

M O N T S E R R A T

CHILD JUSTICE BILL 2024

No. 16 of 2024

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I ASSENT

GOVERNOR

DATE:

M O N T S E R R A T

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A BILL FOR

AN ACT TO ESTABLISH A JUDICIAL PROCESS FOR CHILDREN ACCUSED OF COMMITTING OFFENCES, UNDERPINNED BY RESTORATIVE JUSTICE APPROACHES AND WHICH AIMS AT PROTECTING THE RIGHTS OF CHILDREN; TO PROVIDE FOR THE MINIMUM AGE OF CRIMINAL CAPACITY OF CHILDREN; TO INSTITUTE DIVERSION OF CASES AWAY FROM FORMAL COURT PROCEDURES; TO ESTABLISH THE ASSESSMENT OF CHILDREN AND INITIAL INQUIRIES AS COMPULSORY PROCEDURES; TO EXTEND THE SENTENCING OPTIONS AVAILABLE IN RESPECT OF CHILDREN; TO CONSOLIDATE THE LAWS ON THE ADMINISTRATION OF JUSTICE FOR CHILDREN; AND FOR CONNECTED PURPOSES.

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BE IT ENACTED by The King’s Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat and by the authority of the same as follows:—

PART 1—PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the Child Justice Act, 2024.
- (2) This Act comes into force by Order, on a date appointed by the Governor acting on the advice of Cabinet.

2. Interpretation

In this Act—

“**acknowledging responsibility**” means an admission of responsibility for an offence by a child without a formal admission of guilt;

“**adoptive parent**” means a person who has adopted a child under the Children (Care and Adoption) Act;

“**appropriate adult**” means—

- (a) a member of the family of the child; or
- (b) a custodian or guardian of the child;

who has attained the age of eighteen years, but excludes a parent;

“**assessment**” means the assessment of a child by an assigned officer under Part 6;

“**assessment centre**” means any place established or certified by the Minister under section 8 to receive a child in conflict with the law;

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“assigned officer” means a probation officer, social worker, social worker assistant or any other person assigned by the Court to supervise a child;

“attorney-at-law” means an individual who has been admitted to practice law under the Legal Profession Act (Cap. 2.21);

“available services” includes social services, health care services, legal aid and child care services;

“biological father” includes a man who—

- (a) is biologically the father of a child;
- (b) has been adjudged by a court of competent jurisdiction to be the father of a child; or
- (c) is a father as a result of artificial conception procedures under the Status of Children Act (Cap 5.08);

“biological mother” includes a woman who—

- (a) gave birth to a child; or
- (b) is a mother as a result of artificial conception procedures under the Status of Children Act (Cap 5.08);

“biological parent” means a biological mother or a biological father of a child;

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

“child in conflict with the law” means a child who is alleged to have committed an offence;

“Child Justice Committee” means the Child Justice Committee established under section 6;

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“Children (Care and Adoption) Act” means the Children (Care and Adoption) Act (Cap. 5.04);

“Commissioner of Police” means the Commissioner of Police appointed under section 85(4) of the Montserrat Constitution Order (Cap. 1.01);

“community service work” means work for a community organisation or other work of value to the community performed by a child without payment;

“compulsory school attendance order” means an order requiring a child to attend school for a specified period of time, which attendance is to be monitored by a specified person;

“correctional supervision” means a community based sentence referred to in section 61;

“Court” means the Magistrate’s Court;

“Criminal Procedure Code” means the Criminal Procedure Code (Cap 04.01);

“detention” includes confinement in a police cell, lockup, place of safety or other secure residential facility;

“Director” means the Director of Social Services;

“Director of Public Prosecutions” means the Director of Public Prosecutions appointed under section 46 of the Montserrat Constitution Order 2010 (Cap. 1.01);

“diversion” means the removal of cases of a child alleged to have committed an offence from the formal court procedures and the adoption of

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informal procedures in relation to the child, under Part 8;

“**diversion option**” means a plan or programme with a specified content and duration set out in three levels under section 45;

“**family group conference**” means a gathering convened by an assigned officer as a diversion on the direction of the Child Justice Committee under section 38 or sentencing option under a Court order under section 64;

“**financial year**” means a period of twelve months ending on 31 March;

“**Government**” means the Government of Montserrat;

“**initial inquiry**” means a procedure referred to in Part 7 which takes place after an assessment and before trial in a court;

“**legal guardian**” in relation to a child, means a person appointed to be his or her guardian by deed or will, or by order of a court of competent jurisdiction;

“**Minister**” means the Minister responsible for social services;

“**parent**” includes—

- (a) a biological parent or adoptive parent who has the parental responsibility of the child;
- (b) a person, who has stood in loco parentis to a child for a period of not less than one year and who has a continuing relationship with the child;
or

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(c) a legal guardian of the child who has custody or guardianship rights of the child,

but does not include a person acting as care giver on behalf of the Director;

“**parental responsibility**” means the duties, powers, rights, responsibilities and authority which by any law the parent of a child has in relation to that child;

“**place of safety**” means any place or institution, not being a police cell, lock-up or a correctional facility, where the person in charge is willing to temporarily receive and take care of a child in conflict with the law and which, in the opinion of the Child Justice Committee, may provide safety for a child;

“**police custody**” includes custody by the police in any assessment centre or secure residential facility;

“**police officer**” means a member of the Royal Montserrat Police Service;

“**prescribed**” means prescribed by Regulations;

“**relative**” in relation to a child means a grandparent, brother, sister, uncle or aunt of the child, whether the relationship is by blood, affinity or adoption;

“**residential requirement**” means compulsory residence in a secure residential facility or a place other than the home of the child;

“**secure residential facility**” means a residential facility established or certified by the Minister under section 9 to receive sentenced children;

“**supervision and guidance order**”—

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(a) means an order placing a child under the supervision and guidance of a mentor or peer in order to guide the behaviour of the child; and

(b) includes a probation order made under the Probation of Offenders Act (Cap 4:05); and

“**symbolic compensation**” has the meaning assigned to it in section 70(2).

3. Principles to be applied when dealing with children

(1) A Magistrate presiding in the Court, the Director, the Child Justice Committee or a person performing any function under this Act shall be guided by the following principles—

(a) the best interest of the child, the safety, welfare and well-being of the child shall be the paramount consideration;

(b) a child shall as far as possible be given an opportunity to respond before any decision is taken which affects the child;

(c) a child shall be addressed in a manner appropriate to his or her age, maturity and intellectual development;

(d) a child shall be treated in a manner which takes into account his or her beliefs;

(e) all procedures to be carried out under this Act shall be conducted and completed in a timely manner;

(f) parents, relatives and other family members have the right to assist a child in proceedings under this Act and, wherever possible, to participate in decisions affecting the child;

(g) all consequences arising from the commission of an offence by a child shall be proportionate to the circumstances of the child, the nature of the offence

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and the interests of society, and a child shall not be treated more severely than an adult would be treated in the same circumstances;

- (h) a child lacking in—
- (i) family support;
 - (ii) educational support; or
 - (iii) employment opportunities, if the child is between the ages of sixteen years and eighteen years,

shall have equal access to available services; and

- (i) every effort shall be made to ensure that children receive equal treatment to other children when having committed similar offences.
- (2) A Magistrate presiding in the Court or the Child Justice Committee shall consider the following principles when making a decision regarding the release of a child in detention—
- (a) preference shall be given to the release of the child into the care of a parent or an appropriate adult, with or without the imposition of conditions;
 - (b) if the release of a child into the care of a parent or an appropriate adult is not feasible, the release of the child on bail or recognisance shall be considered;
 - (c) if the child is detained as a measure of last resort, the least restrictive form of detention appropriate to the child and the offence shall be selected.
- (3) A child who is in detention in police custody—
- (a) shall be—
 - (i) detained separately from adults;
 - (ii) detained with children of the same sex and monitored by a police officer of the same sex;

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- (iii) detained in conditions which will reduce the risk of harm to that child, including the risk of harm caused by other children;
- (b) shall have the right to—
 - (i) adequate food and water;
 - (ii) medical treatment;
 - (iii) reasonable visits by a parent, relative, appropriate adult, attorney-at-law, assigned officer, health worker, religious counsellor or any other person having a close and wholesome relationship with the child;
 - (iv) access to reading material;
 - (v) adequate exercise; and
 - (vi) adequate clothing.

**PART 2—APPLICATION AND CRIMINAL
RESPONSIBILITY**

4. Application of Act

- (1) Subject to subsections (2) and (3) and section 5, this Act applies to—
 - (a) a child who is alleged to have committed an offence and who, at the time of the alleged commission of the offence, was under the age of eighteen years; and
 - (b) a child referred to in paragraph (a) who attained the age of eighteen years before proceedings that were instituted against him or her, under to this Act, have been concluded.
- (2) The Criminal Procedure Code and the Magistrate’s Court Act apply to a person referred to in subsection (1), except in so far as this Act provides for different procedures in respect of that person.

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- (3) The Director of Public Prosecutions, in the circumstances described in subsection (4), may direct that this Act applies to a person who is alleged to have committed an offence and who, at the time of the alleged commission of the offence was eighteen years or older but under the age of twenty-one years.
- (4) A direction referred to in subsection (3) may be issued if—
 - (a) there are several co-accused and the majority of them are under the age of eighteen years;
 - (b) the person commits a further offence while serving a residential sentence imposed under this Act and after having reached the age of eighteen years; or
 - (c) in the opinion of the Director of Public Prosecutions, any other circumstance merits the issuance of a direction under that subsection.

5. Criminal responsibility

- (1) A person under the age of twelve years is not criminally responsible for any act or omission.
- (2) A person under the age of fourteen years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission, the person had capacity to know that he ought not to do the act or make the omission.
- (3) A person under the age of twelve is presumed to be incapable of unlawful sexual intercourse.
- (4) If the Director of Public Prosecutions intends to prosecute a child for an offence under subsection (2), he shall issue a certificate in the prescribed form confirming the intention to prosecute.
- (5) In issuing a certificate under subsection (4), the Director of Public Prosecutions may have regard to any relevant information, but shall have regard to—
 - (a) the appropriateness of diversion under this Act;

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- (b) the educational level, cognitive ability, domestic and environmental circumstances, age and maturity of the child;
- (c) the nature and gravity of the alleged offence;
- (d) the impact of the alleged offence on any victim of the offence;
- (e) an assessment report done by an assigned officer under section 26(4); and
- (f) an evaluation or a report of a counsellor, medical practitioner or psychologist, if applicable.

PART 3 —CHILD JUSTICE COMMITTEE

6. Establishment of Child Justice Committee

- (1) There is established a Child Justice Committee which is responsible for exercising the powers and discharging the duties conferred on it under this Act.
- (2) The Child Justice Committee is comprised of the following members appointed by the Governor acting on the advice of Cabinet—
 - (a) as an *ex-officio* member, a Magistrate, who shall be Chairperson of the Committee; and
 - (b) two persons who are upstanding members of the community.
- (3) If the Chairperson is absent, the Governor acting on the advice of Cabinet may appoint as the Chairperson, a person who possesses at least seven years' legal experience.
- (4) The term of office of a member of the Child Justice Committee and other matters of appointment including resignation shall be as prescribed.
- (5) The Governor acting on the advice of Cabinet may terminate the appointment of a member of the Child

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Justice Committee appointed under subsection (2)(b) or (3) if the member—

- (a) has been convicted of an offence punishable by imprisonment or by a fine exceeding \$5,000; or
 - (b) fails to attend proceedings of the Child Justice Committee for two consecutive meetings without any valid reason.
- (6) The Governor acting on the advice of Cabinet shall appoint a public officer as Secretary of the Committee and the Secretary shall—
- (a) attend meetings of the Committee;
 - (b) record the minutes of each meeting in proper form;
 - (c) perform any other duty connected with the work of the Committee.

