion programme.

(3) A report by the Child Diversion Committee under this section shall—

- (a) be made promptly, in writing;
- (b) identify the author of the report and the child or matter to which it relates;
- (c) be kept as part of the records of the Child Diversion Committee; and
- (d) be made and kept in conformity with any prescribed requirements.

13.—(1) A child may no longer be eligible to continue in a child diversion programme or for participation in a child diversion programme if the child commits or attempts to commit another diversion offence or any other offence within three years after the date of the commencement of a child diversion programme.

Ineligibility for child diversion.

(2) A child shall not be eligible for participation in a child diversion programme after three referrals to a child diversion programme.

14.—(1) Where a child is referred to a Child Diversion Committee for participation in a child diversion programme, the Child Diversion

Child diversion programme.

Office, on the recommendations of the Child Diversion Committee shall, develop a child diversion programme—

- (a) utilizing one or more of the diversion options specified in section 16, as is appropriate in the circumstances; and
- (b) based on the evaluations of the Child Diversion Committee in the particular case of the child having regard to—
 - (i) the best interests of the child;
 - (ii) the nature and circumstances of the offence or alleged offence;
 - (iii) the recommendations, if any, of the referring court or constable;
 - (iv) the parent or guardian of the child;
 - (v) the socio-economic conditions of the child; and
 - (vi) the victim or other persons or the community affected by the child's behaviour.

(2) The Child Diversion programme developed under subsection (1) shall be in writing, stating—

- (a) the anticipated duration, commencement date and schedules or plans relating to the child's participation in the programme, including the diversion options comprising a child diversion programme;
- (b) the specific terms and conditions of the child diversion programme with which the child or the parent or guardian of the child is to comply;
- (c) whether a child diversion programme utilizes diversion options requiring the restitution of an object and how the object is to be determined; and
- (d) if the diversion option referred to in section 16(1)(l) or (2) is utilized, whether the necessary consent has been given in accordance with section 17(2)(a).

(3) The Child Diversion Committee shall provide a copy of the child diversion programme and any subsequent modification of the child diversion programme, to the child for whom the child diversion programme was developed and to the person referred to in section 9(2)(d) in whose presence the child consented.

15. A child diversion programme developed under section 14 shall—
- (a) be developed, administered and supervised so that the best interests of the child are the paramount consideration;
 - (b) take into account the public interest;
 - (c) utilize a restorative justice programme approach;
 - (d) be developed with a view to causing the child to understand the impact of the child's behaviour on others, including the victim;
 - (e) take into account the child's socialization needs;
 - (f) be delivered in a location readily accessible to the child;
 - (g) be capable of being administered in various locations, circumstances and for a number of diversion offences;
 - (h) be structured in a manner that enables—
 - (i) proper supervision of the child participating in the child diversion programme; and
 - (ii) evaluation of the effectiveness of the child diversion programme by the Child Diversion Committee;
 - (i) be developed to take into account the needs of children in rural areas or remote areas in the parish; and
 - (j) promote the involvement of parents and guardians, as appropriate.

Minimum standards for child diversion programme.

16.—(1) Subject to the provisions of this Act, a child diversion programme may direct or require a child to do one or more of the following—

Diversion options.

- (a) to make an oral or written apology to a specified person or institution, under the supervision of a specified person;

- (b) to attend school for a specified period of time, under the supervision of a specified person;
- (c) to accept the supervision and guidance of a mentor or peer in the manner set out in the child diversion programme;
- (d) to report to a specified person at such time and place as is specified in the child diversion programme;
- (e) to spend a specified number of hours with the child's family members, at such place, for such time, or for such activities, as may be specified;
- (f) to associate with persons or peers who it is believed can contribute to improvement in the child's behaviour;
- (g) to refrain from associating with persons or peers as specified in the child diversion programme;
- (h) to comply with the terms of an agreement made between the child and the child's parent or guardian, to comply with specified standards of behaviour or to desist from engaging in specified behaviour;
- (i) to desist from visiting, frequenting or remaining at a specified place;
- (j) to attend counselling or therapy sessions with an approved counsellor or an approved psychologist;
- (k) to attend a vocational institution, an educational institution or a therapeutic institution, as specified in the child diversion programme;
- (l) subject to subsection (2), to make restitution of a specified object to a specified victim, if the object is capable of being replaced or restored or if the object is not capable of being replaced, make a symbolic act of restitution to a specified person, at such time, place and in such manner as specified in the child diversion programme;
- (m) to perform community service, under the supervision of a specified individual, an organization or institution; and

- (n) with the consent of the victim, to provide specified services to the victim, at such time, place and in such manner as specified.

(2) Where there is no identifiable person to whom restitution may be made, the child may be required to make amends for the benefit of a community, or community association or organization, a charitable organization, a welfare organization or any other appropriate institution by directing—

- (a) the child to provide a service; or
- (b) the child's parent or guardian to make a payment, on behalf of the child to the organization or institution specified to receive the payment under the child diversion programme.

17.—(1) In selecting or recommending a diversion option for inclusion in a child diversion programme, the Child Diversion Office and the Child Diversion Committee, respectively, shall—

Selection of
diversion
option.

- (a) have regard to the matters set out in subsections (2) and (3); and
- (b) consider the nature of the offence and the public interest.

(2) Where a child diversion programme utilizes the diversion option under section 16(1)(1) or (2), before determining the object to be supplied, the Child Diversion Committee shall—

- (a) obtain the written consent of the child's parent or guardian; and
- (b) be satisfied of the financial ability of the parent or guardian to supply a specified object or to make a payment on behalf of the child.

(3) For the purposes of subsection (2), the Child Diversion Committee shall make its determination in accordance with any regulations made under section 40.

(4) The determination under subsection (2), shall be included in the recommendations of the Child Diversion Committee to the Child Diversion Office for the development of the child diversion programme.

Non-
implemen-
tation or
discontinua-
tion of child
diversion
programme.

18.—(1) A Child Diversion Committee shall not implement or shall immediately discontinue any child diversion programme, in whole or in part, that—

- (a) is harmful, exploitative or dangerous or is likely to harm, exploit or endanger a child's physical or mental health;
- (b) is not appropriate to the age and maturity of the child;
- (c) is likely to disrupt a child's educational performance;
- (d) is structured in a manner which may exclude the participation of any child admitted into the programme;
- (e) fails to take into account the harm or loss sustained by the victim; or
- (f) the court or the Child Diversion Office objects to being implemented or continuing.

(2) Where a Child Diversion Committee does not implement or discontinues a child diversion programme, in whole or in part, under subsection (1), the Committee shall give—

- (a) a preliminary report thereon within five working days; and
- (b) a subsequent final report, in writing, within thirty days,

of its decision not to implement, or to discontinue a child diversion programme, to the Child Diversion Office, and to the referring court or constable, as the case may be.

Failure to
comply with
or to
complete
child
diversion
programme.

19.—(1) Where a child fails to comply with, or to complete, a child diversion programme, the Child Diversion Committee shall, within five days of receiving notice of the non-compliance or non-completion, advise the constable or court that referred the child, as the case may be, of the child's failure to comply with or complete the programme.

(2) Upon being notified by the Child Diversion Committee of the failure of the child to comply with, or to complete, a child diversion programme under subsection (1)—

- (a) the referring constable may charge the child with the applicable diversion offence forming the basis of the referral;

- (b) the court may, for the child to appear before the court—
 - (i) issue a warrant for the arrest of the child; or
 - (ii) cause a summons to be issued in respect of the child.

(3) When a child appears before the court under subsection (2), the court shall—

- (a) inquire into the reasons for the child's failure to comply with, or to complete, the child diversion programme; and
- (b) make a determination whether the failure is attributable to the child.

(4) Where it is found that the failure to comply with, or to complete, the child diversion programme is not attributable to the child, the court may make an order modifying the child diversion programme.

(5) Where the court finds that the failure to comply with, or to complete, the child diversion programme is attributable to the child—

- (a) in a case where the matter was referred on the recommendation of a prosecutor, the prosecutor may, with the approval of the court, proceed with the prosecution;
- (b) in a case where the matter was referred by the court, the court may proceed with the trial; or
- (c) in any case in which the matter does not proceed to trial, the court may consider the child diversion programme and may make an order directing the Child Diversion Committee as to the manner in which the child diversion programme is to be modified in light of the non-compliance of the child.