7. Procedure in relation to Child Justice Committee

- (1) The Child Justice Committee shall meet as often as may be necessary to undertake its duties.
- (2) Subject to subsection (3), the Child Justice Committee may act despite the absence of any member of the Child Justice Committee and an order made by the Child Justice Committee shall not be invalid by reason only of the absence of any member during any stage of any proceedings before the Child Justice Committee.
- (3) There shall be at least two members of the Child Justice Committee present, including the Magistrate or a person appointed under section 6(3), at the hearing of a proceeding by the Child Justice Committee.
- (4) In the event of any difference of opinion among members of the Child Justice Committee in the interim or final disposition, the opinion of the majority shall prevail, but where there is no majority, the opinion of the Magistrate or a person appointed under section 6(3) shall prevail.

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- (5) The Child Justice Committee shall, at the end of each financial year, prepare and submit to Cabinet through the Minister, a report, which—
- (a) shall set out details of its meetings held during the year; and
 - (b) may outline recommendations of the Committee for improvement to the administration and operation of this Act.
- (6) The Chief Justice shall make rules relating to proceedings before the Child Justice Committee.

**PART 4—ESTABLISHMENT OF ASSESSMENT CENTRES
AND SECURE RESIDENTIAL FACILITY**

8. Assessment Centre

- (1) The Minister may establish and maintain, either by his or her Ministry or under an agreement with a voluntary organisation, an assessment centre for the temporary reception of any child in conflict with the law and prior to or pending the completion of an initial inquiry regarding the child under this Act.
- (2) Despite subsection (1), if the Minister is of the opinion that any institution other than an assessment centre referred to subsection (1), is fit for the temporary reception of a child in conflict with the law pending an initial inquiry regarding the child, the Minister shall certify the institution as an assessment centre for the purposes of this Act.
- (3) The Minister may make rules to provide for the management of an assessment centre including the standards and the various types of services to be provided by it and the circumstances under which and the manner in which the certification of an assessment centre may be granted or withdrawn.

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- (4) A child who, on commission of an alleged offence is not placed under the charge of a parent and is sent to an assessment centre, shall be initially kept in a reception unit of the assessment centre for initial assessment, care and classification, giving due consideration to the age, physical and mental status of the child and the degree of the alleged offence.

9. Secure residential facility

- (1) The Minister may establish and maintain, either by his or her Ministry or under an agreement with a voluntary organisation, a secure residential facility as may be required for the reception and rehabilitation of a child that has been sentenced.
- (2) Despite subsection (1), where the Minister is of the opinion that any institution other than a secure residential facility established under subsection (1), is fit for the reception of a child that has been sentenced, the Minister shall certify that institution as a secure residential facility.
- (3) The Minister may make rules to provide for the management of a secure residential facility including the standards and various types of services to be provided by that facility which are necessary for the rehabilitation and social integration of a child.
- (4) The rules made under subsection (3) may also provide for the management, classification and separation of a child on the basis of age and the nature of the offence committed by the child and his or her physical and mental status.

**PART 5—METHODS OF SECURING ATTENDANCE OF
CHILD AT INITIAL INQUIRY**

10. Method of securing attendance of child

- (1) If a police officer possesses evidence that a child is a child in conflict with the law, the police officer may secure the

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attendance of a child at an initial inquiry by any of the following methods—

- (a) apprehension;
 - (b) summons; or
 - (c) a written notice.
- (2) Before a police officer uses any of the methods referred to in subsection (1), the police officer shall consult with the Director of Public Prosecutions as to whether or not the matter should be set down for an initial inquiry.

11. Apprehension

- (1) Unless there are compelling reasons justifying an apprehension, a child shall not be apprehended for an offence stated in Schedule 1.
- (2) A warrant to apprehend issued under the Criminal Procedure Code in respect of a child shall direct that the child be brought to appear at an initial inquiry.
- (3) The police officer on apprehending a child shall immediately notify the parent of the child, or if the parent cannot be found, an appropriate adult, of the apprehension.
- (4) If a police officer has notified a parent of a child or an appropriate adult of an apprehension under subsection (3), the police officer shall inform the child and a parent of a child or appropriate adult in the presence of the child of—
 - (a) the nature of the allegation against the child;
 - (b) the rights of the child, in the prescribed manner; and
 - (c) explain to the child the immediate procedures to be followed under this Act and any other relevant law.
- (5) The police officer who has apprehended a child, or any other police officer, shall immediately after the apprehension, inform an assigned officer of the apprehension in the prescribed manner.

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- (6) If the police officer is unable to inform the assigned officer of the apprehension and comply with the requirements of subsection (5), he or she shall submit a written report to the Child Justice Committee at the initial inquiry in the prescribed manner giving reasons for the non-compliance.
- (7) A child who has been apprehended shall, whether an assessment of the child has been effected or not, be taken by a police officer to appear at an initial inquiry within seventy-two hours after the apprehension.
- (8) The police officer responsible for the investigation of a case with respect to a child shall ensure that the child is assessed in accordance with Part 6, before the commencement of the initial inquiry of the offence alleged to have been committed by the child.
- (9) Where a child who is accused of an offence referred to in Schedule 1, has not been released from police custody before appearing at an initial inquiry, the police officer who apprehended the child shall provide the Child Justice Committee with a written report in the prescribed manner giving the reasons why the child is not released.
- (10) A police officer shall not apprehend a child under the age of twelve years who is alleged to have committed an offence but—
 - (a) shall inform the Social Services Department of the particulars of the child as may be prescribed; and
 - (b) may remove the child to a place of safety if the police officer has reasons to believe that it is necessary to do so for the safety of the child.

12. Summons

- (1) A summons issued in respect of a child shall specify—
 - (a) the place, date and time of the initial inquiry;
 - (b) the nature of the allegation against the child;
 - (c) the rights of the child; and

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- (d) the immediate procedures to be followed under this Act or any other law.
- (2) A copy of the summons relating to the alleged offence by the child shall be served on the parents of the child or an appropriate adult.
- (3) A police officer shall no later than twenty-four hours after the service of the summons referred to in subsection (1) inform an assigned officer of the serving of the summons in the prescribed manner.

13. Written notice

- (1) A police officer may direct a child to appear at an initial inquiry at a specified time on a specified date and to remain in attendance at the initial inquiry relating to the offence in question.
- (2) A police officer who directs a child, under subsection (1), shall—

 - (a) direct the parent of the child or an appropriate adult to bring the child or cause the child to be brought to appear at the initial inquiry; and
 - (b) complete and hand to the child and the parent or an appropriate adult, a written notice on which shall be entered the offence in respect of which the initial inquiry will be conducted and the time and place at which the child shall appear.
- (3) A police officer shall—

 - (a) when he or she hands the written notice to a child, the parent or an appropriate adult, as the case may be—

 - (i) inform the child, the parent or appropriate adult of the nature of the allegation against the child;
 - (ii) inform the child, the parent or appropriate adult of his or her rights in the prescribed manner; and

- (iii) explain to the child, the parent or appropriate adult the immediate procedures to be followed under this Act; and
- (b) not later than twenty-four hours after handing the written notice to the child, inform an assigned officer that he or she has done so.

14. Uncertainty as to age of person

If a police officer is uncertain as to the age of a person suspected of having committed an offence but has reason to believe that the person is a child, the police officer shall treat the person as a child for the purposes of this Part, subject to the ascertainment of the age of the person at the initial inquiry.

15. Release of child into care of parent or appropriate adult before initial inquiry

- (1) A police officer shall release a child who is in detention in police custody and who is accused of an offence in Schedule 1, into the care of the parent or an appropriate adult, before the child appears at the initial inquiry unless—
 - (a) exceptional circumstances, as may be prescribed, warrant detention;
 - (b) the parent of the child or an appropriate adult cannot be located or is not available and all reasonable efforts have been made to locate the parent or appropriate adult; or
 - (c) there is a substantial risk that the child may be a danger to any other person or to himself or herself.
- (2) A police officer may, in consultation with the Director of Public Prosecutions, release a child who—
 - (a) is accused of an offence in Schedule 1 but has not been released under subsection (1); or

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(b) is in detention in police custody and who is accused of an offence in Schedule 2,

into the care of a parent or an appropriate adult on any condition in subsection (3) and the police officer shall inform the Director of Public Prosecutions of his or her decision under this subsection.

(3) A child may be released under subsection (2) on condition that the child—

(a) appears at a specified place and time for assessment;

(b) does not interfere with a witness, tamper with evidence or associate with a person or group of specified people; and

(c) resides at a particular address.

16. Magistrate may authorise the release of child

(1) Despite section 15, a Magistrate may authorise the release of a child from detention in police custody into the care of the parent or an appropriate adult on any of the conditions referred to in section 15(3).

(2) If a release is authorised under subsection (1), the written notice referred to in section 17, shall be handed to the child and to the person into whose care the child is released.

17. Duty of police officer and person into whose care the child is released

(1) A police officer who releases a child from detention under section 15 or who releases a child on the direction of a Magistrate under section 16 and places the child in the care of a parent or an appropriate adult, shall—

(a) at the time of release of the child, complete and hand to the child and to the person into whose care the child is released, a written notice in the prescribed form on which shall be entered the offence in respect of which the child is being accused, any conditions relating to the release of the child and the

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place, date and time at which the child shall appear for the initial inquiry;

- (b) direct a parent of the child or an appropriate adult to bring the child or cause the child to be brought to appear at the initial inquiry at a specified place, date and time and to remain in attendance and, if any of the conditions referred to in paragraph (a) have been imposed, to ensure that the child complies with the said conditions; and
 - (c) direct the child to appear at the initial inquiry at a specified place, date and time and to remain in attendance and, if any of the conditions referred to in paragraph (a) have been imposed, to comply with those conditions.
- (2) A person who fails to comply with a notice issued under section 17(1)(a) commits a summary offence and is liable to a fine of \$5,000 or to three months' imprisonment.

18. Release of child on recognisance prior to initial inquiry

- (1) If a child is taken into police custody with or without a warrant, and cannot be brought immediately before the Child Justice Committee, the police officer in charge of a police station to which the child is brought shall inquire into the matter and shall, unless—
- (a) the child is accused of an offence referred to in Schedule 3;
 - (b) it is necessary in the interest of the child to remove him or her from association with an undesirable person; or
 - (c) the police officer has reason to believe that the release of the child would defeat the ends of justice,
- release the child on recognisance, with or without sureties, for an amount set under subsection (3), being entered into by him or her or by his or her parent or an appropriate adult.

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- (2) The recognisance provided under subsection (1) may require the attendance at the initial inquiry of the parent or the appropriate adult and the child.
- (3) The Commissioner of Police shall, on the advice of the Director of Public Prosecutions, issue directives regarding the amounts to be set for recognisance of bail.
- (4) The Director of Public Prosecutions may, in consultation with the police officer charged with an investigation with respect to a child under this Act, authorise the release of a child accused of an offence referred to in Schedule 2 on recognisance prior to the appearance of the child at the initial inquiry, subject to reasonable conditions if the release of the child into the care of a parent or an appropriate adult is deemed appropriate.
- (5) If a child is released under this section, an assigned officer may monitor the child in a manner prescribed.

19. Child accused of certain offences not to be released from detention

Subject to section 3(3) and section 20, a police officer shall not release a child accused of an offence referred to in Schedule 3 from detention in police custody.

20. Detention in place of safety

If a child cannot, for any reason, be released—

- (a) into the care of a parent or an appropriate adult; or
- (b) on recognisance,

the child may be detained in a place of safety.

21. Report of injury sustained by child

- (1) If a child in detention in police custody complains of an injury sustained during apprehension or otherwise, whilst in detention—

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- (a) the police officer to whom the complaint is made shall report the complaint to the police officer in charge of the police station where the child was apprehended; and
 - (b) the police officer in charge of the police station where the child was apprehended, shall delegate a police officer to take the child to a medical doctor for examination as soon as is reasonably possible.
- (2) The report of the medical doctor who conducted an examination on the child under subsection (1)(b) shall be included in the appropriate police file.

22. Register of children in detention in police custody

- (1) The police officer in charge of a police station shall keep a register in which prescribed details regarding the detention in police custody of all children shall be recorded.
- (2) The register referred to in subsection (1) may be examined by the persons to be prescribed.

PART 6—ASSESSMENT OF A CHILD

23. Duty of an assigned officer to assess child

Subject to section 11(5) and 11(8), an assigned officer who receives notification from a police officer under section 11, shall assess the child at an assessment centre or in a place that is conducive to privacy before the child appears at the initial inquiry relating to that child.

24. Persons to attend assessment

- (1) Subject to section 25(2) and 25(3), the parent or an appropriate adult shall attend the assessment of the child.
- (2) A child shall be present at his or her assessment.
- (3) The following persons may attend the assessment of a child—

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- (a) the attorney-at-law representing the child;
- (b) a police officer who apprehended the child, issued the summons or notice or any other police officer designated by the Commissioner of Police; or
- (c) any other person whose presence the assigned officer believes is necessary or desirable for the assessment or whom the assigned officer believes should attend in the best interest of the child.

25. Powers and duties of assigned officer prior to assessment

- (1) An assigned officer shall within a reasonable time, being not less than forty-eight hours, before the assessment of a child issue a notice in the prescribed form to the parent or an appropriate adult to appear at the assessment.
- (2) A notice issued under subsection (1) shall be delivered by a police officer on the request of the assigned officer in the prescribed manner.
- (3) A person notified under subsection (1) may apply in writing to the assigned officer for permission to be absent or excluded from the assessment, and if the assigned officer grants the permission, the permission shall be in writing.
- (4) An assigned officer may in the prescribed manner, request a police officer to—
 - (a) obtain any documentation required for the completion of the assessment of a child;
 - (b) locate the parent or an appropriate adult; and
 - (c) provide transport in order to secure the attendance of the assessment of the child, and his or her parent or appropriate adult.
- (5) An assigned officer shall make every effort to locate a parent or an appropriate adult for the purposes of concluding the assessment of a child.

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- (6) If all reasonable efforts to locate a parent or an appropriate adult have failed, the assigned officer shall conclude the assessment in the absence of the persons and the assigned officer shall record his or her efforts to locate either the parent or appropriate adult.

26. Powers and duties of assigned officer at assessment

- (1) An assigned officer shall—
- (a) explain the purpose of the assessment to—
 - (i) the child; and
 - (ii) the parent or an appropriate adult;
 - (b) inform the child of his or her rights in the prescribed manner;
 - (c) explain the procedures to be followed under this Act to—
 - (i) the child; and
 - (ii) the parent or an appropriate adult; and
 - (d) inquire from the child whether he or she intends to acknowledge responsibility for the offence in question.
- (2) The assigned officer, shall, at any stage during the assessment—
- (a) consult individually with any person at the assessment;
 - (b) contact or consult any person who is not present at the assessment and who may have information relating to an assessment and if the information is obtained, the child shall be informed of the information, in a language that the child is able to understand.
- (3) If a child is accused with another child, the assigned officer may conduct the assessment of the children simultaneously.

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- (4) The assigned officer shall—
- (a) encourage participation of the child during the assessment process, but the child is not obligated to participate;
 - (b) complete an assessment report at the end of an assessment in the prescribed manner and shall provide recommendations with respect to—
 - (i) the prospects of diversion;
 - (ii) the possible release of the child into the care of a parent or an appropriate adult, if the child is in detention; or
 - (iii) the placement, where applicable, of the child in a particular place of safety or an assessment centre.
- (5) If it appears to the assigned officer that the child does not intend to acknowledge responsibility for the alleged offence, this shall be indicated in the assessment report.
- (6) The assigned officer shall submit the report referred to in subsection (4)(b) to the Director of Social Services and the Director of Public Prosecutions prior to the commencement of the initial inquiry undertaken under Part 7.

PART 7—INITIAL INQUIRY

27. Nature and objectives of initial inquiry

- (1) The Child Justice Committee shall hold an initial inquiry in respect of a child after an assessment under this Act.
- (2) The appearance of a child at an initial inquiry under this Act shall be regarded as equivalent to a first appearance before a court as contemplated under the Criminal Procedure Code.
- (3) The objectives of an initial inquiry are to—

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- (a) establish whether the matter can be diverted before a trial;
 - (b) identify a suitable diversion option, where applicable;
 - (c) provide an opportunity for the Director of Public Prosecutions to assess whether there are sufficient grounds for the matter to proceed to trial;
 - (d) ensure that all available information relevant to the child, his or her circumstances and the offence is considered in order to make a decision on diversion and placement of the child;
 - (e) ensure that the views of all persons present are considered before a decision is taken by the Child Justice Committee;
 - (f) encourage the participation of the child and his or her parent or an appropriate adult in decisions concerning the child; and
 - (g) determine the release or placement of the child pending—
 - (i) conclusion of the initial inquiry; or
 - (ii) appearance of the child in Court.
- (4) An initial inquiry shall be held in a place as the Child Justice Committee may determine having regard to privacy and confidentiality.
- (5) The Child Justice Committee shall conduct the proceedings in an informal manner by asking questions, interviewing persons at the initial inquiry and using other lawful methods to obtain information.

28. Persons to attend initial inquiry

- (1) The following persons shall attend an initial inquiry—
- (a) the child;
 - (b) the parent or an appropriate adult;
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- (c)* the assigned officer who conducted the assessment of the child; and
 - (d)* any other person as may be considered necessary by the Child Justice Committee under section 30(2).
- (2)** The Child Justice Committee may exclude a parent or an appropriate adult from attending the initial inquiry if his or her presence at the initial inquiry is not in the best interest of the child.
- (3)** If an initial inquiry proceeds in the absence of the assigned officer who conducted the assessment of the child, the assessment report of that assigned officer, shall be made available at the initial inquiry unless the assessment has been dispensed with under section 30(2).
- (4)** The following persons may attend an initial inquiry—
 - (a)* the attorney-at law representing the child;
 - (b)* a police officer who apprehended the child, issued the summons or notice or any other police officer designated by the Commissioner of Police;
 - (c)* the Director of Public Prosecutions;
 - (d)* the Director; and
 - (e)* any other person as may be considered by the Child Justice Committee under section 30(2).

29. Procedure relating to initial inquiry

- (1)** At the commencement of an initial inquiry the Child Justice Committee shall—
 - (a)* confirm or determine the age of the child;
 - (b)* explain the purposes of the initial inquiry to the child;
 - (c)* inform the child of the nature of the allegation against him or her;
 - (d)* inform the child of his or her rights; and

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- (e) explain to the child the immediate procedures to be followed under this Act.
- (2) The assigned officer shall ensure that the Child Justice Committee has a copy of the assessment report prepared under section 26(4)(b), if available.
- (3) A person attending an initial inquiry may submit to the Child Justice Committee information regarding a previous diversion or conviction of the child concerned.
- (4) A child, the attorney-at-law representing the child, the parent, an appropriate adult, and the Director of Public Prosecutions shall be given an opportunity to question the assigned officer who prepared the assessment report on the child or any other person giving evidence at the initial inquiry.
- (5) If the child in respect of whom an initial inquiry is being conducted, is a co-accused with one or more children, a joint initial inquiry may be held.
- (6) Where a joint initial inquiry is held under subsection (5), different decisions may be made in respect of each child.
- (7) If a child and an adult are alleged to have committed the same offence, section 54 applies.
- (8) If a child does not acknowledge responsibility for the offence with which he or she is being charged, no further questions regarding the offence may be put to the child and the Director of Public Prosecutions may request that the matter be set down for trial in the Court.
- (9) The Child Justice Committee shall keep a record of all proceedings relating to an initial inquiry.

30. Powers and duties of the Child Justice Committee with respect to an initial inquiry

- (1) The Child Justice Committee shall conduct all initial inquiries under this Part relating to a child in conflict with the law.

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- (2) The Child Justice Committee may—
- (a) subpoena or cause to be subpoenaed any person to be present at an initial inquiry, whose presence is in the best interest of the child or is necessary for the conclusion of the initial inquiry;
 - (b) permit the attendance of any other person who may be able to contribute to the initial inquiry;
 - (c) request any further documentation or information which may be necessary or relevant to the initial inquiry;
 - (d) after consideration of the information contained in an assessment report, elicit any information from any person attending the initial inquiry to supplement or clarify the information in the assessment report;
 - (e) take the steps that may be necessary to establish the truth of any statement or the correctness of any submission; and
 - (f) where the conduct of the proceedings of the initial inquiry or any aspect of it is in dispute, rule on the conduct of the initial inquiry in a manner consistent with this Act.
- (3) Notwithstanding section 27(1), if a child has not been assessed at the commencement of the initial inquiry, the Child Justice Committee may dispense with the assessment if it is in the best interests of the child to do so.
- (4) The Child Justice Committee shall ensure that the child, the attorney-at-law representing the child, the parent or an appropriate adult is informed of—
- (a) the recommendations in the report prepared by the assigned officer; and
 - (b) any diversion option and the aims and content of the diversion option,

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in a language that the child is able to understand.

- (5) The Child Justice Committee may request the assigned officer to explain, elaborate on or justify any recommendation or statement made in the assessment report, and provide additional information.
- (6) The Child Justice Committee shall consider the reports, provided by the police officer who apprehended the child, regarding the apprehension of the child and the detention of the child in police custody.

31. Failure to appear at initial inquiry

- (1) A child or his or her parent or an appropriate adult, who has been directed to appear at an initial inquiry by a police officer under section 13 and who fails to do so, commits a summary offence and is liable to a fine of \$5,000 or to three months' imprisonment.
- (2) Subject to sections 68 and 69, a child who has been released in the care of his or her parent or an appropriate adult and who fails to comply with the direction contained in a written notice referred to in section 13 or with any condition imposed under section 15(3) commits a summary offence and is liable to a fine of \$5,000 or to three months' imprisonment.

32. Release of child into care of parent or appropriate adult at initial inquiry and on recognisance or bail

- (1) The Child Justice Committee shall release a child who is in detention, into the care of the parent or an appropriate adult if—
 - (a) the initial inquiry is not disposed of at the first appearance of the child before the Child Justice Committee; and
 - (b) it is in the interest of justice to so release the child.
- (2) In considering whether or not it would be in the interest of justice to release a child into the care of the parent or an

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appropriate adult, the Child Justice Committee shall have regard to the recommendation made by the assigned officer and other relevant factors, including—

- (a) the best interests of the child;
- (b) whether the child has any previous convictions;
- (c) the availability of the parent or an appropriate adult;
- (d) the likelihood of the child returning to the initial inquiry for a further appearance;
- (e) the period for which the child has already been in detention since apprehension;
- (f) the imposition of a curfew on release;
- (g) the probable period of detention of the child until conclusion of the initial inquiry;
- (h) the risk that the child may be a danger to himself or herself or to any other person;
- (i) the state of health of the child;
- (j) the reason for any delay in the disposal or conclusion of the initial inquiry and whether such delay was due to any fault on the part of the Crown or on the part of the child or his or her attorney-at-law;
- (k) whether detention would prejudice the child in the preparation of his or her case;
- (l) the likelihood that, if the child is found guilty of the offence he or she will be detained for a substantial period;
- (m) the fact that the child is under the age of twelve years and conclusively presumed to lack criminal responsibility; and
- (n) the receipt of a written confirmation by the Director of Public Prosecutions that he or she intends to

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charge the child with an offence referred to in Schedule 3.