(6) Where, notwithstanding the modification of the child diversion programme under subsection (4) to facilitate the completion of the programme by the child, the Child Diversion Committee subsequently notifies the constable or the court of the child's failure to complete the modified programme, the referring constable or court, as the case may be, may proceed in accordance with section 11(3).

(7) Where a child charged for a diversion offence had been referred by a constable to a Child Diversion Committee for participation in a child diversion programme, the constable having charge of the case shall advise the court of the child's referral to a Child Diversion Committee for participation in a child diversion programme and the child's failure to comply with, or to complete, the programme.

(8) On receiving advice under subsection (7), the court shall take into account the extent, if any, of the child's participation in a child diversion programme.

Minister to prescribe standards, approve counsellors, etc.

20.—(1) The Minister may prescribe—

- (a) standards, guidelines, procedures and time-frames for the development, implementation and supervision of child diversion programmes;
- (b) the form and manner of implementation of child diversion programmes; and
- (c) requirements, procedures and formats for record-keeping and reports.

(2) For the purposes of this Act, the Minister—

- (a) may approve, in writing, suitably qualified counsellors and psychologists in respect of each parish; and
- (b) shall cause the names of the approved counsellors and approved psychologists to be published in the *Gazette*.

*Police Warnings, Police Cautions and Referral to
Child Diversion by Constable*

Constable may issue warnings or police caution. First Schedule.

21.—(1) Subject to subsection (2), where a constable has received notice of, or reasonably suspects, the commission by a child of a diversion offence specified in the First Schedule, the constable may, in accordance with the provisions of sections 22, 23 and 25, issue an informal warning, a formal warning or a police caution, as appropriate in the circumstances to that child—

- (a) having regard to the facts and circumstances of the case; and

- (b) the requirements for referral of a child to the Child Diversion Committee for admission into a child diversion programme.

(2) A constable shall not issue a formal warning or a police caution without the written consent of the victim of the diversion offence, unless the constable is unable to ascertain an individual or other person as the victim of the diversion offence, for the purpose of giving consent, due to the nature of the diversion offence or the facts of the case.

22.—(1) Where a child accepts responsibility for a diversion offence specified in the First Schedule, and in the opinion of a constable, the diversion offence committed does not warrant a formal warning or a police caution under this Act, the constable may give an informal warning to the child—

Informal warning by constable.

- (a) warning the child that the child is suspected to have committed a diversion offence specified in the First Schedule and has accepted responsibility for the diversion offence;
- (b) advise the child of the penalty to which he may be liable if convicted of the diversion offence specified in the First Schedule; and
- (c) warning the child to desist from engaging in acts or conduct constituting the elements of a diversion offence.

First Schedule.

(2) An informal warning by a constable shall be an oral warning.

(3) A constable who issues an informal warning under subsection (1), shall notify—

- (a) the parent or guardian of the child;
- (b) the Child Diversion Office; and
- (c) the relevant Child Diversion Committee.

(4) The notification of an informal warning by a constable under subsection (3) shall be made in writing, in the prescribed form and include—

- (a) the date on which the informal warning was issued;

- (b) the identity of the child to whom it was issued and the parent or guardian of that child; and
- (c) the circumstances that warranted the issue of the informal warning to the child.

(5) No record is required to be made or kept of the informal warning or any copy of a notification under subsection (3) by the constable or otherwise at the police station.

Formal
warning by
constable.
First
Schedule.

23.—(1) Where in the opinion of a constable, a diversion offence specified in the First Schedule does not warrant criminal proceedings, the constable may issue a formal warning to the child at the police station in the presence of the child's parent or guardian, if the child—

- (a) accepts responsibility for the diversion offence; and
- (b) has previously not been—
 - (i) issued a formal warning or a police caution; or
 - (ii) charged or convicted of any offence, whether or not a diversion offence.

(2) To issue a formal warning, the constable shall take the child to the police station and the parent or guardian shall be informed by the constable that the child is to be issued a formal warning.

(3) For the purposes of this section, a child shall not be released to the supervision of a parent or guardian, unless the constable is satisfied that—

- (a) the parent or guardian is willing to supervise, and appears capable of supervising, the child, so as to prevent the commission of another diversion offence by the child; and
- (b) the identity and residential address of the parent or guardian and the child's identity, date of birth and residential address are verified.

(4) A formal warning under subsection (1), shall—

- (a) not be issued by a constable without the written authorization of the officer or sub-officer of the police in charge of the

police station which authorization shall be endorsed on the formal warning issued; and

(b) be in the prescribed form.

24. The constable shall provide to the child's parent or guardian a copy of the formal warning issued under section 23 and the parent or guardian shall acknowledge receipt of the copy of the formal warning, in writing.

Copy of formal warning.

25.—(1) Subject to subsection (2), if a diversion offence specified in the First Schedule, suspected to have been committed by a child is in the opinion of the constable, having regard to the circumstances of the case, requires a more serious response, the constable shall issue a police caution to the child and the child may be referred to a child diversion programme.

Police caution. First Schedule.

(2) A police caution under subsection (1) shall not be issued to a child, unless the constable is satisfied that—

(a) the child—

- (i) accepts responsibility for committing the diversion offence referred to in subsection (1) and the admission was made without having been unduly influenced by another person;
- (ii) displays the need for possible psycho-social care or support;
- (iii) is not the subject of a report under section 6 of the *Child Care and Protection Act*;
- (iv) has previously been issued a formal warning; and
- (v) has previously been issued not more than two police cautions in respect of a diversion offence; and

(b) there is a *prima facie* case in respect of the commission by the child of the diversion offence referred to in paragraph (a)(i).

(3) Where a constable issues a police caution, the child and—

(a) the child's parent or guardian;

- (b) the child's attorney-at-law; or
- (c) a Justice of the Peace,

shall attend at the police station within forty-eight hours after the commission of the diversion offence and if none of the persons referred to in paragraph (a), (b) or (c) attend within that time the constable may request the attendance of the Children's Advocate or a member of the Child Diversion Committee of the parish.

(4) The constable shall not give a police caution without the written authorization of the officer or sub-officer of the police in charge of the police station.

(5) A police caution shall be issued by a constable in the prescribed form and manner.

Effect of
constable's
warning or
police
caution.

26. Where a constable has warned, or issued a police caution to a child and that child is referred to a child diversion programme—

- (a) the child shall not be charged with the commission of a diversion offence in relation to the facts and circumstances which formed the basis for the warning or police caution; and
- (b) no further proceedings shall be taken for the diversion offence in relation to which the child was warned or the police caution was issued.

Duty to
inform
victim.

27.—(1) Where there is an identified victim of a diversion offence, the constable shall—

- (a) inform the victim that a formal warning or police caution, as the case may be is to be given to the child;
- (b) explain the nature and status of the formal warning or police caution to the victim; and
- (c) offer to communicate to the child warned or to whom a police caution was issued (or to be warned or issued a police caution) the statements of the victim explaining the impact on the victim of the commission of the offence.

(2) Where the victim is a child, all communication with the child for the purposes of subsection (1) shall be made by the constable in the presence of the parent or guardian, and the constable shall interview the child to assess the impact of the offence on the child.

28.—(1) Where a constable issues a police caution, the child shall be eligible for referral by the constable to a Child Diversion Committee for admission into a child diversion programme in the parish in which the child resides.

Child
diversion
referral by
constable.

(2) Notwithstanding subsection (1), a constable shall not refer an eligible child to a Child Diversion Committee for admission to a child diversion programme unless the victim of the diversion offence, if identified, consents, in writing, in accordance with section 32, to the child's referral.

(3) If the victim of the diversion offence consents for the purposes of subsection (2), the constable shall cause the consent to be recorded.

(4) Where the victim referred to in subsection (2) does not consent the constable shall not refer the child to the Child Diversion Committee for participation in a child diversion programme and the constable may charge the child for the commission of the diversion offence.

(5) In the case of a child who is the victim referred to in subsection (3), the child victim's parent or guardian shall be directed by the constable to provide any necessary assistance to the child victim in respect of the decision-making process concerning the child victim's consent to the child's referral to a child diversion programme.