- (3) The Child Justice Committee may in releasing a child under subsection (1) impose one or more of the following conditions, namely, that the child shall—
- (a) appear before the Child Justice Committee at a specified place and time;
 - (b) report periodically to a specified person or place;
 - (c) attend a particular school;
 - (d) reside at a particular address;
 - (e) be placed under the supervision of a specified person; or
 - (f) not to interfere with a witness, tamper with any evidence or associate with any person or group of specified persons.
- (4) If the Child Justice Committee releases a child into the care of a parent or an appropriate adult, the Child Justice Committee shall direct the parent or the appropriate adult, to bring the child or ensure that the child appears at a specified time and place and, if a condition has been imposed under this section, to ensure that the child complies with the condition.
- (5) A parent or an appropriate adult into whose care a child is placed who fails to comply with a direction issued under subsection (4) commits a summary offence and is liable to a fine of \$5,000 or to twelve months' imprisonment.
- (6) If a child has been released into the care of his or her parent or an appropriate adult and the child fails to comply with a condition imposed under subsection (3) the Child Justice Committee may direct that the child be detained in a place of safety.
- (7) The Child Justice Committee may, after consideration of the facts release a child on bail or recognizance having regard to the factors referred to in subsection (2) and
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subject to one or more of the conditions referred to in subsection (3).

33. Detention of child after first appearance before the Child Justice Committee

- (1) The Child Justice Committee may direct the detention of a child in a place of safety if—
 - (a) the proceedings of the initial inquiry are postponed under section 34 or 35;
 - (b) the release of the child into the care of his or her parent or an appropriate adult is for any reason not possible; or
 - (c) the child is to appear for trial under section 40(3).
- (2) If a place of safety is unavailable, the Child Justice Committee may direct that a child be detained in a detention facility at the police station—
 - (a) in accordance with section 3(3); and
 - (b) that is deemed by the Director as suitable for the detention of children.
- (3) The Child Justice Committee shall have regard to the recommendations made by the assigned officer when deciding where to place the child under subsection (1).
- (4) A child of fourteen years or older who is charged with an offence referred to in Schedule 3 shall be detained in a correctional facility if the Child Justice Committee feels there is a substantial risk that the child may cause harm to other children in a place of safety.
- (5) If the Child Justice Committee issues a direction that a child be detained in a correctional facility, the Child Justice Committee shall record the reasons for issuing the direction.
- (6) If the Child Justice Committee makes an order for the detention of a child under subsection 1(c) the assigned officer shall make periodic visits to the child to ensure that

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the child is being properly treated or kept under suitable care.

- (7) If the assigned officer referred to in subsection (6) is satisfied that the child is not being properly treated or kept under suitable care the assigned officer shall issue appropriate remedial directions to the person in whose custody the child has been detained and submit a report to the Child Justice Committee regarding the detention of the child.
- (8) Subject to subsections (5) and (6), if the Child Justice Committee issues a direction for the detention of a child under subsection (1)(c), or on receipt of the report referred to in subsection (6), the child shall appear before the Child Justice Committee at a time and place to be determined by the Child Justice Committee.
- (9) If a child appears before the Child Justice Committee under subsection (7), the Child Justice Committee shall—
 - (a) determine whether or not the detention remains necessary;
 - (b) if ordering the further detention of the child, record the reasons for its decision;
 - (c) consider a reduction of the amount of bail or recognizance, if applicable;
 - (d) inquire whether or not the child is being properly treated and kept under suitable conditions; and
 - (e) if satisfied that the child is not being properly treated and kept under suitable conditions, inspect and investigate the treatment and conditions and make an appropriate remedial order.

34. Postponement of initial inquiry

- (1) Subject to section 35, the Child Justice Committee may postpone the proceedings of an initial inquiry for a period not exceeding fourteen days for the purposes of—

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- (a) securing the attendance of a person necessary for the conclusion of the initial inquiry;
 - (b) obtaining information necessary for the conclusion of the initial inquiry;
 - (c) establishing the attitude of the victim regarding diversion;
 - (d) the planning of a diversion option;
 - (e) finding alternatives to pre-trial residential detention;
 - (f) assessing the child, where no assessment has previously been undertaken and it is found that assessment may not be dispensed with;
 - (g) noting a confession;
 - (h) noting an admission;
 - (i) holding of an identity parade;
 - (j) securing an attorney-at-law to represent the child; or
 - (k) any other matter which the Child Justice Committee considers necessary.
- (2) If the proceedings of an initial inquiry are postponed under subsection (1)(g), (h) or (i), the Child Justice Committee shall inform the child of his or her right to have his or her parent or an appropriate adult present during the proceedings.
- (3) Subject to section 35, the Director of Public Prosecutions may request that the matter be set down for trial in the Court, if the initial inquiry is not concluded within the period specified in subsection (1).

35. Postponement of initial inquiry for detailed assessment

- (1) Notwithstanding section 34, the Child Justice Committee may postpone the proceedings of an initial inquiry for a period not exceeding seven days if there are exceptional circumstances warranting a further assessment of the child, and if these circumstances relate to—

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- (a) the possibility that the child may be a danger to others or to himself or herself;
 - (b) the fact that the child has a history of repeatedly committing offences or abscondment;
 - (c) the social welfare history of the child;
 - (d) the possible admission of the child to a sexual offender's programme, substance abuse programme, therapeutic treatment programme or other intensive programme; or
 - (e) the possibility that the child may be a victim of sexual abuse or other abuse.
- (2) A detailed assessment shall be conducted in the home of the child, unless this is not in the best interests of the child, or is impossible, in which case the assessment may be conducted at a place of safety or an assessment centre.

36. Referral of matter to the Director

- (1) If it appears during proceedings at an initial inquiry that a child is in need of care and protection under the Children (Care and Adoption) Act and that it is desirable to deal with the child under that Act, the Child Justice Committee shall stop the proceedings and transfer the matter to the Director to be dealt with in accordance with the Children (Care and Adoption) Act.
- (2) Referral of a matter to the Director under subsection (1), shall be considered by the Child Justice Committee if a child—
- (a) has previously been assessed on more than one occasion with regard to minor offences that were committed to meet the basic need of the child for food and shelter and in the initial inquiry in question it is again alleged that the child has committed the offences;
 - (b) is allegedly abusing dependence-producing substances on controlled drugs; or

- (c) does not live at his or her family home or in an appropriate child care service and is alleged to have committed a minor offence, the purpose of which was to meet the basic need of the child for food and shelter.

37. Decision regarding diversion

- (1) The Child Justice Committee shall ascertain whether a child before the Child Justice Committee may be diverted, in accordance with Part 9, after consideration of the following—
 - (a) any recommendations made by the Director of Public Prosecutions;
 - (b) the assessment report, unless this has been dispensed with under section 30(3);
 - (c) the views of all persons present at the initial inquiry and any information provided by the persons;
 - (d) any information requested under section 30(2)(c); and
 - (e) the willingness of the child to acknowledge responsibility for the offence.
- (2) If the Child Justice Committee decides that the matter may be diverted, the Child Justice Committee shall issue a direction for diversion in the prescribed manner in respect of the child concerned.
- (3) In addition to the diversion options referred to in section 45, the Child Justice Committee may, after consultation with the persons present at the initial inquiry, develop an individual diversion option which meets the purposes of and standards applicable to the diversion set out in that section.

38. Family group conference

- (1) If a child has been referred to appear at a family group conference by the Child Justice Committee or the Court,

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an assigned officer shall be appointed by the Child Justice Committee or the Court to conduct the family group conference.

- (2) The assigned officer appointed under subsection (1) shall, within fourteen days, but not later than twenty-one days after the appointment, convene the family group conference by setting the time and place for such conference, and taking all necessary steps to ensure that all persons who are to attend the conference are adequately notified of the time and place of the conference.
- (3) The following persons shall attend a family group conference—
- (a) the child and his or her parent or a appropriate adult;
 - (b) any person requested by the child and considered appropriate by the Child Justice Committee or the Court;
 - (c) the assigned officer;
 - (d) a police officer who apprehended the child, issued a summons or notice or another police officer designated by the Commissioner of Police;
 - (e) the victim of the alleged offence which the child committed and if the victim is under the age of eighteen years, his or her parent or an appropriate adult;
 - (f) the attorney-at-law representing the child, if applicable;
 - (g) a member of the community in which the child resides; and
 - (h) any person authorised by the assigned officer to attend the family group conference.
- (4) The participants in a family group conference shall follow the procedure agreed upon by them and may agree to a plan in respect of the child under subsection (4) as they consider necessary.

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- (5) A plan referred to in subsection (3)—
- (a) may include—
 - (i) the application of any diversion option contained in section 42(1); or
 - (ii) any other plan appropriate to the child, his or her family and the circumstances, but the plan shall be consistent with the principles contained in this Act; and
 - (b) shall—
 - (i) specify the objectives for the child and the period within which they are to be achieved;
 - (ii) contain the details of the services and the assistance to be provided for the child and for a parent or an appropriate adult;
 - (iii) specify the persons or organisations to provide the services;
 - (iv) state the responsibility of the child and the parents or an appropriate adult; and
 - (v) include any other matter relating to the education, recreation and welfare of the child as are relevant.
- (6) The assigned officer shall record the details of and reasons for any plan agreed to at the family group conference and shall furnish a copy of the record to the Child Justice Committee.
- (7) If a child fails to comply with any condition of the plan agreed to in a family group conference, the assigned officer shall notify the Child Justice Committee in writing of the failure, and section 47 applies.
- (8) If the participants of a family group conference fail to agree on a plan, the assigned officer shall close the family group conference and refer the matter back to the Child

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Justice Committee for consideration of another diversion option.

- (9) The proceedings of a family group conference shall be confidential and a statement made by a participant in the family group conference may not be used as evidence in any subsequent court proceedings.

39. Release of child

- (1) If the Child Justice Committee at the conclusion of an initial inquiry determines that a child is not guilty of the alleged offence, the Child Justice Committee may recommend to the Director of Public Prosecutions that the child not be prosecuted.
- (2) The Director of Public Prosecutions shall determine whether the child under subsection (1) shall be prosecuted.
- (3) The Child Justice Committee shall notify the child's parent and the child of its determination under subsection (1) and release the child.

40. Procedure on referral of matter for trial

- (1) If diversion has not taken place and the matter has not been transferred to the Director under section 36 on the conclusion of the initial inquiry, if the Director of Public Prosecutions decides to prosecute the child, the police shall inform the Child Justice Committee of the place, date and time when the child shall appear for trial in the Court.
- (2) The Child Justice Committee shall, if the child is not represented by an attorney-at-law, explain to the child and the parent or an appropriate adult, the provisions of Part 8 regarding legal representation.
- (3) If a child is—
- (a) in detention, the Child Justice Committee shall inform the child of the place, date and time of his or her appearance in Court and shall direct the parent

or an appropriate adult to attend the proceedings at the specified time and place.

- (b) not in detention, the Child Justice Committee—
 - (i) may alter or extend any condition imposed under section 15(3) or section 32(3); and
 - (ii) shall direct the child and his or her parent or an appropriate adult, to appear in Court at a specified place, date and time.

PART 8—LEGAL REPRESENTATION

41. Child to be provided with legal representation

- (1) A child may be provided with legal representation at the public expense at the conclusion of an initial inquiry if no legal representative was appointed by the parent or an appropriate adult and if—
 - (a) the child is in detention pending plea and trial in the Court;
 - (b) the proceedings are postponed for plea and trial in the Court and it is likely that a sentence involving a residential requirement may be imposed if the child is found guilty of the offence in question; or
 - (c) the child is under the age of fourteen years and a certificate has been issued under section 5(4) in respect of the child.
- (2) The Director of Public Prosecutions shall indicate to the Court whether he or she is of the opinion that the matter is a matter referred to in subsection (1)(b) before the child is asked to plead and if so, a plea shall not be taken until an attorney-at law has been appointed.
- (3) The Minister shall issue directives regarding—
 - (a) the criteria to be satisfied in determining whether a child qualifies for legal representation at the public expense; and

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- (b)* the maximum amount of funds that may be provided for legal representation in a proceeding.
- (4)** A parent or an appropriate adult may apply to the Director for legal representation, in the form set out in Schedule 5.