(6) The constable shall cause a record to be made if—

- (a) given the facts and circumstances of the case and the elements of the diversion offence, no individual or specific person is ascertainable as the victim of the diversion offence; or
- (b) in the case of a diversion offence in which the victim can be ascertained, the constable is unable to locate the victim,

and the record shall include an account of the constable's unsuccessful efforts to locate the victim to obtain the relevant consent, and may refer the child for participation in a child diversion programme.

(7) The referral procedure for the purposes of this section, of a child by a constable shall—

- (a) be made in the prescribed form and manner to be known as the “Child Diversion Referral Form”; and
- (b) constitute a record of—
 - (i) any referral and the written consent thereto;
 - (ii) any referral without consent and the reasons therefor in accordance with subsection (6); or
 - (iii) if applicable, the consideration by the constable to refer the child to a child diversion programme and the refusal of consent by the victim, kept in the prescribed manner, if any.

Record of warnings and police cautions to be kept.

29.—(1) A constable who gives a formal warning, a police caution or makes a referral to a child diversion programme shall cause a record of the warning, police caution or referral, as the case may be, to be recorded in a register dedicated for the purpose and kept at the police station.

(2) The record of a formal warning or a police caution shall include the statements given to the constable, including the statements of any witnesses, the victim and the child warned or to whom a police caution was issued, as the case may be.

(3) Subject to subsection (4), a sergeant or an officer above the rank of sergeant shall, after a period of five years from the date on which a formal warning was given, cause the entry in the register recording that formal warning to be expunged from the register in accordance with such procedures as may be prescribed.

(4) Subsection (3) shall not apply if a police caution is issued to the child to whom a formal warning was given within the five year period referred to in subsection (3).

30. Where a constable gives a police warning or issues a police caution, the constable shall notify the Child Diversion Committee, in writing, in the prescribed form, if any.

Notice to
Child
Diversion
Committee.

31. A constable, in calculating how many police cautions have been given to a child, shall include any police caution given within the preceding three years by—

Calculation
of number of
police
cautions.

- (a) another constable at the police station; and
- (b) a constable at another police station in the parish or in another parish.

32.—(1) Subject to subsections (2) and (3), where a victim consents to—

Consent of
victim.

- (a) the issue of a formal warning or a police caution; or
- (b) the referral of a child to a child diversion programme, that consent shall be in writing, signed, witnessed and recorded in the prescribed form or manner, if any.

(2) Where there is more than one victim, the consent of each victim is required.

(3) In any case where the victim is—

- (a) a person under the age of fourteen years, consent for the purposes of this Part may be given on the victim's behalf by—
 - (i) the victim's parent or guardian; or
 - (ii) the Children's Advocate, if—
 - (A) the parent or guardian cannot be located;
or
 - (B) the court or the constable, as the case may be, is satisfied that the parent or guardian is, or appears, incapable of giving consent for the purposes of this Act by

reason of any physical, intellectual or mental impairment;

- (b) a person who has attained the age of fourteen years, and who the court is satisfied is unable to give consent for the purposes of this Act by reason of any physical, intellectual or mental impairment, that consent may be given by a member of the person's immediate family who has attained the age of eighteen years; or
- (c) deceased, consent may be given by a member of the deceased's immediate family who has attained the age of eighteen years,

and the person giving the consent on behalf of the victim shall be entitled to participate in any child diversion programme in accordance with the terms of any diversion option utilized.

(4) In this section "member of the person's immediate family" means—

- (a) that person's—
 - (i) spouse, within the meaning of section 2(1)(d) of the *Intestates' Estates and Property Charges Act*;
 - (ii) child, adopted child or stepchild;
 - (iii) brother or sister, step-brother or step-sister;
 - (iv) parent, step-parent or grandparent; or
- (b) any other person who the court determines to be of sufficient proximate relationship (whether by blood or otherwise) to be considered a member of the person's immediate family.

Court Warnings and Orders

Warnings,
etc. by court.

33.—(1) Where a child is charged and brought before a court in respect of a diversion offence, the court may—

- (a) hear the case;

- (b) issue a warning to the child and suspend the prosecution of the case if the court is satisfied of the matters set out in subsection (2);
- (c) refer the child to the Child Diversion Committee for the parish in which the child resides for participation in a child diversion programme; or
- (d) adjourn the case *sine die*.

(2) The court, on consideration of the matters set out in subsection (3), may issue a warning where it is satisfied that—

- (a) the child is charged with a diversion offence;
- (b) the child has entered a plea of guilty; and
- (c) the child has not previously been charged or convicted of an offence.

(3) The court in determining whether to issue a warning, shall consider the following—

- (a) the child's admission of guilt;
- (b) the nature of the offence;
- (c) the strength of the evidence;
- (d) commission by the child of any prior offences;
- (e) prior referrals to the Children's Advocate or the Government agency with responsibility for children;
- (f) whether the child has previously been warned by a constable or a court;
- (g) whether the child has been given more than two police cautions by a constable;
- (h) prior referrals of the child to the Child Diversion Committee;
- (i) an assessment of the risk and any factors affecting the likelihood of the child committing other offences; and

- (j) an assessment of the risk of harm the child poses to the public.

(4) The issue of a warning and the suspension of any further prosecution of the case shall not preclude the exercise of the powers of the court to issue an order under this Act, the *Child Care and Protection Act* or the *Probation of Offenders Act*.

Court orders.

34.—(1) Where a child is brought before the court as a child in need of care and protection under the *Child Care and Protection Act* or as a child offender or otherwise, the court may make an order under subsection (2) in respect of the child if satisfied that it is expedient so to deal with the child.

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

- (a) require the child to make amends for the loss or injury caused to a person by the child, including by the rendering of services by that child directly to the victim who sustained the loss or injury, as the case may be, if that victim consents to receiving the service (hereinafter referred to as a “reparation order”);
- (b) if there is no identified victim to whom reparation may be made under paragraph (a), require the child to make amends by rendering services to the benefit of the community (hereinafter referred to as “an order to make amends”);
- (c) require restitution, subject to such terms and conditions as may be specified in the order;
- (d) refer a child to a Child Diversion Committee for participation in a child diversion programme (hereinafter referred to as a “child diversion referral order”); and
- (e) suspend the sentence of a child who has completed a child diversion programme so that the sentence will not take effect (hereinafter referred to as a “suspended sentence order”).

Reparation order.

35.—(1) Where a child is brought or appears before the court—

- (a) as a child in need of care and protection under the *Child Care and Protection Act* or as a child offender or otherwise; and

- (b) it is alleged that the child has caused physical injury to any person, or any loss or damage to any property,

if a children's officer, a probation and after-care officer, a parent or guardian of the child or a constable has cause to believe, and reports to the court, that the child may be willing to make amends to the person who has suffered the injury or loss, or it otherwise appears to the court that the child may be willing to make amends to that person, the court may make a reparation order.

(2) A reparation order may provide for the making of amends by—

- (a) non-monetary compensation, including the rendering of unpaid service; or
- (b) monetary compensation,

to the person who suffered the injury, damage or loss or to the community in which the person lives or in which the injury, damage or loss was suffered.

(3) A reparation order shall—

- (a) require the child to make amends to a person who has suffered loss or injury caused by the child, by rendering such service to that person or to the community, or such other compensation, and on such conditions as may be specified in the order; and
- (b) specify the date, place, nature of the service and duration for rendering the service referred to in paragraph (a);
- (c) designate—
 - (i) a children's officer;
 - (ii) a probation and after-care officer;
 - (iii) a parent or guardian;
 - (iv) a constable; or
 - (v) such other person, as the order may specify,

to supervise the child during the delivery of the service or other compensation in accordance with the order.

(4) The court shall, if it makes a reparation order inform the child and the child's parent or guardian of the consequences of any failure to comply with the terms and conditions of the order.

(5) The court shall not make a reparation order unless—

- (a) the person who sustained the loss or injury caused by the child; and
- (b) the child or the parent or guardian of the child to whom the order relates,

consent, in writing, to the child making amends by way of rendering a service or such other compensation as the order may specify and comply with the terms and conditions of the order.

(6) The court may, from time to time, at the request or on the recommendation of—

- (a) the person designated pursuant to subsection (3)(c) to supervise the child; or
- (b) the person who suffered injury or loss,

revoke or vary the terms of, or the conditions imposed by a reparation order.

Form 1.
Third
Schedule.
Form 3.

(7) A reparation order shall be in the form set out as Form 1 in the Third Schedule and an order for the variation thereof shall be in the form set out as Form 3 in the Third Schedule.

Order to
make
amends.

36.—(1) Where a child is brought or appears before the court—

- (a) as a child in need of care and protection under the *Child Care and Protection Act* or as a child offender or otherwise; and
- (b) it is alleged that the child has caused any injury or loss to any person, or any loss or damage to any property, and that there is no identified victim of the diversion offence,

if a children's officer, a probation and after-care officer, a parent or guardian of the child or a constable has cause to believe, and reports to the court, that the child may be willing to make amends for the injury,

damage or loss suffered, or it otherwise appears to the court that the child may be willing to make amends, the court may make an order to make amends.

(2) An order to make amends may provide for the making of amends by—

- (a) non-monetary compensation, including the rendering of unpaid service; or
- (b) monetary compensation,

to the benefit of the community in which the injury, damage or loss was suffered.

(3) An order to make amends shall—

- (a) require the child to make amends for the injury, damage or loss caused by the child, by rendering such service for the benefit of the community, to a community association or organization, a charitable organization, a welfare organization or any other appropriate institution, or such other compensation, and on such conditions as may be specified in the order; and
- (b) specify the date, place, nature of the service and duration for rendering the service referred to in paragraph (a);
- (c) designate—
 - (i) a children's officer;
 - (ii) a probation and after-care officer;
 - (iii) a parent or guardian;
 - (iv) a constable; or
 - (v) such other person, as the order may specify,

to supervise the child during the delivery of the service or other compensation in accordance with the order.

(4) The court shall, if it makes an order to make amends inform the child and the child's parent or guardian of the consequences of any failure to comply with the terms and conditions of the order.

(5) The court shall not make an order to make amends unless—

- (a) the association, organization, institution or other person in relation to which the service is to be provided or compensation made for the benefit of the community; and
- (b) the child or the parent or guardian of the child to whom the order relates,

consent, in writing, to the child making amends by way of rendering a service or such other compensation as the order may specify and complies with the terms and conditions of the order.

(6) The court may, from time to time, at the request or on the recommendation of—

- (a) the person designated pursuant to subsection (3)(c) to supervise the child; or
- (b) a person referred to in subsection (5),

revoke or vary the terms or the conditions of an order to make amends.

(7) An order to make amends shall be in the form set out as Form 2 in the Third Schedule and an order for the variation thereof shall be in the form set out as Form 3 in the Third Schedule.

Form 2.
Third
Schedule.
Form 3.

37.—(1) A child diversion referral order shall be in the form set out as Form 4 in the Third Schedule and an order for the modification thereof shall be in the form set out as Form 5 in the Third Schedule.

Child
diversion
referral order.
Form 4.
Third
Schedule.
Form 5.
First
Schedule.

(2) Notwithstanding the diversion offences specified in the First Schedule, a court may make a child diversion referral order in respect of any other offence in the interest of Justice.

(3) The referral of a child for participation in a child diversion programme by the court may be made to the Child Diversion Committee in the parish in which the offence was committed or in the parish in which the child resides.

38. The court may make a suspended sentence order if the court is satisfied that a child having been referred to a Child Diversion Committee for participation in a child diversion programme under section 34 has completed the child diversion programme in respect of the diversion offence for which the child had been convicted and sentenced.

Suspended
sentence
order.

PART III—General

39.—(1) Subject to subsections (2) and (3), every person having an official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential all documents, information or records obtained relating to a child referred to the Child Diversion Committee for participation in a child diversion programme.

Obligation to
secrecy.

(2) The obligation to secrecy and confidentiality imposed by this section continues to apply to a person despite the person having ceased to be appointed under, or employed in carrying out the provisions of, this Act.

(3) Nothing in this section prevents disclosure—

- (a) to any person which is permitted or required by law; or
- (b) pursuant to an order of a court.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding one year.

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

Regulations.

- (a) procedures for regulating the proceedings of Child Diversion Committees and the National Child Diversion Oversight Committee;
- (b) requirements and procedures for the preparation and implementation of individual child diversion programmes, including matters to be taken into account and procedures for the determination of the selection of replacement objects;
- (c) forms for the giving of consent, the issue of warnings, police cautions and referrals to a Child Diversion Committee;

First
Schedule,
Second
Schedule,
Third
Schedule.

(d) amendment of the First Schedule, the Second Schedule and the Third Schedule;

(e) any other matter required to be prescribed.

Inconsistency with other Acts.

41. In the event of any inconsistency between a provision of this Act and any other law, other than the *Constitution of Jamaica*, the provisions of this Act shall prevail to the extent of the inconsistency.

Derogation.

42. All powers given by this Act shall be deemed to be in addition to, and not in derogation of, any other powers conferred by law.

Review by Parliamentary Committee.

43.—(1) This Act shall be reviewed, from time to time, by a Committee of both Houses of Parliament appointed for the purpose.

(2) The first such review shall be conducted not later than three years after the appointed day.

Transitional.

44.—(1) Subject to the provisions of this section, with effect from the appointed day, the provisions of this Act shall have effect and apply in relation to a child offender, young inmate, or parolee who was a child at the time of conviction as if the Act were in force, at the time—

(a) the child offender was brought before a court;

(b) the young inmate was sentenced; or

(c) of the grant of parole.

(2) Notwithstanding the provisions of the *Parole Act* or any other enactment in respect of a person who was a child offender or young inmate at the time of the grant of parole, the Parole Board may amend the requirements of the relevant parole order in respect of that parolee in accordance with this Act as if the Act were in force at the time when parole was granted.

(3) In this section, “young inmate” means an inmate under the age of eighteen years.

45.—(1) The provisions of the enactments specified in the first column of the Fourth Schedule are amended in the manner specified in the second column of the Fourth Schedule.

Amendment
of enact-
ments and
construction.
Fourth
Schedule.

(2) Each amendment shall be construed as one with the enactment specified in relation to the amendment.

FIRST SCHEDULE

(Sections 2, 9, 21, 22,
23, 25, 37 and 40)*Diversion Offences*

1. Any offence under the following provisions of the *Sexual Offences Act*—
 - (a) section 7 (Incest);
 - (b) section 10 (sexual intercourse with person under sixteen);
 - (c) section 13 (indecent assault).
2. Any offence under the following provisions of the *Offences Against the Person Act*—
 - (a) section 22 (unlawful wounding);
 - (b) section 34 (obstructing clergyman in the performance of his duties);
 - (c) section 35 (assaulting magistrate when preserving wreck);
 - (d) section 36 (assault with intent to commit felony, or on constable, *etc.*);
 - (e) section 37 (hindering seaman from working at his trade, *etc.*);
 - (f) section 38 (using violence to deter person from buying or selling);
 - (g) section 39 (summary jurisdiction to try common assaults);
 - (h) section 40 (aggravated assaults on women or children);
 - (i) section 43 (punishment for common and aggravated assaults).
3. Any offence under the following provisions of the *Larceny Act*—
 - (a) section 5 (simple larceny);
 - (b) section 18 (larceny in dwelling-houses);
 - (c) section 19 (larceny from the person);
 - (d) section 21 (larceny by tenants or lodgers);
 - (e) section 22 (larceny and embezzlement by clerks or servants);
 - (f) section 24 (conversion).
4. Any offence under the following provisions of the *Noise Abatement Act*—
 - (a) section 3 (noise from private premises and public places);
 - (b) section 4 (liability of owner of premises or equipment, *etc.*);
 - (c) section 6 (power to seize and detain specified equipment).

5. Any offence under the following provisions of the *Towns and Communities Act*—

- (a) section 3 (what not to be done in thoroughfares or highways);
- (b) section 5—
 - (i) paragraph (a) (exposing goods for sale in thoroughfares, *etc.*);
 - (ii) paragraph (b) (laying timber, *etc.*, in thoroughfares);
 - (iii) paragraph (c) (beating mats in thoroughfares);
 - (iv) paragraph (d) (emptying privies at improper hours, *etc.*);
 - (v) paragraph (f) (exposing goods for sale on piazzas without owner's consent, *etc.*);
 - (vi) paragraph (g) (negligent use of fire);
 - (vii) paragraph (h) (disturbing public worship);
- (c) section 6 (riotous behaviour in public place while drunk);
- (d) section 7 (drunk and disorderly persons may be apprehended);
- (e) section 8 (persons found drunk in streets);
- (f) section 11 (noisy and disorderly conduct in public places).