42. Requirements to be complied with by attorney-at-law

An attorney-at-law representing a child shall—

- (a)* allow the child, as far as is reasonably possible, to give independent instructions concerning the case;
- (b)* explain the rights and duties of the child in relation to any proceedings under this Act, in a manner appropriate to the age and intellectual development of the child;
- (c)* promote diversion where appropriate, but may not unduly influence the child to acknowledge responsibility; and
- (d)* ensure that the trial is conducted without delay.

PART 9— DIVERSION

43. Purposes of diversion

The purposes of diversion under this Act are to—

- (a)* encourage the child to be accountable for the harm which he or she has caused to another person;
- (b)* meet the particular needs of the child;
- (c)* promote the reintegration of the child into the family and the community;
- (d)* provide an opportunity to those affected by the harm caused by the child to express their views on its impact on them;
- (e)* encourage the rendering to the victim of some symbolic benefit or the delivery of some object as compensation for the harm caused by the child;

- (f) promote the reconciliation between the child and the person or community affected by the harm caused by the child;
- (g) prevent stigmatisation of the child and other adverse consequences flowing from being subject to the criminal justice system; and
- (h) prevent the child from having a criminal record.

44. Child to be considered for diversion under certain circumstances

A child shall be considered for diversion if—

- (a) the child and his or her parent or an appropriate adult, consent to the diversion and the diversion option;
- (b) the child understands his or her right to remain silent and has not been unduly influenced to acknowledge responsibility for an alleged act or omission; and
- (c) there is sufficient evidence to prosecute the child, or
- (d) the penalty for offence with which the child is charged is no more than five years' imprisonment.

45. Levels of diversion options

- (1) At the initial inquiry, the Child Justice Committee, in directing a diversion option in respect of a child, may direct a level one, level two or level three diversion option as set out in Schedule 4 and in selecting the level that is appropriate for the child, the Child Justice Committee shall consider—
 - (a) the background of the child;
 - (b) the educational level, cognitive ability and the environmental circumstances of the child;
 - (c) the proportionality of the option recommended or selected to the circumstances of the child;

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- (d)* the nature of the offence and the interests of the community or society; and
 - (e)* the age and developmental needs of the child.
- (2)** A level three diversion option applies to a child over the age of fourteen years in cases where the relevant law under which the offence is committed imposes a sentence of detention for a period not exceeding one year.
- (3)** On selection of a diversion option, the Child Justice Committee or the Court shall designate an assigned officer or other suitable person to monitor the compliance of the child of the selected diversion option and if a child fails to comply with any condition of the diversion option, the assigned officer or specified person shall notify the Child Justice Committee or the Court of the failure.

46. Minimum standards applicable to diversion and diversion options

- (1)** A child may be required to perform community services as an element of diversion, with due consideration to the age and development of the child.
- (2)** A diversion option must—
 - (a)* promote the dignity and well-being of the child, and the development of his or sense of self-worth and ability to contribute to his or her community and society;
 - (b)* not be exploitative, harmful or hazardous to the physical or mental health of the child;
 - (c)* be appropriate to the age and maturity of the child; and
 - (d)* not interfere with the education or schooling of the child.
- (3)** The Director shall keep a register in the prescribed manner of all children who have been subjected to diversion.

- (4) A child shall not be excluded from a diversion option if his or her parents is unable to pay any fee required for the child's participation in the diversion option.

47. Failure to comply with diversion direction

- (1) If a child fails to comply with a diversion direction, the Child Justice Committee shall on being notified of the failure in the prescribed manner, issue a warrant for the apprehension of the child or a written notice to the child to appear before the Child Justice Committee.
- (2) If a child appears before the Child Justice Committee under subsection (1), the Child Justice Committee shall inquire into the reasons for the failure of the child to comply with the diversion direction and unless the Director of Public Prosecutions decides to proceed with the prosecution of the child concerned, the Child Justice Committee may, after consideration of the views of any person present at the initial inquiry—
- (a) apply the same option with altered conditions;
 - (b) apply any other diversion option; or
 - (c) issue an appropriate direction that will assist the child and his or her family to comply with the diversion option initially applied.
- (3) If the Director of Public Prosecutions decides to proceed with the prosecution of the matter, the matter shall be set down for trial in the Court and section 40 applies with the necessary changes required by the context.

48. Development of diversion options

- (1) The Minister on consultation with the Child Justice Committee and the Director may develop any other suitable diversion option as contemplated in this Part.
- (2) A diversion option presented to the Minister by a government department, an agency or a non-governmental

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organisation, may be approved by the Minister for the purposes of this Act, in the prescribed manner, if it—

- (a) meets the requirements of section 46(2);
 - (b) has a predetermined content and duration; and
 - (c) involves a service to children on a regular basis.
- (3) A diversion option may be inserted in a plan that is developed at a family group conference under section 38 or section 64 and is appropriate to the child.

PART 10 —COURT PROCEEDINGS

49. Parent may be present

On hearing of a charge against, or an application relating to, a person who is believed to be a child, the Court may summon the parent or an appropriate adult responsible for the care of the child brought before the court, to be present in court while the charge or application is being determined.

50. Conduct of proceedings relating to child in Court

- (1) At the commencement of the proceedings in Court, the Magistrate shall in the prescribed manner—
- (a) inform the child of the nature of the allegations against him or her;
 - (b) inform the parent of the child of the nature of the allegations against the child;
 - (c) inform the child of his or her rights; and
 - (d) explain to the child the procedures to be followed under this Act and the Criminal Procedure Code.
- (2) The proceedings in the Court shall, with due regard to the procedural rights of the child, be conducted in an informal manner in order to encourage maximum participation by the child and his or her parent or an appropriate adult.

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- (3) The Magistrate shall designate a person to act as an independent observer and the independent observer shall be present at the proceedings if—
- (a) a child refuses to have his or her parent or an appropriate adult present at the proceedings referred to in subsection (1) and (2); or
 - (b) a parent or an appropriate adult is not present or cannot be traced and an attorney-at-law is not available.
- (4) The Magistrate shall protect a child from hostile cross examination where the cross examination is prejudicial to the well-being of the child or to the fairness of the proceedings.

51. Admissibility of certain evidence

- (1) The Magistrate shall determine whether to admit evidence obtained as a result of a confession or an admission by a child, whether or not the parent of the child or an appropriate adult or the attorney-at-law representing the child was present when the confession or the admission was made.
- (2) Subsection (1) also applies if an identity parade has taken place.

52. Treatment of child at Court

- (1) A child shall not wear leg irons when appearing in any court, and handcuffs may only be used if there are exceptional circumstances warranting their use.
- (2) A child held in a cell at the police station or at any court shall be kept separate from an adult and shall be treated in a manner and kept in conditions which take into account the age of the child.
- (3) A female child shall be kept separate from a male child when in the custody of any court.

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- (4) If a child is transported to and from a court he or she shall, be transported separate from adults.
- (5) The Commissioner of Police shall issue directives in the treatment and conditions of a child while in detention in any court.

53. Medical examination or evaluation of a child

- (1) The Director of Public Prosecutions or the attorney-at-law, appointed by the Crown and representing the child may request the Court to order a medical examination by a medical practitioner or an evaluation of the child by a suitably qualified person to be conducted at the expense of the Crown.
- (2) If an order has been made by the Court under subsection (2), the person identified to conduct the medical examination or evaluation of the child shall furnish the Court with a written report of the examination or evaluation within thirty days of the date of the order.
- (4) The evaluation shall include an assessment of the cognitive, emotional, psychological and social development of the child.
- (5) The person who conducts the evaluation may be called to attend the Court proceedings and to give evidence and, if called, shall be remunerated by the Crown.

54. Separation and joinder of trials involving child and adult

- (1) If a child and an adult are alleged to have committed the same offence, they are to be tried separately unless it is in the interest of justice to join the trials.
- (2) An application for the joinder of the trials shall be made to the Court and the child shall appear after notice is given to the child in the prescribed manner.
- (3) If the Court grants an application for joinder of trials, the matter shall be transferred to the Court in which the adult

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is being tried and the child shall appear after notice is given to the child in the prescribed manner.

- (4) The court where the adult is being tried, shall afford the child concerned all the benefits conferred on the child under this Act.

55. Time limits relating to conclusion of trials

- (1) The Court shall conclude the trial of an accused child as speedily as possible and shall ensure that postponements are limited in number and duration.
- (2) Sections 32 and 35, apply, with the necessary changes required by the context to the Court if the child appearing in the Court for the first time is in detention.
- (3) If a child remains in detention in a place of safety, a secure residential facility or a correctional facility and the trial of the child is not concluded within six months from the date on which the child has pleaded to the charge, the child shall be released from detention, unless he or she is charged with an offence listed under item 1, 2 or 3 of Schedule 3.

56. Court may divert matter

- (1) If at any time before the conclusion of a case for the prosecution it comes to the attention of the Court that a child acknowledges or intends to acknowledge responsibility for an alleged offence, the court may make an order for diversion in respect of the child if the Director of Public Prosecutions indicates that the matter may be diverted.
- (2) Sections 44 to 47 apply with the changes required by the context if the court makes an order for diversion.
- (3) If the Court makes an order for diversion, it shall postpone the proceedings pending the compliance of the child with the diversion order.

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- (4) The Court may, on receipt of a report from an assigned officer that a child has successfully complied with a diversion order, acquit the child of all charges in question.
- (5) An acquittal of the child may be made in the absence of the child.
- (6) If a child fails to comply with a diversion order, section 47 applies with the necessary changes required by the context.

57. Privacy and confidentiality for children in court

- (1) A person shall not be present at a sitting of a court in a matter relating to a child unless the presence of the person is necessary in connection with the proceedings of the court or unless the Magistrate has granted the person permission to be present.
- (2) A person shall not publish any information which reveals or may reveal the identity of a child or of any witness under the age of eighteen years appearing at any proceedings before a court.
- (3) Subject to subsection (4), an assigned officer or Magistrate shall not preclude—
 - (a) access to information pertaining to a child if the access would be in the best interests, safety or welfare of the child;
 - (b) the publication, in the form of a law report, of—
 - (i) information for the purpose or reporting any question of law relating to the proceedings in question; or
 - (ii) any decision or ruling given by the court on the question; or
 - (c) the publication, in the form of any report of a professional or technical nature, of research results and statistical data pertaining to a child if the

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publication would be in the best interests, safety or welfare of the child or children in general.

- (4) The reports referred to in subsection (3)(b) and (c) shall not mention—
- (a) the name of the person charged or of the person against whom or in connection with whom the offence in question is alleged to have been committed or of any witness at the proceedings; and
 - (b) the place where the offence in question was alleged to have been committed.
- (5) Subject to subsection (6), in relation to any proceedings in any court—
- (a) a newspaper report or radio broadcast of the proceedings shall not reveal the name, address or school, or include any particulars calculated to lead to the identification of any child either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness in the proceedings;
 - (b) a picture shall not be published in any manner as being, or including a picture of, any child concerned in the proceedings.
- (6) The court may, in any case, if satisfied that it is in the interests of justice or the public to do so, by order dispense with the requirements of this subsection to the extent as may be specified in the order.

PART 11— SENTENCING OF CHILD

58. Child to be sentenced in accordance with this Part

The Court shall, after a finding of guilt in relation to a child, impose a sentence on the child in accordance with this Part.

59. Purposes of sentencing

The purposes of sentencing under this Act are to—

- (a) encourage the child to understand the implications of and be accountable for the harm caused;
- (b) promote an individualised response that is appropriate to the circumstances of the child and proportionate to the circumstances surrounding the offence;
- (c) promote the reintegration of the child into the family and community; and
- (d) ensure that any necessary supervision, guidance, treatment or services which form part of the sentence, assist the child in the process of reintegration and rehabilitation.

60. Pre-sentence reports

- (1) The Court shall request a pre-sentence report prepared by a probation officer or an appropriate person prior to the imposition of sentence on a child.
- (2) The probation officer or appropriate person shall complete the report referred to in subsection (1) as soon as possible, but no later than one calendar month following the date on which the report was requested.
- (3) The Court is not obligated to impose a sentence recommended in a pre-sentence report, but if the Court imposes a sentence other than that recommended in the pre-sentence report, it shall record the reason for the imposition of a different sentence.
- (4) The Court may dispense with a pre-sentence report if—
 - (a) a child is convicted for an offence referred to in Schedule 1; or
 - (b) requiring the report would cause undue delay in the conclusion of the case to prejudice the child,

but the Court shall not impose a sentence with a residential requirement unless a pre-sentence report has been placed before the Court.

- (5) For the purposes of subsection (4), “**a sentence with a residential requirement**” includes a sentence where the residential requirement is suspended.
- (6) If the Court imposes a sentence involving detention in a secure residential facility, the Court shall certify on the warrant of detention that a pre-sentence report has been placed before the Court prior to the imposition of the sentence.

61. Community based sentences

- (1) The Court may impose as a requirement in relation to a penalty for an offence that the child is sentenced to a secured residential facility or a correctional facility for an initial period and thereafter is required to serve the remainder of the sentence providing a service in the community.
- (2) A sentence which allows a child to serve in the community and which may be imposed under this Act includes—
 - (a) any of the level two diversion options referred to in items (a), (b), (c), (d) or (e) of Schedule 4;
 - (b) placement under a supervision and guidance order in the prescribed form for a period not exceeding three years;
 - (c) in cases that warrant the specialised intervention, referral to counselling or therapy in conjunction with any of the options under paragraph (a) for a period of time as the Court considers necessary;
 - (d) if the child is over the age of compulsory school attendance, and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose,

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for a period not exceeding twelve months and for no more than thirty-five hours per week;

- (e) performance of some service without remuneration for the benefit of the community under the supervision or control of a specified person or institution identified by the Court for a maximum period of two hundred and fifty hours and which shall be completed in twelve months; and
 - (f) committing the child to the care of a fit person, whether a relative or not, who is willing to undertake the care of the child;
 - (g) ordering the parent of the child to enter into a recognisance for the good behaviour of the child; and
 - (h) any other sentence, subject to section 68, which is appropriate to the circumstances of the child and in keeping with the principles of this Act and which, if it includes a period of time, shall not exceed twelve months.
- (3) The consent of a person to undertake the care of a child under an order made under subsection (2)(f) shall be provided in a manner the Court determines sufficient.
- (4) Before a child from the age of twelve years to fourteen years is sentenced under subsection (2)(e), the Court shall consider the age, development and compulsory school attendance of the child.

62. Supervision of a child under a supervision and guidance order

- (1) If a child has been placed under the supervision of a person under a supervision and guidance order under section 61(2)(b), that person—
- (a) shall, while the order remains in force, visit, advise and support the child and, when necessary,

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endeavour to find the child suitable employment;
and

- (b)* may, if it appears necessary in the child's best interests to do so, at any time while the order remains in force, bring the child before a court and that court may, if it thinks it desirable in the child's best interests to do so, commit the child to the care of a fit person, whether a relative or not, who is willing to undertake the care of the child.
- (2) If a child is bound by a recognizance or order under the Probation of Offenders Act (Cap. 4.05) or under this Act, the attainment by that child of the age of eighteen years shall not deprive the Court of jurisdiction to—
- (a)* enforce his or her attendance and deal with him or her in any respect for any failure to observe the conditions of his or her recognizance, or order; or
 - (b)* vary or discharge the recognizance or order.

63. Summons to inquire of fit person

- (1) If a child has been convicted of any offence and the Court is satisfied that it is in the best interests and welfare of the child to make an order committing the child to the care of a fit person and ascertains on inquiry that the person is available and willing to undertake the care of the child, the Court shall summon the fit person before it for the purpose of examining him or her as to his or her fitness to be appointed.
- (2) The Court, before making an order under this Act committing a child to the care of a fit person, shall endeavour to ascertain the religious persuasion of the child and shall, wherever possible, in making the order, take into consideration the religious persuasion of the child.

64. Family group conference for sentencing

- (1) If the Court makes a determination of guilt with respect to a child, the Court may refer the matter to a family group conference for a written recommendation.
- (2) Section 38 applies if the Court has referred a matter to a family group conference.
- (3) On receipt of the written recommendation from a family group conference, the Court may—
 - (a) confirm the recommendation by making it an order of the Court; or
 - (b) substitute or amend the recommendation and make it an appropriate order.
- (4) If the Court does not agree to the terms of the plan made at a family group conference, and imposes a sentence that is different in a material respect from that agreed to or decided upon at the family group conference, the Court shall note the reasons for deviating from the plan on the record of the proceedings.
- (5) If a child who has been sentenced in accordance with an order arising from a family group conference fails to comply with that order, an assigned officer shall notify the Court of the failure as soon as possible and the Court shall issue a warrant for the apprehension of the child, and if the child appears before the Court under the warrant, the Court shall impose an appropriate sentence on the child.

65. Sentences involving correctional supervision

- (1) The Court may impose a sentence of correctional supervision for a period not exceeding three years on a child over the age of fourteen years.
- (2) The whole or any part of the sentence imposed under subsection (1) may be postponed or suspended, with or without conditions referred to in section 69(3).

66. Sentence with a compulsory residential requirement

- (1) A sentence involving a compulsory residential requirement shall not be imposed on a child unless the court is satisfied that the sentence is justified by—
 - (a) the seriousness of the offence, the protection of the community and the severity of the impact of the offence on the victim; or
 - (b) the previous failure of the child to respond to non-residential alternatives.
- (2) If the Court imposes a sentence involving a compulsory residential requirement on a child it shall note the reasons for the sentence on the record and explain them to the child in a language which the child can understand.
- (3) A sentence involving a compulsory residential requirement shall include referral to a—
 - (a) programme with a periodic residence requirement where the duration of the programme does not exceed twelve months, and no portion of the residence requirement exceeds twenty-one consecutive nights, with a maximum of sixty nights for the duration of the programme;
 - (b) secure residential facility, subject to section 67; or
 - (c) correctional facility, subject to section 68.

67. Referral to secure residential facility

- (1) Subject to subsection (2), a sentence to a secure residential facility shall not exceed two years.
- (2) A sentence to a secure residential facility may be imposed for a period exceeding two years if the child is fourteen years and over and he or she would have been sentenced to imprisonment due to the seriousness of the offence were it not for section 68(1)(a).

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- (3) Subject to subsection (4), a child referred to in subsection (2) may not be required to reside in a secure residential facility beyond the age of eighteen years.
- (4) Notwithstanding subsection (3), a child may request permission, in the prescribed form, from the head of the secure residential facility to continue to reside at the secure residential facility for the purposes of completing his or her education in the following circumstances—
 - (d) on completion of a sentence at a secure residential facility; or
 - (e) in the case of a child referred to in subsection (2), on attainment of the age of eighteen years.

68. Referral to a correctional facility

- (1) A court shall not impose sentence of imprisonment on a child—
 - (a) unless the child was over the age of fourteen years at the time of commission of the offence; and
 - (b) unless substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include—
 - (i) conviction of an offence referred to in Schedule 3; or
 - (ii) a previous failure to respond to alternative sentences, including sentences with a residential element; or
 - (c) in respect of an offence referred to in Schedule 1; or
 - (d) as an alternative to any other sentence specified in this Act.
- (2) If a sentence of imprisonment is imposed on a child under subsection (1) that sentence shall be for a period not exceeding three years.

- (3) If a child fails to comply with a condition of a sentence imposed on him or her, the child may, in the prescribed manner, be brought before the court for reconsideration of the original sentence which may, subject to subsections (1) and (2), include a sentence of imprisonment.
- (4) If the Court imposes a sentence of imprisonment, the Court shall announce the term of imprisonment in open Court and the coming into effect of the term of imprisonment shall be antedated by the number of days that the child has spent in a correctional facility prior to the sentence being announced in the Court.

69. Postponement or suspension of passing sentence

- (1) The passing of any sentence imposed on a child may be postponed, with or without one or more of the conditions referred to in subsection (3), for a period not exceeding three years.
- (2) The whole or any part of any sentence imposed on a child may be suspended, with or without one or more conditions referred to in subsection (3), for a period not exceeding five years.
- (3) The conditions referred to in subsections (1) and (2) may be any condition appropriate to the circumstances of the child which are in keeping with the principles of this Act and which promotes the reintegration of the child into his or her community or society and may include—
 - (a) restitution, compensation or symbolic compensation;
 - (b) an apology;
 - (c) the obligation not to commit a further offence of a similar nature;
 - (d) good behaviour;
 - (e) regular school attendance for a specified period;

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- (f)* attendance at a specified time and place of a family group conference;
 - (g)* placement under the supervision of an assigned officer;
 - (h)* a requirement that the child shall appear before the Court on a date or dates to be determined by the Court for a periodic progress report; and
 - (i)* referral to a level one diversion option referred to in items *(d)*, *(e)*, *(f)*, *(g)*, *(h)*, *(i)*, *(j)* or *(k)* in Schedule 4.
- (4)** If the Court has postponed the passing of a sentence under subsection (1) on one or more conditions, the Court may request the assigned officer concerned to submit regular reports indicating the compliance of the child with the conditions imposed under this section.
- (5)** Notwithstanding section 79, the conviction of a child in respect of whom passing of a sentence has been postponed shall be expunged from any record if the child has met all the conditions imposed or at the expiration of the period in question.

70. Penalty in lieu of fine or imprisonment

The Court convicting a child of an offence for which a fine or imprisonment is stated by law as the penalty, may impose any one of the following penalties in place of that fine or imprisonment—

- (a)* symbolic compensation to a specified person or institution;
- (b)* payment of compensation not exceeding \$5,000 to a specified person or institution if the child or his or her family is able to make that payment;
- (c)* an obligation on the child to provide a service or benefit or to pay compensation to a specified organisation identified by the child or by the Court,

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if there is no identifiable person to whom restitution or compensation could be made; or

(d) any other sentence as stated in this Act, except imprisonment.

(2) In this section “**symbolic compensation**” means the giving of an object owned, made or bought by a child to a person, or group of persons or an institution as compensation for the harm caused by the child.

71. Prohibition on certain forms of punishment

(1) A sentence of life imprisonment or any form of corporal punishment shall not be imposed on a child.

(2) A court shall not pronounce or record a sentence of death against a child, but instead the court shall sentence the child to be detained in a correctional facility and under conditions as the court may direct.

(3) A child who has been sentenced to attend a secure residential facility may not be detained in a correctional facility or in police custody pending designation of the place where the sentence is to be served.

72. Notice to parent

(1) If it appears to the Court that finds a child guilty of an offence relating to property or against the person of another, on evidence admitted or submissions made in the case against the child—

(a) that wilful failure on the part of a parent or an appropriate adult to exercise proper care of, or supervision over, the child was likely to have substantially contributed to the commission of the offence; and

(b) that compensation may be paid to any person for—

(i) loss caused to the person’s property whether the loss was an element of the offence charged

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or happened in the course of the commission of the offence; or

- (ii) injury suffered by the person, whether as the victim of the offence or otherwise, because of the commission of the offence,

the Court, on its own initiative or on application by the Director of Public Prosecutions, may decide to call on the parent or an appropriate adult to show cause, as directed by the Court, why the parent or an appropriate adult should not pay the compensation.

- (2) If the parent or an appropriate adult is present in Court when the Court decides to call on the parent or an appropriate adult to show cause, the Court may call on the parent to show cause by announcing its decision in Court.
- (3) The Court in all cases, instead of acting under subsection (2), may cause the Clerk of the Court to give written notice to the parent or an appropriate adult to show cause, as directed by the notice, why the parent or an appropriate adult should not pay the compensation.
- (4) If the Court calls on the parent or an appropriate adult under subsection (2) or the Clerk of the Court issues a notice under subsection (3)—
- (a) the Court shall reduce its reasons for so doing in writing; and
- (b) a copy of the reasons for so doing shall be given, in accordance with the direction of the Court, if any, to the parent or an appropriate adult within a reasonable time before the show cause hearing.