6. Any of the following offences under the *Malicious Injuries to Property Act*—

- (a) section 14 (injuries to buildings by tenants);
- (b) section 25 (injuries to fences, walls, *etc.*);
- (c) section 42 (injury to property to amount exceeding ten dollars);
- (d) section 43 (injury to property for which no punishment yet provided).

7. Any of the following offences under the *National Solid Waste Management Act*—

- (a) section 44 (offence of interference with disposal facility);
- (b) section 45 (offence of operating disposal facility *etc.*, without licence);
- (c) section 46 (offence of littering public place, *etc.*);
- (d) section 47 (offence of littering private place without consent);
- (e) section 48 (offence of wilful breaking of bottles, *etc.*, in public place).

8. Any of the following offences under the *Trespass Act*—
 - (a) section 2 (trespass on enclosed or cultivated land);
 - (b) section 6 (squatters);
 - (c) section 11 (assaults, *etc.* by trespassers);
 - (d) section 15 (making or leaving openings to enable stock to trespass).
 9. An offence under section 13 of the *Terrorism Prevention Act* (information about terrorism offence).
 10. An offence under any other enactment for which the penalty is imprisonment for a term not exceeding three years.
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SECOND SCHEDULE (Sections 6, 8 and 40)

Constitution and Procedures of Child Diversion Committee

1. A Child Diversion Committee shall consist of such number of persons, not being less than seven nor more than eleven, as the Minister may, from time to time, determine, and the members of each Child Diversion Committee may consist of—

Constitution
of Child
Diversion
Committee.

- (a) a Justice of the Peace for the parish in respect of which the Child Diversion Committee is established;
- (b) a probation and after-care officer, nominated by the Commissioner of Corrections;
- (c) a Minister of religion;
- (d) a person qualified to be a guidance counsellor;
- (e) a member of the Jamaica Constabulary Force nominated by the Commissioner of Police;
- (f) an education officer nominated by the Permanent Secretary in the Ministry with responsibility for education;
- (g) an officer of the Government agency with responsibility for children, nominated by that agency;
- (h) a person qualified in child psychology or a registered medical practitioner qualified in child psychiatry; and
- (i) such other person who appears to the Minister to be qualified in matters, including criminology, human behavioural science, social science and drug abuse treatment, which are relevant to addressing the needs of children in conflict with the law.

2.—(1) The members of each Committee shall be appointed by instrument in writing and shall hold office for such period, not exceeding three years, as the Minister may specify in the instrument.

Tenure of
office.

(2) The members of the Committee shall be eligible for re-appointment.

(3) The Minister may at any time revoke the appointment of any member of the Committee appointed under this paragraph if he thinks it expedient to do so.

Resignation. 3.—(1) A member of the Committee, other than the chairperson, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairperson, and from the date of receipt by the Minister of such instrument, such member shall cease to be a member of the Committee.

(2) The chairperson may, at any time, resign office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of receipt by the Minister of the instrument.

Procedures and meetings. 4.—(1) Subject to any regulations made under this Act to regulate the proceedings of a Child Diversion Committee, a Child Diversion Committee may proceed and meet in accordance with this paragraph.

(2) Every Child Diversion Committee—

- (a) shall select its chairperson from among its members;
- (b) may make decisions on the basis of a majority vote and if the voting is equal the chairperson shall have a casting vote; and
- (c) may regulate its own proceedings.

(3) Every Child Diversion Committee shall meet as often as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such times and places and on such days as the Child Diversion Committee may determine.

(4) The chairperson shall preside at all meetings of the Child Diversion Committee and in the absence of the chairperson from any meeting the members present and constituting a quorum shall elect a chairperson from among their number at that meeting.

(5) The quorum of a Child Diversion Committee shall be five.

Publication of appointments. 5. The Minister shall cause the names of the members of each Child Diversion Committee as first constituted and every change in the membership of the Committee to be published in the *Gazette*.

Power to appoint sub-committees. 6.—(1) The Child Diversion Committee may appoint a sub-committee of the Committee to examine and report to it on any matter arising out of or connected with any of its functions under this Act.

(2) A sub-committee shall consist of at least two members of the Child Diversion Committee and such other persons, whether members of the Committee or not, whose assistance or advice the Committee may desire.

(3) The Child Diversion Committee may reject a report of a sub-committee or adopt it, either wholly or in part, with such modifications, additions or adaptations, as the Committee may think fit.

7. The Child Diversion Committee may delegate to any member or sub-committee of the Committee the power and authority to carry out on their behalf such duties as the Committee may determine in respect of the functions of the Committee specified in section 7(1)(e), (f), (g) or (h).

Power to delegate.

8.—(1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Child Diversion Committee, or any member of a sub-committee appointed under paragraph 6, in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

Protection of members of the Child Diversion Committee.

(2) Where any member of the Child Diversion Committee or of a sub-committee appointed under paragraph 6, as the case may be, is exempt from liability by reason only of the provisions of this paragraph the Child Diversion Committee shall be liable to the extent that it would be if the said member were a servant or agent of the Child Diversion Committee.

9. There may be paid to the chairperson and other members of the Child Diversion Committee, such remuneration (whether by way of salary, honoraria or allowances) as the Minister responsible for the public service may determine.

Remuneration of members.

10. The office of the chairperson or member of a Child Diversion Committee shall not be a public office for the purposes of Chapter V of the *Constitution*.

Committee membership not public office.

THIRD SCHEDULE (Sections 35, 36, 37 and 40)

FORM 1

THE CHILD DIVERSION ACT

Reparation Order

WHEREAS (1) a child of the age of (2) was brought before the court on (3) by— (4)

AND WHEREAS the child is suspected or alleged to have committed a diversion offence which resulted in injury or loss to (5)

AND WHEREAS having regard to the circumstances of the case, it is hereby ordered that the child be required to make amends to the named person who has suffered loss or injury caused by the child, by rendering the service or compensation to that person or to the community specified in this order.

AND WHEREAS the person who sustained the loss or injury caused by the child and the child or the parent or guardian of the child (6) of the child to whom this order relates, has given consent, in writing, to the child making amends by way of rendering the service or compensation specified as follows (7):

.....

AND WHEREAS the specified service or compensation is subject to the following terms and conditions (8):

..... and shall be delivered under the supervision of (9):

.....

Given under my hand this (10) day of
at (11) in the parish of (12)
(13)

- (1) State full name of child.
- (2) State age of child.
- (3) Date(s) child brought before court.
- (4) State name, rank and police station of constable or in the case of any other person, name and occupation of person bringing child before the court.
- (5) Name of victim or complainant.
- (6) Name of parent or guardian of child.
- (7) State nature of compensation, and the details of the compensation to be made.
- (8) In the case of non-monetary compensation, state the date, place and nature of the service and duration for rendering the service or in the case of monetary compensation, amount and manner of payment the terms of the compensation specified.
- (9) State name, occupation of person supervising delivery of the service or compensation.
- (10) State date.
- (11) State place.
- (12) State name of parish.
- (13) Signature of the proper officer of the court.

FORM 2

THE CHILD DIVERSION ACT

Order to Make Amends

WHEREAS (1)..... a child of the age of (2)..... was brought before the court (3)..... by—

(4)

AND WHEREAS the child is suspected or alleged to have committed a diversion offence which resulted in the injury or loss to a person who the investigating constable has been unable to identify or the commission of which does not involve an identifiable victim:

AND WHEREAS the child or the parent or guardian of the child (5)..... of the child to whom this order relates, has given consent, in writing, to the child making amends by way of rendering the service or compensation specified as follows (6):

.....
.....
.....

AND WHEREAS having regard to the circumstances of the case, it is hereby ordered that the child be required to make amends for the injury or loss by rendering the service or compensation to the organization or in respect of the community named and in the manner specified in this order:

AND WHEREAS the specified service or compensation is subject to the following terms and conditions (7):

.....
.....
.....