73. Proceedings to show cause

- (1) At the proceedings to show cause for the purposes of section 72 (1)—

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- (a) evidence and submissions in the case against the child are to be treated as evidence and submissions in the proceedings to show cause;
 - (b) further evidence may be given and submissions made;
 - (c) the parent or appropriate adult may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and
 - (d) the parent or an appropriate adult may require any fact stated in submissions mentioned in paragraph (a) to be proved.
- (2) Subject to subsection (1)—
 - (a) the determination of the issues at the proceedings to show cause shall be by way of fresh hearing on the merits; and
 - (b) the Court shall not be bound by a determination made by it under section 72.
- (3) If the parent was called on to show cause on the prosecution’s application, the prosecution shall be a party to the proceedings to show cause.
- (4) If the parent was called on to show cause on the Court’s own initiative the Director of Public Prosecutions, may at the proceedings to show cause—
 - (a) appear and give the Court the assistance it may require; or
 - (b) intervene as a party with the permission of the Court.
- (5) If on consideration of the evidence and submissions mentioned in subsection (1)(a) and (b), a Court is satisfied beyond reasonable doubt of the matters mentioned in section 72(1), the Court may make an order requiring the parent to pay compensation.

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- (6) An order made under subsection (5) shall direct that the amount shall be paid—
- (a) by a time specified in the order or by instalments specified in the order; and
 - (b) to the Clerk of the Court.
- (7) In determining the amount to be paid by a parent by way of compensation, the Court shall have regard to the capacity of the parent to pay the amount, which shall include an assessment of the effect any order would have on the capacity of the parent to provide for his or her child.
- (8) The Court shall proceed under this section in the absence of the parent if the Court is satisfied that the parent has been given notice of the proceedings to show cause under section 72.

**PART 12—GENERAL PROVISIONS AS TO PROCEEDINGS
IN COURT**

74. Power to proceed with case in absence of child

If in any proceedings in relation to any offence, the Court is satisfied that the attendance before the Court of a child in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

75. Extension of power to take depositions

If the Court is satisfied by the evidence of a medical practitioner that the attendance before the Court of—

(a) a child in respect of whom the offence is alleged to have been committed; or

(b) a child witness to the alleged offence,

would involve serious danger to his or her life or health, any deposition of the child taken under this Part shall be

admitted in evidence either for or against the accused child without further proof if it is signed by the Magistrate before whom it was taken.

76. Determination of age

- (1) If a person, whether charged with an offence or not, is brought before a court otherwise than for the purpose of giving evidence, and it appears to the Court that he or she is a child, the court shall make due enquiry as to the age of that person, and for that purpose shall take the evidence as may be forthcoming at the hearing of the case.
- (2) If in any charge or indictment for any offence it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age, and he or she appears to the court to have been at the date of the commission of the alleged offence a child or to have been under or to have attained the specified age he or she shall for the purposes of this Act be presumed at that date to have been a child or to have been under, or to have attained, that age, unless the contrary is proved.
- (3) An order or judgment of the court shall not be invalidated by any subsequent proof that the age of a person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person brought before it shall, for the purposes of this Act be the true age of the person brought before the court and if the person has attained the age of 18 years that person shall for the purposes of this Act be considered not to be a child.

77. Responsibilities of parent of child in conflict with the law

- (1) The Court may make an order in relation to one or both of the parents of a child in conflict with the law or in relation to any other appropriate adult responsible for a child in conflict with the law.

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- (2) The Court order, referred to in subsection (1), may require the parents or appropriate adult to—
- (a) attend counselling;
 - (b) attend parenting classes;
 - (c) comply with the care plan;
 - (d) take such action as may be necessary to support a probation order or care plan.
- (3) A parent who, without reasonable cause, contravenes a Court order, made under subsection (2), commits a summary offence and liable to a fine of \$5,000 or to three months' imprisonment.
- (4) In making an order, under this section, the Court shall take into consideration the recommendations of the Child Justice Committee.
- (5) When making a recommendation to the Court, under this section, the Child Justice Committee shall take into account—
- (a) the recommendations of the relevant assigned officer;
 - (b) the effect on other children of the family;
 - (c) the terms of employment of the parents or appropriate adult; and
 - (d) any other circumstances or conditions as is relevant to the particular case.

78. Appeal

An appeal shall lie from any decision or order of the Court.

PART 13— RECORDS OF CONVICTION AND SENTENCE

79. Expungement of records

- (1) The record of a sentence imposed on a child convicted of an offence in item (1), (2), (3) or (4) of Schedule 3 shall not be expunged.
- (2) In respect of an offence other than those referred to in subsection (1), a Magistrate shall make an order regarding the expungement of the conviction and sentence of the child and shall note the reasons for the decisions as to whether the record may be expunged or not where the judge imposes the sentence after consideration of any relevant factor, including—
 - (a) the nature and circumstances of the offence; and
 - (b) the personal circumstances of the child.
- (3) If the judge makes a decision regarding the expungement of a record of a conviction and sentence under this section, he or she shall explain the decision and give his or her reasons for the decision, including any conditions relating to the expungement of the record, to the child.
- (4) A decision by the Magistrate not to expunge a record is subject to appeal.

PART 14 — OFFENCES AND PENALTIES

80. Offences and penalties

- (1) A person shall not hinder or obstruct a police officer or an assigned officer in the performance of his or her functions under this Act.
- (2) A person who contravenes subsection (1) commits a summary offence and is liable to a fine of \$5,000 or to three months' imprisonment.
- (3) A person who—

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- (a) fails to comply with a direction issued under section 13 or section 38(2); or
- (b) publishes or broadcasts by radio, internet, social media or other electronic means any matter or information or reveals the identity of persons in contravention of section 57;

commits a summary offence and is liable to a fine of \$50,000 or to twelve months of imprisonment.

PART 15 –REGULATIONS AND REPEAL

81. Regulations

- (1) The Governor acting on the advice of Cabinet may make regulations regarding any matter which is required by this Act to be prescribed.
- (2) Without limiting the generality of subsection (1), the Governor acting on the advice of Cabinet may make regulations regarding procedures to be implemented to monitor and assess the proper application of and compliance with this Act.

82. Amendment of Schedules

- (1) The Governor acting on the advice of Cabinet may, by Order, amend the Schedules.
- (2) An Order made under subsection (1) shall be laid before the Legislative Assembly and is subject to negative resolution.

83. Repeal and transitional provisions

- (1) The Juveniles Act (Cap 2.11) is repealed.
- (2) Despite the repeal of the Juveniles Act (Cap 2.11), rules, orders, and regulations made under that Act will be continued in force and unless replaced by rules, orders and regulations made under this Act.

SCHEDULE 1

(Sections, 11, 15, 60(4), 68(1))

APPREHENSION AND RELEASE

A child shall not be apprehended for any of the following offences unless there are compelling reasons justifying apprehension and if a child is apprehended, the child shall be released in accordance with section 15:

1. Assault where grievous bodily harm has not been inflicted
2. Damage to property where damage does not exceed \$5,000
3. Trespass
4. Any offence under any law in Montserrat relating to the possession of a controlled drug (where the value of the quantity involved does not exceed \$1,000)
5. Theft, where the value of the property does not exceed \$1,000
6. Any offence made under an enactment where the maximum penalty determined by that enactment does not exceed \$5,000 or imprisonment up to three months
7. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule
8. Any non-violent offence not being an offence mentioned in Schedule 2 or 3

SCHEDULE 2

(Sections 15(2), 18 (4))

**OFFENCES FOR WHICH A CHILD MAY BE RELEASED
FROM POLICE CUSTODY**

1. Assault, involving the infliction of grievous bodily harm
2. Arson
3. Robbery, other than robbery with aggravating circumstances, if the amount involved does not exceed \$100,000
4. Theft, where the amount involved does not exceed \$100,000
5. Any offence under any law relating to the possession of a controlled drug where the quantity involved does not exceed \$100,000
6. Forgery or fraud, where the amount concerned does not exceed \$100,000
7. Any offence made under an enactment where the penalty concerned does not exceed \$100,000
8. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule
9. Burglary, if there are no aggravating circumstances

SCHEDULE 3

(Sections 18(1), 19, 32, 33, 55, 68 and 79)

**OFFENCES FOR WHICH A CHILD MAY NOT BE
RELEASED FROM POLICE CUSTODY**

1. Murder
2. Infanticide
3. Manslaughter
4. Rape.
5. Treason
6. Burglary, if there are aggravating circumstances
7. Robbery—
 - (a) where there are aggravating circumstances or violence; or
 - (b) involving the taking of a motor vehicle.
8. Indecent assault on a person under the age of eighteen years.
9. Any offence under the Drugs (Prevention of Misuse) Act (Cap 4.07) if—
 - (a) the value of the controlled drugs in question is more than \$100,000; or
 - (b) the value of the controlled drugs in question is more than \$100,000 and the offence was committed by a person, group of persons, acting in the execution or furtherance of a common purpose or conspiracy

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10. Any conspiracy or incitement to commit an offence referred to in this Schedule or an attempt to commit any of the offences referred to in item 1, 2, or 3 of this Schedule.
11. Resisting arrest, obstruction, assault on a police officer under the Police Act (Cap. 10.01).
12. Offences under the Road Traffic Act (Cap 7.06)) involving vehicular manslaughter or causing death by dangerous driving.

SCHEDULE 4

(Section 45)

LEVELS OF DIVERSION OPTIONS

Level one diversion option includes—

- (a) an oral or written apology to a specified person or institution;
- (b) a formal caution in the prescribed form with or without conditions;
- (c) placement under a supervision and guidance order in the prescribed form for a period not exceeding six months;
- (d) placement under a reporting order in the prescribed form;
- (e) the issue of a compulsory school attendance order in the prescribed form for a period not exceeding six months;
- (f) the issue of a family time order, requiring a child to spend a specified number of hours with his or her family, in the prescribed form for a period not exceeding six months;
- (g) the issue of a good behaviour order in the prescribed form;
- (h) the issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place in the prescribed form;
- (i) referral to counselling or therapy for a period not exceeding six months;
- (j) compulsory attendance at a specified place for a specified vocational or educational purpose for a

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- period not exceeding five hours each week, for a maximum of six months;
- (k) symbolic compensation to a specified person or an institution; and
- (l) restitution of a specified object to a specified victim of an alleged offence where the object concerned may be returned or restored.

Level two diversion option includes—

- (a) the options referred to in Level one except that the maximum periods referred to in that Level shall for the purposes of this subsection be nine months;
- (b) compulsory attendance at a place approved by the Child Justice Committee for a specified vocational or educational purpose for a period not exceeding eight hours each week, for a maximum of nine months;
- (c) performance of some service without remuneration for the benefit of the community under the supervision or control of an organisation or institution, or a specified person or group identified by an assigned officer effecting the assessment, for a maximum period of fifty hours, and to be completed within a maximum period of nine months;
- (d) provision of some service or benefit to a specified victim in an amount which the family of the child is able to afford;
- (e) where there is no identifiable person to whom restitution or compensation may be made, provision of some service or benefit or payment of compensation to an organisation, charity or welfare organisation for the benefit of the community.

Level three diversion option includes—

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- (a) referral to a programme which does not exceed twelve months and which has a residential element that must not exceed thirty-five days in total and twenty-one consecutive days during the operation of the programme;
- (b) performance of some service without remuneration for the benefit of the community under the supervision and control of an organisation or institution, or a specified group of persons, identified by an assigned officer and for a period of two hundred and fifty hours which shall be completed within twelve months and no more than thirty-five hours per week;
- (c) where the child is not attending formal schooling, compulsory attendance at a specified place for a specified vocational or educational purpose for a period not exceeding twelve months and no more than thirty-five hours per week; and
- (d) referral to counselling or therapeutic intervention in conjunction with any of the options listed in respect of this level.

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SCHEDULE 5

(Section 41)

Government of Montserrat

APPLICATION FOR LEGAL REPRESENTATION

Applicant's Code
For office use only

Guidance Notes

Please read the guidance notes below before completing this form.

The information that you provide in this form is confidential and will only be disclosed in accordance with your authorisation.

Who should complete the form

This form should be completed by a parent or an appropriate adult (as defined in the Child Justice Act) on behalf of a child.

How is eligibility determined?

To determine eligibility for legal representation, the Social Services Department considers, among other factors:

- the purpose of the request for legal representation
- whether it is reasonable in all the circumstances to provide legal representation
- what you earn and what you own

How do you know if you have been approved for legal representation?

After you submit the completed application form, the Social Services Department will send you a letter informing you:

- if you have been approved for legal representation;
- the amount to be granted towards legal representation;
- what the grant is for.

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Surname:

First name:

Middle name(s):

Surname at birth (if different):

2. Has the child been known by or has used any other name, including a nickname?

No

Yes → What is the other name?

3. Gender:

Male Female Other

4. Date of Birth:


5. Age:

6. Photographic identification submitted:

Passport No.

Driver's Licence No.

Other (*state type of ID*)

 Attach copy of photographic identification referenced above.

7. Place of birth:

8. Home Address:

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9. Is the child a Montserratian?

No → State the nationality of the child

Yes

10. Is the child a resident of Montserrat?

No → State the country of residence of the child

Yes

11. Does the child have a disability?

No

Yes → What is the child's disability?

- brain injury
- autism spectrum
- chronic health condition
- hearing/speech impairment
- mental health condition
- physical impairment
- vision impairment
- Other – *Give details:*

12. If the child is over 16 years of age, is the child married? (See Marriage Act)

No

Yes → Give details of marriage, including details of the husband

13. Is the child currently employed?

What is the basis of the child's employment?

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- No
- Yes → Give details

- full time
- part time
- casual
- self-employed

Give details of the child's income
Net wage/salary

\$

- Weekly Fortnightly Monthly

 *Attach copies of last 3 payslips or a letter from child's employer showing the income and tax paid for the child.*

14. Does the child receive any other income or benefit?

- No
- Yes → What is the amount received as an income/benefit?

Income:


\$

- Weekly Fortnightly Monthly

Benefit:

\$

- Weekly Fortnightly Monthly

 *Attach proof of other income/benefit*

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PARENT/APPROPRIATE ADULT DETAILS

To be completed in respect of the parent of the child or the appropriate adult

Personal Details

15. Your name

Mr Mrs Ms Miss Other

Surname:

First Name:

Middle name(s):

Surname at birth (if different):

16. Are you known by or have used any other name, including a nickname?

No
 Yes → What is the other name?

17. Gender:

Male Female Other


18. Date of Birth:

19. Age:

20. Photographic identification submitted:

Passport No.
 Driver's Licence No.
 Other:

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 Attach copy of photographic identification referenced above.

21. Place of birth:

22. Home Address:

23. Is it safe to write to the address above?

No → Provide a safe address below:

Yes

24. Telephone Number:

(Home)

(Mobile)

25. Is it safe to call on these numbers?

No → Provide a safe number

Yes

26. Email address:

Would you prefer to being contacted by email?

No

Yes

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27. Do you have a disability?

- No
- Yes → What is your disability?
 - brain injury
 - autism spectrum
 - chronic health condition
 - hearing/speech impairment
 - mental health condition
 - physical impairment
 - vision impairment
 - Other – *Give details:*

28. What is your current relationship status?

- Single
- Married
- In a relationship
- Separated
- Divorced
- Widowed

29. What is your relationship to the child?

30. Does the child reside with you?

- No → Give details
- Yes

Who does the child reside with?

Name:

Age:

Gender:

Relationship:

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31. Do you reside with any other person?

No

Yes → Give details

Name	Age	Gender	Relationship

32. Is the child financially independent of his parents or an appropriate adult?

No → The child is financially dependent on:

Yes

Your Income

33. Are you currently employed?

No

Yes → Give details

What is the basis of your employment?

full time

part time

casual


self-employed

Give details of income

Net wage/salary

\$

Weekly Fortnightly Monthly

 Attach copies of last 3 payslips or a letter from your employer showing the weekly income and tax paid for you

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34. Do you receive any other income?
 No
 Yes → Amount received as other income

\$

- Weekly Fortnightly Monthly

Provide further details below

Source	Period <i>(Weekly/fortnightly/monthly)</i>	Amount
Interest from investments		\$
Rental		\$
Child Support		\$
Income from a trust		\$
Worker's compensation		\$
Other Income: <input style="width: 80px;" type="text"/>		\$

Attach proof of other income

35. Do you currently receive a social welfare, social security benefits or a pension (including rental payments made on your behalf by the Social Services Department)?
 No
 Yes → Select appropriate option below
- Social Welfare
 - Social Security Benefit
 - Pension (If yes, source of pension)
 - I don't know

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Provide further details of the amount you receive as a benefit or pension?

Social Welfare:

	\$ <input style="width: 150px; height: 20px;" type="text"/>	
<input type="checkbox"/> Weekly	<input type="checkbox"/> Fortnightly	<input type="checkbox"/> Monthly

Social Security Benefit

	\$ <input style="width: 150px; height: 20px;" type="text"/>	
<input type="checkbox"/> Weekly	<input type="checkbox"/> Fortnightly	<input type="checkbox"/> Monthly

Pension

	\$ <input style="width: 150px; height: 20px;" type="text"/>	
<input type="checkbox"/> Weekly	<input type="checkbox"/> Fortnightly	<input type="checkbox"/> Monthly

 *Attach proof of social welfare, social security benefits or a pension*

36. Do you receive any other benefit?

- No
- Yes → Amount received as a benefit

\$ <input style="width: 150px; height: 20px;" type="text"/>

- Weekly Fortnightly Monthly

 *Attach proof of any other benefit*

37. Is there any person (e.g. a spouse, partner or relative) who gives you financial help or could assist you financially?

- No
- Yes → Details of Person

Name	Relationship

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- 41.** Is the home solely owned by you?
 No → Give details
 Yes

If the home is owned jointly, please list the name of the person(s) with whom you share ownership and the size of the share

Other Owner(s)	Size of Share

- 42.** Current Value of the home

\$

- 43.** Mortgage payment remaining on the home:

\$

- 44.** Do own any other real estate (i.e. an investment property) in Montserrat or elsewhere (including real estate you are paying off)?

- No
 Yes → State reference number and location of other real estate(s)

- 45.** Is the other real estate solely owned by you?
 No → Give details
 Yes

If the real estate(s) is owned jointly, please list the name of the person(s) with whom you share ownership and the size of the share

Property Reference and Location	Other Owner(s)	Size of Share

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46. Current value(s) of the real estate(s)

\$
\$

47. Mortgage payment(s) remaining on real estate(s)

\$
\$

48. Do you own a business?

- No
 Yes → Give details below

Name

--

Address

Current value of business

\$

49. Is the business solely owned by you?

- No → Give details
 Yes

If the business is owned jointly, please list the name of the person(s) with whom you share ownership and the size of the share

Other Owner(s)	Size of Share

50. Do you own any motor vehicle (including motor vehicles you are paying off)?

- No
 Yes → Provide vehicle information below

Year	Make/Model	Market Value	Amount owing
		\$	\$

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- 51.** Is the motor vehicle(s) solely owned by you?
 No → Give details
 Yes

If the motor vehicle(s) is owned jointly, please list the name of the person(s) with whom you share ownership

Joint Owner	Vehicle Description

- 52.** Do you have a bank account in Montserrat or elsewhere?
 No
 Yes → Provide the following bank information

Bank Name	Account Number	Amount held
		\$
		\$
		\$

📎 Attach statements for the last 3 months for all accounts from the financial institution(s) listed

- 53.** Do you own anything else of value in Montserrat or elsewhere e.g. boats or shares?
 No
 Yes → Provide a description of the item and its value

Description of Item	Value
	\$
	\$
	\$

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Your Expenses

54. Do you have any dependents?
 No
 Yes → Give details of all dependents

Name	Date of Birth	Relationship to you	Living with You?
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

55. Provide details of your expenses

Expense	Period <i>(Weekly/fortnightly/monthly)</i>	Amount	<i>Paid by:</i>	
			Applicant	Other Resident
Rent		\$	<input type="checkbox"/>	<input type="checkbox"/>
Mortgage		\$	<input type="checkbox"/>	<input type="checkbox"/>
Utilities		\$	<input type="checkbox"/>	<input type="checkbox"/>
Child care		\$	<input type="checkbox"/>	<input type="checkbox"/>
Child Support		\$	<input type="checkbox"/>	<input type="checkbox"/>
Loans		\$	<input type="checkbox"/>	<input type="checkbox"/>
Other debts: _____		\$	<input type="checkbox"/>	<input type="checkbox"/>

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56. Do you have any other special financial reasons that we need to consider when making a decision about your application (e.g. expenses because of a disability, personal debts etc)?

No

Yes → Give details below

Legal Proceedings Details

57. Court reference number

--

Next court date:

--

59. Has the child been charged with a criminal offence?

No

Yes → Give details below

Date Charged

--

Description of Charge


--

--

--

60. How did the child plead?

Guilty Not guilty Not sure

 Attach copies of relevant court documents.

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61. Does the child currently have legal representation?

No

Yes → Give details of legal representation

Name of Attorney

--

Name of Law Firm

--

Address of Law Firm

--

Telephone number

--

62. In the absence of current legal representation, is there an attorney-at-law that you want to represent the child and who will agree to provide legal representation?

No

Yes → Give details of the attorney-at-law

Name of Attorney

--

Name of Law Firm

--

Address of Law Firm

--

Telephone number

--

63. Have legal fees previously been paid to an attorney-at-law for this matter by or on the child's behalf?

No

Yes → Give details or previous fee payment

Fees paid by

--

Fees paid to

--


Amount paid

\$

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64. State any further details you wish to provide about the child’s legal matter (including the reason for the request for legal representation, details of what happened, the current status of legal proceedings)

65. Please tell us about any exceptional circumstances that you want us to consider when making a decision about the application.

 *Attach copies of any relevant documents, e.g. medical reports*

66. Have the circumstances under which the child may be provided with legal representation been explained to the child and the parent or an appropriate adult?
 No Yes

67. Is the child in detention pending plea and trial in Court?
 No
 Yes → Give details below

Name of Detention Centre

--

Date detention commenced

--

68. Have the proceedings been postponed for plea and trial in the Court?
 No
 Yes → Give details below

Date of postponement

--

Date on which proceedings will resume

--

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69. Has a certificate has been issued by the DPP confirming an intention to prosecute the child?
- No
 - Yes
 - I don't know

70. Does the child have any previous convictions?
- No
 - Yes → Give details below of previous convictions

Checklist

Copies of the following documents are attached:

- Photographic identification of the child (*question 6*)
- Copies of last 3 payslips or a letter from the child's employer showing the income and tax paid for the child (*question 13*)
- Proof of other income/benefit for the child (*question 14*)
- Photographic identification of applicant parent/appropriate adult (*question 20*)
- Copies of last 3 payslips or a letter from the applicant's employer showing the weekly income and tax paid for the applicant (*question 33*)
- Proof of other income of applicant parent/appropriate adult (*question 34*)
- Proof of social welfare, social security benefits or a pension of applicant parent/appropriate adult (*question 35*)
- Proof of other benefit of applicant parent/appropriate adult (*question 36*)
- Statements for the last 3 months for all accounts from the financial institution(s) listed by the applicant parent/appropriate adult (*question 52*)
- Copies of relevant court documents relating to current court proceedings (*question 60*)