..... and shall be delivered under the supervision of (8):

.....
.....

Given under my hand this (9)..... day of.....

..... at (10)..... in the parish of (11).....

(12).....

(1) State full name of child.

- (2) State age of child.
- (3) State court.
- (4) State name of person bringing child before the court.
- (5) Name of parent or guardian of child.
- (6) State nature of service or compensation to make amends, and the details of the service to be rendered or compensation to be made.
- (7) State the date, place and nature of the service and duration for rendering the service or in the case of monetary compensation, amount and manner of payment the terms of the compensation specified.
- (8) State name and occupation of person supervising delivery of the service or compensation.
- (9) State date.
- (10) State place.
- (11) State name of parish.
- (12) Signature of the proper officer of the court.

FORM 3

THE CHILD DIVERSION ACT

Variation of Terms and Conditions of Reparation Order or Order to Make Amends

WHEREAS (1)..... a child of the age of (2)..... was brought before the court on (3)..... by (4).....

AND WHEREAS the child was ordered to make compensation make amends pursuant to order of:

(5)..... made (6).....

AND WHEREAS having regard to the circumstances of the case, it is hereby ordered that the terms and conditions of the order be varied in the following manner (7):

.....

Given under my hand this (8)..... day of..... at (9)..... in the parish of (10)..... (11).....

- (1) State full name of child.
(2) State age of child.
(3) Date(s) child was brought before court.
(4) State name, rank and police station of constable or in the case of any other person, name and occupation.
(5) State court making order.
(6) State date order made.
(7) State the specific details of variation of the order.
(8) State date.
(9) State place.
(10) State name of parish.
(11) Signature of the proper officer of the court.

FORM 4

THE CHILD DIVERSION ACT

Order of Referral to Child Diversion Programme

WHEREAS (1) a child of the age of (2) was brought before the court as a child in conflict with the law on (3) by—

(4)

AND WHEREAS the child is eligible for and consents to participation in a child diversion programme:

AND WHEREAS the victim, having been identified, consents to the above named child's participation in the child diversion programme:

AND WHEREAS on consideration of the best interests of the child, it is ordered that the above named child be referred to the Child Diversion Committee in the parish of (5) to participate in a child diversion programme approved by the court:

Given under my hand this (6) day of at (7) in the parish of (8) (9)

- (1) State full name of child.
- (2) State age of child.
- (3) Date child appeared before the court.
- (4) State name and rank of police officer, parent or guardian, as the case may be, who brought child before the court.
- (5) Name of parish of Child Diversion Committee to which child is to be referred.
- (6) State date.
- (7) State place.
- (8) State name of parish.
- (9) Signature of the proper officer of the court.

FORM 5

THE CHILD DIVERSION ACT

Order for Modification of Child Diversion Programme

WHEREAS (1) a child of the age of
 (2) was referred for participation in a child
 diversion programme on the (3) by—
 (4)
 (5)

AND WHEREAS the Child Diversion Committee for the Parish of (6)
 supervised a child diversion programme for
 the named child comprising the following diversion options (7):

AND WHEREAS the above named child (8) commenced/did not commence
 participation in the child diversion programme and has failed to complete the
 child diversion programme or any diversion option thereof:

AND WHEREAS on consideration of the reasons for the child's failure to
 complete the child diversion programme and to facilitate the completion of the
 child diversion programme by the child, it is ordered that the child diversion
 programme be modified in the following manner (9):

Given under my hand this (10) day of
 at (11) in
 the parish of (12) (13)

- (1) State full name of child.
- (2) State age of child.
- (3) Date of referral to child diversion programme.
- (4) State court or name and rank of police officer who made referral.
- (5) State police station to which referring police officer was assigned at the time of the referral.

- (6) State Child Diversion Committee that developed child diversion programme for named child.
- (7) State child diversion options comprising child diversion programme.
- (8) Strike out inapplicable alternatives.
- (9) State modification of diversion options or any requirements thereof.
- (10) State date.
- (11) State place.
- (12) State name of parish.
- (13) Signature of the proper officer of the court.

FOURTH SCHEDULE

(Section 45)

Amendment of Enactments

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Second Column

Enactment

Amendment

*Child Care and
Protection Act*

Section 2

In subsection (1), insert in the correct alphabetical sequence the following definitions—

“approved treatment provider” has the meaning assigned to it by section 2 of the *Drug Court (Treatment and Rehabilitation of Offenders) Act*;

“attendance order” means an order made by a court requiring a child, with the child’s consent and the consent of a parent or guardian of the child, to attend a day training centre;

“child diversion” has the meaning assigned to it by the *Child Diversion Act*;

“child diversion referral order” has the meaning assigned to it by section 2 of the *Child Diversion Act*;

“day training centre” shall have the meaning assigned to it by the *Criminal Justice (Reform) Act*;

“drug” includes alcohol or any other intoxicating substance and any dangerous drug falling within Part III, IIIA or IV of the *Dangerous Drugs Act*;

“drug treatment and rehabilitation order” means an order made by a court, requiring a named child to submit to a prescribed treatment programme in accordance with section 76B;

“order to make amends” has the meaning assigned to it by section 2 of the *Child Diversion Act*;

“prescribed treatment programme” has the meaning assigned to it by section 2 of the *Drug Court (Treatment and Rehabilitation of Offenders) Act*;

First Column	Second Column
Enactment	Amendment
	“reparation order” has the meaning assigned to it by section 2 of the <i>Child Diversion Act</i> .”.
Section 14	<p>In subsection (2)—</p> <p>(a) delete the full stop appearing at the end of paragraph (f) and substitute therefor a semicolon; and</p> <p>(b) insert next after paragraph (f), the following—</p> <p style="padding-left: 40px;">“(g) where there is reasonable cause to believe that a child is dependent on any drug, require that child to submit to a prescribed treatment programme.”.</p>
Section 24	<p>In subsection (2)—</p> <p>(a) in paragraph (a), delete the word “or”;</p> <p>(b) in paragraph (b), delete from sub-paragraph (ii), the full stop and substitute therefor a semicolon; and</p> <p>(c) insert next after paragraph (b), the following—</p> <p style="padding-left: 40px;">“(c) be a reparation order, an order to make amends, an order requiring restitution or child diversion referral order under section 34 of the <i>Child Diversion Act</i>; or</p> <p style="padding-left: 40px;">(d) be a drug treatment and rehabilitation order.”.</p>
Section 67	In subsection (1), delete the word “Where” and substitute therefor the words “Subject to the provisions of the <i>Child Diversion Act</i> , where”.
Section 76	<p>1. In subsection (1)—</p> <p>(a) delete the full stop appearing at the end of paragraph (i) and substitute therefor a semicolon; and</p>

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Enactment

Amendment

(b) insert next after paragraph (i), the following—

“(j) under section 34 of the *Child Diversion Act*;

(k) for drug treatment and rehabilitation under section 76A.”.

2. By inserting next after subsection (8), the following—

“ (8A) Where a court makes an order under subsection (1)(b) or (c), the court may include in the order a requirement that the person shall, during the period of the probation or supervision, as the case may be, attend a day training centre specified in the order, and section 5(2), (3) and (4) of the *Criminal Justice (Reform) Act* shall apply, with necessary modification, to that requirement.”.

New sections
76A, 76B and
76C

Insert next after section 76, the following—

“ Drug
treatment
and
rehabili-
tation
order. 76A.—(1) Where a child is charged with an offence, or is for any other reason brought before a court and, a children’s officer, a probation and after-care officer, a parent or guardian of the child, an arresting officer, or the Clerk of the Court, as the case may be, has cause to believe and reports to the court that the child may be dependent on the use of drugs, or it otherwise appears to the court that the child may be dependent on the use of drugs, the court may make a drug treatment and rehabilitation order.

(2) A drug treatment and rehabilitation order shall—

(a) require the child to submit to assessment by an approved treatment provider for participation in a prescribed treatment programme; and

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Enactment

Amendment

- (b) if the assessment states that the child is considered suitable for participation in a prescribed treatment programme, require the child—
 - (i) to participate in the recommended prescribed treatment programme; and
 - (ii) to comply with the conditions imposed by the court under paragraph (c); and
- (c) impose such conditions as the court deems fit (hereinafter referred to as the “specified conditions”) in relation to the child’s participation in the prescribed treatment programme.

(3) Where the court makes an order under subsection (1), the court shall inform the child and the child’s parent or guardian of the consequences of any failure to comply with the specified conditions.

(4) The court may make an order under subsection (1) in relation to a child—

- (a) before commencing the trial;

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Amendment

- (b) where the trial has commenced; or
- (c) where the trial has concluded and resulted in that child's conviction, before sentence is passed,

and in that case, the court shall defer commencement or continuation of the trial or execution of the sentence, as the case may be, during the period for which the drug treatment and rehabilitation order is in force.

(5) Subject to subsection 6, where the court makes an order under subsection (1), the child or the parent or guardian of the child to whom it relates shall be required to signify consent, in writing, to—

- (a) participate in the prescribed treatment programme; and
- (b) comply with the specified conditions, including, if applicable, a condition that the child undergo drug tests at such times as are specified by the order.

(6) The court may dispense with the consent of the parent or guardian if—

- (a) the parent or guardian unreasonably withholds consent, or acts in a manner inconsistent with the exercise of parental rights in the best interests of the child; or

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Report of approved treatment provider.	<p>(b) the child is capable of effective consent in accordance with section 8 of the <i>Law Reform (Age of Majority) Act</i>.</p> <p>(7) The court may, from time to time, on the recommendation of the approved treatment provider, vary or revoke the terms of, or the specified conditions imposed under, a drug treatment and rehabilitation order.</p> <p>76B. Where a child participates in a prescribed treatment programme, the approved treatment provider concerned shall submit to the court, at such intervals as may be prescribed, a progress report in respect of the child.</p>
Termination of programme.	<p>76C.—(1) The court may terminate a prescribed treatment programme in relation to a child who is the subject of a drug treatment and rehabilitation order if—</p> <ul style="list-style-type: none">(a) the child successfully completes the programme;(b) a request is made by or on behalf of the child to terminate the programme; or(c) based on the report of the approved treatment provider, the court is satisfied that there is no further useful purpose to be served by the child's continued participation in the prescribed treatment programme.

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Enactment

Amendment

(2) Where a prescribed treatment programme is completed or otherwise terminated by the court, the records of any tests performed on the child shall not be admissible in evidence in any proceedings against that child.”.

Section 91

In subsection (2), delete—

- (a) the words “two hundred and fifty thousand dollars” and substitute therefor the words “two million dollars”; and
- (b) the words “three months” and substitute therefor the words “one year”.

Constabulary Force Act

New section 25A

Insert next after section 25, the following—

“ Child diversion. 25A. Where a child is found committing an offence or is reasonably suspected of having committed an offence or may be charged with having committed an offence, a constable may, instead of laying charges against the child, act in accordance with the *Child Diversion Act*.”.

Corrections Act

Section 2

1. In subsection (1), insert in the correct alphabetical sequence, the following definitions—

“ “Child Diversion Committee” has the meaning assigned to it by section 6 of the *Child Diversion Act*;

“Children’s Advocate” has the meaning assigned to it by section 2 of the *Child Care and Protection Act*;

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Amendment

“contribution order” has the meaning assigned to it by section 2 of the *Child Care and Protection Act*;

“guardian”, in relation to a young inmate or a child, includes any person, who has for the time being the charge of, or control over, the child;

“restorative justice programme” has the meaning assigned to it by the *Criminal Justice (Reform) Act*.

2. Insert next after subsection (1), the following—

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

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

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Enactment	Amendment
New section 31A	<p>Insert next after section 31, the following—</p> <p style="margin-left: 40px;">“ Child care plan. 31A.—(1) Where a young inmate is detained in an adult correctional centre, the Superintendent of the adult correctional centre shall, in relation to that young inmate—</p> <p style="margin-left: 80px;">(a) have due regard to the best interests of the child; and</p> <p style="margin-left: 80px;">(b) cause a child care plan to be prepared.</p> <p style="margin-left: 40px;">(2) Paragraphs 12 to 17 of the Second Schedule shall apply to a young inmate detained in an adult correctional centre.”</p>
Section 48	In subsection (1), delete the word “persons” and substitute therefor the word “children”.
Section 50	<p>1. In subsection (1)—</p> <p style="margin-left: 40px;">(a) in paragraph (a), delete the word “persons” and substitute the word “children”; and</p> <p style="margin-left: 40px;">(b) delete the word “person” and substitute the word “child”.</p> <p>2. In subsection (2), delete the words “person” and “persons” and substitute therefor the words “child” and “children”, respectively.</p> <p>3. In subsection (3), delete the word “persons” and substitute the word “children”.</p>
Section 52	Delete the word “person” wherever it appears and substitute therefor, in each case, the word “child”.
Section 53	Delete the word “person” wherever it appears and substitute therefor, in each case, the word “child”.
Section 54	Delete the word “persons” wherever it appears and substitute therefor, in each case, the word “children”.

First Column	Second Column
Enactment	Amendment
Section 56	1. In subsection (1), delete the words “Any person” and substitute therefor the words “Any child”. 2. In paragraphs (a) and (b) of subsection (2), delete the word “person” wherever it appears and substitute therefor, in each case, the word “child”.
Section 58A	In subsection (4), delete the definition of “guardian”.
Second Schedule	1. In paragraphs 2, 3, 6 and 9, delete the word “person” wherever it appears and substitute therefor, in each case, the word “child”. 2. In paragraphs 4 and 5, delete the word “person’s” wherever it appears and substitute therefor, in each case, the word “child’s”; 3. In paragraph 7— (a) in subparagraph (1), delete the word “person” and substitute therefor the word “child”; and (b) in subparagraph (2), delete the words “person being” and substitute therefor the words “child being”. 4. In paragraph 8, delete the word “persons” and substitute therefor the word “children”. 5. In paragraph 10— (a) in subparagraphs (1) and (2), delete the word “person” wherever it appears, and substitute therefor the word “child”; and (b) in subparagraph (3), delete the word “persons” and substitute therefor the word “children”. 6. In paragraph 11, delete the words “a person” and substitute therefor the words “a child”. 7. Insert next after paragraph 11 the following— “ 12. The manager of a juvenile correctional centre shall— (a) in respect of each child detained at the centre, cause to be prepared and implemented a plan (hereinafter referred to as a “child care plan”);

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- (b) within fourteen days of the admission of that child to the centre, prepare and implement a child care plan for the care of that child during his detention at the juvenile correctional centre and in preparation of that child's release from the juvenile correctional centre;
- (c) identify the members of staff of the juvenile correctional centre who shall be responsible for preparation and implementation of the child care plan in respect of a child detained at the centre;
- (d) review and monitor the preparation and implementation of child care plans; and
- (e) report quarterly, in writing, to the Commissioner and such other prescribed persons, the status of the care plans prepared and implemented in respect of the children detained at the juvenile correctional centre.

13. A child care plan shall be prepared having regard to—

- (a) the best interests of the child;
- (b) the physical, mental and emotional health of the child;
- (c) the educational, behavioral and social needs of the child;
- (d) the needs of the child in respect of rehabilitation, prevention of recidivism and reintegration into the community on release from the juvenile correctional facility;
- (e) where necessary, the child's participation in counselling, anger management programmes, behavioural therapy, mediation and restorative justice programmes;

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- (f) the terms of the correctional order or any other order sending the child to the juvenile correctional centre;
- (g) the terms of any contribution order made in the respect of that child;
- (h) the provisions of any applicable standing order issued by the Commissioner;
- (i) the terms of any applicable training and work release schemes under section 58 or work programmes under section 60; and
- (j) any applicable Correctional Institution Rules.

14. Before a child care plan is implemented, the plan shall—

- (a) be approved, in writing, by the manager;
- (b) be supplied to the child to whom the plan relates for the child to read the plan or if necessary, for the plan to be read to the child;
- (c) be explained to the child, including any plans for the child's participation in any activities, including educational, work, training, counselling, mediation or any other scheme or programme and any schedule relating to the child's participation in those activities and the child's views, if any, shall be taken into account;
- (d) be read and explained to the child by a member of staff designated by the manager to do so and the child shall be invited to state whether he understands the plan and to sign the plan; and
- (e) where practicable, be read and explained to the child in the presence of a parent, guardian, attorney-at-law of the child, as the case may be.

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15. Where a child declines to sign the child care plan—

- (a) the staff member explaining the plan shall note on the plan any reasons as to why the child declined to sign the plan;
- (b) notwithstanding any objections or concerns the child may have expressed, the plan may be implemented, having appropriate regard to those objections or concerns;
- (c) the member of staff who explained the plan shall indicate, in writing, on the plan, that the contents were explained to the child and that the child declined to sign the plan.

16. A copy of the child care plan referred to in paragraph 14 and any subsequent modification of the plan, shall be furnished to and explained as necessary, to the parent or guardian of that child.

17. The manager shall, in respect of each child detained at the juvenile correctional centre, keep and maintain a record of the—

- (a) admission and detention of the child, including the terms and the conditions of such detention;
- (b) the care and supervision of that child during the child's detention and in preparation of release;
- (c) preparation, approval, modification and implementation of a child care plan in respect of that child,

and all documents in the custody of the juvenile correctional centre relating to the child shall constitute part of the record and be kept accordingly.”.

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Enactment

Amendment

*Correctional
Institution
(Adult
Correctional
Centre) Rules,
1991*

Rule 177

1. In paragraph (1)—

(a) delete subparagraph (a), and substitute therefor the following—

“(a) *young adult class*—Inmates between the ages of eighteen to twenty-one years, inclusive;”;

(b) in paragraph (c), delete the fullstop and substitute therefor a semi-colon;

(c) insert next after paragraph (c), the following—

“(d) *young inmates class*—a class comprising young inmates.”.

2. In paragraph (2), delete the words “young inmates class” and substitute therefor the words “young adult class”.

Gun Court Act

Section 2

Insert immediately before the definition of “Clerk” the following definition—

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

Section 8

1. In subsection (4), delete the words “young person” and substitute therefor the word “child”.

2. Delete subsection (7).

Section 19

In subsection (1), delete the words “young person” and substitute therefor the word “child”.

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Enactment

Amendment

Parole Act

Section 2

1. Renumber the section as subsection (1) of the section.

2. In subsection (1), as renumbered—

- (a) delete the definition of “sentence” and substitute therefor the following—

““sentence” means any sentence of imprisonment other than a sentence of preventive detention;”;

- (b) insert in the correct alphabetical sequence the following definitions—

““adult correctional centre” has the meaning assigned to it by the *Corrections Act*;

“appropriate Child Diversion Committee” means the Child Diversion Committee which, in the opinion of the Board, is likely to have the closest connection with the applicant if he is released on parole;

“appropriate parish parole committee” means the parish parole committee which, in the opinion of the Board, is likely to have the closest connection with the applicant if he is released on parole;

“best interests of the child” has the meaning assigned to it by subsection (2);

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

“child care plan” has the meaning assigned to it by the *Corrections Act*;

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Enactment

Amendment

“child diversion” has the meaning assigned to it by the *Child Diversion Act*;

“Child Diversion Committee” has the meaning assigned to it by the *Child Diversion Act*;

“child offender” means an inmate who is a child serving a sentence, or any part of a sentence, in an adult correctional centre or a juvenile correctional centre;

“children’s officer” has the meaning assigned to it by the *Child Care and Protection Act*;

“guardian”, in relation to a child or a child offender, includes any person, who has for the time being the charge of, or control over, the child;

“inmate” means a person convicted and detained serving a sentence in an adult correctional centre under a term of imprisonment;”.

3. Insert next after subsection (1), as renumbered, the following—

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

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

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

Section 6

Insert next after subsection (6), the following—

" (7) In relation to a child offender, the child offender shall be eligible for parole upon the child offender's successful completion of a child care plan."

Section 7

1. In subsection (1), delete the words "An inmate eligible" and substitute therefor the words "Subject to subsection (1A), an inmate eligible".

2. Insert next after subsection (1), the following—

" (1A) In the case of a child offender, the application may be made on the child's behalf by—

- (a) his parent, guardian or attorney-at-law;
- (b) the Children's Advocate; or
- (c) such other person as the Commissioner of Corrections may, after consultation with the Children's Advocate authorize, in writing."

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3. In subsection (2)—
- (a) Renumber paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and
 - (b) insert next after paragraph (b), the following—
 - “(c) in the case of a child offender, the terms and outcome of the implementation of a child care plan in respect of that child offender;”.
4. In subsection (3)—
- (a) in paragraphs (a) and (b), delete the word “and”;
 - (b) renumber paragraph (c) as paragraph (d), and insert next after paragraph (b), the following—
 - “(c) a copy of the child care plan prepared and implemented in respect of the applicant and a written report of—
 - (i) the child offender’s progress and participation in the child care plan, including participation in educational, work, training, counselling, mediation or any other scheme, programme or activity specified in the child care plan;

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- (ii) the participation of the child offender's parent or guardian, if required by the child care plan, and the outcome of the child offender's parent or guardian's participation in the plan; and".

5. In subsection (4)—

- (a) in paragraph (b), delete the word "and";
- (b) renumber paragraph (c) as paragraph (d); and
- (c) insert next after paragraph (b), the following—

"(c) in the case of a child offender, direct the appropriate parish parole committee to consult with the Child Diversion Committee and report on the outcome of the consultation, including any recommendations made by the Child Diversion Committee in relation to the applicant; and".

6. In subsection (6), delete the words "The Board shall" and substitute the words "Subject to section 6A, the Board shall".

7. Insert next after subsection (6), the following—

" (6A) In the case of a child offender, for the purpose of deciding whether to grant parole to an applicant, in addition to the matters specified in

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subsection (6), the Board shall take into account the following—

- (a) the age of the child offender, including his age at the time the offence was committed;
- (b) whether the child offender has successfully completed the relevant child care plan;
- (c) the recommendations and arrangements, if any, to be implemented to provide appropriate continued rehabilitative support and supervision of the child offender if released on parole;
- (d) if the child offender is released on parole, the care, safety, maintenance and supervision of the child offender during the parole period; and
- (e) the best interests of the child.”.

8. Delete subsection (9).

Section 8

1. Renumber the section as subsection (1).

2. Insert next after subsection (1), as renumbered, the following—

“ (2) If the parolee is a child, the Board shall, in determining the requirements to be contained in the parole order, consider—

- (a) the best interests of the child;
- (b) the arrangements, if any, indicated by the child care plan in respect of the applicant to promote the parolee’s continued rehabilitation and successful reintegration into the community;

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- (c) the recommendations, if any, of—
 - (i) the appropriate parish parole committee;
 - (ii) the appropriate Child Diversion Committee;
 - (iii) the Children’s Advocate or a children’s officer;
 - (iv) a probation and after-care officer, if applicable;
- (d) supervision by the appropriate Child Diversion Committee for the duration of the parole period, notwithstanding any attainment of majority by the child during the parole period;
- (e) any necessary arrangements for co-ordination and communication between the parole officer and—
 - (i) the parolee and the parolee’s parent or guardian;
 - (ii) the appropriate Child Diversion Committee; or
 - (iii) the Children’s Advocate.”.

Section 9

In subsection (4)—

- (a) in paragraph (b), delete the word “and”;
- (b) renumber paragraph (c), as paragraph (d); and
- (c) insert next after paragraph (b) the following—
 - “(c) the parolee’s parent or guardian and the appropriate Child Diversion Committee if the parolee is a child; and”.

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Section 10

In subsection (3), delete the words “decision to the parolee” and substitute therefor the following—

“decision—

- (a) to the parolee; and
- (b) if the parolee is a child, to the parolee’s parent or guardian, the appropriate Child Diversion Committee and the Children’s Advocate.”.

*The Parole
Rules, 1978*

Rule 9

In paragraph (2D), delete the definition of “guardian”.

Passed in the House of Representatives this 9th day of May, 2018 with thirty-three (33) amendments.

PEARNEL CHARLES, CD, MP, JP
Speaker.

Passed in the Senate this 13th day of July, 2018 with thirteen (13) amendments.

THOMAS TAVARES-FINSON, CD, QC, JP
President.

On the 17th day of July, 2018 the House of Representatives agreed to the amendments made by the Senate.

PEARNEL CHARLES, CD, MP, JP
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Ed Valrie A. Curtis
Clerk to the Houses of Parliament.